



**Leeds Arts University**

## **Conditions of Purchase for Goods and/or Services**

### **1. Interpretation**

1.1 In these Conditions the following words shall have the following meanings:

“the University” the entity identified in the Order as the purchaser (or, in the absence of any such entity being identified, Leeds Art University, one of whose places of business is at Blenheim Walk, Leeds, LS2 9AQ);

“Conditions” the standard terms and conditions of purchase set out in this document and (unless the context otherwise requires) any special terms and conditions agreed in writing between the University and the Supplier;

“Contract” the Order and the Supplier’s acceptance of the Order;

“Goods” any goods agreed in the Contract to be purchased by the University from the Supplier (including any part of them);

“Order” a Purchase Order, the University’s written instruction to supply the Goods and/or perform the Services, incorporating these Conditions and any other documents which the University agrees in writing shall be part of the Order;

“Services” any services agreed in the Contract to be purchased by the University from the Supplier (including any part of them);

“the Supplier” the party identified in the Order as the Supplier.

### **2. Application of Conditions**

2.1 These Conditions shall govern the Contract to the exclusion of any terms or conditions endorsed upon, delivered with or contained in the Supplier’s quotation, acknowledgement or acceptance of order or similar document and shall cancel and supersede any earlier version of Conditions of Purchase of the University and the Supplier waives any right which it otherwise might have to rely on such terms or conditions.

2.2 No variation to the Order or these Conditions shall be binding on the University unless agreed in writing and signed by a duly authorised representative of the University.

### **3. Orders**

3.1 The Order constitutes an offer by the University to purchase the Goods and/or the Services in accordance with these Conditions.

3.2 The Order shall be deemed to be accepted and the Contract shall come into existence on the earlier of the Supplier issuing written acceptance or doing any act which is consistent with the Supplier’s acceptance or fulfilment of the Order.

3.3 Only Orders placed on the University’s official Order and accepted by the Supplier within the time period (if any) stated on the Order shall be binding on the University.

3.4 The University may withhold payment where the Supplier has not included the Order number and date on notes, packaging or any invoice or other correspondence relating to the Order.

### **4. Quality and Defects**

4.1 The Supplier warrants that the Goods shall (a) be of the quantity, quality and description specified in the Order;

(b) be capable of any standard of performance specified in the Order; (c) conform with any sample, patterns or specification supplied, or agreed to, by the University; and (d) comply with all statutory requirements and regulations relating to the Goods.

4.2 The Supplier warrants that the Services shall conform in all respects with the Order and any specification supplied, or agreed to, by the University and will comply with all statutory requirements and regulations relating to the performance of the Services.

4.3 The Supplier shall maintain and implement quality control procedures to enable the Supplier to comply with its obligations under the Contract and, at the University's request, will supply the University with full details of such procedures and any associated reports.

4.4 At any time prior to the delivery of the Goods, the University shall have the right to require the Supplier to carry out the procedures referred to in Condition 4.3. If the University is of the opinion that the Goods do not or are unlikely to conform with the Order or to any specification supplied, or agreed to, by the University or that the procedures are insufficient or inappropriate to ensure consistent conformity with the Contract, the University shall inform the Supplier and the Supplier shall immediately take such action as is necessary to ensure such conformity. Notwithstanding any such action, the Supplier shall remain fully responsible for the Goods and procedures and any such action shall not diminish or otherwise affect the Supplier's obligations under the Contract.

4.5 The Supplier shall comply with all applicable regulations or other legal requirements concerning the Goods.

4.6 The Goods shall be marked in accordance with the University's instructions and properly packed and secured so as to reach their destination in an undamaged condition.

4.7 Without prejudice to the University's right to terminate the Contract under Condition 12, if any of the Goods or Services fail to comply with the provisions set out in this Condition 4 the University shall be entitled to any one or more of the remedies listed in Condition 13.

4.8 All Goods, packaging, and Services supplied, shall comply (where relevant) with: Sale of Goods Act 1979, Supply of Goods and Services Act 1982, all current applicable amendments, statutes, and regulations, specifications of the British Standards Institution (or equivalent) in force at the time the Order was issued.

4.9 If requested by the University, the Supplier shall as soon as reasonably practicable repair or replace all Goods which are or become defective during the period of 12 months from putting into service, or 18 months from delivery, (whichever shall be the shorter) where such defects occur under proper usage and are due to faulty design, the Seller's erroneous instructions as to use, or erroneous use data, or inadequate or faulty materials or workmanship, or any other breach of the Seller's warranties, expressed or implied.

## **5. Indemnity and Insurance**

5.1 The Supplier shall keep the University indemnified against all direct, indirect and consequential liability, loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) (together "Loss") awarded against or incurred or paid by the University as a result of or in connection with (a) defective Goods or Services including, without limitation, defective workmanship, quality or materials; (b) any infringement or alleged infringement of any intellectual property rights caused by the possession, use, manufacture or supply of the Goods; (c) any breach of the General Data Protection Regulations (the GDPR) and the Data Protection Act 2018 (DPA) (when in effect) (d) any claim made against the University in respect of any Loss sustained by the University's employees or agents or by any customer or third party to the extent that such Loss was caused by, relates to or arises from the Goods or the performance of the Services; and (e) any failure by the Supplier to follow any of the University's policies or procedures which the University makes known to the Supplier (as may be amended by the University from time to time).

5.2 Unless the University otherwise requires, the Supplier shall, during the term of the Contract and for a period of 5 years thereafter, insure its liability under the Contract with a reputable insurance company and at the request of the University shall produce to the University full details of such insurance and evidence of its renewal, and in any event the Supplier shall maintain in force the following insurance cover as a minimum: (a) employers' liability cover in the sum of not less than £10 million per claim, with no aggregate limit; (b) public liability cover in the sum of not less than £10 million per claim, with no aggregate limit; (c) professional indemnity cover in the sum of not less than £5 million per claim, with no aggregate limit.

## **6. Delivery, Risk and Performance**

6.1 The Goods shall be delivered carriage paid, to the place of delivery specified by the University. The Supplier shall off-load the Goods as directed by the University.

6.2 All Goods must be adequately protected against damage and deterioration in transit. Information relating to the handling and storage of Goods upon receipt is to be clearly marked on the packaging and accompanying paperwork. Packaging will be assumed to be non-chargeable and non-returnable, unless clearly stated in the Contract, and the Supplier shall be responsible for the collection and disposal of all returnable packaging at no cost to the University.

6.3 The Goods shall remain at the risk of the Supplier until delivery to the University is complete (including off-loading and stacking) at which point, without prejudice to any rights and remedies available to the University by law or pursuant to these Conditions, ownership of the Goods shall pass to the University.

6.4 The date for delivery of the Goods shall be specified in the Order, or if no such date is specified delivery shall take place within 28 days of the Order.

6.5 The date or dates for performance of the Services shall be as specified in the Order or such other date or dates agreed by the University.

6.6 Time for delivery of the Goods and performance of the Services shall be of the essence.

6.7 The Supplier shall invoice the University upon, but separately from, despatch of the Goods to the University or completion of the Services.

6.8 Unless otherwise stipulated by the University in the Order, deliveries of the Goods shall be accepted by the University only during normal business hours.

6.9 Notwithstanding Condition 3.4, the Supplier shall ensure that all Goods deliveries include a delivery note showing the number of packages and contents and any outstanding balance remaining to be delivered.

6.10 If the Goods are not delivered and/or performance of the Services is not completed on the due date then, without prejudice to any other rights which it may have, the University reserves the right to (a) cancel the Contract in whole or in part; (b) refuse to accept any subsequent delivery of the Goods and/or performance of the Services which the Supplier attempts to make; (c) recover from the Supplier any expenditure reasonably incurred by the University in obtaining the Goods or the Services in substitution from another supplier; and (d) claim damages for any additional costs, losses or expenses incurred by the University which are in any way attributable to the Supplier's failure to deliver the Goods or complete performance of the Services on the due date.

6.11 Where the University agrees to accept delivery of the Goods by instalments the Contract will be construed as a single contract in respect of each instalment. Nevertheless failure by the Supplier to deliver any one instalment shall entitle the University at its option to treat the whole Contract as repudiated.

6.12 If the Goods are delivered to the University in excess of the quantities ordered, the University shall not be bound to pay for the excess and any excess will be and will remain at the Supplier's risk and will be returnable or collectable at the Supplier's expense.

6.13 The University shall be entitled to reject any Goods and/or to rectification of any Services which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods or Services until the University has had a reasonable time to inspect them following delivery or performance or, if later, within a reasonable time after any defect in the Goods or Services has become apparent.

6.14 The Supplier shall give the University prior written notice of (a) any delivery of the Goods or items accompanying the Goods having toxic or other hazards to the safety or health of persons or property and shall provide full details of such hazards and of all precautions which should be taken by the University in respect of the delivery, storage, handling, installation and use of the Goods or items including all necessary information to enable the University to comply with all relevant legislation relating to the Goods or items and/or such hazards; and (b) any delivery of Goods which are perishable or of limited lifespan and of any circumstances which may adversely affect the lifespan of such Goods.

6.15 If for any reason the University is unable to accept delivery of the Goods when they are due for delivery the Supplier shall store the Goods in a secure manner until the University is ready to accept delivery.

6.16 Where the Supplier performs the Services on the University's premises, the Supplier shall, and shall procure that its personnel shall, comply with the University's safety and security regulations (as may be amended by the

University from time to time) and shall not, without the prior written consent of the University, use any of the University's facilities or equipment. Where such consent is given by the University, the Supplier shall assume all liability arising out of their use.

## **7. Price and payment**

7.1 Subject to Condition 7.5, the price of the Goods and/or Services shall be as stated in the Order and, unless otherwise agreed in writing by the University, shall be exclusive of value added tax but inclusive of all other charges (including delivery). No variation in the price or extra charges will be accepted by the University.

7.2 The University shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Supplier.

7.3 Subject to Condition 7.5 and unless otherwise agreed in writing, the University shall make payment for the price of the Goods and/or Services within 30 days following receipt of a valid invoice from the Supplier or the Goods and/or Services have been accepted by the University, and in due regard to the University's fortnightly payment run, whichever is the later. Time for payment shall not be of the essence of the Contract.

7.4 The Supplier is not entitled to suspend deliveries of the Goods or performance of the Services in connection with any sums being outstanding from the University, or any other dispute, under the Contract or any other arrangement with the University.

7.5 Where the University has agreed in writing that the Supplier shall provide Services on a time and materials basis:

7.5.1 the charges payable by the University for the Services shall be calculated in accordance with the Supplier's daily fee rates as set out in the Order;

7.5.2 the Supplier's daily fee rates for each individual person engaged in the provision of the Services shall be calculated on the basis of an eight-hour day, worked between 8:00 am and 5:00 pm on weekdays (excluding public holidays);

7.5.3 the Supplier shall ensure that every individual whom it utilises to provide the Services completes time sheets recording their time spent on the Services, and the Supplier shall use such time sheets to calculate the charges covered by each invoice submitted pursuant to Condition 7.5.4 below;

7.5.4 the Supplier shall submit an invoice to the University in respect of its charges for the Services provided in the immediately preceding month, together with any agreed expenses, materials and third party costs, immediately following the end of the month in which the Services have been provided, calculated in accordance with this Condition 7.5;

7.5.6 any price for the Services contained in the Order shall not, unless otherwise stated in the Order or agreed in writing by the University and the Supplier, include the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Supplier utilises in connection with the Services, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by the Supplier in order to provide the Services. The Supplier shall invoice the University for such expenses, materials and third party services at cost, provided that the Supplier shall obtain the University's prior written approval of the amount before incurring any such expenses, material costs or third party services costs;

7.5.7 the University shall only be required to pay any amount invoiced by the Supplier pursuant to Condition 7.5.6 where the University is satisfied that the Supplier has provided sufficient receipts to evidence the relevant expenditure; and

7.5.8 the Supplier shall maintain complete and accurate records of all time spent and materials used by the Supplier in providing the Services in such form as the University shall require from time to time. The Supplier shall permit the University to inspect and audit such records at all times immediately on request.

## **8. Audit**

The Supplier shall keep and maintain until six years after the Contract has been completed, or for as long a period as may be agreed between the parties, full and accurate records of the Contract including (a) the Goods and Services provided under the Contract; (b) all expenditure reimbursed by the University; and (c) all payments made by the University, and the Supplier shall on request afford the University or the University's representatives such access to those records as may be required in connection with the Contract.

## **9. Compliance with legislation and the University's rules**

9.1 The Supplier shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise) and shall comply with the University's equality and diversity statements and policies made known to the Supplier from time to time by the University (as may be amended by the University from time to time). The Supplier shall take all reasonable steps to secure the observance of this Condition 9.1 by all servants, employees or agents of the Supplier and all suppliers and sub-contractors engaged in performance of the Contract.

9.2 The Supplier shall (and shall use its reasonable endeavours to procure that its staff shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of the Contract and the Supplier shall undertake, or refrain from undertaking, such acts as the University requests so as to enable the University to comply with its obligations under the Human Rights Act 1998.

9.3 The Supplier agrees to comply with any health and safety and safeguarding rules made known to the Supplier from time to time by the University (as may be amended from time to time by the University) together with all applicable statutory rules and regulations regarding these matters and the Supplier shall notify the University as soon as practicable of any health and safety hazards or safeguarding risks at the University's premises of which it becomes aware.

9.4 The Supplier shall comply at all times with the General Data Protection Regulation (the GDPR) and the Data Protection Act 2018 (DPA) (when in effect) and all other relevant legislation in relation to the processing of personal information and shall not perform its obligations under the Contract in such a way as to cause the University to breach any of its obligations under such legislation.

9.5 The Supplier acknowledges that the University is subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and the Supplier shall assist and co-operate with the University (at the Supplier's expense) to enable the University to comply with its obligations under such legislation.

9.6 The Supplier shall at all times when performing the Contract use (and procure that any third parties associated with the performance of the Contract shall use) reasonable endeavours to conserve energy, reduce waste, phase out the use of ozone depleting substances and minimise the release of greenhouse gases (including carbon dioxide emissions), volatile organic compounds and other substances which may cause damage to the health of any living being and/or to the environment.

## **10. Confidentiality**

The Supplier shall keep confidential and use for the purpose only of performing the Order all technical and commercial know-how, specifications, inventions, processes or initiatives disclosed to the Supplier by the University or its agents, or which are created by the Supplier in performing the Order and any other confidential information concerning the University's business or its products, suppliers and customers which the Supplier may obtain and the Supplier shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know the same for the purpose of discharging the Supplier's obligations to the University and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality and non-use as bind the Supplier.

## **11. The University's Property**

11.1 Materials, equipment and all intellectual property rights in drawings, specifications and data supplied by the University to the Supplier shall be used by the Supplier only for the supply of the Goods to the University or the performance of the Services for the University. Such items shall remain the exclusive property of the University but shall be held by the Supplier at its own risk and kept in good condition by the Supplier until returned to the University and shall not be used or disposed of other than in accordance with the University's written instructions.

11.2 Any intellectual property rights created by the Supplier in performing the Order shall belong to the University absolutely and shall be not used for any purpose (other than performing the Order) without the University's prior written consent. The Supplier shall do such acts as the University may require to perfect the University's title to such intellectual property rights.

## **12. Termination of the Contract**

12.1 The University shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Supplier written notice whereupon all work on the Contract shall be discontinued and the University shall pay to the Supplier reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss.

12.2 The University shall have the right at any time by giving written notice to the Supplier to terminate the Contract immediately if (a) the Supplier commits a breach of any of the terms or conditions of the Contract; (b) any distress, execution or other process is levied upon any of the assets of the Supplier; (c) the Supplier convenes any meeting of creditors or passes a resolution for winding up or suffers a petition for winding up or has an administrative receiver or receiver appointed over the whole or part of its assets or suffers the appointment of an administrator or goes into liquidation or a bankruptcy order is made against it or anything analogous to any of the foregoing events under the law of any jurisdiction occurs in relation to the Supplier; (d) the Supplier ceases or threatens to cease to carry on its business; (e) there is a change of control of the Supplier; or (f) the University apprehends that any of the foregoing events is about to occur in relation to the Supplier or that the financial position of the Supplier has deteriorated to such an extent that the Supplier's capability to adequately perform the Contract has in the University's opinion been placed in jeopardy.

12.3 Termination of the Contract for any reason shall be without prejudice to rights of the University accrued prior to termination. The Conditions which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination, including but not limited to the following Conditions: 1, 2, 4.1, 4.2, 4.7, 5, 6.9, 6.12, 7.5.8, 8, 9, 10, 11, 12.3, 13, 14, 15, and 18.

## **13. Remedies**

Without prejudice to any other right or remedy which the University may have, if any Goods are not supplied or Services are not performed in accordance with, or the Supplier fails to comply with, any of the terms of the Contract, the University shall be entitled to any one or more of the following remedies at its discretion, whether or not any part of the Goods or Services has been accepted by the University: (a) to rescind the Order; (b) to reject the Goods (in whole or in part) and return them to or require that they are collected by the Supplier at the Supplier's risk and expense on the basis that a full refund for the Goods so returned shall be paid immediately by the Supplier; (c) to reject the Services (in whole or in part) on the basis that a full refund for the Services so rejected shall be paid immediately by the Supplier; (d) at the University's option to allow the Supplier the opportunity at the Supplier's expense either to remedy any defect in the Goods or the Services or to supply replacement Goods and/or Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled, provided that if the Supplier refuses to do so the University shall be entitled to purchase replacement Goods and/or Services from an alternative source and the Supplier shall reimburse the University for any additional costs and expenses reasonably incurred in doing so; (e) to refuse to accept any further deliveries of the Goods or performance of the Services but without any liability to the Supplier; (f) to carry out at the Supplier's expense any work necessary to make the Goods or Services comply with the Contract; and (g) to claim such damages as may have been sustained in consequence of the Supplier's breaches of the Contract.

## **14. Guarantee/Warranty**

Without prejudice to any other right of the University, where under the terms of any warranty or guarantee given by the University on the resale of the Goods or on the sale of any goods in which the Goods are comprised, the University is responsible for or has agreed to the repair or replacement of the Goods, the Supplier shall, if requested by the University, repair or replace the Goods and reimburse or pay to the University all transport and labour costs incurred by the University in satisfying the claim under such warranty or guarantee.

## **15. Set Off**

The University shall be entitled to apply any sum due from the University to the Supplier in settlement of any sum due from the Supplier to the University.

## **16. Force Majeure**

The University reserves the right to, without liability, defer the date of delivery of the Goods or performance of the Services or payment or to cancel the Contract or reduce the volume of the Goods or the extent of the Services ordered if it is prevented or delayed due to circumstances beyond the University's reasonable control including, without limitation, lock-outs, strikes or other labour disputes.

## **17. Anti-Corruption**

The Supplier shall at all times: (a) comply with, warrant and indemnify the University in relation to all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("Relevant Requirements"), Fraud Act 2006, IR35 (1999), and Criminal Finance Act 2017; (b) comply with the University's anti-corruption policies, as the University or the relevant industry body may update them from time to time ("Relevant Policies"); (c) have and shall maintain in place throughout the term of the Contract its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and the Relevant Policies (including but not limited to by any person performing any aspect of the Contract) and will enforce them where appropriate; (d) promptly notify the University if any request or demand for financial or other advantage of any kind is received by the Supplier in connection with the performance of the Contract or if any foreign public official is appointed as an officer or employer of or acquires an interest in the Supplier; and (e) within two months of the date of the Contract, and annually thereafter until its termination or expiry, certify to the University in writing signed by an officer of the University, compliance with this Condition 17 by the Supplier and all persons associated with it. The Supplier shall provide such supporting evidence of compliance as the University may reasonably request.

## **18. General**

18.1 The Supplier shall not be entitled to assign or sub-contract the Contract or any part of it without the prior written consent of the University.

18.2 Nothing in the Contract entitles any third party to any benefit under, or to enforce the terms of, the Contract.

18.3 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

18.4 The Supplier shall not use the Contract or any name, logo or other intellectual property right of the University without the University's prior written consent.

18.5 Any waiver by the University of any breach of, or any default under, any provision of the Contract by the Supplier will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract, and no failure or delay by the University in enforcing or partially enforcing any provision of the Contract shall be construed as a waiver of any of its rights under the Contract.

18.6 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or reasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect. 18.7 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. Any notices sent by University pursuant to these Conditions shall be deemed served upon being sent provided that the University is able to prove that such notice was sent.

18.8 The formation, existence, construction, performance, validity and all other aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

