

Standard terms and conditions for the supply of reagents and consumables.

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

Applicable Laws	all applicable laws, statutes, regulations from time to time in force in England and Wales.
Business Day	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
Business Hours	the period from 9.00 am to 5.00 pm on any Business Day.
Change of Control	has the meaning given in section 1124 of the Corporation Tax Act 2010.
Conditions	the terms and conditions set out in this document as amended from time to time in accordance with clause 14.8.
Confidential Information	shall mean the existence and terms of these Conditions, and all other information and trade secrets relating to the University's business or students which come into the possession of, or are otherwise made available to, the Supplier, whether orally, or in documentary, electronic or other form.
Contract	a contract between the University and the Supplier for the sale and purchase of the Goods in accordance with these Conditions.
Delivery Date	the date specified in the Order or if no such date is specified, within a reasonable time of the Order being made by the University.

Delivery Location	the address for delivery of Goods as set out in the Order.
EIR	the Environmental Information Regulations 2004.
FOIA	the Freedom of Information Act 2000.
Goods	the goods set out in the Order.
Intellectual Property Rights	patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
Order	the University's order for the Goods, as set out in the University's purchase order form or other written acceptance of the Supplier's quotation for the supply of the Goods to the University, as the case may be.
Specification	any specification for the Goods, including any related plans and drawings, that is agreed in writing by the University and the Supplier and set out in the Order.

Supplier	the person or entity from whom the University purchases the Goods set out in the Order.
University	means the University of Newcastle Upon Tyne trading as Newcastle University as set in the Order.
University Materials	all materials, equipment and tools, drawings, specifications, and data supplied by the University to the Supplier.
University Policies	the University's mandatory policies as amended by notification to the Supplier from time to time.

1.2 Interpretation:

1.2.1 A reference to legislation or a legislative provision:

1.2.1.1 is a reference to it as amended, extended or re-enacted from time to time; and

1.2.1.2 will include all subordinate legislation made from time to time under that legislation or legislative provision.

1.2.2 Any words following the terms **including, include, in particular, for example** or any similar expression will be construed as illustrative and will not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.2.3 A reference to **writing** or **written** excludes fax but not email.

2. Basis of contract

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.2 The Order constitutes an offer by the University to purchase the Goods in accordance with these Conditions.

2.3 The Order shall be deemed to be accepted on the earlier of:

2.3.1 the Supplier issuing a written acceptance of the Order; and

2.3.2 the Supplier doing any act consistent with fulfilling the Order,

at which point and on which date the Contract shall come into existence.

2.4 The Supplier waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Supplier that is inconsistent with these Conditions.

3. Goods

3.1 The Goods are described in the Specification.

3.2 The Supplier shall ensure that the Goods shall:

3.2.1 correspond with their description and any applicable Specification;

3.2.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the University expressly or by implication, and in this respect the University relies on the Supplier's skill and judgement;

3.2.3 where they are manufactured products, be free from defects in design, material and workmanship and remain so for 12 months after delivery; and

3.2.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

3.3 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.

3.4 The University may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.

3.5 If following such inspection or testing the University considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 3.1, the University shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

3.6 The University may conduct further inspections and tests after the Supplier has carried out its remedial actions.

3.7 Notwithstanding any such inspections or testing, the Supplier shall remain fully responsible for the Goods and any such inspections or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and the University shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

4. **Delivery**

4.1 The Supplier shall ensure that:

4.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition; and

4.1.2 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

4.2 The Supplier shall deliver the Goods:

4.2.1 on the Delivery Date;

4.2.2 at the Delivery Location; and

4.2.3 during Business Hours, or as instructed by the University.

4.3 Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Location.

4.4 The Supplier shall not deliver the Goods in instalments without the University's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all, or any defect in an instalment shall entitle the University to the remedies set out in clause 6.

5. **Packaging and containers etc**

5.1 If the Supplier requires the University to return to it any packaging materials, or make any packaging materials available for collection, it shall ensure that fact is clearly stated on the delivery note for the Goods.

- 5.2 Subject to clause 5.1, the University shall [return any packaging materials for the Goods (other than Containers) to the Supplier, at the Supplier's expense] **OR** [make any packaging materials (other than Containers) for the Goods available for collection by the Supplier, at the Supplier's expense, from the Delivery Location to which Goods were delivered.
- 5.3 Where the Goods are supplied in containers or storage equipment (**Containers**) belonging to the Supplier and the Supplier has agreed the Containers can be retained by the University for the purpose of storing the Goods:
- 5.3.1 the University acknowledges it shall not own or acquire title to Containers nor charge or otherwise encumber the same or part with possession of the same (other than to the Supplier) and further acknowledges title to the Containers shall at all time vest in the Supplier;
- 5.3.2 the Supplier shall be responsible for insuring the Containers, at its own cost, for their full replacement value at all times while they are in the University's possession;
- 5.3.3 the University shall allow the Supplier to collect the Container(s) when the Goods in the Container(s) have been used up;

6. **University remedies**

- 6.1 If the Goods are not delivered on the Delivery Date, or do not comply with the undertakings set out in clause 3.1, then, without limiting any of its other rights or remedies, and whether or not it has accepted the Goods, the University may exercise any one or more of the following rights and remedies:
- 6.1.1 to terminate the Contract;
- 6.1.2 to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
- 6.1.3 to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
- 6.1.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;

- 6.1.5 to recover from the Supplier any costs incurred by the University in obtaining substitute goods from a third party; and
- 6.1.6 to claim damages for any other costs, loss or expenses incurred by the University which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.
- 6.2 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.
- 6.3 The University's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.
- 7. Title and risk**
- 7.1 Title in the Goods shall pass to the University on completion of delivery.
- 7.2 Risk in the Goods shall pass to the University on completion of delivery provided that where the University rejects any part of the Goods in accordance with clause 6.1 the risk in that part of the Goods shall revert to the Supplier.
- 8. Price and payment**
- 8.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date the Contract came into existence.
- 8.2 The price of the Goods:
- 8.2.1 excludes amounts in respect of value added tax (**VAT**), which the University shall additionally be liable to pay to the Supplier at the prevailing rate (if applicable), subject to the receipt of a valid VAT invoice; and
- 8.2.2 includes the costs of packaging, insurance and carriage of the Goods.
- 8.3 No extra charges shall be effective and payable by the University unless agreed in writing with the University.
- 8.4 The Supplier shall invoice the University for the price of the Goods plus VAT at the prevailing rate (if applicable) on or at any time after the completion of delivery as specified in the Order. The Supplier shall ensure that the invoice includes the date of the Order, the invoice number, the University's order number (if applicable), the Supplier's VAT

registration number (if applicable) and any supporting documents that the University may reasonably require.

8.5 When the Supplier submits an invoice (including an electronic invoice) to the University in accordance with this clause 8, the University will consider and verify that invoice in a timely fashion.

8.6 Subject to clause 8.5 the University shall pay each correctly rendered invoice for the Goods in accordance with this clause 8 which is properly due and submitted by the Supplier within 30 days from the date on which the University has determined that the invoice is valid , properly due and undisputed to a bank account nominated in writing by the Supplier.

8.7 If the invoice is an electronic invoice it must comply with the standard on electronic invoicing. For these purposes "electronic invoice" means an invoice which has been issued transmitted and received in a structured electronic format that allows for its automatic and electronic processing. An electronic invoice complies with the standard for electronic invoicing approved and issued by the British Standards Institution in the document numbered BS EN 16931-1:2017 (Electronic invoicing - Part 1: Semantic data model of the core elements of an electronic invoice) and uses a syntax that complies with that standard in the document numbered PD CEN/TS 16931-2:2017 (Electronic invoicing - Part 2: List of syntaxes that comply with EN 16931-1) approved and issued by the British Standards Institution.

8.8 If the University fails to comply with clause 8.5 the invoice shall be regarded as valid and undisputed for the purposes of clause 8.6 after a reasonable time has passed.

8.9 Where the Supplier enters into a Sub-Contract, the Supplier shall include in that Sub-Contract:

8.9.1 provisions having the same effect as clauses 8.5 to 8.8 of this Contract; and

8.9.2 a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clauses 8.5 to 8.8 of this Contract.

In this clause 8.9, "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from the University in a subcontracting chain, made wholly or

substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract.

8.10 If the University fails to make any payment due to the Supplier under the Contract by the due date for payment, then the University will pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each date at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when the base rate is below 0%.

8.11 The University may at any time, without notice to the Supplier, set off any liability of the Supplier to the University against any liability of the University to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. If the liabilities to be set off are expressed in different currencies, the University may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the University of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

9. **Indemnity**

9.1 The Supplier shall indemnify the University on a full indemnity basis against all liabilities, costs, expenses, damages and losses suffered or incurred by the University arising out of or in connection with any claim made against the University for actual or alleged infringement of a third party's rights (including any Intellectual Property Rights) arising out of, or in connection with, the receipt, use or onward supply of the Goods by the University, its licensees and sub-licensees.

9.2 This clause 9 shall survive termination of the Contract.

10. **Insurance**

10.1 During the term of the Contract, the Supplier shall maintain in force insurance policies with reputable insurance companies, against all risks that would normally be insured against by a prudent person in connection with the risks associated with the Contract.

10.2 The Supplier will produce to the University on request both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

11. Limitation of liability

11.1 References to liability in this clause 11 include every kind of liability arising under or in connection with this Contract including but not limited to liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise.

11.2 Nothing in the Contract limits liability for:

11.2.1 death or personal injury caused by negligence;

11.2.2 fraud or fraudulent misrepresentation;

11.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;

11.2.4 defective products under the Consumer Protection Act 1987; and

11.2.5 any other liability which by law cannot be limited.

11.3 Subject to clause 11.2:

11.3.1 the Supplier's total liability to the University for all loss or damage howsoever arising in connection with the Order will not exceed [xxxx] for any one event or series of connected events; and

11.3.2 the University's total liability to the Supplier for all loss or damage howsoever arising under or in connection with the Order (including by negligence) shall not exceed the price actually paid to the Supplier for the Goods under the Order.

11.4 Subject to clause 11.2 neither party shall in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for any special, indirect or consequential loss, costs, damages, charges or expenses.

11.5 This clause 11 shall survive termination of the Contract.

12. Compliance with relevant laws and policies

12.1 In performing its obligations under the Contract, the Supplier shall:

12.1.1 comply with all applicable laws, statutes, regulations from time to time in force; and

12.1.2 comply with the with the University Policies.

12.2 Breach of clause 12.1 shall constitute an irremediable material breach of the Contract.

13. Termination

13.1 Without affecting any other right or remedy available to it, the University may terminate the Contract (in whole or in part) with immediate effect by giving written notice to the Supplier at any time before delivery of the Goods with immediate effect by giving the Supplier written notice, at which point the Supplier shall discontinue all work on the Contract or at any time if:

13.1.1 there is a Change of Control of the Supplier;

13.1.2 the Supplier is in breach of its compliance obligations under clause 10, clause 12, clause 14.2 or clause 14.5; or

13.1.3 the University reasonably believes that a termination ground in in any Applicable Laws relating to the procurement of supplies, services and works applies.

13.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

13.2.1 the other party commits a material breach of any term of this Contract and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;

13.2.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

13.2.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

13.2.4 the other party's financial position deteriorates to such an extent that in the terminating party's reasonable opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

- 13.3 On termination or expiry of the Contract for whatever reason:
- 13.3.1 the Supplier shall immediately return all University Materials. If the Supplier fails to do so, then the University may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract; and
- 13.3.2 any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.
- 13.4 Termination or expiry of the Contract shall not affect any of the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 13.5 Where the Contract has been entered into pursuant to a framework or other master or long-term supply agreement between the parties, this Contract may be terminated in accordance with any provision as to its termination set out in any such framework agreement or other master or long-term supply agreement.
14. **General**
- 14.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for 30 days, the party not affected may terminate the Contract by giving 7 days written notice to the other party.
- 14.2 **Equal Opportunities and the Equality Act 2010**
- 14.2.1 The University is committed to a comprehensive policy of equal opportunities and to meeting its responsibilities under the Equality Act 2010 (the 'EA') and the Code of Practice on Racial Equality in Employment 2005.

14.2.2 The Supplier shall in performing the Contract comply with the provisions of section 149 of the EA as if the Supplier were a body within the meaning of Schedule 19 of the EA.

14.2.3 The Supplier shall comply with the provisions of section 41 of the EA in all dealings with sub-contractors.

14.2.4 The Supplier shall comply with all of its legal obligations regarding the prevention of discrimination, victimisation or harassment because of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation, and the promotion of equality.

14.2.5 The Supplier shall, when required, answer queries raised by the University on matters referred to in this clause 14.2 and breach of statutory obligations will entitle the University to immediately terminate the Contract.

14.2.6 The Supplier shall establish, maintain and enforce its own policies and procedures, to ensure compliance with the requirements of the EA.

14.3 **Assignment and other dealings.**

14.3.1 The University may at any time, assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Contract.

14.3.2 The Supplier may not at any time assign, mortgage, charge, sub-contract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under this Contract without the prior written consent of the University.

14.4 **Audit**

14.4.1 The Supplier shall allow the University (or its professional advisers) to access the Supplier's premises, personnel, systems and relevant records to verify that the Charges and any other sums charged to the University under this Contract are accurate.

14.4.2 Subject to the Supplier's confidentiality obligations, the Supplier shall provide the University (and its professional advisers) with all reasonable co-operation, access and assistance in relation to each audit.

14.4.3 The University shall provide at least 5 Business Days' notice of its intention to conduct an audit and any audit shall be conducted during Business Hours.

14.4.4 The University and its professional advisers shall have the right to take copies of any records which they reasonably require and remove such copies and the Supplier shall provide the necessary facilities to assist in copying free of charge.

14.5 **Corrupt Gifts**

14.5.1 The Supplier shall, and shall procure that their employees, officer, agents, sub-contractors, or anyone else acting on their behalf shall:

14.5.1.1 not commit any act or omission which causes or could cause it or the University to breach, or commit an offence under, any laws relating to anti-bribery and/or anti-corruption;

14.5.1.2 not, offer or give, or agree to give either directly or indirectly, to any employee or representative of the University, any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other contract with the University, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such other contract;

14.5.1.3 keep accurate and up to date records showing all payments made and received and all other advantages given and received by it in connection with the Contract and the steps it takes to comply with this clause 14.5, and permit the University to inspect those records as reasonably required;

14.5.1.4 promptly notify the University of:

14.5.1.4.1 any request or demand for any financial or other advantage received by it; and

14.5.1.4.2 any financial or other advantage it gives or intends to give whether directly or indirectly in connection with the Contract; and

14.5.1.4.3 promptly notify the University of any breach of this clause
14.5.

14.5.2 The attention of the Supplier is drawn to the criminal offences created by the
Bribery Act 2010.

14.5.3 The University may terminate the Contract immediately by giving written notice to
that effect to the Supplier if the Supplier is in breach of this clause 14.5.

14.6 **Confidentiality and Freedom of Information.**

14.6.1 Each party will, subject to clauses 14.6.2 and 14.6.3:

14.6.1.1 keep all Confidential Information secret, safe and secure;

14.6.1.2 not use or disclose the Confidential Information except for the purposes
of performing its obligations under this Contract.

14.6.2 The provisions of clause 14.6.1 shall not apply to Confidential Information to the
extent that it is or was:

14.6.2.1 already in the possession of the Supplier free of any duty of
confidentiality on the date of its disclosure;

14.6.2.2 in the public domain other than as a result of a breach of clause 14.6.1;
or

14.6.2.3 required to be disclosed by regulatory or legal requirement.

14.6.3 Notwithstanding the provisions of clauses 14.6.1 and 14.6.2 the University is
committed to meeting its responsibilities under the FOIA and EIR and the Supplier
acknowledges that the University is subject to the requirements of the FOIA and
EIR and shall assist and cooperate with the University (at no expense to the
University) to enable the University to comply with the University's responsibilities
under the FOIA and EIR.

14.7 **Entire agreement.** The Contract constitutes the entire agreement between the parties and
supersedes and extinguishes all previous agreements, promises, assurances, warranties,
representations and understandings between them, whether written or oral, relating to its
subject matter.

14.8 **Variation.** No variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the University.

14.9 **Waiver.**

14.9.1 A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

14.9.2 A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

14.10 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 14.10 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

14.11 **Notices.**

14.11.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

14.11.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

14.11.1.2 sent by email to:

14.11.1.2.1 the email address for the Supplier set out in the Order; and

14.11.1.2.2 the email address for the University set out in the Order.

14.11.2 Any notice shall be deemed to have been received:

14.11.2.1 if delivered by hand, at the time the notice is left at the proper address;

14.11.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or

14.11.2.3 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when Business Hours resume.

14.11.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

14.12 **Third party rights.** This Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.

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

14.14 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.