CARDIFF UNIVERSITY PURCHASING SECTION

**STANDARD CONDITIONS OF CONTRACT FOR THE PURCHASE OF GOODS**

**AND/OR SERVICES**

1. **DEFINITIONS**
2. In these Conditions:

‘Authorised’ means signed by one of the authorised officers

‘Authorised Officer’ means our employee specifically authorised by us to sign our Purchase Order, confirmation of which may be obtained from the Purchasing Manager

‘Conditions’ means the standard terms & conditions of purchase set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the parties to this contract

‘Confidential Information’ means any information which has been designated as confidential by either Party in writing, or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored), including information which relates to the business affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998.

‘Contract’ means the contract for the sale and purchase of the Goods and the supply and acquisition of the services

 ‘Goods’ ‘Services’ means the products, materials, articles, works and services described in the purchase order.

Order Amendment’ means our authorised Purchase Order amendment

‘Package’ or ‘Packaging’ means any type of package including bags, cases, carboys, cylinders, drums, pallets, tank wagons and other containers.

‘Price’ means financial consideration and shall include ‘rate’ or ‘fee’ particularly in the provision of services.

‘Purchase Order’ means our purchase order to which these Conditions are annexed

“Sale of Goods Act 1979” shall mean the Sale of Goods Act 1979 as amended by the Sale and Supply of Goods Act 1994 and the Sale of Goods (Amendment) Act 1995.

‘Specification’ includes any drawings, plans, data or other information relating to the Goods or Services.

“Supply of Goods and Services Act 1982” shall mean the Supply of Goods and Services Act 1982 as amended by the Sale and Supply of Goods Act 1994.

‘We’, ‘Us’ and ‘Our’ means Cardiff University.

‘You’ and ‘Your’ means the person, firm or company to whom the purchase order is addressed and any employees, sub-contractors or agents of said person, firm or company

1. Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.
2. The headings in these Conditions are for ease of reference only and shall not affect the interpretation or construction of these conditions.
3. Words importing the masculine gender also include the feminine and the neuter

2. **BASIS OF PURCHASE**

1. The purchase order constitutes an offer by us to purchase the goods and/or acquire the services subject to these Conditions.
2. These Conditions shall apply to the Contract to the exclusion of any other terms of sale or other conditions of trade on which you may seek to rely. Your terms on order acknowledgements, delivery notes, invoices or any other of your standard documentation are excluded unless specific clauses are agreed in writing between the signatories to this Contract.
3. The purchase order will be deemed to be accepted unconditionally by you if no detailed counter-offer is received within 14 days of its date, subject to clause 2(ii) above.
4. Delivery of goods or provision of services in response to the purchase order or order amendment shall imply that you have accepted these Conditions.
5. No variation to the purchase order or these Conditions shall be binding unless agreed in writing between the signatories to this Contract.

3. **SPECIFICATIONS**

1. The quantity, quality, performance and description of the goods and the services shall, subject as provided in these Conditions, be as specified in the purchase order and/or in any applicable specification supplied by us to you or agreed in writing by us.
2. Any specification supplied by us to you, or specifically produced by you for us, in connection with the Contract, together with the copyright, design rights or any other intellectual property rights in the specification, shall be our exclusive property. You shall not disclose to any third party or use any such specification except to the extent that it is or becomes public knowledge through no fault of yours, or as required for the purpose of the Contract.
3. You shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the goods and the performance of the services. All equipment and products must be CE marked where applicable and must conform to all relevant EU and UK standards.

(iv) You shall at your expense provide any programmes of manufacture and delivery that we may reasonably require. You shall notify us without delay in writing if your progress falls behind or may fall behind any of these programmes.

(v) You shall not unreasonably refuse any request by us to inspect and test the goods during manufacture, processing, or storage at your premises or any third party prior to despatch, and you shall provide us with all facilities reasonably required for inspection and testing.

(vi) If as a result of inspection or testing we are not satisfied that the goods will comply in all respects with the Contract, and we inform you within 10 days of inspection or testing, you shall take such steps as are necessary to ensure compliance.

(vii) Any inspection, or approval by us shall not relieve you from your obligations under this Contract.

(viii) The goods shall be marked in accordance with our instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition.

(ix) The goods shall be new unless otherwise specified on the purchase order and be of sound materials and skilled and careful workmanship.

4. **VOLUMES & VALUES OF BUSINESS**

 Any written or verbal estimates of potential volumes or values of business which may be achieved under this Contract, which are not part of a purchase order, are provided only for guidance and are not binding. We will use reasonable endeavour to provide relevant information but no guarantee is given regarding the overall extent to which the contract will be used.

5. **PRICE**

1. You shall sell us the goods or provide the services for the firm price stated in the contract. If no price is stated in the contract, then the price shall be a competitive price, taking into account prevailing market conditions.
2. The price shall be inclusive of all charges for storing, packaging, shipping, carriage, insurance and delivery of the goods to the delivery address, installation and commissioning (as applicable) and any other duties, imposts or levies other than value added tax.
3. No increase in price may be made whether on account of increased material, labour or transport costs, fluctuation in exchange rates or otherwise without our prior consent in writing.
4. We shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by you, whether or not shown in your own terms and conditions of sale.

(v) We shall give you a reasonable opportunity to replace the Goods with new Goods that conform with this Contract, after which time we shall be entitled to cancel the purchase order and purchase the nearest equivalent Goods elsewhere. In the event of cancellation under this condition you shall promptly repay any monies paid under the Contract without any retention or offset whatsoever. Cancellation of the purchase order under this condition shall not affect any other rights we may have. You must collect all rejected Goods within a reasonable time of rejection or we shall return them to you at your risk and expense.

6. **DELIVERY**

(i) The goods shall be delivered to, and the services shall be performed at, the delivery address on the date or within the period stated in the purchase order, in either case during our usual business hours. Except where otherwise provided in the contract, delivery shall include the unloading, stacking or installation of the Goods by your staff, suppliers or carriers at the delivery address. Under no circumstances shall goods be left unattended at any premises. It is your responsibility to obtain a receipt for all goods delivered. We disclaim all responsibility for the security of goods delivered and left on our premises by you, or your carrier, if you fail to obtain a receipt for their acceptance from a person authorised to receive them. All valid deliveries will be signed for as “unexamined” on the basis of the number of packages received. Any damage or partial loss in transit or incorrect delivery shall be your liability provided that it is readily apparent and that you are notified of such damage or loss or incorrect delivery following our examination of the consignment.

(ii) The goods shall be properly packed, secured and despatched at your expense to arrive in good condition at the time or times and the place or places specified in the contract. All goods which customarily bear any mark, tab, brand, label or other device indicating place of origin, inspection under Government or other body, or standards of quality must be delivered with all said marks, tabs, brands, labels or other devices intact. A delivery note shall be issued by you in respect of each and every delivery made under the Contract. The receiving establishment shall retain one copy of the delivery note/invoice. The said note shall clearly and legibly state the full and proper description of the goods and quote the official order number. A duplicate copy may be signed and returned to you by the person accepting the delivery, noted as “unexamined”. The receiving establishment shall retain one copy of the delivery note/invoice.

(iii) If you or your carrier delivers any goods at the wrong time or to the wrong place then we may deduct from the price any resulting costs incurred by us for temporary insurance, storage or transport. We shall not be responsible for any loss or damage to incorrectly delivered goods.

(iv) If the goods are to be delivered, or the services are to be performed, by instalments, the Contract will be treated as a single contract and not severable.

1. We shall be entitled to reject any goods which are not in accordance with the Contract, and shall not be deemed to have accepted any goods until we have had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the goods has become apparent.
2. When a specific date has been agreed in writing between the parties, the time of delivery of the goods and of performance of the services is of the essence of the Contract.
3. We shall be under no obligation to accept or pay for any goods delivered in excess of the quantity ordered. If we elect not to accept such over-delivered goods, we shall be entitled to give you written notice to remove them within 5 days of receipt by you of such notice. If you fail to arrange removal, we shall be entitled to dispose of such goods and charge you for the costs of such disposal and any other expenses incurred by us as a result of such over-delivery (included but not limited to the costs of moving and storing them). The risk in any over-delivered goods shall remain with you until they are collected on your behalf or disposed of or purchased by us, as appropriate.

(viii) The delivery of services shall be subject to Cardiff University’s Supplementary Conditions of Contract for the delivery of Services, available via <http://www.cf.ac.uk/purch/forsuppliers/index.html>

7. **PACKAGING**

Unless otherwise stated in the contract, all packaging shall be deemed to be collected and removed by you at your own expense. We shall not be obliged to return to you any packaging or packing materials for the goods. If any specific written agreement is made for packaging to be returned by us after delivery, you must give us full disposal instructions before the time of delivery. The packaging must be clearly marked to show to whom it belongs. You must make suitable arrangements in advance of any return to cover the cost of all associated carriage and handling. We shall not be liable for any packaging lost or damaged in transit.

8. **PAYMENT**

(i) Subject to any agreed stage payment profile that is part of the contract, you shall be entitled to invoice us on, or at any time after, correct delivery of the goods or performance of the services. Any stage payment profile agreed in writing by our Authorised Officer will take precedence and be subject to the specific performance criteria for each payment.

(ii) Subject to clauses 6 & 9 herein, we shall pay you within 30 days of receipt of a correctly rendered invoice. Your invoice must be addressed to the department indicated on the purchase order and must quote the full purchase order number. VAT, where applicable, shall be shown separately on all invoices as a strictly nett extra charge. Where a Value Added Tax Zero-rating Certificate is issued with the acceptance of a Tender, Value Added Tax should not be charged on invoices related to the contract. We shall not be held responsible for delays in payment caused by your failure to comply with our invoicing instructions.

(iii) We shall be entitled to set off against the price all amounts lawfully owed to us by you, whether under this purchase order/contract or otherwise.

(iv) Where you enter into a sub-contract with a supplier or contractor for the purpose of performing the obligations set out in the Contract, you shall ensure that a provision is made in such a sub-contract which requires payment to be made of all sums due by you to the subcontractor within a specified period not exceeding 30 days from the receipt of a valid invoice.

9. **DEFAULT IN PERFORMANCE**

(i) **Goods**

 If the goods or any part of them are not delivered by the time or times specified in the contract then we may by written notice cancel any undelivered balance of the goods. We may also return for full credit and at your expense any goods that in our opinion cannot be used owing to this cancellation.

(ii) **Services**

 In the case of services failing to be carried out to the quality levels or within the agreed programme of dates or times under the contract, we may at our sole discretion adopt one or more of the following remedies:-

 (a) have the work performed by alternative means and any additional costs reasonably so incurred shall be charged to you;

 (b) deduct from any invoice presented by you such sum as we consider reasonable for the unsatisfactory services concerned or to meet any additional costs arising from clause 9(ii)(a) above.

 (c) terminate the contract either for the specific services which have not been carried out in accordance with the contract or for all the services to which the contract relates. In either such case you will not be entitled to payment by way of compensation, other than due consideration for those parts of the service which have been carried out satisfactorily but subject to clause 9(ii)(a) above.

In the event of termination you shall co-operate in the transfer of services, particularly under TUPE provisions, to any other organisation in accordance with advice from us.

10. **TERMINATION OF CONTRACT**

1. We shall be entitled to cancel the purchase order in respect of all or part only of the goods and/or the services without penalty by giving you notice at any time prior to delivery or performance unless such goods have been specially manufactured to our requirements. In that event, our sole liability will be to pay for the price of the goods in respect of which we have exercised our right of cancellation, less your net saving of cost arising from cancellation.
2. We shall be entitled to terminate the Contract without liability by giving notice to you at any time if:
3. You commit a breach of any of your obligations under the Contract
4. you make any voluntary arrangement with your creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) become bankrupt or (being a company) become subject to an administration order or go into liquidation (otherwise than for the purpose of amalgamation or reconstruction, or
5. an encumbrancer takes possession, or a receiver is appointed, of any of your property or assets, or
6. you cease, or threaten to cease, to carry on business, or
7. we reasonably apprehend that any of the events mentioned above is about to occur in relation to you and notify you accordingly.
8. If the Contract is in the form of a Framework Agreement, it shall be terminable at any time during the agreement period by not less than three [3] months notice in writing being given by either party to the other.
9. **VARIATIONS**

We shall have the right, before delivery, to send you an order amendment adding to, deleting or modifying the Goods. If the order amendment will cause a change to the Price or delivery date then you must suspend performance of the Contract and notify us without undue delay of the new Price and delivery date. You must allow us a reasonable period of time to consider any new Price and delivery date. The order amendment shall take effect only if our Authorised Officer accepts in writing the new Price and delivery date within the time you stipulate. If our Authorised Officer declines the revised price or delivery date, he shall have the right to exercise the option either to confirm that the performance of the Contract shall immediately resume as though the said order amendment had not been issued, or that the original order may be cancelled.

1. **NON-OBSERVANCE OF CONDITIONS**

If you breach or fail to observe any provision of this Contract we may give you written notice of such breach or non-observance and you shall have 28 days from receipt of the notice in which to rectify the breach or non-observance. For a material breach of contract, a maximum period of 7 days will be given in which to rectify the breach. Should you fail to rectify the breach, non-observance or material breach within the stipulated time, we shall have the right to terminate the Contract with immediate effect and without penalty.

13. **PROPERTY AND RISK IN GOODS**

(i) You shall bear all risks of loss or damage to the goods until they have been correctly delivered to the specified address and shall insure accordingly.

(ii) Ownership of the goods shall pass to us when they have been paid for in full.

14. **WARRANTIES & LIABILITY**

(i) You warrant that the goods, or services:

(a) will be of satisfactory quality and fit for any purpose held out by you or made known to you in writing at or before the time the purchase order is placed (within the meaning respectively of the Sale of Goods Act 1979 as amended and the Supply of Goods & Services Act 1982 as amended by the Supply of Goods to Consumers Regulations 2002, and the implied terms contained within any of these Acts) and shall comply with any statute, statutory order, directive or regulation or relevant International, European or British Standard (or equivalent required by us and any voluntary codes of conduct relating to the Goods.

(b) will be free from defects in design, materials and workmanship – other than special design to our specification.

1. will correspond with any relevant specification or sample.
2. will be covered by a minimum warranty period of 12 calendar months from delivery to us, or for a period of 12 calendar months from commissioning, where the Contract provides that goods are not to be installed, commissioned, tested and handed over immediately following delivery. Where an Acceptance Certificate is issued, the warranty period start date shall be the date stated on the Acceptance Certificate. You shall be responsible for making good, expeditiously and at your own expense, any defect in or damage to any of the Goods and/or output of the Services. Such remedial action shall be performed on our site unless otherwise agreed in writing.
3. You warrant that any e**lectrical and/or electronic equipment supplied by you under this contract that operates directly with UK mains voltage 230 +/- 10 volts is capable of running reliably over the entire voltage range of 207-253 volts without early failure and, in particular, with no degradation when running continuously at the higher voltage range of 240-253 volts. Performance data demonstrating this capacity will be required as appropriate.**
4. You warrant that the services will be performed by appropriately experienced, trained and qualified personnel, with all due care and diligence and to such a high standard of quality as it is reasonable for us to expect in all the circumstances.
5. Without prejudice to any other remedy, if any goods or services are not supplied or do not perform in accordance with the Contract, we shall be entitled:
6. to require you to repair the goods or to supply replacement goods or services in accordance with the contract within [14] days; or
7. at our sole option, and whether or not we have previously required you to repair the goods or to supply any replacement goods or services, to treat the Contract as discharged by your breach and require the repayment of any part of the price which has been paid.
8. Repairs or replacements will themselves be covered by the above warranty but for a period of 12 months from acceptance by us.
9. You shall indemnify us in full against all liability, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by us as a result of or in connection with:
10. breach of any warranty given by you in relation to the goods or the services
11. any claim that the goods infringe, or their importation, use or resale, infringes, the patent, copyright, design right, trade mark or other intellectual property rights of any person, except to the extent that the claim arises from your compliance with our specification
12. any liability under the Consumer Protection Act 1987 in respect of goods,
13. any act or omission by you or your employees, agents, or sub-contractors in supplying, delivering and installing the goods, and
14. any act or omission by you or your employees, agents, or sub-contractors in connection with the performance of the services

15. **INDEMNITY AND INSURANCE**

1. You shall indemnify us against all loss, actions, costs, claims, demands, expenses and liabilities whatsoever (if any) which we may incur either at common law or by statute in respect of personal injury to or death of any person or in respect of any loss or destruction of or damage to property (other than as a result of any default or neglect of ourselves or of any person for whom we are responsible) which shall have occurred in connection with any work executed by you under this contract or shall be alleged to be attributable to some defect in the goods.
2. You shall indemnify us against any and all loss, costs, expenses and liabilities caused to us whether directly or as a result of the action, claim or demand of any third party by reason of any breach by you of these conditions or of any terms or obligations on your part either legislated for or implied by the Sale of Goods Act 1979 as amended, the Supply of Goods and Services Act 1982 and the Supply of Goods to Consumers Regulations 2002 or any other statute or statutory provision relevant to the contract or to goods or services covered thereby.
3. You shall hold satisfactory insurance cover with a reputable insurer to fulfil your insurance obligations for the duration of this contract including public liability cover of at least £5M (Five Million Pounds Sterling). Satisfactory evidence of such insurance and payment of current premiums shall be shown to us upon request. The terms of any insurance or the amount of cover shall not relieve you of any liabilities under the contract. It shall be your responsibility to determine the amount of insurance cover that will be adequate to enable you to satisfy any liability referred to in this clause 15 (i) to 15 (iv) inclusive.
4. You shall indemnify us fully and shall keep us fully indemnified against all liability, loss, damages, injury, costs, claims and expenses (including legal expenses) suffered or incurred by us or in connection with the WEEE Regulations 2004 and the ROHS Regulations 2004.

16. **WORK ON OUR PREMISES**

(i) If the contract involves any works or services which you perform on our premises, you shall ensure that you and your employees, agents, your sub-contractors and their employees and any other person associated with you will adhere in every respect to the obligations imposed on you by current safety legislation and will comply with any regulations that we may notify to you in writing. You shall ensure that your health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to us on request.

(ii) You shall notify us immediately in the event of any incident occurring in the performance of the contract on our premises where that incident causes any personal injury, or damage to property which could give rise to personal injury.

(iii) You shall be responsible for maintaining the security of the premises in accordance with its standard security requirements and you, your employees, agents, servants and sub-contractors shall comply with all our reasonable security requirements while on the premises. You shall make no delivery of materials, plant or other items you require to perform work on our premises, nor commence any work on our premises, without obtaining prior written approval.

(iv) If and when directed by us, you shall provide a list of the names and appropriate addresses of all persons who it is expected may require admission in connection with the contract to any premises occupied by or on behalf of us, specifying the capacities in which they are concerned with the performance of the contract and any such particulars as we may reasonably require. We reserve the right to refuse to admit to, or withdraw permission to remain on, any premises occupied by us: any member of staff or any person employed as your sub-contractor, agent or servant whose admission or continued presence would be, in our opinion, inappropriate. Our decision as to whether any person is to be refused access to our premises shall be final and conclusive.

(v) On completion of the contract, you shall remove your plant, equipment and unused materials and shall clear away from our premises all rubbish arising from performance of the contract and leave our premises in a neat and tidy condition.

(vi) The University is committed to making its premises completely smoking free for the protection of all of its staff and students. Smoking is not permitted in or on any University premises. This includes all communal work areas, individual rooms, stairwells, lifts, rest areas, toilets, car parks and grounds. You shall ensure that all staff working on our premises comply with this policy.

(vii) The University has a duty to comply with the Equality Act 2010 and other relevant equality legislation. The University has produced and implemented a Dignity at Work & Study policy. Where services are carried out on our Premises, you must ensure that your staff interact with our staff and students in a manner consistent with the requirements of the relevant legislation and the University’s Dignity at Work & Study policy; a copy of which may be accessed via: <http://www.cardiff.ac.uk/govrn/cocom/equalityanddiversity/dignityatwork/index.html>

17. **HOURS OF WORK**

We may specify the period during which you shall carry out your operations and work shall be performed in such a manner that the business of the University is interfered with as little as possible.

18. **OUR SAFETY POLICY**

(i) If required by us in writing, you must supply the following information at any time prior to the contract award decision, or during the contract:

 Safety Policy Safety Plans

 Fire Safety Plan Risk Assessments

 Accident Statistics for the last 5 years Valid insurance documents

 Any Improvement/Prohibition Notice received

 Any prosecution or pending prosecution under Health & Safety legislation.

(ii) You shall observe all legal requirements of the United Kingdom, European Union and relevant international agreements in relation to health, safety and environment, and in particular to the marking of hazardous Goods, the provision of data sheets for hazardous Goods, the provision of data sheets for hazardous materials and all provisions relating to food. Hazardous Goods must be clearly marked and display the name of the material in English. Transport and other documents must include declaration of the hazard and name of the material in English and Goods must be accompanied by emergency information in English.

(iii) We shall have the right, at any time during the progress of the Contract, to order in writing the removal from our premises of any materials which in our opinion are either hazardous, noxious or not in accordance with the Agreement and the substitution of proper and suitable materials.

(iv) You shall promptly notify us of any health and safety hazards which may arise in connection with the performance of the contract and we shall promptly notify you of any health and safety hazards which may exist or arise at our premises and which may affect you in the performance of the Contract.

(v) You shall promptly notify us in the event of any incident occurring in the performance of the Contract on our premises where that incident causes any personal injury, or damage to property which could give rise to personal injury.

19. **ARTICLES ON LOAN AND USE OF INFORMATION**

(i) All tools, materials, drawings, specifications and other equipment and data (‘The Articles’) loaned by us to you in connection with the contract shall remain always our property and be surrendered to us on demand in good and serviceable condition (fair wear and tear allowed) and are to be used by you solely for the purpose of completing the contract. You agree that no copy of any of the articles will be made without the consent in writing of our authorised officer. Until you return all the articles to us they shall be at your risk and insured by you at your own expense against the risk of loss, theft or damage. Any loss of or damage to such articles shall be made good by you at your expense including, in the case of loss of premises keys, or computerised door access cards, the costs of re-suiting necessary to recover the original level of building security. All scrap arising from the supply of such articles must be disposed of at our discretion and all proceeds of sales of such scrap must promptly be paid to us in full.

(ii) You shall be responsible for the accuracy of all drawings, documentation and information supplied to us by you in connection with the provision of goods or performance of services and shall pay us any extra costs occasioned by any discrepancies, errors or omissions therein.

(iii) Each party shall treat all Confidential Information belonging to the other party as confidential and safeguard it accordingly and shall not disclose any Confidential Information belonging to the other party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the contract or where disclosure is otherwise expressly permitted by the provisions of the contract. Nothing in this clause shall prevent us from disclosing any Confidential Information for the purpose of the examination and certification of our accounts or any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which we have used our resources. Nothing in this clause shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the contract in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or any infringement of Intellectual Property Rights.

(iv) We have a legal duty to comply with the provisions of the Freedom of Information Act, 2000 (FOIA)and the Environmental Information Regulations 2004 (EIR). Accordingly, information in relation to this contract and any prior related tender may be made available on demand in accordance with the legislation. You should state if any of the information supplied by you as part of the contract is either confidential or commercially sensitive, or should not be disclosed to a third party in response to a request for information under the Act. The reasons for such sensitivity must be specified. In such cases the relevant material will be examined in the light of the exemptions provided in the Freedom of Information Act or Environmental Information Regulations, although we cannot guarantee that any exemption will apply. You shall assist and co-operate with us to enable us to comply with information disclosure requirements under FOIA or EIR. You and your sub-contractors shall:

a) Transfer any request for information that you receive to us as soon as practicable after receipt and in any event within 2 (two) working days of receiving a request for information

b) Provide us with a copy of all information in your possession or power in the form that we require within 5 (five) working days (or any other period we may specify) of us requesting that information and

c) Provide all necessary assistance as is reasonably requested by us to enable us to respond to a request for information within the time limit for compliance set out in FOIA or EIR.

(v) The provisions of 19 (iii) and 19 (iv) shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

20. **OWNERSHIP OF RESULTS**

If the contract involves design and/or development work:

(i) All rights in the results of work arising out of or deriving from this contract, including inventions, designs, artwork, copyright and knowledge, shall be our property and we shall have the sole right to determine whether any letters patent, registered design, trademark and other protection shall be sought.

(ii) You shall promptly communicate to us all such results and shall if requested and at our expense do all acts and things necessary to enable us or our nominee to obtain letters patent, registered designs and other protection for such results in all territories and to assign the same to us or our nominee.

(iii) You shall ensure that all technical information (including computer programs and programming information) arising out of or deriving from this contract is held in strict confidence except for any such information which becomes public knowledge other than by breach of this contract and is returned to us upon termination of the Contract (including any back up media)

21. **INFRINGEMENT OF PATENT**

(i) With the exception of goods made to our design or instructions, you warrant that neither the goods nor software, nor our use of them, will infringe any patent registered design, trade mark, copyright or other protected right and undertake to indemnify us against all actions, claims, demands, costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of any such right.

(ii) If at any time any allegation of infringement of any patent, registered design or copyright is made in respect of the goods or software or in your reasonable opinion is likely to be made, you may at your own expense modify or replace the goods or software, without detracting from overall performance. At the same time you will make good for any loss of use by us of goods or software during modification or replacement, so as to avoid the infringement.

22. **Environmental Policy**

 Our Policy of Sustainable Procurement and Environmental Responsibility requires us to give reasonable priority to suppliers that have established, or propose to establish, appropriate sustainable environmental policies governing their own business activities. You must supply details of any existing, or proposed environmental policy relating to the raw materials used, production methods and finished products or services. We reserve the right at our sole discretion to apply sustainability and environmental factors in any contract award decision.

**23. DISCRIMINATION AND ACCESSIBILITY**

1. You shall not discriminate either directly or indirectly on the grounds of race disability, sex, sexual orientation, gender reassignment, age, religion, belief or lack of belief, marriage or civil partnership status, pregnancy or maternity in accordance with the Equality Act 2010 (and any other relevant legislation) or any statutory modification or re-enactment thereof, including discrimination by association or perception and harassment or victimisation.
2. You warrant that your own procedures and practices comply with legislation to prevent unlawful discrimination, harassment and victimisation and that your employees are fully trained on matters relating to the prevention of unlawful discrimination, harassment and victimisation.
3. You will provide your goods, facilities or services in line with the requirements of the Equality Act 2010 in relation to access and reasonable adjustments for disabled people where relevant.
4. You shall also provide your goods, facilities or services in accordance with the current public sector duties under the Race Relations (Amendment) Act 2000, Equality Act 2006 and Disability Discrimination Act 2005 to amended by the public sector duties prescribed under the Equality Act 2010 from April 2011
5. You shall provide such information as required by us in relation to your compliance with anti-discrimination legislation and you will co-operate with any investigation by us or a body empowered to carry out such investigations under the relevant legislation.
6. Where any investigation is conducted, or proceedings are brought that arise directly or indirectly out of any act or omission by you, your agents or subcontractors and where there is a finding against you in any such investigation or proceedings, you shall indemnify us with respect to all costs, charges and expenses including legal and administrative expenses) incurred by us during or in connection with any such investigation or proceedings and further indemnify us for any compensation, damages, costs or other award we may be ordered or required to pay to a third party.
7. Without prejudice to the remedies set out above, we may terminate the contract if notice is given to you of a substantial or persistent breach of this clause providing that a reasonable period has been given during which the breach may have been rectified and you have failed to remedy the breach within the stated period.
8. A copy of the University’s Equality and Diversity policy can be accessed via: <http://www.cardiff.ac.uk/govrn/cocom/equalityanddiversity/index.html>

24. **DATA PROTECTION ACT**

(i) With respect to the parties’ rights and obligations under this Contract, the parties acknowledge that, except where otherwise agreed, we are the Data Controller and you are the Data Processor.

(ii) Where you, pursuant to your obligations under this contract, process Personal Data on our behalf, you shall:

a) process Personal Data only in accordance with our instructions (which may be specific instructions or instructions of a general nature as set out in this Contract or as otherwise notified by us to you during the Term);

b) process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Ordered Services or as is required by Law or any Regulatory Body;

c) comply with the “Data Protection Terms for Data Processor Contracts” where applicable. A copy is available from the Purchasing Section or via our website: <http://www.cardiff.ac.uk/purch/forsuppliers/index.html>

(iii) You shall be liable for and shall indemnify (and keep indemnified) us against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and disbursements on a solicitor client basis) and demands incurred by us which arise directly or in connection with your data processing activities under this contract, including without limitation those arising out of any third party demand, claim or action, or any breach of contract, negligence, fraud, wilful misconduct, breach of statutory duty or non-compliance with any part of the Data Protection Requirements by you or your employees, servants, agents or Sub-Contractors.

25. **ASSIGNMENT AND SUB-LETTING**

1. Our purchase order is personal to you and you shall not assign or transfer or purport to assign or transfer to any other person any of its rights or sub-contract any of its obligations under the Contract.
2. You shall not sub-let any part of the contract without our written consent, but we shall not withhold such consent unreasonably. This restriction shall not apply to sub-contracts for materials for minor details or for any part of which the makers are named in the contract.
3. You shall be held liable for all Goods supplied and/or all Services carried out by your sub-contractors under this Contract.
4. In the event that your business is transferred in whole or in part to another person or organisation, you shall retain producer responsibility under the WEEE Regulations 2004, unless the transferee has agreed to meet the producer’s obligations in respect of any Goods (i.e. electronic or electrical equipment) under the WEEE Regulations 2004.

26. **MATTERS BEYOND CONTROL**

If either party is delayed or prevented from performing its obligations under this contract by circumstances beyond the reasonable control of either party (including without limitation any form of government intervention, fire, flood or any disaster relevant to the purchase order or breakdown of plant), such performance shall be suspended and if it cannot be completed within a reasonable time after the due date as specified in the purchase order, then the contract may be cancelled by either party. We shall pay to you such sum as may be fair and reasonable in all the circumstances of the case in respect of work performed by you under the purchase order prior to cancellation but only in respect of work that we have received full benefit as originally contemplated in the contract. This provision can have effect only if it is called into operation by the party wishing to rely on it giving written notice to the other to that effect.

27. **PREVENTION OF** **CORRUPTION AND FRAUD**

(i) You warrant and undertake to us that in performance of the Contract:

(a) In connection with this or any other contract between you and us you shall not give, provide, or offer to our staff and agents any loan, fee, reward, gift or any emolument or advantage whatsoever. Your attention is drawn to the criminal offences under the Bribery Act 2010.

(b) You shall take all reasonable steps, in accordance with good industry practice, to prevent any fraudulent activity by your staff or your company (including its shareholders, members, directors) and/or any of your suppliers, in connection with the receipt of monies from us. You shall notify us immediately if you have reason to suspect that any fraud has occurred, or is occurring, or is likely to occur.

(c) you will comply with applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (”Anti-Bribery Law”);

(d) you will comply with our anti-bribery policy as may be amended from time to time

(e) you will procure that any person who performs or has performed services for or on your behalf (”Associated Person”) in connection with this Contract complies with this Clause [1].

(f) you will not enter into any agreement with any Associated Person in connection with this Agreement, unless such agreement contains undertakings on the same terms as contained in this Clause [1];

(g) you have and will maintain in place effective accounting procedures and internal controls necessary to record all expenditure in connection with the Contract;

(h) from time to time, at our reasonable request, you will confirm in writing that you have complied with your undertakings under [Clauses 1.1 - [1.5] and will provide any information reasonably requested by us in support of such compliance;

(i) you shall notify us as soon as practicable of any breach of any of the undertakings contained within this clause of which you become aware.

(ii) Breach of any of the undertakings in this clause shall be deemed to be a material breach of the Agreement for the purpose of Clause 3 below

(iii) If you, your staff or any subcontractors, or anyone acting on your or their behalf, commits any of the prohibited acts or commits any offence under the Bribery Act 2010, whether with or without your knowledge, we shall be entitled to terminate the Contract and recover from you the amount of any loss resulting from the termination and the amount or value of any such gift, consideration or commission.

28**. WELSH LANGUAGE SCHEME**

You shall conform fully with the requirements of the University’s Welsh Language Scheme, in compliance with the Welsh Language Act 1993 (c.38). If the provision of the goods or services includes a Welsh Language element, you should seek the assistance and advice of the University’s translation service with all translation tasks so as to ensure a consistent and quality provision. Details of the University’s Welsh Language Scheme can be downloaded from our website:

<http://www.caerdydd.ac.uk/govrn/welshlanguageservice/index.html>

29. **WAIVER**

A failure at any time to enforce any provision of the contract shall in no way effect the right at a later date to require complete performance of the contract, nor shall the waiver of the breach of any provision be taken or held to be a waiver of any subsequent breach of the provision or be a waiver of the provision itself.

# 30. VALIDITY OF PROVISIONS

If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

31. **NOTICE**

 All notices and communications required to be sent to you by us in this contract shall be made in writing and sent by either facsimile, first class mail or email (electronic mail) to your registered or head office and if sent by you to us sent to our authorised officer. Provided the relevant communication is not returned as undelivered, it shall be deemed to have reached the party to whom it is addressed on the next business day following the date of transmission or posting.

**32 THE CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999 (“the 1999 Act”)**

 No person who is not a Party to the Contract (including without limitation any employee, officer, agent, shareholder, representative or sub-contractor of either Party) shall have any right to enforce any term of the Contract which expressly or by implication confers a benefit on such person, without the prior agreement in writing of both Parties, which agreements should specifically refer to this Condition 32. This Condition 32 does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the 1999 Act and does not apply to the Crown.

33. **AMENDMENT**

No addition, alteration or substitution of these Conditions will bind us or form part of the contract unless and until accepted in writing by our Purchasing Manager.

34. **LAW AND DISPUTE RESOLUTION**

This contract shall be governed by the laws of Wales and England and the exclusive jurisdiction of the courts in Wales and England.

In the event of any dispute or difference in connection with the Contract, the parties shall seek to resolve the dispute or difference amicably by further consultation and negotiation in good faith. If agreement cannot be reached by this method and both parties further agree, the dispute or difference shall be referred to an alternative dispute resolution procedure (ADR) recommended by the Centre for Dispute Resolution, London (CEDR). If either party elects not to pursue ADR, both parties shall submit to the jurisdiction of the courts of England and Wales.