**date [2017][[1]](#footnote-2)**

**Aston University**

**and**

**[insert name][[2]](#footnote-3)**

**agreement for the purchase of goods[[3]](#footnote-4)**

**[[4]](#footnote-5)SUBJECT TO CONTRACT**

**Draft: [ ]**

**This Agreement** is between:

1. Aston University of Aston Triangle, Birmingham, B4 7ET, England (“Aston”); and
2. [insert company name][[5]](#footnote-6) registered in England and Wales with registered number [insert company number][[6]](#footnote-7) and whose registered office is situated at [insert company’s registered address][[7]](#footnote-8) (“the Supplier”);

each a “Party”, together the “Parties”.

**Agreed:**

1. Introduction

The Parties have agreed that Aston will purchase the Goods (defined below) from the Supplier and the Supplier will deliver the Goods pursuant to the terms set out in this Agreement.

1. Duration

This Agreement will commence on the Commencement Date and will continue in force so long as the Parties’ obligations subsist in accordance with the terms set out in this Agreement (“the Term”) unless otherwise terminated in accordance with paragraphs 5.6.4, 16, 17, 23 of Schedule 1 of the Terms and Conditions

This Agreement may be extended by the mutual agreement of the Parties no later than [6 weeks’][[8]](#footnote-9) prior to the end of the Term.

1. Goods

The Goods are defined as any goods to be delivered by the Supplier as set out in the Goods Specification.

Aston will have [insert number of days][[9]](#footnote-10) to inspect the Goods to ensure that the Goods correspond with the Goods Specification prior to the payment of Price (the “Inspection Period”). Aston will not be deemed to have accepted the Goods during the Inspection Period.

The Supplier agrees that Aston may mark the Goods as being Aston’s property on delivery for the purposes of security. The Supplier acknowledges that by marking the Goods Aston will not be deemed to have accepted the Goods.

The Acceptance Period will commence on the Delivery Date and will lead to the Acceptance Date.

In the event the Goods fail to meet the Goods Specification, Aston will be entitled to exercise the rights and remedies as set out in the Terms and Conditions.

1. Delivery

The Supplier will deliver the Goods [on [insert date]] *OR\*[[10]](#footnote-11)* [no later than [insert date]] (“the Delivery Date”). The Supplier will deliver the Goods on the Delivery Date between the hours of 08:00 – 17:00 at the Delivery Address.[[11]](#footnote-12)

The Delivery Address is:

[Insert delivery area/location] [[12]](#footnote-13)

Aston University

Aston Triangle

Birmingham

B4 7ET

United Kingdom

1. Acceptance tests

Aston will undertake the Acceptance Tests within the Acceptance Period in accordance with Schedule 5. [The Parties may, subject to mutual agreement, produce a set of bespoke acceptance tests to determine whether the Goods meet the Goods Specification.][[13]](#footnote-14)

1. Spares[[14]](#footnote-15)

The Supplier will make the Spares available to Aston [for a period of [insert time period] from the Delivery Date] OR\* [for the duration of this Agreement] (“Spare Supply Period”).

1. Payment

Aston will pay the Supplier the Price as set out in Schedule 3.

The Price will be plus VAT unless Aston is in receipt of a VAT exemption form.

The Supplier will not increase the Price without the prior written consent of Aston.

[The Parties acknowledge that time is of the essence with the delivery of the Goods and Aston may reduce the Price by a rate of [insert percentage][[15]](#footnote-16) per day that elapses between the Delivery Date and the actual date of delivery that will not exceed a total reduction of the Price of [insert agreed percentage][[16]](#footnote-17) which the Parties agree is a genuine pre-estimate of Aston’s loss as a result of late delivery and is not a penalty.][[17]](#footnote-18)

1. Change request

The Parties may amend the provisions of this Agreement by completing a Change Request in the form set out in Schedule 6 and entering into an amending agreement.

1. Aston and Supplier Details

Details of Aston’s and the Supplier’s representatives that are involved in the purchase and delivery of the Goods are set out in Schedule 4.

1. Force Majeure[[18]](#footnote-19)

Neither Party will be liable to the other to the extent that it is unable to perform its obligations by reason of Force Majeure provided the Party so unable to perform promptly notifies the other of the Force Majeure and its causes (“the Force Majeure Notice”).

If a Force Majeure continues for more than [60] days’ (“the Force Majeure Period”), a Party in receipt of a Force Majeure Notice may terminate this Agreement by giving [30] Business days’ notice to the other Party (“the Subsequent FM Notice”).

In calculating the Force Majeure Period, the Party may ignore any period or periods totalling [10] days or less during the Force Majeure Period, during which the Party serving the Force Majeure Notice under clause 10.1 was able to fulfil its obligations.

The Party serving a Subsequent FM Notice pursuant to clause 10.2 may withdraw it if the Force Majeure ceases during the [30] Business days.

1. Terms and Conditions

[Subject always to clause 12,][[19]](#footnote-20) the Terms and Conditions will apply to this Agreement.

1. Special Conditions

[Insert bespoke conditions in relation to the purchase of Goods as necessary to vary the Terms and Conditions ][[20]](#footnote-21).

* 1. [[21]](#footnote-22)

Aston’s Terms and Conditions for purchase of Goods

* + - 1. Goods

The Supplier will provide the Goods to Aston in accordance with the Goods Specification and the terms set out in this Agreement.

The Supplier will comply with all Applicable Laws, standards, regulations and other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods.

The Supplier will ensure that the Goods are of satisfactory quality (within the meaning of the Sale of Goods Act 1979 as amended) and fit for purpose as expressly made known to the Supplier by Aston.

The Supplier will ensure that it has and maintains all licences, approvals and consents that it requires to undertake its obligations set out in this Agreement.

The Supplier will and procure that its Affiliates will comply with Aston’s Policies and Procedures as required

* + - 1. Inspection period

Aston will have the right to inspect and test the Goods at any time prior to delivery during the Inspection Period. The Supplier will not unreasonably refuse any request made by Aston to carry out such inspection and testing and will provide Aston with all facilities reasonably required.

If, as a result of inspection or testing pursuant to paragraph 2.1 of this Schedule 1, Aston is not satisfied that the Goods will comply with the Goods Specification or the remainder of this Agreement, and Aston so informs the Supplier within 30 days of the inspection or testing, the Supplier will take such steps as are necessary to ensure compliance with the Goods Specification and the remainder of this Agreement.

Notwithstanding any such inspection or testing, the Supplier will remain fully responsible for the Goods and any such inspection or testing will not reduce or otherwise affect the Supplier’s obligations under this Agreement.

* + - 1. Delivery

The Supplier will deliver the Goods to the Delivery Address on the Delivery Date.

The Supplier will offload the Goods at the Delivery Address at its own risk.

The Supplier may not deliver the Goods by separate instalments unless mutually agreed in writing with Aston.

The Supplier will deliver the Goods in an undamaged condition.

The Supplier will deliver the Goods with a delivery note setting out the Delivery Address, Delivery Date and details of the Goods including special storing conditions if applicable.

Subject to the nature of the Goods, prior to the Delivery Date, the Supplier will provide Aston with a list by name and description of any harmful or potentially harmful properties or ingredients in the Goods. Aston will rely on such information from the Supplier in order to satisfy its obligations under Applicable Law.

The Supplier will provide Aston with all operating and safety instructions with the Goods.

Aston will not be bound to pay the Supplier for any excess Goods delivered. Any excess Goods will be and will remain at the Supplier’s risk and will be returnable at the Supplier’s expense.

The Supplier will remove all packaging from the Goods upon delivery unless mutually agreed otherwise in writing with Aston.

* + - 1. Acceptance

Aston will be deemed to have accepted the Goods on the Acceptance Date.

* + - 1. Acceptance tests

The Goods may be required to satisfy the Acceptance Tests to demonstrate that the Goods meet the Goods Specification before they are accepted by Aston.

Aston will notify the Supplier in writing as to when the Acceptance Tests will take place. The Supplier may attend and assist with conducting the Acceptance Tests.

The Supplier will be afforded the opportunity to comment on the suitability of the Acceptance Tests.

Aston will record the results of the Acceptance Tests.

Aston will notify the Supplier promptly on successful completion of the Acceptance Tests as to whether the Goods satisfy the Acceptance Tests.

If the Goods do not satisfy the Acceptance Tests, Aston will notify the Supplier of such failure and may (in its discretion and without prejudice to its other rights under this Agreement):

grant a further period of time during which the Supplier will be required to adapt, modify and/or otherwise correct the relevant Goods to comply with the Goods Specification so that the Goods can be re-submitted for further testing; or

accept the Goods subject to a list of written exceptions which the Supplier will rectify within the timescales agreed by the Parties; or

accept the Goods subject to receiving a refund or reduction in Price; or

reject any/all of the Goods and terminate this Agreement with immediate effect by giving written notice to the Supplier in accordance with paragraph 23 of this Schedule 1 without any liability to the Supplier on the basis of a total failure of consideration including any liability to pay any outstanding payments of the Price which, at the time of (and but for) such termination, remain outstanding and are due to be paid to the Supplier. In the event Aston terminates this Agreement pursuant to paragraph 5.6.4 of this Schedule 1, the Supplier will repay Aston any amounts paid to the Supplier under this Agreement within 14 days of the date of such termination; or

complete the supply of the Goods by entering into a contract with a third party and recover from the Supplier any costs incurred by Aston in obtaining substitute Goods from a third party.

The Supplier will ensure that any modifications made as a result of failing to pass the Acceptance Test will not adversely impact on any previously successful Acceptance Test or (as applicable) the approval procedure in respect of any other Goods. To the extent that any such adverse impacts occur, the Supplier will be liable to Aston for Aston’s reasonable costs in conducting further tests.

Aston will notify the Supplier within 30 days of receiving the modified Goods pursuant to paragraph 5.6.1 of this Schedule 1 confirming whether the modified Goods meet the Goods Specification.

* + - 1. Spares

Where appropriate to the Goods supplied, Aston may request the Supplier to make Spares available at reasonable prices and with reasonable dispatching conditions to Aston.

The Supplier will maintain a supply of Spares for the Spares Supply Period.

The Spares will be fully compatible with the Goods and maintain the same levels of performance as the Goods originally supplied, though they need not be identical to those items. The warranty given by the Supplier in paragraph 10 of this Schedule 1 will apply to the Spares as if they were part of the original Goods.

During the Spares Supply Period, if the Supplier intends to discontinue the manufacture of the Spares, the Supplier will notify Aston in writing of such intention setting out the details of any third party from which the Spares will be available or any third party to which the Supplier intends to provide the Design Information.

If the Supplier breaches paragraph 6.1 of this Schedule 1 during the Spares Supply Period or becomes Insolvent, the Supplier will, so far as it is legally entitled to do so, and if so required by Aston, as soon as practicable, deliver the Design Information to Aston or its nominated third party, free of charge. Aston, or its nominated third party, may retain the Design Information for such time only as is necessary. After such time and if the Supplier requires it, Aston will return the Design Information to the Supplier at its cost.

* + - 1. Title and Risk

The title and risk in the Goods will pass to Aston when the Goods are delivered to the Delivery Address on the Delivery Date.

* + - 1. Payment

The Supplier will raise an Invoice to Aston at any time after the delivery of the Goods.

Aston will pay the Invoice within 30 days of the date of the Invoice.

Aston may at any time and without notice to the Supplier set off any liability of the Supplier to Aston against any liability of Aston to the Supplier.

No payment made by Aston will constitute acceptance by Aston of the Goods or otherwise prejudice any rights or remedies which Aston may have against the Supplier including the right to recover any amount overpaid or wrongfully paid to the Supplier.

* + - 1. Access

The Supplier will provide the names of any employees or persons that may require access to Aston’s premises to deliver the Goods if expressly requested by Aston.

* + - 1. Warranties

The Supplier warrants and represents to Aston that the Goods will:

be of satisfactory quality within the meaning of the Sale of Goods Act 1979 and fit for purpose as specified by Aston;

be free from defects in design, material and workmanship;

correspond with the Goods Specification;

comply with all Applicable Laws in relation to their sale and supply; and

formulated, designed, construction, finished and packaged as to be safe, durable and without any risk to any individual.

* + - 1. Non-performance

Without prejudice to any other rights or remedies of Aston, if the Supplier breaches any condition of the Agreement or Aston terminates this Agreement in accordance with paragraph 5.6.4, 16, 17, 22 and 23 of this Schedule 1, then Aston may, whether or not it has accepted the Goods (in whole or part):

where applicable, cancel any or all remaining instalments of the Goods to be delivered;

reject the Goods (in whole or part) and return them to the Supplier at the risk and cost of the Supplier subject to Aston receiving a full refund for the return of the Goods by the Supplier;

at its sole option, afford the Supplier the opportunity to remedy the defect, supply replacement Goods, or carry out necessary work to ensure that the conditions of this Agreement are met at the Supplier’s cost;

refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make without any liability to Aston;

recover from the Supplier any additional expenditure reasonably incurred by Aston in obtaining the Goods in substitution from another supplier;

claim Losses incurred by Aston which are in any way attributable to the Supplier’s breach of this Agreement or failure to deliver the Goods on the Delivery Date or at all; and/or

for a period of 12 months from the Delivery Date, in respect of Goods which do not conform with the provisions set out in paragraph 10.1 of this Schedule 1, oblige the Supplier, at Aston’s discretion, to replace or repair such Goods free of charge and any repaired or replaced Goods will be guaranteed on the terms of paragraph 11.1.7 of this Schedule 1 for the unexpired portion of the 12 month period.

* + - 1. Indemnity

The Supplier will indemnify and hold Aston harmless from all claims and all direct, indirect or consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses), costs, proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred or paid by, Aston as a result of or in connection with:

any claim made against Aston in respect of any liability, loss, damage, injury, cost or expense sustained by Aston's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the delivery of the Goods as a consequence of a breach or negligent performance or failure or delay in performance of this Agreement by the Supplier; or

any alleged or actual infringement, whether or not under English law, of any third party's Intellectual Property Rights or other rights arising out of the use of the Goods.

Nothing in this paragraph 12 of this Schedule 1 will restrict or limit Aston’s general obligation at law to mitigate any loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity.

* + - 1. Limitation of Liability

Neither Party limits its liability for:

death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors; or

fraud by it or its employees; or

breach of any obligation as to title implied by statute; or

any other act or omission, liability for which may not be limited under Applicable Law.

The Supplier is not responsible for any Losses caused by the breach or negligent performance of Aston in connection with any of the Supplier’s obligations under this Agreement.

* + - 1. Intellectual Property Rights

The Supplier warrants that the Goods will not infringe the Intellectual Property Rights of any person or third party.

* + - 1. Confidentiality

The Supplier will not (except in the proper course of its duties) use or disclose to any third party (and will use his best endeavours to prevent the publication or disclosure of) any Confidential Information. This restriction does not apply to any use or disclosure authorised by Aston or required by any Applicable Law or any information which is already in, or comes into, the public domain otherwise than through the Supplier’s unauthorised disclosure.

* + - 1. Anti-Bribery

Each Party will:

comply with Anti-Bribery Law;

not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act if such activity, practice or conduct had been carried out in the UK;

have and will maintain in place, throughout the term of this Agreement, its own policies and procedures, including Adequate Procedures, to ensure compliance with Anti-Bribery Law and this paragraph 16 of Schedule 1, and will enforce them where appropriate; and

procure and ensure that all its Associated Persons comply with this paragraph 16 of Schedule 1.

The Supplier will:

keep, for a minimum of 6 years and at its normal place of business, detailed, accurate and up to date records and books of account showing all payments made by the Supplier in connection with this Agreement and the steps taken by the Supplier to comply with this paragraph 16 of Schedule 1; and

permit Aston, and any person nominated by it for this purpose to have such access on demand to the Supplier’s premises, personnel, systems, books and records as Aston may reasonably require to verify the Supplier’s compliance with this paragraph 16 of Schedule 1.

Aston may terminate this Agreement with immediate effect if the Supplier is found in breach of this paragraph 16 of Schedule 1.

* + - 1. Modern Slavery

The Parties will comply with the Modern Slavery Act 2015 and all associated regulations. The Parties agree not to engage in any practice or conduct which would constitute an offence under the Modern Slavery Act 2015. Breach of this paragraph 17 of this Schedule 1 will be deemed a material breach of this Agreement. Aston may terminate this Agreement if the Supplier is found in breach of paragraph 17 of this Schedule 1.

* + - 1. Freedom of Information

The Supplier acknowledges that Aston is subject to the requirements of the FOIA and the EIR, and the Supplier will assist and co-operate with Aston (on request and at each Party’s own expense) to enable Aston to comply with the information disclosure requirements imposed on it by the FOIA and/or the EIR as the case may be.

If Aston is in receipt of a Request for Information and decides that it is obliged to disclose Confidential Information in response to such Request for Information, it will endeavour to notify the Supplier of that decision at least 3 Business Days before disclosure (insofar as it is lawful for Aston to do so).

* + - 1. Compliance with Applicable Laws

The Supplier will monitor and keep Aston informed in writing of any changes in the Applicable Laws which may impact the delivery of Goods and will provide Aston with timely details of measures it proposes to take and changes it proposes to make to comply with any such changes.

The Supplier will consult Aston on the manner, form and timing of changes it proposes to make to meet any changes in Applicable Laws where they would impact the delivery of the Goods. The Supplier will not implement any change, without Aston’s prior written agreement, which would have an adverse effect on the Supplier’s ability to deliver the Goods in accordance with this Agreement. The Supplier will use all reasonable endeavours to minimise any disruption caused by any changes in Applicable Laws.

* + - 1. Data Protection Law

Schedule 7 will apply to this Agreement in respect of compliance with Data Protection Laws.

* + - 1. Audit

Aston may as often as reasonably necessary during this Agreement and for a period of 12 months following its termination, conduct an audit for the following purposes to verify the accuracy of charges levied by the Supplier and review the integrity, confidentiality and security of any Confidential Information, the Supplier’s compliance with the Applicable Laws, any records created and/or books of account kept pursuant to this Agreement.

Aston will use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the delivery of the Goods.

Subject to Aston’s obligations of confidentiality, the Supplier will on demand provide Aston and any Regulatory Body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including all information requested by Aston within the permitted scope of the audit and reasonable access to any premises controlled by the Supplier and to any equipment used (whether exclusively or non-exclusively) in the delivery of the Goods.

Aston will endeavour to (but is not obliged to) provide at least 15 Business Days’ notice of its intention to conduct an audit.

The Parties agree that they will bear their own costs and expenses incurred in respect of compliance with this paragraph 20 of Schedule 1, unless the audit identifies a material breach of the terms of the Agreement by the Supplier in which case the Supplier will reimburse Aston for all reasonable costs incurred by Aston in the course of the audit.

If an audit identifies that the Supplier has failed to perform its obligations under this Agreement in any material manner, the Parties will agree and implement a remedial plan. If the Supplier’s failure relates to a failure to provide any information to Aston about the charges levied under this Agreement, then the remedial plan will include a requirement for the provision of all such information.

If an audit identifies that Aston has overpaid any charges set out in the Price, the Supplier will pay to Aston the amount overpaid within 30 days. Aston may deduct the relevant amount from any subsequent Invoices if the Supplier fails to make this payment.

If an audit identifies that Aston has underpaid any charges, Aston will pay to the Supplier the amount of the under-payment less the cost of audit incurred by Aston within 30 days if this was due to a default by the Supplier in relation to invoicing.

* + - 1. Insurance

The Supplier will maintain the Insurances in force with a reputable insurance company and, on Aston’s request, provide Aston with copies of such policies of Insurance.

* + - 1. Termination

Aston may at any time terminate this Agreement by giving the Supplier no less than 3 months’ notice.

Either Party may terminate this Agreement immediately by giving written notice to the other Party at any time if:

the other Party commits a material breach that cannot be remedied; or

the other Party commits a material breach that can be remedied but fails to remedy that breach within 30 days of a receipt of a written notice issued by the non-breaching Party setting out the breach and the requirement to remedy it; or

the other Party commits a series of persistent breaches which, when taken together, amount to material breach; or

the other Party ceases, or threatens to cease, to carry on all or substantially the whole of its business; or

there is a change of control of the other Party (within the meaning of section 1124 of the Corporation Tax Act 2010.

Aston may terminate this Agreement immediately by giving notice if the Supplier becomes Insolvent.

Aston may terminate the delivery of one or more Goods by giving 1 months’ written notice to the Supplier. The termination of the delivery of those Goods will not affect the continuity and validity of any other existing Goods to be delivered under this Agreement.

Following expiry or termination of this Agreement, the Goods Specification, paragraph 6 (Spares), paragraph 13 (Limitation of Liability), paragraph 15 (Confidentiality), paragraph 16 (Anti-Bribery), paragraph 17 (Modern Slavery), paragraph 23 (Termination), paragraph 26 (General Provisions), paragraph 28 (Conflict), paragraph 29 (Governing Law and Jurisdiction), paragraph 30 (Definitions), and paragraph 31 (Interpretation) of this Schedule 1, will continue to have effect as will all rights and duties of the Parties accrued prior to termination.

The Parties acknowledge that Termination of this Agreement will not affect any of the Parties’ rights and remedies that have accrued as at termination.

* + - 1. Notices

The addresses of the Parties for service of notice are set out on the first page of this Agreement.

If a notice has been properly sent or delivered in accordance with this paragraph 24 of Schedule 1, it will be deemed to have been received as follows:

if delivered personally, at the time of delivery; or

if delivered by commercial courier, at the time of signature of the courier's delivery receipt; or

if sent or supplied by electronic means, one hour after the notice was sent or supplied and a delivery receipt received; or

if sent by pre-paid United Kingdom first class post to an address in the United Kingdom, 48 hours after it was posted; or

if deemed receipt under any of paragraphs 24.2.1 to 24.2.5 of this Schedule 1 (inclusive) is not within Business Hours, receipt will be deemed on the Party’s next Business Day.

In proving service in respect of personal delivery or delivery by post it will be sufficient to prove that the envelope containing such notice was addressed to the correct address of the relevant Party and delivered to that address.

* + - 1. Dispute Resolution
			2. Aston and the Supplier will use all reasonable endeavours to negotiate in good faith and settle amicably any dispute that may arise out of or relate to this Agreement or a breach thereof.
			3. General Provisions

Each Party on behalf of itself acknowledges and agrees with the other Party that:

this Agreement constitutes the entire agreement and understanding between the Parties and supersedes any previous arrangement, understanding or agreement between them;

in entering into this Agreement neither Party has relied on any Pre-Contractual Statement; and

each Party agrees that the only rights and remedies available to it or arising out of or in connection with any Pre-Contractual Statement will be for breach of contract. Nothing in this Agreement will, however, limit or exclude any liability for fraud.

The Supplier will not assign, novate, sub-contract or otherwise dispose of any or all of its rights and obligations under this Agreement to any third party other than to those sub-contractors as specified in Schedule 5 without the prior written consent of Aston.

Subject to clause 12 of the Agreement, no variation of this Agreement will be valid unless it is in writing and signed by or on behalf of each of the Parties.

This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, will be an original, and all the counterparts together will constitute one and the same instrument.

Except as expressly provided elsewhere in this Agreement, a person who is not a party to this Agreement will not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists, or is available, apart from under that Act.

The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any person that is not a party to this Agreement.

In the event of any conflict, these Terms and Conditions will take precedence over the Goods Specification and Price.

* + - 1. Conflict

In the event of any conflict, these Terms and Conditions will take precedence over the Goods Specification and Price.

* + - 1. Governing Law and Jurisdiction

The formation, construction, performance, validity and all aspects whatsoever of this Agreement (including non-contractual disputes or claims) will be governed by English Law and the Parties agree to the exclusive jurisdiction of the courts of England and Wales.

* + - 1. Definitions

The following expressions will have the following meanings unless the context otherwise requires:

“**Acceptance Date**” means the earlier of the date on which the Goods pass the Acceptance Tests or in any event no more than 30 days after the Delivery Date upon which Aston will be deemed to have accepted the Goods;

“**Acceptance Period**” means the period of no more than 30 days that Aston will have to inspect the Goods which will lead to the Acceptance Date;

“**Acceptance Tests”** means the tests to be carried out by Aston in accordance with the form set out in Schedule 5 to determine whether the Goods meet the Goods Specification;

**“Adequate Procedures”** will be determined in accordance with section 7(2) of the Bribery Act (and any guidance issued under section 9 of that Act);

**“Affiliates”** means all associates, staff, employees, consultants and visiting consultants of the Supplier;

**“Anti Bribery Law”** means all Applicable Laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including the Bribery Act;

**“Applicable Laws”** means the laws of England and Wales and the European Union and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the obligations under this Agreement including Anti Bribery Law, Modern Slavery Law and Data Protection Law;

**“Associated Persons”** has the meaning ascribed to it in section 8 of the Bribery Act and will include any employees, agents and/or subcontractors of the Parties;

**“Bribery Act”** means the Bribery Act 2010;

**“Business Day”** means a day other than Saturday, Sunday or public holiday in England when banks in London are open for business;

**“Business Hours”** means 9.00am – 5.00pm on a Business Day;

**“Change Request”** means a change request in the form set out in Schedule 7 that will be completed by the Parties when proposing an amendment to this Agreement;

**“Commencement Date”** means the date of this Agreement;

**“Confidential Information”** means information in whatever form (including written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) including trade secrets such as technical data and know-how or details of any of suppliers, customers, students, agents, distributors, management or business contacts (whether directly or indirectly and whether before or after the Effective Date, whether or not such information (if in anything other than oral form) is marked confidential);

**“Data Protection Law”** means the Data Protection Act 1998 and from 25 May 2018 with the General Data Protection Regulation (Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data;

**“Delivery Date”** has the meaning given in clause 5;

**“EIA”** means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;

**“Force Majeure”** means circumstances beyond the reasonable control of a Party including, without limitation, acts of God, acts of terrorism, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic;

**“Force Majeure Period”** has the meaning given to it in clause 10.2.

**“Force Majeure Notice”** has the meaning given to it in clause 10.1;

**“FOIA”** means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government departments in relation to such legislation;

**“Goods”** means the goods to be delivered by the Supplier to Aston as set out in the Goods Specification;

“Goods Specification” means the Goods to be delivered by the Supplier to Aston in accordance with Schedule 2;

 **“Insolvent”** means a Party that:

(a) proposes or passes a resolution for its winding up or in the case of a limited liability partnership proposes or determines that it will be wound up;

(b) is subject to an application to or order or notice issued by a court or other authority of competent jurisdiction for its winding up or striking off;

(c) enters administration or is the subject of an application for administration filed at any court or a notice of intention to appoint an administrator given by any person filed at any court;

(d) proposes, makes or is subject to, a company voluntary arrangement or a composition with its creditors generally, an application to a court of competent jurisdiction for protection from its creditors generally or a scheme of arrangement under Part 26 Companies Act 2006;

(e) has a receiver or a provisional liquidator appointed over any of its assets, undertaking or income;

(f) ceases to trade or appears, in the reasonable opinion of the other Party, to be likely to cease to trade;

(g) is unable to pay its debts within the meaning of section 123 Insolvency Act 1986; or

(h) is the subject of any event that is equivalent or similar to any events mentioned in sub-clauses (a) to (g);

**“Insurance”** means professional indemnity insurance, product liability insurance and public liability insurance cover of not less than £10,000,000 for any one or any series of claims in aggregate in each case;

**“Intellectual Property Rights”** means all intellectual and industrial property rights including patents, know-how, registered trade marks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trade marks, rights to prevent passing off for unfair competition, copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions;

**“Invoice”** means a valid invoice setting out the payment in relation to the Goods, period relating to invoice, date on invoice and the invoice number;

 **“Losses”** means all costs (including legal costs and costs of enforcement), expenses, liabilities (including any tax liability), damages, claims, demands, proceedings and judgments;

**“Material Sub-Contractors”** means the material sub-contractors set out in Schedule 5;

**“Milestone**” means a key stage of delivery reached by the Supplier as set out in Schedule 3;

**“Nominated Representative”** means the individual authorised to legally bind the relevant Party and execute this Agreement;

**“Modern Slavery Law”** means the Modern Slavery Act 2015 and all associated regulations;

**“Policies and Procedures”** means the published policies and procedures of Aston (as amended from time to time);

**“Pre-Contractual Statement”** means any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement or any documents referred to in it;

**“Price”** means the price of the Goods payable by Aston to the Supplier in accordance with Schedule 3;

**“Project Manager”** means the project manager as identified in Schedule 4;

 **“Regulatory Bodies**” means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled by any Applicable Law to supervise, regulate, investigate or influence the matters dealt with in this Agreement, or any other affairs of Aston;

**“Request for Information”** means a request for information made (or deemed to be made in accordance with the FOIA or the EIR as the case may be) under the FOIA or the EIR;

 **“Subsequent FM Notice”** has the meaning given to it in clause 10.2;

**“Term”** has the meaning given in clause 2.1;

**“Terms and Conditions**” means the terms and conditions applicable to the Goods as set out in Schedule 1; and

**“VAT”** means tax prevailing in accordance with the Value Added Tax Act 1994.

* + - 1. Interpretation

In this Agreement:

the headings in this Agreement are inserted for convenience only and will not affect its construction;

a reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it;

unless the context otherwise requires, a reference to one gender will include a reference to the other gender;

unless the context otherwise requires, words in the singular include the plural and in the plural include the singular;

a person includes a corporate or unincorporated body (whether or not having separate legal personality);

any phrase introduced by the words “including”, “includes”, “in particular” or “for example” or similar will be construed as illustrative and will not limit the generality of the related general words;

unless a right or remedy of a party is expressed to be an exclusive right or remedy, the exercise of it by a party is without prejudice to that party's other rights and remedies; and

any schedules and appendices to this Agreement form part of (and are incorporated into) this Agreement.

* 1.

Goods Specification

[Insert details of the Goods to be delivered by the Supplier]

* 1.

Price

* + - 1. Aston will pay the Supplier £ [XXXXX] plus VAT.
			2. VAT is payable on all amounts stated in this Agreement.
			3. The payment of the Price will be divided into the following instalments corresponding to the Milestones set out in the table below:

|  |  |  |  |
| --- | --- | --- | --- |
| **Descriptions of Goods / Milestone** | **Acceptance Criteria** | **Date required for delivery of Goods** | **Price plus VAT** |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

* 1.

Aston and Supplier Details

|  |  |  |
| --- | --- | --- |
|  | **Aston’s Details** | **Supplier’s Details** |
| NominatedRepresentative |  |  |
| Contact Address |  |  |
| Email Address |  |  |
| Telephone Number |  |  |
| Work Mobile Number (if applicable) |  |  |
| [insert other details] |  |  |
| [insert other details] |  |  |
| [insert other details] |  |  |

* 1.

Form of Acceptance Test

1. Aston will undertake the Acceptance Tests and complete the form below.
2. This form will be signed by each Parties’ Nominated Representative.
3. The Acceptance Tests will be completed within [30] days of the Supplier delivering the Goods at Aston. Signature of this completed Acceptance Test confirms that Aston is satisfied that the Goods meet the Goods Specification and not does deem acceptance of the Goods.

|  |
| --- |
| **Acceptance Criteria** |
|  | Supplier |  |
| Contract Number |  |
| Date |  |
| **Testable Milestone** | **Acceptance Criteria** |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
| **Signature** |
| Signed for and on behalf of Aston:Signed.............................................................Name...............................................................Position...........................................................Date................................................................. | Signed for and on behalf of the Supplier:Signed.............................................................Name...............................................................Position............................................................Date................................................................. |

* 1.

Form of Change Request

If either Party wishes to amend this Agreement, it will complete a Change Request in the form set out in this Schedule 7.

|  |  |
| --- | --- |
| **External Document** | **Variation Number: [ENTER NUMBER]** |
| **Contract Name** | **Contract No:** |
| **Supplier’s Name** | **Budget Code** |

**Proposed Change**

|  |
| --- |
| **Details** |
| [Insert details of proposed change and include costs below] |

### Additional Cost

|  |
| --- |
| **Activity** |
|  |  |
|  |  |
|  |  |
|  |  |
| Total price plus VAT |  |

I hereby agree to the contents and cost of the work as detailed in this Change Request. The effect of this variation will increase/decrease the total contract value by an additional £[insert figure] from £[insert figure] to £[insert figure] plus VAT. By signing this Change Request, the Parties agree to enter into a legally binding variation to this Agreement.

**Signed on behalf of Aston Signed for and on behalf of the Supplier**

Name: …………………………… Name: ……………………………

Signature: …………………………… Signature: ……………………………

Position: …………………………… Position: ……………………………

Date: …………………………… Date: ……………………………

* 1.

**Data Protection**

* + - 1. Definitions and Interpretation

In this Schedule 7, unless set out below and unless the content otherwise requires, a term defined elsewhere in the Agreement has the same meaning in this Schedule 7.

**“Agreement”** shall mean this Agreement.

The terms **Data Controller, Data Processor, Data Subject, Process/Processing and Special Categories of Personal Data** shall have the same meaning as described in theData Protection Laws. For the purposes of this Schedule 7, the Data Controller shall be Aston and the Data Processor shall be [Party B].

"**EEA**" means the European Economic Area.

"**Personal Data Breach**"means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise Processed, as well as any breach of the security requirements set out in paragraph 2.2.4.

**Personal Data** means the data set out in this Schedule 7 and any other personal data, as defined in the Data Protection Laws, Processed by the Data Processor on behalf of the Data Controller pursuant to or in connection with the Agreement.

**Standard Contractual Clauses** means the standard contractual clauses, as agreed by the European Commission, for the transfer of Personal Data to processors established in third countries which do not ensure an adequate level of protection, as updated, amended replaced or superseded from time to time by the European Commission.

"**Supervisory Authority**" means (a) an independent public authority which is established by a Member State pursuant to Article 51 GDPR; and (b) any similar regulatory authority responsible for the enforcement of Data Protection Laws.

* + - 1. Data Processing Terms

The Data Controller hereby appoints the Data Processor in relation to the Processing of Personal Data under the Agreement and the parties agree to act in accordance with their respective obligations under this Schedule 7.

The Data Processor agrees that it shall undertake the obligations set out in this paragraph 2.2.

It shall only process the Personal Data relating to the categories of Data Subjects for the purposes of the Agreement and for the specific purposes in each case as set out in this Schedule 7 and shall not Process, transfer, modify, amend or alter the Personal Data or disclose or permit the disclosure of the Personal Data to any third party other than in accordance with the terms of the Agreement and the Data Controller's documented instructions from time to time and for the sole purpose of fulfilling its obligations under the Agreement, unless Processing is required by Applicable Laws to which the Data Processor is subject, in which case the Data Processor shall to the extent permitted by Applicable Laws inform the Data Controller of that legal requirement before Processing that Personal Data.

It shall take reasonable steps to ensure the reliability of any employee, agent or contractor who may have access to the Personal Data, ensuring in each case that access is strictly limited to those individuals who need to access the relevant Personal Data, as strictly necessary for the purposes set out in paragraph 2.2.1 above in the context of that individual's duties to the Data Processor, ensuring that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, it shall implement appropriate technical and organizational measures to ensure a level of security appropriate to the risk, including inter alia as appropriate the measures referred to in Article 32(1) of the GDPR.

In assessing the appropriate level of security, it shall take account in particular of the risks that are presented by Processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to the Personal Data transmitted, stored or otherwise Processed.

It shall notify the Data Controller without undue delay and in any case within 24 hours, upon becoming aware of or reasonably suspecting a Personal Data Breach, providing the Data Controller with sufficient information which allows the Data Controller to meet any obligations to report a Personal Data Breach under the Data Protection Laws. Such notification shall as a minimum:

communicate the name and contact details of the Data Processor's data protection officer or other relevant contact from whom more information may be obtained;

describe the likely consequences of the Personal Data Breach; and

describe the measures taken or proposed to be taken to address the Personal Data Breach.

It shall co-operate with the Data Controller and take such reasonable commercial steps as are directed by the Data Controller to assist in the investigation, mitigation and remediation of each Personal Data Breach.

It shall co‑operate as requested by the Data Controller to enable the Data Controller to comply with any exercise of rights by a Data Subject under any Data Protection Laws and, taking into account the nature of the Processing, it shall assist the Data Controller by implementing appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Data Controller's obligation to respond to requests for exercising Data Subject rights laid down in GDPR.

It shall promptly, and in any case within 5 Working Days, notify the Data Controller if it receives a request from a Data Subject under any Data Protection Laws in respect of the Personal Data.

It shall provide reasonable assistance to the Data Controller with any data protection impact assessments which are required under Article 35 GDPR and with any prior consultations to any supervisory authority of the Data Controller which are required under Article 36 GDPR, in each case solely in relation to Processing of Personal Data by the Data Processor on behalf of the Data Controller under this Agreement, and taking into account the nature of the Processing and information available to the Data Processor.

Where the Data Processor receives a request for disclosure of Personal Data from any government agency or regulator or under any statutory requirement (or is otherwise required or wishes to make a disclosure to a government agency or regulator or under any statutory requirement), it shall advise the Data Controller, in writing, of the request as soon as possible and prior to any disclosure, unless prohibited from doing so by law.

The Data Processor shall not authorise any third party and/or sub-contractor to Process the Personal Data ("Sub-processor") other than with the prior written consent of the Data Controller***,*** which the Data Controller may refuse in its absolute discretion and in each case subject to the Data Processor:

providing the Data Controller with full details of the Processing to be undertaken by the each Sub-processor;

carrying out adequate due diligence on each Sub-processor to ensure that it is capable of providing the level of protection for the Personal Data as is required by this Schedule 7 including without limitation sufficient guarantees to implement appropriate technical and organisational measures in such a manner that Processing will meet the requirements of GDPR and this Schedule 7;

including terms in the contract between the Data Processor and each Sub-processor which are the same as those set out in this Schedule 7. Upon request, the Data Processor shall provide a copy of its agreements with Sub-processors to the Data Controller for its review;

insofar as that contract involves a transfer of the Personal Data outside of the EEA, incorporate the Standard Contractual Clauses into the contract between the Data Processor and each Sub-processor, or procure that each Sub-processor enter into such a contract with the Data Controller, in each case in order to ensure the adequate protection of the transferred Personal Data; and

remain fully liable to the Data Controller for any failure by each Sub-processor to fulfil its obligations in relation to the Processing of any Personal Data Processed under the Agreement.

The Data Processor shall not under any circumstances Process any Personal Data outside the EEA unless authorised in writing to do so by the Data Controller (which consent shall be subject to Data Processor agreeing details of the transfer with the Data Controller and Data Processor and its sub-processor complying with the Data Controller’s IT security requirements as applicable). When requested by the Data Controller, the Data Processorshall promptly enter into (or procure that any relevant Sub-processor of the Data Processor enters into) an agreement with the Data Controller including or on such provisions as the Standard Contractual Clauses and/or such variation as the Data Controller might require, in respect of any processing of Personal Data outside of the EEA, which terms shall take precedence over those in this Schedule 7.

The Data Processor shall make available to the Data Controller on request all information necessary to demonstrate compliance with this Schedule 7 and allow for and contribute to audits, including inspections by the Data Controller or another auditor mandated by the Data Controller of any premises where the Processing of Personal Data Processed under this Agreementtakes place, in order to assess compliance with this Schedule 7. The Data Processor shall permit the Data Controller or another auditor mandated by the Data Controller to inspect, audit and copy any relevant records, processes and systems in order that the Data Controller may satisfy itself that the provisions of this Schedule 7 are being complied with. The Data Processor shall provide full co‑operation to the Data Controller in respect of any such audit and shall at the request of the Data Controller, provide the Data Controller with evidence of compliance with its obligations under this Schedule 7. The Data Processor shall immediately inform the Data Controller if, in its opinion, an instruction pursuant to this paragraph 2.6 infringes the GDPR or other EU or Member State data protection provisions.

The Data Processor agrees that it shall hold the Personal Data in such a manner that it is capable of being distinguished from other data or information processed by the Data Processor.

The Data Processor shall indemnify and hold harmless the Data Controller against all losses, fines and regulatory sanctions arising from any claim by a third party or SupervisoryAuthority arising from any breach of this Schedule 7.

In the event of any termination of the Agreement, the Data Processor shall:

subject to paragraph 2.9.2, cease processing the Data Controller Personal Data;

promptly, and in any event within 28 days, at the Data Controller’s instruction, either (a) return a complete copy of all the Personal Data to the Data Controller by secure file transfer in such format as notified by the Data Controller to the Data Processor; or (b) securely delete the Personal Data, such that it cannot be recovered or reconstructed, and procure the deletion of all other copies of the Personal Data Processed by Data Processor or any Sub-processor under this Agreement; and

certify that all copies of the Personal Data have been destroyed or returned in compliance with paragraph 2.9.2 within a reasonable time but in any event not later than 28 days after termination.

* + - 1. Changes in Data Protection Laws

The Data Controller may notify the Data Processor in writing from time to time of any variations to this Schedule 7 which are required as a result of a change in Data Protection Laws including without limitation to the generality of the foregoing, any variations which are (i) required as a result of any changes to UK Data Protection Laws following any exit of the UK from the European Union; or (ii) required to take account of any new data transfer mechanisms for the purposes of paragraph 2.5. Any such variations shall take effect on the date falling 30 days after the date such written notice is sent by the Data Controller and the Data Processor shall procure that where necessary the terms in each contract between Data Processor and each Sub-processor are amended to incorporate such variations within the same time period.

* + - 1. Personal Data

This Schedule 7 includes certain details of the Processing of Personal Data as required by Article 28(3) GDPR.

Subject matter and duration of the Processing of Personal Data:

the subject matter and duration of the Processing of the Personal Data are as set out in this Agreement.

The nature and purpose of the Processing of Personal Data:

for the purpose of the provision of the Processing of the Personal Data as set out in this Agreement.

The types of Personal Data to be Processed

[Include list of data types here] [[22]](#footnote-23)

The categories of Data Subject to whom the Personal Data relates

[Insert categories here] [[23]](#footnote-24).

This Agreement has been entered into on the date stated at the beginning of it.

Signed on behalf of **Aston University[[24]](#footnote-25)**

Signature:

Date:

Name:

Position:

Signed for and on behalf of **[insert name][[25]](#footnote-26)**

Signature:

Date:

Name:

Position:

1. Amend the year accordingly and remove square brackets.  Once the Agreement has been signed by both parties, the last date of signature should be entered here. [↑](#footnote-ref-2)
2. Insert the name of the other party. [↑](#footnote-ref-3)
3. This agreement should be used when Aston is purchasing goods through a tender process. [↑](#footnote-ref-4)
4. Remove in final version [↑](#footnote-ref-5)
5. Insert the name of the other party. [↑](#footnote-ref-6)
6. Insert the Company number. [↑](#footnote-ref-7)
7. Insert the Company’s registered address. [↑](#footnote-ref-8)
8. Is this clause applicable? If not it can be deleted. Otherwise, please consider whether 6 weeks’ notice period is sufficient in light of the duration. [↑](#footnote-ref-9)
9. Insert number of days Aston has to inspect the Goods prior to purchasing them. [↑](#footnote-ref-10)
10. Consider whether the Goods need to be delivered on a certain date or any time before a certain date. [↑](#footnote-ref-11)
11. Amend as per required. [↑](#footnote-ref-12)
12. Insert the address for the place where Goods need to be delivered, i.e. Aston Main Building etc. [↑](#footnote-ref-13)
13. Please delete if not applicable. [↑](#footnote-ref-14)
14. Please delete as necessary. [↑](#footnote-ref-15)
15. Please insert the agreed percentage. [↑](#footnote-ref-16)
16. Please insert the agreed percentage. [↑](#footnote-ref-17)
17. This is the University’s standard positon. Please use this clause to suit the type of contract that is being entered into. [↑](#footnote-ref-18)
18. Consider the type of agreement and the necessary time periods for force majeure. Is 60 days sufficient without it causing the University a problem? Amend the time periods necessary. [↑](#footnote-ref-19)
19. Retain if clause 12 is retained otherwise please delete this part and clause 12. [↑](#footnote-ref-20)
20. Any bespoke conditions will need to be inserted here. Please contact Legal Services to assist with the drafting. [↑](#footnote-ref-21)
21. These are the University’s standard terms. Please contact Legal Services in the event any changes are required. [↑](#footnote-ref-22)
22. Please insert the types of Personal data that will be processed e.g. names of Students, grades, etc. [↑](#footnote-ref-23)
23. Please insert the Data Subjects to whom this relates e.g. Students, staff, etc. [↑](#footnote-ref-24)
24. The Executive Lead of the relevant area will need to execute this Agreement if it has a value of £50,000 of less. There will need to be a second signatory if the Agreement has a value higher than £50,000, i.e. the CFO. If the Agreement has a value of between £250,000 but less than £1,000,000, the CFO and Vice-Chancellor will need to sign the Agreement. Contracts with a value above £1,000,000 will need approval from Council [↑](#footnote-ref-25)
25. Insert the name of the other party. [↑](#footnote-ref-26)