

Torus Foundation Contract Terms

November 2023



- 1. Contract formation**
 - 1.1 The Purchase Order constitutes an offer by Torus Foundation, a Charity regulated by the Charity Commission under Charity number 1152903, a limited company under Company Number 08444912 and whose registered office is at 4 Corporation Street, St. Helens, England, WA9 1LD (Torus Foundation), to purchase Goods and/or Services (as detailed in the Purchase Order) from the Supplier in accordance with these Contract Terms and any Schedules or documents referred to in the Contract Terms (together **"the Agreement"**).
 - 1.2 The offer shall be deemed to be accepted and the Agreement shall come into existence on the earlier of:
 - 1.2.1 the Supplier signing and returning the Purchase Order; or
 - 1.2.2 any act by the Supplier consistent with fulfilling the order detailed in the Purchase Order.
 - 1.3 These Contract Terms apply to the Agreement to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by law, trade custom, practice, or course of dealing.
 - 1.4 Where Torus Foundation and the Supplier have entered into a separate written agreement (issued by Torus Foundation) in relation to the supply of the Services, if there is any inconsistency between the terms of that written agreement and these Contract Terms, the terms of that separate written agreement shall take precedence.
- 2. Supply of Services**
 - 2.1 The Supplier shall provide the Services detailed in the Purchase Order in accordance with:
 - 2.1.1 all descriptions, standards and specifications set out in the Purchase Order and the Supplier shall ensure that any deliverables are fit for any purpose that Torus Foundation expressly or impliedly makes known to the Supplier;
 - 2.1.2 the timescales stated in the Purchase Order or as otherwise required by Torus Foundation (and time is of the essence in relation to these timescales);
 - 2.1.3 all due skill and care and in accordance with best practice within its industry;
 - 2.1.4 all legal and regulatory requirements (including maintaining licences or consents required) and reasonable instructions of Torus Foundation from time to time; and
 - 2.1.5 using personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Agreement;
 - 2.1.6 any performance standards reasonably required by Torus Foundation, and the Supplier shall attend review meetings and provide review information as Torus Foundation reasonably requires in relation to such performance.
 - 2.2 Torus Foundation may cancel an order without liability at any time prior to commencement of the Services.
- 3. Supply of Goods**
 - 3.1 The Supplier shall ensure that the Goods detailed in the Purchase Order:
 - 3.1.1 are of satisfactory quality and fit for any purpose held out by the Supplier or made known to the Supplier by Torus Foundation, expressly or by implication, and in this respect Torus Foundation relies on the Supplier's skill and judgement;
 - 3.1.2 strictly conform with all descriptions, specifications and requirements set out in the Purchase Order;
 - 3.1.3 comply with all legal and regulatory requirements and industry standards (including in relation to manufacture, labelling, packaging, storage, handling and delivery) and the Supplier shall ensure that it has and maintains all licences, consents, and permits that it needs to carry out its obligations under the Agreement;
 - 3.1.4 are free from defects in design, material and workmanship and remain so for 12 months after the date of delivery or for the duration of any manufacturer's warranty if longer; and
 - 3.1.5 are supplied in strict accordance with the delivery dates specified in the Purchase Order.
 - 3.2 The Supplier will deliver the Goods to the delivery location specified in the Purchase Order (or by Torus Foundation), properly packed (insurance and carriage paid) with a delivery note showing the purchase order number, type, and quantity of Goods.
 - 3.3 The Supplier will immediately notify Torus Foundation in writing of any anticipated delay in delivery.
 - 3.4 If Goods are not delivered (rejected Goods are not deemed to have been delivered) on or before the due date for delivery as specified in the Purchase Order (or by Torus Foundation) then, without limiting any other right or remedy Torus Foundation has, Torus Foundation may cancel the order without liability.
 - 3.5 Risk and title in the Goods will pass to Torus Foundation on completion of delivery of the Goods. Delivery is completed on completion of the unloading of Goods at the delivery location and a Torus Foundation representative signing the delivery note.
 - 3.6 Torus Foundation may at any time prior to despatch of the Goods amend or cancel an order by written notice to the Supplier. If Torus Foundation amends or cancels an order, its liability to the Supplier will be limited to payment to the Supplier of all costs reasonably and properly incurred by the

- Supplier in fulfilling the order up until the date of receipt of the notice of amendment or cancellation.
- 3.7 If the Goods do not comply with the Agreement, Torus Foundation may reject the Goods and return them to the Supplier (at the Supplier's risk and expense) and/or require the Supplier to repair or replace the Goods or provide a full refund.
- 4. Charges and Payment**
- 4.1 The Supplier shall submit invoices in respect of the Charges (unless specified otherwise by Torus Foundation):
- 4.1.1 at the end of the month during which any Services are provided;
- 4.1.2 following completion of delivery of Goods.
- 4.2 In consideration for the provision of the Goods/Services, Torus Foundation shall pay each invoice which is properly due and submitted to it by the Supplier in accordance with the requirements of the Purchase Order, within 30 days of receipt.
- 4.3 If Torus Foundation fails to make any payment due to the Supplier under the Agreement by the due date for payment, Torus Foundation shall pay interest on the overdue sum from the due date until payment of the overdue sum at 3% a year above the Bank of England's base rate from time to time.
- 5. Term and Termination**
- 5.1 Either party may terminate the Agreement with immediate effect upon notice in writing to the other party if:
- 5.1.1 the other party commits a breach of the Agreement and fails to remedy the breach within 28 days of written notice to do so;
- 5.1.2 the other party becomes insolvent, bankrupt, enters into liquidation, enters into a voluntary arrangement, appoints a receiver or such similar event.
- 5.2 Torus Foundation may terminate the Agreement at any time by giving 14 days' written notice to the Supplier.
- 6. Data Protection**
- 6.1 DP Legislation mean the General Data Protection Regulation (EU 2016/679) the Data Protection Act 2018, and legislation that amends, re-enacts, or replaces it in England & Wales. The definitions and interpretations of the DP Legislation apply to this clause.
- 6.2 This clause 6, applies to personal data supplied by us to you in connection with the Services.
- 6.3 If the Supplier is acting as a Controller of our data, the Supplier will comply with its duty under the DP Legislation.
- 6.4 The Supplier will take all appropriate steps to protect against unauthorised or unlawful processing or accidental loss or destruction of personal data supplied to the Supplier in connection with the Services.
- 6.5 The Supplier will only process personal data (a) to provide the Services and (b) in accordance with the Suppliers legal and regulatory requirements. Any processing of personal data will be in accordance with the DP Legislation.
- 6.6 The Supplier will notify Torus Foundation within 24 hours of (a) receipt of a data request from a data subject or, if the Supplier receives a claim, complaint, or allegation about the processing of personal data or (b) on becoming aware of any breach of security leading to the destruction, loss or unlawful disclosure of personal data supplied in connection with the Services.
- 7. Insurance**
- 7.1 The Supplier shall maintain the following insurances (all in relation to any one claim or series of claims):
- 7.1.1 Public Liability insurance with a limit of indemnity not less than £5,000,000 (five million pounds);
- 7.1.2 Employer's Liability insurance with a limit of indemnity not less than £5,000,000 (five million pounds); and
- 7.1.3 If requested by Torus Foundation, Professional Indemnity insurance with a limit of indemnity not less than £2,000,000 (two million pounds); and
- 7.1.4 Where supplying Goods, Product Liability insurance with a limit of indemnity not less than £5,000,000 (five million pounds).
- 8. Indemnity and liability**
- 8.1 Nothing in the Agreement limits any liability which cannot legally be limited.
- 8.2 The maximum total aggregate liability of Torus Foundation to the Supplier under this Agreement is limited to £5,000 (five thousand pounds)).
- 8.3 Subject to clause 8.1, neither party shall be liable to the other for the any indirect or consequential loss.
- 9. Intellectual Property Ownership**
- 9.1 The Supplier warrants, represents and undertakes that the Goods/Services will not in any way infringe any intellectual property rights, nor any contractual, employment or property rights, duties of non-disclosure or other rights of any third parties.
- 9.2 Torus Foundation shall own all deliverables produced by the Supplier and the Supplier hereby assigns all intellectual property rights in the deliverables to Torus Foundation.
- 10. Compliance with Anti-Slavery Laws & Policies**
- 10.1 In performing its obligations under the Agreement, the Supplier shall comply with all applicable anti-slavery and human trafficking laws, statutes, regulations, and codes from time to time in force including but not limited to the Modern Slavery Act 2015 and Torus Foundation's policy in that regard.

11. General

- 11.1 **Confidentiality.** The Supplier shall not use Torus Foundation's confidential information for any purpose other than to perform its obligations under the Agreement and the Supplier shall keep such information confidential and secure.
- 11.2 **Notices.** All notices, orders and instructions shall be regarded as properly served if sent by hand, post, or email to the address on the Purchase Order (or notified in writing by the parties from time to time).
- 11.3 **Variation.** No variation of the Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

- 11.4 **Assignment.** The Supplier shall not be entitled to assign its rights or obligations or delegate its duties under the Agreement without the prior written consent of Torus Foundation.
- 11.5 **Subcontracting.** The Supplier may not subcontract any or all of its rights or obligations under the Agreement without the prior written consent of Torus Foundation, and the Supplier shall remain responsible for all acts and omissions of its subcontractors as if they were its own.
- 11.6 **TUPE.** The Supplier shall adhere to the Transfer of Undertaking (Protection of Employment) Regulations 2006 and provide to Torus Foundation any information it may reasonably require in connection with any transfer of staff under such Regulations.