

## **CONDITIONS OF CONTRACT FOR THE SALE OF GOODS AND SERVICES**

### **1. INTERPRETATION**

#### **1.1 In these Conditions:-**

- 1.1.1 "the Contract" means the agreement concluded between the Company and the Contractor for the supply of Goods and/or Services which is subject to these conditions and including all documents which are incorporated or referred to therein;
- 1.1.2 "the Contractor" means the person who by the Contract undertakes to buy Goods or Services. Where the Contractor is an individual or partnership, the expression shall include the personal representatives of that individual or of the partners;
- 1.1.3 "the Company" means Staffordshire University HEC, or Staffordshire University Enterprises Limited (trading in its own name or as Beacon Computers) or Octagon Computer Centre Limited, as the case may be.
- 1.1.4 "the Goods" means all goods, materials, articles and models, experimental equipment or prototypes to be supplied by the Company under the Contract;
- 1.1.5 "the Services" means any services to be performed by the Company.
- 1.1.6 "the Contract Price" means the price exclusive of Value Added Tax payable by the Contractor to the Company under the Contract;
- 1.1.7 unless the context otherwise requires, reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended or re-enacted by any subsequent enactment, order, regulation or instrument.

1.2 The headings to these Conditions shall not affect their interpretation.

### **2. VARIATION OF CONDITIONS**

Goods or Services shall be supplied in accordance with these Conditions. Any conditions which the Contractor may seek to impose and which in any way add to, vary or contradict these Conditions shall be excluded and not form part of the Contract, unless each of such conditions has been specifically agreed to in writing by the Company.

### **3. SPECIFICATION**

Any description of Goods or Services is given by way of identification only and the use of such description shall not constitute a sale by description. All specifications, drawings, weights, dimensions or other characteristics submitted in any quotation by the Company are approximate only and the descriptions and illustrations contained in any of the Company's catalogues, brochures, price lists or other publicity materials are intended merely to present a general idea of Goods or Services described therein. The Company reserves the right to change any of the foregoing without notice and to supply Goods or Services so changed in performance of the Contract provided that such changes do not materially affect the characteristics of the Goods or Services.

#### 4. SAMPLE

Even if a sample of the Goods has been shown to and inspected by the Contractor, such sample was so shown and inspected solely to enable the Contractor to assess for itself the quality of the bulk and not so as to constitute a sale by sample.

#### 5. INFORMATION

The Contractor shall be responsible to the Company for ensuring the accuracy and sufficiency of its order (including any applicable specification and/or sample). The Company shall be entitled to charge the Contractor for all costs (and a reasonable element of profit) incurred by it where variations to Goods or Services are requested by the Contractor and accepted by the Company.

#### 6. LIMITATION OF LIABILITY

6.1 The Company shall:

6.1.1 make good at its option by reimbursement of the whole or part of the price (and, where relevant, as a deduction from any part of the price remaining unpaid) or by repair or by replacement

6.1.1.1 subject to condition 3 any failure by the Goods to correspond with their specification at the time of delivery;

6.1.1.2 any defect developing under normal use in the Goods and due solely to faulty design (except where the design is supplied by or on behalf of the Contractor) materials and/or workmanship;

6.1.2 make good at its option by reimbursement of the price or by reperformance of the Services any defective workmanship or negligence in the performance of the Services;

provided that:

6.1.3 any failure to meet specification is notified in writing to the Company within 7 days from the date of delivery or (where the failure was not apparent on reasonable inspection) within a reasonable time after discovery of the failure and in any event such failure must be notified within 3 months after delivery;

6.1.4 any such defect in design materials workmanship shall have appeared within 3 months after delivery and shall have been thereupon promptly notified to the Company in writing;

6.1.5 the Company shall be under no liability in respect of any defect in the Goods arising from any drawings, design or specification supplied by the Contractor;

6.1.6 the Company shall be under no liability in respect of any defect arising from fair wear and tear, or other acts of the Contractor including without limitation wilful damage, negligence, lack of proper maintenance of servicing, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or alteration or repair of the Goods within the Company's approval.

6.1.7 the Company shall be under no liability until any monies due from the Contractor under the Contract have been paid in full; and

6.1.8 any Goods alleged to be defective are promptly made available to the Company for inspection and, if so required by the Company, are promptly returned at the Contractor's risk and expense to the Company's premises for inspection.

6.2 Provided that nothing in the Condition shall operate so as:-

6.2.1 to exclude the Company's non-excludable liability in respect of death or personal injury caused by the negligence of the Company its servants or agents;

6.2.2 to exclude the application of Section 12 of the Sale of Goods Act 1979;

6.2.3 to exclude liability for fraudulent misrepresentation.

6.3 The Company shall not be liable to the Contractor in contract tort (including without limitation negligence) and/or breach of statutory duty for any loss or damage which the Contractor may suffer by reason of any act, omission, neglect or default (including negligence) in the performance of the Contract by the Company its servants or agents, in a sum which is greater than the Contract Price.

6.4 The Company shall not be liable to the Contractor in contract tort (including without limitation negligence) and/or breach of statutory duty for any indirect or consequential (including economic) loss of any kind with the Contractor may suffer by reason of any act, omission, neglect or default (including negligence) in the performance of the Contract by the Company, its servants or agent.

6.5 Nothing in conditions 3, 5 and 6 shall operate so as to affect the statutory rights of the Customer where Goods are sold or Services are supplied to a Contractor dealing as a consumer within the meaning of Unfair Contract Terms Act 1977.

## **7. DELIVERY**

7.1 In the absence of agreement to the contrary, delivery of the Goods shall be made by the Contractor collecting the Goods at the Company's premises as soon as practicable following notification from the Company that the Goods are ready for collection or, if some other place for delivery is agreed by the Company, by the Company delivering the Goods to that place.

7.2 The Contractor shall be responsible for the provision and cost of all transport and labour for loading. Where the Company assists the Contractor with the removal of the Goods, such assistance shall be rendered without any responsibility on the part of the Company, its servants or agents and the Goods shall be at the sole risk of the Contractor.

7.3 Unless otherwise stated any time quoted by the Company for delivery of all or any of Goods or performance of Services is an estimate only and time shall not be of the essence. The Company shall not be liable for any failure to meet any such estimate, nor for any loss of whatsoever nature resulting directly or indirectly therefrom.

7.4 If a completion date is agreed in writing and the Company fails to deliver Goods or perform the Services by such date, the Contractor shall be entitled to claim a reduction in the Contract Price by giving the Company notice in writing within a reasonable time, unless it can be reasonably concluded from the circumstances that the Contractor has suffered no loss. Such reduction shall be equal to one per cent of that part of the Contract Price which is attributable to such part of Goods or Services which cannot as a consequence of such failure be put to the use intended for each complete week of delay from such firm date, but shall not exceed five per cent of such part of the Contract Price.

## **8. DELIVERY BY INSTALMENTS**

The Company reserves the right to delivery by instalments and each delivery shall constitute a separate contract to which these Conditions shall apply. Failure by the Company to deliver any one or more of the instalments or any claim by the Contractor in respect of any one or more instalments shall not entitle the Contractor to treat the Contract as a whole as repudiated.

## **9. FAILURE TO TAKE DELIVERY**

If the Contractor fails to take delivery of or collect the Goods or fails to give the Company adequate delivery instructions after notification by the Company that the Goods are ready the Company may (without prejudice to its other rights and remedies)

9.1 store the Goods (on its own or any third party's premises) and charge the Contractor for its reasonable costs (including without limitation VAT costs of storage, carriage and insurance); and/or

9.2 sell the Goods at any time and after deducting all costs and expenses account to the Contractor for any excess over the price already paid under the Contract or charge the Contractor for any shortfall between the Contract price and such costs and expenses.

## 10. NON-DELIVERY

- 10.1 Notification of short delivery (measured by weight or number) or damage in transit must be made in writing to the Company within five days of the receipt of the Goods.
- 10.2 Notification of non-delivery must be made in writing to the Company within 14 days after the date of the Company's invoice.
- 10.3 The Company shall at its option either make good the whole or part of the price (and where relevant, as a deduction from any part of the price remaining unpaid) or by repair or replacement any such non-delivery short delivery or damage notified as aforesaid and save as provided in this condition 10.3 shall not be liable for any such non-delivery short delivery or damage in transit nor for any loss, financial or otherwise resulting directly or indirectly therefrom. In no event shall the Company be liable to the Contractor in connection with any damage or loss in transit where delivery takes place at the Company's premises.

## 11. PAYMENT

- 11.1 Payment shall be made in full within 30 days following the date appearing on the Company's invoice notwithstanding that delivery may not have taken place and the property in the Goods may not have passed to the Contractor.
- 11.2 If payment of the Contract Price or any part thereof is not made by the due date, the company shall be entitled:
  - 11.2.1 to charge interest on the outstanding amount at the rate of 3% per annum above the Midland Bank Base Rate accruing daily until the actual date of payment (both before and after judgement);
  - 11.2.2 to require payment in advance of delivery for undelivered Goods or performance of unperformed Services, whether ordered under the Contract or not;
  - 11.2.3 to refuse to make delivery of any undelivered Goods or performance of unperformed Services whether ordered under the Contract or not and without incurring any liability whatever to the Contractor for non-delivery, non-performance or any delay in delivery or performance;
  - 11.2.4 to terminate the Contract.
- 11.3 Whenever under the 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 the Contract or under any other contract with the Company.

## 12. PRICE

- 12.1 Subject to prior written agreement to the contrary, the Company shall be entitled to invoice the Contractor for the price of Goods or Services on or at any time after the Company has notified the Contractor that Goods or Services are ready for collection or the Company has tendered delivery of Goods or performed the Services.
- 12.2 Any price quoted by the Company is based upon costs current as at the date of quotation. The price charged in accordance with Condition 11.2.1 to the Contractor under the Contract may be changed to take account of costs current at the date of invoice.
- 12.3 Unless otherwise expressly stated in writing, all prices are exclusive of VAT which shall be charged where appropriate at the rate prevailing at the relevant tax point.
- 12.4 Where payment is agreed to be made by instalments, any delay or default by the Contractor in making payment in respect of any one instalment shall render all the remaining instalments due forthwith, and interest will be charged with immediate effect until the date of actual payment.

**13. RISK**

The risk in the Goods will pass to the Contractor immediately on delivery to the Contractor or into custody on the Contractor's behalf, whichever is the sooner.

**14. PROPERTY**

14.1 Notwithstanding delivery and the passing of risk, property in and title to the Goods shall remain in the Company until the Company has received payment of the full price of (a) all Goods and/or Services the subject of the Contract and (b) all other Goods and/or Services supplied by the Company to the Contractor under any other contract whatsoever.

14.2 Until property in and title to the Goods passes to the Contractor

14.2.1 the Contractor shall keep the Goods properly stored, protected and insured and separate from all or any other goods whether belonging to the Company the Contractor or any third party;

14.2.2 the Company shall be entitled at any time forthwith to revoke the Contractor's power to use or deal with the goods as the case may be; and it shall automatically cease if the Contractor shall commit or be subject to any Act of Insolvency as defined in Conditions 19.1 and 19.2; and

14.2.3 the Contractor shall not make any modification to the Goods or their packaging or alter remove or tamper with any marks, numbers or other means of identification used on or in relation to the Goods.

14.3 Upon termination of the Contractor's power to use or deal with the Goods, the Contractor shall place the Goods at the disposal of the Company and the Company and its servants and agents are hereby irrevocably authorised without the need for consent of any third party, but using only such force as may be necessary to enter upon any premises of the Contractor for the purpose of removing the Goods.

14.4 If any of the foregoing provisions of this Condition shall be invalid or unenforceable such invalidity or unenforceability shall not affect the remaining provisions.

**15. WARRANTY**

15.1 The Company warrants that Goods or Services:-

15.1.1 will be of merchantable quality

15.1.2 will be free from defects in design, material and workmanship

15.1.3 will correspond with any relevant specification or sample

15.1.4 will comply with all statutory requirements and regulations relating to the sale of services.

Provided that:-

15.1.5 the Company shall be under no liability in respect of any defect in Goods or Services arising from any drawings design or specification supplied by the Contractor;

15.1.6 the Company shall be under no liability in respect of any defect arising from fair wear and tear or other acts of the Contractor including without limitation wilful damage, negligence, lack of proper maintenance or servicing, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing) misuse or alteration or repair of Goods or Services without the Company's approval;

15.1.7 the Company shall be under no liability until any monies due from the Contractor under the Contract have been paid in full.

- 15.2 Without prejudice to any other remedy if the goods are not supplied in accordance with the Contract the Contractor shall be entitled:-
- 15.2.1 to inform the Company in writing within 7 days of the Contractor first discovering any such defects and in any event during the currency of any warranty or guarantee.
- 15.2.2 to return defective goods promptly to the Company at the Contractor's sole expense.
- 15.3 In the event of problems arising, the Contractor shall contact the Company who will within 14 days investigate and seek to rectify the problem.
- 15.4 The Contractor will be deemed to have accepted the Services, if no notification of defects is given within 14 days of delivery (or discovery of the defect).

## 16. EXPORT

- 16.1 Should the Contractor propose to export any goods or services purchased from the Company the Contractor shall reveal in writing the proposed Country of destination, state town and customer for such services at the time of making any enquiry and obtaining such services.
- 16.2 It shall be the responsibility of the Contractor to ensure that all requirements applicable to the Contract, whether statutory, regulatory, municipal and/or otherwise howsoever, (including without limitation any relating to the importation or use of the Goods in the country of destination and for the payment of duties thereon) are duly complied with. It shall be a condition precedent to the performance by the Company of its obligations under the Contract that all necessary licences, permits and consents shall have been obtained by the Contractor.
- 16.3 Any failure on the part of the Contractor to notify the Company of any such intention to export shall render any contract relating to such services voidable at the Company's option notwithstanding that any act or thing may have been done by the Company in performance or part performance of such contract. Upon the Company being notified of such intention to export any obligation on the Company's part existing at such time shall be voidable at the Company's option. Further in the event of any such failure as aforesaid the Contractor shall indemnify the Company and keep the Company indemnified against all and any costs expenses and/or damages whatsoever arising by reason of any export or attempt to export services purchases from the Company or agreed to be purchased from the Company.
- 16.4 The Contractor shall be responsible for arranging testing and inspection of Goods or Services at the Company's premises before shipment. The Company shall have no liability for any claim in respect of any defect in Goods or Services which would be apparent on testing or inspection and which is made after shipment or in respect of any damage during transit.

## 17. FORCE MAJEURE

Neither party shall be liable to the other for any failure to perform or for any delay in the performance (other than as to payment) of any of its obligations under the Contract caused by any factor beyond its reasonable control.

## 18. INDUCEMENTS

If the Contractor shall have offered or given or agreed to give to any person 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 the Contract or any other contract with the Company or for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other contract with the Company, or if the like acts shall have been done by any person or persons employed by it or acting on its behalf (whether with or without the knowledge of the Contractor) or if in relation to the Contract or any other contract with the Company, the Contractor or any person employed by it or acting on its behalf shall have done any act which had the recipient been in the employment of a public body would have been an offence under the Prevention of Corruption Acts 1889 to 1916 or shall have given any fee or reward to any officer of the Company which shall have been exacted or accepted by such officer under colour of his office or employment and is otherwise than such officer's proper remuneration, the Company shall be entitled to cancel the Contract and to recover from the Contractor the amount of any loss resulting from such cancellation and shall have no liability whatsoever in respect of or in connection with such cancellation.

## 19. TERMINATION

The Company may at any time by notice in writing summarily terminate the Contract wholly or in part and/or any other Contract with the Contractor or to withhold performance of all or any of its obligations under the Contract, and/or any other contact with the Contractor without compensation to the Contractor in any of the following events:

- 19.1 if the Contractor, being an individual, or, where the Contractor is a firm, any partner in that firm shall at any time become bankrupt, or shall have a receiving order, administration order, or interim order made against him, or shall make any composition or scheme of arrangement with or for the benefit of his creditors, or shall make any conveyance of assignment for the benefit of his creditors, or shall purport to do so, or if in Scotland he shall become insolvent or bankrupt, or any application shall be made for sequestration of his estate, or a trust deed shall be granted by him for the benefit of his creditors; or
- 19.2 if the Contractor being a company shall pass a resolution, or the Court shall make an order, that the company shall be wound up (except for the purpose of amalgamation or reconstruction) or if an administrative receiver on behalf of a creditor shall be appointed, or if the Court shall make an administration order, or if circumstances shall arise which entitle the Court or a creditor to appoint an administrative receiver or which entitle the Court to make a winding-up order or administration order, or
- 19.3 the Contractor shall commit any breach of any contract (including without limitation the Contract) with the Company.

provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Company and that on the giving of such notice all monies outstanding from the Contractor to the Company shall become immediately due and payable. In the event of a suspension of performance the Company shall be entitled to require as a condition of resuming performance, prepayment or such other security as it may deem appropriate.

## 20. INTELLECTUAL PROPERTY RIGHTS

- 20.1 All drawings, specifications, designs, software, photographs and intellectual property of any kind obtained by the Contractor from the Company remain the Company's exclusive property. They may not, without the Company's consent, be utilised by the Contractor, copied, reproduced or communicated to a third party except for the purpose of implementing the Contract for which they are supplied. Except in the case of the Company's standard descriptive specifications, operating instructions, layout and foundation drawings, they are to be returned to the Company on completion of the Contract.
- 20.2 If any claim is made against the Contractor that Goods or Services infringe or that their use or resale infringes the patent, copyright, design right, registered design, trade mark or other industrial or intellectual property rights of any other person or any claim is made in respect of passing off or unauthorised use of confidential information in relation to Goods or Services and/or their use or resale the Contractor shall forthwith notify the Company in writing and the Company shall be given full control of any proceedings or negotiations in connection with any such claim. The Contractor shall give the Company all reasonable assistance for the purposes of any such proceedings or negotiations and except pursuant to a final award, the Contractor shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Company (which shall not be unreasonably withheld). The Contractor shall do nothing which would or might vitiate any policy of insurance of insurance cover which the Contractor may have in relation to such infringement.
- 20.3 If Goods are to be modified by the Company or produced in accordance with a specification submitted by the Contractor, the Contractor shall (without prejudice to the other rights and remedies of the Company) indemnify the Company in full against all loss, costs, damages, charges, expenses and other liabilities awarded against or incurred by the Company as a result of or in connection with
  - 20.3.1 any claim for infringement of any patent, copyright, design right, registered design, trade mark or other industrial or intellectual property rights of any other person and/or for passing off and/or unauthorised use of confidential information which results from the Company's use of the Contractor's specifications.

20.3.2 any other liability of any kind to any third party including without limitation for defective Goods, personal injury or death to the extent that it arises from this specification.

## 21. CANCELLATION

Following acceptance by the Company of the Contractor's order, no cancellation and/or suspension, either in whole or in part, may be made by the Contractor other than with the prior written consent of a director of the Company and upon terms that the Contractor shall indemnify the Company in full against all loss (including without limitation loss of profit) damages, costs expenses and other liabilities awarded against or incurred by the Company as a result of or in connection with the cancellation.

## 22. HEALTH & SAFETY

22.1 The Contractor undertakes that, if the Goods are being supplied for use at work, it will take such steps as are necessary to ensure, so far as is reasonably practicable, that the Goods will be safe and without risks to health when properly used, set, cleaned and maintained by a person at work.

22.2 The following provisions apply where the Goods are used, obsolete or second hand:

22.2.1 The Goods are not supplied as new goods.

22.2.2 Where Goods are of a type usually covered by safety regulations or orders made under the Consumer Protection Act 1987 or any other enactment or in compliance with any European Community obligation, and in particular where the Goods are electrical equipment usually covered by the Electrical Equipment (Safety) Regulations 1975 and 1976, and the parties contemplate that the Goods may be used again for their original purpose after appropriate steps have been taken with regard to safety, the Contractor undertakes to have the Goods properly checked before use, to have them regularly serviced and maintained and to take such other steps as are necessary to ensure, so far as is reasonably practicable, that they will be safe and without risks to health when properly used, set, cleaned and maintained by a person at work.

## 23. DISPUTE

Any dispute arising under or in connection with the Contract or the supply of Goods or Services shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated upon the application of either party by the President for the time being of the Law Society in accordance with the Arbitration Acts 1950 - 1979. The arbitrators decision shall be final and binding on both parties. Costs shall be in the award of the arbitrator.

## 24. NO WAIVER

No failure or delay on the part of the Company to exercise any of its rights under the Contract shall operate as a waiver of nor shall any waiver by the Company of any breach by the Contractor of any of its obligations under the Contract affect the rights of the Company in the event of any further or continuing breach.

## 25. ASSIGNMENT

The Contract is personal to the Contractor, who shall not assign or in any way part with the benefit without the Company's prior written consent.

## 26. SEVERABILITY

Each and every obligation contained in these Conditions shall be treated as a separate obligation and shall be severally enforceable as such notwithstanding the non-enforceability of any other such obligation.

## 27. NO AGENCY

The Conditions of the Contract shall not create or evidence, or be deemed to create or evidence, any agency or partnership between the Company on the one hand and the Contractor or any third party on the other.



**28. NOTICES**

Any notice required to be given in writing under the Contract shall be given, where possible, by facsimile transmission and otherwise by first class post addressed to the registered office of the party for which it is intended, or to such other address as may be notified in writing in accordance herewith for the purpose, and shall be deemed to have been received, in the case of a facsimile transmission, upon transmission and, in the case of a letter, forty-eight hours after posting. In proving service by letter, it shall be sufficient to show that the envelope containing the notice was properly addressed and stamped and duly posted.

**29. BRIBERY ACT 2010**

The Contractor shall, at all times, act within the meaning and scope of the provisions of the Bribery Act 2010 or any statutory modification of re-enactment thereof. The Contractor shall take all reasonable steps to secure the observance of these provisions by all servants, employees or agents of the Contractor and all sub-contractors employed in the execution of the Contract.

**30. LAW**

The Contract shall be considered as a contract made in England and subject to English Law.