

Conditions of Contract

These conditions may only be varied with the written agreement of the Client. No terms or conditions put forward at any time by the Contractor shall form any part of the Contract.

1. Definitions

1.1. In these conditions:

'Client' means the Commission for Tertiary Education and Research (CTER) (known as "Medr") established pursuant to The Tertiary Education and Research (Wales) Act 2022;

'Contractor' means the person, firm or company to whom the Purchase Order is issued;

'Services' means the services to be provided as specified in the Purchase Order and shall, where the context so admits, include any materials, articles and goods to be supplied thereunder hereinafter referred to as **'the Goods'**;

'Premises' means the location where the services are to be performed, as specified in the Purchase Order.

2. Variation of the Goods and Services

2.1. The Client reserves the right by notice to the Contractor to modify the quality or quantity of the Goods and Services and any alteration to the price or the completion date. Such modification shall be agreed between the parties in writing. Failing agreement the matter shall be determined by dispute resolution in accordance with the provisions of Condition 26.

3. The Goods

3.1. The Goods shall be to the reasonable satisfaction of the Client and shall conform in all respects with any particulars specified in this Contract and in any variations thereto.

3.2. The Goods shall conform in all respects with the requirements of any statutes, orders, regulations or by-laws from time to time in force.

3.3. The Goods shall be fit and sufficient for the purpose for which such goods are ordinarily used and for any particular purpose made known to the Contractor by the Client and the Client relies on the skill and judgement of the Contractor in the supply of the Goods and the execution of the Contract.

4. Inspection of Premises and Nature of Services

4.1. The Contractor is deemed to have inspected the Premises so as to have understood the nature and extent of the Services to be carried out and satisfied himself in relation to all matters connected with the Services and Premises. Any

costs incurred by the Client due to failure of the Contractor to inspect in accordance with this clause shall be borne by the Contractor.

- 4.2. The Client shall, at the request of the Contractor, grant such access as may be reasonable for this purpose.

5. The Price

- 5.1. The price of the Goods or Services shall be as stated on the Purchase Order and unless otherwise stated, shall be inclusive of VAT. No increase will be accepted by the Client unless agreed by him in writing before the execution of the Purchase Order.
- 5.2. Unless otherwise agreed in writing by the Client, the Contractor shall render a separate invoice in respect of each consignment delivered under this Purchase Order. Payment shall be due 10 days after receipt of the Goods or the correct invoice therefore, whichever is the later.
- 5.3. Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net charge.
- 5.4. The Contractor shall be responsible for accounting to HM Revenue & Customs for all applicable taxes and duties whether on income or expenditure.

6. Contractor's Status

- 6.1. In carrying out the Services the Contractor shall be acting as principal and not as the agent of the Client. Accordingly:
- (a) the Contractor shall not (and shall procure that his agents and employees do not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent of the Client, and;
 - (b) nothing in this Contract shall impose any liability on the Client in respect of any liability incurred by the Contractor to any other person but this shall not be taken to exclude or limit any liability of the Client to the Contractor that may arise by virtue of either a breach of this Contract or any negligence on the part of the Client, his staff or agents.

7. Property and Risk

- 7.1. Risk of damage to or loss of the Goods shall, without prejudice to any of the rights or remedies of the Client (including the Client's rights and remedies under Condition 8, hereof) pass to the Client at the time of delivery.
- 7.2. The property in the Goods shall pass to the Clients on delivery, unless payment for the Goods is made prior to the delivery, when it shall pass to the Client once payment has been made and the Goods have been appropriated.

8. Damage in Transit

- 8.1. On dispatch of any consignment of the Goods the Contractor shall send to the Client at the address for delivery of the Goods an advice note specifying the means of transport, the place and date of dispatch, the number of packages and

their weight and volume. The Contractor shall free of charge, and as quickly as possible, either report or replace (as the Client shall elect) any of the Goods that are either damaged in transit or, having been placed in transit, failed to be delivered to the Client, provided that:

- (a) in the case of damage to such Goods in transit, the Client shall within 30 days of delivery, give notice to the Contractor that the Goods have been damaged;
- (b) in the case of non-delivery the Client shall (provided that the Client has been advised of the dispatch of the Goods) within ten days of the notified date of delivery give notice to the Contractor that the Goods have not been delivered.

9. Inspection, Rejection and Guarantee

- 9.1. The Contractor shall permit the Client or his authorised representatives to make any inspections or tests he may reasonably require and the Contractor shall afford all reasonable facilities and assistance free of charge at his premises. No failure to make complaint at the time of such inspection or tests and no approval given during or after such tests or inspections shall constitute a waiver by the Client of any rights or remedies in respect of the Goods.
- 9.2. The Client may by written notice to the Contractor reject any Goods that fail to meet the requirements specified herein. Such notice shall be given within a reasonable time after delivery to the Client of the Goods concerned. If the Client shall reject any of the Goods, pursuant to this Condition the Client shall be entitled (without prejudice to his other rights and remedies) either:
 - (a) to have the Goods concerned as quickly as possible either repaired by the Contractor or (as the Client shall elect) replaced by the Contractor with Goods which comply in all respects with the requirements specified herein; or
 - (b) to obtain a refund from the Contractor in respect of the goods concerned.
- 9.3. The guarantee period applicable to the Goods shall be 12 months from putting into service (i.e. the date on which the Goods are first used or operated by the Client for their intended purpose) or 18 months from the date on which the Goods are physically delivered to the Client's specified delivery location, whichever shall be the shorter (subject to any alternative guarantee arrangements agreed in writing between the Client and the Contractor). If the Client shall within such guarantee period or within 30 days thereafter give notice in writing to the Contractor of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use the Contractor shall (without prejudice to any other rights and remedies which the Client may have) as quickly as possible remedy such defects (whether by repair or replacement as the Client shall elect) without cost to the Client.
- 9.4. Any Goods rejected or returned by the Client as described in paragraph 9.2 shall be returned to the Contractor at the Contractor's risk and expense. Property in the Goods shall pass back to the Contractor at the time the Goods are returned to the Contractor for any reason under clause 9.

10. Labelling and Packaging

- 10.1. The Goods shall be packed and marked in a proper and appropriate manner and in accordance with the Client's instructions and any statutory requirements and

any requirements of the carriers. In particular the Goods shall be marked with Order Number, the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous goods (and all documents relating thereto) shall bear prominent and adequate warnings. The Contractor shall indemnify the Client against all actions, suits, claims, demands, losses, charges, costs and expenses which the Client may suffer or incur as a result of or in connection with any breach of this Condition.

- 10.2. All packaging materials will be considered non-returnable unless the Contractor's advice note states that such materials will be charged for unless returned. The Client accepts no liability in respect of the non-arrival at the Contractor's premises of empty packages returned by the Client unless the Contractor shall within ten days of receiving notice from the Client that the packages have been dispatched notify the Client of such non-arrival.
- 10.3. Maximum use must be made of recycled materials in the manufacture of crates, pallets, boxes, cartons, cushioning and other forms of packaging, where these fulfil other packaging specifications. Packaging must be capable of recovery for reuse or recycling. Packaging specifications should be reviewed periodically to ensure that no unnecessary limitations on the use of recycled materials exist.

11. Contractor's Personnel

- 11.1. The Contractor must comply fully with any security arrangement deemed necessary by the Client. This may include security checks on the Contractor's personnel.
- 11.2. If and when instructed by the Client, the Contractor shall give to the Client a list of names and addresses of all persons who are or may be at any time concerned with the Services or any part of them, specifying the capacities in which they are so concerned with the Services or any part of them, and giving such other particulars and evidence of identity and other supporting evidence as the Client may reasonably require. Any personal data provided under this clause 11 is to be shared in compliance with applicable data protection laws and regulations.
- 11.3. The Contractor shall take the steps reasonably required by the Client to prevent unauthorised persons being admitted to the premises. If the Client gives the Contractor notice that any person is not to be admitted to or is to be removed from the premises or is not to become involved in or is to be removed from involvement in the performance of the Contract, the Contractor shall take all reasonable steps to comply with such notice and if required by the client the Contractor shall replace any person removed under this condition with another suitably qualified person and procure that any pass issued to the person removed is surrendered.
- 11.4. The Contractor shall notify the Client of any impending dispute with its employees which could affect the operation of the services.

12. Manner of Carrying Out the Services

- 12.1. The Contractor shall make no delivery of materials, plant or other things nor commence any work on the premises without obtaining the Client's prior consent.

- 12.2. Access to the premises shall not be exclusive to the Contractor but only such as shall enable him to carry out the Services concurrently with the execution of work by others. The Contractor shall co-operate with such others as the Client may reasonably require.
- 12.3. The Contractor shall ensure that the facilities are used with due regard to conservation and exercise energy management control in the course of providing the services.
- 12.4. The Client shall have the power at any time during the progress of the Services to order in writing:
 - (a) the removal from the premises of any materials which in the opinion of the Client are either hazardous, noxious or not in accordance with the contract, and/or;
 - (b) the substitution of proper and suitable materials, and/or;
 - (c) the removal and proper re-execution notwithstanding any previous test thereof or interim payment therefore of any work which, in respect of material or workmanship, is not in the opinion of the Client in accordance with the Contract.
- 12.5. On completion of the Services the Contractor shall remove his plant, equipment and unused materials and shall clear away from the premises all rubbish arising out of the Services and leave the Premises in a neat and tidy condition.

13. Time of Performance

- 13.1. The Contractor shall begin performing the Service on the date stated in the Purchase Order and shall complete them by the date stated in the Purchase Order or continue to perform them for the period stated in the Purchase Order (whichever is applicable). Time is of the essence. The Client may by written notice require the Contractor to execute the services in such order as the Client may decide. In the absence of such notice the Contractor shall submit such detailed programmes of work and progress reports as the Client may from time to time require.
- 13.2. The Contractor shall be responsible for accounting to HM Revenue & Customs for all applicable taxes and duties whether on income or expenditure.

14. Free Issue Materials

- 14.1. Where the Client for the purpose of the Contract issues materials free of charge to the Contractor such materials shall be and remain the property of the Client. The Contractor shall maintain all such materials in good order and condition and shall use such materials solely in connection with the Contract. The Contractor shall notify the Client of any surplus materials remaining after completion of the Services and shall dispose of them as the Client may direct. Waste of such materials arising from bad workmanship or negligence of the Contractor or any of his employees, agents or sub-contractors shall be made good at the Contractor's expense. Without prejudice to any other of the rights of the Client, the Contractor shall deliver up such materials whether processed or not to the Client on demand.

15. Audit

- 15.1. The Contractor shall keep and maintain, until two years after the Contract has been completed, records to the satisfaction of the Client of all expenditures which are reimbursable by the Client and of the hours worked and costs incurred in connection with any employees of the Contractor paid for by the Client on a time charge basis. The Contractor shall on request afford the Client or his representatives such access to those records as may be required by the Client in connection with the Contract.

16. Corrupt Gifts or Payments

- 16.1. The Contractor shall not offer or give, or agree to give, to any employee or representative of the Client any gift or consideration of any kind, as an inducement or reward for doing or refraining from doing or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other Contract with the Client or for showing or refraining from showing, favour or disfavour to any person in relation to this or any such Contract. The attention of the Contractor is drawn to the criminal offences created by the Bribery Act 2010.

17. Patents and Information

- 17.1. It shall be a condition of this Contract that, except to the extent that the Services incorporate designs furnished by the Client, the Services will not infringe any patent, trade mark, registered design, copyright or other right in the nature of industrial property of any third party and the Contractor shall indemnify the Client against all actions claims, demands, costs and expenses which the Client may suffer or incur as a result of or in connection with any breach of this condition.
- 17.2. All rights (including ownership and copyright) in any specifications, instructions, plans, drawings, patents, models, designs or other materials:
- (a) furnished to or made available to the Contractor by the Client are hereby assigned to and shall vest in the Client absolutely.
 - (b) prepared by or for the Contractor for use, or intended use, in relation to the performance of this Contract are hereby assigned to and shall vest in the Client absolutely. The Contractor shall not and shall procure that his employees and agents shall not (except to the extent necessary for the implementation of this Contract) without the prior written consent of the Client use or disclose any such specifications, instructions, plans, drawings, patents, models, designs and other material as aforesaid or any other information (whether or not relevant to this Contract) which the Contractor may obtain pursuant to or by reason of this Contract, except information which is in the public domain otherwise than by reason of a breach of this provision, and in particular (but without prejudice to the generality of the foregoing) the Contractor shall not refer to the Client or the Contract in any advertisement without the Client's prior written consent.
- 17.3. The provisions of this condition 17 shall apply during the continuance of this Contract and after it's termination howsoever arising.

18. Indemnity and Insurance

- 18.1. The Contractor shall indemnify the Client, its employees and agents against all actions, claims, demands, costs and expenses incurred by or made against the Client, its employees or agents in respect of any loss or damage or personal injury (including death) which arises out of or in connection with this Contract.
- 18.2. Except in the case of loss, damage or personal injury (including death) suffered by an employee of the Contractor (in respect of which the indemnity in Condition 18.1 shall apply whether or not the loss, damage or personal injury was caused by the negligent or wilful act or omission of the Client, or any employee or agent of the Client) the indemnity contained in Condition 18.1 shall not apply to the extent that the loss, damage or injury is caused by the negligent or wilful act or omission of the Client, or any employee or agent of the Client.
- 18.3. The Contractor shall indemnify the Client against any expenditure relating to the repair to the premises or replacement of equipment arising as a result of negligence on the part of the Contractor, its employees, sub-contractors or contractors.
- 18.4. Where relevant to this Clause the Contractor shall notify the Client immediately on becoming aware of any fact or matter which could render the Client liable to prosecution.
- 18.5. The Contractor shall have in force and shall require any sub-contractor to have in force:
 - (a) employer's liability insurance in accordance with any legal requirements for the time being in force, and;
 - (b) public liability insurance for such sum and range of cover as the Contractor deems to be appropriate but covering at least all matters which are the subject of indemnities or compensation obligations under these conditions in the sum of not less than £500,000 for any one incident and unlimited in total, unless otherwise agreed by the Client in writing.
- 18.6. The policy or policies of insurance referred to in paragraph 18.5 shall be shown to the Client whenever he requests, together with satisfactory evidence of payment of premiums.

19. Statutory Obligations

- 19.1. The Contractor shall comply with its statutory obligations for the time being in force. The Contractor shall indemnify the Client against all actions, claims, losses, demands, costs and expenses which the Client may suffer or incur as a result of or in connection with any breach of these obligations.

20. Official Secrets Act and Confidentiality

- 20.1. Without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any confidential information the Contractor acknowledges that any confidential information obtained from or relating to the Client, its employees or agents by the Contractor in the performance of this Contract (or by any person employed or engaged by the Contractor in connection with this Contract in the course of such employment or engagement) is the property of the Client.

- 20.2. The Contractor shall only use confidential information obtained for the purpose of fulfilling its obligations under this contract.
- 20.3. Confidential information for the purposes of this Contract shall mean any information the Contractor is given access to or obtains during the duration of the Contract period apart from information which is in the public domain otherwise than by reason of a breach of this clause 20.
- 20.4. The provisions of this clause 20 shall apply during the continuance of the Contract and after its termination howsoever arising.

21. Termination

- 21.1. The Contractor shall notify the Client in writing immediately upon the occurrence of any of the following events:
- (a) where the Contractor is an individual and if a petition is presented for the Contractor's bankruptcy or a criminal bankruptcy order is made against the Contractor, or he makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage his affairs; or
 - (b) where the Contractor is not an individual but is a firm, or a number of persons acting together in any capacity, if any event in (a) or (c) of this Condition occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Contractor to be wound up as an unregistered company; or
 - (c) where the Contractor is a company, if the company passes a resolution for winding-up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or the court makes an administration order or winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge.
- 21.2. On the occurrence of any of the events described in paragraph 21.1 or, if the Contractor shall have committed a material breach of this Contract and (if such breach is capable of remedy) shall have failed to remedy such breach within thirty days of being required by the Client in writing to do so or, where the Contractor is an individual, if he shall die or be adjudged incapable of managing his affairs within the meaning of the Mental Capacity Act 2005, the Client shall be entitled to terminate this Contract by notice to the Contractor with immediate effect. Thereupon, without prejudice to any other of his rights, the Client may himself complete the services or have them completed by a third party, using for that purpose (making a fair and proper allowance therefore in any payment subsequently made to the Contractor) all materials, plant and equipment on the Premises belonging to the Contractor, and the Client shall not be liable to make any further payment to the Contractor until the services have been completed in accordance with the requirements of the Contract, and shall be entitled to deduct them from any amount due to the Contractor the costs thereof incurred by the Client (including the Client's own costs). If the total cost to the Client exceeds the amount (if any) due to the Contractor, the difference shall be recoverable by the Client from the Contractor.

- 21.3. In addition to his rights of termination under paragraph 21.2, the Client shall be entitled to terminate this Contract by giving to the Contractor not less than thirty days notice to that effect.
- 21.4. Termination under paragraphs 21.2 or 21.3 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Client and shall not affect the continued operation of Conditions 17 and 20.

22. Recovery of Sums due

- 22.1. Wherever under this Contract any sum of money is recoverable from or payable by the Contractor, that sum may be deducted from any sum then due, or which at any later time may become due to the Contractor under this Contract or under any other agreement or contract with the Client or with any department, agency or government authority.

23. Assignment and Sub-Contracting

- 23.1. The Contractor shall not assign or sub-contract any portion of the Contract without the prior written consent of the Client. Sub-contracting any part of the Contract shall not relieve the Contractor of any obligation or duty attributable to him under the Contract or these conditions.
- 23.2. The Contractor shall, if requested, provide the Client with a list of all personnel engaged by his sub-contractors and any subsequent amendments thereto.
- 23.3. Where the Client has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Contractor to the Client immediately upon being issued.

24. Prompt Payment to Sub-Contractors

- 24.1. Where the Contractor enters a subcontract with a supplier or contractor for the purpose of performing the Contract, he shall cause a term to be included in such subcontract which requires payment to be made to the supplier or contractor within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the subcontract requirements.

25. Notices

- 25.1. Any notice given under or pursuant to the Contract shall be in writing and shall be delivered by hand or sent by registered post or by the recorded delivery service to the relevant party at the address of the party shown on the Purchase Order, or to such other address as the party may notify in writing, shall be deemed to have been received:
 - (a) if delivered by hand, on the day of delivery;
 - (b) if sent by pre-paid first-class post, two business days after posting;
 - (c) if sent by recorded delivery, on the date of the signed receipt.

26. Arbitration

- 26.1. All disputes, differences or questions between the parties to the Contract with respect to any matter or thing arising out of or relating to the Contract, other than matters where the decision of the Client is, under the terms of this Contract, to be final and conclusive, and except where special provision for arbitration is made elsewhere in the Contract, shall be referred to a single arbitrator to be agreed upon by the parties or, failing agreement, by the President of the Chartered Institute of Arbitrators, in accordance with the provisions of the Arbitration Act 1996 or any statutory modification or re-enactment thereof.

27. No Smoking Policy

- 27.1. The Client has a no smoking policy in its premises. The Contractor shall ensure that his employees observe the no smoking policy whilst carrying out any services at the Client's Premises. Any failure by the Contractor's personnel to comply with the Client's no smoking policy will result in the Contractor's personnel being asked to leave the Premises and any loss resulting from this action shall be borne by the Contractor.

28. Headings

- 28.1. The headings to the clauses and conditions in this Contract shall not affect their interpretation.

29. Governing Law

- 29.1. These Conditions shall be governed by and construed in accordance with the law of England and Wales (as it applies in Wales) and the Contractor hereby irrevocably submits to the jurisdiction of the courts of England and Wales (sitting in Cardiff). The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the Client to take proceedings against the Contractor in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

30. Other Contracts

- 30.1. Where specific conditions of contract have been agreed, such as for consultancy or construction works, and they conflict with these conditions the specific conditions shall prevail.

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