General Terms and Conditions of the University of Zurich for the Purchase of Goods and Services (GTC UZH – Purchaser)

Dated 29 November 2012

Part I  GENERAL PROVISIONS

1.  Area of Application

1.1  These General Terms and Conditions (in the following AGB UZH – Purchaser) are valid for contracts which have been concluded with the University of Zurich (UZH) as a customer/recipient of services, especially concerning the acquisition of goods (e.g. purchase contracts) and services (e.g. UZH places an order for work or services). Subject to items 1.2, 1.3 and 2.1.

1.2  For contracts concluded with UZH in which UZH is the service provider, the General Terms and Conditions of the University of Zurich (GTC UZH) prevail.

1.3  For purchases made by UZH in the area of IT, the general terms and conditions for IT purchases prevail.

2.  Subject of Contract

2.1  The GTC UZH – Purchaser define the rights and obligations of the contractual parties as regards services provided and/or delivery (in the following services), insofar as no other higher law foresees another course of action (e.g. submission law) or no written agreement (modifications, amendments and/or side agreements) is known to be at variance with the content stated in this contract.

2.2  Only the German version of the GTC UZH – Purchaser is legally binding. Translations are provided for information purposes only.

3.  Concluding a Contract

This contract is deemed concluded once:

a.  all parties to the contract have signed it, or

b.  UZH has accepted a written offer, or the service provider (e.g. vendor, supplier, representative, company) has confirmed its services in writing on the basis of a prior request on the part of UZH, either in the form of a signed duplicate of an order, or in another way that delivers proof in writing.

4.  Place of Service Provision

4.1  The place of service provision is the place determined by UZH (e.g. place of delivery). If no specific place is named, the following location is valid: University of Zurich.

4.2  UZH’s contractual partner bears all transportation costs.

Part II  UZH AS PURCHASER OF SERVICES

5.  Most-Favored Status

The service provider promises to offer UZH its best services and prices.

6.  Transfer of Risk

Profit and risk are transferred to UZH upon the complete and punctual delivery of services to the place of service provision (e.g. delivery of goods).

7.  Prices

7.1  The service provider delivers services at fixed costs or at cost with an upper limit (cap on costs). In the case that no cap on costs is named, the service provider must deliver services at fixed costs.

7.2  Compensation of fixed costs settles all costs incurred in the course of fulfilling the terms of the contract, especially ancillary costs such as expenses, packaging and/or insurance costs, customs and value-added tax, licensing fees and social insurance fees

8.  Terms of Payment

8.1  The service provider sends UZH an invoice for services provided. The invoice must provide detailed information about types of costs and cost rates.

8.2  Payment for services must be done within 30 days of receipt of the invoice, subject to items 9 and 11.3.

9.  Default

9.1  In the case of missed deadlines, the service provider is automatically in default. In other cases, UZH will send the service provider a notice of default.

9.2  In the case of default on the part of the service provider, UZH has, in addition to regular legal rights, the right to declare the contract null and void or reduce compensation in accordance with item 11.5.

9.3  So far as the service provider cannot prove that the default has not arisen through the service provider’s own fault, UZH has the right to demand compensation for the delayed delivery of services in the addition to the rights stated in item 9.2. The compensation for delayed delivery of services may amount to 1% overall, but no more than 10% of the contractual sum per full week or week started of the delay. Upon paying the compensation for delayed delivery, the service provider is not relieved of the obligation to fulfill further elements of the contract, subject to the contract being declared null and void as per item 9.2.

10.  Inspection of Services

UZH inspects the quality of the services provided as soon as possible in the course of ordinary business proceedings, but within 30 days of receiving the service. UZH must indicate to the service provider any missing contractually defined services, or name any other shortcomings in the services provided. An exception are shortcomings that are not apparent during the 30-day term.

11.  Warranty

11.1  The service provider guarantees that the services delivered are in conformity with the contractually stipulated demands, and that no physical or legal defects are inherent that reduce the value of, or suitability for the planned use of the services.

11.2  The service provider is liable for the diligent and faithful fulfillment of the contractually defined services, and guarantees that the work is carried out in accordance with the contractual specifications and the current state of science and technology.

11.3  The service provider is legally bound to personally deliver the contractually defined services. Outsourcing any parts of the work requires the prior permission in writing of UZH.

11.4  The service provider is liable for consequential harm caused by defect.

11.5  In the case that the services provided do not meet the contractually defined requirements, or are defective, UZH has the right (rights arising from product defects) to revoke business interactions (cancellation), to replace the loss in value (mitigation), or to demand a fault-free delivery of the entire service or the defective part of the service. Moreover, UZH has the right to deny payment (item 8.2), to reduce payment, or to demand full or partial repayment for already paid fees. The right to claim compensation for further damage is not affected by the aforementioned.

11.6  In urgent cases, UZH has the right to repair damage at the cost of the service provider, or to have a third party repair damage at the cost of the service provider.

11.7  In the case that the service provider does not deliver the demanded subsequent delivery or the demanded improvements on time, or does so insufficiently, UZH has the right to repair damage at the cost of the service provider, to have a third party repair damage at the cost of the service provider, or to declare the contract null and void without further notice. UZH retains the right to claim compensation for further damage.

11.8  Rights arising from product defects (item 11.5) expire two years after the contractually defined services have been delivered. This time period does not apply to defects that are not apparent when the two-year term expires.

12.  Contractual Penalty

In the case of default (item 9), or non-delivery, or incomplete delivery of services (item 11), UZH has not only the right to demand fulfillment of the contract, but also the right to demand of the customer/recipient of services a contractual penalty in
the amount of 10% of the contractual price, but at least CHF 1,000.

13. **Disposal**
With the signing of this contract, the service provider declares readiness to reclaim delivered goods for correct and legal disposal. In the case that disposal costs are not included in the contractual price, the service provider may at the most charge established, market-compliant original costs.

### Part III FINAL PROVISIONS

14. **Conveyance and Transference**
In the case that the contractual partner wants to assign or transfer to a third party individual rights and/or obligations defined in the contract, the contractual partner must receive prior written permission from UZH.

15. **Force Majeure**
The contractual parties are not liable for the consequences of a force majeure (e.g. war, environmental catastrophe). Such events grant each party, upon payment for services already provided, the right to withdraw from the contract or to delay fulfillment of the contract; no obligation to compensate for damage may be imposed.

16. **Protection of Rights**

16.1 Before, during and after the duration of the contractual agreement, all legal rights for intellectual property related to fulfillment of the contract are conferred to UZH.

16.2 All protected intellectual property rights that arise in connection to fulfilling the contract, and any rights of use or exploitation rights involved, belong exclusively to UZH.

16.3 UZH has the right to use results proceeding from fulfillment of the contract to fulfill its official duties, particularly those related to research (e.g. for Bachelor’s and Master’s dissertations and PhD theses), and for university teaching and learning (training and continuing education).

17. **Safeguarding Confidentiality**

17.1 Subject to legal obligations to provide information or explanations, the contractual parties must treat with confidentiality all facts and data that are neither obvious nor generally accessible. Confidentiality must already be maintained before the contract takes effect, and must remain intact after the contract has been terminated. In the case that the UZH’s contractual partner violates confidentiality, item 12 prevails.

17.2 In the case that one of the contractual parties wishes to use the contractual relationship for advertisement purposes, or to make public the existence of the contract, the other contractual party must grant prior permission in writing.

18. **Termination of the Contract**

18.1 A fixed-term contract terminates at the end of the contractually stipulated time period. An open-ended contract may be (regularly) terminated in accordance with the contractually defined terms of ending the contract, subject to binding legal provisions. In the case that no deadlines for terminating the contract are included in the contract, the contract may be terminated by either contractual partner upon issuing written notice at the end of a calendar month, followed by a three-month cancellation term.

18.2 In the case that major problems make the continuation of the contract insupportable for one of the contractual parties, the contract may be dissolved (immediately) within a named period of time following a previously issued, unsuccessful demand in writing to remove the problem. In the case of an unjustified termination for exceptional reasons, item 12 prevails.

18.3 The services rendered up to termination of the contract must be settled between the contractual parties.

19. **Applicable Law and Place of Jurisdiction**

19.1 All contracts concluded with UZH are subject to Swiss law. The United Nations Convention on Contracts for the International Sale of Goods (CISG) is not applicable.

19.2 Place of Jurisdiction is Zurich, Switzerland.