

GENERAL CONDITIONS OF CONTRACT (SERVICES)



1. Definitions

'We', 'Us' and 'Our' means London Metropolitan University a company limited by guarantee incorporated and registered in England and Wales with company number 00974438 and whose registered office is at London Metropolitan University, 166-220 Holloway Road, London.

'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.

'Writing' or 'written' includes faxes and email

'Accounts Payable Supervisor' means the person duly appointed by Us to authorise the relevant payment

'Authorised' means signed by one of Our authorised officers.

'Authorised Officer' means Our employee authorised, either generally or specifically, by us to sign Our Purchase Order, confirmation of which may be obtained from the secretary of the relevant Department or the Accounts Payable Supervisor.

'Business Day' means a day (other than a Saturday, Sunday or public holiday), when banks in London are open for business.

'Commercially Sensitive Information' has the meaning specified in the FOIA

'Conditions' means the terms and conditions set out in this document.

'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, goods, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either You or Us, all personal data and sensitive personal data within the meaning of the Data Protection Act 1998 and the Commercially Sensitive Information.

'Contract' means the contract between Us and You for the supply of Services in accordance with these Conditions. For the avoidance of doubt, the Contract shall comprise (in order of precedence): any Order Amendments, the Purchase Order, these Conditions and any other document (or part document) referred to on the Purchase Order.

'Department' means the relevant department at London Metropolitan University

'FOIA' means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;

'Information' has the meaning given under section 84 of the Freedom of Information Act 2000;

'Intellectual Property Rights' means any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trade marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

'Order Amendment' means Our authorised order amendment or series of order amendments, each order amendment having precedence over any earlier order amendment.

'Party' means a party to the Contract.

'Price' has the meaning given in Condition 5 below.

'Purchase Order' means Our authorised purchase order having these Conditions on its reverse or attached to it or referring to these Conditions on its face.

'Services' means the services to be provided by You under the Contract and as set out in the Specification.

'Specification' means any specification for the Services that is agreed by Us and You.

2. The Contract

2.1 You agree to provide the Services to Us in accordance with the terms of the Contract.

2.2 Notwithstanding reference to any of Your terms and conditions, these Conditions shall apply to the Contract to the exclusion of any other terms that You seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.3 Our Purchase Order constitutes an offer by Us to purchase the Services from You in accordance with these Conditions. The Purchase Order shall be deemed to be accepted on the earlier of You issuing written acceptance or doing anything consistent with fulfilling the Purchase Order, at which point the Contract comes into existence.

2.4 For the avoidance of doubt, supply of Services in response to a Purchase Order or Order Amendment shall be taken to imply that You have accepted these Conditions.

3. Services

3.1 You shall ensure that You:

- a. meet any performance dates for the Services specified in the Purchase Order or notified to You by Us;
- b. co-operate with Us in all matter relating to the Services and comply with all instructions issued by Us;
- c. perform the Services with the best care, skill and diligence in accordance with best practice in Your industry, profession or trade;
- d. use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that You fulfil your Obligations under this Contract;
- e. ensure that the Services will conform with all descriptions and specifications set out in the Specification and that any documents, products and materials developed by You in relation to the Services shall be fit for any purpose expressly or impliedly made known to You by Us;
- f. provide all equipment, tools vehicles and such other items as are required to provide the Services;
- g. use the best quality goods, materials, standards and techniques and ensure that all goods and materials supplied and used in the Services or transferred to Us are free from defects in workmanship, installation and design;
- h. obtain and at all times maintain all necessary licences and consents and comply with all applicable laws and regulations;
- i. observe all health and safety rules and regulations and any other security requirements that apply at Our premises;
- j. hold all materials, equipment and tools, drawings, specifications and data (Our Materials) supplied by Us to You in safe custody at Your own risk and maintain Our Materials in good condition until such time as they are returned to Us and do not dispose of or use Our Materials other than in accordance with Our written instructions or authorisation; and
- k. do not do or omit to do anything which may cause Us to lose any licence, authority, consent or permission upon which We rely for the purposes of conducting Our business and You acknowledge that We may rely or act on the Services.

3.2 You shall at all times ensure that You have and maintain all the licences, permissions, authorisations, consents and permits that You need to carry out Your obligations under the Contract.

4. Our obligations

4.1 We shall provide You with reasonable access at reasonable times to Our premises for the purpose of providing the Services and shall provide such information to You as You may reasonably request and We consider reasonably necessary for the purpose of providing the Services.

5. Price and payment

5.1 You will supply the Services to Us for the firm and fixed price stated in the Contract.

5.2 If no price is stated in the Contract then the price shall be as set out in Your published price list in force as at the date that the Contract came into existence and if no such list exists then the price shall be a fair price, taking into account prevailing market conditions.

5.3 The Price shall include all of Your costs and expenses, whether directly or indirectly incurred in connection with the performance of the Services, but shall exclude VAT.

5.4 You may invoice us for the Price on or at any time after the completion of the Services.

5.5 We shall, unless stated otherwise in the Contract, pay to You the Price within 30 days of receipt of a valid invoice from You.

5.6 We shall, if applicable and unless stated otherwise in the Contract, pay to You such additional amounts of VAT as are chargeable on the supply of the Services, within 30 days of receipt of a valid VAT invoice from you.

5.7 Your invoice must be addressed to the Finance Department at London Metropolitan University, Accounts Payable 166-220 Holloway Road London N7 8DB] and must quote the full Purchase Order number, must specify the currency of payment and include such supporting information as may be required by Us to verify the accuracy of the invoice.

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5.8 We shall under no circumstances be held responsible for delays in payment caused by Your failure to comply with our invoicing instructions.

5.9 In the event that any sums of money shall be recoverable from or payable by You under the Contract, You agree that they may be deducted from any sums due to You, or which at a later time may become due to You under this Contract or under any other contract You may have with Us.

6. Variations

6.1 Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing by Us.

6.2 We shall have the right, before supply, to send You an Order Amendment adding to, deleting or modifying the Purchase Order. If the Order Amendment will cause a change to the Price or dates of supply then You must suspend performance of the Contract and notify us without delay, calculating the new Price and date(s) of supply at the same level of cost as the original Price. You shall allow Us at least 10 Business Days to consider any new Price and date(s) of supply. The Order Amendment shall take effect when, but only if, Our Authorised Officer accepts in writing the new Price and date(s) of supply within 10 Business Days. 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 Condition 7).

7. Termination

7.1 In addition to Our other rights of termination under these Conditions, We may terminate the Contract in whole or in part at any time before the supply of Services, with immediate effect by giving You written notice, whereupon You shall discontinue all work on or in relation to the Contract. Following such notice, You shall comply with any instructions that We issue with regard to the Services and You may submit a termination claim in writing upon receipt of which We shall pay to You the cost of any commitments, liabilities or expenditure which in Our reasonable opinion were a consequence of this Contract at the time of termination.

7.2 For the avoidance of doubt, the total amount of all payments made or due to You under this Contract, including any termination payment, shall not exceed the Price and shall under no circumstances include loss of anticipated profits or any indirect loss or consequential loss.

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

7.4 We may terminate the Contract with immediate effect by giving You written notice if You commit a breach of any term of the Contract and (if such breach is remediable) fail to remedy that breach within a period of 10 Business Days after being notified by Us or Our representatives to do so.

7.5 We may terminate the Contract with immediate effect by giving You written notice if You become subject to any of the following:

- a. You suspend, or threaten to suspend, payment of Your debts, or are unable to pay Your debts as they fall due or admit inability to pay Your debts, or (being a company) are deemed unable to pay Your debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) are deemed either unable to pay Your debts or have no reasonable prospect of doing so, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) have any partner to whom any of the foregoing apply;
- b. You commence negotiations with all or any class of Your creditors with a view to rescheduling any of Your debts, or make a proposal for or enter into any compromise or arrangement with Your creditors;
- c. (being a company) a petition is filed, notice is given, a resolution passed, or an order is made, for or in connection with Your winding up, other than for the sole purpose of a scheme for Your solvent amalgamation with one or more companies or Your solvent reconstruction;
- d. (being an individual) You are the subject of a bankruptcy petition or order;
- e. a creditor or encumbrance of Yours attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of Your assets and such attachment or process is not discharged within 10 Business Days;
- f. (being a company) an application is made to court, or an order is made, for the appointment of an

administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over You;

- g. (being a company) a floating charge holder over Your assets has become entitled to appoint or has appointed an administrative receiver;
- h. a person becomes entitled to appoint a receiver over Your assets or a receiver is appointed over Your assets;
- i. any event occurs, or proceeding is taken, with respect to You in any jurisdiction to which You are subject, that has an effect equivalent or similar to any of the events mentioned in this clause;
- j. You suspend, or threaten to suspend, or cease or threaten to cease to carry on, all or substantially the whole of Your business;
- k. Your financial position deteriorates to such an extent that in the Our opinion Your capability to adequately fulfil Your obligations under the Contract has been placed in jeopardy; or
- l. (being an individual) You die or, by reason of illness or incapacity (whether mental or physical), are incapable of managing Your own affairs or becomes a patient under any mental health legislation.

8. Our premises

8.1 If the Contract requires You to enter Our premises You shall ensure that You and Your employees, 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, any relevant health and safety regulations and any applicable internal policies that We may notify to You from time to time.

9. Safety

9.1 You shall observe all legal requirements of the United Kingdom, the 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 materials and all provisions relating to food.

10. Remedies

10.1 If You fail to perform the Services by the applicable dates, We

shall, without limiting any of Our other rights or remedies, have one or more of the following rights:

- a. to terminate the Contract with immediate effect by giving written notice to You;
- b. to refuse to accept any subsequent performance of the Services which You attempt to make;
- c. to recover from You any costs incurred by Us in obtaining substitute services from a third party; where We have paid in advance for Services that have not been provided by You, to have such sums refunded by You; or
- e. to claim damages for any additional costs, loss or expenses incurred by Us which are in any way attributable to Your failure to meet such dates.

10.2 These Conditions shall extend to any substituted or remedial services provided by You.

10.3 Our rights under the Contract are in addition to any rights which may be implied by statute and common law.

11. Indemnity

11.1 You shall keep Us indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by Us as a result of or in connection with:

- a. any claim made against Us by a third party arising out of, or in connection with, the supply of Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by You, Your employees, agents or subcontractors; and
- b. any claim brought against Us for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use or supply of the Services to the extent that the claim is attributable to Your acts or omissions or the acts or omissions of Your employees agents or subcontractors.

12. Insurance

12.1 For the duration of the Contract and for a period of 24 months thereafter, You shall maintain in force, with a reputable insurance

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company, professional indemnity insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract and shall, upon Our request, produce both the insurance certificate giving details of the cover and the receipt for the current year's premium in respect of each insurance.

13. Confidentiality

13.1 You shall treat all Confidential Information belonging to Us as confidential and safeguard it accordingly and shall not disclose any such Confidential Information to any other person without Our prior written consent, except to such persons and to such extent as may be necessary for the performance of the Contract or except where disclosure is otherwise expressly permitted by the provisions of this Contract.

13.2 You shall take all necessary precautions to ensure that all Confidential Information obtained from Us under or in connection with the Contract:-

- is given only to such staff and professional advisors or consultants engaged to advise it in connection with the Contract as is strictly necessary for the performance of the Contract and only to the extent necessary for the performance of the Contract;
- is treated as confidential and not disclosed (without prior approval) or used by any staff or such professional advisors or consultants otherwise than for the purposes of the Contract.

13.3 You shall not use any Confidential Information You receive from Us otherwise than for the purposes of the Contract.

13.4 The provisions in this clause shall not apply to any Confidential Information received by You which is or becomes public knowledge (otherwise than by breach of these Conditions), or was in Your possession without restriction as to its disclosure, before receiving it from Us, or is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure, or is independently developed without access to the Confidential Information, or must be disclosed pursuant to a statutory, legal or parliamentary obligation.

13.5 Nothing in this Condition shall prevent You from using any techniques, ideas or know-how gained during the performance of the Contract in the course of Your normal business, to the extent that this does not result in the disclosure of Confidential Information.

13.6 In the event that You fail to comply with this Condition, We reserve the right to terminate the Contract immediately by notice in writing.

13.7 You acknowledge that damages alone would not be an adequate remedy for the breach of any of the provisions in this clause. Accordingly, without prejudice to any other rights and remedies We may have, We shall be entitled to be granted equitable relief (including without limitation injunctive relief) concerning any threatened or actual breach of any of the provisions in this clause.

14. Force majeure

14.1 Neither Party shall be liable to the other for any delay or failure in performing its obligations under the Contract to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that Party and which by its nature could not have been foreseen by such Party or, if it could have been foreseen, was unavoidable, provided that each Party shall use all reasonable endeavours to cure any such events or circumstances and resume performance of the Contract.

If any events or circumstances prevent either Party from carrying out its obligations under the Contract for a continuous period of more than 15 Business Days, either Party shall have the right to terminate this Contract immediately by giving written notice to the other Party.

15. Assignment and sub-letting

15.1 We may at any time assign, transfer, charge, subcontract or deal in any other manner with any or all of Our rights or obligations under the Contract.

15.2 You may not assign, transfer, charge, subcontract or deal in any other manner with any or all of Your rights or obligations under the Contract without Our prior written consent, which shall not be unreasonably refused.

15.3 For the avoidance of doubt, You shall be responsible for all Services supplied by Your sub-contractors.

16. Anti-Bribery

16.1 You shall comply with and shall procure that any person or organisation associated with You who is supplying Services in connection with the Contract shall comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and shall not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010.

16.2 Breach of this Condition shall be deemed to be a material breach of the Contract.

17. Waiver

17.1 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.

18. Notices

18.1 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 invoice address stated on Our order, and shall be deemed to have reached the party to whom it is addressed on the next Business Day following the date of posting.

19. Amendment

19.1 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 Authorised Officer.

20. Severance

20.1 If a court or any other competent authority finds that any provision (or part of any provision) of the Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

21. Equal Opportunities

21.1 You agree to comply with Our policies and procedures to prevent unlawful discrimination on the grounds of the protected characteristics outlined in Part 2 of the Equality Act 2010, namely age, disability, gender reassignment, marital or civil partner status, pregnancy or maternity, race, colour, nationality, ethnic or national origin, religion or belief, sex or sexual orientation.

21.2 In accordance with Our responsibilities under Part 5 of the Equality Act 2010 We require Our contractors and sub-contractors to ensure that there is no unlawful discrimination against their employees, applicants and contract workers on the grounds of any of the protected characteristics outlined in Part 2 of the Equality Act 2010..

21.3 You warrant that Your practices and procedures comply with legislation to prevent unlawful discrimination and that Your employees are fully trained on matters relating to the prevention of unlawful discrimination.

21.4 You will provide such information as required by Us in relation to Your compliance with anti-discrimination legislation and will co-operate with any investigation by Us or a body empowered to carry out such investigations under the relevant legislation.

21.5 Where any investigation is conducted, or proceedings are brought which arise directly or indirectly out of any act or omission by You, Your agents or sub-contractors and where there is a finding against the contractor 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.

21.6 Without prejudice to its remedies set out above, We may terminate the Contract if notice has been 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.

22. Freedom of Information

22.14 You acknowledge that We are subject to the requirements of the Code of Practice on Access to Government Information, the FOIA and the Environmental Information Regulations and shall assist and cooperate with Use (at Your expense) to enable Us to comply with these Information disclosure requirements.

22.2 You shall and shall procure that Your sub-contractors shall:

- transfer any request for Information to Us as soon as practicable after receipt and in any event within two Business Days of receiving a request for Information;
- provide Us with a copy of all Information in Your possession or power in the form that We require within five Business Days (or such other period as We may specify) of Our requesting that Information; and
- provide all necessary assistance as reasonably requested by Us to enable Us to respond to a request for Information within the time for compliance set out in

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section 10 of the FOIA [or regulation 5 of the Environmental Information Regulations].
22.3 We shall be responsible for determining at Our absolute discretion whether the Commercially Sensitive Information and/or any other Information:

- is exempt from disclosure in accordance with the provisions of the Code of Practice on Access to Government Information, the FOIA or the Environmental Information Regulations; and
- is to be disclosed in response to a request for Information, and

In no event shall You respond directly to a request for Information unless expressly authorised to do so by Us.
22.4 You acknowledges that We may, acting in accordance with the Department for Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000, be obliged under the Code of Practice on Access to Government Information (2nd Edition), the FOIA, or the Environmental Information Regulations to disclose Information:-

- without consulting with You, or
- following consultation with You and having taken Your views into account.

22.5 You shall ensure that all Information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit Us to inspect such records as requested from time to time.
22.6 You acknowledge that any lists or schedules provided by You outlining Confidential Information are of indicative value only and that We may nevertheless be obliged to disclose Confidential Information in accordance with this Condition.

23. Law
23.1 This Contract shall be subject to English Law and You and We submit to the jurisdiction of the English courts save for Our right to enforce Our Intellectual Property Rights anywhere in the world.

Your signature

Signed... ..
Print Name of signatory... ..
Position
Date

Our Signature

Signed... ..
Print Name of signatory... ..
Position
Date