

BOURNEMOUTH UNIVERSITY HIGHER EDUCATION CORPORATION

TERMS AND CONDITIONS OF PURCHASE

1. Definitions and Interpretation

Conditions Contract	these terms and conditions as amended from time to time, the contract between you and us for the sale and purchase of the Goods and/or Services in accordance with these Conditions and the Order.
Deliverables	all documents, products and materials developed by you or your agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).
Goods	any goods (including any part or parts of them) agreed to be bought by us from you under and as set out in the Order.
Intellectual Property Rights	all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.
Order	our order for the Goods and/or Services as set out on our purchase order form, whether on the reverse of or annexed to these Conditions or sent to you electronically, which is on and subject to these Conditions.
Services	any services agreed to be bought by us from you under and as set out in the Order.
Specification	the requirements and specifications of the Goods and/or Services as set out on the Order.
Third Party Products	third party software, documentation and other materials (including, without limitation, know-how) and Intellectual Property Rights therein.
We, us, our	Bournemouth University Higher Education Corporation of Poole House, Talbot Campus, Fern Barrow, Poole, Dorset BH12 5BB and any of our subsidiaries as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee) by way of security or in connection with the taking of security, or (b) its nominee, the legal entity with whom we are contracting for the provision of the Goods and/or Services.
You, your	any person or company who is contracting for the provision of the Goods and/or Services.

2. Applicability of these Conditions and Contract formation

- 2.1 Save where the Order is subject to a separate written agreement between each of you and us, signed by a party's authorised signatory, dated and approved by us ("Agreement"), in which case the terms of the Agreement apply, these Conditions shall apply to the Contract to the exclusion of any other terms that you seek to impose or incorporate, whether expressly or otherwise, or which are implied by trade, custom, practice or course of dealing (this list is not exhaustive). You shall waive any right which you may have to rely on any all such terms.
- 2.2 The Order constitutes an offer by us to purchase the Goods and/or Services in accordance with these Conditions and shall be deemed to be accepted on the earlier of you:
- 2.2.1. issuing a written acceptance of the Order; and
 - 2.2.2. doing any act consistent with fulfilling the Order, at which point the Contract shall come into existence.

Your Obligations

- 3.1 You shall sell and/or supply and we shall purchase such quantities of the Goods and/or Services as detailed in the Order on and in accordance with these Conditions.
- 3.2 You shall use your best endeavours to deliver the Goods and/or supply the Services in accordance with the Order and these Conditions and you shall notify us immediately where you cannot deliver the Goods or perform the Services set out in the Order.
- 3.3 You warrant that, for a period of 12 months from delivery of the Goods (or such other period as agreed between us and you in writing) that they shall:
- 3.3.1. be of satisfactory quality, fit for purpose (whether expressly or impliedly made known to you by us);
 - 3.3.2. be free from defects in design, material and workmanship;
 - 3.3.3. comply with any Specification; and
 - 3.3.4. comply with all applicable legislation from time to time in force.
- 3.4 You undertake that the Services shall:
- 3.4.1. be performed with all reasonable care and skill and any special skill, knowledge or specialism which you have or hold or can obtain;
 - 3.4.2. conform with the Specification; and
 - 3.4.3. comply with all applicable legislation from time to time in force.
- 3.5 In performing the Services you shall:
- 3.5.1. co-operate with us and comply with our reasonable instructions; and
 - 3.5.2. provide a sufficient number of suitably skilled and experienced personnel.
- 3.6 You shall, at all times, have and maintain all and any licences, permissions, authorisations, consents and permits you need to carry out your obligations under the Contract.
- 3.7 Our rights under the above clauses are in addition to our statutory and legal rights in respect of the Goods and/or Services.

4. Delivery of the Goods and Performance of the Services

- 4.1 The Goods shall:
- 4.1.1. be delivered, carriage, duties and levies paid by you, to our place of business or to such other place of delivery agreed by us in writing prior to delivery of the Goods;
 - 4.1.2. be delivered on the date specified in the Order or such other date specified by us;
 - 4.1.3. be properly packed and secured in such a manner as to enable them to reach their destination in good condition;
 - 4.1.4. be off-loaded by you at your own risk and expense as directed by us, acting reasonably; and
 - 4.1.5. not be delivered in instalments without our prior consent.
- 4.2 Time for delivery of the Goods and supply of the Services shall be of the essence.
- 4.3 Any excess or deficiency in the quantity of the Goods delivered shall entitle us, at our option, to accept or reject part or all of the Goods and to a pro rata refund. Any rejected Goods shall be and remain at your risk and shall be returnable at your expense.
- 4.4 We shall be entitled to inspect the Goods within a reasonable time following delivery and/or completion. Any signed delivery note or other document shall operate only as an acknowledgement of delivery or completion and shall not constitute our acceptance of the Goods.
- 4.5 We shall be entitled at any time prior to performance of the Services to cancel the whole or any non-performed part of the Services by written notice to you without liability to you for any loss, including but not limited to consequential loss, arising from such cancellation or variation.

5. Risk/Property

Title and risk in the Goods shall remain at your risk until delivery is complete in accordance with clause 4.1.

6. Price and Payment

The price of the Goods and/or Services shall be the price set out in the Order and is inclusive of VAT. The price shall include, where applicable, all costs (including but not limited to packaging, expenses and outlays), insurance, and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by us.

- 6.2 Where the Services are charged on a time and materials basis:
- 6.2.1. the price shall be calculated in accordance with your standard daily fee rates, as agreed in writing with us;
 - 6.2.2. no charge shall be made on a pro-rata basis or otherwise for part-days without our prior written consent; and
 - 6.2.3. you shall provide accurate satisfactory evidence of the time spent in providing the Services.

- 6.3 You shall invoice us, as applicable:
- 6.3.1. upon, but separately from, despatch of the Goods to us; or
 - 6.3.2. in arrears for your charges for time, expenses and materials (plus VAT if applicable) following completion of the Services where no time frame for payment has been specified in the Order or agreed between you and us in writing; or
 - 6.3.3. in such instalments as specified in the Order.

We shall pay each invoice correctly submitted by you within 30 days of receipt to your nominated bank account. Time for payment shall not be of the essence.

We shall, without limiting any other rights or remedies available to us, be entitled, at our option, to set off any amount owed to us by you against any amounts payable by us to you whether under the Contract or otherwise.

7. Intellectual Property Rights

- 7.1 In the absence of prior written agreement to the contrary, all the rights, interest and title in the Intellectual Property Rights created by you:
- 7.1.1. in the course of performing the Services; or
 - 7.1.2. exclusively for the purpose of performing the Services; and
 - 7.1.3. which exist in and/or result in the Deliverables, shall vest in us upon creation.

You warrant that you have full clear and unencumbered title to the Deliverables and/or the Goods and hereby assign to us, with full title guarantee, all the rights, interest and title in the Intellectual Property Rights which may subsist in the Deliverables. This assignment shall take effect on the Contract date or as a present assignment of future rights that shall take effect immediately on the coming into existence of the Intellectual Property Rights produced by you.

You shall waive or procure the waiver of, at your cost, any moral rights and any other similar rights in any jurisdiction.

8. Intellectual Property Rights owned by us

We hereby grant to you, from the commencement and for the duration of the Contract, a non-exclusive, royalty-free licence to use, operate, copy and modify the Intellectual Property Rights owned by us for the sole purpose of fulfilling your obligations under the Contract.

9. Intellectual Property Rights owned by you

Where, in connection with the Contract, you use any Intellectual Property Rights which do not fall within clauses 7.1.1, 7.1.2, 7.1.3 and which are owned by you, you shall grant to us, or shall procure that we are granted (at your cost and expense) a perpetual, non-exclusive, transferable, royalty-free licence to use, adapt, maintain and support such Intellectual Property Rights. Such licence shall include the right for any person providing services to us to use, adapt, maintain and support such Intellectual Property Rights for our benefit.

10. Third Party Products

- 10.1 You shall obtain the consents of all relevant third parties to your use of any Third Party Products required by you for the provision of the Services which we are not already permitted to use.
- 10.2 If you fail to obtain such consent, you agree to use alternative Third Party Products which may replace those in respect of which consent has not been or cannot, except at unreasonable cost, be obtained.
- 10.3 You shall procure that any licences for Third Party Products reasonably necessary for the provision of the Services are perpetual, transferable, royalty-free and irrevocable and contain terms which shall allow us on termination of the Contract to use, reproduce, modify, develop, maintain and support such Third Party Products or to engage a new services provider to do so.

11. Indemnities

- 11.1 You shall, during the Contract period and for a period of 6 years thereafter, indemnify and hold us harmless from all claims and all direct, indirect or consequential liabilities, loss of profits, loss of business, depletion of goodwill and similar losses, costs (including the cost of replacement Goods or Services), proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred or paid by, us as a result of or in connection with:

- 11.1.1. the breach of any warranty in relation to the Goods or Services; or
- 11.1.2. any claim to which Deliverables infringe, or their importation, use or resale infringes, the Intellectual Property Rights of any person; or
- 11.1.3. any liability under the Consumer Protection Act 1987 in respect of the Goods; or
- 11.1.4. the Goods and/or Services to the extent that such claim arises out of the breach, negligent performance, failure, or delay in performance of the Contract by you, your employees, agents or subcontractors.

The above indemnity is without prejudice and in addition to our rights and remedies implied by statute, common law and elsewhere in these Conditions.

12. **Insurance**
You shall maintain and keep in force during the period of the Contract, and for a period of 6 years thereafter, adequate insurance cover(s) with reputable insurers and you shall provide us with such evidence of the cover(s) as we may request.

13. Confidentiality

13.1 You shall keep in confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to, or otherwise obtained by, you from us, our employees, agents or subcontractors, and any other confidential information concerning our business, products or services which you may obtain.

13.2 You shall restrict disclosure of such confidential information to such of your employees, agents or subcontractors to the limited extent required for the purpose of discharging your obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind you. Clauses 13.1 and 13.2 do not apply to information in the public domain, save where this is due to a breach by you of this clause 13, or information lawfully in your possession prior to it being disclosed by us.

14. Publicity

14.1 You shall not make any press announcements, publicise the Contract or make it known that you are our supplier without our prior written consent.

14.2 You shall not do, or omit to do, anything which may damage our reputation.

15. Termination

15.1 Without prejudice to any other right or remedy we may have, we may immediately terminate the Contract without any liability to you where you:

- 15.1.1. commit a material breach of your obligations under the Contract or persistently fail for whatever reason to perform to our reasonable satisfaction your obligations under the Contract; or
- 15.1.2. act in a way materially contrary to our interests whilst providing or purporting to provide the Goods and/or Services under the Contract; or
- 15.1.3. are unable to pay your debts as they fall due, become bankrupt or have a receiver, administrator, administrative receiver or liquidator appointed or call a meeting of your creditors or cease for any other reason to carry on your business or any other analogous event and in any jurisdiction.

15.2 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

15.3 Upon termination of the Contract you shall:

- 15.3.1. deliver to us all documents, products, and other matters you have agreed to supply to us, whether or not complete;
- 15.3.2. leave our premises as soon as reasonably practicable, without causing damage to our property and tidying up your materials, goods and equipment; and
- 15.3.3. return to us or destroy, at our option, our confidential information provided to you.

16. Remedies

16.1 If any Goods and/or Services are not supplied in accordance with, or you fail to comply with, any terms of the Contract, we shall be entitled (without prejudice to any other right or remedy) to exercise any one or more of the following rights or remedies:

- 16.1.1. to terminate the Contract; or
- 16.1.2. to reject the Goods (in whole or in part) and have the Goods returned to you (at your risk and cost) on the basis that a full refund for the Goods shall be paid immediately by you or a full refund of the expenditure incurred by us in obtaining substitute Goods from a third party; or
- 16.1.3. to refuse to accept the supply of any further Goods and/or Services and to require the immediate repayment of all advance sums previously paid by us to you under the Contract and the cost incurred by us in obtaining replacement Good and/or Services; or
- 16.1.4. to require you (at your cost) to carry out such additional work as is necessary to correct your failure; and
- 16.1.5. in any case, to claim such damages as we may have sustained in connection with your breach(s) of the Contract not otherwise covered above.

17. Audit

You shall retain and allow us and/or our authorised representatives to access all records relating to the Goods and/or Services during the Contract term and for 12 calendar months afterwards at any time during normal business hours for the purpose of auditing or otherwise inspecting them. Where the audit reveals an overpayment/charge you shall reimburse us the balance, within 7 days of us notifying you, together with interest at the rate of 3% above the Bank of England's base rate.

18. Data Protection

Where you process personal data on our behalf you shall do so strictly in accordance with the Data Protection Act 1998 and our instructions from time to time.

19. Compliance with legal requirements

19.1 You shall carry out your obligations under the Contract in a manner that conforms with any and all relevant legal requirements in force during the Contract period.

19.2 You shall comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act 2010, and with our anti-bribery and anti-corruption policy (available at www.bournemouth.ac.uk/about/policies/index.html or on request), as amended or updated by us from time to time.

20. Non solicitation

For a period of 12 months from the termination of the Contract you shall not, or attempt to, solicit or entice away, or make an offer of employment or consultancy to, any person employed or engaged by us with whom you came into contact with in connection with the negotiation or performance of the Contract.

21. Force Majeure

Neither party shall be liable to the other for any delay or failure in performing its obligations under the Contract to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable, provided that you shall use all reasonable endeavours to cure any such events or circumstances affecting you and resume performance under the Contract. If any events or circumstances prevent you from carrying out your obligations under the Contract for a continuous period of more than 7 days we may terminate the Contract immediately by giving you written notice.

22. GENERAL

22.1 Your failure to delay by a party to exercise any right or remedy provided under these Conditions or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

22.2 Nothing in these Conditions is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party. You are an independent contractor and shall at all times be responsible for the payment of all duties and contributions properly payable by you. You will fully and effectively indemnify us in respect of any claims made against us in respect of your income tax, national insurance or other similar contributions relating to your obligations under the Contract.

22.3 For the duration of the Contract and for a period of 6 years thereafter, each party shall use reasonable endeavours to procure that any necessary third party shall execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to the Contract and these Conditions.

22.4 You shall not assign, transfer, mortgage, charge, subcontract, or deal in any other manner with any of your rights and obligations under the Contract without our prior written consent.

22.5 You confirm that you are acting on your own behalf and not for the benefit of any other person.

22.6 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between the parties, whether written or oral, relating to its subject matter.

22.7 Each party agrees that it shall have no remedy in respect of a representation or warranty (whether made innocently or negligently) that is not set out in these Conditions.

22.8 No variation of these Conditions shall be effective unless it is in writing and signed by the parties (or an authorised representative).

22.9 If any court or competent authority finds that any provision of these Conditions (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of these Conditions shall not be affected.

22.10 If any invalid, unenforceable or illegal provision of these Conditions would be valid, enforceable and legal if some part of it were deleted, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

22.11 No one other than a party to the Contract, our successors and our assigns, shall have any right to enforce any of its terms.

23. Notices

23.1 Any notice or other communication required to be given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery, at its registered office (if a company) or (in any other case) its principal place of business.

23.2 Any notice or communication shall be deemed to have been received if delivered by hand, on signature of a delivery receipt or at the time recorded by the delivery service, or if by first class post 2 business days after the date of posting.

23.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall not include e-mail.

24. Governing law and jurisdiction

24.1 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law.

24.2 The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).