

NEWCASTLE UNIVERSITY

TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS 2018

1. **DEFINITION**

1.1 In these Terms and Conditions:

'Anti-Slavery Laws' shall mean any and all laws including statutes, statutory instruments, bye-laws, orders, regulations, directives, treaties, decrees, decisions (as referred to in Article 288 of the Treaty on the Functioning of the European Union) (including any judgment, order or decision of any court, regulator or tribunal) anywhere in the world which relate to anti-slavery or servitude, anti-forced or compulsory labour and/or anti-human trafficking, including the Modern Slavery Act 2015;

'Anti-Slavery Policy' shall mean the Base Code of the Ethical Trading Initiative and University's anti-slavery Statement, in each case as amended from time to time;

'Confidential Information' shall mean the existence and terms of the Contract, and all other information and trade secrets relating to the University's business or students which come into the possession of, or are otherwise made available to, the Supplier pursuant to the Contract, whether orally, or in documentary, electronic or other form, including all (if any) such information held by the Supplier as of the commencement of the Contract;

'Contract' means the agreement between the University and the Supplier for the supply and acquisition of the Goods consisting of these Terms and Conditions, the Order and any other document which the University and the Supplier have expressly agreed in writing shall be incorporated into the Contract formed in accordance with Condition 2;

'Contract Start Date' means the date on which the relevant Contract is formed in accordance with Condition 2.1;

'Data Protection Laws' means all laws relating to data protection, the processing of personal data and privacy, including:

- (a) the Data Protection Act 2018;
- (b) the General Data Protection Regulation (EU) 2016/679; and
- (c) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as may be amended by the proposed Regulation on Privacy and Electronic Communications),

and references to "**Personal Data**", "**Process**" and "**Processing**" have the meanings set out in, and will be interpreted in accordance with, such laws;

'Delivery' means delivery of the Goods to the place specified in the Order. Delivery of the Goods will occur when they have been delivered into the possession of the University at the delivery address;

'Discretionary Exclusions' means the circumstances set out in regulation 57(8) of the Public Contracts Regulations;

'EIR' means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;

'European Single Procurement Document' means a European Single Procurement Document consisting of an updated self-declaration confirming that the Relevant Sub-Contractor fulfils the selection criteria that the Supplier is required to meet as part of any tender which relates to the Contract;

'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;

'Force Majeure Event' means any event or circumstance to the extent it is beyond the reasonable control of and could not have been contemplated by the relevant party, but excluding any (i) changes in law; (ii) acts or omissions by sub-contractors; (iii) strikes, lockouts or industrial disputes; and/or (iv) Union law (as that term is defined in any withdrawal agreement between the European Union and the European Atomic Energy Community and the United Kingdom of Great Britain and Northern Ireland, but other than any exceptions as described in any such withdrawal agreement) actually or potentially ceasing to be binding upon or applicable to the United Kingdom ("**UK**"), including whether relating to the repeal of the European Communities Act 1972 or the start, duration or end of any transition or implementation period agreed between the UK and the European Union ("**EU**") as part of the arrangements for the withdrawal of the UK from the EU and, in each case, any consequences thereof;

'Goods' means the goods (including instalment, component, part of or raw materials used in such goods) described in the Order and such packaging as may be necessary for the immediate containment or handling of the goods but excluding additional cartons, cases and other similar containers used for convenience or distribution;

'Information' has the meaning given to it in Section 84 of the Freedom of Information Act 2000;

'Insolvency Event' means each and any of the following in relation to the Supplier:

- (a) any action (corporate or otherwise), legal proceedings or other procedure or step 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 Supplier (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 Supplier or any of its assets; (iii) the enforcement of any security over any assets of the Supplier; or (iv) the expropriation, attachment, sequestration, distress or execution over or affecting any material asset of the Supplier;

- (b) the Supplier is unable to pay its debts as they fall due or is insolvent;
- (c) the Supplier ceases to trade or appears, in the reasonable opinion of the University, to be likely to cease to trade; or
- (d) the Supplier convenes a meeting of its creditors and/or enters into a composition or arrangement with its creditors or any class of them;

'Intellectual Property Rights' means all intellectual and industrial property rights of any kind whatsoever including patents, supplementary protection certificates, rights in know-how, registered trade marks, registered designs, models, unregistered design rights, unregistered trade marks, rights to prevent passing off or unfair competition and copyright (whether in drawings, plans, specifications, designs and computer software or otherwise), database rights, topography rights, any rights in any invention, discovery or process, in each case whether or not registered or capable of registration, and all applications for and rights to apply for any of the foregoing together with all or any associated goodwill, in each case in the United Kingdom and all other countries in the world and together with all renewals, extensions, continuations, divisions, reissues, re-examinations and substitutions;

'Mandatory Exclusions' means the circumstances set out in regulation 57(1) of the Public Contracts Regulations;

'Modern Slavery Practice' shall mean any practice that amounts to (a) slavery or servitude (each as construed in accordance with Article 4 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 as amended), (b) forced or compulsory labour (as defined by the International Labour Organisation's Forced Labour Convention 1930 (No. 29) and Protocol) (c) human trafficking or (d) the arranging or facilitation of the travel of another person with a view to that person being exploited;

'Order' means the University's written acceptance of the Supplier's quotation for the supply of Goods to the University;

'Premises' means the location where the Goods are to be Delivered as specified in the Order and/or any other premises of the University;

'Price' means the amount payable for the Goods set out in or calculated by reference to the rates set out in the Contract (as applicable);

'Public Contracts Directive' means Directive 2014/24/EC;

'Public Contracts Regulations' means the Public Contracts Regulations 2015 SI 2015/102 as amended and in force from time to time;

'Request for Information' means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;

'Relevant Sub-Contractor(s)' means any sub-Suppliers engaged or to be engaged by the Supplier in relation to the delivery of its obligations under the Contract where the sub-Suppliers are engaged or will be engaged for the provision of works or in relation to the provision of services at a facility under the direct oversight of the University;

'Serious Infringement' means a contract for the Goods should not have been awarded by the University to the Supplier in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 TFEU;

'Specification' means any description, drawings, data, plant or other information (if any) of the Goods (a) contained or referred to in the Contract; and/or (b) published or otherwise made available to the University by or on behalf of the Supplier and/or the manufacturer of the relevant Goods;

'Substantial Modification' means a modification to the Goods, Contract and/or other related agreement other than as provided for in Regulation 72 of the Public Contracts Regulations and to which the University is required to conduct a new procurement procedure in accordance with Regulation 72(9) of the Public Contracts Regulations;

'TFEU' means the Treaty on the Functioning of the European Union;

'Treaties' means the Treaty on European Union and TFEU;

'Supplier' means the person, firm or company named as the Supplier in the Order and with whom the University has contracted to supply the Goods and where the context so permits its legal successors in title, servants, agents, sub-contractors and permitted assigns;

'University' means The University of Newcastle upon Tyne trading as Newcastle University; and

'Working Day' means a day that is not a Saturday, Sunday or public or bank holiday in England and/or Wales.

- 1.2 The headings in the Contract are for ease of reference only and shall not affect the construction thereof.
- 1.3 Any reference to any gender includes any other gender and references to a 'person' include any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra-governmental agency or department, state or agency of state or any other entity (in each case whether or not having separate legal personality).
- 1.4 References to any statute or statutory provision will include any subordinate legislation made under it and will be construed as references to such statute, statutory provision and/or subordinate legislation as modified, amended,

extended, consolidated, re-enacted and/or replaced and in force from time to time.

- 1.5 In the event of any conflict between these Terms and Conditions, and any other Contract documents, these Terms and Conditions shall apply to the extent of the conflict and inconsistency.
- 1.6 Any words following the words 'include', 'includes', 'including', 'in particular' or any similar words or expressions will be construed without limitation and accordingly will not limit the meaning of the words preceding them.
- 1.7 These Terms and Conditions are the only terms and conditions on which the University will purchase any goods from the Supplier and will apply to the exclusion of all other terms and conditions including any terms and conditions which the Supplier purports to apply under any quotation, acknowledgement, acceptance or confirmation of order, delivery note, invoice or similar document (whether or not such document is referred to in the Contract) and any terms and conditions which may otherwise be implied by trade, custom, practice or course of dealing. In particular, no conditions submitted or referred to by the Supplier when tendering shall form part of the Contract unless otherwise agreed to in writing by the University.
- 1.8 To the extent of any inconsistency between the documents comprising the Contract, the following order of precedence shall apply (with (a) being the highest precedence):
 - (a) these Terms and Conditions;
 - (b) the Order;
 - (c) any other document which is incorporated into the Contract.
- 1.9 Nothing in the Contract and no action taken by the parties in connection with it will create a partnership or joint venture or relationship of employer and employee between the parties.

2. **APPOINTMENT**

- 2.1 The Supplier's quotation constitutes an offer by the Supplier to supply the Goods to the University on these Terms and Conditions and will remain open for acceptance by the University for a period of not less than 60 days from and including its date. A contract for the supply of Goods by the Supplier to the University on these Terms and Conditions will be formed when the University accepts the quotation by issuing the Order to the Supplier. For the avoidance of doubt the University is under no obligation to accept the quotation.
- 2.2 With effect from the date set out in the Contract, the University appoints the Supplier to supply to Goods in accordance with the Contract.
- 2.3 Delivery of any Goods will be deemed conclusive evidence of the Supplier's acceptance of these Terms and Conditions.

2.4 The Supplier warrants on an ongoing basis that at all times all information provided by or on behalf of the Supplier to the University in connection with a tender for any of the Goods is complete and accurate.

3. **DELIVERY**

3.1 Where a time for Delivery is specified in the Order, time of Delivery is of the essence of the Contract. If no time of Delivery is specified, Delivery shall be within a reasonable time of the Order being made by the University.

3.2 The Goods shall be delivered as set out in the Contract. The University reserves the right to amend any delivery instruction. If Goods are incorrectly delivered, the Supplier will be held responsible for any additional expense incurred in delivering them to their correct destination.

3.3 Where the Order provides for Delivery within a specified time, that time shall run from the date on which the University issues the Order.

3.4 The University shall not be obliged to take Delivery of any Goods tendered before the time(s) or date(s) shown in the Order and may return any Goods so tendered to the Supplier at the Supplier's risk and expense.

3.5 Unless otherwise expressly stated in the Contract, the Supplier will be responsible for off-loading the Goods from the delivery vehicle.

3.6 Delivery or performance by instalments shall not be accepted by the University unless previously agreed in writing. If Goods are to be delivered in instalments the Contract will be treated as a single contract and not severable.

4. **DOCUMENTS**

4.1 The Supplier shall:

- (a) clearly mark the outside of each consignment or package with the Supplier's name and address together with University's order number and full details of the destination in accordance with the Order;
- (b) include a packing note stating the contents thereof and all the quality assurance documents required by the Specification;
- (c) send to the University a detailed price invoice as soon as is reasonably practicable after the despatch of each consignment;
- (d) state on every such packing note, advice note, invoice or other document relating to the Order, the order number and code number (if any);
- (e) provide the University on request evidence of the place of origin of the Goods and information relating to components, parts or materials used in manufacturing the Goods;

- (f) provide all information as the University requires to ensure that the Goods comply with, and that the University fulfils its obligations under, all applicable legislation and industry codes of practice;
- (g) clearly provide all information regarding hazardous substances and any dangerous properties the Goods may have; and
- (h) provide instructions for use and clear and conspicuous warnings relating to any conditions which are necessary to ensure safety in use or onward sale in each case with sufficient detail to enable the University and any end user to understand any possible risks to health and safety.

5. **QUALITY**

5.1 The Supplier will ensure that the Goods:

- (a) conform as to quantity, quality and description with the Contract;
- (b) conform to any Specification provided by the University;
- (c) are of satisfactory quality, sound materials, workmanship and fit for any purpose held out by the Supplier or made known to the Supplier at the time the Order is placed;
- (d) where no specification or sample has been provided, will meet the University's performance criteria and will be of, and will perform to, a level of design, quality, functionality and durability as would be expected from the most advanced industry-leading goods of the same or a similar type that are on the market at the relevant time;
- (e) will be free from defects in design, material and workmanship;
- (f) correspond in all respects to all samples and/or patterns for the Goods as provided by the University;
- (g) conform with all standards of performance that are specified to the University by or on behalf of the Supplier as applying to the Goods; and
- (h) will comply with all applicable law including statutory requirements, regulations, EU regulations relating to the manufacture and sale of goods, product safety, packaging, labelling (including the appropriate British standard or equivalent specification) unless agreed otherwise by the University in writing.

6. **PACKAGING AND MARKING**

6.1 The Goods shall be carefully and safely packed and protected using the degree of care, diligence and foresight which would be adopted by a leading professional provider of the Goods:

- (a) in a manner suitable to the type and nature of the Goods and the means of transport being used; and

(b) in accordance with any special requirements stated in the Contract.

6.2 Without prejudice to Condition 4, the Supplier shall cause all Goods (including all external packaging) supplied by it to the University to be suitably and sufficiently marked, endorsed and labelled with information and advice necessary to instruct and warn such persons into whose hands the Goods shall come about any hazards to health and/or safety arising from despatching, receiving, handling, using or possessing the Goods and also about the necessary precautions to be taken in respect thereof. Provided however that it shall not be reasonably practicable to mark, endorse or label the Goods accordingly, the Supplier shall fully instruct and advise such persons by any accompanying notice at the time of despatch and take all necessary steps to ensure such notice is given to all persons into whose hands Goods shall come.

6.3 All Goods shall be marked to ensure conformance with all applicable laws and the University's written requirements.

7. **INSPECTION AND TESTING**

7.1 Before despatching the Goods, the Supplier shall carefully inspect and test them for compliance with the Contract. The Supplier shall, if requested by the University, give the University reasonable notice of such inspections and tests and the University shall be entitled to be represented thereat. The Supplier shall at its own expense also supply to the University certificates of the results of inspections and tests in such form as the University may require.

7.2 It is expressly agreed that the University will be entitled at any reasonable time to inspect and test the Goods during manufacture, processing or storage, and the Supplier shall at its own expense provide or procure the provision of all such facilities as may reasonably be required by the University thereof.

7.3 If as a result of any inspection or test under Condition 7.1 or 7.2 the University's representative is of the opinion that the Goods do not comply with the Contract and/or are unlikely on completion of manufacture or processing or Delivery so to comply, the University may:

(a) notify the Supplier and the Supplier shall take such steps as are necessary to ensure such compliance; and/or

(b) terminate the Contract without liability by giving written notice to that effect to the Supplier.

7.4 Nothing in Condition 7.1, 7.2 or 7.3 above nor any failure of the University to exercise its rights thereunder shall release the Supplier from any of its obligations or liabilities under the Contract or affect the University's rights and remedies under the same.

8. **RISK AND OWNERSHIP**

8.1 Risk of damage to or loss of the Goods shall pass to the University on Delivery or as otherwise stated in the Contract provided that, where the University rejects any part of the Goods in accordance with Condition 12, risk in that part shall revert to the Supplier.

- 8.2 Ownership of any Goods shall pass to the University upon Delivery, unless payment for any Goods is made prior to Delivery, when ownership shall pass to the University once payment has been made.
- 8.3 All materials, equipment, tools, dyes and moulds supplied by the University to the Supplier will at all times:
- (a) be and remain the exclusive property of the University;
 - (b) be held by the Supplier in safe custody at its own risk;
 - (c) be maintained and kept in good condition by the Supplier until returned to the University;
 - (d) not be disposed of other than in accordance with the University's written instructions;
 - (e) not be used otherwise than as authorised by the University in writing; and
 - (f) be returned to the University on demand.
- 8.4 The Supplier shall keep all University materials, equipment, tools, dies and moulds at such location agreed with the University and shall keep such equipment clearly identified at all times as the property of the University.
- 8.5 Any surplus materials supplied by the University shall be disposed of at the University's discretion. Any waste of such materials arising from bad workmanship and/or negligence of the Supplier shall be made good at the Supplier's expense.

9. **RELATED SERVICES**

If the Contract involves any works or services related to the supply of Goods (including installation, testing and configuration of the Goods) then the following conditions shall apply:

- 9.1 The Supplier warrants to the University that the works and/or services:
- (a) will conform in every respect with the provisions of and requirements and standards of performance set out in the Contract;
 - (b) will be performed:
 - (i) using the degree of skill, care, prudence, supervision, diligence, foresight, quality control and quality management which would be adopted by a leading professional provider of the works and services;
 - (ii) by appropriately qualified and trained personnel having experience in the provision of services of a similar type and nature of the works and services;
 - (iii) in accordance with:

- (a) all applicable laws that relate in any way to the works and services and/or the Premises where the works and services will be performed;
- (b) the University of Newcastle upon Tyne Code Of Safety Practice For Suppliers Working For Academic Departments; and
- (c) all other rules, policies and reasonable instructions notified to the Supplier by the University.

9.2 Any Goods that are installed incorrectly shall be deemed to not comply with the Contract.

10. **OBSERVANCE OF REGULATIONS**

10.1 The Supplier's representatives, when employed within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force for the conduct of personnel at the Premises. Details of such rules, regulations and requirements shall be provided, on request, by the University.

10.2 Except as provided in the Contract, neither the Supplier nor any of its employees or agents shall carry out any business or trading activity within the confines of the Premises and no advertisement, sign or notice of any description shall be exhibited without prior written approval of the University.

10.3 The Supplier will notify the University immediately in writing if at any time it does or will Process Personal Data under or in connection with the Contract. In such cases, the Supplier will promptly enter into such contractual provisions as required by the University (acting reasonably) to ensure that such Processing and the contractual provisions governing such Processing each comply with the Data Protection Laws.

11. **PRICE AND PAYMENT**

11.1 The Price and terms of payment are as stated in the Order. Unless expressly stated in the Order, the only monies to be paid by the University in connection with the supply of the Goods are the Prices and all Prices:

- (a) are fixed prices;
- (b) shall be quoted, invoiced and paid in sterling;
- (c) are inclusive of all costs and expenses incurred by the Supplier including:
 - (i) packaging, insurance, carriage and delivery costs; and
 - (ii) taxes, customs, duties and other public dues, except VAT.

11.2 No increase in the Prices may be made for any reason without the prior written consent of the University. The University shall be entitled to any

discounts for prompt payment, bulk purchase, volume or purchase customarily granted by the Supplier.

- 11.3 Subject to the supply of the Goods in accordance with the Contract, the Supplier shall invoice the University for the Prices for the Goods in the manner and at the times set out in the Contract. In the absence of any such provisions in the Contract, the Supplier will invoice the University for the Price for the Goods following Delivery and/or acceptance of the Goods (whichever the later). All invoices must be sent to the invoicing address indicated on the Order and must quote the full purchase order number of the Order.
- 11.4 Invoices shall be valid VAT invoices in such form as requested by the University in writing and accompanied by such information as the University may reasonably require in order to verify the Supplier's entitlement to payment. Value Added Tax, where applicable, shall be shown separately on all invoices, as a strictly net extra charge. The Supplier shall, if so requested by the University, furnish such information as may reasonably be required by the University as to the amount of Value Added Tax chargeable on the value of the Goods supplied in accordance with the Contract and payable by the University to the Supplier in addition to the Price.
- 11.5 Unless stated in the Contract, payment of any sums due under the Contract becomes due 28 days following receipt of any undisputed and properly submitted invoice.
- 11.6 Where the University disputes an invoice, the University is entitled to withhold the whole or part of the invoice to the extent of the amount in dispute, and shall pay the balance (if any) that is undisputed; the University shall promptly notify the Supplier of its reasons for withholding any amount under this Condition 11.6. Should a dispute arise in relation to an invoice, the parties will meet within seven days of the University notifying the Supplier of its reasons for withholding the relevant amount and each party will act in good faith to attempt to resolve the dispute.
- 11.7 The Supplier is not discharged from performance of its obligations by reason only that some or all of the Price is withheld under Condition 11.6. No payment made by the University will constitute acceptance or approval by the University of the Goods or otherwise prejudice any rights or remedies which the University may have against the Supplier including the right to recover any amount overpaid or wrongfully paid to the Supplier.
- 11.8 The University may set off against the Price any sums owed to it by the Supplier, in connection with the Contract or any other agreement entered into by the parties.
- 11.9 If any sum payable under the Contract is not paid on or before the due date for payment the Supplier will be entitled to charge the University interest on that sum at 4% per annum above the base lending rate from time to time of Barclays Banks Plc from the due date until the date of payment (whether before or after judgment), such interest to accrue on a daily basis. Such interest will not be chargeable on any sum disputed in accordance with Condition 11.6 for any period during which the payment of such sum remains disputed. The parties agree that this Condition 11.9 is a substantial remedy for late payment of any sum payable under the Contract, for the purposes of

the Late Payment of Commercial Debts (Interest) Act 1998, in particular because:

- (a) the interest rate is greater than the interest rate available to the Supplier in respect of cash on deposit which is immediately available; and
- (b) 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.

11.10 The provisions of Condition 11.9 are in lieu of statutory interest, which shall not accrue on any late payments.

12. **REJECTION AND TERMINATION**

12.1 Without prejudice to Condition 14.3 and/or any other rights or remedies available to the University (whether express or implied), if the whole or any part of the Goods do not conform in all material respects with any of the terms of the Contract and the Supplier has failed to remedy such non-conformance without delay (as determined in the University's reasonable opinion), the University may:

- (a) terminate the Contract without compensation or other liability being owed to the Supplier immediately by giving written notice to that effect to the Supplier; or
- (b) require the Supplier, at the University's option, to promptly repair or replace the relevant Goods free of charge or to refund the Price for the relevant Goods,

and, in either case, the University will be entitled to recover from the Supplier any and all liabilities, losses, damages, costs and expenses incurred by the University as a result of the non-conformity of the Goods, including in obtaining substitute goods from another supplier.

12.2 Conditions 12.1 and 14.3 will apply to any repaired or replacement Goods supplied under Condition 12.1(b).

12.3 The University shall not be deemed to have accepted the Goods until the University has had reasonable time to inspect and test them following delivery or, if later, within a reasonable time after any latent defect becomes apparent.

12.4 The University shall not be deemed to have accepted the Goods by virtue of having requested the Supplier to repair or replace the Goods under these Terms and Conditions.

13. **FORCE MAJEURE**

13.1 Neither party shall be liable for failure to perform or delay in performing its obligations under the Contract to the extent that such failure results from a Force Majeure Event and, if the affected party is the Supplier, the impact of that Force Majeure Event could not have reasonably been avoided or prevented by the Supplier.

- 13.2 If a Force Majeure Event occurs, the party affected will:
- (a) promptly upon becoming aware of the Force Majeure Event give the other party written notice of the occurrence, anticipated duration and impact of the Force Majeure Event;
 - (b) use reasonable endeavours to mitigate the effects of the Force Majeure Event, to continue to perform the affected obligations notwithstanding the occurrence of the Force Majeure Event and to ensure that the Force Majeure Event comes to an end; and
 - (c) continue to perform all of its obligations under this Agreement the performance of which are not affected by the Force Majeure Event.
- 13.3 If any Force Majeure Event prevents, hinders or delays performance of all or any part of the obligations of a party for more than 30 days, then by written notice to the Supplier the University may terminate the Contract without liability as of the date specified by the University in the notice.

14. **WARRANTY**

- 14.1 The Supplier warrants and represents to the University that it has full right, power, capacity and authority to provide the Goods and it is fully qualified, equipped, financed and organised to perform the Contract.
- 14.2 The Supplier represents and warrants to the University that it is fully experienced, qualified, equipped to perform its obligations under the Contract.
- 14.3 Without prejudice to Condition 12.1 and/or any other rights or remedies available to the University (whether express or implied), the Supplier shall, without delay, promptly repair or replace (at the University's option) all Goods which are or become defective during the period of 12 months from the University first using such Goods in the ordinary course of its business or 18 months from Delivery, whichever the earlier, where such defects occur under proper usage and are due to faulty design, Supplier's erroneous instructions as to use or inadequate or faulty materials or workmanship, or any other breach of Supplier's obligations or warranties relating to the Goods whether expressed or implied.
- 14.4 Conditions 12.1 and 14.3 will apply to any repaired or replacement Goods supplied under Condition 14.3.

15. **LIABILITY FOR ACCIDENTS AND DAMAGE**

- 15.1 The Supplier will indemnify the University against all losses, liabilities, costs, damages and expenses that the University does or will incur or suffer, all claims or proceedings made, brought or threatened against the University by any person and all losses, liabilities, costs (on a full indemnity basis), damages and expenses the University does or will incur or suffer as a result of defending or settling any such actual or threatened claim or proceeding, including where they arise from the negligence of the University and in each case arising out of or in connection with :
- (a) any breach of Contract by the Supplier;

- (b) any negligence of the Supplier;
- (c) any claim made allegation, action, dispute or proceedings that the Goods infringe the Intellectual Property Rights of any third party;
- (d) claim made against the University in respect of any breach or alleged breach by the University of any applicable law (including any statutory provision, regulation or bylaws) arising from the acts or omissions of the Supplier or its employees, agents or sub-contractors; or
- (e) any defective design (other than a design made, furnished or specified by the University and for which the Supplier had disclaimed responsibility in writing within a reasonable time after receipt of the University's instructions), defective materials or defective workmanship.

15.2 The Supplier (but without limiting its obligations and responsibilities under the Contract) shall maintain insurance policies with a reputable insurer which provide cover in respect of all of the Supplier's potential liabilities in connection with the supply of the Goods and its performance of its obligations under the Contract.

15.3 In addition to the obligations under Condition 15.2, the Supplier shall take out and maintain:

- (a) public/product liability insurance with a minimum per claim limit of indemnity of at least £1,000,000 for each and every claim; and
- (b) employers liability insurance with a minimum per claim limit of indemnity of not less than £10,000,000 for each and every incident; and
- (c) any other insurances which the Supplier is required by applicable law to maintain

and the Supplier shall maintain such insurances for the term of the Contract and for a period of not less than six years after the Contract has expired or terminated.

15.4 The Supplier shall whenever required produce evidence satisfactory to the University that the policies required by this Condition 15 are in force.

15.5 Upon the University's written request, the Supplier will promptly provide full policy documents that evidence the policies required to be held in accordance with this Condition 15 together with evidence to meet the University's satisfaction of payment of all relevant premiums.

15.6 If the Supplier is in breach of Conditions 15.2 to 15.3 the University may itself insure against any risk that should have otherwise been insured against by the Supplier, and may (at the University's option) 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 Supplier under the Contract or recover such sum or sums from the Supplier as a debt (such debt falling due when the University makes payment of the relevant amount).

15.7 Nothing in the Contract will operate to exclude or restrict one party's liability arising out of or in connection with the Contract, whether in contract, tort, misrepresentation, restitution, under statute or otherwise, including any liability under an indemnity contained in the Contract and/or arising from a breach of, or a failure to perform or defect or delay in performance of, any of a party's obligations under the Contract, in each case howsoever caused including if caused by negligence (if any) to the other:

- (a) for death or personal injury resulting from its negligence;
- (a) for its fraud or fraudulent misrepresentation;
- (b) for breach of its obligations arising under section 12 Sale of Goods Act 1979;
- (c) for breach of a third party's Intellectual Property Rights and for breach of Condition 16 (Intellectual Property);
- (d) for breach of Condition 10.3 (Observance of Regulations);
- (e) for breach of Condition 17 (Confidentiality and Freedom of Information Act 2000);
- (f) for any indemnity given under the Contract; or
- (g) for any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.

15.8 Subject to Condition 15.7 and unless otherwise expressly stated in the Contract, the University's maximum aggregate liability arising out of or in connection with the Contract, whether in contract, tort, misrepresentation, restitution, under statute or otherwise, including any liability arising from a breach of, or a failure to perform or defect or delay in performance of, its obligations under the Contract, in each case howsoever caused including if caused by negligence shall be limited to the total Prices paid and/or payable by the University under the Contract.

15.9 Subject to Condition 15.7, where applicable, the Supplier's maximum aggregate liability arising out of or in connection with the Contract, whether in contract, tort, misrepresentation, restitution, under statute or otherwise, including any liability arising from a breach of, or a failure to perform or defect or delay in performance of, its obligations under the Contract, in each case howsoever caused including if caused by negligence will be limited as expressly set out in the Contract.

16. **INTELLECTUAL PROPERTY**

16.1 Any Specification supplied by the University to the Supplier or specifically produced by the Supplier for the University in connection with the Contract, together with the Intellectual Property Rights subsisting in or relating to the Specification and any Goods designed and/or created using such Specification, shall be the exclusive property of the University and delivered to the University with the Goods.

- 16.2 The Supplier warrants and represents that the supply of the Goods to the University and the use by the University of the Goods (if the Supplier has been made aware of the intended use) shall not in any way infringe any Intellectual Property Right except where the design for the Goods was made, furnished or specified by the University.
- 16.3 If any third party claims that the possession, use and/or the supply of all or any part of any Goods, materials or other items to a Protected Party by or on behalf of the Supplier (**'Indemnified Items'**) infringes the Intellectual Property Rights of that third party or of another person (**'IPR Claim'**), the Supplier will indemnify each Protected Party against all losses (including without limitation all direct, indirect and consequential losses), liabilities, costs (on a full indemnity basis and including without limitation legal and other professional costs and costs of enforcement), damages and expenses that the University does or will incur or suffer, all claims or proceedings made, brought or threatened against the University by any person and all losses (including without limitation all direct, indirect and consequential losses), liabilities, costs (on a full indemnity basis and including without limitation legal and other professional costs and costs of enforcement), damages and expenses the University does or will incur or suffer as a result of defending or settling any such actual or threatened claim or proceeding, in each case arising out of or in connection with that IPR Claim. The **'Protected Parties'** means the University and all of its agents, officers and employees.
- 16.4 If there is an IPR Claim:
- (a) the University will as soon as reasonably practicable notify the Supplier of the IPR Claim, provided that the giving of such notice will not be a condition precedent to the liability of the Supplier under Condition 16.3;
 - (b) the Supplier will at its own cost and expense control the defence of the IPR Claim and any related proceedings or settlement negotiations, except that the University will be entitled to take any action which it deems necessary if the Supplier fails to take action, or (in the University's reasonable opinion) delays taking action, in defending or settling any such IPR Claim and such failure or delay may, in the reasonable opinion of the University, prejudice the interests of any Protected Party; and
 - (c) at the cost and expense of the Supplier, the University will take all reasonable steps to co-operate with the Supplier in the defence or settlement of such IPR Claim.
- 16.5 If the University is (or reasonably believes it is likely to be) subject to any IPR Claim the University may by written notice require the Supplier to promptly (and at the Supplier's cost and expense) either:
- (a) obtain for the Protected Parties the right to continue possessing, using and receiving the Indemnified Items in the manner permitted under the Contract free from any liability for such infringement or likely infringement; or
 - (b) modify, substitute or replace the relevant Indemnified Item so as to avoid the infringement or alleged infringement, without

prejudice to any representations, warranties and indemnities in the Contract and without adversely affecting or limiting in any respect the performance, scope or functionality of the infringing items or any other Indemnified Item or any part of them.

17. **CONFIDENTIALITY AND FREEDOM OF INFORMATION ACT 2000**

17.1 Except to the extent required by law the Supplier shall not disclose to another party the existence of the Contract or the Price or any other terms and conditions of the Contract.

17.2 The Supplier will, subject to Conditions 17.3 and 17.4:

- (a) keep all Confidential Information secret, safe and secure;
- (b) not disclose Confidential Information without the other's prior written consent to any other person except those of its employees who have a need to know the Confidential Information so that it can perform its obligations and exercise its rights under the Contract;
- (c) not use Confidential Information except for the purposes of performing its obligations under the Contract (and in particular not use Confidential Information to obtain a commercial, trading or any other advantage); and
- (d) to keep separate from all other information all Confidential Information in its possession or control.

17.3 The provisions of Condition 17.2 shall not apply to Confidential Information to the extent that it is or was:

- (a) already in the possession of the other free of any duty of confidentiality on the date of its disclosure;
- (b) in the public domain other than as a result of a breach of Condition 17.2.

17.4 Each party may disclose the other party's Confidential Information:

- (a) pursuant to applicable law or regulation or requirement of a competent authority, or the rules of any recognised exchange on which the securities of a party are or are to be listed; or
- (b) in connection with proceedings before a court of competent jurisdiction or under any court order or for the purpose of receiving legal advice,

but only to the extent necessary for to achieve the relevant purpose(s) set out in this Condition 17.4.

17.5 Each party acknowledges that Confidential Information is valuable and that damages might not be an adequate remedy for any breach of Condition 17.2 and accordingly the University will be entitled, without proof of special

damage, to an injunction and other equitable relief for any actual or threatened breach of Condition 17.2.

- 17.6 Notwithstanding the provisions of Conditions 17.1 to 17.5 the University is committed to meeting its responsibilities under the FOIA and EIR and the Supplier acknowledges that the University is subject to the requirements of the FOIA and EIR and shall assist and cooperate with the University (at no expense to the University) to enable the University to comply with the University's responsibilities under the FOIA and EIR.
- 17.7 Accordingly, any and/or all information submitted to the University may need to be disclosed and/or published in accordance with the FOIA and/or EIR. In the event that any of the information held in connection with this Contract would give rise to an actionable breach of confidence and/or would prejudice the Supplier's commercial interests and/or constitute trade secrets ('**Commercially Sensitive Information**'), the Supplier must promptly following such information coming into existence or being shared between the parties (whichever the earlier) identify such information and provide an explanation (in broad terms) what harm might result from the disclosure and/or publication of such information.
- 17.8 The Supplier shall procure that its employees, and agents shall:
- (a) transfer any Request for Information received by the Supplier to the University as soon as practicable after receipt and in any event within 2 Working Days of receiving a Request for Information;
 - (b) provide the University with a copy of all Information in its possession or power in the form that the University requires as soon as is practicable and in any event within 5 Working Days (or such other period as the University acting reasonably may specify) of the University requesting that Information;
 - (c) provide all necessary assistance as reasonably requested by the University to enable the University to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA; and
 - (d) not respond directly to a Request For Information unless authorised in writing to do so by the University.
- 17.9 The University shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other information is:
- (a) exempt from disclosure in accordance with the provisions of the FOIA; and/or
 - (b) to be disclosed in response to a Request for Information and in no circumstances shall the Supplier respond directly to a Request for Information unless expressly authorised by the University.
- 17.10 The Supplier acknowledges that the University 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 Supplier; or
- (b) following consultation with the Supplier and having taken its views into account,

provided always that where Condition 17.10(a) applies, the University shall in accordance with the recommendations of the FOIA Code, draw this to the attention of the Supplier prior to any disclosure.

- 17.11 The Supplier shall ensure that all Information produced in the course of or relating to the Contract is retained by the Supplier in case required for disclosure under the FOIA and/or EIR.

18. EQUAL OPPORTUNITIES AND THE EQUALITY ACT 2010

- 18.1 The University 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.

- 18.2 The Supplier shall in performing the Contract comply with the provisions of section 149 of the EA as if the Supplier were a body within the meaning of Schedule 19 of the EA.

- 18.3 The Supplier shall comply with the provisions of section 41 of the EA in all dealings with sub-contractors.

- 18.4 The Supplier shall comply with all of its legal obligations regarding 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.

- 18.5 The Supplier shall, when required, answer queries raised by the University on matters referred to in this Condition 18 and breach of statutory obligations will entitle the University to immediately terminate the Contract.

- 18.6 The Supplier shall comply with all of the University's equal opportunities and equality policies. Such policies are available on request.

19. ASSIGNMENT

- 19.1 The Supplier will not be entitled to assign, transfer, charge, hold on trust for any person or deal in any other manner with any of its rights under the Contract. The Supplier shall not sub-contract any of its obligations under any part of the Contract (including to Relevant Sub-Contractors) without the written consent of the University. The Supplier shall be responsible for all the acts and omissions of its sub-contractors.

- 19.2 Subject to Condition 19.1, the Supplier shall provide to the University details of the name contact details and legal representatives of its permitted Relevant Sub-Contractors by no later than Contract Start Date.

- 19.3 During the period during which the Contract remains in force, the Supplier shall notify the University in writing within five calendar days of:
- (a) any changes to the information required to be notified to the University in accordance with Condition 19.2 above; and/or
 - (b) the name contact details and legal representatives of any Relevant Sub-Contractors appointed since the Contract Start Date.
- 19.4 Where the Supplier is required to notify the University in accordance with Conditions (a) and (b) it must obtain the written consent of the University to the appointment or continued use of the Relevant Sub-Contractor(s).
- 19.5 In considering whether to grant written consent in accordance with Condition 19.4, the Supplier shall provide the University with a European Single Procurement Document for the Relevant Sub-Contractor. The University may withhold its consent to the appointment or continued use of any Relevant Sub-Contractor where the European Single Procurement Document provided to it in accordance with this Condition 19.5 does not meet any of the selection criteria that the Supplier is required to meet as part of any tender which relates to the Contract.
- 19.6 Where the University withholds its consent in accordance with Condition 19.5 the Supplier shall replace the Relevant Sub-Contractor and shall propose a new sub-contractor by following the process detailed in Conditions 19.3 to 19.5 above.
- 19.7 Where the University has consented to the Supplier appointing a subcontractor, the Contract will, promptly following the relevant subcontract(s) coming into force, provide copies of each subcontract and related orders to the University.
- 19.8 The University will be entitled to assign, transfer, charge, hold on trust for any person and deal in any other manner with any of its rights under the Contract.

20. **TERMINATION**

- 20.1 The University may terminate the Contract immediately at any time without any liability to the Supplier and reserving all rights and remedies available to the University by giving notice to the Supplier at any time if:
- (a) the Supplier is in material breach of any of its obligations under the Contract and that breach is not capable of remedy; or
 - (b) the Supplier is in material breach of any of its obligations under the Contract and that breach can be remedied but the Supplier has failed to do so within 30 days of being given notice of such breach; or
 - (c) the Supplier commits more than one breach of any of its obligations under the Contract and the cumulative effect of such breaches is such that the University reasonably believes that the

Supplier will deliver a sub-standard performance during a period of one month or longer immediately after such breach; or

- (d) if the Supplier, suffers an Insolvency Event; or
- (e) the University reasonably believes that any of the above events is about to occur in relation to the Supplier and notifies the Supplier accordingly.

20.2 The University may terminate the Contract in whole or in part immediately by giving written notice to that effect to the Supplier at any time before Delivery of the relevant Goods. If the University exercises its right of cancellation under this Condition 20.2 the University's sole liability will be to pay to the Supplier fair and reasonable compensation for work-in-progress at the time of cancellation but such compensation will not include loss of profits (whether direct or indirect and whether actual or anticipated) or any indirect or consequential loss.

20.3 Notwithstanding the provisions of Condition 20.5 below, the University may terminate the Contract by giving not less than three (3) months' written notice to the Supplier in the event that the University considers any of the following circumstances have arisen:

- (a) where there is a Substantial Modification;
- (b) where any of the circumstances detailed in the Mandatory Exclusions or Discretionary Exclusions apply to the Supplier at the time that a decision to award a contract to the Supplier is made in respect of any tender to which the Contract relates; or
- (c) where there is a Serious Infringement.

20.4 The Supplier shall notify the University in writing within 10 calendar days of becoming aware of any of the circumstances listed in Conditions 20.3(a) to (c) above applying.

20.5 Subject to Condition 15.7, no termination of the Supplier's engagement under this Agreement in accordance with Condition 20.3 shall render the University liable to the Supplier for any claim for loss of profit, loss of fees or other similar losses.

20.6 Termination of the Contract howsoever effected does not affect:

- (a) the rights or liabilities of the parties under this Condition 20 or which have accrued on or before termination; and
- (b) the continuance in force of Conditions 1, 2.4, 4 - 10, 11.6 - 11.10, 12 and 14 - 30 which survive termination of the Contract.

21. **VARIATION AND ENTIRE AGREEMENT**

21.1 The University reserves the right to vary the Goods ordered by giving written notice of such variation to the Supplier (a '**Service Variation Notice**'), should this at any time become necessary. In the event of any variation of the Goods,

the Prices for the affected Goods shall be subject to fair and reasonable adjustment to be agreed in writing between the University and the Supplier.

21.2 In the event that the parties have failed to agree a reasonable adjustment to the Prices in accordance with Condition 21.1 within a period of 14 days following the Service Variation Notice being issued, the reasonable adjustment will be determined by independent expert who will be selected and appointed in accordance with the following provisions of this Condition 21.2.

- (a) The independent expert will be a member of the Chartered Institute of Accountants of England and Wales of not less than ten years standing.
- (b) If within a period of 28 days following the Service Variation Notice being issued, the parties have not selected and then contractually appointed an appropriate expert, then the expert will (on the written request of either party) be selected by the President from time to time of the Institute of Chartered Accountants of England and Wales. If, following his appointment, the expert dies or becomes unwilling or incapable of acting, either party may serve written notice to request the appointment of a new expert. If the parties have not contractually appointed a new expert within a period of 14 days of such notice, the expert will be selected by the President from time to time of the Institute of Chartered Accountants of England and Wales.
- (c) Each party will co-operate in doing everything that is reasonably necessary to procure the appointment of any expert that has been selected pursuant to this Condition 21.2 (including by acting reasonably in agreeing the terms of engagement of any such expert).
- (d) The expert will make his determination in writing and will give reasons. The expert will act as expert and not as arbitrator. The expert's determination will (save in the event of manifest error) be final and binding.
- (e) The expert's fees and any costs and expenses incurred in relation to his appointment will be borne by the parties in such proportions as the expert determines and in the absence of such determination by the parties equally.

21.3 An amendment to the Contract is ineffective unless it is in writing, expressly purports to amend the Contract and is executed by both parties.

21.4 The Contract constitutes the entire agreement between the parties relating to its subject matter and supersedes all prior representations, agreements, negotiations or understandings between the parties in respect of such subject matter and:

- (a) neither party has entered into the Contract in reliance upon, and it will have no remedy in respect of, any misrepresentation, representation or statement (whether made by the other party or any other person and whether made to the first party or any other person) which is not expressly set out in the Contract; and

- (b) nothing in this Condition 21 will be interpreted or construed as limiting or excluding the liability of any person for fraud or fraudulent misrepresentation.

22. **AUDIT**

- 22.1 The Supplier will and will procure that its sub-contractors will maintain a complete, detailed, accurate and up to date set of records and books of account pertaining to all activities relating to the performance of the Contract and all transactions entered into for the purposes of the Contract and all payments made and received and all other advantages given and received by the Supplier in connection with the Contract (the '**Retained Records**'). The Supplier will ensure that those records and books of account are sufficient to enable the University to verify the Supplier's compliance with the Contract.
- 22.2 The Supplier will and will procure that its sub-contractors will at any time whilst the Supplier or the sub-contractor is required to retain Retained Records pursuant to Condition 22.3, promptly on request from time to time, provide copies of the Retained Records to the University and will permit the Retained Records to be copied to or examined or inspected by the University, and any of its representatives or any representative of any regulatory authority.
- 22.3 The Supplier will and will procure that its sub-contractors will retain the Retained Records for the longer of:
 - (a) six years from the date on which the Contract expires or is terminated; and
 - (b) the period of time (if any) required by applicable lawexcept as otherwise notified by the University to the Contractor in writing.
- 22.4 The Supplier will and will procure that its sub-contractors will, during the term of the Contract and for a period of six years thereafter, permit the University and any persons nominated by it, to have such access on demand to the Supplier's premises, personnel, systems, books and records (including the Retained Records) as the University may require in order to fulfil any request by any regulatory authority and as the University may reasonably require in order to:
 - (a) undertake verifications of the accuracy of the Price or investigate suspected fraud;
 - (b) undertake verification that the Supplier's obligations are being performed in accordance with the Contract;
 - (c) assess and verify the Supplier's compliance with all applicable laws; and/or
 - (d) enable the University to:
 - (i) fully comply with all applicable laws (including any accounting, tax and filing obligations);

- (ii) respond to enquiries raised by any regulatory authority or deal with any investigation by, or order or direction of, any regulatory authority; or
- (iii) deal fully with enquiries, complaints or claims made by third parties.

22.5 The University will, to the extent the same is within its control, use its reasonable endeavours to procure that each exercise of the University's rights under Condition 22.4 does not unreasonably delay the performance by the Supplier of its obligations under the Contract and that, where possible, the exercise of those rights is coordinated so as to minimise disruption.

22.6 The Supplier will and will procure that its sub-contractors will provide the University with all reasonable co operation, access and assistance in relation to each audit.

23. **CORRUPT GIFTS**

23.1 The Supplier shall, and shall procure that their employees, officer, agents, sub-contractors, or anyone else acting on their behalf shall:

- (a) not commit any act or omission which causes or could cause it or the University to breach, or commit an offence under, any laws relating to anti-bribery and/or anti-corruption;
- (b) not, offer or give, or agree to give either directly or indirectly, to any employee or representative of the University, 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 University, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such other contract;
- (c) keep accurate and up to date records showing all payments made and received and all other advantages given and received by it in connection with the Contract and the steps it takes to comply with this Condition 23.1, and permit the University to inspect those records as reasonably required;
- (d) promptly notify the University of:
 - (i) any request or demand for any financial or other advantage received by it; and
 - (ii) any financial or other advantage it gives or intends to givewhether directly or indirectly in connection with the Contract; and
- (e) promptly notify the University of any breach of this Condition 23.1.

23.2 The attention of the Supplier is drawn to the criminal offences created by the Bribery Act 2010.

23.3 The University may terminate the Contract immediately by giving written notice to that effect to the Supplier if the Supplier is in breach of Condition 23.1.

24. **ANTI-SLAVERY**

24.1 The Contractor will not engage in any Modern Slavery Practice.

24.2 The Contractor will:

- (a) comply with the Anti-Slavery Policy and the Contractors Health and Safety Requirements at all times and will procure that its officers, employees, agents, sub-contractors and any other persons who perform services for or on behalf of it in connection with this Contract will comply with the same at all times;
- (b) conduct proper and adequate checks on any agency or person used by the Contractor to provide labour, employees, contractors or other persons to undertake tasks for the Contractor (in each case whether on a permanent or temporary basis) to ensure that any such agency or person does not engage and has not in the past engaged in any Modern Slavery Practice;
- (c) provide the University with such assistance and information as it may require from time to time to enable the University to:
 - (i) perform any activity required by any government, regulatory entity or agency in any relevant jurisdiction for the purpose of compliance with any applicable Anti-Slavery Laws or as required by the University;
 - (ii) prepare its slavery and human trafficking statement as required by section 54 Modern Slavery Act 2015 and to include the matters referred to in section 54(5) of that Act;
 - (iii) identify any non-compliance with the Anti-Slavery Policy or the University of Newcastle upon Tyne Code Of Safety Practice For Suppliers Working For Academic Departments; and
 - (iv) conduct due diligence and to measure the effectiveness of the steps the University is taking or wishes to take to ensure that Modern Slavery Practices are not taking place in its business or supply chains;
- (d) permit the University, and any person nominated by it for this purpose, to have such access on demand to the Contractor's premises, personnel, systems, books and records as the University may require to verify the Contractor's compliance with this **clause 24**.

- 24.3 The Contractor will immediately give written notice to the University upon the occurrence of a breach or suspected breach of any of its obligations referred to in this **clause 24**. The notice will set out full details of the breach or suspected breach.
- 24.4 Any breach of this **clause 24** by the Contractor will be a material breach of this Contract, irrespective of whether any financial loss or reputational damage arises and irrespective of the level of any financial loss or deprivation of benefit arising as a consequence of the breach.
- 24.5 The University will be entitled, by giving written notice to that effect to the Contractor, to require the Contractor to:
- (a) remove from the performance of this Contract any of the Contractor's officers, employees, agents or sub-contractors whom the University believes to be engaging in any Modern Slavery Practice; or
 - (b) take such action as the University requires to ensure that the Contractor fully complies with any Anti-Slavery Law, the Anti-Slavery Policy and the University of Newcastle upon Tyne Code Of Safety Practice For Suppliers Working For Academic Departments.

25 WAIVER

A delay in exercising or failure to exercise a right or remedy under or in connection with the Contract will not constitute a waiver of, or prevent or restrict future exercise of, that or any other right or remedy, nor will the single or partial exercise of a right or remedy prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right, remedy, breach or default will only be valid if it is in writing and signed by the party giving it and only in the circumstances and for the purpose for which it was given and will not constitute a waiver of any other right, remedy, breach or default.

26 NOTICE

All notices and communications required to be sent by either party under the Contract shall be made in writing and sent by first class mail and if sent to the Supplier shall be sent to its registered or head office and if sent to the University shall be sent to Head of Procurement, University of Newcastle Upon Tyne, King's Gate, Newcastle Upon Tyne, NE1 7RU and shall be deemed to have reached the party to whom it is addressed on the second Working Day following the date of posting.

27 ENFORCEABILITY

If any term of the Contract is held by any competent authority to be illegal, unenforceable or invalid such term will be deemed to be severed from the Contract and this will not affect the remainder of the Contract which will continue in full force and effect.

28 THIRD PARTY RIGHTS

The Contract does not create, confer or purport to confer any benefit or right enforceable by any person not a party to it for the purposes of the Contract (Rights of Third Parties) Act 1999.

29 INDEPENDENT CONTRACTOR

Each party agrees that it is an independent contractor and is entering into the Contract as principal and not as agent for or for the benefit of any other person.

30 ESCALATION PROCEDURE

30.1 Subject to Condition 30.5, neither party may commence proceedings in relation to a dispute that arises out of or in connection with the Contract (including (without limitation) in relation to any non-contractual obligations) (a '**Dispute**') unless that party has:

- (a) served a written notice (a '**Referral Notice**') on the other party notifying it of the relevant Dispute: or
- (b) already received a Referral Notice from the other party in relation to the same Dispute.

30.2 Following service of a Referral Notice in relation to a Dispute, each party will respectively procure that such Dispute will be referred for resolution to any director for the time being on behalf of the Supplier and any person of Head of Procurement level (or above) for the time being on behalf of the University. Those representatives will meet at the earliest convenient time and in any event within seven days of the date of service of the relevant Referral Notice and will attempt to resolve the Dispute.

30.3 If a Dispute has not been resolved within seven days of the date of service of the relevant Referral Notice each party will respectively procure that such Dispute be referred for resolution to the Chairman, Chief Executive or Finance Director for the time being on behalf of the Supplier and the Finance Director for the time being on behalf of the University. Those representatives will meet at the earliest convenient time and in any event within 14 days of the date of service of the relevant Referral Notice and will attempt to resolve the Dispute.

30.4 If a Dispute is not resolved within 14 days of service of the relevant Referral Notice either party may commence proceedings in accordance with Condition 31 or, if both parties agree in writing to do so, the parties will attempt to settle the Dispute by mediation in accordance with the CEDR Model Mediation Procedure. Either party may withdraw from mediation at any time.

30.5 Nothing in this Condition 30 will prevent or delay either party from:

- (a) seeking orders for specific performance, interim or final injunctive relief;
- (b) exercising any rights it has to terminate the Contract; or
- (c) commencing any proceedings where this is necessary to avoid any loss of a claim due to the rules on limitation of actions.

31 GOVERNING LAW AND LANGUAGE

- 31.1 The language of the Contract shall be English.
- 31.2 The Contract and any non-contractual obligations arising out of or in connection with it will be governed by the law of England and Wales.
- 31.3 The University's rights and remedies set out in the Contract are in addition to and not exclusive of any rights and remedies provided by law.
- 31.4 Subject to Condition 31.5, the courts of England and Wales have exclusive jurisdiction to determine any dispute arising out of or in connection with the Contract (including in relation to any non-contractual obligations).
- 31.5 Either party may seek specific performance, interim or final injunctive relief or any other relief of similar nature or effect in any court of competent jurisdiction.