1 Interpretation

1.1 In these conditions:

“Buyer” means Brunel University

“Conditions” means the standard conditions of purchase set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller;

“Order” means the Buyer’s purchase order to which these Conditions are annexed and which are the Buyer’s written instructions to supply the Goods and/or Services, as applicable;

“Services” means the services (if any) described in the Order;

“Goods” means the goods (if any, including any instalment of the goods or any part of them) described in the Order;

“Contract” means the Order which forms the contract for the sale and purchase of the Goods and the supply and acquisition of the Services on the Conditions;

“Delivery Address” means the address stated on the Order;

“Intellectual Property Rights” means any and all intellectual property rights throughout the world for the full term of the rights concerned, whether or not registered and whether or not registrable, including without limitation, copyright, database rights, patents (including any divisions, continuations, re-examinations and/or registrations thereof), rights in inventions, know-how and technical information, design rights, registered designs, trade marks (including brand names, devices and logos), internet domain names and the right to apply for any of the foregoing anywhere in the world;

“Price” means the price of the Goods and/or the charge for the Services;

“Seller” means the person (which includes a body corporate) engaged in the performance of the Services and/or production and/or delivery of the Goods so described in the Order, and includes employees, agents and subcontractors (where permitted) of the person engaged.

“Specification” includes any plans, drawings, data or other information relating to the Goods and/or Services;

“Writing” includes telex, cable, facsimile transmission and compatible means of communication.

1.2 Any reference in these Conditions to a statute or a provision of statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2 Basis of Purchase

2.1 The Order constitutes an offer by the Buyer to purchase the Goods and/or acquire the Services subject to the Conditions.

2.2 These Conditions shall apply to the Contract and shall govern the Contract to the entire exclusion of all other terms and conditions, including but not limited to on which any quotation has been given to the Buyer or subject to which the Order is accepted or purported to be accepted by the Seller.
2.3 The Buyer reserves the right to cancel the Order unless unconditionally accepted by the Seller in Writing.

2.4 No variation to the Order or these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

3 Specifications and Buyer's Property

3.1 The quantity, quality and description of the Goods and the Services shall, subject as provided in these Conditions, be as provided in these Conditions, be as specified in the Order and/or in any applicable Specification supplied by the Buyer to the Seller or agreed in Writing by the Buyer and the Seller.

3.2 Any Specification supplied by the Buyer to the Seller or specifically by the Seller for the Buyer, in connection with the Contract together with the copyright, design rights or any other Intellectual Property Rights in the Specification, shall be the exclusive property of the Buyer. The Seller shall not disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of the Seller, or as required for the purpose of the Contract.

3.3 The Seller shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Seller by the Buyer and any other confidential information concerning the Buyer's business or its products which the Seller may obtain and the Seller shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Seller's obligations to the Buyer and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Seller.

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

3.5 The Seller shall not unreasonably refuse any request by the Buyer to inspect and test the Goods during manufacture, processing or at any stage at the premises of the Seller or any third party prior to despatch, and the Seller shall provide the Buyer with all facilities reasonably required for inspection and testing.

3.6 If, as a result of inspection or testing, the Buyer is not satisfied that the Goods will comply in all respects with the Contract, and the Buyer so informs the Seller within 7 days of the inspection or testing, the Seller shall take such steps as are necessary to ensure compliance.

3.7 The Goods shall be marked in accordance with the Buyer's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course.

3.8 The Seller shall promptly inform the Buyer, in writing, in the event of any conflicts of interest arising prior to or during the course of, the performance of the Services. In the event such a conflict results in the Seller being unable to perform or complete the performance of the Services, the Buyer's sole liability shall be to pay the Seller for the Services provided as of the date the conflict arose, but such compensation shall not include loss of anticipated profits or any consequential loss.

3.9 The parties declare that it is their intention that this Contract shall not create the relationship of employer and employee between Buyer and the Seller. The Seller shall be responsible for all income tax and National Insurance, penalties and interest or similar contributions in respect of his/her fees under this Contract. The Seller hereby agrees to indemnify the Buyer in respect of income tax, National Insurance or other items above relating to this Contract.

3.10 It is expressly agreed between the parties that the Seller is an independent contractor and nothing in this Contract shall render him/her an employee, agent or partner of the Buyer and he/she shall not hold himself/herself out as such. The Seller shall not have any right or power to bind the Buyer in any way (including but not limited to the making of any representation or warranty, the assumption of any
obligation or liability and the exercise of any right of power) and shall indemnify the Buyer against any loss or damage which the Buyer may sustain or incur as a result of any unauthorised act or omission of the Seller or any of his/her employees or agents or sub-contractors.

4 Price of Goods and/or Services

4.1 The Price of Goods and/or the Services shall be as stated in the Order and, unless otherwise so stated shall be:

4.1.1 exclusive of an applicable value added tax (which shall be payable by the Buyer subject to receipt of a VAT invoice); and

4.1.2 inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the Delivery Address and any duties, imposts or levies other than value added tax.

4.2 No increase in the Price may be made (whether on account or of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Buyer in Writing. Prices will remain firm for the first year of the contract thereafter; prices may be amended annually subject to agreement by the buyer. Increase may be no more than the annual change in RPI published for the annual period to August.

4.3 The Buyer shall be entitled to any discount for prompt payment, bulk purchase, or volume of purchase customarily granted by the Seller, whether or not shown on its own terms and conditions of sale.

5 Terms of Payment

5.1 The Seller shall be entitled to invoice the Buyer on or at any time after delivery of the Goods and/or performance of the Services, as the case may be and each invoice shall quote the number of the Order.

5.2 Unless otherwise stated in the Order, the Buyer shall pay the Price of the Goods and/or the Services within 30 days after that end of the month of receipt by the Buyer of a valid invoice or after acceptance of the Goods and/or Services in question by the Buyer whichever is the later. Time for payment by the Buyer shall not be of the essence of the Contract.

5.3 The Buyer shall be entitled to set off against the Price any sums owed to the Buyer by the Seller.

6 Delivery

6.1 The Goods shall be delivered to, and the Services shall be performed at, the Delivery Address on the Date or within the period stated in the Order, in either case during the Buyer’s usual business hours.

6.2 Where the date of delivery of the Goods and/or performance of the Services is to be specified after placing of Order, the Seller shall give the Buyer reasonable notice of the specified date.

6.3 Unless otherwise agreed in writing, the time of delivery of the Goods and of performance of the Services is of the essence of the Contract.

6.4 A packing note quoting the number of the Order must accompany each delivery or consignment of the Goods and must be displayed prominently.

6.5 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. Nevertheless failure by the Seller to deliver or perform any one instalment, shall entitle the Buyer at its sole discretion to treat the entire Contract as repudiated.

6.6 If the Goods are delivered to the Buyer in excess of the quantities ordered the Buyer shall not be bound to pay for the excess and any excess will be and will remain at the Seller’s risk and will be
returnable at the Seller’s expense. Further if any Services are performed in excess of that requested by the Buyer, the Buyer shall not be bound to pay for any such excess.

6.7 The Buyer shall be entitled to reject any Goods delivered which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods until the Buyer has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.

6.8 The Seller shall supply the Buyer in reasonable time with any instruction or other information required to enable the Buyer to accept delivery of the Goods and/or performance of the Services.

6.9 The Buyer shall not be obliged to return to the Seller any packing or packing materials for the goods, whether or not any Goods are accepted by the Buyer.

7 **Risk and Property**

7.1 The Seller shall offload the Goods at its own risk as directed by the Buyer.

7.2 The property in the Goods shall pass to the Buyer upon completed delivery.

8 **Quality and Defects**

8.1 The Goods shall be of the best available design, of the best quality, material and workmanship, be without fault and conform in all respects with the Order and specification and/or patterns supplied or advised by the Buyer to the Seller.

8.2 The Buyer’s rights under these Conditions are in addition to the statutory conditions implied in favour of the Buyer by the Sale of Goods Act 1979.

8.3 At any time prior to delivery of the Goods to the Buyer, the Buyer shall have the right to inspect and test the Goods either by itself or through a third party.

8.4 If the results of such inspection or testing cause the Buyer to be of the opinion that the Goods do not conform or are unlikely to conform with the Order or to any Specifications and/or patterns supplied or advised by the Buyer to the Seller, the Buyer shall inform the Seller and the Seller shall immediately take such action as is necessary to ensure conformity and in addition the Buyer shall have the right to inspect and test the Goods either by itself or through a third party.

8.5 Notwithstanding any such inspection or testing, the Seller shall remain fully responsible for Goods and any such inspection or testing shall not diminish or otherwise affect the Seller’s obligations under the Contract.

8.6 If any of the Goods fail to comply with the provisions set out in Clause 9 the Buyer shall be entitled to avail itself of any one or more remedies listed in Clause 11.

9 **Warranties and Liability**

9.1 The Seller warrants to the Buyer that the Goods:

9.1.1 will be of satisfactory quality and fit for the purpose held out by the Seller or made known to the Seller in Writing at the time the Order is placed;

9.1.2 will be free from defects in design, material and workmanship;

9.1.3 will correspond with any relevant Specification or sample; and

9.1.4 will comply with all statutory requirements and regulations relating to the Sale of the Goods;

9.2 The Seller warrants to the Buyer that their Services will be performed by appropriately qualified, experienced and trained personnel, with due care and diligence and to such high standard of quality as it is reasonable for the Buyer to expect in all the circumstances.
9.3 All personnel employed by the Seller for the purpose of performing the Contract shall fulfil their duties in a professional, ethical manner, consistent with the Buyer’s commitment to equal opportunities and race equality and high standards of behaviour.

9.4 Without prejudice to any other remedy, if the Goods and/or Services are not supplied or performed in accordance with the Contract, then the Buyer shall be entitled:

9.4.1 to require the Seller to repair the Goods or to supply replacement Goods and/or Services in accordance with the Contract within 7 days; or

9.4.2 refuse to accept any subsequent delivery of the Goods or continued provision of the Services which the Seller attempts to make;

9.4.3 recover from the Seller any expenditure reasonably incurred by the Buyer in obtaining the Goods and/or the Services in substitution from another supplier; and

9.4.4 claim damages for any additional costs, loss or expenses incurred by the Buyer which are in any way attributable to the Seller’s failure to deliver the Goods or complete the Services on the due date;

9.4.5 at the Buyer’s sole option, and whether or not the Buyer has previously required the Seller to repair the Goods or to supply any replacement Goods and/or Services, to treat the Contract as discharged by the Seller’s breach and require the repayment of any part of the Price which has been paid.

9.5 The Seller shall keep the Buyer indemnified in full against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with:

9.5.1 breach of any warranty given by the Seller in relation to the Goods and/or Services including, but not limited to, in respect of any defective workmanship quality or materials and/or the warranty provided in Clause 17.2 herein;

9.5.2 any claim that the Goods infringe, or their use or resale infringes the patent, copyright, design right or trade mark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any Specification supplied by the Buyer;

9.5.3 any liability under the Consumer Protection Act 1987 in respect of the Goods;

9.5.4 act or omission of the Seller in supplying, delivering and/or installing the Goods;

9.5.5 any act or omission of the Seller in connection with the performance of the Services; and

9.5.6 any claim made against the Buyer in respect of any liability, loss, damage, injury, cost or expense sustained by the Buyer, the Buyer’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 supply, delivering or installing of the Goods and/or Services as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Contract by the Seller.

9.6 In respect of any injury, damage or loss caused to third parties (save and except for death or personal injury arising from the negligence of the Buyer or in respect of any fraudulent misrepresentation on the part of the Buyer) or their property by the Goods there shall be no automatic right of indemnity due from the Buyer to the Seller. Any clause in the Seller’s standard terms and conditions of sale purporting to establish a right of indemnity from the Buyer to the Seller in the event of any injury, damage or loss caused to third parties or their property, shall not be incorporated into this Contract.

9.7 Subject to the provisions of clause 9.6, in no circumstances shall the Buyer be liable to the Seller whether in contract, tort, negligence, breach of statutory duty or otherwise in respect of loss of profits,
revenue, goodwill, business opportunity, loss of or cost of restoration of data or any other indirect, consequential, financial or economic loss or damage costs or expenses whatsoever or howsoever arising out of or in connection with this Contract.

9.8 Subject to the provisions of clause 9.6, the liability of the Buyer to the Seller for direct loss in contract, tort or otherwise arising out of or in connection with this Contract shall be limited for any one incident or series of connected incidents to twice the total amount of funds received by the Seller from the Buyer under, and during the term of, this Contract. If this limitation is adjudged to be unreasonable in the circumstances, the limit of the Buyer’s liability shall be increased to the amount that the Seller can recover from the Buyer’s insurer for direct loss.

9.9 The Seller shall procure, and at all times during the operation of this Contract keep in force with a reputable insurance company carrying out business in the UK, a policy or policies sufficient to indemnify the Buyer against any claim for which the Seller may be liable under this Contract, of not less than £5 million. The policy or policies shall cover liability, loss and damage incurred or suffered by the Buyer or any third party of the Seller’s employees, sub-Contractors or agents arising out of performance of the Contract.

10 Termination

10.1 The Buyer shall be entitled to cancel the Order in respect of all or part of the Goods and/or the Services by giving notice to the Seller at any time prior to delivery or performance in which event the Buyer’s sole liability shall be to pay the Seller the Price for the Goods and/or Services in respect of which the Buyer has exercised its rights of cancellation, less that Seller’s net saving of cost arising from cancellation but such compensation shall not include loss of anticipated profits or any consequential loss.

10.2 The Buyer shall be entitled to terminate the Contract without liability to the Seller by giving notice to the Seller at any time if:

10.2.1 the Seller makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being a person) is declared bankrupt, or (being a company) becomes subject to an administration or goes into liquidation (otherwise that for the purpose of amalgamation or reconstruction); or

10.2.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Seller,

10.2.3 the Seller ceases, or threatens to cease to carry on business;

10.2.4 the Seller commits a material breach of any terms and conditions of the Contract, where the Buyer has served notice on the Seller requiring the breach to be remedied (if capable of remedy) within a period specified in the notice, not being longer than sixty (60) days; or

10.2.5 the Buyer reasonably apprehends that any of the above events is about to occur in relation to the Seller and notifies the Seller accordingly.

10.3 The termination of the Contract, however arising, will be without prejudice to the rights and duties of the parties accrued prior to termination. The terms of this Contract which expressly or impliedly have effected after termination will continue to be enforceable notwithstanding termination.

11 Remedies

11.1 Without prejudice to any other right or remedy which the Buyer may have, if any Goods are not supplied and/or Services not performed, in accordance with, or the Seller fails to comply with, any of the terms of this Contract the Buyer shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part or the Goods have been accepted by the Buyer or Services performed, by the Seller:

11.1.1 to rescind the Order;
11.1.2 to reject the Goods (in whole or in part) and return them to the Seller at the risk and cost of the Seller on the basis that a full refund for the Goods so returned shall be paid forthwith by the Seller;

11.1.3 at the Buyer’s option to give the Seller the opportunity at the Seller’s expense either to remedy any defect in the Goods and/or Services, or to supply replacement Goods and carry out any other necessary work or Services to ensure that the terms of the Contract are fulfilled;

11.1.4 to refuse to accept any further deliveries of the Goods, or performance of the Services, but without any liability to the Buyer;

11.1.5 to carry out at the Seller’s expense any work necessary to make the Goods and/or Services comply with the Contract; and

11.1.6 to claim such damages as may have been sustained in consequence of the Seller’s breach or breaches of the Contract.

12 General

12.1 The Order is personal to the Seller and the Buyer and neither party shall assign or transfer or purport to assign or transfer to any other person any of its rights or sub-contract any of its obligations under the Contract, other than as provided under this Contract, without the prior written consent of the other party.

12.2 Any notice required or permitted to be given by either party to the other under these conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

12.3 No waiver by the Buyer of any breach of the Contract by the Seller shall be considered as a waiver of any subsequent breach of the same or any other provision.

12.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provisions shall not be affected thereby.

12.5 The parties to this Contract do not intend that any term of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

12.6 The Seller hereby transfers and assigns to the Buyer his/her copyright and any other Intellectual Property Rights including any future copyright arising in all literary, artistic and recorded materials of which he/she may in the course of his/her services under this Agreement be sole or joint author (and hereby waives his/her right to be identified as the author of the work and all other moral rights) and undertakes to the Buyer to complete such documents and do such acts relating to the said copyright or other Intellectual Property Rights in any part of the world as Buyer may (at its own expense) at any time require him/her to complete or do including those in order to give effect to such transfer, assignment or waiver.

12.7 All notes, memoranda, records, lists of clients and suppliers and employees, correspondence, documents, computer and other data storage media such as disks and tapes, data listings, codes, designs and drawings and other documents and material whatsoever (whether made or created by the Seller in the course of providing the Services) relating to the business of the Buyer (and any copies of the same held in any medium) shall be and remain the property of the Buyer and shall be handed over forthwith by the Seller or his/her personal representatives to the Buyer on demand and in any event on the termination of this Contract.

13 Force Majeure

13.1 The Buyer reserves the right to defer the date of delivery or performance of the Services or payment or to cancel the Contract or reduce the volume of the Goods ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Buyer.
including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce) or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

14 **Health and Safety**

14.1 The Seller shall comply with the requirements of UK and international legislation and agreements relating to the supply, packaging, labelling and carriage of hazardous goods.

14.2 The Seller shall ensure the Goods comply with current health and safety legislation and the legislation implementing any relevant EC Directive. The Buyer may require the Seller to show that the Goods bear a CE mark and may ask for a copy of the EC Declaration of Conformity.

15 **Data Protection**

15.1 Each party shall comply with the Data Protection Act 1998 ("the Act") the regulations made under the Act and any statutory amendments or re-enactments made of the Act in respect of personal data as defined in the Act ("Personal Data") processed in relation to this Agreement.

15.2 Where a party is acting as a data processor for the other as defined by the Act, that party undertakes:

15.2.1 to keep the Personal Data confidential and not to use or disclose the Personal Data other than as provided for under this Agreement save at the specific request of the data controller of the Personal Data or as required by law;

15.2.2 to ensure that only such of its employees who may be required by the data processor to assist it in meeting its obligations under this Agreement shall have access to the Personal Data and that such employees are aware of their responsibilities when processing Personal Data;

15.2.3 to have in place appropriate technical and organisational measures to safeguard against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access to Personal Data. Such measures shall (taking into account the state of technological development and the cost of implementing such measures) be appropriate to the nature of the Personal Data held by the data processor.

15.3 Each party shall indemnify and keep indemnified the other against all reasonable losses cost, demands and expenses suffered or incurred by it arising out or in connection with any action or claim brought by a third party directly caused by a breach by the indemnify party of the provisions of the Act.

16 **Law**

16.1 The constructions, validity and performance of the Contract shall be governed by the Law of England. The Contract shall be deemed to have been made in England and the parties to the Contract hereby submit to the exclusive jurisdiction of the English Courts.

17 **Diversity and Equality**

17.1 The Seller shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination whether in race, gender, religion, disability, sexual orientation or age or otherwise in employment.

17.2 The Seller shall take all reasonable steps to secure the observance of clause 17.1 by all servants, employees or agents of the Seller and all suppliers and sub-contractors employed in the execution of the contract.

17.3 The Seller will provide such information as required by the Buyer in relation to its compliance with anti-discrimination legislation and will co-operate with any investigations under the relevant legislation.

17.4 Where any investigation is conducted, or proceedings are brought which arise directly or indirectly out of any act or omission of the Seller, its agents or sub-contractors including in circumstances beyond the
18 **Freedom of Information Act 2000**

18.1 The Seller acknowledges that the Buyer is a Public Authority for the purposes of the Freedom of Information Act 2000 (the “FOIA”) and that the Buyer is under a general obligation to make all information held by it, available to the general public on request, unless an exemption under the FOIA applies.

18.2 The Seller confirms that in providing any information to the Buyer in connection with this Agreement, it accepts that the Buyer may need to disclose such information under the FOIA.

18.3 If the Seller has a reasonable belief that any of the information that it has or is to be provided in connection with this Agreement is ‘Confidential’, then the Seller must provide a specific written Notice to the Buyer, informing the Buyer of exactly which information the Seller believes is confidential AND providing the Buyer with the Seller’s reasonable rationale for its belief that such information is confidential. Unless and until the Seller has provided the Buyer with a satisfactory notice and explanation (to be decided at the sole discretion of the Buyer), then the Buyer shall be at liberty to disclose the information as it deems necessary, to comply with the FOIA.

18.4 The Seller further confirms that notwithstanding Clause 3.3 above any information provided by the Seller to the Buyer in connection with this Agreement, may be released to any third party under the following circumstances:

18.4.1 A Public Access Request is validly received under the FOIA and the Buyer is unable to refuse disclosure by applying any of the exemptions under the FOIA;

18.4.2 A Subject Access Request is validly received under the Data Protection Act 1998 (the “DPA”) and the Buyer is unable to refuse disclosure by applying any of the exemption under the DPA;

18.4.3 The Buyer is compelled to release the information under any other Legislation, Regulation or other similar directive or order etc;

18.4.4 The Buyer is compelled to release the information under an order from a Court or other similar body of competent jurisdiction;

18.4.5 The information has entered the public domain other than by the Buyer’s breach.

18.5 In the case of a necessary disclosure, the Buyer will attempt to discuss such disclosure with the Seller. However the Buyer will be under no obligation to so consult with the Seller and retains the absolute right to disclose the necessary information in accordance with Clause 1.4 above or otherwise.

19 **Service of Notice**

19.1 Any notice served on the University under or pursuant to this agreement shall be validly served only if addressed to The Academic Registrar, Brunel University, Uxbridge, Middlesex, UB8 3PH and mentioning this agreement.