

TERMS AND CONDITIONS OF CONTRACT

1. PARTIES: INTERPRETATIONS

1.1 These conditions are the conditions of contract between the person(s) whose tender is accepted (hereinafter called “the Contractor”) Maynooth University (hereinafter called the “the university”).

1.2 In these conditions:

1.2.1 the expression “the Contractor”, unless the context otherwise requires, shall include as well as the legal person(s) whose tender is accepted, the heirs, executors, administrators and permitted assigns of such person(s).

1.2.2 the expression “the University” shall mean Maynooth University and shall include every person who is for the time being or from time to time a budget holder within the University or any successor or permitted assignees.

1.3 The University may, without further consent or approval, grant power to individual budget holders (hereinafter referred to as “Client Departments” and each a “Client Department”) to exercise any or all of the rights, powers and duties given and committed to him, expressly or impliedly, under this contract. This shall include permitting those budget holders to order goods direct from the Contractor, to arrange that those bodies will be responsible for paying the Contractor for goods properly delivered and generally to deal with the Contractor in relation to relevant issues arising from the performance of the contract.

1.4 These conditions shall be read and construed in conjunction with :

- (a) the Introduction;
- (b) the Particulars of Contract;
- (c) the Specification(s);
- (d) the Price Schedule(s);
- (e) the Notes to Tenderer’s;
- (f) the Ancillary Documentation (if applicable);
- (g) the Tender Form;
- (h) Appendices (if applicable);

2. JOINT AND SEVERAL LIABILITY

Where two or more legal persons are included within the expression “the Contractor” the liability of such persons hereunder shall be joint and several.

3. DURATION

3.1 This contract shall commence on the commencement date specified in the Introduction and subject to the conditions of the contract shall continue until the termination date specified therein but it may be extended beyond that date, upon the same terms and conditions as are set out herein, for such further term as may be agreed between the University and the Contractor if deemed expedient by the University.

3.2 Either party may terminate the contract by giving to the other party not less than six months notice in writing, such notice not to be served at any time before the expiry of the first six months of the contract. In the event of the Contractor failing to comply with any of the conditions herein below specified, the University shall have the power to terminate the contract as provided in clause 29 below.

4. NATURE OF CONTRACT

The Contractor acknowledges that where the University contracts to purchase goods or services on behalf of all Client Departments, individual Client Departments may purchase such goods and services from other suppliers.

5. PERFORMANCE OF WORKS

The Contractor shall perform its obligations under this Agreement:-

5.1 using all the reasonable skill, care and diligence to be expected of a competent person experienced in providing the goods and works provided for herein; and

5.2 in accordance with all laws, regulations, codes of practice and orders for the time being in force.

6. REPRESENTATIONS AND WARRANTIES

The Contractor represents and warrants in favour of the University that:-

6.1 it has all necessary power and authority to execute, deliver and perform its obligations under this contract;

6.2 the execution, delivery and performance by it of this contract has been authorised by all necessary action on its part;

6.3 each of the obligations of the Contractor under this contract constitute legally binding obligations;

6.4 all goods provided by it shall be of merchantable quality and shall be fit for the purpose intended hereunder.

7. SAMPLES

Within the time period specified by the University, the Contractor shall submit, if required, such advance samples of the articles to be supplied as may be demanded. If such samples are not satisfactory, the contract may be terminated in accordance with clause 29 hereof.

8. PATENTED ARTICLES

Patented articles supplied under the Contract shall be marked in accordance with the provisions of the Patent Acts. The Contractor shall indemnify the University, and the staff of each or of any Client Department, against any action, claim or demand for infringement of any patent rights in respect of any articles supplied under the Contract, or for royalty or damages in respect thereof.

9. QUALITY CONTROL

9.1 The goods supplied under this contract shall be supplied by the Contractor and shall correspond with the specification, or any other specification stipulated by the University ("the Specification"). The University shall at all reasonable times be entitled to inspect the premises and/or plant where the articles are being manufactured and/or stored.

9.2 Should any delivery be found to be inferior or defective in respect of quality or manufacture or in any other respect, or otherwise contrary to the Specification, the University shall be entitled to reject it, and, in the event of such rejection, or of the quantities ordered not being delivered at the specified dates, the University may, if he thinks fit, purchase elsewhere, charging the Contractor with whatever price he may have to pay over and above the contract price.

9.3 If the University in its reasonable opinion decides following an inspection carried out pursuant to clause 9.1 above that the Contractor will not be able to deliver the goods by the specified delivery date, the University may cancel the order and purchase the goods elsewhere, charging the Contractor with whatever price he may have to pay over and above the contract price.

9.4 The Contractor shall comply with all applicable laws and regulations concerning the manufacture, packaging (including waste management), packing and delivery of the goods.

10. DEFECTIVE WORK (GOODS)

10.1 The University may reject any goods delivered which are not in accordance with this contract, and shall not be deemed to have accepted any goods until the University has had a reasonable time to inspect them following delivery or, if later, until the expiry of a reasonable period after any latent defect in the goods has become apparent.

10.2 Rejected goods shall be removed by the Contractor from the Client Department within ten working days from the date of the notification to the Contractor of their rejection. In the event of failure by the Contractor to remove goods within ten working days of such notification, the University may dispose of such goods as he sees fit, and charge the Contractor, by way of liquidated damages, a sum not exceeding 25% of the invoice value of the goods adjudged to be defective. Pending removal, the goods will remain at the Client Department at the risk of the Contractor.

10.3 In the event of the delivery of any defective goods which owing to urgency or for any other reason cannot be wholly rejected, the Client department shall be entitled to deduct from any payment due to the Contractor such sum as it may deem expedient, not exceeding 25% of the whole value of the goods of which the Client Department has taken delivery.

10.4 The rights of the University and/or Client Department under this clause shall be without prejudice to any other right or remedy available to him or it arising at law or in equity (including but not limited to the right of termination under clause 29 hereof).

11. DEFECTIVE WORK (SERVICES)

11.1 In the event of the discovery of any error, due to the fault of the Contractor at any time after delivery of the work ordered, the Contractor shall be bound if called upon to do so, to rectify such error, or errors, at his own cost to the satisfaction of the Client Department. In the event of the delivery of any defective work which owing to urgency or for any reason cannot be wholly rejected, the Client Department shall be entitled to deduct from any payment due to the Contractor such sum as it may deem expedient, not exceeding 25% of the whole value of the work of which the Client Department has taken delivery.

11.2 The rights of the University and/or Client department under this clause shall be without prejudice to any other right or remedy available to him or it arising at law or in equity (including but not limited to the right of termination under clause 29 hereof).

12. QUANTITIES

Notwithstanding any quantities stated by or on behalf of the University as estimated required quantities, the Contractor shall supply the quantities actually ordered during the currency of this contract to meet the requirements of the Client Department at the prices stated in his tender, whether they be more or less in any degree than the estimated required quantity. The University shall be under no liability to the Contractor if the quantities actually ordered fall short of the estimated quantities, and the Contractor hereby indemnifies the University and agrees to keep the University indemnified against any actions, claims, costs, demands and expenses arising directly or indirectly as a result of the quantities actually ordered being less than the estimated required quantities.

13. DELIVERY

The goods ordered under this contract shall be delivered to any location, specified by the University, without limit to the number of locations, in the quantities and by the dates specified in the orders, unless otherwise stated. Any extension of the delivery time shall not constitute a general waiver or acquiescence on the part of the University. All such goods shall be delivered free of encumbrances or retention of title clauses or similar provision. The prices quoted shall be based on the understanding that the goods are to be delivered carriage paid to the various Client Departments, along with the necessary

delivery documentation. Pending such delivery, the goods will remain at the risk of the Contractor.

14. DELIVERY DATES

Delivery within the time specified on the orders must be regarded as of the essence of the Contract. Where the Contractor does not deliver the ordered amount within such delivery dates or lead times, the University may, at its discretion, deduct 2% per week, or part thereof, for each week of late delivery, of the value of the entire relevant invoice or order as liquidated damages. Should the Client Department find themselves obliged to order elsewhere in consequence of the failure of the Contractor to deliver supplies of approved quality, the Client Department shall be entitled to recover from the Contractor, in addition to any excess prices which may be paid over the contract price, an amount equivalent to the sum which the Client Department would under this clause have been entitled to deduct from the contract price, if the Contractor had delivered supplies of approved quality at the date on which the order to purchase elsewhere was given.

15. INFORMATION REGARDING WORK IN HAND

The Contractor shall, whenever called upon to do so, give full information regarding any work in hand. He shall answer promptly all enquiries regarding the work required under this contract. He shall also furnish in writing, when required to do so, detailed explanations of the causes of non-delivery of any work in arrears, and any further information that the University or Client Department deems necessary.

The Contractor shall supply to the University such reports as it may require. These may include a monthly report of the values and volumes invoiced in each month of the contract together with copies of such orders received during the month, as the University shall request. The monthly report shall be despatched to the University no later than the last business day of the first week of the following month. The University may, from time to time, require copies of specific invoices issued in respect of orders placed, the required information to be communicated to the Contractor. These shall be supplied by the Contractor to the University without undue delay following such a request.

16. METHOD OF RENDERING ACCOUNTS

16.1 The Contractor shall render invoices for every delivery of goods, and render his accounts monthly to the University for those items. He shall be paid by the University, as soon as his accounts shall have been examined and found correct, subject to the European Communities (Late Payment in Commercial Transactions) Regulations, 2002 i.e., within 30 days from receipt of the invoice or delivery of the goods, whichever is the later, provided that the goods conform to the Specification and that the Contractor has complied with these Conditions and any other requirements including, without limitation, certificates as to tax affairs.

16.2 All invoices must be accompanied by such additional information as the University may reasonably request to verify the amounts stated therein.

17. RECOVERY OF SUMS DUE

Whenever under this contract any sum of money shall be recoverable from or payable by the Contractor, the same may be deducted from any sum then due or which at any time thereafter may become due to the Contractor under this contract, or any other contract between the University or Client Department and the Contractor, without prejudice to the right of the University to recover the same as a civil debt.

18. ONLY WORK PROPERLY ORDERED TO BE PAID FOR

The Contractor shall undertake work only on the direction or in accordance with regulations communicated to him in writing by the University or Client Department, who shall not be

bound to pay for the production of any work but such as has been ordered in the manner prescribed.

19. VAT

To the extent that VAT is properly chargeable to the University and/or Client Departments on goods or services provided by the Contractor under this Agreement, the University and/or Client Department shall, on receipt of a valid VAT invoice, pay such VAT in addition to payments due to the Contractor hereunder. Any overpayments by the University and/or Client Departments in respect of VAT by reason of any error or omission on the part of the Contractor and/or Client Departments shall be recoverable from the Contractor as a debt due to the University.

20. TAX CLEARANCE

Any payment under this contract is conditional upon the production to the University and/or Client Departments of a current Tax Clearance Certificate or C2 certificate from the Revenue Commissioners issued in favour of the Contractor.

21. INDEMNITY AND LIABILITY

The Contractor hereby indemnifies the University and undertakes to keep the University indemnified throughout the term of this contract against all and any proceedings, actions, claims, costs (including legal costs), demands and expenses brought or made against the University or incurred by the University arising directly or indirectly out of or in connection with:

21.1 any breach, non-performance or non-observance by the Contractor of any term, provision or condition of this contract;

21.2 any negligent or reckless act or omission or breach of statutory duty on the part of the Contractor or any of its officers or employees.

Without limiting the foregoing, the Contractor agrees to indemnify, keep indemnified and hold harmless the University and their respective officers, employees and agents, from and against all proceedings, actions, costs (including legal costs), charges, claims, expenses, damages, liability, losses and demands in respect of any injury to or the death of any person whomsoever or in respect of any loss of or damage to any property caused by or arising from any act, neglect, default or omission of the Contractor, its employees, sub-contractors or agents in connection with the performance of this Agreement.

The Contractor shall not be responsible for any damage, loss or injury to or the death of any person caused by the negligence or wilful act or omission of the University or any of its employees or agents.

22. INSURANCE

The Contractor shall be responsible and take due precautions for the safe custody of any materials on his premises which are the property of the University or any Client Department and shall insure the same against any form of loss or damage up to the point of delivery.

The Contractor shall maintain adequate insurances throughout the period of this contract with an approved insurance company and the Contractor shall upon request of the University produce appropriate evidence confirming such insurance is in place.

23. FAIR WAGES AND CONDITIONS

23.1 The Contractor shall in the execution of this contract observe and fulfil the obligations following as to fair wages and conditions of labour, that is to say the Contractor shall pay rates of wages and observe hours of labour not less favourable than those commonly recognised by employers and trade societies or, in the absence of such

recognised wages and hours, those which in practice prevail amongst good employers in the trade in the district where the work is carried out. Where there are no such wages and hours recognised or prevailing in the district, those recognised or prevailing in the nearest district in which the general industrial circumstances are similar shall be adopted.

Further, the conditions of employment generally accepted in the district in the trade concerned shall be taken into account considering how far the terms of this clause are being observed, and for this purpose also regard shall be had to the conditions of employment generally in the Contractor.

23.2 Conditions and Agreements to be Exhibited

The Contractor shall cause the preceding clause 23.1 to be prominently exhibited for the information of the work people on the premises where work is being executed under this contract. In trades where it is the practice, the Contractor shall also cause to be exhibited or have available for inspection, a copy of any signed agreement determining the rates or wages and hours of labour commonly recognised by employers and trade societies in the district.

23.3 Wages and Time Sheets

The Contractor shall keep proper wages books and time sheets showing the wages paid and the time worked by the work people in his employ in and about the execution of the contract, and such wages books and time sheets shall be produced whenever required for the inspection of any Officer authorised by the University.

23.4 Employment Legislation

The Contractor shall fully observe and comply with the provisions of all applicable employment legislation and regulations in force in Ireland from time to time during the term of this contract including, without limitation, the National Minimum Wage Act, 2000 and any employment regulation orders issued by a Joint Labour Committee pursuant to Section 42 of the Industrial Relations Act, 1946, or registered employment agreements as provided by Section 27 of the Industrial Relations Act, 1946, the Safety in Industry Acts, 1955 and 1980 and the Safety, Health and Welfare at Work Act, 1989 and all regulations, directions, notices and orders made or served there under and any relevant code of practice issued by the National Authority for Occupational Safety and Health established pursuant to the Safety, Health and Welfare at Work Act, 1989 and the Contractor shall comply with any national pay agreements.

24. CORRUPT GIFTS TO PERSONS IN THE UNIVERSITY SERVICE.

24.1 The Contractor shall not offer to give or agree to give any person in the University's Service any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this or any other contract for the University's Service or for showing or forbearing to show favour or disfavour to any person in relation to this or any other contract for the University's Service.

24.2 Any breach of this condition by the Contractor or by anyone employed by him or acting on his behalf (whether with or without the knowledge of the Contractor) or the commission of any offence by the Contractor or by anyone employed by him or acting on his behalf under the Prevention of Corruption Acts, 1889 to 1916, as adapted by Adaptation Order No. 37 of 1928 and the Ethics in Public Office Acts, 1995 to 2001, in relation of this or any other contract with the University shall entitle the University to cancel the contract and to recover from the Contractor the amount of any loss resulting from such cancellation.

24.3 Any dispute or difference of opinion arising in respect of either the interpretation, effect or application of this condition or of the amount of damages recoverable by the University from the Contractor as a result of cancellation hereunder shall be decided by the

University in such manner and on such evidence or information as he may think fit and his decision shall be final.

25. BOND

The Contractor shall be bound, if called upon by the University, to enter into a bond with an approved insurance company or financial institution for the due performance of the conditions of this contract, such Bond to be provided at the expense of the Contractor. The expiry date of any such bond must be a minimum of 12 months after the anticipated expiry date of this contract or any extension thereof.

26. DISABILITY

No employee of the University shall be admitted to any part or share of this contract, or to any benefit to arise there from.

27. CHANGE OF OWNERSHIP

Where the Contractor is a body corporate, the Contractor:-

27.1 shall not undergo any change of control without the prior written approval of the University, such approval not to be unreasonably withheld or delayed (and for this purpose "control" shall have the meaning assigned to it in Section 11, Taxes Consolidation Act 1997); and

27.2 shall notify the University of any change in the legal or beneficial ownership of the shares in its share capital.

28. FAILURE TO OBSERVE CONDITIONS OR TO EXECUTE WORK

In the event of the Contractor materially failing:-

28.1 to observe or perform any of the Conditions of the Contract, or

28.2 to execute any work in a good workmanlike manner to the satisfaction of and by the time fixed by the University.

It shall be lawful for the University in his discretion in the former event to remove or withhold all or any part of the work to which the Contractor would otherwise be entitled under this contract until such time as he may be satisfied that the Contractor is able to and will duly observe the said Conditions, and in the latter event to reject or remove as the case may require any work executed otherwise than in a good and workmanlike manner to the satisfaction of and by the time fixed by the University, and in both or either of the events aforesaid to employ other firms to produce the work so removed or withheld or work in lieu of that so rejected or removed as aforesaid.

The rights of the University under this clause are without prejudice to any other right or remedy of the University arising at law or in equity (including but not limited to the right to terminate this Contract for persistent breach pursuant to clause 29 hereof).

29. TERMINATION

In the event that the Contractor:-

29.1 persistently fails to observe or perform any of the terms and conditions of this contract;

OR

29.2 fails in any material respect to observe or perform any of the terms or conditions of this contract following the expiry of not less than 28 days notice by the University upon the

Contractor specifying the breach complained of and requiring the Contractor to remedy the same;

OR

29.3 commits an act of bankruptcy or being a company enters into liquidation whether compulsory or voluntary or if a receiver is appointed over all or any of the assets of the Contractor or if a petition to appoint an examiner over the Contractor is presented to the High Court in Ireland;

OR

29.4 fails to observe or perform the provisions of clause 23 or 24 of this Contract in any respect; then the University may terminate this contract forthwith by notice in writing to the Contractor.

The rights and remedies of the University under this clause shall be without prejudice to any other rights and remedies available to them in law or in equity.

30. EFFECT OF TERMINATION / EXPIRY

The Contractor shall take all reasonable steps, both prior to and following the termination or expiry of this contract, to facilitate the transfer to a successor including (but without prejudice to the generality of the foregoing) the delivery to the University upon demand of all customer data in the Contractor's possession.

Following the expiry or termination (for whatever reason) of this contract, the Contractor shall immediately

30.1 deliver up to the University and / or

30.2 destroy or erase, as the University may direct by notice in writing to the Contractor, all copies of documents in its possession that contain confidential information (in whatever form or medium) of the University or of any Client Department and shall if requested provide to the University a written certification that has been done.

31. FORCE MAJEURE

In case of strikes, combinations of work people, fire, accidents or other circumstances beyond the reasonable control of the Contractor, impeding or delaying the performance by the Contractor of his obligations under this contract, and provided that the Contractor shall give notice in writing to the University immediately on the happening of such impediment or delay, stating the cause and the date of commencement, and on its cessation, stating the date of cessation, the delivery or completion of orders may be suspended by the University without penalty, and the University shall have power during such impediment or delay to obtain supplies elsewhere without any charge to the Contractor.

32. TRANSFER AND SUBCONTRACTING

The Contractor shall not, without the written permission of the University, transfer or assign, directly or indirectly, to any person or persons whatever the benefit of this contract or any right or authority there under, or transfer or delegate the operation or management of any part of this contract. The Contractor shall be responsible in all respects for the performance of any sub-contractors. If any elements of the contract are sub-contracted to a third party the Contractor shall remain responsible for the entire contract.

33. CLIENT DATABASES, OWNERSHIP AND SURRENDER

The Successful Tenderer shall create and maintain a record / database of all activity under this contract, so as to provide the information, which may from time to time, be required or requested by the University whose property this record/database shall be and in whom the copyright is vested. The successful contractor shall surrender in full and without charge, upon receipt of a request from the University, this record/database. The use of the information contained in this record/database is prohibited for any purpose other than to service this contract.

34. ASSIGNMENT OF WARRANTIES

The Contractor shall ensure that all manufacturers' warranties obtained for the goods supplied under this contract shall be assigned to the University.

35. APPEAL LIMITED

Should any question or questions arise as to the interpretation of this contract, or as to the execution of any order arising out of the same, such question or questions shall be settled by the award of the University, subject to the right of appeal by the Contractor to an independent arbitrator acceptable to both parties whose decision in such case shall be final. In the event of failure by the parties to agree on such Arbitrator, the parties shall accept an Arbitrator nominated by the President for the time being of the Law Society of Ireland.

36. GOVERNING LAW

This contract shall be governed by the law of Ireland and, subject only to Clause 35, and parties hereby irrevocably submit to the jurisdiction of the Courts of Ireland.