1. Definitions

“Us”, “Our” and “We” means the University of Surrey.

“You” and “Your” means the person, firm or company to whom the Purchase Order or Purchasing Card instruction or at the time of such instruction was addressed and any employees, sub-contractors or agents of said person, firm or company.

“The Services” means all work or service specified in a Purchase Order or Purchasing Card instruction to be supplied in accordance with the Contract.

“Authorised Officer” means Our employee authorised, either generally or specifically, by Us, to sign the Purchase Order or to accept Purchasing Card instructions, confirmation of which may be obtained from the Head of Purchasing at The University of Surrey.

“Authorised” means an employee of one of Our Authorised Officers.

“Purchase Order” means Our Authorised Purchase Order having these General Conditions of Purchase on its reverse or attached to it or referring to these General Conditions of Purchase on its face.

“Order Amendment” means Our authorised Order Amendment or series of Order Amendments, each Order Amendment having precedence over any earlier Order Amendment.

“Purchasing Card instruction” means the instruction given by one of our Authorised Officers to supply the Services and may be by verbal, telephonic or electronic means.

“Address” means the delivery address stated in a Purchase Order or Purchasing Card instruction or Order Amendment.

“Contract” has the meaning given in Condition 2 below.

“Price” has the meaning given in Condition 4 below.

“A Correct Invoice” shall mean a detailed invoice quoting the University of Surrey Purchase Order number setting out all details of the services supplied and all discounts given.

2. Basis of Purchase

2.1 A Purchase Order or Purchasing Card instruction constitutes an offer by Us to purchase the Services at the prices as mentioned in this order and upon these Terms and Conditions.

2.2 You hereby acknowledge that acceptance of Our Purchase Order or Purchasing Card instruction implies acceptance of these Terms and Conditions which shall override any terms and conditions contained in any document supplied by You (notwithstanding any contrary terms in Your terms and conditions).

2.3 The date on which the Services are to be performed may vary. Such variations may include, but are not limited to, additions, omissions, substitutions, alterations, changes in quality, form, character, kind and changes, in any specified sequence, method or timing in connection with the performance of the Services.

2.4 No variation or addition to these Terms and Conditions or a Purchase Order or Purchasing Card instruction will be binding upon Us unless agreed in writing between Our Head of Purchasing or Director of Finance and Your authorised representative.

2.5 Subject to any Order Amendment in accordance with clause 2.3 These Terms and Conditions embody the entire understanding of the parties and override any prior promotions, undertakings or representations.

2.6 No Purchase Order or Purchasing Card instruction will be binding upon Us unless signed or given by Our authorised representative.

2.7 All Purchase Orders, or Purchasing Card instructions whether in writing or placed orally by Us, are upon these Terms and Conditions unless We agree otherwise in writing.

2.8 The Purchase Order or Purchasing Card constitutes an offer on Our part and no Contract shall be formed until You either expressly by giving notice of Your acceptance to Us, or implied by Your making a Purchase Order or Purchasing Card instruction in whole or in part, accepts the offer.

3. Cancellation

3.1 We may cancel a Purchase Order or Purchasing Card instruction without liability to You, at any time prior to the receipt of express or implied acceptance in accordance with clause 2, by giving You written notice.

3.2 At any time before or after implied or acceptance of a Purchase Order or Purchasing Card instruction in accordance with clause 2, We shall be entitled to cancel a Purchase Order or Purchasing Card instruction in respect of all or part only of the Services by giving You written notice of the time prior to delivery of the Services to which such cancellation relates.

3.3 Any such cancellation by Us shall be without prejudice to Our rights to damages for loss arising from cancellation.

4. Price

4.1 The price payable for the Services shall be that stated on the front of a Purchase Order or quoted at time of Purchasing Card instruction, and, unless otherwise so stated, shall be: a) exclusive of any applicable Value Added Tax (which shall be payable by Us subject to receipt of a VAT invoice); b) inclusive of all costs, expenses and profits relating to the provision and performance of the Services.

4.2 The price shall remain for the period of the Contract unless otherwise stated within the Schedule of Prices.

4.3 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 Our prior written consent.

4.4 We shall be entitled to any discount for prompt payment or otherwise usually granted by You in such circumstances.

5. Performance

5.1 The Services shall be performed at the Address during Our agreed business hours.

5.2 The Services shall be performed on or before the date or within the period stated on a Purchase Order or at time of Purchasing Card instruction or if no date or period is specified, within a reasonable period provided that We shall be under no obligation to accept provision or performance of the Services before the expiry of the date, but reserves the right to do so.

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

6. Documentation and Marking

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

7. Payment

7.1 Unless agreed in writing, You shall only be entitled to invoice Us after performance of the Services.

7.2 We will pay for the Services within such time period as may be agreed, but not earlier than 30 days after the end of the month in which a Correct Invoice is received.

7.3 We shall be entitled to set off against the price any sums owned to Us by You.

7.4 You shall have no right to charge Us interest (or any other sum in addition to the price) on any outstanding account.

8. Intellectual Property

8.1 All patents, copyright, design rights and other intellectual property rights (“IP Rights”) in all data prepared or supplied by Us to You shall remain Our property.

8.2 All “IP Rights” in all data prepared or developed by You under or in connection with the Contract shall vest in Us.

8.3 All “IP Rights” in all data not prepared or developed by You under or in connection with the Contract but which are: a) already vested in You and b) used by You in connection with the Contract shall remain vested in You but You hereby grant a non-exclusive, irrevocable, royalty free licence to both Us and any third party to use, copy or modify such data provided it is to enable Us or such third party to utilise the Services prepared or developed under or in connection with the Contract.

8.4 You shall disclose to Us all inventions which You or Your personnel may make in the performance of the Services and which are wholly or substantially based on concepts or data developed or supplied by Us. All “IP Rights” to such inventions shall vest in Us.

8.5 You shall execute all documents and perform such acts as may be reasonably necessary to enable Us to vest or maintain all “IP Rights” and perfect Our title to any inventions referred to in clause 8.4 and all data referred to in clause 8.2.

8.6 You shall ensure that all “IP Rights” in all data prepared or developed by any third party under or in connection with the Contract, including permitted sub-contractors under clauses 17, shall become vested in Us.

8.7 In respect of any “IP Rights” vested in any third party supplied not prepared or developed under or in connection with the Contract, You shall obtain from such third party (at no cost and expense to Us) such permission, waiver or licence as may be necessary to enable the Services to be performed or delivered completed and / or the data used, copied or modified by either Us or by any third party You have authorised.

8.8 You shall waive, and shall procure from any third party the waiver of, the exercise against Us of all moral rights in data that are or become vested in You and / or any third party.

9. Manner of Carrying Out and Extent of the Services

9.1 You shall perform the Services with all due care, skill and diligence to Our requirements and satisfaction, in accordance with good practice.

10. Warranties as to Services

10.1 You warrant to Us that the Services:

10.1.1 will comply with any statute, statutory order, directive or regulation or relevant British Standard (or equivalent required by Us) in force at the time of the performance of the Services.

10.2 You warrant that the Services infringe the industrial or intellectual property rights of any other person, except to the extent that the claim arises from compliance with any specifications, drawings, samples or descriptions provided by Us.

10.3 You shall bring to the attention of all Your employees, agents, sub-contractors and representatives in any way the provision of the Services, Our health and safety requirements and contractors on site requirements and You shall be responsible for ensuring that such requirements are duly observed by all Your such employees, agents, sub-contractors and representatives.

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

11. Indemnity

11.1 You shall indemnify Us in full against all direct, indirect or consequential liability, loss, damages, injury, costs and expenses (including legal expenses) awarded against or incurred by Us as a result of, or in connection with:

a) breach of any warranty or undertaking by You in relation to the Services;

b) any claim that the Services infringe the industrial or intellectual property rights of any other person, except to the extent that the claim arises from compliance with any specifications, drawings, samples or descriptions provided by Us;

c) any liability under the Supply of Goods and Services Act 1982 in respect of the Services;

d) any act or omission of any of Your personnel in connection with the performance of the Services;

e) any injury or other loss caused to any of Our employees or any other person on Our premises, caused by any default or negligence on Your part (including without prejudice to the generality of the foregoing) or any failure by You or Your agents, employees or sub-contractors to comply with any provisions of the Health and safety at Work Act 1984 (and any amendments or modifications thereof) or any regulations or code of practice thereunder).

12. Insurance

12.1 You shall maintain with a reputable insurance company such insurance cover as is reasonable (or as specifically required by Us) including without prejudice to the generality of the foregoing insurance to cover the liability of employees, agents or sub-contractors who shall be on Our premises at any time in connection with the provision of the Services in an amount not less than £5m against all risks of liability for death, personal injury or loss or damage to property and all liability under this Contract and shall on request provide Us with evidence of such insurance as We may reasonably require. If You fail to comply with such a request We may cancel the Purchase Order and any such failure by You or Your agents, employees or sub-contractors to comply with such provisions shall constitute a fundamental breach of the Contract.

12.2 Should You, Our or any third party (including Us) become unable to carry out the Services, You shall in such event forthwith pay Us a sum equal to such part of the Premium as has been paid up to the date of termination less any sum which You may recover from any third party or any third party’s insurers for any claim which may be made against Us by reason of such breach of contract.
13. Confidentiality and Design
13.1 Any Purchase Order or Purchasing Card instruction placed by Us shall be treated as confidential and in particular You shall not make use of Our name or the name of Our customers for publicity purposes without Our prior written consent. All designs, drawings, specifications and information supplied by Us or produced by You at Our expense in connection with a Purchase Order or Purchasing Card instruction shall remain Our property and are confidential and must only be used for the purpose of this Purchase Order or Purchasing Card instruction; the particulars contained therein must not be disclosed to anyone other than Our employees, without Our written consent. They must be used solely for the purpose of performing the Services and no similar goods or parts may be made for any other purpose. All such documentation and all copies thereof must be returned to Us on completion of any Order or Purchasing Card instruction or at any time on demand by Us, in either case, at Your expense.

14. Force Majeure
14.1 We shall not be liable to You or be deemed to be in breach of contract by reason of any delay in performing, or any failure to perform any of Your obligations in relation to a Purchase Order or Purchasing Card instruction if the delay or failure was due to any cause beyond Our reasonable control including, but not limited to, industrial action, war, fire, prohibition or enactment of any kind.

15. Termination
15.1 We shall have the right at any time, by giving You notice in writing, to terminate a Purchase Order or Purchasing Card instruction forthwith without liability to You in any of the following events:

15.1.1 If You commit a breach of any of the Terms and Conditions of a Contract;
15.1.2 If You, being a company, enter into liquidation whether compulsorily or voluntarily or has a petition presented for the appointment of an administrator or compounds with its creditors or has a receiver or administrative receiver appointed of all or any part of Your assets or takes or suffers any similar action in consequence of debt, take an individual or partnership, shall suspend payment or propose to enter into any composition with creditors or become unable to pay Your debts or have no reasonable prospect of so doing, or suffer a bankruptcy order of or anything analogous to any of the foregoing under the law of a jurisdiction in relation to You.
15.1.3 If a sale or purchase financial position should arise to such an extent that in Our opinion Your capability to adequately fulfil Your obligations hereunder has been jeopardised.
15.1.4 If You cease to operate or cease to trade on any of Your business or trade
15.2 Without prejudice to Our rights under clauses 13 and 15.1.1 – 15.1.4 We may for any other reason whatsoever terminate the Contract and / or Purchase Orders and / or Purchasing Card instructions at any time by giving You reasonable notice and specifying the date from which termination shall be effective.

16. Remedies
16.1 Without prejudice to any other remedy, if any Services are not performed in accordance with a Contract, then We shall be entitled (whether or not any part of the Services have been accepted by Us) to exercise any one or more of the following remedies in Our sole discretion:
16.1.1 to rescind a Purchase Order or Purchasing Card instruction
16.1.2 to require You at Your expense to remedy defects in the Services and carry out any other necessary work to ensure that the Terms and Conditions of a Purchase Order or Purchasing Card instruction are fulfilled;
16.1.3 to refuse to accept any further provision of any further Services without any liability to You;
16.1.4 to carry out at Your expense any work necessary to make the Services comply with a Purchase Order or Purchasing Card instruction; and
16.1.5 to claim such damages as may have been sustained in consequence of Your breach

17. Assignment
17.1 A Purchase Order or Purchasing Card instruction is personal to You and You shall not Without Our prior written consent assign or sub-contract any of Your rights or Your duties thereunder.

18. Waiver
18.1 No waiver by Us of any breach of this Contract by You shall be considered as a waiver of any subsequent breach of the same or any other provision.

19. Notices
19.1 Any notice required or permitted to be given by either party to the other under these Terms and Conditions shall be given in writing and be delivered by hand or sent by telex, facsimile or recorded delivery post to the address of the relevant party as stated herein or to any subsequently notified address. Any notice sent by telex or facsimile shall be deemed to have been served at the time of transmission. A notice sent by post shall be deemed to have been served four (4) days after posting.

20. Health & Safety and Environmental Protection
20.1 You shall:
   a) in relation to all persons likely to be affected by the execution of a Purchase Order or Purchasing Card instruction and coming into contact with the Services shall take such steps as may be reasonably practicable to ensure their health and safety;
   b) not receive or dispose of any waste as a result of executing a Purchase Order or Purchasing Card instruction in a manner likely to cause harm to the health and safety of any person or to the environment and shall ensure that any waste produced is stored in such a manner as to be easily removed from the environment;
   c) during the execution of a Purchase Order or Purchasing Card instruction take such steps as are reasonably practicable to avoid harm to the environment.

21. Governing Law
21.1 A Purchase Order or Purchasing Card instruction and these Terms and Conditions shall be governed and construed in accordance with the laws of England and the parties submit to the non-exclusive jurisdiction of the English Courts.

Where services are to be provided at the Address the following clause shall also apply
22. Protection of the Site
22.1 You shall provide all necessary protection of the premises at the Address and of plant, components, goods, materials and consumables and all things at the Address during the performance of the Services.
22.2 You shall restrict Your activities solely to the areas of the premises designated by Us.
22.3 You shall employ for the Services and retain during all working hours, competent personnel to Our reasonable satisfaction. Should We not be satisfied with any such personnel and give You notice thereof in writing, You shall exclude such personnel from the provision of the Services and substitute other personnel in their place.
22.4 You shall take all measures which under or by virtue of the provisions of any statutory requirement or the working rules of any industry, are required for the welfare, health, safety and protection of personnel employed at the Address by You (or Your permitted sub-contractors).
22.5 We operate a No Smoking policy in all Our buildings and all personnel employed by You (or Your sub-contractors) must comply with this ruling.
22.6 Electrical or other equipment belonging to You (or Your sub-contractors) shall not be used without Us having received prior notification and an opportunity to verify its safety.
22.7 You shall , in carrying out the Services, abide at all times with Our work place regulations.
22.8 The services shall be carried out in compliance with all applicable statutory requirements (whether national or international), Codes of Practice and British or European Standards.

23. Prevention of Corruption and Bribery
23.1 You shall not solicit or accept, nor offer, give or agree to give, to any person, any gift or consideration of any kind as an inducement or reward for doing, or refraining from doing any act in relation to the obtaining or execution of this or any other Contract with Us or for showing or refraining from showing favour or disfavour to any person in relation to this or any such Contract. You shall comply with all applicable laws, regulations, codes and sanctions concerning bribery and corruption, including the Bribery Act 2010.
23.2 No breach of this condition by You or by anyone employed by You or acting on Your behalf (whether with or without Your knowledge) in relation to any contract with Us shall entitle Us to terminate the Contract. We shall recover from You any loss in relation to the Contract resulting from such termination and shall recover from You the amount of the value of any gift, consideration or commission in connection with the Contract.
23.3 In any dispute, difference or question arising in respect of:
   a) the interpretation of this condition (except so far as the same may relate to the amount recoverable from You under condition 23.2).
   b) Our right to terminate the Contract under this condition;
   c) The amount or value of any gift, consideration or commission,
   Our decision shall be final and conclusive.

24. Freedom of Information
The University of Surrey is subject to the provisions of the Freedom of Information Act (2000).

25. Equality and Diversity
25.1 The contractor agrees to comply with the University’s policies and procedures to prevent unlawful discrimination on the grounds of sex, race, disability, sexual orientation, age, religion and belief.
25.2 In accordance with its responsibilities under the E&D statutory requirements, particularly those of the Race Relations Act 1976 (as amended by the Race Relations (Amendment) Act 2000 and the Race Relations Act 1976 (Amendment) Regulations 2003) to eliminate unlawful racial discrimination, promote equal opportunities and promote good relations between people of different racial groups, the University requires its contractors and sub-contractors to comply with the terms of this section.
25.3 The contractor warrants that its own practices and procedures comply with E&D legislation to prevent unlawful discrimination and that its employees are fully trained on matters relating to the prevention of unlawful discrimination.
25.4 The contractor will provide such information as required by the University in relation to its compliance with anti-discrimination legislation and will co-operate with any investigation by the University or a body empowered to carry out such investigations under the relevant legislation.
25.5 Where any investigation is conducted, or proceedings are brought which arise directly or indirectly out of any act or omission of the contractor, its agents or sub-contractors and where there is a finding against the Contractor in any such investigation or proceedings, the contractor shall indemnify the University with respect to all costs, charges and expenses (including legal and administrative expenses) incurred by the University during or in connection with any such investigation or proceedings and further indemnify the University for any compensation, damages, costs or other award the University may be ordered or required to pay to a third party.
25.6 Without prejudice to its remedies set out above, the University may terminate the contract if notice has been given to the contractor of a substantial or persistent breach of this clause proving that a reasonable period has been given during which the breach may have been rectified and the contractor has failed to remedy the breach within the stated period.

26. Confidentiality
26.1 You shall treat as confidential all unpublished information which may be derived from or obtained in the course of or in connection with the Contract and shall take all necessary precautions by contract or otherwise to treat all such information as confidential, and to ensure that such information is not disclosed by persons employed by You, and You shall not use such information for Your own commercial benefit.

27. Severability
27.1 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, such severability of the provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.