

# University of Cambridge

## Standard Terms and Conditions of Sale

### (“Conditions”)

#### 1. GENERAL

- 1.1 In these Conditions, the following words and expressions shall have the following meanings:-

Word/Expression	Meaning
“the Buyer”	the person, firm, company, university or other organisation who or which has agreed to purchase Goods and/or Services from the University
“the University”	The Chancellor, Masters and Scholars of the University of Cambridge (which may from time to time act through one of its departments, schools, faculties, institutions or divisions)
“a Contract”	a contract for the sale and purchase of Goods and/or Services between the University and the Buyer
“Capital Equipment”	all items manufactured or supplied by the University which are of a capital nature including without limitation, instruments, computers, printers, and non-expendable accessories/spare parts
“Consumables”	all items manufactured or supplied by the University other than the Capital Equipment including without limitation, biochemicals
“Goods”	any [Consumables or Capital Equipment] agreed to be supplied to the Buyer by the University
“Services”	all services agreed to be performed by the University

- 1.2 These Conditions shall govern each Contract to the exclusion of any conditions of the Buyer

(including any terms or conditions which the Buyer purports to incorporate through any purchase order, confirmation of order, specification, or other document) except to the extent that additional or alternative conditions are agreed or stated in writing by the University to apply. These Conditions may not be varied or waived except with the express written agreement of the University. The failure of the University to enforce its rights under a Contract at any time for any period of time shall not be construed as a waiver of any such rights.

- 1.3 All drawings, descriptive matter, specifications and advertising material issued by the University or contained on any University website are issued for the sole purpose of giving an approximate idea of the Goods or Services described within the Contract. They will not form part of the Contract, nor will any representation made orally or in writing by an employee, agent or student of the University.

- 1.4 A Contract shall be formed when an order received from the Buyer is accepted in writing by the University or, if earlier, on the acceptance by the Buyer, without amendment, of any valid quotation issued by the University.

#### 2. PRICES AND QUOTATIONS

- 2.1 The price of the Goods and/or Services will be the University’s quoted price (or if there is no quoted price, the University’s list price on the date of delivery) exclusive of value added or other taxes except where stated otherwise. All quotations issued by the University for the supply of Goods and/or Services shall remain open for acceptance for the lesser of 90 days or such other period as may be stated in the quotation. Prices shall not include handling, freight, packaging, insurance or similar costs, for which an additional charge will be made where applicable. In particular, a handling charge may be made for small orders. If you order goods for delivery outside the UK, you will be responsible for import duties, whatever they may be at the time of delivery or release to you.

- 2.2 The University shall not modify quoted prices at any time before delivery to the Buyer unless to reflect (a) any changes to its costs resulting from any alteration in or addition to the Buyer’s requirements or (b) any changes in external costs, charges, duties or taxes arising in relation to the provision of the Goods or Services which are outside the control of the University, including under clause 16.

### **3. PAYMENT**

3.1 Unless full or partial payment in advance or other payment terms have been specified by the University, the University shall invoice in full for Goods on delivery.

3.2 The University shall invoice for Services monthly in advance, payment for the first two months to be made on commencement of the Contract, save in relation to the provision of conferences and courses, or the hiring out of facilities, when payment must be received in full in advance of the start of the conference, course or hiring period, as the case may be.

3.3 Unless otherwise specified, payment shall be due in the currency invoiced no later than thirty (30) days from the date of invoice. Bank charges incurred as a result of payment being made from overseas accounts shall be reimbursed to the University by the Buyer. All payments shall be made free of any demand, deduction or set-off by the Buyer.

3.4 In the event of late payment the University reserves the right to do any one or more of the following:

- (a) in the case of Goods, to suspend deliveries and/or any of its outstanding obligations under the Contract; and
- (b) in the case of Services (other than those set out in (iv) below), to suspend the provision of Services; and in either case
- (c) to charge interest to cover administrative and other associated costs in relation to the late payment pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 ("the LCD Act") where applicable.
- (d) in situations where the LCD Act does not apply, to charge the interest which would be payable were the LCD Act applicable;
- (e) in the case of the provision of conferences, courses or the hiring out of facilities, to refuse admission to the course or conference, or to deny access to the facilities concerned;
- (f) to refer collection of the debt to its debt collection agent.

3.5 The University may make a search against the Buyer with a credit reference agency which may keep a record of that search and will share that information with other businesses. The University may also make enquiries about the proprietors, principal directors, partners or managers of the Buyer with a credit reference agency.

### **4. CHANGES**

4.1 The University reserves the right to modify the Goods to comply with applicable law or regulations, to improve capability or

performance, or to supply Goods of equivalent performance if those requested are no longer available.

4.2 The University reserves the right to make any change on prior notice in the specification of any Goods which does not materially affect the use, installation, performance or price thereof. The Buyer shall confirm or cancel any order promptly on receipt of such notice.

4.3 The University reserves the right to make any change on prior notice to the specification of any Services to be provided, which does not materially effect the value of that Service to the Buyer. The Buyer shall confirm or cancel any order promptly on receipt of such notice.

4.4 Without prejudice to the rights of the Buyer pursuant to Clause 10, Goods may only be returned with the University's prior consent. A restocking charge will be applied to deliveries returned for exchange or credit.

### **5. DELIVERY OF GOODS**

5.1 Delivery of Goods under a Contract shall be deemed to take place at the University, irrespective of the party arranging delivery to the Buyer.

5.2 Delivery of Goods to the Buyer is not included in the price.

5.3 In the event of late delivery of Goods by the University, Clause 6 shall apply.

5.4 The Buyer shall notify the University within five (5) working days in writing of any short delivery or defects in respect of Goods reasonably discoverable on careful examination. The University's sole obligation shall be, at its option, to replace or give a refund in respect of any defective Goods or refund the purchase price of any undelivered Goods.

5.5 Where delivery of any Product requires an export license or other authorisation before shipment, the University shall not be responsible for any delay in delivery due to delay in, or refusal of, such license or authorisation. It shall be the responsibility of the Buyer to obtain any export licence or authorisation required.

5.6 If, one week after the University has notified the Buyer that the Goods are ready for delivery, for any reason the Buyer will not accept delivery of Goods, or the University is unable to deliver the Goods because the Buyer has not provided appropriate instructions, documents, licences or authorisations:-

- (a) risk in any Goods will thereupon pass to the Buyer;
- (b) the Goods will be deemed to have been delivered; and

- (c) the University may store the Goods until delivery and the Buyer shall be responsible for all related costs, including, without limitation, all costs for storage and insurance.

## **6. TIMING**

- 6.1 The University will use all reasonable endeavours to avoid any delay in delivery of Goods or provision of Services on the dates notified to the Buyer. Failure to deliver or perform by the specified date will not be a sufficient cause for cancellation, nor will the University be liable for any direct, indirect, consequential or economic loss, or any costs charges or expenses suffered or incurred due to delay in delivery.

## **7. CANCELLATION OF CONTRACT**

- 7.1 In the event that an order for Goods or Services is cancelled prior to delivery or performance, the Buyer shall be liable to reimburse the University for the larger of (a) the costs incurred or committed to the date of cancellation and (b) an administration fee of £50, or such fee as may be specified in relation to the Contract in question.

## **8. RISK AND TITLE TO GOODS**

- 8.1 All Goods supplied under a Contract shall be at the Buyer's risk on delivery.
- 8.2 Full legal and equitable title and interest in Consumables shall pass to the Buyer on delivery.
- 8.3 Title in the Capital Equipment will not pass to the Buyer until the University has received full payment for it and for any other Goods that the University has sold to the Buyer for which payment is outstanding. Until title passes the Buyer holds the Capital Equipment on behalf of the University as bailee, and shall keep such Capital Equipment maintained in good condition and insured on the University's behalf against all risks for its full purchase price. The Buyer has the right to resell the Capital Equipment provided:-
  - (a) any sale shall be effected in the ordinary course of the Buyer's business at full market value and the Buyer shall hold such part of the proceeds of sale as represent the amount owed by the Buyer to the University on behalf of the University and the Buyer shall account to the University accordingly;
  - (b) such right of re-sale shall terminate immediately on the Buyer in any way charging or encumbering the Capital Equipment, or suffering any proceedings in relation to insolvency or any other action in consequence of debt, or the Buyer failing to observe or perform any of its obligations to the University under the Contract concerned.

## **9. SERVICES**

- 9.1 Where the University is to provide Services to the Buyer at its premises the Buyer shall ensure that adequate and safe facilities exist at its premises and that the University is properly notified of any relevant regulations or health and safety requirements.

## **10. WARRANTY**

- 10.1 **Goods** – The University warrants that its Consumables meet the University's specifications at the time of shipment. All warranty claims on Consumables must be made within thirty (30) days of receipt of the Consumables. The University's sole liability and Buyer's exclusive remedy for a breach of this warranty is limited to replacement or refund of the defective Consumables at the sole option of the University.
- 10.2 **Capital Equipment** – The University's Capital Equipment of its own manufacture is warranted from date of delivery to be free of defects in workmanship or materials under normal usage for a period of one year. The University's sole liability and Buyer's exclusive remedy of a breach of this warranty is limited to repair, replacement or refund at the sole option of the University. Where Capital Equipment is not of the University's manufacture, the University shall endeavour to ensure that the Buyer shall have the benefit of any warranty given by the third party manufacturer.
- 10.3 **Services** – The University warrants that all Services will be carried out with reasonable care and skill. The University's sole liability for breach of this warranty shall be at its option to give credit for (provided that no such credit shall exceed the value of any monies received under the same Contract by the University) or re-perform the Services in question. This warranty shall only extend for a period of sixty (60) days after the completion of the relevant part of the Services.
- 10.4 All other warranties, representations, terms and conditions (statutory, express, implied or otherwise) as to quality, condition, description, merchantability or fitness for purpose of goods (except for the implied warranty of title), are hereby expressly excluded, as are all other warranties, representations, terms and conditions (statutory, express, implied or otherwise) in respect of the quality or timeliness of the provision of services.

## **THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITIONS 10.5, 10.6, 11.1 AND 16.**

- 10.5 The University shall have no liability under any Contract or otherwise in respect of any defect in Goods arising from fair wear and tear or misuse (either on its own or in combination with other equipment), or alteration or repair of the Goods without the University's approval.

10.6 The University shall have no liability under any Contract or otherwise in respect of any defect in Goods or in relation to the provision of Services arising from defects in specifications or materials supplied by the Buyer, wilful damage or negligence of the Buyer or its employees or agents; abnormal working conditions at the Buyer's premises or failure to follow the University's instructions (whether oral or in writing).

## **11. LIMITATION OF LIABILITY**

11.1 Subject to Condition 11.2:

- (a) The University's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of any Contract shall be limited to the total price payable under that Contract in the calendar year in question or the average of the previous three calendar years, if greater; and
- (b) The University shall not be liable to the Buyer for any indirect or consequential damage, (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with any Contract.

11.2 The exclusion of liability in these Conditions shall not apply in respect of fraudulent misrepresentation or of death or personal injury caused by the University's negligence.

## **12. TRADE MARKS, PATENTS/AND INTELLECTUAL PROPERTY**

12.1 Where the Buyer supplies designs, drawings and specifications to the University to enable it to manufacture non-standard or custom made Goods the Buyer warrants that such manufacture will not infringe the intellectual property rights of any third party.

12.2 All intellectual property rights in the Goods and/or created in the course of carrying out the Services shall at all times remain vested in the University or its employees, consultants or students, as the case may be and shall not become the property of the Buyer.

12.3 The Buyer shall have no right to apply to the Goods or otherwise use any trademark owned or used by the University.

12.4 If any claim is made or alleged that the Goods infringe any patent rights, registered designs, copyright or other industrial property rights of another then:

- (a) the Buyer shall forthwith notify the University with full particulars and

- (b) the University or its suppliers or licensors (as case may be) shall be at liberty at their expense to conduct all negotiations and/or litigation in respect thereof and (if necessary) in the name of the Buyer and, if as a result of such negotiations or litigation the Buyer shall be unable to use the Goods substantially for purposes for which they were bought, the University shall (except when Condition 12.5 applies) take them back and refund the purchase price to the Buyer and such refund shall be in full satisfaction of all claims by the Buyer against the University.

12.5 The Buyer shall indemnify the University against all action costs (including the cost of defending legal proceedings) expenses claims proceedings and demands in respect of any infringement or alleged infringement by the University of patent rights registered design, copyright or other industrial rights attributable to the University's complying with any special instructions from or requirements of the Buyer.

## **13. HEALTH SAFETY AND WASTE**

13.1 The Buyer shall be responsible for ensuring that:

- (a) the Goods as specified are safe and appropriate for the Buyer's intended use;
- (b) the Goods are handled in a safe manner; and
- (c) any waste originating from the Goods is disposed of in accordance with any relevant regulations.

## **14. INDEMNITIES**

14.1 Except where the claim arises as a result of the negligence of the University, the

Buyer shall indemnify the University in respect of any claim which may be made against the University arising in connection with the Buyer's use of any Goods supplied or the results of any Services.

## **15. TERMINATION**

15.1 In the event that the Buyer becomes bankrupt or, being a company, goes into liquidation (other than for the purposes of reconstruction or amalgamation) or has an administrator or receiver appointed or suffers any other action in consequence of debt the University shall be entitled immediately to terminate the Contract without notice and without prejudice to any other rights of the University hereunder.

15.2 Without prejudice to any other right or remedy available pursuant to these Conditions, either party shall have the right to terminate the Contract on the giving of 60 days written notice in the event of a material breach of contract by the other party which is not remedied before expiry of such notice. Where the University shall

have issued such notice it shall have the right to suspend performance or deliveries under the Contract in question until the breach has been remedied. Where such material breach is incapable of remedy, the innocent party shall have the right to terminate the Contract forthwith on the service of written notice.

## **16. FORCE MAJEURE, BREXIT**

- 16.1 The University shall not be liable in respect of the non-performance of any of its obligations to the extent such performance is prevented by any circumstances beyond its reasonable control including but not limited to strikes, lock outs or labour disputes of any kind (whether relating to its own employees or others), fire, flood, explosion, natural catastrophe, pandemic or epidemic (including COVID-19) and any government or central University guidance or requirements to act or not act in a particular way, military operations, blockade, sabotage, revolution, riot, civil commotion, war or civil war, plant breakdown, computer or other equipment failure and inability to obtain equipment.
- 16.2 If an event of force majeure exceeds four months either party may cancel the Contract without liability.
- 16.3 If a Brexit Trigger Event (as defined in clause 16.4) occurs, either party may:
- (a) require the other party to negotiate in good faith an amendment to the Contract to alleviate the Brexit Trigger Event; and
  - (b) if no such amendment is made to this Contract within 30 days, may cancel the Contract without liability by giving the other party not less than 30 days' written notice.
- 16.4 A Brexit Trigger Event means any of the following events occurring at any time after and caused by the UK ceasing to be a Member State of the European Union:
- (a) a material adverse impact on a party's ability to perform the Contract in accordance with its terms and the law, including without limitation a change in law, trade tariff, approvals or licences required for performance, currency fluctuation or any other substantial change to the business or economic environment in which a party operates;
  - (b) an increase in the costs incurred by a party in performing the Contract of at least 5% since the price for the Goods was last agreed;
  - (c) the price of the goods and resources needed by a party to perform its obligations under the Contract is at least 5% higher than the market value for similar products or services.

## **17. GOVERNING LAW**

- 17.1 The Contract shall be governed by and construed in accordance with the laws of England and the parties hereby submit to the exclusive jurisdiction of the English Courts.

## **18. NOTICES**

- 18.1 All notices shall be in writing served on the other party at its registered office or principal place of business. In the case of the University all notices should be addressed to the Head of the Department, Faculty, School, Institution or Division concerned, with a copy to the Director of Finance, the Old Schools, Trinity Lane, Cambridge.

Notice may be served by prepaid post, by hand or by fax or e-mail, confirmed by post.

Notices served by post shall be deemed to have been served five working days after despatch.

Notices served by fax or e-mail shall be deemed to have been served the next working day after despatch.

## **19. GENERAL**

- 19.1 If the whole or any part of a provision of these Conditions is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction, unless it alters the basic nature of the Contract concerned or is contrary to public policy.
- 19.2 These Conditions do not constitute one party the partner, agent, or legal representative of the other. Save as aforesaid none of these Conditions shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to the Contract concerned.
- 19.3 The Buyer shall not assign or otherwise transfer all or any part of its rights or obligations under any Contract without the University's prior written consent.