

## MODULE 1

### UNIVERSITY OF READING GENERAL TERMS and CONDITIONS OF PURCHASE

#### 1. Definitions

1.1 In these General Clauses of Purchase, the following definitions will apply:-

"Address"	means the delivery or performance address stated in a Purchase Order or Purchasing Card Instruction or Order Amendment.
"Authorised"	means signed by one of Our Authorised Officers.
"Authorised Officer"	means Our employee authorised, either generally or specifically, by Us, to sign our Purchase Order, confirmation of which may be obtained from the Head of Procurement at the University of Reading.
"Contract"	has the meaning given in Clause 2 below.
A "Correct Invoice"	shall mean an invoice setting out details we require, quoting Our Purchase Order number and setting out full details of the Goods/Services supplied, the Price and any discounts given.
"Confidential Information"	means information, data and material of any nature which We or You may receive or obtain in connection with the operation of the Contract
"EIR"	means the Environmental Information Regulations 2004 and any subsequent amended Regulations as may be issued from time to time.
"FOIA"	means the Freedom of Information Act 2000.
"General Clauses of Purchase"	mean the terms and conditions set out in this document and any Annexes referred to or attached.
"Goods"	means the goods, materials or articles, described in the Contract and where stated in the Contract, the Services.
"Installation Terms"	mean the terms and conditions relating to the installation and commissioning of Goods or other installation services set out in [Module 2], to the extent applicable to the Contract.
"IP Rights"	mean copyright, trade mark, patent, design, design right and all other registered or unregistered intellectual property rights which exist anywhere in the world.
"Order Amendment"	means Our Authorised order amendment or series of order amendments, each Order Amendment

	having precedence over any earlier Order Amendment.
"Package" or "Packaging"	means any type of package including bags, cases, carboys, cylinders, drums, pallets, tank wagons and other containers.
"Price"	has the meaning given in Clause 3 below.
"Purchase Order"	means Our Authorised purchase order having these General Clauses of Purchase on its reverse or attached to or sent with it or referring to these General Clauses of Purchase on its face.
"Purchasing Card Instruction"	means the instruction given by one of our Authorised Officers to supply the Goods or Services, which may be by verbal, telephonic or electronic means.
"Sale of Goods Act 1979"	shall mean the Sale of Goods Act 1979 as amended by the Sale and Supply of Goods Act 1994, the Sale of Goods (Amendment) Act 1994 and the Sale of Goods (Amendment) Act 1995.
"Services"	mean the services or works specified in the Contract;
"SoW"	Means a statement of works;
"Special Clauses"	means, if applicable, any special terms and conditions included in the Contract, as set out in Module [3].
"Specification"	Includes any specification, scope of work, SoW, terms of reference, plans, drawings or other similar information or instructions relating to the Goods or Services, as notified by Us.
"Supply of Goods and Services Act 1982"	shall mean the Supply of Goods and Services Act 1982. <ul style="list-style-type: none"> <li>(i) which comprises personal data or sensitive personal data (as both terms are defined in the Data Protection Act 1998);</li> <li>(ii) which is listed in any Annex to this Contract;</li> <li>(iii) the release of which is likely to prejudice the commercial interests of Us or You respectively; or</li> <li>(iv) which is a trade secret.</li> </ul>
"University", "We", "Us"	means the University of Reading of Whiteknights,

and "Our"	PO Box 217, Reading RG6 6AH.
"Working Day"	is any day from Monday to Friday, excluding English bank, public and statutory holidays.
"You" and "Your"	means the person, firm or company to whom the Purchase Order or Purchasing Card Instruction is addressed and any employees, sub-contractors or agents of said person, firm or company.

- 1.2 In these General Clauses of Purchase, the headings to clauses are for convenience only and shall not affect interpretation, the singular includes the plural and the converse is true.
- 1.3 Any Act or Regulations referred to in these General Clauses of Purchase shall be as amended or replaced from time to time.
- 1.4 Where Module 2 is included in the Contract, in the event of any inconsistency between provisions of the Modules, the provisions of Module [2] shall take priority.

## 2. **The Contract**

- 2.1 You agree to sell and we agree to purchase the Goods and/or Services in accordance with the Contract. The Contract shall comprise (in order of precedence): any Order Amendments, the Purchase Order, any Special Clauses these General Clauses of Purchase, the Installation Terms, any requirements set out in the Notes section of any specification supplied with tender documents and any other document (or part document) referred to on the Purchase Order. The Contract shall not include any of Your conditions of sale, notwithstanding reference to them in any document. However, should this Contract be held by a competent jurisdiction to include Your terms and conditions of sale then in the event of any conflict or apparent conflict these general Clauses of Purchase shall always prevail over Your terms and conditions of sale. Delivery of Goods or performance of Services in response to a Purchase Order or Order Amendment shall be taken to imply that You have accepted the terms and conditions of this Contract.
- 2.2 A Purchase Order or Purchasing Card Instruction constitutes an offer by Us to purchase the Goods and/or Services at the prices mentioned in the Purchase Order and on these Terms and Clauses.
- 2.3 We may from time to time during the Services vary the requirement. Such variations may include, but are not limited to, additions, omissions, substitutions, alterations, changes in quality, form, character, kind and changes, in any specified sequence, method or timing of the Services.
- 2.4 No variation or addition to these Terms and Clauses or a Purchase Order or Purchasing Card Instruction shall be binding upon Us unless agreed in writing between Our Head of Procurement or Director of Finance and Corporate Services and Your authorised representative.
- 2.5 Subject to any Order Amendment in accordance with clause [4] these General Terms and Clauses of Purchase embody the entire understanding of the parties and override any prior promises, undertakings or representations. This provision shall not apply in the case of fraud.

- 2.6 No Purchase Order or Purchasing Card Instruction will be binding on Us unless signed or given by Our Authorised Officer.
- 2.7 Our Purchase Order or Purchasing Card Instruction constitutes an offer on our part and no Contract shall be formed until You either (a) expressly accept by notifying us of your acceptance in writing or (b) impliedly accept by fulfilling a Purchase Order or a Purchasing Card Instruction, in whole or in part.
- 2.8 Any Specification supplied by Us to You or specifically produced by You for Us, together with any IP Rights in it, shall be Our exclusive property. You shall not disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge without your fault.
- 2.9 The Supplier agrees to supply the University in accordance with the terms of the agreement. The Supplier acknowledges and agrees that nothing in this agreement restricts the University from contracting with any other party for the supply of the same or similar goods or services. Except as expressly provided, nothing in this agreement is intended to, or shall be deemed to, establish any right in favour of the Supplier of exclusive supply, or any partnership or joint venture between the parties, constitute either party the agent of the other, nor authorise a party to make or enter into any commitments for or on behalf of the other party.

### 3. **Price**

- 3.1 You will sell Us the Goods or supply the Services for the firm and fixed Price stated in the Contract. If no Price is stated in the Contract then the Price shall be a fair price, taking into account prevailing market conditions.
- 3.2 The Price shall include storage, packing, insurance, delivery, installation and commissioning (as applicable) but shall exclude VAT (which VAT shall be payable by us subject to receipt of a VAT invoice). The Price shall also be inclusive of all costs, expenses and profits relating to the provision and performance of the Goods and/or Services.
- 3.3 You may not increase the Price due to increases in costs of materials, labour or transport, fluctuation in exchange rates or any other reason whatsoever.
- 3.4 We shall be entitled to any discount related to volume purchases or prompt payment which are expressly agreed with Us or customarily or usually granted by You.

### 4. **Variations**

We shall have the right, before delivery, or performance to send You an Order Amendment, adding to, deleting or modifying the Goods and/or Services. If the Order Amendment will cause a change to the Price or delivery performance date then You must suspend performance of the Contract and notify us without delay, calculating the new Price and delivery or performance date at the same level of cost and profitability as the original Price. You must allow Us at least 10 working days to consider any new Price and delivery or performance date. The Order Amendment shall take effect when but only if Our Authorised Officer accepts in writing the new Price and delivery or performance date within the time You stipulate. If Our Authorised Officer fails to confirm the Order Amendment within the time You stipulate then performance of the Contract shall immediately resume as though the said Order Amendment had not been issued (except that We may still exercise Our right of cancellation in accordance with Clause 5).

## 5. **Our Right of Cancellation**

In addition to Our other rights of cancellation under this Contract, We may cancel the Purchase Order and any Order Amendment thereto at any time by sending You a notice of termination. You will comply with any instructions that We may issue with regard to the Goods and/or Services. If You submit a termination claim then We will pay to You the cost of any commitments, liabilities or expenditure which in Our reasonable opinion were a consequence the cancellation of this Contract at the time of termination. The total of all payments made or due to You under this Contract, including any termination payment, shall not exceed the Price. If You fail to submit a termination claim within 3 months of the date of termination then We shall have no further liability under the Contract.

## 6. **Performance**

6.1 The Services shall be performed at the Address during Our agreed business hours. We reserve the right to make alternative arrangements by written notice.

6.2 The Services shall be performed on or before the date or within the period stated on a Purchase Order or advised at time of Purchasing Card Instruction or if no date or period is specified, within a reasonable period provided that We shall be under no obligation to accept provision of the Services before the specified date, but reserve the right to do so. Time shall be of the essence regarding performance and without prejudice to any other rights which We may have We reserve the right to cancel a Purchase Order or Purchasing Card Instruction in the event that the Services are not so performed and to claim damages for any loss incurred in obtaining the Services from another contractor.

6.3 If the Services are to be performed by instalments, a Contract shall be treated as a single contract and not severable.

6.4 You shall provide Us with such invoices, advice notes, delivery notes, time sheets, statements and other documentation as We may from time to time specify. In particular and without limitation: You shall supply Us, on performance of all Services, with all information which is required to enable Us to accept performance of the Services.

## 7. **Quality Description and Warranties**

7.1.1 The Goods and/or Services shall:

- (a) conform in every respect with the provisions of the Contract;
- (b) be capable of all standards of performance specified in the Contract;
- (c) be fit for any purpose made known to You expressly or by implication and in this respect We rely on Your skill and judgement; be new (unless otherwise specified on the Purchase Order) and be of sound materials and skilled and careful workmanship;
- (d) correspond with their description or any samples, patterns, drawings, plans and Specifications referred to in the Contract;
- (e) be of satisfactory quality
- (f) comply with any current legislation; and

- (g) be performed to the highest standards in the industry with all due care, skill and diligence to Our requirements and satisfaction, with time being of the essence regarding performance.

Unless specifically required under the Contract, You warrant that there shall be no asbestos content in the Goods And You shall indemnify us in respect of any claim, loss, damage, injury, death, costs, expense or liability arising from the breach of this warranty.

7.1.2 You warrant to Us that the Goods/Services:

- (a) will comply with any statute, statutory order, directive or regulation or relevant British Standard (or equivalent required by Us) in force at the time of the performance of the Services.
- (b) You warrant to Us that the Services will be performed by appropriately qualified and trained personnel with competence and due care and diligence and in accordance with Our instructions for the provision of such Services and will comply in every respect with all relevant Specifications.
- (c) You shall bring to the attention of all Your employees, agents, sub-contractors and representatives involved in any way in the supply of the Goods or the provision of the Services, Our health and safety requirements and contractors on site requirements and You shall be responsible for ensuring that such requirements are duly observed by all Your such employees, agents, sub-contractors and representatives.

7.1.3 We are at all times relying on Your skill and knowledge in the supply of Goods and/or Services in the execution of a Purchase Order.

## 8. **Work on Our Premises**

8.1 If the Contract involves the performance of any Services on Our premises then the following conditions shall apply:

- 8.1.1 You shall ensure that You and Your employees, Your sub-contractors and their employees and any other person associated with You will adhere in every respect to the obligations imposed on You by current health and safety legislation.
- 8.1.2 You shall ensure that You and Your employees, Your sub-contractors and their employees and any other person associated with You will comply with any regulations that We may notify to You in writing.

## 9. **Progress and Inspection**

9.1 You shall at Your expense provide any programmes of manufacture and delivery that We may reasonably require. You shall notify Us without delay in writing if Your progress falls behind any of these programmes.

9.2 We shall have the right to check progress at Your works or the works of sub-contractors at all reasonable times, to inspect and to reject Goods that do not comply with the Contract. Your sub-contracts shall reserve such right for Us.

9.3 Any inspection, or approval shall not relieve You from Your obligations under this Contract.

## 10. **Packaging**

Unless otherwise stated in the Contract, all Packages shall be non-returnable. If the Contract states that Package is returnable, You must give us full disposal instructions before the time of delivery. The Package must be clearly marked to show to whom it belongs. You must pay the cost of all carriage and handling for the return of the Package. We shall not be liable for any Package lost or damaged in transit.

## 11. **Safety**

You shall observe all legal requirements of the United Kingdom, European Union and relevant international agreements in relation to health, safety and environment, and in particular to the marking of hazardous Goods, the provision of data sheets for hazardous materials, and all provisions relating to food.

## 12. **Delivery**

12.1 The Goods shall be properly packed and firmly secured. They shall be despatched and offloaded by Your or Your carriers personnel at Your expense to arrive in good condition at the time or times and the place or places specified in the Contract.

12.2 If You or Your carrier deliver any Goods at the wrong time or to the wrong place then We may deduct from the Price any resulting costs of storage or transport.

## 13. **Late Delivery**

If the Goods and/or Services or any part of them are not delivered by the time or times specified in the Contract then We may by written notice cancel any undelivered balance of the Goods or Services. We may also return for full credit and at Your expense any Goods that in Our opinion cannot be utilised owing to this cancellation. In the case of Services, We may have the services or work performed by alternative means and any additional costs so incurred shall be at Your expense. This shall not affect any other rights that We have.

## 14. **Property and Risk**

14.1 You shall bear all risks of loss or damage to the Goods until they have been delivered and shall insure accordingly.

14.2 Ownership of the Goods shall pass to Us:

14.2.1 when the Goods have been delivered but without prejudice to our right of rejection under this Contract, and

14.2.2 if We make any advance or stage payment, at the time such payment is made, in which cases You must as soon as possible mark the Goods as Our property.

## 15. **Acceptance**

We shall have the right to reject the Goods or Services in whole or in part whether or not paid for in full or in part within a reasonable time of delivery or performance if they do not conform with the requirements of this Contract. It is agreed that We may exercise the right of rejection notwithstanding any provision contained in section 11 or section 15a or section 30 (subsections 2A and 2B) or section 35 of the Sale of Goods Act 1979. We shall give You a reasonable opportunity to replace the Goods with new Goods that conform with this

Contract, or to re-perform the services within a time-scale acceptable to Us, after which time We shall be entitled to cancel the Purchase Order and purchase the nearest equivalent goods or services elsewhere. In the event of cancellation under this condition You shall promptly repay any moneys paid under the Contract without any retention or offset whatsoever. Cancellation of the Purchase Order under this condition shall not affect any other rights We may have. You must collect all rejected Goods within a reasonable time of rejection or We shall return them to You at Your risk and expense. You shall not be entitled to any payment for part-performed Services.

## 16. **Payment**

- 16.1 Unless stated otherwise in the Contract We shall pay You within 30 days of receipt of a correctly rendered invoice. Your invoice must be addressed to the department indicated on the Purchase Order and must quote the full Purchase Order number. We shall not be responsible for delays in payment caused by Your failure to comply with Our invoicing instructions.
- 16.2 Unless otherwise agreed by Us in writing, You shall only be entitled to invoice Us following delivery of the Goods and/or performance of the Services.
- 16.3 We shall be entitled to set off against the Price any counter-claim or sum which You may owe to Us.
- 16.4 You shall have no right to charge Us interest (or any other sum in addition to the Price) on any outstanding sum, nor to suspend or withhold delivery of Goods or performance of Services, pending payment of any invoice.

## 17. **Your Warranty**

- 17.1 It is expressly agreed between us that:
- 17.1.1 You shall promptly make good at Your expense any defect in the Goods that We discover under proper usage during the first 12 months of actual use or 18 months from the date of acceptance by Us whichever period shall expire first. Such defects may arise from your faulty design, Your erroneous instructions as to use or inadequate or faulty materials or poor workmanship or any other breach of Your obligations whether in this Contract or at law.
- 17.1.2 Repairs or replacements will themselves be covered by the above warranty but for a period of 12 months from acceptance by Us.
- 17.1.3 You will ensure that compatible spares are available to facilitate repairs (where applicable) for a period of at least 10 years from the date of delivery of the Goods.

## 18. **Indemnity**

- 18.1 You shall indemnify Us against all loss, actions, costs, claims, demands, expenses and liabilities whatsoever (if any) which We may incur either at common law or by statute in respect of personal injury to or death of any person or in respect of any loss or destruction of or damage to property (other than as a result of any default or neglect of Ourselves or of any person for whom We are responsible) which shall have occurred in connection with any work executed by You under this Contract or shall be alleged to be attributable to some defect in the Goods.

- 18.2 Without prejudice to the generality of Clause 18.1 You will indemnify us against all loss, costs, claims, demands, expenses and liabilities whatsoever (if any) which We may incur either at common law or by statute (other than as a result of any default or neglect of Ourselves or for any person for whom We are responsible) in respect of personal injury to or death of any of Your or Our employees, agents, sub-contractors or other representatives while on Our premises whether or not such persons are (at the time such personal injury or deaths are caused) acting in the course of their employment.
- 18.3 You will indemnify Us against any and all loss, costs, expenses and liabilities caused to Us whether directly or as a result of the action, claim or demand of any third party by reason of any breach by You of these conditions or of any terms or obligations on Your part implied by the Sale of Goods Act 1979, by the Supply of Goods and Services Act 1982 or by any other statute or statutory provision relevant to the Contract or to Goods or work covered thereby. This indemnity shall not be prejudiced or waived by any exercise of any of Our other rights and remedies.
- 18.4 You shall indemnify Us in full against all direct, indirect or consequential liability, loss, damages, injury, costs and expenses (including legal expenses) awarded against or incurred by Us as a result of or in connection with:-
- 18.4.1 breach of any warranty or undertaking by You in relation to the Services;
  - 18.4.2 any claim that the Services infringe the industrial or intellectual property rights of any other person, except to the extent that the claim arises from compliance with any specifications, drawings, samples or descriptions provided by Us.
  - 18.4.3 any liability under the Supply of Goods and Services Act 1982 in respect of the Services;
  - 18.4.4 any act or omission of any of Your personnel in connection with the performance of the Services
  - 18.4.5 any injury or other loss caused to any of Our employees or any other person on Our premises, caused by any default or negligence on Your part (including without prejudice to the generality of the foregoing any failure by You or Your agents, employees or sub-contractors to comply with any provisions of the Health and safety at Work Act 1984 (and any amendments or modifications thereof) or any regulations or code of practice thereunder). This indemnity will extend to any civil or criminal action.

## 19. **Insurance**

You shall hold satisfactory insurance cover with a reputable insurer to fulfil Your insurance obligations for the duration of this Contract including public liability insurance cover of at least £2M (two million pounds Sterling). You shall effect insurance against all those risks arising from Your indemnities in Clause [18]. Satisfactory evidence of such insurance and payment of current premiums shall be shown to Us upon request.

## 20. **Recovery of Sums Due**

Whenever under the Contract any sums of money shall be recoverable from or payable by You, they may be deducted from any sums then due, or which at any later time may become due to You under this Contract or under any other Contract You may have with us.

## 21. **Matters beyond Control**

If either party is delayed or prevented from performing its obligations under this Contract by circumstances beyond the reasonable control of either party, (including without limitation any form of Government intervention, strikes and lock-outs relevant to the Purchase Order (other than strikes or other industrial action by Your employees) or breakdown of plant) such performance shall be suspended, and if it cannot be completed within a reasonable time (normally, [one] month) after the due date as specified in the Purchase Order then the Contract may be cancelled by either party. We shall pay to You such sum as may be fair and reasonable in all the circumstances of the case in respect of work performed by You under the Purchase Order prior to cancellation but only in respect of work that We have received full benefit of as originally contemplated in the Contract. This provision can only have effect if it is called into operation by the party wishing to rely on it giving written notice to the other to that effect.

## 22. **Articles on Loan and Use of Information**

22.1 All tools, materials, drawings, specifications and other equipment and data ("the Articles") loaned by Us to You in connection with the Contract shall remain always Our property and be surrendered to Us upon demand in good and serviceable condition (fair wear and tear allowed) and are to be used by You solely for the purpose of completing the Contract. You agree that no copy of any of the Articles will be made without the consent in writing of Our Authorised Officer. Until You return all the Articles to Us they shall be at Your risk and insured by You at Your own expense against the risk of loss, theft or damage (to full replacement valuation). Any loss of or damage to such Articles shall be made good by You at Your expense. All scrap arising from the supply of such Articles must be disposed of by You at Our direction and all proceeds of sales of such scrap must promptly be paid to us in full.

22.2 Any information derived from Our property or otherwise communicated to You in connection with the Contract shall be kept secret and confidential and shall not without the consent in writing of Our Authorised Officer, be published or disclosed to any third party, or made use of by You except for the purpose of implementing the Contract.

## 23. **Intellectual Property**

23.1 All IP Rights Software or Work ("Data") prepared or supplied by Us to You shall remain Our property.

23.2 All IP Rights in all Data prepared or developed by You under or in connection with the Contract shall vest in Us.

23.3 All IP Rights in all Data not prepared or developed by You under or in connection with the Contract but which are:-

23.3.1 already vested in You at the date when the Contract was made and

23.3.2 used by You in connection with the Contract

shall remain vested in You but You hereby grant a non-exclusive, irrevocable, royalty free licence to both Us and to any third party We have authorised or may in the future authorise to use, copy or modify such Data provided it is to enable Us or such third party to utilise the Data prepared or developed under or in connection with the Contract.

- 23.4 You shall disclose to Us all inventions which You or Your Employees may make in the supply of the Goods or the performance of the Services and which are wholly or substantially based on concepts or data developed or supplied by Us. All IP Rights to such inventions shall vest in Us.
- 23.5 You shall execute all documents and perform such acts as may be reasonably necessary to enable Us to obtain and / or maintain all IP Rights and perfect Our title to any inventions referred to in clause [23.4] and all Data referred to in clause [23.2].
- 23.6 You shall ensure that all IP Rights in all Data prepared or developed by any third party under or in connection with the Contract, including permitted sub-contractors , shall become vested in Us.
- 23.7 In respect of any IP Rights vested in any third party data supplied but not prepared or developed under or in connection with the Contract, You shall obtain from such third party (at no cost and expense to Us) such permission, waiver or licence as may be necessary to enable the Goods to be supplied or the Services to be performed and completed and / or the data used, copied or modified by either Us or by any third party You have authorised.
- 23.8 You waive, and shall procure from any third party the waiver of, the exercise against Us of all moral rights in data that are or become vested in You and / or any third party and/or Us.
- 23.9 The provisions of this Clause shall apply during the continuance of this Contract and after its termination howsoever arising.

## 24. **Ownership of Results and Intellectual Property**

- 24.1 If the Contract involves design and / or development Services:
- 24.1.1 All rights in the results of Services arising out of or deriving from this Contract, including inventions, designs, copyright and knowledge (“Results”) shall be Our property and We shall have the sole right to determine whether any letters patent, registered design, trademark and other IP Right protection shall be sought.
- 24.1.2 You shall promptly communicate to Us all such Results and shall if requested and at Our expense do all acts and things necessary to enable Us or Our nominee to obtain letters patent, registered designs and other IP Right protection for such Results in all territories and to assign the same to Us or Our nominee.
- 24.1.3 You shall ensure that all technical information (including computer programs and programming information) arising out of or deriving from this Contract is held in strict confidence except for any such information which becomes public knowledge other than by breach of this Contract.
- 24.1.4 The provisions of this Clause shall apply during the continuance of this Contract and after its termination howsoever arising.

## 25. **Infringement of patents**

With the exception of Goods made to Our design or instruction, You warrant that neither the Goods nor Our use of them nor the Services or any product of them will infringe any IP Rights or other protected right and undertake to indemnify Us against all actions, claims, demands, costs, charges expenses and liabilities arising from or incurred by reason of any infringement or alleged infringement of any such right.

## 26. Equal Opportunities

- 26.1 You agree to comply with Our policy of and the laws relating to preventing unlawful discrimination on the grounds of sex, marital status, disability, race, sexual orientation, age, religion and belief and promoting race equality.
- 26.2 In accordance with Our responsibilities under the Disability Discrimination Act 1995, the Race Relations Act 1976 (as amended by the Race Relations (Amendment) Act 2000 and the Race Relations Act 1976 (Amendment) Regulations 2003) to eliminate unlawful discrimination against disability or race and promote equal opportunities and good relations between people of different racial groups, We require our contractors and sub-contractors to comply with the terms of this clause.
- 26.3 You warrant that Your own practices and procedures comply with legislation to prevent unlawful discrimination and that Your employees are fully trained on matters relating to the prevention of unlawful discrimination, are suitably qualified and experienced and shall fulfil their duties in a professional and ethical manner, consistent with Our commitment to equal opportunities, race equality and high standards of behaviour.
- 26.4 You will provide such information as required by Us in relation to Our compliance with anti-discrimination legislation and will co-operate with any investigation by Us or a body empowered to carry out such investigations under the relevant legislation. Where any investigation is conducted, or proceedings are brought which arise directly or indirectly out of any of Your or Your agents or sub-contractors acts or omissions, and where there is a finding against You in any such investigation or proceedings, You shall indemnify Us with respect to all costs, charges and expenses (including legal and administrative expenses) incurred by Us during or in connection with any such investigation or proceedings and further indemnify Us for any compensation, damages, costs or other award We may be ordered or required to pay to a third party.
- 26.5 You shall not discriminate directly or indirectly against any person on grounds of their disability or of their colour, race, nationality or ethnic origins contrary to Part II of the Race Relations Act 1976 (Discrimination in the Field of Employment) and / or contrary to Part III of the Act (Discrimination on Other Fields) either in employment or in service and / or contravene Part IV of the Act (Other Unlawful Acts).
- 26.6 You shall comply with the provisions of Section 7 of the Act in all dealings with sub-contractors.
- 26.7 You shall in performing the contract comply with the provisions of Section 71 (1) of the Race Relations Act 1976 as amended by the Race Relations Amendment Act 2000 and the Race Relations Act 1976 (Amendment) Regulations 2003 as if You were a body within the meaning of Schedule 1A to the Act.
- 26.8 You shall monitor Your own employees by reference to their disabilities, racial origins and ethnicity and provide such information to Us on request.
- 26.9 You shall provide such information as We require about Your policies and practices concerning the prevention of unlawful discrimination and the promotion of equal opportunities and race equality both in terms of employment and customer service. You shall have regard to the promotion of race equality and shall consider the promotion of race equality and good race relations as key objectives of the contract.

- 26.10 We and You shall continue to monitor the performance and objectives of the contract throughout its duration and to make any amendments or changes necessary to the contract, or its performance or objectives in order further to promote race equality.
- 26.11 You shall notify Us immediately in writing as soon as You become aware of any investigation or proceedings brought against You under the Disability Discrimination Act 1995 or the Race Relations Act 1976 (as amended by the Race Relations (Amendment) Act 2000 and the Race Relations Act 1976 (Amendment) Regulations 2003).
- 26.12 Where any investigation is undertaken by a person or body empowered to conduct such an investigation against You or against Us either in connection with any contract awarded to You, You shall without charge :-
- 26.12.1 provide any information requested in the timescale allotted;
  - 26.12.2 attend and permit Your employees to attend any meeting as required;
  - 26.12.3 allow access to and investigation of any documents or data deemed to be relevant to the investigation;
  - 26.12.4 allow Yourself and Your employees to appear as witnesses in any proceedings; and
  - 26.12.5 co-operate fully with the person or body conducting the investigation.
- 26.13 Where any investigation is conducted, or proceedings are brought which arise directly or indirectly out of any act of or omission by You, Your staff, employees, agents or sub-contractors and where there is a finding against You in any such investigation or proceedings, You shall indemnify Us with respect to all costs, charges, and expenses (including legal and administrative expenses) incurred by Us during or in connection with any such investigation or proceedings and further indemnify Us for any compensation, damages, costs or other award We may be ordered or required to pay to a third party.
- 26.14 If a finding of unlawful discrimination or breach of equal opportunities legislation is made against You or against Us arising from Your conduct, We will require You to take immediate remedial steps to prevent further recurrences.
- 26.15 If You enter into any sub-contract as authorised in the contract in connection with the contract, You shall impose obligations on Your sub-contractors terms which are identical to those imposed on You in this clause. We expect that You will not sub-contract to any business, service or group which has a poor history of discrimination in employment or service delivery. A breach of this clause will be considered as a fundamental breach of the contract between Us and You.
- 26.16 Without prejudice to Our remedies set out above, We may terminate the contract if We have given You notice of a substantial or persistent breach of this clause providing that a reasonable period has been given during which the breach may have been rectified and You have failed to remedy the breach within the stated period.
- 26.17 Where in connection with this contract, You, Your agents or sub-contractors or Your staff are required to carry out work on Our premises or alongside Our employees or students on any other premises, this clause shall apply.

27. **Right to Work**

It shall be your responsibility to comply with all the legal requirements, including but not limited to obtaining in advance all necessary licences, permissions, visas or leave and satisfying all applicable criteria to enter or remain in the UK for the purposes contemplated by this Contract.

28. **Confidentiality and Freedom of Information**

28.1 In respect of any Confidential Information it may receive from the other party ('the Discloser') and subject always to the remainder of this clause, each party ('the Recipient') undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party without the Discloser's prior written consent provided that:

28.1.1 The Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of the Contract;

28.1.2 The provisions of this clause shall not apply to Confidential Information which:

- (a) is in or enters into the public domain other than by breach of the Contract or other act or omissions of the Recipient;
- (b) is obtained by a third party who is lawfully authorised to disclose it;
- (c) is authorised for release by the prior written consent of the Discloser; or
- (d) We are required to disclose in Our compliance with the FOIA and/ or any applicable guidance or codes of practice

28.1.3 Nothing in the clause shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial administrative, governmental or regulatory process in connection with any suit, action, proceedings or claim or otherwise by applicable law, or, where You are the recipient, to Your immediate or ultimate holding company provided that You procure that such holding company complies with this clause as if any reference to You in this clause were a reference to such a holding company.

28.1.4 You acknowledge that We are subject to the FOIA and the EIR. You note and acknowledge the FOIA and both the respective Codes of Practice on the Discharge of Public Authorities Functions and on the management of Records (which are issued under sections 45 and 46 of the FIOA respectively), as may be amended, updated or replaced from time to time and the EIR. You will act in accordance with the FOIA and these Codes of Practice (and any other applicable codes of practice or guidance notified to You from time to time) and the EIR to the extent that they apply to Your performance under the Contract.

28.1.5 You agree that:

- (a) Without prejudice to the generality of sub-clause (b) above, the provisions of this clause are subject to Our respective obligations and commitments under the FOIA and the Code of Practice and the EIR;

- (b) the decision on whether any exemption applies to a request for disclosure of recorded information or what information is to be disclosed is a decision solely for Us;
  - (c) Where we are managing a request as referred to in (d) above, You shall cooperate with Us and shall respond within five (5) working days of any request by Us for assistance in determining how to respond to a request for disclosure.
- 28.1.6 Where practicable and legally permitted, We will consult You in relation to any request for disclosure of Your Confidential Information in accordance with all applicable guidance.
- 28.1.7 When processing personal data on behalf of the University You must do so only in accordance with the University's own Data Protection Policy and Guidelines set out at [http://www.reading.ac.uk/data\\_protection](http://www.reading.ac.uk/data_protection)
- 28.1.8 This clause shall remain in force without limit in respect of Confidential Information which comprises Personal Data. Save as aforesaid and unless otherwise expressly set out in the Contract, this clause shall remain in force for a period of 3 years after the termination or expiry of the Contract.

## 29. **Promotion of Contract**

The Contractor shall not undertake (or permit or allow to be undertaken) at any time, whether before during or after this Agreement any marketing, publicity or promotional activity or produce a client list which refers to or discloses the fact of or contents of this Agreement or identifies the University to or through the Media, any potential customer of the Contractor or any third party, without the prior written consent of the University on each occasion. For these purposes **Media** includes but is not limited to radio, television, newspapers, trade and/or specialist press, websites, the internet, texts, social media, email and any representatives of such media.

## 30. **Non-observance of Clauses/Termination**

- 30.1 If You breach or fail to observe any provision of this Contract We may give You written notice of such breach or non-observance and You shall have 28 days from receipt of the notice in which to rectify the breach or non-observance. Should You fail to rectify the breach or non-observance, then We shall have the right to give You written notice terminating the Contract with immediate effect.
- 30.2 We shall have the right at any time, by giving You notice in writing, to terminate a Purchase Order or Purchasing Card Instruction forthwith without liability to You in any of the following events:-
- 30.2.1 If You commit a breach of any of the Terms or Clauses of a Contract;
  - 30.2.2 If You, being a company, enter into liquidation whether compulsorily or voluntarily or has a petition presented for the appointment of an administrator or compounds with its creditors or has a receiver or administrative receiver appointed of all or any part of Your assets or takes or suffers any similar action in consequence of debt, or being an individual or partnership, shall suspend payment or propose to enter into any composition with creditors or become unable to pay Your debts (or have no reasonable prospect of so doing) or suffer a bankruptcy order or if anything

analogous to any of the foregoing under the law of a jurisdiction occurs in relation to You.

30.2.3 If Your financial position shall deteriorate to such extent that in Our opinion Your capability to adequately fulfil Your obligations hereunder has been placed in jeopardy.

30.2.4 If You cease or threaten to cease to carry on Your business or trade

30.3 Without prejudice to Our rights under any other provision of this Contract, We may for any other reason whatsoever terminate the Contract and / or Purchase Orders and / or Purchasing Card Instructions at any time by giving You reasonable notice and specifying the date from which termination shall be effective.

## 31. Remedies

31.1 Without prejudice to any other remedy, if any Services are not performed in accordance with a Contract, then We shall be entitled (whether or not any part of the Services have been accepted by Us) to exercise any one or more of the following remedies in Our sole discretion:-

31.1.1 to rescind a Purchase Order or Purchasing Card Instruction

31.1.2 to require You at Your expense to remedy defects in the Services and carry out any other necessary work to ensure that the Terms and Clauses of a Purchase Order or Purchasing Card Instruction are fulfilled;

31.1.3 to refuse to accept any further provision of any further Services without any liability to You;

31.1.4 to carry out at Your expense any work necessary to make the Services comply with a Purchase Order or Purchasing Card Instruction; and

31.1.5 to claim such damages as may have been sustained in consequence of Your breach.

## 32. Your Insolvency

If You become insolvent or bankrupt or (being a company) make an arrangement with Your creditors or have an administrative receiver or administrator appointed or commence to be wound up (other than for the purposes of amalgamation or reconstruction) We may without replacing or reducing any other of Our rights terminate the Contract with immediate effect by written notice to You or any person in whom the Contract may have become vested.

## 33. Assignment and Sub-letting

The Contract shall not be assigned by You nor sub-let or sub-contracted as a whole. You shall not sub-let or sub-contract any part of the Contract without Our written consent, but We shall not refuse such consent unreasonably. The restriction contained in this condition shall not apply to sub-contracts for materials for minor details or for any part of which the makers are named in the Contract. You shall be responsible for all work done and Goods supplied by all sub-contractors.

## 34. Inspection and audit

- 34.1 Where the Contract is identified as **cost plus** by the University, the University may, at any time, with or without notice, both during this Contract and for a period of six years after the end of the Contract, conduct an inspection and audit for any reasonable purpose, including but not limited to the following purposes:
- 34.1.1 to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this Contract), any relevant cost reduction and income generation initiatives carried out and/or the costs of all suppliers (including Sub-contractors) of the Goods or Services;
  - 34.1.2 to review the integrity, confidentiality and security of the University Data;
  - 34.1.3 to review the Contractor's compliance with the Data Protection Act 1998 (DPA), the FOIA, and any other legislation applicable to the Services;
  - 34.1.4 to review the Contractor's compliance with its obligations under this Contract;
  - 34.1.5 to review any records created during the provision of the Goods or Services;
  - 34.1.6 to review any books of account kept by the Contractor in connection with the provision of the Goods or Services;
  - 34.1.7 to carry out the audit and certification of the University's accounts;
  - 34.1.8 to carry out any examination of the economy, efficiency and effectiveness with which the University has used its resources;
  - 34.1.9 to verify the accuracy and completeness of any management information delivered or required by this Contract.
- 34.2 The University shall use its reasonable endeavours to ensure that the conduct of each inspection and audit does not unreasonably disrupt the Contractor or delay the provision of the Goods or Services.
- 34.3 Subject to the University's obligations of confidentiality, the Contractor shall on demand provide the University (and/or its agents or representatives) with all reasonable co-operation and assistance in relation to each inspection and audit, including:
- 34.3.1 providing all information requested by the University within the permitted scope of the audit;
  - 34.3.2 reasonable access to any sites controlled by the Contractor and to any vehicles or equipment used (whether exclusively or non-exclusively) in the performance of the Goods or Services; and
  - 34.3.3 access to the Staff.
- 34.4 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material default by the Contractor in which case the Contractor shall reimburse the University for all the University's costs and expenses incurred in the course of the inspection and audit.

34.5 If an audit identifies that:

34.5.1 the Contractor has failed to perform its obligations under this Contract in any material manner, the parties shall agree and implement a remedial plan. If the Contractor's failure relates to a failure to provide any information to the University about the Charges, proposed Charges or the Contractor's costs, then the remedial plan shall include a requirement for the provision of all such information;

34.5.2 the University has overpaid any Charges, the Contractor shall pay to the University the amount overpaid within 7 days, together with interest from the date of overpayment (at Barclays base lending rate plus 3 per cent). The University may deduct the relevant amount from the Charges if the Contractor fails to make this payment; and

34.5.3 the University has underpaid any Charges, the University shall pay to the Contractor the amount of the under-payment less the cost of the inspection and audit incurred by the University if this was due to a default by the Contractor in relation to invoicing within 14 days.

35. **Support of whistle-blowing**

35.1 The Contractor shall adopt a whistle-blowing policy for its own Staff and shall comply fully with the Public Interest Disclosure Act 1998 (PIDA)

35.2 If the Contractor or any of its Staff become aware of facts or circumstances involving or relation to any employee or officer of the University which, if disclosed by a University employee to the University, would be a protected disclosure under the PIDA, the Contractor will disclose all relevant facts and circumstances to the University in confidence, to enable the University to deal with the matter.

36. **Corrupt Gifts**

In connection with this or any other Contract between You and Us You shall not give, provide, or offer to Our staff or agents any loan, fee, reward, gift or any emolument or advantage whatsoever. In the event of any breach of this Clause, We shall, without prejudice to any other rights We may possess, be at liberty to terminate this Contract and any other contract immediately by notice and to recover from You any loss or damage resulting from such termination.

37. **Waiver**

A failure at any time to enforce any provision of the Contract shall in no way affect Our right at a later date to require complete performance of the Contract; nor shall the waiver of the breach of any provision be taken or held to be a waiver of any subsequent breach of the provision or be a waiver of the provision itself.

38. **Notice**

All notices and communications required to be given by You or Us in this Contract shall be made in writing and sent by first class post, fax or delivered by hand. Such notices shall be sent to You at Your registered or head office and if sent to Us sent to the Head of Purchasing and shall be deemed to have reached the party to whom it is addressed on the next business day following the date of posting, on the day of hand delivery and, if by fax, immediately

upon transmission, provided that a transmission report for the complete message can be produced.

39. **Amendment**

No addition, alteration or substitution of these Clauses will bind Us or form part of the Contract unless and until accepted in writing by Our Authorised Officer.

40. **Protection of the Site**

40.1 You shall provide all necessary protection of the premises at the Address and of plant, components, goods, materials and consumables and all things at the Address during the performance of the Services.

40.2 You shall restrict Your activities solely to the areas of the premises designated by Us.

40.3 You shall employ for the Services and retain during all working hours, competent personnel to Our reasonable satisfaction. Should We be dissatisfied with the personnel and give You notice thereof in writing, You shall exclude such personnel from the provision of the Services and substitute other personnel in their place.

40.4 You shall take all measures which under or by virtue of the provisions of any statutory requirement or the working rules of any industry, are required for the welfare, health, safety and protection of personnel employed at the Address by You (or Your permitted sub-contractors).

40.5 We operate a No Smoking policy in all Our buildings and all personnel employed by You (or Your sub-contractors) must comply with this ruling.

40.6 Electrical or other equipment belonging to You (or Your sub-contractors) shall not be used without Us having received prior notification and an opportunity to verify its safety.

40.7 You shall, in carrying out the Services, abide at all times with Our work place regulations.

40.8 The Services shall be carried out in compliance with all applicable statutory requirements (whether national or international), Codes of Practice and British or European Standards.

41. **Severability**

If any provision of these Clauses is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the provisions of these Clauses and the remainder of the provision in question shall not be affected thereby.

42. **Health & Safety and Environmental Protection**

42.1 You shall:-

42.1.1 in relation to all persons likely to be affected by the execution of a Purchase Order or Purchasing Card Instruction and coming into contact with the Services, take all such steps as may be reasonably practicable to ensure their health and safety;

42.1.2 not treat or dispose of any waste as a result of executing a Purchase Order or Purchasing Card Instruction in a manner likely to cause harm to the health and safety of any person or to the environment and shall comply with every relevant statutory duty; and

42.1.3 during the execution of a Purchase Order or Purchasing Card Instruction take such steps as are reasonably practicable to avoid harm to the environment.

43. **Law**

43.1 This Contract shall be subject to English Law and the jurisdiction of the English Courts.

43.2 The parties shall attempt to settle any dispute between themselves by informal negotiation. If that is not successful, the parties shall refer the dispute to alternative dispute resolution (“ADR”). If the ADR does not produce a result within 30 days of the reference (or such other period as the parties may agree) or if either party withdraws from or will not participate in ADR, the dispute shall be referred to the exclusive jurisdiction of the English courts.

44. You undertake, both during and after any Contract, that You will not refer to the details of the Contract, use Us as a reference site or name or refer to Us, whether verbally or in any publicity, promotional, advertising or reference material or announcement (or any material having a similar purpose), without Our prior written consent on each occasion. You will procure that your officers, employees, agents, representatives and any contractors comply with the requirements of this clause.

## MODULE 2

### TERMS AND CONDITIONS FOR THE INSTALLATION OF GOODS

#### 45. Supplemental Definitions

45.1 These Installation Terms apply if referred to in the Purchase Order.

45.2 The following definitions shall apply in addition to those set out elsewhere in the Contract:

“Acceptance Date” means the date on which We accept the Goods, once fully delivered, installed, commissioned and ready for use.

‘Goods and Services’ include all matter, articles, things, or provision of labour to carry out tasks, which are the subject of a Purchase Order, including, but not limited to, the Equipment, Computer Hardware and Computer Software specified on the face of the Purchase Order; in the schedule to this Module 2 and/or any Appendices and/or Schedules to this Contract.

‘Contact’ shall mean Our instruction contained in the Purchase Order, any other conditions, or documents referred to in the Purchase Order, and the General Clauses of Purchase .

‘Delivery’ shall mean the delivery including off loading and setting in the designated place the Goods supplied in accordance with this Contract and/or the provision of the Services supplied in accordance with this Contract.

‘Installation’ shall mean the installation of the Goods onto the site and into the operating environment specified by Us and certified as acceptable for the installation of the Goods in accordance with Clause [6] of these Installation Terms. Where the Goods to be supplied in accordance with this Contract comprise, or include Computer Hardware, installation shall include commissioning the Computer Hardware and the loading of the operating system software and any other specified software, whether supplied under this Contract, or not.

‘Completion Date’ shall mean the date specified on the Purchase Order, in the schedule to these Installation Terms or within the Programme of Delivery for the completion of the Delivery, and/or Installation and/or where applicable, the date by which it is intended that Acceptance will be signified by Us.

‘Amendment’ shall mean any variation to the contract confirmed by an Authorised Purchase Order Form carrying the words ‘Purchase Order Amendment Number ....’and/or by the issue of an instruction to vary the contract in accordance with clause[12]of the Installation Terms.

‘Fixed’ shall mean no variation of price nor reconciliation of costs is permitted, other than accordance with clause [2.2] of these Installation Terms.

“Programme of Delivery” means the programme for delivery and installation of the goods specified by Us, in the Purchase order or elsewhere.

“Duty” means import duty and levies.

46. **Prices**
- 46.1 Unless specifically agreed in the Contract all prices shall be in UK Pounds Sterling and Fixed for the duration of the Contract, inclusive of carriage, packaging and certification (where required) but exclusive of VAT. Prices shall be deemed to be exclusive of Duty unless otherwise specified on the face of Our Purchase Order issued against this Contract.
- 46.2 You shall be obliged to vary the Contract Price downwards in the event of any reduction(s) in Your published price list for all or any of the Goods and/or Services to be supplied in accordance with this Contract, such that the list prices before discount to Us fall below those ruling at any time prior to the payment of the invoice issued by You for the Goods and/or Services. You shall in any case be expected to vary the Contract Price downwards in the event of any reduction in the cost of materials, labour or transport, such that the costs to You fall below those ruling at the date of Your tender, quotation or the award of this Contract/issue of the Purchase Order.
47. **Contractors to Inform Themselves Fully**
- 47.1 You shall be deemed to have examined the requirements of the Contract. No claims from You for any additional payment will be allowed on the grounds of misinterpretation of the requirements specified - whether such specifications have been nominated by Us or proposed by You against an operational requirement issued by Us or these Installation Terms on which You could reasonably have satisfied yourselves by reference to Us prior to the issue of the Purchase Order/award of the Contract.
- 47.2 Unless otherwise stated in the schedule to these Installation Terms, or otherwise agreed in writing, You shall be obliged to examine the site onto or into which the Goods are to be installed under the Contract.
48. **The Installation Site**
- 48.1 Unless otherwise specified in the schedule to these Installation Terms, or otherwise agreed in writing and/or stated on the face of the Purchase Order, You shall be required to undertake a visit to the nominated site(s) for the installation, or any part(s) thereof, and shall:-
- 48.1.1 issue a report detailing work to be carried out to prepare the nominated site(s) for the installation, or any portion thereof (the "Report"), or;
  - 48.1.2 issue a certificate, stating that the site(s) is/are suitable and acceptable for the installation to commence.
- 48.2 The Report so issued by You in accordance with sub-clause 4.1.1 must supply adequate information in sufficient time to enable the buyer to prepare the nominated installation site or sites for the installation, and enable Us to provide: -
- 48.2.1 a suitable supply of electric current and such other mains services as may be required;
  - 48.2.2 all other required electrical and mechanical items and fittings, as specified by You at the time of awarding this Contract and agreed by Us (other than the Goods)

- 48.2.3 such facilities and environmental conditions as defined on the Purchase Order and/or in the schedule to these Installation Terms.
- 48.3 In circumstances where You issue a Report in accordance with sub-clause 4.1.1, You shall be required to re-examine the site(s) upon the notification by Us that any work specified in the Report has been completed and issue a certificate in accordance with sub-clause 4.1.1, or invoke the provisions of sub-clause 4.1.1 as appropriate.
- 48.4 We at our own expense shall ensure that such preparation and provision are made such that You are able to deliver the Goods and/or Services on the date specified for delivery on the Purchase Order and/or with any Programme of Delivery. In the event that such preparation and provision are unsuitable for the purpose of the Installation as the result of an act or default of one party, then any costs which the other party can demonstrate as being reasonably and necessarily incurred due to act or default of that party, shall be recoverable.
- 48.5 The Delivery and/or Installation site(s) shall be nominated on the Purchase Order issued against, and/or specified in the schedule to, these Installation Terms.
49. **Access**
- 49.1 We shall afford to Your authorised personnel at all reasonable times and with Our prior agreement, such access to the nominated site, (but not necessarily sole access) as may be necessary for the inspection of the site and for the execution of Delivery, providing always that We shall have the right to refuse to admit to, or order the removal from, the site of any person employed by You, or acting on Your behalf, or any authorised sub-contractor or who, in Our opinion (which shall be final), is not a fit and proper person to be on the site. Action under this clause shall be confirmed in writing to You by Us immediately and shall not relieve You of any of its obligations under the Contract.
- 49.2 You must take reasonable care to ensure that, in the execution of the Delivery and Installation, You do not interfere with Our operations or those of Our employees or any other contractor employed on the site.
- 49.3 You may work on the site only with Our permission.
- 49.4 You shall, without prejudice to any other obligations with regard to access to the site set out in the Contract: -
- 49.4.1 comply at all times with Your statutory obligations in respect of Health and Safety at Work, and any subsequent re-enactments or amendments thereto, and Our policies, procedures and/or reasonable instructions in respect of Health and Safety;
  - 49.4.2 comply with any of Our policies, procedures and/or reasonable instructions with regard to security when attempting to gain access to and egress from, and at all times when working on, the site;
  - 49.4.3 comply with Our policies, procedures and/or instructions in respect of the use of any services and/or facilities to be provided by Us in accordance with the Contract and/or as may otherwise be reasonably required so that You are able to meet Your obligations under the Contract;

- 49.4.4 comply with any of Our policies, procedures and/or instructions in respect of the site and/or any other of Our sites to which You may have access for any purpose;
  - 49.4.5 ensure that any Installation and/or other services to be provided under the Contract which require Your attendance on the site to be undertaken during Our standard operational hours unless otherwise agreed by Us;
  - 49.4.6 leave the Goods and/or the site in a clean and tidy condition at the end of each attendance on the site and upon completion of the Installation in accordance with these Installation Terms..
- 49.5 You shall ensure that Your personnel and the personnel of any of Your agents and/or sub-contractors shall comply with their obligations set out in sub-clauses 5.1 to 5.4 inclusive above.

## 50. **Quality**

- 50.1 In the absence of a specification or sample, any Goods supplied in accordance with this Contract will be new and of good construction, sound materially, of adequate strength and free of defects in design materials and workmanship. Notwithstanding the aforementioned, Goods and/or Services supplied must comply with the express terms of the Contract and implied conditions, warranties and terms contained in the Sale of Goods Act 1979, and/or the Supply of Goods and Services Act 2 1982 as amended by any related statutes, and any statutory re-enactment(s) or modification(s) thereof and with all appropriate European Union Directives applicable and relevant to the Goods and/or Services at the time of the Purchase Order and/or date of the Contract (in which case all Goods supplied must be clearly endorsed as being fully compliant as aforesaid by the application of the CE Mark in a position on the Goods which meets the requirements of the Directives and/or You shall be obliged to provide copies of relevant test or other certification in respect of the Goods and/or Services at Our request) and/or with any specification of the British Standards Institution (or equivalent) which is relevant to the Goods and Services at time of the Purchase Order and/or date of this Contract.
- 50.2 Without prejudice to any of Your obligations to provide other warranties in accordance with this Contract, You hereby warrant that the Goods supplied to Us and all systems and equipment which may be utilised or relied upon by You in the provision of Services to Us comply with the Year 2000 conformity requirements set out by the British Standards Institution in the document PD 2000-1 "A definition of Year 2000 Conformity Requirements" (including both the definition and the amplification set out in rules 1 - 4 of that document) and, without prejudice to such statement of conformity, neither the Goods or Services, nor the performance of Your obligations under the Contract, will be impaired, disrupted or adversely affected, whether wholly or in part, as a result of the advent of the Year 2000 or any other date after such date.

## 51. **Standards of Installation**

- 51.1 The installation shall be defined on the Purchase Order and/or in the schedule to these Installation Terms, and shall include the supply, delivery, installation, testing, commissioning and setting to work of the Goods and all other work required to be carried out by You and in accordance with the Contract.

51.2 To the extent that the standard of the Installation has not been specified in the Contract, You shall use good quality materials, techniques and standards to execute the Contract with care, skill and diligence required in accordance with the best industry practice.

52. **Programme of Installation**

52.1 Where specified on the face of the Purchase Order and/or in the schedule the Installation shall be carried out in accordance with the programme of Installation which shall be agreed at the time of awarding the Contract, and shall be included in the schedule to these Installation Terms. Where a programme of Installation is not agreed, Delivery and installation, which shall not be deemed to have taken place until We have accepted the Goods and/or Services in accordance with clauses [11 and 12] hereof, must be in compliance with the date specified on the Purchase Order and/or in the schedule to these Installation Terms.

53. **Packaging, Marking and Delivery**

53.1 All Goods supplied against the Purchase Order must be adequately protected against damage and deterioration in transit and delivered, carriage paid. Any information related to the handling and storage of Goods upon receipt must be clearly marked on the packaging and accompanying paperwork. The Goods shall be at Your risk until delivered to Us at the point specified in the Purchase Order unless We otherwise agree in writing. "Delivered" shall mean off loaded and set in the place designated by Us, but shall not under any circumstances be deemed to be acceptance of the goods by the Buyer. Unless otherwise provided in the Order You shall be considered responsible for the collection and disposal of all returnable Packaging at no cost to Us.

53.2 No deliveries shall be made to the site specified in the schedule to these Installation Terms without the prior permission of an Authorised Officer, giving at least 48 hours notice.

53.3 You shall be responsible for the delivery of Goods to the nominated site and shall provide all necessary labour, materials and plant required for the off-loading and placing in position of any Goods and for all other purposes of the Contract.

53.4 The Goods shall be transported and off-loaded at Your sole risk and expense. You shall be responsible for the safe custody of any equipment which is Your property whilst it is held on the site until the Acceptance Date, after which You shall remove such equipment leaving the site and premises, in a clean and tidy condition. For the avoidance of doubt, any goods and/or equipment which are Your property shall be held on the site at Your sole risk. We shall not be liable for any loss or damage to such goods and equipment howsoever caused, and shall have the right to charge for storage of the goods and equipment in the event that You fail to remove Your goods and equipment from site within a reasonable period of time following completion of delivery.

54. **Delays by the Contractor**

54.1 Any time or period for Delivery, despatch, Installation commissioning and/or completion shall be the essence of this Contract. If the Contract fails to complete: -

54.1.1 any specific portion of the Installation by the date(s) specified in the Programme of Delivery (or such revised dates as may be agreed in accordance with Clause [11] of these Installation Terms)

54.1.2 the Installation of the Goods and/or Services by the Completion Date (or such revised dates as may be agreed in accordance with Clause [11] of these Installation Terms,)

We shall have the right to either:-

- (a) cancel any specific Purchase Orders issued against this Contract and/or terminate this Contract whereupon Our rights shall be as described in clause [14] hereof, or
- (b) proceed with the fulfilment of the Purchase Order and/or this Contract whereupon We shall have the right to recover any losses which We may have suffered from You as set out in clause [10.2] hereof.

It shall be for Us to notify You of Our intention to cancel the Purchase Order and/or terminate this Contract or proceed with fulfilment of the Order/Contract, such decision being at Our sole and absolute discretion which shall be full and final.

54.2 In the event that We elect to proceed with the fulfilment of the Contract, and We have suffered any loss, costs, expense or damage, then without prejudice to Our rights as aforesaid We shall have the right to deduct, as liquidated and ascertained damages and not by the way of penalty, from the price as stated on the face of the Purchase Order and/or the Price as stated in the Contract either:-

54.2.1 the percentage stated on the face of the Purchase Order and/or in the schedule to these Installation Terms and agreed at the time of awarding this Contract, of the total Price, whichever is specified as being applicable, for each week or part thereof between the Completion Date and the actual Acceptance Date or:-

54.2.2 where no percentage is specified on the Purchase Order a sum equivalent to 1% (one per cent) of the total Price stated on the face of the Purchase Order for each week or part thereof between the Completion Date and the actual Acceptance Date.

Such deductions so made shall be without prejudice to all other rights and remedies available to Us.

54.3 In any event the amount so deducted shall not exceed the maximum percentage of the total Price of the Purchase Order and/or total Contract Price:-

54.3.1 as stated on the face of the Purchase Order and/or in the schedule to these Installation Terms where percentages have been agreed in accordance with sub-clause [10.2.1] or

54.3.2 a maximum of ten per cent (10%) of the total Contract Price as stated on the Order and/or in the schedule to these Installation Terms, if the circumstances prevail as described in sub-10.2.2.

## 55. Acceptance and Acceptance Tests

55.1 The Contractor shall be required to undertake acceptance tests for specific portion(s) of the Installation and/or the complete Installation in accordance with the specifications detailed on the Purchase Order and/or in the schedule to these Installation Terms ("Acceptance Tests"), such Acceptance Tests being related to the Programme of Installation and/or

payment terms applicable to the Contract. In the event that Acceptance Tests and subsequent certification are required then: -

- 55.2 Where the details of the Acceptance Tests to be implemented in accordance with this Contract are not specified on the face of the Purchase Order or in the schedule to these Installation Terms, the Acceptance Tests to be administered shall be defined as those procedures published by the manufacturer of the relevant Goods and/or their authorised agents, which are generally accepted as enabling Us to satisfy ourselves that the Goods and/or Services or specific portion thereof have been delivered, installed and commissioned in accordance with the Contract.
- 55.3 Where specified on the face of the Purchase Order and/or in the schedule to and/or where we have issued a specification notifying You that the Goods are to be utilised and/or installed on or with goods supplied by sources other than You, including, but not limited to, computer application software to be supplied by You in accordance with this Contract, (the "Combined Installation") We shall have the right to require that Acceptance Tests are undertaken in respect of the complete combined Installation. Such circumstances may, by the agreement of the parties, be reflected in the programme of Delivery and/or any staged payment which may apply to the Purchase Order/this Contract.
- 55.4 You shall give Us 7 days written notice, or such shorter notice as may be agreed, of the date when you will be able to commence Acceptance Tests.
- 55.5 Acceptance Tests will be applied to the complete Combined Installation and to any portion thereof as stipulated in the schedule to these Installation Terms. Such Acceptance Tests will be scheduled in direct relation to the agreed stages of installation or to the Completion Date as specified on the Purchase Order and/or in the schedule to these Installation Terms.
- 55.6 Unless otherwise specified in the Purchase Order/Contract, it shall be for You to provide the necessary equipment, labour and things of all kinds to carry out the Acceptance Tests.
- 55.7 The Acceptance Tests shall take place on the dates specified in the schedule to these Installation Terms, or such dates as We shall notify to You in writing, unless otherwise agreed.
- 55.8 If You or Your appropriate authorised officer fails to attend on the appointed date(s) for the Acceptance Tests, We shall be entitled to proceed in Your absence and the said test shall be deemed to have been made in the presence of authorised officer and copies of all documents produced as a result of the tests shall be made immediately available to Us.
- 55.9 If You fail to make such tests within the time stipulated in clause [11.6] above, We reserve the right to undertake the Acceptance Tests specified. All Acceptance Tests undertaken by Us shall be at Your risk and expense, unless you shall establish to the satisfaction of an Authorised Officer that the tests were not being delayed, in which case such tests so made shall be at Our risk and expense.
- 55.10 If the Goods and/or Services or any portion thereof fail to pass the Acceptance Tests, repeat tests shall be carried out within a reasonable time by Us. In the event that the Goods and/or services or any portion thereof, are not in accordance with the Contract, then without prejudice to the rights under clauses [11 & 13] of these Installation Terms, We shall have the right to:-

- 55.10.1 require You to supply, free of all charges, such additional or replacement Goods and/or Services as may be necessary to enable the Goods and/or Services to pass the Acceptance Tests;
  - 55.10.2 accept and retain such of the Goods and/or services We may consider expedient at such reduced price as may be agreed by Us and You;
  - 55.10.3 contract with a third party to enable the Goods and/or Services to pass the Acceptance Tests. In such circumstances any costs incurred shall be for Your account, and shall be deducted from sums due under this, or any other contract.
  - 55.10.4 reject the Goods and/or Services, where they are not in accordance with the Contract.
- 55.11 In the event that Goods and/or Services delivered by You fail to conform with the Contract, whether by reason of not being of quality, or fit for the purpose stipulated either in the specification issued by Us or in accordance with Your published specifications, and whether the Goods and/or Services have been subjected to Acceptance Tests or otherwise, We shall without prejudice to Our rights under clauses [13 and 16 and of these Installation Terms have the right to reject such Goods and/or Services within a reasonable time of delivery and/or acceptance. We shall be obliged to give you reasonable opportunity to replace any rejected Goods and/or provide Services with Goods and/or Services which conform to the Contract, but shall thereafter, without prejudice to any other right which We may have against You, have the right to purchase such Goods and/or Services as aforesaid the price of which shall be for Your account. When Goods are rejected they will be stored at Our site, and subsequently returned, at Your sole risk and expense.
- 55.12 The making of payment, whether of the Contract Price or for any portion thereof shall not prejudice Our right of rejection.
56. **Acceptance Certificate**
- 56.1 Acceptance certification will not normally be required under these Installation Terms, but where specified on the face of the Purchase Order and/or in the schedule to these Installation Terms, and as soon as the Acceptance Tests appropriate to, or specified for, the Goods and/or Services have been completed and the Goods and/or Services have passed the Acceptance Tests, an Authorised Officer shall issue an Acceptance certificate which will state the Acceptance Date and any outstanding defects in the Installation or relevant portion thereof ("Acceptance Certificate"). You undertake to rectify such defects immediately and without delay and, in any case, by a specific date, which shall be binding, and which shall be agreed in writing by both parties within seven (7) working days of the Date of Acceptance. In the event that You shall fail to remedy such defects within the period specified and agreed, Our rights shall be as set out in clauses [11 and 13] of these Installation Terms.
57. **Cancellation**
- 57.1 Any time or period for delivery, despatch, installation and/or completion shall be of the essence of this Contract and/or any Purchase Order Issued against this Contract. We shall be entitled at their sole and absolute discretion to either:
- 57.1.1 cancel an order issued against this Contract and/or terminate this Contract and/or any part thereof forthwith, in which case We shall have the right to claim reimbursement for all losses suffered, or

57.1.2 proceed with the fulfilment of the Order/Contract, in which case Our rights shall be as set out in these Installation Terms.

Such rights as set out above shall accrue to Us in the case of sub-clauses 13.1.1 in all of the events listed at Clauses [13.2 to 13.7] inclusive below and in the case of sub-clause [13.1.2] only in the events listed at clauses [13.2 to 13.4] to inclusive, below.

57.2 We shall also be entitled to cancel this Contract or any Purchase Order if:

57.2.1 You fail to deliver Goods and/or Services in accordance with the terms of the Purchase Order/Contract.

57.2.2 You fail to make progress with the Purchase Order so as to jeopardise the purpose of the Purchase Order/Contract.

57.2.3 You having been given a reasonable period to rectify the situation, fail to provide adequate replacement Goods and/or an adequate or satisfactory Service.

57.2.4 You become bankrupt or insolvent, or have a receiving order made against you, or compound with your creditors or, being a corporation, commences to be wound up or if you attempt to carry on its business under a receiver for the benefit of any of its creditors.

57.2.5 You are the subject of a takeover by or merger with another company.

57.3 In the event that we elect to cancel a Purchase Order and/or terminate this Contract or any part hereof for any of the foregoing reasons We shall not be liable for any unfulfilled commitment.

## 58. **Patents and Other Rights**

58.1 You shall fully indemnify Us against all actions, claims, demands, proceedings, damages, costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of any patent, design or copyright by the use or possession of the Goods and/or any product which is a tangible output of the Services supplied by You under the Contract subject to the following:-

58.1.1 We shall promptly notify You in writing of any alleged infringement of which they have notice.

58.1.2 We must make no admissions without Your consent.

58.1.3 We, at Your request and expense shall allow You to conduct and/or settle all negotiations and litigation, and give You all reasonable assistance. The costs incurred or recovered in such negotiations or litigation shall be for Your account.

58.2 If at any time any allegation of infringement of any patent, registered design or copyright is made in respect of the Goods and/or Services or in Your reasonable opinion is likely to be made, You may, at your own expense, modify or replace the Goods and/or Services or any portion(s) thereof, without detracting from the overall performance of the Goods and/or any product which is a tangible output of the services, You making good to Us any loss of use during modification or replacement, so as to avoid the infringement. The provisions of clause [4] of Module 1 shall then take effect as if We had requested a variation save that that You shall not be entitled to any increase to the Contract Price.

- 58.3 Where development forms part of the Purchase Order/this Contract the ownership of any invention, design or copyright arising from such development shall be transferred to Us and You shall co-operate in any measure necessary to make such transfer effective as soon as any such right arises.
- 58.4 You shall treat all information provided by Us as confidential and use such information only for purposes of performing Our Purchase Order/meeting their obligations under this Contract. Where drawings or other data are issued You shall exercise proper custody and control and return/dispose of such accordance with Our instructions.
59. **Software**
- 59.1 You shall be responsible for providing in accordance with the Contract, all software and associated documentation: -
- 59.1.1 the Goods comprise of and/or include Computer Hardware and/or
  - 59.1.2 the Software and associated documentation is necessary for the satisfactory operation of the Goods and/or
  - 59.1.3 where the provision of such Software and associated documentation is specified on the Order/in the schedule to these installation Terms.
- 59.2 Where the provision of the Software is not subject to the separate licence arrangements: -
- 59.2.1 You hereby grant to Us a perpetual right to use the Software (whether modified as hereinafter provided or not) on the Goods.
  - 59.2.2 We shall in perpetuity have the right to modify or add to any of the Software without reference or obligation to You.
  - 59.2.3 all of Your patent, registered design, copyright and other intellectual property rights of the Contractor in the Software shall remain vested in You.
  - 59.2.4 We shall have copyright in any modifications or additions made to the Software, but shall in no case acquire copyright in the Software itself.
  - 59.2.5 We shall not assign or sub-license to any third party to have the use of the software, including any translation, compilation, adaptation, enhancement or any other version of the Software, without your prior written consent.
  - 59.2.6 We shall only make so many copies of the Software or any portion thereof as are reasonably necessary for operational security and use.
- 59.3 Where You provide Third Party Software in accordance with this Contract or otherwise in order to enable them to meet Your obligations under this Contract, You shall either: -
- 59.3.1 Procure for Us a non-exclusive, perpetual and irrevocable licence to use the Software on the Terms and Clauses of a separate Licence Agreement, or
  - 59.3.2 grant to Us a sub-licence to use the Third Party Software on the Terms and Clauses of a separate Licence Agreement.

59.4 You hereby warrant that you have the right in Law to sub-license the Third Party Software as aforesaid.

## 60. **Standard of Performance**

60.1 You shall ensure, and undertake to ensure that the Goods maintain the standard of performance specified and/or achieved that are either:-

60.1.1 in the Original Equipment Manufacturer's and/or their authorised Agents and/or Your published specification for the Goods, or

60.1.2 in the schedule to these Installation Terms and/or on the face of the Purchase Order, or

60.1.3 as demonstrated in the Acceptance Tests and accepted by Us, or

60.1.4 a combination of the above, for either the period of the maintenance contract if the Goods are to be maintained by You, or the Warranty period if the Goods are not to be maintained by You.

60.2 If We claim that the Goods and/or Services or any portion thereof, are not achieving and maintaining the standard of performance specified in the Contract, then notwithstanding prior acceptance of the Goods and/or Services in accordance with clauses [11 and 12] of hereof You shall undertake necessary investigations to disprove Our claims, or to prove that such failure to maintain requisite standards is due to the fault of the Us, free of all charges.

## 61. **Indemnity**

61.1 You will keep Us indemnified in respect of all loss and/or expense which results during proper use directly or indirectly from defective materials, goods, workmanship or design supplied by You, and against any claims for the loss or injury to any person by reason of Your negligence, or any act or omission on Your part or of Your employees, sub-contractors, or agents arising out of the performance of the Purchase Order and/or this Contract. You will also keep Us indemnified against any damage to the Buyer's property (including any materials, tools or patterns sent to You for any purpose). For these purposes You will be required to produce evidence of premium receipts for Public Liability Insurance coverage of not less than five million pounds (£5,000,000) sterling or as otherwise shown on the face of the Purchase Order and/or in the schedule to these Installation Terms for any one, or series of claims that may arise.

## 62. **Sub-Contracting**

62.1 You shall not, without Our written consent, which shall not be unreasonably withheld, sub-contract the Contract or any part thereof, or make any Sub-Contract with any person or persons for the execution of any part of the Order/Contract, but the restrictions contained in this clause shall not apply to the supply of materials or minor details, nor to any part of the Contract for which, a sub-contractor is named on the Purchase Order, and/or in the schedule to these Installation Terms.

62.2 In circumstances where We give written consent to You to sub-contract specific parts of the Contract, such written consent shall be agreed in writing, and shall not relieve You from any liability or obligations under the Contract, and You shall be responsible for the acts, defaults or neglects of Your sub-contractor, their agents, servants or workmen as fully as if

they were acts, defaults or neglects of You. When requested by Us a copy of any sub-order and/or sub-contract detail will be provided at no charge.

62.3 We may by written notice to You assign the benefits and obligations of this Contract.

### 63. **Warranty**

63.1 You shall be responsible for making good at Your own expense on the site(s) nominated, and within the time scales specified in sub-clause [19.2] of this clause, any defect in or damage to any of the Goods and/or output of the Services provided which may develop during a period of 12 calendar months, where the Goods are to be utilised immediately, (which, where an Acceptance Certificate is issued, shall be the date stated on the Acceptance Certificate for the Goods) or a period of 18 calendar months where the Goods are not to be utilised immediately, from the date of delivery, whichever is the shortest period hereinafter referred to as the "Warranty Period", for that portion which results in a failure of the Goods to fulfil the functions or meet the level of performance specified in the Contract and accepted by Us by the issue of Acceptance Certification or otherwise, which arises from:-

63.1.1 defective materials, including software, workmanship or design (other than a design furnished or specified by Us for which You have disclaimed responsibility in writing within a reasonable time, after the receipt of the Our instructions), or,

63.1.2 any act or omission by You done or omitted during the Warranty Period.

63.2 You must respond within a maximum of 8 working hours or such other period as specified on the Purchase Order and/or in the schedule to these Installation Terms to a request for service under the provisions of the Warranty, and must, wherever possible effect a repair within a maximum of a further 8 working hours.

63.3 If any such damage or defect cannot be remedied within the time scale detailed in sub-clause [19.2] hereof, or You fail to respond and remedy the damage or defect within a reasonable time, We may proceed to engage the services of a third party to provide the Warranty Service. Any service so undertaken shall be at Your risk and expense, and any costs incurred by Us shall be for Your account. Should We invoke the provisions of this clause, the utilisation of a third party services shall not affect the Warranty provisions for the remainder of the Warranty Period, nor Our ability to enter into a Maintenance Agreement with You, and You shall be responsible for meeting their obligations thereafter.

63.4 Should We invoke the provisions of sub-clause [19.3] hereof of this clause, this shall be without prejudice to any other rights which We may have against You in respect of You failing to remedy such defect or damage.

63.5 Where a defect involves a fault inherent in the design of the Goods and/or specification of Services provided, or any part thereof, You shall, at your own expense, promptly carry out such re-design as may be necessary to prevent a recurrence of the defect, and upon completion shall rectify the fault in the Goods and/or standard of the Services provided. Any such re-design or re-specification shall be accomplished in such a manner as to ensure that the performance and operation of the Goods and/or Services is not down-graded by virtue of such re-design and/or re-specification from the standard as accepted by Us in accordance with this Contract.

- 63.6 The provisions of this Clause shall not apply to any defect or damage which arises or develops as a result of any alteration, addition or attachment to the Goods where: -
- 63.6.1 You have published by means of publication in Your, or the original manufacture's specifications, a notification stating that the alteration, addition or attachment will downgrade the standard of performance of the Goods and/or invalidate the warranty;
  - 63.6.2 You have otherwise notified Us in writing that a specific alteration, addition or attachment will downgrade the standards of performance of the Goods and/or invalidate the warranty;
  - 63.6.3 the warranty is invalidated by our negligent act or omission , provided always that it shall be for You to prove that any defect or damage has been caused by the alteration, addition or attachment. Save as aforesaid, We shall have the right to make any alteration and/or addition and/or attachment to the Goods, whether such alteration, addition and/or attachment is made by Our employees by a sub-contractor and/or appropriately qualified third party source, without reference to you and you shall not be relieved of any of their obligations to provide warranty services in accordance with this clause.
- 63.7 All services under the provision of this Warranty shall be provided free of all charges, and shall be carried out on Our site(s) concerned. Goods shall not be removed from Us for the provision of Warranty services without the permission of an Authorised Officer.
- 63.8 In circumstances where Goods are authorised to be removed from Our site, the Goods shall at all times remain Our property, but the risk inherent in the Goods shall pass to You from the time the Goods are removed from their normal operating environment until they are returned and, where appropriate, reinstalled into the same operating environment, or any other operating environment designated by an Authorised Officer; appropriate Acceptance Tests have been concluded where necessary, and acceptance documentation has been signed by Us.
- 63.9 You shall be solely liable to rectify any loss or damage howsoever caused prior to such Acceptance as a matter of urgency and, in any case, within a time scale to be agreed by both parties at the appropriate time.
- 63.10 Where Goods are held at site the Goods must be readily identifiable as Our property and You must keep appropriate records thereof.
- 63.11 Should You be affected by incidents such as bankruptcy or liquidation You must identify such Goods to the receiver, etc. as our property.
- 63.12 This Clause in no way seeks to limit any statutory rights which may accrue to Us under this Contract.
64. **Loan Equipment**
- 64.1 In circumstances where Goods or any specific components or parts thereof and/or any Software are removed from site in order to provide Warranty services , or for any other reason as may be agreed by the parties, You shall, upon the request of an Authorised Officer, be required to provide Goods of an identical or nearest equivalent specification on a free loan basis for the entire period of time for which the original Goods and/or specific components or parts thereof are held on Your site.

64.2 Any goods supplied on loan in accordance with this clause will remain Your property but will be held on site at Your risk, for the duration of the period whilst it is installed and being utilised by Us. The risk shall return to You immediately the goods are removed from the use within Our user department and replaced by original Goods. We undertake to adequately insure the goods against loss or damage whilst they are in use on Our premises, but will not accept any liability for failure or breakdown of the Goods due to wear and tear or faulty manufacture. You must repair or replace goods which are loaned to Us and subsequently develop a fault within the timescales specified under the Warranty 19].

## 65. Replacement Goods and / or Services

65.1 In the event that all or any of the Goods and/or Services supplied in accordance with the Purchase Order/this Contract shall consistently fail to achieve and maintain the standards of performance either:-

65.1.1 as specified in the published specification for the Goods and/or Services as issued by the manufacturers of the Goods and/or their authorised agents, and/or the service provider and/or You;

65.1.2 as specified on the face to the Purchase Order and/or in the schedule to these Installation Terms;

65.1.3 as demonstrated in the Acceptance Tests and/or accepted in writing by Us;

65.1.4 a combination of the above, and provided that the Goods have been installed and the Goods and/or Services are being used by Us in accordance with the installation and/or operating instructions: -

65.1.5 issued and/or published by You in writing or any other appropriate media agreed by Us;

65.1.6 issued and/or published by the manufacturers of the Goods and/or their authorised agents and/or the service provider;

65.1.7 where no instructions are provided, in accordance with generally accepted good practice appropriate to the Goods and/or Services;

65.1.8 combination of the above, You hereby warrant that the Goods and/or Services, or specific portion(s) thereof affected by such circumstances shall be replaced with Goods and/or Services of equal or nearest equivalent higher specification forthwith and free of all charges.

65.2 For the avoidance of doubt, “consistently fail” shall be defined as the Goods requiring a maximum of four (4) visits to provide service repairs, and/or return visits to provide the services to satisfactory standards, for the period and under the terms and conditions of the warranty provided with the Goods and/or Services in accordance with Clause [19] or the Installation Terms, or such other period as may be agreed by the parties in writing.

65.3 In the event that the Goods and/or Services are supplied without Warranty, then Our rights under this clause shall remain unaffected only in circumstances where We enters into a separate maintenance agreement with You.

- 65.4 Service calls which you can prove as having been made necessary due to Our negligent act or omission, or which are defined as return calls to replace parts shall be excluded from the total number of visits referred to in sub-clause [21.2] hereof.
- 65.5 If You remove the Goods from site to undertake warranty repairs, and fail to return the Goods repaired and operating to the standards of performance as defined in [21.1] hereof within a maximum period of ten working days, and/or fail to provide an adequate service within the same period, from the date of receiving the initial request from Us, the failure shall be defined as one service call added to the cumulative total for the purposes of this Contract for each ten working day period as aforesaid.
- 65.6 Replacement Goods and/or Services supplied by You under this Clause shall be supplied in accordance with these Installation Terms wherever such Installation Terms are appropriate. The Goods and/or Services shall be supplied with a full warranty service as defined in, and for the period stated in 19 of these Installation Terms commencing on the date that the replacement Goods and/or Services are delivered or accepted whichever date is appropriate to the Purchase Order/this Contract. Our rights to require You to replace Goods and/or Services in accordance with this Clause shall apply to any replacement Goods and/or Services as if they were the Goods and/or Services originally supplied.
66. **Performance Guarantee**
- 66.1 Unless otherwise stated, You shall be solely and entirely responsible for the specification of the Goods required to perform the tasks specified and achieve satisfactory levels of performance of the requirements specified by Us in the invitation to tender document, and/or any documentation subsequently issued by Us, and agreed by the parties as forming part of any Purchase Order issued against this Contract or part of this Contract and appended hereto.
- 66.2 Any amendments made to Your original specification subsequent to discussions with Us shall not excuse You from their obligations under this clause.
- 66.3 In circumstances where Goods so specified by You in the tender response, any subsequent amendments thereto or any other documentation submitted by You and accepted by Us in the award of this Contract, fails to carry out the functions and/or otherwise meet the specification specified by Us, or any other systems requirement issued by Us in connection with this Contract, and agreed by both parties, You shall be responsible for providing such additional or replacement Goods and/or Services as may be necessary to achieve the requirements in accordance with this Contract free of all charges.
- 66.4 Such provision of replacement Goods shall be in accordance with the conditions of these Installation Terms, and shall where specified be subject to Acceptance Tests and the issue of Acceptance Certificates in accordance with this Contract.
- 66.5 The inclusion of this Clause in no way seeks to limit any statutory rights which may accrue to Us under this Contract, and shall not relieve either party of their obligations under this Contract.
67. **Safety**
- 67.1 In accordance with the requirements of the Health & Safety at Work Act 1974 and any re-enactment or amendment thereof, any safety precautions required for the handling of the material covered by the Purchase Order/Contract are to be clearly indicated on each consignment.

- 67.2 Hazardous goods must be marked in accordance with Chemicals, (Hazard Information and Packaging for Supply) Regulations (CHIP2) 1994 and subsequent amendments. Risk and Safety Phrases must be in English.
- 67.3 Goods must be accompanied by emergency information in English in the form of written instructions, labels or markings. You shall observe the requirements of U.K. and International Agreements relating to the packing, labelling and carriage of hazardous Goods.
- 67.4 Hazard data sheets must be supplied with the delivery for all hazardous materials, and the information contained in the data sheets must meet the legal requirements of the Health and Safety at Work Act, and the Health and Safety Executive Guidance Note HS/G27
68. **Consumable Supplies**
- 68.1 We reserve the right to procure consumable supplies to be used on or with the Goods, and suitable for the Goods from You or such other source as We may deem appropriate. Such procurement of consumables from a source other than You shall not invalidate our rights under these Installation Terms, and shall in no way affect the provisions under Warranty claims made in accordance with clause [19], nor Our rights under clause [22] of this Contract provided that the consumables utilised meet the minimum standards as published by You, the manufacturer and/or their authorised agents, or where no published standards are available, the standards generally accepted as being appropriate to the Goods concerned.
- 68.2 In the event that You shall claim that the use of specific consumables is downgrading the standards of performance of the Goods and/or increasing the cost to You of meeting Your obligations to provide Warranty services in accordance with clause [19] and/or Replacement Goods in accordance with clause [22] of this Contract, it shall be for You to prove that the consumables do not meet the requisite minimum standards, and are affecting the Goods and/or increasing their costs as aforesaid. If You prove that the consumables do not meet the requisite minimum standards We shall cease using the consumables concerned and procure alternative consumables which meet the standards required.
69. **Maintenance**
- 69.1 If required by Us before the end of the Warranty Period, shall enter into a separate contract for the maintenance of the Goods subject to terms and conditions to be agreed separately.
- 69.2 If a maintenance contract commences on the Acceptance Date the maintenance charges during the Warranty Period shall reflect Your obligations under Clause [19] of these Installation Terms.
70. **Spares**
- 70.1 Where appropriate to the Goods supplied in accordance with this Contract, You shall make available to Us, or any nominated third party maintenance source, on request and with reasonable despatch and at reasonable prices, all spares and replacement parts as We, or nominated third party maintenance source, shall require for the Goods.
- 70.2 You shall maintain a supply of such spares or replacement parts for a period of seven (7) years from the date of Delivery or the Acceptance Date, whichever is the later, or such period as may be agreed at the time of awarding the Contract.

- 70.3 Such spares or replacement parts shall be required to be fully compatible with, and maintain as a minimum the same levels of performance as, the Goods originally supplied, but need not be identical to those items.
- 70.4 If during this period You, or Your sub-contractor intend to discontinue the manufacture of spares or replacement parts for the Goods You shall immediately give notice to Us of such intention, and advise the Buyer of any third party source from which the spares or replacement parts will be available, or to which third party source You intend to provide drawings, patterns, specifications and other information.
- 70.5 If during the stipulated period of seven (7) years You or Your sub-contractor (in the absence of agreement as aforesaid) either: -
- 70.5.1 fails to make available to Us with reasonable despatch, at reasonable prices all such spares or replacement parts as We or nominated third party maintenance source shall require for the Goods; or
  - 70.5.2 becomes insolvent or has receiving order made against them, or commences to be wound up (not being a member's winding up for the purposes of reconstruction), then You shall so far as You are legally entitled to do so, and if so required by Us, as soon as practicable, deliver to Us or Our nominated third party maintenance source, free of charge such drawings, patterns, specifications and other information as referred to in sub-clause [26.4] hereof, and which We, or their nominated third party source, shall be entitled to retain for such time only as necessary for the exercise by Us of their rights under this clause, and which if You so require, shall be returned by Us to You at Our cost and expense.

## 71. **Attachments to the Goods**

- 71.1 We shall have the right to attach to, or install onto the Goods any goods, including but not limited to installing Computer Software onto Computer Hardware, which We consider to be appropriate and necessary to enable the Goods to be utilised to the fullest extent as required by Us, and /or as may be specified in this Contract. Such goods so attached and/or installed and/or shall not have the effect of degrading the performance of the Goods, and shall not relieve You from meeting Your obligations to provide Warranty services in accordance with clause [19] or Replacement Goods in accordance with clause [21] hereof provided that: -
- 71.1.1 the goods attached or installed are not specified in any of Your and/or the manufacturer and/or their authorised agents published specifications as having the effect of degrading the standards of performance or invalidating Our rights under clauses [19] and [21] as aforesaid.
  - 71.1.2 You have not otherwise notified Us in writing that the attachment or installation of specific goods will degrade the standards of performance or invalidate Our rights under clauses [19] and [21] as aforesaid.
  - 71.1.3 the goods have been attached or installed in accordance with the published instructions of the supplier of the goods concerned.
- 71.2 In the event that the attachments and/or installation is made by Us, and or You can prove that such attachment or installation is downgrading the standard of performance of the Goods and/or otherwise increasing the frequency of the provision of Warranty services, then You shall be entitled to be reimbursed any associated costs which You can demonstrate as being reasonably and necessarily incurred in providing Warranty services and/or

returning the Goods to the normal standards of performance in accordance with this Contract.

**72. Operation Manuals**

You shall supply to Us all operating manuals and other documentation necessary for the satisfactory operation of the Goods or as specified in the Purchase Order/Contract. If, after the Delivery and/or Acceptance Date, the operating manuals and documentation need updating or replacing You shall be responsible for notifying Us of the availability of such updates or replacements, and shall supply them at reasonable prices, upon receipt of appropriate Purchase Order documentation. You shall provide the operating manuals and other documentation in the media format in which it is available at the appropriate time.

**73. Mistakes in Information**

73.1 You shall be responsible for and shall pay any extra costs occasioned by any discrepancies, errors or omissions in drawings, documentation or other information supplied in writing by You whether or not approved by Us, provided that such discrepancies, errors or omissions are not due to inaccurate drawings or information and decisions supplied in writing to You by Us.

73.2 We shall be responsible for, and shall pay any additional costs which You can demonstrate as being reasonably and necessarily incurred as a direct result of You acting upon any discrepancies, errors or omissions are not due to inaccurate drawings or information and decisions supplied in writing to You, by Us. Any claims submitted relative to this clause must be made in writing, and acceptance of any additional charges confirmed in writing by an Authorised Officer, by means of the issue of a Purchase Order Amendment or variation to this Contract in accordance with clause [4] of Module 1 hereof.

**END**