

Cardiff University (the “University”) - General Conditions of Contract (the “Conditions”)

1. General

These Conditions are the terms and conditions on which the University is willing to provide the goods or services as set out in the University’s quotation or other correspondence issued to you (the “Client”). The University only accepts as binding on itself the Conditions. Any terms or conditions contained in any written or printed document of the Client shall be deemed inapplicable. Any variations of, deletions from, or additions to the Conditions will only apply if agreed by the University in writing.

2. Quotations and Variations

2.1 Any quotation issued by the University is open for acceptance for a period of two months after its issue, and if not accepted within the said two months shall be deemed to have lapsed unless the University at its sole discretion elects to extend such period.

2.2 In the case of a project which is to be carried out by the University in stages and where a delay of more than two months occurs between any two stages occasioned by instruction or act or omission of the Client, the University may at its discretion withdraw from the contract for the remaining stage or stages but shall be entitled to payment of such amounts as are set out in Clause 11.2 below.

2.3 Variations requested by the Client will be charged for on terms to be agreed in advance with the University or otherwise on terms no less advantageous to the University than in the original contract. The University shall be entitled at any time in its discretion and without any liability in respect thereof to refuse to agree to any requested variation.

3. Travelling Expenses

All travelling, subsistence and out of pocket expenses incurred by the University or its appointed agents in fulfilling the contract will be charged to the Client in addition to the quoted fee, unless expressly included therein.

4. Carriage

All carriage charges will be met by the Client.

5. Additional Costs

5.1 Contracts of up to 1 year duration.

The cost to the Client shall (save for the additional expenses referred to in Clauses 3 and 4 above) remain fixed in the amount of the quotation issued by the University to the Client and accepted by the Client, save for any additional costs required to be incurred by the University in fulfilling the contract which neither the University nor the Client could have reasonably foreseen at the date of the quotation. Such costs shall be charged as an additional cost to the Client but the University shall not incur such costs without first informing the Client of the same and obtaining the Client’s instructions to incur such costs.

5.2 Contracts exceeding 1 year in duration.

In the event of the contract being for a period in excess of one year, the contract shall be reviewed by the parties in the tenth month of each twelve month period of the contract for the purpose of discussing any modifications to the agreed programme and any consequential adjustments to the price payable in respect of the contract. In such review the University will advise the Client of costs which have changed in that period, and the parties shall discuss adjustments to the price payable in respect of the contract to take account of those changed costs. Such costs to include but are not limited to:

5.2.1 Variations to the programme,

5.2.2 Adjustments in the nationally agreed rates of wages and salaries or in the cost of material and transport.

5.2.3 Alterations in order regulations and by-laws applicable to the contract.

In the event of the parties being unable to agree on any price adjustments, the University shall be entitled to terminate the contract by written notice and to recover such costs as are set out in Clause 11.2 below.

6. Commencement and Completion

6.1 Unless otherwise agreed the work required under the contract will commence as soon as may be reasonably practicable after acceptance in writing by the Client of the University’s written quotation.

6.2 At its discretion the University shall be entitled to subcontract elements of the work to be performed under the contract.

6.3 Whilst the University will use every endeavour to complete the said work required by the date specified in the quotation, time of completion shall not be of the essence of the contract. The University shall not be liable for any loss to the Client of any nature occasioned by any delay in completion (however caused).

7. Payment

7.1 Unless otherwise specified, the University may issue invoices for work completed to date, at various times of its own choosing or at the completion of the work required. In all cases invoices are issued on 30 day settlement terms and the University reserves the right if any invoice remains unpaid for 30 days from its date of issue to give seven days written notice to the Client that work on the agreed programme will cease until such time as all outstanding payments are made. Furthermore the University reserves the right to charge interest (both before and after any judgment) on the amount outstanding, at the interest rate in force on the due date for payment pursuant to the Late Payment of Commercial Debts (Interest) Act 1998. That interest will be calculated from the date or last date for payment to the actual date of payment, both dates inclusive, and will be compounded quarterly. The Client will pay that interest to the University on demand. Consequential and any other loss arising from any such action shall be the Client’s sole responsibility, and the University shall be entitled at any time after giving of the said seven days notice to terminate the contract by written notice and to recover such amounts as are set out in Clause 11.2 below. Time of payment is of the essence of the contract.

7.2 All goods, materials and documents supplied under the contract remain the property of the University until full payment is received by the University.

8. Reports

8.1 Whilst the University will maintain contact with the Client throughout the term of the contract, no statement made by any members of the University’s staff or other persons engaged by the University shall be binding on the University unless and until it is confirmed in writing by the University.

8.2 Unless otherwise specified the University undertakes to conclude every contract with a written report. The frequency of intermediate reports, if appropriate, will be agreed in writing by the parties.

9. Confidential Information

9.1 The parties and their employees undertake to hold as confidential all disclosures of a technical nature made to them by the other party in the course of setting up or progressing the contract. From this shall be excluded:

9.1.1 Information which is in the public domain.

9.1.2 Information which comes into the public domain or is otherwise received by either party in good faith from a third party.

9.1.3 Information which either party can reasonably prove was in its possession at the time of the disclosure.

9.1.4 Information which is disclosed by order of a court of law or required to be disclosed by any applicable law.

9.1.5 Information which either party can reasonably prove to have been generated independently, without reference to the disclosing party’s confidential information

10. Publicity

Neither the University nor the Client may use the name of the other either directly or by inference for publicity purposes without the written consent of the other.

11. Termination of Contract

11.1 The contract may be terminated by mutual consent. Either party may terminate the contract with immediate effect by giving written notice to the other party if the other party is in material breach of the contract and has not remedied such breach within 30 days from receiving notice of such breach or if either party becomes insolvent.

11.2 In the event of the contract being terminated pursuant to the provisions of these terms and conditions by either party or by mutual consent, the Client shall reimburse the University or its agents for all work done to date and shall meet for the duration of the original contract period the full costs of the University’s staff recruited by the University for the contract (provided always that in the event that the University is able legally and properly to terminate fixed term contracts of the University’s staff recruited by the University for the contract, the University will do so and the said full costs will be reduced accordingly).

12. Liability

12.1 The Client acknowledges and agrees that any claim it may have in relation to the contract or anything connected therewith would be against the University and that staff employees and the agents of the University shall in their personal capacities be in no way liable in respect of such claim.

12.2 The University’s total liability under this contract will not exceed the value of the project fee.

13. No Warranty

13.1 While the University will use every endeavour to achieve the objectives of the contract, it offers no warranty, express or implied, that the conclusions of the project will constitute a complete or partial solution to the problem under investigation, or that any written recommendations will be acceptable to the Client.

13.2 All machines, tools, equipment and materials supplied by the University in connection with the contract are supplied as prototypes for experimental or research purposes only. The Client consequentially accepts that such prototypes are not warranted by the University as complying with any relevant directives whether to the nature of materials, manufacturing processes or manufacturing standards (including but without limitation consumer protection and product liability legislation and legislation connected with CE conformity markings).

13.3 Machines, tools, equipment, and materials for production or testing purposes will be supplied by the Client on terms to be agreed between the parties, save that the Client agrees to indemnify the University for any injury, loss or damage as a result of use of the same by the University.

13.4 Should the University be required to carry out any testing or evaluation in connection with the contract then the Client shall be responsible for informing the University in writing of any relevant standards, directives and/or legislation (whether UK or EU) and shall indemnify the University for all losses, expenses or claims of whatever nature arising out of the Client's acts or omission in this regard.

14. Risk

Any goods or items of whatsoever nature supplied by the Client to the University shall at all times be at the risk of the Client and the University shall not be liable in respect of any loss or damage thereto or arising from any such loss or damage.

15. Exclusions

The Client shall be liable for and shall indemnify the University against any liability, loss, costs, expenses, claims or proceedings whatsoever arising as a result of work done in accordance with the Client's specification which involves any impracticality, inefficiency or lack of safety or other defect where such defect is due (whether in part or in whole) to faults or omissions inherent in the specification or infringement of any letters patent, registered design or trade mark, or any other intellectual property right or any claim for such infringement. No work will be produced by the University which to the University's knowledge will infringe any letters patent, registered design or trade mark or any other intellectual property right but no warranty, express or implied, is given against, and the University shall not incur any liability because of the existence of such.

In the event of the University being held to have any liability to the Client in respect of claims in connection with the contract, the Client hereby agrees that the maximum liability on the University hereunder, irrespective of the number of claims made, shall be in the amount of the price paid for the contract. The Client hereby acknowledges and agrees that the price for the contract has been calculated on the assumption that the provisions of this paragraph are fully valid and effective.

16. Consequential Loss (Third Party)

The Client shall satisfy himself as to the fitness for purpose and safety of all processes, procedures, machinery, and prototypes recommended by the University, and machines apparatus and equipment made from drawings and designs submitted by the University in connection with the contract. The University shall not be called upon to indemnify the Client against claims by other parties in respect of non-delivery, delay in delivery or defects or errors in the work undertaken by the University. The University shall not be liable for any claims in connection with the contract for loss of contracts, loss of goodwill, loss of opportunity, loss of profits, loss of turnover or loss of anticipated savings and neither shall the University be liable for any indirect or consequential loss or special loss or damage of any nature whatsoever.

The University shall not be responsible for any loss, damages, expenses or injuries howsoever occasioned to or sustained by any person or any property caused by or in any way arising out of the use of any equipment or any part thereof designed, manufactured or supplied by, or on behalf of, or at the direction of the University. Nothing in these Conditions shall be construed to limit or exclude liability for death or personal injury caused by the negligence of the University.

17. Drawings, Models and Equipment

17.1 Any drawings, models or other matter submitted to the Client before contract are confidential and are provided to show approximately the University's proposals. They must not be shown produced or copied to any third party or used for any other purpose whatsoever. They will remain the property of the University and must be returned on request.

17.2 All models or experimental equipment or other items of whatever nature provided at the expense of the University and used during the course of the work remain the property of the University unless otherwise specifically agreed.

18. Ownership of Rights

18.1 All rights to intellectual property (including but not limited to copyright, letters patent and registered design) arising from the work that is the subject of the contract shall become the sole property of the University unless agreed otherwise in writing.

18.2 No information of any description concerning the contract or its results will be published by the Client if in the opinion of the University such action is likely to prejudice a grant of patent or design copyright to which the University may claim ownership.

19. Third Party Rights

Neither party intends that this contract creates any right enforceable by any person not a party to it pursuant to the Contracts (Rights of Third Parties) Act 1999.

20. Force Majeure

20.1 The University shall not be liable under or be deemed to be in breach of this contract for any delays or failures in performance of this contract which results from circumstances beyond its reasonable control, including any delays or failures by the Client to give adequate instructions, provide required materials or approvals.

21. Disputes and Law

21.1 All disputes, differences or questions in respect of any matter or thing arising out of the contract shall be referred to an alternative dispute resolution procedure (ADR) recommended by the Centre for Dispute Resolution, London (CEDR).

21.2 In the event that either the University or Client elects not to pursue ADR then the University and Client submit to the exclusive jurisdiction of the courts of England and Wales.

21.3 The construction, validity and performance of the contract shall be governed in all respects by the Laws of England and Wales.