These General Conditions of Purchase are incorporated as an inherent part of this Purchase Order and must be accepted as the terms of the contract to which they relate. They may not be varied, except as described below, and conditions published in any form by the person, firm or company to whom the Buyer has been appointed as authorized officer of the University of Aberdeen.

1. DEFINITIONS

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

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

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

Goods means the goods described in the Purchase Order.

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

Intellectual Property Rights means any copyright, patent, trademark or trade name, design rights, or other similar right of whatever nature, registered or unregistered, present or future, together with the benefit of any claim of right arising under any of them.

Suppliers means the person, firm or company so named in the Purchase Order on the date or within the period stated in the Purchase Order, in either case during the term of the Contract.

2. BASIS OF PURCHASE

2.1 The Purchase Order constitutes an offer by the Buyer to purchase the Goods and/or the Services subject to the terms of the Purchase Order and these Terms and Conditions. The terms of the Purchase Order and these Terms and Conditions shall apply to the contract between the Buyer and the Supplier for the sale and purchase of the Goods and/or the supply and provision of the Services which is constituted by the Purchase Order and these Terms and Conditions.

2.2 The Supplier shall treat all information provided by the Buyer as confidential and shall not disclose such information to any other person, firm or company except as required by law.

3. SPECIFICATIONS AND QUALITY

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

3.2 The Supplier undertakes to supply the Goods and/or Services using suitability experienced personnel who will carry out their duties with due diligence and in accordance with good industry practice, using such tools, machinery, equipment and a team of skilled and experienced personnel as may be reasonably necessary.

3.3 The Goods and/or Services shall comply with the express terms of the Purchase Order and these Terms and Conditions and with the implied conditions, warranties and terms contained in the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982 (or any statutory equivalent) which is relevant to the Goods supplied.

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

4. VARIATIONS

4.1 The Supplier shall not alter or provide goods and/or services different from any of the Goods and/or Services, except as expressly directed in writing by the Buyer. The Buyer shall have the right, from time to time during the execution of the Contract, by written notice to the Supplier, to amend the Specification to add to or omit, or otherwise vary, the Goods and/or Services, and the Supplier shall carry out such additions, omissions or variations and be bound by the conditions so far as may be practicable, but, with the exception of goods, variations or omissions were stated in the Purchase Order and these Terms and Conditions.

5. DELIVERY, PACKAGING AND MARKING

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

5.2 If the Buyer arranges for delivery of the Goods and/or Services the Buyer shall pay the reasonable costs and expenses of delivery of such delivery or Services.

5.3 If the Goods are to be delivered or the Services are to be performed by instalments the Contract will be treated as a contract for a series of transactions and the Supplier shall procure the delivery, instalments, installation and certification of the Goods in accordance with the Specification set out in the Purchase Order.

5.4 The Goods shall be delivered during the normal hours of work of the Supplier, subject to reasonable notice, and shall be delivered in good and workable condition. The Buyer shall have the right to examine the Goods and specify further work to be done by the Supplier.

5.5 The Supplier shall not be entitled to charge the Buyer for the cost of attendance by its staff, contractors and/or agents at any such tests or any repeat tests.

6. PAYMENT AND TESTING

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

7. INSTALLATION AND TESTING

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

7.2 The Supplier shall, at its cost and risk, carry out all necessary testing to ensure the Goods comply with the Specification set out in the Purchase Order.

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

7.4 The Supplier shall test each Goods and/or Integral Software, specified in the Purchase Order.

7.5 The Goods and/or Integral Software (or any part thereof) fail the tests referred to in Clause 7.2 then the Supplier shall forthwith implement free of charge any alterations or modifications or replacements of the Goods and/or Integral Software as it shall in the circumstances reasonably judge necessary and in sufficient time to allow the reinstallation of the Goods within the limit of the 7 days of the date of failure. The Supplier shall not be liable to the Buyer for the cost of attendance by its staff, contractors and/or agents.

8. RIGHT OF REJECTION

8.1 The Buyer shall be entitled, and may by written notice to the Supplier, to reject any Goods if the Goods are defective, are not in accordance with the Specification or are damaged or otherwise not in good repair, workable or useable.

8.2 Subject to Clause 7.9, where goods are rejected the Supplier shall at the Buyer’s cost, at the Buyer’s discretion, repair, replace or remanufacture the Goods and the Supplier shall bear all costs, including reasonable expenses and costs incurred by the Buyer in connection with the rejection.

9. PRICES

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

10. PAYMENT

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

10.2 Each invoice shall quote the number of the Purchase Order. Payment may be delayed but no prompt discount shall be forfeited by the Buyer, if the Supplier fails to mark the Purchase Order number on the invoice, all returns, resales, reworkings and further statements and all other correspondences.

10.3 The Supplier shall not be entitled to charge the Buyer for the cost of attendance by its staff, contractors and/or agents at any such tests or any repeat tests.

10.4 The Buyer shall be entitled to charge the Supplier for the cost of attendance by its staff, contractors and/or agents at any such tests or any repeat tests.

10.5 Where the Supplier is the owner of the Integral Software (or any part thereof) or any application software forming part of the Goods, the Supplier shall provide the Buyer with a non-transferable licence to use the Buyer's software on a non-exclusive basis.

11. INTELLECTUAL PROPERTY RIGHTS

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

11.2 The Supplier shall indemnify and keep indemnified the Buyer and any other person, firm or company to whom the Supplier has been appointed as authorized officer of the University of Aberdeen.

12. CONFIDENTIAL INFORMATION

The Supplier shall treat all information provided by the Buyer in confident and use such information only for the purposes of fulfilling the Contract. Where drawings or other data are issued by the Buyer to the Supplier, the Supplier shall exercise every care and secrecy and, whether or not the Buyer pays for such drawings or other data provided by the Supplier, the Supplier shall remain the property of the Buyer. On completion, cancellation or termination of the Contract, the Buyer shall return or dispose of such drawings or other data in accordance with the Buyer's written instructions.

13. SAFETY

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

13.1 Where the Goods and/or Services include the creation, development or distribution of any hazardous goods, the Supplier shall provide the Buyer with a detailed safety data sheet and the information contained in the data sheets meet the legal requirements of the Health and Safety at Work Act 1974 and the Chemicals (Hazard Information and Packaging for Supply) Regulations 2002.

14. SHIPS, USAGE AND STORAGE

Without prejudice to any rights that the Buyer may have under the Purchase Order, these Terms and Conditions or by statute, common law or otherwise, the Supplier shall, where necessary during the twelve month period from the date of the Contract, supply and fit, free of charge, new spare parts required for the purposes of repair of the Goods.
14.2 The Supplier shall ensure that, where applicable, compatible electro-mechanical spares to effect repairs are also made available to the Buyer, if required, for a period of 7 years from the date of the Contract or such period as is specified in the Purchase Order.

14.3 The Supplier shall ensure that adequate instruction is given to the Buyer to ensure proper use and storage requirements of the Goods, and shall notify the anticipated life expectancy of any item, whether in storage or in use. The Buyer's rights, whether under these Purchase Orders, these Terms and Conditions or by statute, common law or otherwise, will not be prejudiced simply by the Supplier's specification of a supposed life expectancy of any item.

15. INCREDIBILITY

15.1 Without prejudice to any rights or remedies of the Buyer, the Supplier shall indemnify and keep indemnified the Buyer in full and on demand against all actions, suits, claims, demands, losses, charges, costs, expenses, damages and liabilities (whether in respect of personal injury or death or in connection with any damage to the Buyer's test set part, or in respect of any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any defect in the Goods and/or Services, or the negligent or wrong acts or omissions of the Supplier or its sub-contractors, employees, agents, representatives or consignees.

15.2 The Supplier shall effect a reputable insurance company a policy or policies of insurance covering all the matters which are the subject of indemnities under these Terms and Conditions and shall at the request of the Buyer produce the relevant policy or policies together with receipts or other evidence of payment of the latest premium due thereon.

16. CANCELLATION

16.1 Any time or period for delivery, dispatch, or completion specified in the Purchase Order or otherwise agreed in writing by the Buyer and the Seller shall be of the essence.

16.2 Without prejudice to Clause 16.3, the Buyer shall be entitled to cancel the Purchase Order in respect of all or part of the Goods and/or Services at any time prior to delivery of the Goods and/or Services in whole or in part. Upon delivery of the Goods and/or Services, the Supplier shall not be entitled to cancel the Purchase Order for any reason save as provided by law.

16.3 The Buyer shall be entitled to cancel the Contract or any part thereof, without prejudice to any other remedy the Buyer may have, by giving written notice to the Supplier if:

16.3.1 the Buyer has exercised its right of cancellation which cannot be avoided by the Supplier;

16.3.2 there is a delay in delivery, dispatch, or completion of the Goods and/or Services which are the subject of the Contract, the Buyer shall have the right to suspend the Contract until such circumstances have ceased. In such circumstances, the Buyer having notified the Supplier in writing shall have no liability to the Supplier during the period which such interruption continues. If the use of the Goods and/or Services is prevented by suspension then, after a reasonable time, the Contract may be cancelled by The Buyer.

16.4.1 The Buyer and the Seller shall be of the essence.

17. SUSPENSION

In the event of any interruption of the Buyer's business, activities or affairs due to circumstances beyond the Buyer's control such as but not limited to any dispute, fire, explosion or accident which would prevent or hinder the performance of Goods and/or Services which are the subject of the Contract, the Buyer shall have the right to suspend the Contract until such circumstances have ceased. In such circumstances, the Buyer having notified the Supplier in writing shall have no liability to the Supplier during the period which such interruption continues. If the use of the Goods and/or Services is prevented by suspension then, after a reasonable time, the Contract may be cancelled by The Buyer.

18. INSOLVENCY

If the Buyer becomes or is deemed to become insolvent (within the meaning of section 780 or 845 of the Bankruptcy (Scotland) Act 1993 or in any way whatsoever by reason of its affairs becoming unblockable or by the full, absolute or partial liquidation or the winding up, suspension, or voluntary rearrangement of affairs or the carrying on of its business by or under the supervision of the court or otherwise) or (if a company) the company is wound up (whether voluntarily or compulsorily) or a receiver or administrator is appointed over all, or any substantial part of, its assets or if any voluntary arrangement with its creditors or in relation to its affairs is made or proposed or any similar event occurs in relation to the Supplier then this Contract shall be automatically and immediately terminated without prejudice to any of the Buyer's rights.

19. NO WAIVER

No waiver by the Buyer of any of its rights under or in connection with this Contract constitutes an amendment to, or waiver of any of its other rights under or in connection with this Contract.

20. SEVERABILITY

If any provision of these Terms and Conditions or the Purchase Order is held to be invalid or unenforceable, the remaining provisions and parts of this Terms and Conditions and/or the Purchase Order shall remain in full force and effect.

21. NON-ASSIGNMENT OF RIGHTS

If either Party is, or becomes, appointed receiver, manager, or trustee in bankruptcy, or in any other manner whatsoever, the Buyer or the Seller may, at its discretion, either terminate this Contract and/or suspend the use of Goods and/or Services.

22. DATA PROTECTION

In the event of cancellation of any of the foregoing reasons the Buyer shall not be liable for any unfulfilled commitment under the Contract.

23. FREEDOM OF INFORMATION

The Buyer has a statutory obligation to disclose information in compliance with the Freedom of Information Act (Scotland) 2002. The Supplier may identify information contained within any of the Supplier's communications which are to be considered secret and not to be released to anyone other than the Buyer and incorporate a confidentiality clause within submissions. However, the Supplier must be aware that the Buyer, a public contracting authority, may not be in a position to restrict publication of this information in the event of a Freedom of Information request or challenge. When requested, the Supplier must assist the Buyer to comply with any request for disclosure of information and will be required to be so.