

UNIVERSITY OF ABERDEEN TERMS AND CONDITIONS OF PURCHASE

These General Conditions of Purchase are incorporated as an inherent part of this Purchase Order and must be accepted as the basis of this agreement to sell and purchase. They may not be varied, except as described below, and conditions published in any form by the person, firm or company to whom the Purchase Order is addressed shall neither annul nor alter them unless specifically agreed in writing by an authorised officer of the University of Aberdeen.

1. DEFINITIONS

In these Terms and Conditions the following words and expressions shall have the meanings set out below unless the context otherwise requires:-

'Buyer' means the University of Aberdeen or any wholly owned or associated subsidiary of the University of Aberdeen so named in the Purchase Order.

'Contract' means the contract between the Buyer and the Supplier for the sale and purchase of the Goods and/or the supply and provision of the Services and which is constituted by the Purchase Order and these Terms and Conditions.

'Goods' means the goods described in the Purchase Order.

'Integral Software' means the computer software and programs embedded in or forming an integral part of the Goods.

'Intellectual Property Rights' means any copyright, patent, trade mark or trade name, design rights, database rights, or other similar right of whatever nature, registered or unregistered, present or future, together with any application for such mark, name or right and any renewals or extensions thereof anywhere in the world.

'Purchase Order' means the Buyer's authorised purchase order form.

'Supplier' means the person, firm or company so named in the Purchase Order.

'Services' means the services described in the Purchase Order.

1.1 In interpreting these Terms and Conditions:-

1.1.1 headings are for ease of reference only and shall not affect the construction of these Terms and Conditions;

1.1.2 the words "including" and "in particular" shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they take effect as limiting the generality of any preceding words; and

1.1.3 where a reference is made to a statutory provision this includes any statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and any orders, regulations or other delegated or subordinate legislation made from time to time under it.

2. BASIS OF PURCHASE

2.1 The Purchase Order constitutes an offer by the Buyer to purchase the Goods and/or the Services subject to the terms of the Purchase Order and these Terms and Conditions.

2.2 The terms of the Purchase Order and these Terms and Conditions shall apply to and form part of the Contract to the exclusion of any terms and conditions referred to, offered, or stated to apply by the Supplier at any stage in the dealings between the Buyer and Supplier with reference to the Goods and/or Services to which the Contract relates. If the Supplier's general, specific or standard terms and conditions contain the same or a similar over-riding provision, then this Clause 2.2 shall prevail.

2.3 Any amendment to the terms of the Purchase Order and/or these Terms and Conditions shall be binding upon the Buyer only if made by a written instrument expressly amending the Purchase Order and/or these Terms and Conditions signed by a duly authorised representative of the Buyer.

2.4 If the Supplier is the owner of the Integral Software (or any part thereof) or any application software forming part of the Goods, the Supplier hereby grants to the Buyer a non-exclusive and (save as provided in Clause 2.5) a non-transferable licence to use such software (in the case of the Integral Software, in the form in which it is embedded into the Goods at the time of delivery to the Buyer).

2.5 The Buyer shall be entitled to transfer the benefit of the licence granted pursuant to Clause 2.4 to the purchaser(s) of the Goods (or any part thereof) from the Buyer at any time in the future.

2.6 If the Supplier is not the owner of the Integral Software (or any part thereof) or any application software forming part of the Goods, it shall ensure that the Goods are supplied with an appropriate end-user licence from the owner of such software or (as the case may be) an appropriate sub-licence agreement with the Supplier governing the use by the Buyer of the relevant software.

2.7 For the avoidance of doubt, the Supplier warrants and undertakes that the price of the Goods and/or the Services includes the right of the Buyer to use and the grant of the relevant licence to the Integral Software and any application software forming part of the Goods in terms of Clauses 2.4 to 2.7 inclusive.

3. SPECIFICATIONS AND QUALITY

3.1 The Supplier shall supply the Goods and/or Services in accordance with the specifications and other requirements described in or attached to the Purchase Order.

3.2 The Supplier undertakes to supply the Goods and/or Services using suitably experienced personnel who will carry out their duties with due diligence and in accordance with good industry practice, using materials of good construction and adequate strength which are free of defects in design, materials and workmanship.

3.3 The Goods and/or Services shall comply with the express terms of the Purchase Order and these Terms and Conditions and with the implied conditions, warranties and terms contained in the Sale of Goods Act 1979 and related statutes and with any specification of the British Standards Institution (or equivalent) which is relevant to the Goods and/or Services at the time of Contract.

3.4 The Supplier shall comply with all applicable statutes, regulations and/or legal requirements concerning the manufacture, packaging, packing, sale and delivery of the Goods and/or the performance of the Services.

3.5 With the exception of Goods made to Buyer's design or instructions Supplier shall warrant that neither the Goods nor use of them will infringe any patent, registered design, trademark, copyright or other protected right and undertake to indemnify Buyer against all claims, losses, damages, costs (including legal costs), expenses and liabilities of every kind for, or arising out of, any alleged infringement of any such right.

4. VARIATIONS

The Supplier shall not alter or provide goods and/or services different from any of the Goods and/or Services, except as expressly directed in writing by the Buyer. The Buyer shall have the right, from time to time during the execution of the Contract, by amendment to the Contract in accordance with Clause 2.3 to direct the Supplier to add to or omit, or otherwise vary, the Goods and/or Services, and the Supplier shall carry out such additions, omissions or variations and be bound by the same conditions, so far as applicable, as though the said additions, omissions or variations were stated in the Purchase Order and/or these Terms and Conditions.

5. DELIVERY, PACKAGING AND MARKING

5.1 The Goods shall be delivered to and the Services shall be performed at the address stated in the Purchase Order on the date or within the period stated in the Purchase Order, in either case during the Buyer's usual business hours or such other dates and/or period as may be agreed in writing by the Buyer.

5.2 If Goods are incorrectly delivered the Seller will be responsible for any additional expense incurred in delivering them to the correct address.

5.3 If the Buyer arranges for delivery of the Goods and/or Services the Supplier shall pay the Buyer's reasonable costs and expenses of delivery of such Goods and/or Services.

5.4 The Supplier shall mark the number of the Purchase Order on each delivery consignment, package and packing.

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

5.6 The Supplier shall ensure that all Goods supplied against the Contract are adequately protected against damage and deterioration in transit and delivered carriage paid. Any information relating to the handling of Goods upon receipt shall be clearly marked in English on the exterior packaging and accompanying paperwork. Unless otherwise expressly provided in the Purchase Order, the Supplier shall be responsible for the collection and disposal of all returnable packaging at no cost to the Buyer.

5.7 The Supplier shall ensure that the Goods are accompanied by full written information about the use(s) for which the Goods have been designed and tested and any conditions necessary to ensure the Goods will be safe and without risk to health when properly handled, stored, used and transported.

6. PROPERTY AND RISK

6.1 Subject to Clause 6.2, property and risk in the Goods shall pass to the Buyer immediately after delivery has been satisfactorily effected, provided that such passing of property and risk shall not prejudice either the Buyer's right to reject the Goods pursuant to Clauses 7 or 8 or any other rights that the Buyer may have under the Contract.

6.2 Where advance or progress payments are made by the Buyer, property, but not risk, shall pass to the Buyer as soon as the first of such advance or progress payment(s) has been made. All items paid for by the Buyer prior to delivery by the Supplier shall be adequately marked and recorded as being the property of the Buyer.

7. INSTALLATION AND TESTING

7.1 Where the Services include installation of any Goods, the Supplier shall install the relevant Goods in the location specified by the Buyer in the Purchase Order or such other location as the Buyer may direct.

7.2 On installation the Supplier shall carry out in the presence of the Buyer or its representatives:-

7.2.1 general tests specified by the Buyer in order to verify that the Goods and any Integral Software, is working in accordance with the applicable specification for such Goods and Integral Software; and

7.2.2 any tests in respect of such Goods and/or Integral Software, specified in the Purchase Order.

7.3 If the Goods and/or Integral Software (or any part thereof) fail the tests referred to in Clause 7.2 then the Supplier shall forthwith implement free of charge such alterations or modifications to or replacements of the Goods and/or Integral Software as it shall in the circumstances reasonably judge necessary and in sufficient time to allow the repetition of the tests within 7 days of the date of failure. The Supplier shall not be entitled to charge the Buyer for the cost of attendance by its staff, consultants and/or sub-contractors at any such tests or any repeat tests.

7.4 If the Goods and/or Integral Software (or any part thereof) fail the repeat tests then the Buyer shall have the right to reject the Goods and the Integral Software in whole or in part.

8. RIGHT OF REJECTION

8.1 In the case of Goods and/or Services delivered against the Contract by the Supplier not conforming whether by reason of not being of the quality, or the quantity or fit for the purpose specified in the Purchase Order, then the Buyer shall have the right to reject any or all such Goods and/or Services within a reasonable time of their delivery. Upon rejection property and risk in the rejected Goods shall revert to the Seller. Further, where the Buyer receives Goods as unexamined the Buyer's rights to subsequently reject them if any latent defect is found shall not be prejudiced nor shall any right of claim for shortage be prejudiced.

8.2 Subject to Clause 7, where goods are rejected the Buyer will afford the Supplier reasonable opportunity to replace rejected Goods and/or Services with Goods and/or Services which conform in all respects to the requirements specified in the Purchase Order. If the Supplier fails for whatever reason to meet all or any of the aforementioned requirements then the Buyer shall have the right to procure equivalents elsewhere without prejudice to any other rights or remedies which the Buyer may have against the Supplier.

8.3 The making of payment (either in whole or in part) shall not prejudice the Buyer's right of rejection. The Supplier shall pay to the Buyer, forthwith on receipt of notice (whether in writing or otherwise) from the Buyer that the Buyer has rejected the Goods and/or Services, in full any amounts paid by the Buyer in respect of rejected Goods and/or Services.

9. PRICES

The price of the Goods and/or Services shall be as stated in the Purchase Order and, unless specifically agreed otherwise, all prices shall be firm and fixed and no variation of price nor reconciliation of costs shall be permitted for the duration of the Contract, inclusive of carriage, packaging, installation and certification (where required) but exclusive of VAT.

10. PAYMENT

10.1 Provided the Goods have been delivered or the Services have been performed and comply with the requirements of the Contract to the reasonable satisfaction of the Buyer, then, subject to the accuracy of invoice, the Buyer shall endeavour to make payment 30 days after the receipt of a valid invoice. The Buyer shall not be held responsible for delays in payment caused by Supplier failure to comply with invoicing instructions.

10.2 Each invoice shall quote the number of the Purchase Order. Payment may be delayed but no prompt discount shall be forfeited by the Buyer, if the Supplier fails to mark the Purchase Order number on the consignment, package, packing or advice notes, invoices, monthly statements and all other correspondence.

10.3 Value Added Tax, where applicable, shall be shown separately on all invoices.

10.4 Any payment made shall be without prejudice to the Buyer's rights to reject the Goods and/or Services pursuant to Clauses 7 or 8 as applicable.

11. INTELLECTUAL PROPERTY RIGHTS

11.1 The Supplier shall indemnify and keep indemnified the Buyer in full and on demand against all actions, suits, claims, demands, losses, charges, costs and expenses which the Buyer may suffer or incur as a result of or in connection with any claim that the Goods and/or Services infringe the Intellectual Property Rights of any third party.

11.2 Where the Services include the creation, development or otherwise of Intellectual Property Rights by the Supplier for the Buyer, the Buyer shall own all such Intellectual Property Rights. The Supplier hereby assigns to the Buyer all its property, right, title and interest in such Intellectual Property Rights, including all statutory and common law rights, and, at the request of the Buyer, undertakes to do all things and execute all such further documents, forms and authorisations as may be required by the Buyer to assign and/or vest full property, right, title and interest in such Intellectual Property Rights in the Buyer absolutely.

12. CONFIDENTIAL INFORMATION

The Supplier shall treat all information provided by the Buyer as confidential and use such information only for the purposes of fulfilling the Contract. Where drawings or other data are issued by the Buyer to the Seller, the Supplier shall exercise proper custody and control of same. Such drawings or other data provided by the Buyer shall remain the property of the Buyer. On completion, cancellation or termination of the Contract for any reason, the Supplier shall return or dispose of such drawings or other data in accordance with the Buyer's written instructions.

13. SAFETY

13.1 In accordance with the requirements of the Health and Safety at Work etc Act 1974 any safety precautions required for the handling of the material covered by the Contract are to be clearly indicated on each consignment.

13.2 Hazardous goods must be marked in accordance with the Chemicals (Hazard Information and Packaging for Supply) Regulations 2002. All risk and safety warnings and phrases must be in English.

13.3 Goods must be accompanied by emergency information in English in the form of written instructions, labels or markings. The Supplier shall observe the requirements of U.K. and international agreements relating to the packing, labelling and carriage of hazardous goods.

13.4 Hazard data sheets must be supplied with the delivery for all hazardous materials, and the information contained in the data sheets must meet the legal requirements of the Health and Safety at Work etc Act 1974 and the Chemicals (Hazard Information and Packaging for Supply) Regulations 2002.

14. SPARES, USAGE AND STORAGE

14.1 Without prejudice to any rights that the Buyer may have under the Purchase Order, these Terms and Conditions or by statute, common law or otherwise, the Supplier shall, where necessary during the twelve month period from the date of the Contract, supply and fit, free of charge, new spare parts required for the purposes of repair of the Goods.

- 14.2 The Supplier shall ensure that, where applicable, compatible electro-mechanical spares to effect repairs are also made available to the Buyer, if required, for a period of 7 years from the date of the Contract or such other period as is specified in the Purchase Order.
- 14.3 The Supplier shall ensure that adequate instruction is given to the Buyer to ensure proper use and storage requirements of the Goods, and shall notify the anticipated life expectancy of any item, whether in storage or in use. The Buyer's rights, whether under the Purchase Order, these Terms and Conditions or by statute, common law or otherwise, will not be prejudiced simply by the Supplier's specification of a supposed life expectancy of any item.
15. **INDEMNITY**
- 15.1 Without prejudice to any rights or remedies of the Buyer, the Supplier shall indemnify and keep indemnified the Buyer in full and on demand against all actions, suits, claims, demands, losses, charges, costs and expenses which the Buyer may suffer, or incur, as a result of, or in connection with any damage to the Buyer's and third parties' properties, or in respect of any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any defect in the Goods and/or Services, or the negligent or wrongful act or omission of the Supplier or its sub-contractors, employees, agents, representatives or consultants.
- 15.2 The Supplier shall effect with a reputable insurance company a policy or policies of insurance covering all the matters which are the subject of indemnities under these Terms and Conditions and shall at the request of the Buyer produce the relevant policy or policies together with receipts or other evidence of payment of the latest premium due thereunder.
16. **CANCELLATION**
- 16.1 Any time or period for delivery despatch or completion specified in the Purchase Order or otherwise agreed in writing by the Buyer and the Seller shall be of the essence.
- 16.2 Without prejudice to Clause 16.3, the Buyer shall be entitled to cancel the Purchase Order in respect of all or part only of the Goods and/or Services at any time prior to delivery of the Goods and/or performance of the Services in which event the Buyer's sole liability to the Supplier shall be to pay to the Supplier the price for the Goods and/or Services to the extent already supplied or performed and to reimburse the Supplier for any reasonable sums due by the Supplier to a third party in respect of Goods and/or Services for which the Buyer has exercised its right of cancellation which cannot be avoided by the Supplier.
- 16.3 The Buyer shall be entitled to cancel the Contract or any part thereof, without prejudice to any other remedy the Buyer may have, by giving written notice to the Supplier if -
- 16.3.1 the Buyer has rejected Goods pursuant to Clauses 7 or 8 above; or
- 16.3.2 there is a material breach by the Supplier of any term of the Purchase Order and/or these Terms and Conditions which cannot be remedied or, if remediable, is not remedied within thirty (30) days of that party being requested in writing to do so; or
- 16.3.3 the Supplier becomes insolvent and has a trustee in bankruptcy or receiver or judicial factor or (if a company) has an administrative receiver, receiver, liquidator or administrator appointed over all or a substantial part of its assets or makes any voluntary arrangement with its creditors or threatens to cease to carry on business or the Buyer has reasonable grounds to believe that any of the foregoing events is about to occur in relation to the Supplier; or
- 16.3.4 the Supplier suffers or permits a change of control (within the meaning of Section 840 of the Income and Corporation Taxes Act 1998).
- 16.3.5 In the event of cancellation for any of the foregoing reasons the Buyer shall not be liable for any unfulfilled commitment under the Contract.
17. **SUSPENSION**
- In the event of any interruption of the Buyer's business, activities or affairs due to circumstances beyond the Buyer's control such as but not limited to any dispute, fire, explosion or accident which would prevent or hinder the use of Goods and/or Services which are the subject of the Contract, the Buyer shall have the right to suspend the Contract until such circumstances have ceased. In such circumstances, the Buyer having notified the Supplier in writing shall have no liability to the Supplier during the period which such interruption continues. If the use of Goods and/or Services is prevented by suspension then, after a reasonable time, the Contract may be cancelled by the Buyer.
18. **INSOLVENCY**
- If the Supplier should become apparently insolvent within the meaning of section 7 of the Bankruptcy (Scotland) Act 1985, or being a company make an arrangement with Supplier's creditors, or have an administrative receiver or administrator appointed or commence to be wound up, the Buyer may without replacing or reducing rights terminate the Contract with immediate effect by written notice to the Supplier or any person or organisation in whom the Contract may have been vested.
19. **ASSIGNMENT AND SUB-CONTRACTING**
- 19.1 The Supplier shall not assign or subcontract any of its rights or duties either in whole or in part under the Contract without prior written permission of the Buyer.
- 19.2 Where prior written authority is given, the Supplier shall remain responsible for the performance of the Contract and shall ensure that any assignee and/or sub-contractor complies with the terms and requirements of the Contract. The Supplier shall be responsible for the acts and omissions of any sub-contractor as if they were the Supplier's own acts and omissions and shall indemnify and keep indemnified the Buyer in full and on demand against all actions, suits, claims, demands, losses, charges, costs and expenses which the Buyer may suffer or incur as a result of or in connection with any act or omission of any sub-contractor of the Supplier. When requested by the Buyer, a copy of sub-contract details shall be provided at no charge.
20. **NO WAIVER**
- No failure of delay by the Buyer in exercising any right or remedy under the Contract shall operate as a waiver of such right or remedy nor shall any single or partial exercise or waiver of any such right or remedy preclude its further exercise or the exercise of any other right or remedy.
21. **SEVERABILITY**
- If any provision of these Terms and Conditions and/or the Purchase Order is held to be invalid or unenforceable, the remaining provisions and parts of these Terms and Conditions and/or the Purchase Order shall remain in full force and effect.
22. **NON-OBSERVANCE OF CONDITIONS**
- If Supplier shall breach or fail to observe any provision of this Contract they may be issued with a written notice of such breach or non-observance requesting that the Supplier take corrective action. If the Supplier should fail to take appropriate action within a reasonable period, the Buyer shall have the right to give written notice terminating the Contract with immediate effect.
23. **GOVERNING LAW**
- The validity and performance of the Contract shall be governed by and construed in accordance with Scots Law and the Supplier thereby irrevocably submits to the jurisdiction of the Scottish courts. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the Buyer to take proceedings against the Supplier in any other court of competent jurisdiction, nor shall the taking of proceedings by the Buyer in any one or more jurisdictions preclude the taking of proceedings by the Buyer in any other jurisdiction, whether concurrently or not.
24. **WEEE**
- Under the terms of the Waste Electrical and Electronic Regulations 2006, it is the Supplier's responsibility to take back equipment purchased after 13 Aug 2005 which falls within the scope of this legislation. ALL electrical and electronic items are to have a plasticised label attached and clearly marked with:
1. Supplier name and address 2. Name of manufacturer 3. Order number 4. Supply date 5. Delivery address.
25. **BRIBERY ACT 2010**
- Supplier is required to take all reasonable steps to exclude bribery from their transactions with buyers and suppliers. In connection with this or any other contract, Supplier shall not give, provide or offer to Buyer's staff or agents, or any second-tier supplier to Buyer, any loan, fee, reward, gift or any emolument or advantage whatsoever, or Buyer shall, without prejudice to any other rights the Buyer may possess, be at liberty to terminate this and any other contract, and to recover from Supplier any loss or damage resulting from such termination. When required Supplier must be prepared to provide details of policy relating to bribery, and how this is implemented and monitored within Supplier's organisation.
26. **FREEDOM OF INFORMATION**
- The Buyer has a statutory obligation to disclose information in compliance with the Freedom of Information Act (Scotland) 2002. The Supplier may identify information contained within any of the Supplier's communications which are to be redacted and not for release to anyone other than the Buyer and incorporate a confidentiality clause within submissions. However, the Supplier must be aware that the Buyer, being a public contracting authority, may not be in a position to restrict publication of this information in the event of a Freedom of Information request or challenge. When requested, the Supplier must assist the Buyer to comply with any request for disclosure of information and will be required to by law.
27. **DATA PROTECTION**
- 27.1 **Personal Data - Compliance with the Data Protection Legislation (Data Protection Act 1998)**
Each Party shall comply with its respective obligations under the provisions of the Data Protection Legislation. In particular, each party shall comply with its respective provisions set out in the GDPR. Without prejudice to the meaning afforded to each party under the GDPR (the General Data Protection Regulation (EU 2016/679) (GDPR), the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner), the intention of the parties is that in respect of the Buyer Data and any personal data processed on behalf of the Buyer by the Supplier, the Buyer shall be the data controller and the Supplier shall be a data processor. As used in this Clause the terms "process", "processing", "personal data" and "data subjects" shall have the meanings ascribed to them in the Data Protection Legislation.
- 27.2 **Data Processor Obligations - The Supplier shall (and shall ensure that its Contract Workers and agents shall):**
- 27.2.1 implement and maintain appropriate technical and organisational measures and safeguards for protection of personal data, to ensure the rights of data subjects are protected and to ensure that processing will meet the requirements of the General Data Protection Regulation;
- 27.2.2 ensure that all employees and subcontractors authorised to process personal data are subject to binding confidentiality obligations in respect of that personal data;
- 27.2.3 assist the Buyer, using appropriate technical and organisational measures, to respond to requests from data subjects including requests for information, requests for deletion and amendments of information and requests for the transfer of data;
- 27.2.4 assist the Buyer in ensuring compliance with its security, data breach notification, impact assessment and consultation obligations under Data Protection Legislation, taking into account the nature of processing and information available to the data processor;
- 27.2.5 at the Buyer's election, delete or return all personal data and allowing copies to the Buyer (unless Data Protection Legislation requires the data processor to store that personal data);
- 27.2.6 make available to the Buyer all information necessary, and allow for and contribute to audits and inspections conducted by the Buyer or the Buyer's mandated auditor, to demonstrate the data processor's compliance with its obligations under this agreement;
- 27.2.7 immediately inform the Buyer if, in the data processor's opinion, any instruction given by the Buyer to the data processor infringes Data Protection Legislation;
- 27.2.8 maintain a written record of all processing activities under its responsibility and of all categories of processing activities carried out on behalf of the Buyer, that satisfies the requirements of the Data Protection Legislation;
- 27.2.9 cooperate on request with any relevant European Union or member state supervisory authority;
- 27.2.10 notify the Buyer without undue delay after becoming aware of a breach of personal data and notify the Buyer immediately if it is asked to do something infringing the GDPR or other data protection law of the EU or a member state;
- 27.2.11 take any further action and execute any further documents and amendments to this Contract as may, in the Buyer's reasonable opinion, be required to comply with Data Protection Legislation;
- 27.2.12 only process personal data in accordance with the Buyer's documented instructions consistent with and in the scope of this Contract (unless required to do so by applicable law, in which case the data processor shall inform the Buyer of that legal requirement unless prohibited by law on important grounds of public interest);
- 27.2.13 only engage another processor to carry out specific processing activities with prior specific or general written authorisation of the Buyer, and only where that other processor is subject to a written contract imposing on that other processor the same data protection obligations as are imposed on the data processor in this Contract;
- 27.2.14 not process or transfer personal data outside the European Economic Area except with the express prior written consent of the Buyer; and
- 27.2.15 nothing within this Contract relieves the processor of its own direct responsibilities and liabilities under the GDPR.
- 27.3 The Supplier agrees that the technical and organisational measures referred to in Clause 27.2 above shall ensure a level of security appropriate to the risk, taking into account:
- 27.3.1 the state of the art, the costs of implementation;
- 27.3.2 the nature, scope, context and purposes of processing and risks of varying likelihood; and
- 27.3.3 severity for the rights and freedoms of individuals.
- 27.4 The Supplier agrees that the technical and organisational measures to be implemented by them and as referred to in Clause 27.3.1 above shall include, as appropriate:
- 27.4.1 pseudonymisation and encryption of personal data;
- 27.4.2 the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
- 27.4.3 the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident; and
- 27.4.4 a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.
- 27.5 The Supplier will indemnify the Buyer on demand from and against any costs, claims, liabilities and expenses (including legal expenses on an indemnity basis) suffered or incurred by the Buyer as a result of (i) any failure by the Supplier to comply with its obligations under the Data Protection Legislation, or (ii) any breach by the Supplier of this Clause 27.