

# THE DURHAM UTC LIMITED

## STANDARD TERMS AND CONDITIONS OF PURCHASE

### DEFINITIONS

The terms and expressions used in these Standard Terms and Conditions of Purchase shall have the meanings attributed to them as set out below;-

**“Authorised”** means signed by an Authorised Officer;

**“Authorised Officer”** means Our employee being the relevant person authorised, either generally or specifically, by Us to sign Our Purchase Order in accordance with the levels set in Our financial regulations as amended from time to time, confirmation of which may be obtained from the Procurement Manager;

**“Change in Law”** the coming into effect or repeal (without re-enactment or consolidation) in England of any law, or any amendment or variation to any law, or any judgment of a relevant court of law which changes binding precedent in England in each case after the date of the Contract;

**“Contract”** has the meaning given in Clause 2 below;

**“Employees”** any person employed by the Supplier to perform the Contract which will also include the Supplier’s servants, agents, voluntary and unpaid workers and subcontractors and representatives or, in respect of Clause 19 (TUPE and Re-tendering) and any other TUPE obligation, an individual employed by the Supplier in the performance of the Services;

**“ETI Base Code”** means the Ethical Trading Initiative Base Code which is an internationally recognised code of labour practice. A copy of which can be accessed at [www.ethicaltrade.org](http://www.ethicaltrade.org).

**“General Conditions”** means these Standard Terms and Conditions of Purchase;

**“Good Industry Practice”** the exercise of such degree of skill, diligence, care and foresight which would reasonably and ordinarily be expected from a skilled and experienced Supplier engaged in the supply of Services similar to the Services under the same or similar circumstances as those applicable to the Contract;

**“Goods”** means the materials, articles, works and services described in the Contract;

**“Intellectual Property Rights”** patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;

**“Liabilities”** all costs, actions, demands, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought;

**“Order Amendment”** means an amendment or series of amendments made to Our Purchase Order, each Order Amendment having precedence over any earlier Order Amendment;

**“Packaging”** means any type of packaging including bags, cases, carboys, cylinders, drums, pallets, tank wagons and other containers;

**“Price”** has the meaning given in Clause 3 below;

**“Procurement Manager”** means the person appointed by Us with overall responsibility for the procurement of Services and Goods by Us;

**“Purchase Order”** means Our Authorised purchase order including any Order Amendment;

**“Replacement Contractor”** any company, organisation or person who replaces the Supplier following termination or expiry of all or part of the Contract;

**“Services”** the services described in the Specification to be provided by the Supplier in accordance with the Contract, together with all equipment required and any associated Goods provided by the Supplier in relation to the services;

**“Special Conditions”** means any special conditions of contract agreed between the parties or attached to the Purchase Order including any scope of work or itinerary agreed in writing prior to the Purchase Order and directly relevant to the Goods ordered including, where issued any Invitation to Tender;

**“Specification”** means the description of the Services or Goods which may be contained within the Purchase Order, Order Amendment or annexed to these General Conditions of Purchase or within Your written description of the Services or Goods to be supplied;

**“Tender”** means the final offer accepted by Us for the supply of the Services or Goods and the manner of doing so;

**“TUPE”** the Transfer of Undertakings (Protection of Employment) Regulations 2006;

**“UTC”, “We”, “Us” and “Our”** means the Durham UTC Limited care of University of Sunderland 4<sup>th</sup> Floor Edinburgh Building, City Campus, Chester Road, Sunderland, Tyne and Wear, SR1 3SD;

**“UTC Closure Day”** means any day designated by the UTC as a day in which the UTC shall be closed. Details of such days can be provided upon request by the UTC’s Authorised Officer.

**“Working Day”** means any weekday (Monday to Friday) which is not a Bank Holiday, other National Public Holiday or the UTC Closure Day; and

**“Supplier”, “You”, “Your” and “Yours”** 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.

## **INTERPRETATION**

- 1.1 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.2 Unless the context otherwise requires, a reference to one gender shall be construed to include any other gender.
- 1.3 The Contract shall be binding on, and enure to the benefit of, the parties to the Contract and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.4 A reference to any statute, order, regulation or similar instrument shall be construed as a reference to the statute, order, regulations or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.
- 1.5 Any reference to a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

## **2. FORM OF CONTRACT**

- 2.1 The "Contract" between the parties shall comprise (in order of precedence) of the following documents;
  - i) Purchase Order or Order Amendment
  - ii) any Special Conditions supplied to You, if applicable
  - iii) these Standard Terms and Conditions for the Purchase
  - iv) Your response to the UTC's invitation to Tender, if applicable
  - v) Any other document (or part document) referred to in the Purchase Order or expressly incorporated into the Contract with Our written agreement.
- 2.2 Prior to provision of the Services or dispatch or delivery of the Goods the Supplier must be in receipt of a Purchase Order. The UTC shall not be liable for Services or Goods supplied without a Purchase Order.
- 2.3 Provision of the Services or dispatch or delivery of Goods by the Supplier in response to a Purchase Order shall be deemed conclusive evidence of the Supplier's acceptance of these Standard Terms and Conditions of Purchase.
- 2.4 These Standard Terms and Conditions of Purchase shall apply to all contracts for the purchase of Services or Goods by the UTC from the Supplier to the exclusion of all other terms and conditions including any terms or conditions which the Supplier may purport to apply under any sales offer or similar document.
- 2.5 You agree to sell and We agree to purchase the Services or Goods in accordance with the Contract.

## **3. PRICE**

- 3.1 The "Price" for the Services or Goods shall be the fixed Price as stated in the Contract. This shall in all cases be subject to any agreed provisions included within the Contract concerning Price movement determination.

- 3.2 The Services shall not be provided and the Goods shall not be dispatched or delivered unless a Price has been agreed between the parties.
- 3.3 The UTC reserves the right to withhold payment of the relevant part of the Price, without payment of interest, where the Supplier has either failed to provide the Services or deliver the Goods at all or has provided the Services or delivered Goods, which, in the reasonable opinion of the UTC, are unsatisfactory and any invoice relating to such Services or Goods will not be paid unless or until the Services or Goods have been provided or delivered to the UTC's satisfaction.
- 3.4 The Price shall include storage, packaging, insurance (including carriage insurance), delivery, installation and commissioning (as applicable) but shall exclude VAT.
- 3.5 Unless otherwise stated in the Contract We shall pay You within Our normal payment terms as stated on Our Purchase Order (further information available from the Procurement Manager). Your invoice must be addressed to the department indicated on the Purchase Order and must quote the full Purchase Order number.
- 3.6 We shall not be held responsible for delays in payment caused by Your failure to comply with Our invoicing instructions.

#### **4. ORDER AMENDMENT**

- 4.1 The UTC shall have the right, before commencement of the Services or delivery of the Goods, to send You an Order Amendment adding to, deleting or modifying the Services or Goods.
- 4.2 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 delay, calculating the new Price and delivery date at the same level of cost and profitability as the original Price. You must allow Us at least 10 working days to consider any new Price and delivery date.
- 4.3 The Order Amendment shall take effect when but only if Our Authorised Officer accepts in writing the new Price and delivery date within the time You stipulate. If Our Authorised Officer fails to confirm the Order Amendment within the time You stipulate then performance of the Contract shall immediately resume as though the said Order Amendment had not been issued (except that We may still exercise Our right of cancellation in accordance with Clause 5).
- 4.4 Notwithstanding any Order Amendment described by Clauses 4.1 to 4.3. no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

#### **5. OUR RIGHTS OF CANCELLATION AND TERMINATION**

- 5.1 In addition to the UTC's other rights of cancellation or termination under the Contract, the UTC may cancel the Purchase Order and any Order Amendment at any time by sending You a notice of termination. In this regard. you will comply with any instructions that We may issue with regard to the Services or Goods.
- 5.2 Subject to Clause 17, where the UTC exercises its right to cancel or terminate under Clause 5.1 above, the Supplier shall be entitled to issue a termination claim for any reasonable, direct and quantifiable costs reasonably incurred due to the cancellation or termination. In any event, the total of all payments made or due to You under the Contract, including any termination payment, shall not exceed the Price.

5.3 If You fail to submit a termination claim within 3 months of the date of Our notice of termination then We shall have no further liability under the Contract.

## **6. QUALITY, DESCRIPTION AND SPECIFICATION**

6.1 The Services and/or Goods shall:

6.1.1 conform in every respect with the provisions of the Contract;

6.1.2 be provided in a proper, skillful and workmanlike manner;

6.1.3 be provided by a sufficient number of appropriately qualified, trained and experienced personnel with a high standard of skill, care and due diligence and in accordance with Good Industry Practice;

6.1.4 be capable of all standards of performance specified in the Contract;

6.1.5 be fit for any purpose made known to You expressly or by implication and in this respect We rely on Your skill and judgment;

6.1.6 be new (unless otherwise specified on the Purchase Order) and be free from defects in design, material and workmanship;

6.1.7 correspond with their description or any samples, patterns, drawings, plans and specifications referred to in the Contract;

6.1.8 be of merchantable quality; and

6.1.9 comply with all relevant legislation and be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health.

6.2 In the event that the Specification is prepared by You, You will prepare the Specification and afford Us reasonable opportunity to consider the Specification for Our approval. You will make it clear upon any specification that it is a formal Specification. Notwithstanding any other rights under the Contract, We reserve the right to reject the Specification or request an amendment to the Specification.

6.3 Where We have produced the Specification, you will contact the Authorised Officer in the event that Our Specification is unclear, you require further information to fulfill your obligations under the Contract or you are unable to meet the Specification.

6.4 We accept no liability for any costs You may incur in the event that We reject your Specification or You are required to contact Us for any reason contained within 6.2.

## **7. WORK ON OUR PREMISES**

7.1 If the Contract involves any provision of the Services or works which You perform on Our premises then the following conditions shall apply:

7.1.1 You shall ensure that You and Your Employees, Your subcontractors 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 safe working practices.

7.1.2 You shall ensure that You and Your Employees, Your sub-contractors and their employees and any other person associated with You will comply with any policies, guidance or regulations that We may notify to You in writing or which are generally displayed on our premises or on Our website.

7.1.3 You shall ensure that You and Your Employees, Your sub-contractors and their employees and any other person associated with You carry at all times a form of identity which is acceptable to Us.

## **8. PROGRESS AND INSPECTION**

8.1 You shall at Your expense provide any programmes of delivery or manufacture that We may reasonably require. You shall notify Us without delay in writing if Your progress falls behind any of these programmes.

8.2 The Supplier shall permit the UTC to make any inspections or tests which may be reasonably required and in this regard We shall have the right to check progress at Your premises or the premises of sub-contractors at all reasonable times. Any inspection or test shall not relieve You from Your obligations under this Contract. Your sub-contracts shall reserve such right for Us.

8.3 Without prejudice to any of the UTC's rights under the Contract, following any test or inspection carried out under Clause 8.2 the UTC reserves the right to reject any Goods that do not comply with the Contract.

## **9. PACKAGING**

9.1 Unless otherwise stated in the Contract all Packaging shall be non-returnable.

9.2 If the Contract states that Packaging is returnable You must pay the cost of all carriage and handling for the return of Packaging and We shall not be liable for any Packaging lost or damaged in transit. The Packaging must be clearly marked to show to whom it belongs.

9.3 You agree to be solely responsible for the removal and disposal of any Packaging supplied at the point of delivery and to bear the entire costs of doing so.

## **10. HEALTH AND SAFETY**

10.1 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 and the provision of data sheets for hazardous materials.

10.2 You shall ensure that the requirements of Our Health and Safety Policies are fully complied with in so far as it is within Your responsibility so to comply ([www.sunderland.ac.uk](http://www.sunderland.ac.uk)).

## **11. DELIVERY**

11.1 The Services shall be provided in complete accordance with the requirements of the Specification (and any delivery instructions contained therein). Any order accepted by You will, unless otherwise agreed at the time of order or within one working day, be expected to be delivered within 5 Working Days as a maximum lead time. The Goods shall be delivered in accordance with any delivery instructions issued by the Authorised Officer. If no time for delivery is given by the delivery instructions then Services and/or Goods shall be delivered between the hours of 9:00am and 5:00pm on a Business Day.

11.2 The time of the delivery of the Services and Goods is of essence to the Contract.

11.3 The UTC retains the Supplier for the performance of the Services on a non-exclusive basis.

- 11.4 Where the Goods are delivered by the Supplier, the point of delivery shall be when they are removed from the transporting vehicle and delivered in accordance with the delivery instructions. Where the Goods are collected by the UTC from the Supplier, the point of delivery shall be when they are loaded onto the UTC's vehicle.
- 11.5 Except where otherwise provided in the Contract, delivery shall include the uploading or stacking of the Goods by the Supplier at such places as the UTC may direct to the Supplier.
- 11.6 All Goods must be properly packed, clearly and legibly labeled and addressed, insured for transit and dispatched together with appropriate delivery documentation (giving full details of the Goods delivered).
- 11.7 Unless expressly agreed to the contrary, the UTC shall not be obliged to accept delivery by installments. If the UTC does not specify or agree to delivery by installments, delivery of any one installment not in accordance with the delivery instructions shall, without prejudice to any other rights or remedies of the UTC, entitle the UTC to terminate the whole of any unfulfilled part of the Contract without further liability to the Supplier.
- 11.8 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 of storage or transport.

**12. LATE DELIVERY**

- 12.1 In the event that the Services or Goods or any portion of them are not delivered in accordance with the delivery instructions the UTC shall be entitled to recover from the Supplier, as liquidated damages and not by way of penalty, the amount, if any, as set out in the Special Conditions for the period during which the failures continues.
- 12.2 If late delivery occurs then the UTC may by written notice to you cancel any undelivered part of the Services or Goods. We may also return for full credit and at Your expense, any part-delivered Goods that in Our opinion cannot be utilised owing to this cancellation.

**13. PROPERTY AND RISK**

- 13.1 You shall bear all risks of loss or damage to the Goods until they have been delivered and shall insure accordingly.
- 13.2 Ownership of the Goods shall pass to Us:
  - 13.2.1 when the Goods have been delivered in accordance with Clause 11.1 but without prejudice to our right of rejection under this Contract; and
  - 13.2.2 if We make any advance or stage payment, at the time such payment is made, in which case You must as soon as possible mark the Goods as Our property.

**14. ACCEPTANCE**

- 14.1 The issue by the UTC of a receipt note for the Goods shall not constitute any acknowledgement of the condition or nature of those Goods. The UTC shall not be deemed to have accepted any Goods until it has had reasonable opportunity to inspect them following delivery or within a reasonable time after any latent defect in the Goods has become apparent.
- 14.2 The UTC shall have the right to reject the Goods by notice in writing whether or not paid for in full or in part within a reasonable time of delivery if they do not conform with the requirements of this Contract.

- 14.3 It is agreed that We may exercise this right of rejection notwithstanding any provision contained in Section 11 or Section 25 of the Sale of Goods Act 1979 (as amended by the Sale and Supply of Goods Act 1994). 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 and any loss occasioned by Us as a result shall be recoverable from You as a civil debt.
- 14.4 In the event of cancellation under this Clause You shall promptly repay any monies paid under the Contract without any retention or offset whatsoever. Cancellation of the Purchase Order under this Clause shall not affect any other rights We may have. You must collect all rejected Goods within a reasonable time of rejection or We shall have the right either to return them to You sell or otherwise dispose of them at Your risk and expense.
- 14.5 Furthermore, in instances of any incorrectly pre-configured units, which are not in accordance with the Purchase Order, You will rectify the fault at Your expense within 5 working days from notification of the problem.

## **15. YOUR WARRANTY**

- 15.1 Unless otherwise agreed in the Tender You warrant that:
- 15.1.1 the Services shall be provided in a proper, skillful and workmanlike manner and to the reasonable satisfaction of the Authorised Officer;
  - 15.1.2 You shall promptly make good at Your expense any defect in the Goods that We discover under proper usage during the first 12 months from the date of acceptance by Us which may arise from Your faulty design, Your erroneous instructions as to use or inadequate or faulty materials or poor workmanship or any other breach of Your obligations whether in this Contract or at law;
  - 15.1.3 repairs or replacements will themselves be covered for the balance of the above warranty; and
  - 15.1.4 You will ensure that compatible spares are available to facilitate repairs (where applicable) for a period of at least 5 years from the date of delivery of the Goods.
- 15.2 Without prejudice to the UTC's right to terminate the Contract under Clause 24, if any of the Services supplied are not delivered in accordance with the Contract, the UTC shall be entitled to;
- 15.2.1 require the Supplier to provide replacement Services in accordance with the Contract as soon as reasonably practicable and in any event within 14 days of a request to do so; or
  - 15.2.2 subject to Clause 16 (Indemnity and Insurance) require repayment of the proportion of the Price which has been paid in respect of such Services together with payment of any additional expenditure over and above the Price reasonably incurred by the UTC in obtaining replacement Services.

## **16. INDEMNITY AND INSURANCE**

- 16.1 The Supplier shall indemnify the UTC in full without limit of liability for any direct loss or damage to the real or personal property of the UTC or any third party, or injury claimed by any third party and against all Liabilities awarded against or incurred by the UTC (including legal expenses on an indemnity basis) arising from the Supplier's performance of the Contract, its negligence, any defect or fault in the Goods or any act or omission of the Supplier in supplying, delivering and where applicable installing the Goods.



16.2 The Supplier shall hold adequate insurance cover with a reputable insurer to fulfill Your insurance obligations for the duration of the Contract including public liability insurance cover of at least £5M (Five Million Pounds Sterling) in respect of any one event or series of events. You shall also effect insurance against all those risks arising from Your indemnity contained in Clause 16.1. Satisfactory evidence of such insurance and payment of current premiums shall be shown to Us upon request.

## **17. RECOVERY OF SUMS DUE**

17.1 Whenever under the Contract any sums of money shall be recoverable from or payable by You, they may be deducted from any sums then due, or which at any later time may be come due to You under this Contract or under any other contract You may have with Us.

## **18. SUPPLIER'S EMPLOYEES**

18.1 The UTC reserves the right under the Contract to refuse to admit to, or to withdraw permission to remain on, any premises occupied by or on behalf of the UTC:

18.1.1 any member of the Supplier's Employees; and/ or

18.1.2 any person employed or engaged by a sub-contractor, agent or servant of the Supplier,

whose admission or continued presence would be, in the reasonable opinion of the UTC, undesirable.

18.2 When directed by the UTC, the Supplier shall provide a list of the names and addresses of all persons (if any) who it is expected may require admission in connection with the Contract to any premises occupied by or on behalf of the UTC, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the UTC may reasonably desire.

18.3 The Supplier's Employees, engaged within the boundaries of any of the UTC's premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time-to-time for the conduct of personnel when at that establishment and when outside that establishment.

18.4 The decision of the UTC as to whether any person is to be refused access to any premises occupied by or on behalf of the UTC shall be final and conclusive.

18.5 The Supplier shall replace any of the Supplier's Employees who the UTC reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Supplier's Employees for any reason, the Supplier shall make sure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.

18.6 The Supplier shall bear the cost of or costs arising from any notice, instruction or decision of the UTC under this Clause.

## **19. TUPE AND RE-TENDERING**

19.1 In the event of expiry or termination of the Contract or whenever reasonably requested by the UTC in preparation for tendering arrangements the Supplier shall provide the UTC with such assistance as the UTC may require and provide at no cost to the UTC any information the UTC (whether on its own account or on behalf of any potential or confirmed Replacement Contractor) may request in relation to the Employees including but not limited to, providing Employee liability information as required under Regulation 11 of TUPE.

19.2 The Supplier authorises the UTC to pass any information supplied to any Replacement Contractor or potential Replacement Contractor and the Supplier will secure all necessary consents from relevant Employees in order to do this.

19.3 The Supplier will keep the UTC and any Replacement Contractor indemnified in full against all Liabilities arising directly or indirectly in connection with any breach of this Clause or inaccuracies in or omissions from the information provided.

## **20. FORCE MAJEURE**

20.1 If either party is delayed or prevented from performing its obligations under the Contract by circumstances beyond the reasonable control of either party, (including without limitation any form of Government intervention, strikes and lock-outs 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. This provision can only have effect if it is called into operation by the party wishing to rely on it giving written notice to the other to that effect

20.2 If the Contract is cancelled in accordance with Clause 20.1, We shall pay to You such sums as may be fair and reasonable in all the circumstances of the case in respect of the Services or Goods supplied by You under the Purchase Order prior to cancellation but only in respect of Services or Goods for which We have received full benefit as originally contemplated in the Contract.

## **21. ARTICLES ON LOAN AND USE OF INFORMATION**

21.1 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 upon 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.

21.2 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.

21.3 Any loss of or damage to such Articles shall be made good by You at Your expense. 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.

## **22. OWNERSHIP OF RESULTS**

22.1 Unless otherwise agreed in writing:

22.1.1. All rights in the results of work arising out of or deriving from the Contract, including inventions, designs, 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; and

22.1.2 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.

## 23. INFRINGEMENT OF PATENTS TRADEMARKS AND COPYRIGHTS

- 23.1 The Price shall include all royalties, licence fees or similar expenses in respect of the making, use or exercise by You of any invention or design for the purpose of performing the Contract.
- 23.2 With the exception of Goods made to Our design or instructions, You warrant that neither the Services or Goods nor Our use of them will infringe any third party Intellectual Property Rights and undertake to indemnify Us against all Liabilities arising from or incurred by reason of any infringement or alleged infringement of any such right.

## 24. TERMINATION

- 24.1 We may terminate the Contract with immediate effect by notice to you in writing at any time if:
- 24.1.1 You become insolvent or bankrupt or (being a company) make an arrangement with Your creditors or have an administrative receiver or administrator appointed or commence to be wound up (other than for the purposes of amalgamation or reconstruction);
  - 24.1.2 You are convicted of a criminal offence;
  - 24.1.3 You cease or threaten to cease to carry on Your business;
  - 24.1.4 there is a change of control of Your business;
  - 24.1.5 We reasonably believe that there is an adverse risk to Our reputation as a result of the Contract continuing; or
  - 24.1.6 You breach or fail to observe any provision of the Contract and fail to remedy such breach or non-observance within 14 days from receipt of written notice from Us requesting you to in which to rectify the breach or non-observance.

## 25. BRIBERY ACT COMPLIANCE / CORRUPT GIFTS

- 25.1 In this clause 25:
- 25.1.1 the expressions “**Adequate Procedures**”, “**Foreign Public Official**”, “**Associated Person(s)**” and “**Performing Services**” shall bear the meanings assigned to them in the Bribery Act 2010 “**the Bribery Act**” and, as the case may be, any Guidance for the time being issued under section 9 of the Bribery Act (“**the Guidance**”).
- 25.2 You shall and shall procure that any associated person shall:
- 25.2.1 comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption practices including the Bribery Act and the Guidance (together “**the Requirements**”); and
  - 25.2.2 comply with Our Anti-bribery Policy as may be updated from time to time ([www.sunderland.ac.uk](http://www.sunderland.ac.uk)) (“**the Policy**”)
- 25.3 You shall not engage in and shall procure that any Associated Person shall not in engage in any activity practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act if such activity practice or conduct had been carried out in the United Kingdom.

- 25.4 You shall:
- 25.4.1 have and maintain in place throughout the term of the Contract your own policies and procedures including Adequate Procedures to ensure compliance with the Requirements, the Policy, and clause 25.3 above and shall enforce them whenever appropriate;
  - 25.4.2 promptly report to Us any request or demand for any financial or other advantage of any kind offered promised or given to you in connection with the performance of the Contract;
  - 25.4.3 at Our request certify to Us in writing signed by you or your duly authorised officer compliance with this Clause by You and by any Associated Person Performing Services under the Contract;
  - 25.4.4 forthwith to notify Us in writing in the event that a Foreign Public Official becomes an officer or employee of Yours or acquires a direct or indirect interest in You and You warrant that no officer, employee or direct or indirect owner of Yours is a foreign public official as at the date of the Contract;
  - 25.4.5 be directly liable to Us in the event of any breach of this clause 25 by an Associated Person and shall fully indemnify Us for any costs, losses damages or expenses consequent upon such breach howsoever arising.
- 25.5 Without prejudice to Clause 25.4 above, 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. In the event of any breach of this Clause, We shall, without prejudice to any other rights we may possess, be at liberty forthwith to terminate this and any other Contract and to recover from You any loss or damage resulting from such termination.

## **26. EQUALITY AND DIVERSITY**

- 26.1 You shall:
- 26.1.1 abide by all UK and EU legislation and codes of practice relating to the Equality Act 2010 or such re-enactment as shall be in force for the time being;
  - 26.1.2 comply with the provisions of the Equality Act 2010 (as amended) in all dealings with the UTC's employees, officers, workers, consultants, agency staff, contractors, subcontractors and students;
  - 26.1.3 not discriminate directly or indirectly against, harass or victimise any person because of or on grounds related to age, disability, gender reassignment, marital or civil partner status, pregnancy or maternity, colour, race, nationality, national or ethnic origin, religion or beliefs, sex or sexual orientation ('Protected Characteristic(s)') in all aspects of your relationship with the any persons mentioned in sub-clause 26.1.2 above;
  - 26.1.4 ensure that you and so far as reasonably practicable your employees, subcontractors and agents do not discriminate directly or indirectly against, harass or victimise any person because of or on grounds related to a Protected Characteristic;
  - 26.1.5 you will use your reasonable endeavours to and will ensure that so far as reasonably practicable your employers, subcontractors and agents comply with Our policies on equality and diversity and equal opportunities ([www.sunderland.ac.uk](http://www.sunderland.ac.uk));
  - 26.1.6 ensure that your own practices and procedures comply with all relevant statutory requirements to promote positive attitudes to difference and to prevent unlawful

discrimination and that your employees and agents are trained on matters relating to diversity and the prevention of unlawful discrimination;

26.1.7 following receipt of a request to do so by Us, submit a report statement to Us demonstrating your compliance with this clause 26 and provide such information as We reasonably request from time to time to enable Us to monitor and report on equality and diversity issues; and

26.1.8 agree to co-operate with any investigation by Us or such other empowered body under the relevant legislation.

## **27. FREEDOM OF INFORMATION**

27.1 You acknowledge that We are subject to the requirements of the Freedom of Information Act 2000 (“the FOIA”) and shall assist and co-operate with Us (at Your expense) to enable Us to comply with these information disclosure requirements.

27.2 Where a request for information under the FOIA submitted to Us concerns information held by You, You shall provide Us with a copy of all the information requested in Your possession or power in the form that We require within five (5) Working Days of Our requesting the information (or such other period as we may specify).

27.3 You further acknowledge that We may be required to disclose information concerning you and the Contract in discharging our Obligations under the FOIA. You accept that after using reasonable endeavours to consult with You and having considered Your views We shall be solely responsible for determining at our absolute discretion whether the information should be disclosed under the FOIA or whether an exemption from disclosure applies.

## **28. MODERN SLAVERY**

28.1 In order to assist the UTC to meet its obligations under the Modern Slavery Act 2015, the Supplier agrees to raise any concerns about the issue or suspicion of modern slavery in any parts of its business or supply chain with the Authorised Officer at the earliest possible opportunity.

28.2 The Supplier warrants that it shall and shall procure that its sub-contractors and supply chain complies with the Ethical Trading Initiative Base Code and any anti-slavery measures notified to the Supplier by the UTC.

28.3 The UTC, acting by itself or through its audit agents, shall have the right during the period of the Contract and for a period of 18 months thereafter to assess compliance by the Supplier, its sub-contractor and the Supplier’s supply chain with this Clause 28.

## **29. CONFIDENTIALITY AND PUBLICITY**

29.1 Any documents provided to the Supplier by the UTC and information which the Supplier may acquire as a result of the Contract or otherwise communicated to You in connection with the Contract shall to the extent that they are not in the public domain or required to be disclosed by operation of law shall be kept secret and confidential and shall not without the consent in writing of Our Authorised Officer, be published or disclosed to any third party, or made use of by You except for the purpose of implementing the Contract.

29.2 The Supplier shall not;  
(a) make any press announcements or publicise the Contract or its contents in any way; or  
(b) use the UTC’s name or brand in any promotion or marketing or announcement of orders;

Without the prior written consent of the UTC, which shall not be unreasonably withheld or delayed.

- 29.3 Each party acknowledges to the other that nothing in the Contract either expressly or by implication constitutes an endorsement of any products or services of the other party and each party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

### **30. DISPUTE RESOLUTION PROCEDURE**

- 30.1 If a dispute arises between the UTC and the Supplier in connection with the Contract, the parties shall each use reasonable endeavours to resolve such dispute by means of prompt discussion at an appropriate managerial level.
- 30.2 If a dispute is not resolved within 14 days of referral under Clause 30.1 then either party may refer it to the Principal of the UTC or the Chief Executive of the Supplier or other appropriate nominated officer of each party for resolution who shall meet for discussion within 14 days or longer period as the parties may agree.
- 30.3 Provided that both parties consent, a dispute not resolved in accordance with Clauses 30.1 and 30.2 shall next be referred at the request of either party to a mediator appointed by agreement between the parties with 14 days of one party requesting mediation with the costs of mediation determined by the mediator.
- 30.4 Nothing in this Clause 30 shall preclude either party from applying at any time to the English courts for such interim or conservatory measures as may be considered appropriate.

### **31. ASSIGNMENT AND SUB-LETTING**

- 31.1 The Contract shall not be assigned by You nor sub-let as a whole. You shall not sub-let any part of the Contract without Our written consent. The restriction contained in this Clause shall not apply to sub-contracts for materials for minor details, delivery or for any part of which the makers are named in the Contract. You shall be responsible for all work done and Goods supplied by all sub-contractors.

### **32. VARIATION TO CONTRACT**

- 32.1 No variation or modification to the Contract is valid unless it is in writing and signed by the UTC and the Supplier.

### **33. CONTRACT INEFFECTIVENESS**

- 33.1 If the Contract is held invalid, illegal or unenforceable for any reason so fundamental as to prevent the accomplishment of the purpose of the Contract and good faith negotiations to remedy such invalidity, illegality or unenforceability can not to the reasonable commercial endeavours of the parties remedy such invalidity, illegality or unenforceability then the UTC may terminate the Contract with immediate effect by notice in writing.
- 33.2 Where the UTC terminates the Contract in accordance with Clause 33.1 above, the parties agree that the UTC shall pay all reasonable costs and fees incurred up to the point of termination. In any event, the total of all payments made or due to You under the Contract, including any termination payment, shall not exceed the Price.

**34. SURVIVAL**

34.1 Clauses 13, 15-17, 19-23, 25-30, and 33 will survive any expiry or termination of the Contract and continue in full force and effect indefinitely.

**35. WAIVER**

35.1 A failure at any time to enforce any provision of the Contract shall in no way affect 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.

**36. NOTICES**

36.1 All notices and communications required to be sent by You or Us in this Contract shall be made in writing and sent by first class mail and if sent to You sent to Your registered or head office and if sent to Us sent to the Procurement Manager and shall be deemed to have reached the party to whom it is addressed on the next business day following the date of posting.

**37. STATUTORY REQUIREMENTS**

37.1 You are required to be conversant with and to comply with all statutory and legal requirements of the United Kingdom and European Union, which are relevant and relate to Your performance of the Contract.

**38. LAW**

38.1 The construction validity and performance of this Contract shall be governed by the Law of England.