

NEWCASTLE UNIVERSITY

General Conditions of Contract for Services or Minor Works 2010

1. Definitions

- 1.1 The term 'Employer' shall mean the University of Newcastle trading as Newcastle University.
- 1.2 The term 'Contractor' shall mean the person, firm or company to whom the Purchase Order is issued.
- 1.3 The term 'FOIA' shall mean the Freedom of Information Act 2000 and any subordinate legislation (as defined under the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such Act and, where applicable, the Environmental Information Regulations 2004.
- 1.4 The term an 'Insolvency Event' means each and any of the following in relation to the Contractor:-
- (a) any action (corporate or otherwise), legal proceedings or other procedure or step is taken by any person in any jurisdiction in relation to or with a view to: (i) the winding up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Contractor (except that no right to terminate will arise in respect of any procedure commenced for the purpose of a solvent amalgamation or reconstruction); (ii) the appointment of a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator, nominee, supervisor or similar officer in respect of the Contractor or any of its assets; (iii) the enforcement of any security over any assets of the Contractor; or (iv) the expropriation, attachment, sequestration, distress or execution over or affecting any material asset of the Contractor;
 - (b) the Contractor is unable to pay its debts as they fall due or is insolvent; or
 - (c) the Contractor enters into a composition or arrangement with its creditors or any class of them.
- 1.4 The 'Intellectual Property Rights' means any and all patents, trade marks, business names, copyright, moral rights, database rights, rights in designs, rights in inventions, and any and all other intellectual property rights, whether or not registered or capable of registration and whether subsisting anywhere in the world and including all applications and rights to apply for any of them together with all or any associated goodwill.
- 1.5 The 'Works' shall mean all work to be undertaken, and materials to be supplied, by the Contractor in performance of the Contract.
- 1.6 'The Site' shall mean the location where the Works are to be performed.
- 1.67 The term 'Purchase Order' shall mean the Employer's Purchase Order which specifies that these conditions apply to it.
- 1.8 The Contract' shall mean the contract between the Employer and the Contractor consisting of the Purchase Order, these conditions and any other documents (or parts thereof) specified in the Purchase Order. Should there be any inconsistency between the documents comprising the contract, they shall have precedence in the order herein listed.

2. Inclusions in Contract

The Contract includes for all materials, labour, plant, equipment, transport, handling of materials and plant, tools and appliances and all other things necessary for the Works.

3. Inspection of Site

The Contractor is deemed to have understood the nature and extent of the Works, and to have visited the Site and shall make no claim founded on his failure to do so. The Employer shall, on request of the Contractor, grant such access as may be reasonable for this purpose.

4. Manner of Carrying Out the Works

- 4.1 The Contractor shall make no delivery nor commence work on Site before obtaining the Employer's consent.
- 4.2 Access to and possession of the Site shall not be exclusive to the Contractor but only such as shall enable him to carry out the Works concurrently with the execution of work by others.
- 4.3 The Employer shall have the power at any time during the progress of the Works to order in writing:
 - (a) The removal from the Site of any materials which in the opinion of the Employer are not in accordance with the Contract.
 - (b) The substitution of proper and suitable materials.
 - (c) The removal and proper re-execution (notwithstanding any previous test thereof or interim payment therefor) of any work which, in respect of material or workmanship, is not in the opinion of the Employer in accordance with the Contract.
- 4.4 No work shall be laid in excavation and no work shall be covered or hidden until approved by the Employer.

5. Completion Date

The date of completion of the Works or, in the case of a service being performed at regular intervals, the period of the Contract, shall be that specified in the Employer's Purchase Order unless otherwise agreed between the Employer and the Contractor. Time shall be of the essence.

6. Terms of payment

- 6.1 Unless otherwise stated in the Contract, payment will be made within 28 days of receipt and agreement of invoices, submitted monthly, for work completed to the satisfaction of the Employer.
- 6.2 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.
- 6.3 If any payment is overdue, interest at the rate of [5%] over base rate from time to time of Barclays Bank plc shall accrue on the unpaid amount from the date that that payment becomes due until the date of payment.
- 6.4 The provisions of Sub-Clause 6.3 provide a substantial contractual remedy for late payment of a debt under the Contract, and are fair and reasonable, because:-
 - 6.4.1 the interest rate is greater than the interest rate available to the Contractor in respect of cash on deposit which is immediately available; and
 - 6.4.2 the other provisions of the Contract reflect, and take into account, the overall relationship between the parties, and so it would be inappropriate for a higher interest rate to apply.
- 6.5 The provisions of Sub-Clause 6.3 are in lieu of statutory interest, which shall not accrue accordingly.
- 6.6 The Employer may set off against the Contract price any sums owned to it by the Contractor, in connection with the Contract or any other agreement entered into by the parties.

7. Contractor's Supervisor

The Contractor shall have a competent supervisor on the Site and any instructions given to the said supervisor (written or oral) shall be deemed to be given to the Contractor.

8. Assignment and Sub-Letting

- 8.1 The Contractor shall not assign or sub-let the whole or any portion of the Contract without the prior written consent of the Employer. No sub-letting shall relieve the Contractor from the responsibility of the Contract or from active supervision of the Works during their progress.
- 8.2 Where the Employer has consented to the placing of sub-contracts, copies of each sub-order shall be sent by the Contractor to the Employer immediately it is issued.

9. Variation in Contract Price

Save as provided for under Sub-Clause 10.2 the contract price shall be a firm price unless otherwise agreed between the parties when the Purchase Order is placed.

10. Variation of the Works

- 10.1 The Contractor shall not vary any of the Works, except as directed in writing by the Employer.
- 10.2 The Employer reserves the right by notice in writing to modify the quality or quantity of the Works and any alteration to the Contract price arising by reason of such modification shall be agreed between the parties.

11. Payments to Site Labour

- 11.1 The Contractor and his sub-contractor (if any) shall pay their respective employees on the Site the rates of wages, and observe hours and conditions of working, recognised by the national agreements, if any, for the industries or trades applicable to the Contractor's work and in any event at least the statutory minimum wage where in force and relevant. In the absence of such agreements the Contractor and his sub-contractors shall observe rates and conditions approved by the Employer.
- 11.2 Bonus and other payments outside those defined in 11.1 above shall only be made in accordance with principles agreed with the Employer.
- 11.3 Hours of working, including overtime, shall be agreed with the Employer.
- 11.4 Before the placing of the Contract, the Contractor shall have obtained for himself and his sub-contractors (if any) the approval of the Employer for the arrangements covered in 11.1, 11.2 and 11.3 above. The Contractor and his sub-contractors shall not introduce or commence to negotiate any changes in these arrangements without the written consent of the Employer. Notice shall be given to the Employer of the implementation of any national awards affecting these arrangements.
- 11.5 The Contractor shall not offer employment to any person employed by the Employer or by other contractors employed by the Employer whilst work under the Contract is taking place.

12. Statutory Duties and Safety

- 12.1 The Works shall be carried out with the proper regard to safety and the Contractor shall observe and conform to all statutory enactments and regulations and any by-laws and/or regulations of local or other authorities applicable to the Works or generally to the Site where the Works are carried out, the cost of supplying and/or doing all things required for the purpose being deemed to be included in the Contract price. Any additional expenses reasonably incurred by the Contractor in conforming with any such statutory enactments, by-laws and regulations made subsequently to the Contractor's tender shall be added to the Contract price, provided that such additional expenses were not ascertainable at the date of tender.
- 12.2 The Contractor shall also observe through his staff and work people the Works Rules (available on request) applicable to the Site where the Works are carried out. The Employer shall have the right to require the Contractor immediately on receipt of notice in writing to remove any of his employees on the Site who has:
- (a) failed to comply with the Works Rules or
 - (b) in the opinion of the Employer misconducted himself, or been negligent or incompetent.
- 12.3 The Contractor shall be responsible for the suitability and safety of the equipment used by him and no equipment shall be used which may be unsuitable, unsafe or liable to cause damage. Without lessening the absolute responsibility of the Contractor in regard to such equipment the Employer shall have the right to inspect such equipment and if in the Employer's opinion it is unsuitable it shall not be used on the Works, no extra time or payment being allowed to the Contractor for replacement.

13. Free-issue Materials

Where the Employer for the purposes of the Contract issues materials free of charge to the Contractor such materials shall be and remain the property of the Employer. The Contractor shall maintain all such materials in good order and condition and shall use such materials solely in connection with the Contract. Any surplus materials shall be disposed of at the Employer's discretion. Waste of such materials arising from bad workmanship or negligence of the Contractor shall be made good at the Contractor's expense. Without prejudice to any other of the rights of the Employer, the Contractor shall deliver up such materials whether further processed or not to the Employer on demand.

14. Indemnity

The Contractor shall take every practicable precaution not to damage or injure any property or persons. The Contractor shall satisfy all claims founded on any such damage or injury which arise out of or in

consequence of any operations under the Contract whether such claims are made by the Employer or a third party against the Contractor or against the Employer, and the Contractor shall indemnify the Employer against all actions, demands, damages, costs, charges and expenses (including legal fees) arising in connection therewith, provided, however, that nothing in this condition shall render the Contractor liable for any injury or damage resulting from any negligent act or omission of the Employer, his servants or agents, or any other contractor employed by the Employer.

15. Insurances

15.1 The Contractor shall have in force and shall require any sub-contractor to have in force:

- (a) Employer's Liability Insurance and
- (b) Public Liability Insurance for such sum and range of cover as the Employer deems to be appropriate but not less than £500,000 for any one accident unless otherwise agreed by the Employer in writing.

All such insurances shall be extended to indemnify the Employer against any claim for which the Contractor or sub-contractor may be legally liable.

15.2 The policy of insurance shall be shown to the Employer whenever he requests together with satisfactory evidence of payment of premiums.

15.3 If the Contractor is in breach of either Sub-Clause 15.1 or 15.2 the Employer may itself insure against any risk with respect to which the default shall have occurred, and may deduct a sum or sums equivalent to the amount paid or payable in respect of premiums from any monies due or to become due to the Contractor under the Contract or recover them from the Contractor as a debt.

15.4 The Employer shall maintain Employer's Liability and Public Liability Insurance in respect of his own liabilities.

16. Notification Procedure

The Contractor shall give immediate notice in the event of any accident or damage likely to form the subject of a claim under the Employer's insurance and shall give all the information and assistance in respect thereof that the Employer's insurers may require, and shall not negotiate, pay, settle, admit or repudiate any claim without their written consent, and shall permit the insurers to take proceedings in the name of the Contractor to recover compensation or secure an indemnity from any third party in respect of any of the matters covered by the said insurance.

17. Intellectual Property Rights

17.1 The Contractor hereby assigns to the Employer free from all charges and other encumbrances all right, title and interest in and to the Intellectual Property Rights, subsisting in or relating to the information, reports, specification, software, drawing and other results arising out of the Works, goods or materials produced for the Employer by the Contractor its sub-contractor or specifically commissioned by the Employer from the Contractor ("the Deliverables"), together with all rights of action arising or accrued in relation to those Intellectual Property Rights, including the right to take proceedings and to seek and recover damages, the right to obtain delivery-up of all infringing copies and all other remedies for past infringement.

17.2 The Contractor shall clearly identify any inventions, works or materials over which the Contractor or any third party has pre-existing Intellectual Property Rights which are proposed to be included in the Deliverables and in such cases the Contractor shall not include those inventions, works or materials in the Deliverables without the prior written consent of the Employer. The Contractor shall grant or use his best endeavours to obtain the grant of an irrevocable royalty free, perpetual, transferable non-exclusive licence to the Employer to use such pre-existing Intellectual Property Rights as shall be necessary for the use of the Deliverables. The Contractor shall indemnify the Employer against all losses, costs and expenses, including legal fees on an indemnity basis, incurred by the Employer in using such rights, in particular, but without limitation, arising from third party actions or threatened actions for damages.

17.3 The Contractor hereby waives and shall procure that any relevant third party shall waive (to the extent that such rights may be waived) all moral rights which now or in the future may subsist anywhere in the world in the Deliverables.

17.4 The Contractor represents, warrants and undertakes that neither the Deliverables nor the provision or receipt of the Works shall infringe any third party Intellectual Property Rights.

18. Contractor's Conditions

No conditions submitted or referred to by the Contractor when tendering shall form part of the Contract unless otherwise agreed to in writing by the Employer.

19. Secrecy

19.1 No photographs of any of the Employer's equipment, installations or property shall be taken without the Employer's prior consent in writing. The Contractor shall keep secret and shall not divulge to any third party (except sub-contractors accepting a like obligation of secrecy, and then only to the extent necessary for the performance of the sub-contract) all information given by the Employer in connection with the Contract or which becomes known to the Contractor through his performance of such work under the Contract.

19.2 The Contractor shall not mention the Employer's name in connection with the Contract or disclose the existence of the Contract in any publicity material or other similar communication to third parties without the Employer's prior consent in writing.

20. Clearance of Site on Completion

On completion of the Works the Contractor shall remove at his expense his plant, equipment and unused materials and shall clear away from the Site all rubbish arising out of the Works.

21. Loan of Employer's Plant and Equipment

(The inclusion of this condition does not imply that the Employer assumes any obligations to provide 'Loaned Plant', which means plant or equipment owned by the Employer and used by or on behalf of the Contractor by agreement.)

21.1 Where Loaned Plant is operated by a servant of the Employer:

- (a) The operator shall not become the servant of the Contractor but shall carry out with the Loaned Plant such work as he may be directed to do by the Contractor.
- (b) The Contractor shall be liable for any damage to the Loaned Plant caused by misdirection or misuse of it due to negligence on the part of the Contractor, or his servants, agents or sub-contractors.
- (c) The Employer shall be liable for any damage to the Loaned Plant caused by a defect in or faulty operation of the plant.

21.2 Where Loaned Plant is operated by a servant of the Contractor, the Contractor shall be liable for all damage to the Loaned Plant unless he can show that it was caused by a defect in the plant at the commencement of the loan and he shall be liable for any loss (including loss by theft) of the said plant.

21.3 The Employer shall have the right to withdraw Loaned Plant at any time and shall be under no liability whatever in connection with the Employer failing to lend plant at any time.

21.4 The Contractor shall satisfy himself that any Loaned Plant is suitable for the purpose intended.

22. Contractor's Default

22.1 If the Contractor fails to carry out promptly any of the Employer's instructions, and fails within 10 days of notice by the Employer drawing attention to such failure to take such steps as reasonably satisfy the Employer, the Employer may, without prejudice to any other of his rights, carry out Works at the risk and expense of the Contractor.

22.2 If the Contractor commits a breach of the Contract and fails within 10 days of notice by the Employer to take such steps as reasonably satisfy the Employer to rectify such breach, the Employer may, without prejudice to any other of his rights, terminate the Contract forthwith by notice to the Contractor. Thereupon, without prejudice to any other of his rights, the Employer may himself complete the Works or have it completed by a third party, using for that purpose (or making a fair and proper payment thereof) all materials, plant and equipment on the Site belonging to the Contractor, and the Employer shall not be liable to make any further payment to the Contractor until the Works have been completed in accordance with the requirements of the Contract, and shall be entitled to deduct from the Contract price (ascertained in accordance with the terms and conditions of the Contract) any additional cost incurred by the Employer. If the total cost to the Employer exceeds the said Contract price, the difference shall be recoverable by the Employer from the Contractor.

23. Insolvency and Bankruptcy

If the Contractor suffers an Insolvency Event the Employer may, without prejudice to any other of his rights, terminate the Contract forthwith by notice to the Contractor or any person in whom the Contract may have become vested.

24. Construction of Contract

The construction, validity and performance of the Contract shall be governed by the law of England and the parties agree to submit to the exclusive jurisdiction of the English Courts.

25. Notices

Any notice to be sent under the Contract should be sent to the addresses given on page one and served personally or by pre-paid registered or recorded delivery letter or facsimile confirmed by first class post. Letters shall be deemed served 48 hours after posting and facsimiles on despatch.

26. Waiver

No delay or omission by Employer in exercising any of its rights or remedies under the Contract or under any applicable law on any occasion shall be deemed a waiver of, or bar to, the exercise of such right or remedy or any other right or remedy upon any other occasion.

27. Headings

The headings in the Contract are for ease of reference only and shall not affect the construction thereof.

28. Severance

In the event that any provision of the Contract shall be void or unenforceable by reason of any provision or applicable law, it shall be deleted and the remaining provisions hereof shall continue in full force and effect and, if necessary, be so amended as shall be necessary to give effect to the spirit of the Contract so far as possible.

29. Freedom of Information Act (2000)

- 29.1 The Employer is committed to meeting its responsibilities under the FOIA and the Contractor acknowledges that the Employer is subject to the requirements of the FOIA and shall assist and cooperate with the Employer (at no expense to the Employer) to enable the Employer to comply with these disclosure requirements.
- 29.2 Accordingly, all information submitted to the Employer may need to be disclosed and/or published. If you consider that any of the information held in connection with this Contract would give rise to an actionable breach of confidence and/or would prejudice your commercial interests, and/or constitute trade secrets ("Commercially Sensitive Information") please identify it and explain (in broad terms) what harm might result from the disclosure and/or publication.
- 29.3 The Contractor shall procure that its employees, and agents shall:
- a) transfer any request for information within the meaning of the FOIA ("Request") received by the Contractor to the Employer as soon as practicable after receipt and in any event within 2 working days of receiving a Request;
 - b) provide the Employer with a copy of all information within the meaning of S84 of FOIA in its possession or power in the form that the Employer requires as soon as is practicable and in any event within 5 working days (or such other period as the Employer acting reasonably may specify) of the Employer requesting that information; and
 - c) provide all necessary assistance as reasonably requested by the Employer to enable the Employer to respond to a Request within the time for compliance set out in section 10 of the FOIA.
- 29.4 The Employer shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other information:
- a) is exempt from disclosure in accordance with the provisions of the FOIA; or
 - b) is to be disclosed in response to a Request and in no circumstances shall the Contractor respond directly to a Request unless expressly authorised by the Employer.
- 29.5 You acknowledge that the Employer may, acting in accordance with the Code of Practice in the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000 (the "FOIA Code") be obliged under the FOIA to disclose information:-
- a) without consulting the Contractor; or

b) following consultation with the Contractor and having taken its views into account

provided always that where Clause 29.5 (a) applies, the Employer shall in accordance with the recommendations of the FOIA Code, draw this to the attention of the Contractor prior to any disclosure.

29.6 The Contractor shall ensure that all information produced in the course of or relating to the Contract is retained for disclosure

30. Equal Opportunities and The Equality Act 2010

- 30.1 The Employer is committed to a comprehensive policy of equal opportunities and to meeting its responsibilities under the Equality Act 2010 ("the EA") and the Code of Practice on Racial Equality in Employment 2005 and any other codes of practice issued by a relevant Government Department in relation to the EA.
- 30.2 The Contractor shall in performing the Contract comply with the provisions of section 149 of the EA as if the Contractor were a body within the meaning of Schedule 19 of the EA.
- 30.3 The Contractor shall comply with the provisions of section 41 of the EA in all dealings with sub-contractors.
- 30.4 All personnel employed by the Contractor for the purpose of performing the Contract shall be suitably trained, qualified and experienced, and shall fulfil their duties in a professional, ethical manner, consistent with the Employer's commitment to equal opportunities and the EA.
- 30.5 The Contractor shall accept its legal obligation to comply with legislation for the prevention of discrimination, victimisation or harassment because of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation, and the promotion of equality.
- 30.6 The Contractor shall, when required, answer queries raised by the Employer on matters referred to in this clause and breach of statutory obligations will entitle the Employer to immediately terminate the Contract.
- 30.7 Copies of the Employer's policies are available on request.

31. Corrupt Gifts

The Contractor shall not, and shall procure that their employees, officer, agents, subcontractors, or anyone else acting on their behalf shall not, offer or give, or agree to give either directly or indirectly, to any employee or representative of the Employer, 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 Employer, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such other contract. The attention of the Contractor is drawn to the criminal offences created by the Prevention of Corruption Acts 1889 to 1916 and the Bribery Act 2010.