

Trinity College Dublin Standard Terms and Conditions of Purchase

IT IS AGREED

1. INTERPRETATION:

1.1 In these Conditions:

"**Buyer**" means the body corporate incorporated under the name of the Provost Fellows and Scholars of the College of the Holy and Undivided Trinity of Queen Elizabeth near Dublin or any of its subsidiary companies.

"**Conditions**" means the standard conditions of purchase set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller.

"**Order**" means the Buyer's purchase order to which these Conditions are annexed.

"**Services**" means the services (if any) described in the Order.

"**Goods**" means the goods (including any installment of the goods or any part of them) described in the Order.

"**Contract**" means the contract for the sale and purchase of the Goods and the supply and acquisition of the Services on the Conditions.

"**Delivery Address**" means the address stated on the Order.

"**Price**" means the price of the Goods and/or the charge for the Services.

"**Seller**" means the person so described in the Order.

"**Specification**" includes any plans, drawings, data or other information relating to the Goods or Services.

"**Subsidiaries**" has the meaning given to it by the Companies Act 1963 to 1990 as supplemented by the European Communities (Companies Group Accounts) regulations 1992.

"**Writing**" includes telex, cable, facsimile transmission and comparable means of communication, but excludes Electronic Mail (E-Mail).

1.2 Any reference in these Conditions to an Act, statutory instrument or a provision of an act or statutory instrument shall be construed as a reference to that act or statutory instrument or provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. APPLICABILITY AND JURISDICTION

2.1 These conditions shall apply to the contract between the Buyer and The Seller, subject to any amendments referred to in the Purchase Order or otherwise agreed in writing by Buyer, to the entire exclusion of any other express conditions.

2.2 The construction, validity and performance of the Contract shall be governed by Irish Law. The Contract shall be deemed to have been made in Ireland and the parties to the Contract hereby submit to the exclusive jurisdiction of the Irish Courts.

2.3 This contract shall be governed by the Sale of Goods & Supply of Services Act 1980.

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2. BASIS OF PURCHASE

2.1 The Order constitutes an offer by the Buyer to purchase the Goods and/or acquire the Services subject to the Conditions.

2.2 Unless otherwise agreed in writing the Order shall not imply any commitment by the Buyer to contract exclusively with the Seller.

2.3 These Conditions shall apply to the Contract to the exclusion of any other terms and conditions on which any quotation has been given to the Buyer or subject to which the Order is accepted or purported to be accepted by the Seller.

2.4 No variation to the Order or these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.

3. SPECIFICATIONS

3.1 The quantity, quality and description of the Goods and the Services shall, subject to the Conditions herein, be as specified in the Order and/or in any applicable Specification supplied by the Buyer to the Seller or agreed in writing by the Buyer and the Seller.

3.2 Any Specification supplied by the Buyer to the Seller or specifically by the Seller for the Buyer, in connection with the Contract together with the copyright, design rights or any other intellectual property rights in the Specification, shall be the exclusive property of the Buyer. The Seller shall not disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of the Seller, or as required for the purpose of the Contract.

3.3 The Seller shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods and the performance of the Services.

3.4 The Seller shall not refuse any request by the Buyer to inspect and test the Goods during manufacture, processing or storage at the premises of the Seller or any third party prior to despatch, the Seller shall provide the Buyer with all facilities reasonably required for inspection and testing.

3.5 If, as a result of inspection or testing, the Buyer is not satisfied that the Goods will comply in all respects with the Contract, and the Buyer so informs the Seller within 7 days of inspection or testing, the Seller shall take such steps as are necessary to ensure compliance.

3.6 The Goods shall be marked in accordance with the Buyer's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course.

3.7 The Seller shall, at its expense, provide any programmes of manufacture and delivery that the Buyer may reasonably require. The Seller shall notify the Buyer without delay, in writing, if its progress falls behind, or may fall behind, any of these programmes.

4. PRICE OF GOODS AND SERVICES

4.1 The Price of the Goods and the Services shall be as stated in the Order and, unless otherwise so stated, shall be:

4.1.1 exclusive of any applicable value added tax (which shall be payable by the Buyer subject to receipt of a VAT invoice); and

4.1.2 inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the Delivery Address and any duties, imposts or levies other than value added tax.

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4.2 No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Buyer in writing.

4.3 The Buyer shall be entitled to any discount for early payment, bulk purchase, or volume of purchase customarily granted by the Seller, whether or not shown on its own terms and conditions of sale.

5. TERMS OF PAYMENT

5.1 The Seller shall be entitled to invoice the Buyer on or at any time after delivery of the Goods or performance of the Services, as the case may be, and each invoice shall quote the number of the Order.

5.2 Unless stated otherwise in the contract, the Buyer shall pay the Seller the Price within 30 days of receipt, by the Accounts Payables section of the Buyer, of a correctly rendered invoice. This invoice must quote the full purchase order number. The Buyer shall not be held responsible for delays in payment caused by the failure by the Seller to comply with the Buyer's invoicing instructions.

5.3 All quotations and payments shall be in Euros only. Payment shall be on foot of invoices and made only under the terms of the European Communities (Late Payment in Commercial Transactions) Regulations 2002 - Statutory Instrument No. 388 of 2002.

5.4 The Buyer shall be entitled to set off against the Price any sums owed to the Buyer by the Seller.

6. DELIVERY

6.1 The Goods shall be delivered to and the Services shall be performed at the Delivery Address on the date or within the period stated in the Order, in either case during the Buyer's usual business hours.

6.2 Where the date of delivery of the Goods or of performances of the Services is to be specified after the placing of the Order, the Seller shall give the Buyer reasonable notice of the specified date.

6.3 The time of delivery of the Goods and of performance of the Services is of the essence of the Contract.

6.4 A packing note quoting the number of the Order must accompany each delivery or consignment of the Goods and must be displayed prominently.

6.5 If the Goods are to be delivered or the Services are to be performed by instalments, the Contract will be treated as a single contract and not severable.

6.6 The Buyer shall be entitled to reject any Goods delivered which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods until it has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.

6.7 The Seller shall supply the Buyer in good time with any instructions or other information required to enable the Buyer to accept delivery of the Goods and performance of the Services.

6.8 If the Seller or the Seller's carrier delivers any goods at the wrong time or to the wrong place then the Buyer may deduct from the Price any resulting costs of storage or transport.

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6.9 The Seller shall forthwith on request by the Buyer, following delivery of the goods, attend at the part of the Buyers premises designated by it and shall remove at its own expense and without cost to the Buyer all packaging in which the goods were delivered to the Buyer.

6.10 The Buyer shall have the right, before delivery, to send the Seller an order amendment adding to, deleting or modifying the goods. If the order amendment will cause a change to the price or delivery date, then the Seller must suspend performance of the contract and notify the Buyer without delay, calculating the new price and delivery date at the same level of cost and profitability as the original price. The Seller must allow the Buyer at least 10 working days to consider any new price and delivery date. The order amendment shall take effect when, but only if, an authorised officer of the Buyer accepts in writing the new price and delivery date within the time stipulated by the Buyer. If an authorised officer of the Buyer fails to confirm the order amendment within the time stipulated by the Buyer, then performance of the contract shall immediately resume as though the said order amendment had not been issued (except that the Buyer may still exercise its right of cancellation).

7. RISK AND PROPERTY

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer upon delivery to the Buyer in accordance with the Contract.

7.2 The title and property in the goods shall pass to the Buyer upon delivery or (in the case of delivery by instalments) upon delivery of each instalment, unless payment or part payment has been made prior to delivery in which event the property in any materials, components or goods purchased or allocated by the Seller for the purpose of this Contract shall immediately vest in the Buyer.

7.3 If any goods are delivered or services provided which fail to comply with the provisions of this Contract (however slight the failure to meet those requirements) by reason of quality, quantity or (without limitation) any other reason, or are delivered in error, without prejudice to any other rights and notwithstanding any provision to the contrary contained in the Sale of Goods and Supply of Services Act 1980, the Buyer may at its sole discretion and at Seller's risk and expense, either:-

7.3.1 return the goods or any instalment or any part thereof on the basis that a full refund for such goods shall be paid forthwith by the Seller; or

7.3.2 require immediate replacement or rectification by delivery of goods or performance of services which are in accordance with this Contract; or

7.3.3 require the immediate repair or remedy of any defects in the goods or deficiency in the services; or

7.3.4 repair or remedy the defects or deficiencies itself or by others, at the Seller's expense; or

7.3.5 purchase equivalent goods or services elsewhere at no additional cost to the Buyer; or

7.3.6 refuse to accept any further delivery of goods or performance of any further services, without liability.

The Buyer shall have the right to claim compensation for all its resulting costs and expenses. The making of any prior payment shall not prejudice the Buyer's right of rejection.

7.4. In the event of cancellation under this condition, the Seller shall promptly repay any monies paid under the contract without any retention or offset whatsoever. Cancellation of the

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purchase order under this condition shall not affect any other rights the Buyer may have. The Seller must collect all rejected goods within a reasonable time of rejection or the Buyer shall return them to the Seller at the Sellers own risk and expense.

8. WARRANTIES AND LIABILITY

8.1 The Seller hereby warrants its power to enter into contracts and has obtained all necessary approvals to do so.

8.2 The Seller warrants to the Buyer that the Goods:

8.2.1 will be of satisfactory quality and fit for any purpose held out by the Seller or made known to the Seller in writing at the time the Order is placed;

8.2.2 will be free from defects in design, material and workmanship;

8.2.3 will correspond with any relevant Specification or sample;

8.2.4 will comply with all statutory requirements and regulations relating to the sale of the Goods;

8.2.5 do not infringe the Intellectual Property rights of any third party; and

8.2.6 will be free from encumbrance

8.3. The Seller warrants to the Buyer that the Services will be performed by appropriately qualified and trained personnel, with due care and diligence and to such high standard of quality as is reasonable for the Buyer to expect in all the circumstances.

8.3.1 The Seller shall promptly make good, at its expense, any defect in the Goods that the Buyer discovers under proper usage, during the first of 12 months of actual use, or 18 months from the date of acceptance by the Buyer, whichever period shall expire first. Such defects may arise from the Sellers faulty design, the Sellers erroneous instructions as to use or inadequate or faulty materials or poor workmanship or any other breach of the Sellers obligations whether in this contract or at law.

8.3.2 Repairs or replacements will themselves be covered by the above warranty but for a period of 12 months from acceptance by the Buyer.

8.4 The Seller shall indemnify the Buyer in full against all liability, loss, damages, costs, claims and expenses (including legal expenses) awarded against or incurred or paid by the Buyer, whether such loss, damage, costs or expenses are incurred by the buyer, by its successor in title or by any third party claiming on or against the buyer, as a result of or in connection with:

8.4.1 any breach of any warranty given by the Seller in relation to the Goods or Services;

8.4.2 any liability under the Consumer Protection Act 1987 in respect of the Goods;

8.4.3 any act or omission of any of the Seller's personnel in connection with the performance of the Services;

8.4.4 any injury to, illness or death of any person, or loss of or damage to any property arising out of or in the course of the Contract, to the extent that the liability is due to any negligence, breach of Statutory Regulations and duties or due to any omissions or defaults of the Seller or its employees, agents, sub-contractors or subsidiaries in supplying, delivering and installing the Goods.

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8.5 This indemnity shall remain in force after the conclusion of, or sooner termination by either party of the Contract.

8.6 In respect of any injury, damage or loss caused to third parties or their property by the Goods there shall be no automatic right of indemnity due from the Buyer to the Seller. Any clause in the Seller's standard terms and conditions of sale purporting to establish a right of indemnity from the Buyer to the Seller in the event of any injury, damage or loss caused to third parties or their property shall not be incorporated into this Contract.

9. INTELLECTUAL PROPOERTY

9.1 All rights in the results of work arising out of, or deriving from, this contract, including inventions, designs, copyright and knowledge, shall be the property of the Buyer and it shall have the sole right to determine whether any letters patent, registered design, trademark and other protection shall be sought.

9.2 The Seller shall promptly communicate to the Buyer all such results and shall, if requested, and at the Buyers expense do all acts and things necessary to enable the Buyer or its nominee to obtain letters patent, registered designs and other protection for such results, in all territories, and to assign the same to the Buyer or its nominee.

9.3 The Seller 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.

9.4 If notified promptly in writing of any action brought against the Buyer based upon a claim that any parts provided or a modification made to the product by the Sellers infringes any patent, trade mark, copyright or other intellectual property right, the Seller will defend such action at its expense and pay any costs and damages awarded and any expenses incurred by the Buyer in connection with the claim (including legal and other expert fees). The Seller shall have sole control of and responsibility for the defence of any such action and all negotiations for its settlement or compromise.

9.5 If as a result of such claim the Buyer is prohibited from using or otherwise unable to use the product or if such a claim is likely to be made, The Seller will either procure for the Buyer the right to continue using the goods, or replace or modify the infringing parts without detracting from the goods overall performance so that it becomes non-infringing. The Seller shall indemnify the Buyer against any loss of use during such modification or replacement.

9.4 The Seller will not have any liability to the Buyer under any provision of this clause if the infringement, or claim thereof is based upon any modification of any item of goods by a party other than the Seller (other than by the Buyer in accordance with the Seller's instructions).

10. TERMINATION

10.1 The Buyer shall be entitled to cancel the Order in respect of all or part only of the Goods and/or the Services by giving to the Seller at any time prior to delivery or performance in which event the Buyer's sole liability shall be to pay the Seller the Price for the Goods or Services in respect of which the Buyer has exercised its right of cancellation, less the Seller's net saving of cost arising from cancellation.

10.2 The Buyer shall be entitled to terminate the Contract without liability to the Seller by giving notice to the Seller at any time if:

10.2.1 the Seller makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being a company) becomes subject to an administration or goes into liquidation (otherwise that for the purpose of amalgamation or reconstruction); or

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10.2.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Seller; or

10.2.3 the Seller ceases, or threatens to cease, to carry on business; or

10.2.4 the Buyer reasonably apprehends that any of the above events is about to occur in relation to the Seller and notifies the Seller accordingly.

11. REMEDIES

11.1 If the Seller shall commit a breach or shall fail to observe any provision of these conditions, the Buyer may give the Seller written notice of such breach or non-observance and the Seller shall have 28 days from receipt of the notice within which to rectify the breach or non-observance. Should the Seller fail to rectify the breach or non-observance, then the Buyer shall have the right to give the Seller written notice terminating the contract with immediate effect

12. FORCE MAJUERE

12.1 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 or breakdown of plant), such performance shall be suspended, and if it cannot be completed within a reasonable time after the due date as specified in the purchase order, then the contract may be cancelled by either party. The Buyer shall pay to the Seller such sum as may be fair and reasonable in all the circumstances of the case in respect of work performed by the Seller under the purchase order, prior to cancellation, but only in respect of work of which the Buyer has received full benefit as originally contemplated in the contract. This provision can have effect only if it is called into operation by the party wishing to rely on it, giving written notice to the other of that effect.

13. NOTICES

13.1 Any demand notice or communication shall be deemed to be duly served;

13.1.1 If delivered by hand, when left at the proper address for service (except that where such delivery is not on a working day service shall be deemed to occur on the next following working day);

13.1.2 If given or made by prepaid first class post, two working days after being posted;

13.1.3 If delivered by fax, on receipt by the sender of the fax confirmation.

13.2. Any demand notice or communication shall be made in writing to the recipient at its registered offices, or in the case of the Buyer, at, Treasurer's Office, Trinity College, College Green, Dublin 2, Rep. of Ireland (or such other address as may be notified in writing from time to time) and shall be marked for the attention of the Procurement Officer.

14 WAIVER

14.1 A failure at any time to enforce any provision of these conditions shall in no way affect the 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.

15. SEVERABILITY

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

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16. CONFIDENTIALITY

16.1 The Seller shall obtain written approval from the Buyer prior to taking photographs or making publicity releases or announcements including advertisements regarding either the contract or the activities of the Seller related to its participation in the contract.

16.2 Any information derived from the Buyer, or otherwise communicated to the Seller in connection with the contract, shall be kept secret and confidential and shall not, without the consent, in writing, of an authorised officer of the Buyer be published or disclosed to any third party, or made use of by the Seller, except for the purpose of implementing the contract or in fulfillment of the Buyer's obligations of the Freedom of Information Acts.

17. ASSIGNMENT/SUBCONTRACTING

17.1 The contract shall not be assigned by the Seller nor sub- contracted as a whole. The Seller shall not sub-contract any part of the contract without the Buyers prior written consent, but the Buyer 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. The Seller shall be responsible for all work done and goods supplied by all sub-contractors.

18. INDEPENDENT CONTRACTOR

18.1 For the purposes of this Contract, the Seller is an independent contractor and neither it nor its sub-contractors or its or their employees or agents are the sub-contractor, agent or employee of the Buyer, and they shall not hold themselves out to be so.

19. BRIBERY

19.1 In connection with this, or any other contract between the Seller and the Buyer, the Seller shall not give, provide, or offer to the Buyers staff and agents any loan, fee, reward, gift or any emolument or advantage whatsoever. In the event of any breach of this Condition, the Buyer shall, without prejudice to any other rights it may possess, be at liberty forthwith to terminate this, and any other contract, and to recover from the Seller any loss or damage resulting from such termination.

20. COMPLIANCE

20.1 The Seller shall maintain accurate records relevant to the Contract and shall permit the Buyer or its authorised personnel and/or agents access at all reasonable times to such records.

20.2 The Seller shall protect and hold all property of the Buyer free from liens, charges and other encumbrances.

20.3 The Seller shall comply with all applicable laws, ordinances, statutes, orders, rules and regulations of any governmental authority having jurisdiction (hereafter "Laws") and shall, unless otherwise stipulated in the Purchase Order, obtain and pay for all licences and permits necessary for the provision of goods and performance of services in accordance with such Laws.

21. HEALTH AND SAFETY

21.1 The Seller shall comply with the requirements of Irish and international legislation and agreements relating to the supply, packaging, labeling and carriage of hazardous goods.

21.2 The Seller shall observe all legal requirements of Ireland, the European Union and relevant international agreements in relation to health, safety and environment, and in

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particular, to the marking of hazardous goods, the provision of data sheets for hazardous materials and all provisions relating to food.

21.3 The Seller shall ensure that Goods comply with current health and safety legislation and the legislation implementing any relevant EC Directive. The Buyer may require the Seller to show that the Goods bear a CE mark and may ask for a copy of the EC Declaration of Conformity.

21.4 The Seller agrees to provide the Buyer before delivery with written details of any harmful or potentially harmful properties or ingredients in the Goods supplied together with any information concerning any changes that may take place in such properties or ingredients. The Buyer will rely on the supply of such information from the Seller in order to satisfy its own obligations under legislation relating to health and safety at work and the control of substances hazardous to health.

21.5 The Seller agrees to give the Buyer notice in writing within a reasonable time prior to delivery of the Goods of anything which is toxic, explosive or otherwise hazardous to the health and safety of persons or property. The notice shall identify the hazard, and give full details of the precautions to be taken when coming into contact with such things together with details of the safe manner of use, handling and storage.

22. TAX

22.1 Professional Services Withholding Tax (PSWT) must be deducted at the standard rate from payments by contracting authorities for professional services. Comprehensive information on PSWT is available in a booklet "A Revenue Guide to Professional Services Withholding Tax (PSWT) for Accountable Persons and Specified Persons" which is published on website www.revenue.ie or can be obtained from the Revenue Commissioners: current telephone (01) 8780100.

22.2 All contracting authorities are reminded of the need for tax clearance of contractors as outlined in Department of Finance 'Circular 22/95 Tax Clearance Procedures - Public Sector Contracts or any revised version which will be available on www.revenue.ie <<http://www.revenue.ie>>. Tenderers should contact their local Revenue District or Large Cases Division as appropriate. Full contact details can be obtained, and for most cases an online application for Tax Clearance Certificates can currently be made, under 'What's New' on www.revenue.ie <<http://www.revenue.ie>>. Non resident tenderers should contact the Collector General, Sarsfield House, Limerick: current telephone (061) 310 310 or 1890 203 070.

22.3 Any work carried out by the contracting authorities in the process of installation of equipment which entails the use of Building and Construction methods will require the production of a C2 certificate in the place of the Tax Clearance Certificate. This is necessary for the acquisition of a C47 Authorisation to Pay. Contracting Authorities should be aware that possession of a C2 negates the requirement for the supply of a Tax Clearance Certificate. Further details available from Revenue Commissioners as detailed above.