

Conditions of Contract for the supply of goods and / or services by The University of Manchester 2024

CONTRACT CONDITIONS

1. Definitions

- 1.1 In this Agreement (except where the context otherwise requires) the defined words and expressions shall have the meanings specified below:

"Agreement" means this agreement, including these Contract Conditions, the Sales Order and any Schedule.

"Background Intellectual Property" means any Intellectual Property made available by either Party for use in the provision of the Goods and / or Services or necessary to exploit the Deliverables, but not arising from and developed in the course of the provision of the Goods and / or Services and belonging to such Party or to which such Party has rights which permits its use in the provision of the Goods and / or Services and to exploit the Deliverables. For the avoidance of doubt, the Materials supplied by the Customer shall be classified as Background Intellectual Property and will remain the property of the Customer.

"Business Day" means a day, excluding Saturdays and Sundays, on which banks are generally open in London, England, for the transaction of normal banking business.

"Confidential Information" means all secret or not generally known information or information which is not easily accessible to others or of a commercially sensitive nature disclosed or made available in any way by one Party ("Discloser") to the other ("Recipient") for use in connection with the provision of the Goods and / or Services (including the Background Intellectual Property of the Discloser and the Deliverables) and marked or labelled by the Discloser as "Proprietary", "Confidential" or "Sensitive" at the time of disclosure.

"Contract Price" means the sum to be paid for the Goods and / or Services as specified in the Sales Order.

"Customer" means the person, firm or company whose details are set out in the Sales Order attached to this Agreement.

"Deliverables" means the deliverables set out in the Sales Order directly produced by the University for the Customer by the End Date unless otherwise agreed.

"End Date" means the date specified in the Sales Order.

"Effective Date"

means the date specified in the Sales Order attached to this Agreement.

"Goods" means the goods (or any instalment or part of them) to be supplied pursuant to the Agreement.

"Intellectual Property Rights" means all patents, rights to inventions, utility models, copyright and related rights, trade-marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for

passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

"Innovation Factory" means University of Manchester Innovation Factory Limited (of Core Technology Facility 46 Grafton Street, Manchester, M13 9NT, United Kingdom) which is the University's wholly owned technology, development and exploitation company.

"Materials" shall mean Original Materials and Unmodified Derivatives.

"Modifications" shall mean any materials created by the University which contain/incorporate any form of the Materials.

"Original Materials" shall mean all materials provided by Customer, as described in the Schedule 1 attached hereto and which may from time to time be amended subject to written agreement between the Parties.

"Party" means either the Customer or the University individually or together as the **"Parties"**

"Sales Order" means the Sales Order attached to this Agreement.

"Services" means the services, including the Deliverables, to be provided by the University as specified in the Sales Order.

"Start Date" means the date the work will commence as specified in the Sales Order.

"University" means the University of Manchester (a Royal Charter corporation registered under number RC000797, an exempt charity) and all its servants, agents, successors and assigns.

"Unmodified Derivatives" shall mean any important unmodified functional sub-unit of the Original Materials created by the University.

2. Appointment and Term

- 2.1 This Agreement sets out the terms and conditions pursuant to which the University agrees to provide to the Customer the Goods and / or Services specified in the Sales Order for the Period from the Start Date to the End Date unless earlier terminated or extended in writing.

3. Supply of Goods and Services Supply of Services

- 3.1 The University shall use reasonable endeavours to carry out the Services in accordance with this Agreement in the period from the Start Date to the End Date. Due to the nature of the Services time is not of the essence but is a good faith estimate.
- 3.2 Upon execution of this Agreement, Customer agrees to supply to the University the Original Materials as soon after the Effective Date as reasonably possible.
- 3.3 The Materials and any Modifications shall be used solely for purposes to carry out the Services at the University's facilities under the direction of the University Contact. It is expressly understood by the University and University Contact that the Materials and Modifications will at all times be used in accordance with applicable laws and regulations.
- 3.4 The University and University Contact will not manufacture, sell or sub-licence for manufacture and sale upon a commercial basis the Materials or Modifications, or use them for the development of any commercial product.
- 3.5 The University and University Contact agree not to transfer, transmit or in any other way provide the Materials or Modifications, to any third party without the written consent of the Customer.
- 3.6 The University shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the University shall notify the Customer in any such event.
- 3.7 The Customer shall co-operate with the University in any manner reasonably required by the University in order to carry out the Services, including provision of the Materials, information, data and assistance, and making available suitably qualified employees.
- 3.8 Where the Services are to be performed on the Customer's premises, or the premises of a third party, the Customer shall:
 - 3.8.1 ensure that the University's personnel have full and free access during working hours to the premises to enable the University to perform the Services;
 - 3.8.2 take all such steps as may be necessary to ensure the safety of any of the University's employees; and agents and sub-contractors who visit the premises concerned; and
 - 3.8.3 indemnify the University for all injury to its employees, agents and sub-contractors, and for loss and damage to the University's property, while such persons or property are on the premises of the Customer, other than injury to persons or loss or damage to property caused by the negligence of the University.
- 3.9 Where the Services consist of or includes the University acting as an expert witness in the context of court proceedings, the Customer shall comply with all the relevant provisions of the Civil Procedure Rules 2020 in force from time to time.
4. **Supply of Goods**
 - 4.1 The quantity, description and delivery time for the Goods shall be as set out in the Sales Order. Due to the nature of the Services, the time is not of the essence but is a good faith estimate.
 - 4.2 The Customer shall co-operate with the University in any manner reasonably required by the University in order to deliver the Goods, including provision of information, data and assistance, and making available suitably qualified employees.
 - 4.3 Unless otherwise agreed by the University in writing the Goods will be delivered from the University and the price of the Goods is exclusive of carriage, packing and insurance to the Customer's premises. The Goods may be delivered by separate instalments and the University will inform the Customer of any such arrangements.
 - 4.4 The Customer shall provide a delivery point to the University for receipt of the Goods at the Customer's premises, or the premises of a third party. For receipt of the Goods, the Customer shall:
 - 4.4.1 ensure that the University's personnel have full and free access during working hours to the premises to enable the University to deliver the Goods;
 - 4.4.2 take all such steps as may be necessary to ensure the safety of any of the University's employees, agents and sub-contractors who visit the premises concerned; and
 - 4.4.3 indemnify the University for any injury to its employees, agents and sub-contractors, and for loss and damage to the University's property, while such persons or property are on the premises of the Customer, other than injury to persons or loss or damage to property caused by the negligence of the University.
 - 4.5 If the Customer is unable to take delivery of the Goods at the time arranged, the University may arrange storage for the Goods, any such storage would be at the Customers cost and risk.
 - 4.6 From the time of delivering the Goods, the maintenance, risk and insurance shall be the sole responsibility of the Customer, notwithstanding that until the Customer has made final payment to the University, the Goods shall remain the property of the University. The Customer will keep the Goods comprehensively insured against loss or damage by accident, fire, theft and other risks usually covered by such insurance until such time as full payment for the Goods is made to the University. The ownership of the Goods shall pass to the Customer on receipt of the final payment to the University.
5. **The Contract Price**
 - 5.1 In consideration of the performance of the obligations on the part of the University pursuant to this Agreement, the Customer shall pay to the University the Contract Price as set out in the Sales Order within thirty (30) days of receipt of an invoice Without prejudice to the University's other rights and remedies consequent upon breach of this Agreement, the University may charge interest on the balance

- outstanding, accruing from day to day at the rate of four percent (4%) per annum above the National Westminster Bank PLC base rate from time to time in force and compounded annually as at 31st December.
- 5.2 Where VAT or other transactional taxes must be charged by the University as supplier, these will be invoiced in addition to the Contract Price and are payable by the Customer. Where withholding taxes apply which must be deducted from the Customer's payments to the University, the amount invoiced will be increased such that, after the application of such taxes, the University receives the full Contract Price as set out in the Sales Order.
- 6. Additional Goods and Services and Costs**
- 6.1 If the Customer requires the University to provide goods and services not contained in the Sales Order ("Additional Goods and/or Services"), or to change the nature of the Goods and / or Services set out in the Sales Order, it shall make a request for such Additional Goods and/or Services or any changes to the University in a timely manner in writing and signed by the Customer.
- 6.2 If at the request of the Customer the University agrees to provide Additional Goods and Services and/or any changes, the Customer:
- 6.2.1 shall be liable to pay the University such additional charges as the University may reasonably determine; and
- 6.2.2 shall be bound by this Agreement for the duration of and in respect of the Additional Goods and Services and/or any changes provided.
- 7. Warranties**
- 7.1 The University warrants that it shall provide the Goods and Services with reasonable care and skill using reasonably qualified and experienced staff.
- 7.2 All other conditions or warranties (whether express or implied by statute or common law or arising from conduct or a previous course of dealing or trade custom or usage or otherwise howsoever) are hereby expressly excluded to the fullest extent permitted by law.
- 8. Limitation of liability**
- 8.1 This clause 8 sets out the entire financial liability of the Parties (including any liability for the acts or omissions of its employees, agents and sub-contractors) to each other in respect of:
- 8.1.1 any breach of this Agreement; and
- 8.1.2 any use made by the Customer of the Goods and / or Services, the University Background Intellectual Property or any part of them; and
- 8.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Goods and / or Services and/or this Agreement.
- 8.2 Nothing in this Agreement limits or excludes the liability of either Party:
- 8.2.1 for death or personal injury resulting from negligence; or
- 8.2.2 for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the University; or
- 8.2.3 for any liability incurred by the Customer as a result of any breach by the University of the terms implied by Section 57 of the Consumer Rights Act 2015.
- 8.3 Subject to clause 8.2, no Party shall have any liability for: loss of profit (direct or indirect); loss of revenue, loss of production or loss of business (in each case whether direct or indirect); loss of goodwill, loss of reputation or loss of opportunity (in each case whether direct or indirect); loss of anticipated saving or loss of margin (in each case whether direct or indirect); liability to third parties (whether direct or indirect); or indirect, consequential or special loss; arising out of or in connection with this Agreement, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including negligence and any liability under an indemnity contained in this Agreement and/or arising from a breach of, or a failure to perform or defect or delay in performance of, any of the Parties' obligations under this Agreement.
- 8.4 Subject to Clause 8.2, the total liability of each Party to the other under this Agreement (whether in contract or for negligence or in breach of statutory duty or otherwise howsoever) for any loss or damage of whatsoever nature and howsoever caused shall be limited to the Contract Price.
- 9. Defective Performance of the Goods and / or Services**
- 9.1 If the University's breach of this Agreement causes a defect or error in the provision by it of the Goods and / or Services (or any part of it) which arises within 12 months of the delivery of the Goods and / or Services, the University will, at its own discretion, either credit to the Customer the price paid by the Customer for the Goods and / or Services (or such part of it) or re-perform or provide (save as to the time of performance) the Goods and / or Services concerned.
- 9.2 In order to exercise its rights under this clause 9.2 the Customer shall inform the University within seven days of the date when such defect or error appeared in the Goods and / or Services as provided, setting out full details in writing of the defect or error. The University shall not be liable to the Customer for any such defect or error not notified to it in accordance with this clause 9.2.
- 9.3 The University shall not be liable for any defect or error in the performance of the Goods and / or Services arising out of the acts, omissions, negligence or default of the Customer or its employees, agents or sub-contractors, including in particular (but without prejudice to the generality of the foregoing) any failure by the Customer to comply with any recommendations of the University and any errors, omissions or other defects in any instructions, information, drawing designs or specifications provided by or on behalf of the Customer or by a third party.

- 9.4 In carrying out the Goods and / or Services the University may use information provided to it by third parties. The University will use all reasonable endeavours to ensure the reliability of any third party sources but the University shall not be liable for any defect or error in the provision of the Goods and / or Services any loss or damage caused to the Customer or to any third party due to the inaccuracy of information provided to the University by the Customer or a third parties.
- 10. Indemnity**
- 10.1 The Customer shall indemnify and hold harmless the University in respect of any costs, claims, demands, expenses or liability, of whatsoever kind or nature, incurred by the University and/or for which it may be liable to any third party including, but not limited to, infringement of any third party rights, such as intellectual property rights, due to or arising from the acts, omissions or defaults of the Customer.
- 11. Representations**
- 11.1 This Agreement shall be governed exclusively by the provisions contained herein, except where excluded, varied, amended or incompatible with the Sales Order, in which case the terms contained in the Sales Order shall take precedence.
- 11.2 Subject to clause 11.1, no statement, description, information, warranty, condition or recommendation contained in any, catalogue, price list, advertisement or communication or made verbally by any of the University's agents or employees shall be construed to enlarge, vary or override in any way any of the provisions of this Agreement.
- 12. Termination**
- 12.1 This Agreement may be terminated by either Party for any breach of any of the material obligations set out in this Agreement, by giving not less than thirty (30) days' written notice to the other of its intention to terminate. The notice shall include a detailed statement describing the nature of the breach. If the breach is capable of being remedied and is remedied within the thirty-day notice period, then the termination shall not take effect. If the breach is of a nature such that it can be fully remedied but not within the thirty-day notice period, then termination shall also not be effective if the Party involved begins to remedy the breach within that period, and then continues diligently to remedy the breach until it is remedied fully. If the breach is incapable of remedy, then the termination shall take effect at the end of the thirty-day notice period in any event.
- 12.2 This Agreement may be terminated by the University with immediate effect on written notice if any of the following events occurs:
- 12.2.1 the Customer is guilty of fraud or dishonesty or acts in any manner which in the reasonable opinion of the University brings or is likely to bring the University into disrepute or is materially adverse to the interests of the University; or
- 12.2.2 the Customer goes into liquidation (except for the purposes of an amalgamation, reconstruction or other reorganisation approved by the University and in such manner that the company resulting from the reorganisation agrees to be bound by or to assume the obligations imposed on the Customer under this Agreement).
- 12.3 Either Party may terminate this Agreement by giving no less than thirty days' notice in writing.
- 12.4 On termination of the Agreement for any reason:
- (a) the Customer shall immediately pay to the University all reasonable costs incurred or committed for the Services, and any outstanding unpaid invoices, in respect of the Goods and / or Services supplied but for which no invoice has been submitted, the University shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the University Background Intellectual Property and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the University may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Agreement;
- (c) the accrued rights, remedies, obligations and liabilities of the Parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication survive termination shall continue in full force and effect.
- 12.5 In the event that the University terminates this Agreement in accordance with Clauses 12.1 or 12.2 or if the Customer does not pay the Contract Price in full, all Intellectual Property Rights in the Deliverables and the results arising from the Services will revert to the University. The University may agree with the Customer's rights of use to such Deliverables as part of any termination arrangement.
- 13. Intellectual Property**
- 13.1 The University Background Intellectual Property shall remain vested in the University and any Customer Background Intellectual Property shall remain vested in the Customer. If the Customer requires access to use any of the University's relevant Background Intellectual Property which was developed by the University or by any of the University's employees, students, agents and appointees working on the Services, for the purposes of exploiting any Deliverables, the University will not unreasonably refuse to grant to the Customer a licence to such relevant Background Intellectual Property for such purpose to be negotiated on fair and reasonable terms provided such licence is requested in writing by the Customer within six (6) months of the completion of the Services.

- 13.2 As between the University and the Customer, all Intellectual Property Rights in the Deliverables shall vest absolutely in the Customer.
- 13.3 The University shall, promptly at the Customer's request and expense, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Customer may from time to time require for the purpose of securing for the Customer the full benefit of the Deliverables that will be owned by the Customer, including all right, title and interest in and to the Intellectual Property Rights assigned to the Customer in accordance with clause 13.2
- 13.4 The terms of any licence agreement provided for in Clause 13.1 above shall be negotiated in good faith by the Customer and Innovation Factory and shall contain all such terms and conditions which are usual and customary in a licence agreement, including but not limited to royalties, limitation of liability, audit provisions, termination, governing law provisions.
- 13.5 The Customer grants to the University a non-exclusive, perpetual, royalty free licence to use the Customer owned Deliverables for non-commercial purposes.
- 14. Confidentiality and Data Protection**
- 14.1 Each Party will use reasonable endeavours not to disclose to any third party any Confidential Information and not to make to any third party any disclosure of Confidential Information which would prejudice either the rights of the other Party under or pursuant to this Agreement. Any information disclosed orally that is identified as Confidential Information shall be confirmed in writing within 30 days of disclosure and will be treated the same as if it had been reduced to a tangible form at the time of disclosure.
- 14.2 The Recipient shall be entitled to use the Confidential Information only for the purposes of this Agreement and to disclose the Confidential Information in confidence to such of its employees that need to know in order to carry out that Party's obligations under this Agreement.
- 14.3 The Recipient shall incur no obligation under Clause 14.1 with respect to information which:
- 14.3.1 is known to the Recipient before the Effective Date, and not impressed already with any obligation of confidentiality to the Discloser; or
- 14.3.2 is or becomes publicly known without the fault of the Recipient; or
- 14.3.3 is obtained by the Recipient from a third party in circumstances where the Recipient has no reason to believe that there has been a breach of an obligation of confidentiality owed to the Discloser; or
- 14.3.4 is independently developed by the Recipient without use of the Confidential Information; or
- 14.3.5 is approved for release in writing by an authorised representative of the Discloser; or
- 14.3.6 the Recipient is specifically required to disclose pursuant to an order of any Court of competent jurisdiction in order to fulfil the Court Order but the Recipient is only released from its obligation to the extent of such order.
- 14.4 The Customer acknowledges that the University is subject to the provisions of the Freedom of Information Act 2000 (as amended from time to time) and that the University is therefore subject to legal duties which may require the disclosure of information in relation to this Agreement. If the University holds information in relation to this Agreement on behalf of the Customer, the Customer agrees to assist and cooperate with the University to enable it to comply with the Freedom of Information Act 2000.
- 14.5 Each Party shall comply with EU General Data Protection Regulation 2016/679 ("GDPR") and the UK Data Protection Act 2018 (as applicable) where Personal Data will form an element of the services the Parties will put a Data Sharing Agreement in place.
- 15. Force Majeure**
- 15.1 If the performance by either Party of any of its obligations under this Agreement (other than an obligation to make payment) shall be prevented by circumstances beyond its reasonable control (including any industrial action on the part of its employees) then such Party shall be excused from performance of that obligation for the duration of the relevant event.
- 16. Notices**
- 16.1 Any notice given under this Agreement shall be in writing and signed by or on behalf of the Party giving it and sent to the signatory at the address shown on the Sales Order (with a copy also sent by email) and will be deemed to have been duly made, delivered or served on the date of the Notice.
- 17. Dispute Resolution**
- 17.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute arising between them out of or in connection with this Agreement within 30 Business Days of the dispute arising.
- 17.2 If the dispute cannot be resolved, then the Parties shall attempt to settle it by mediation in accordance with the Centre for Dispute Resolution ("CEDR") Model Mediation Procedure from time-to-time in force.
- 17.3 To initiate the mediation a party to the Agreement must give notice in writing (the "ADR Notice") to the other party requesting a mediation in accordance with this clause 17 The mediation is to take place not later than 30 Business Days after the ADR Notice. If there is any issue on the conduct of the mediation upon which the Parties cannot agree within 14 Business Days of the ADR Notice, then CEDR shall, at the request of either Party, decide the issue for the Parties, having consulted with them. Unless otherwise agreed by the Parties, the place of the mediation shall be nominated by the mediator.

- 17.4 Unless otherwise agreed, all negotiations connected with the dispute and any settlement shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- 17.5 If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by both the Customer and the University.
- 17.6 If the Parties fail to reach agreement within 60 Business Days of the initiation of the mediation, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.
- 17.7 The commencement of mediation shall not prevent the Parties commencing or continuing court proceedings.
- 18. General**
- 18.1 This Agreement, Sales Order and Contract Conditions constitute the entire agreement between the Parties in respect of the Goods and/or Services supplied.
- 18.2 The Agreement will be deemed accepted once a signed Sales Order has been issued by the University and the University commences to fulfil its obligations thereunder.
- 18.3 For the purposes of clarity this Agreement constitutes a contract for the provision of services and not a contract of employment.
- 18.4 No waiver of a breach by either Party of any covenant, condition, obligation or understanding of this Agreement shall be deemed to constitute a waiver of any other breach of the same, or of any other covenant, condition, obligation or understanding; and no failure, forbearance or delay by either Party in exercising any right under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise by either Party of any right preclude any further exercise thereof, or the exercise of any other right.
- 18.5 Nothing in this Agreement shall be deemed to constitute, evidence or comprise a partnership between the Parties or to constitute either party the agent of the other.
- 18.6 Neither party may assign its rights under this Agreement in whole or in part to any person, firm or company without the prior written agreement of the other party.
- 18.7 No amendment, waiver, or variation, of this Agreement, whether in whole or in part, shall be binding on the Parties unless set out in writing and signed by or on behalf of the Parties by their duly authorised representatives.
- 18.8 Should any part or provision of this Agreement be prohibited or rendered void or unenforceable by a Court of competent jurisdiction or any legislation to which it is subject, the part or provision in question shall be so prohibited or rendered void or unenforceable to the extent to which it is thus prohibited or rendered void or unenforceable, and no further; and the validity or enforceability of any other part of this Agreement shall not thereby be affected. The Parties shall uphold the remainder of this Agreement, and shall negotiate an amendment which, as far as legally feasible, maintains the economic balance between the Parties.
- 18.9 Each Party shall, at its own cost and expense, from time to time do or procure the execution of all documents as may be reasonably necessary in order to give effect to the provisions of this Agreement.
- 18.10 The Parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
- 18.11 Subject to the Dispute Resolution provisions each Party irrevocably agrees that this Agreement shall be governed by the laws of England and Wales and the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).