



## Terms and Conditions of Contract for the Purchase of Goods

This document specifies the Terms and Conditions of Contract. No other Terms and Conditions in any correspondence between the Parties shall apply to this Contract unless expressly agreed by the Parties and confirmed in writing.

### Clauses

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## 1. Interpretation and Definitions

In these Conditions:

“Articles on Loan” shall mean all tools, free issue materials, patterns, drawings, specifications, software, data and any other equipment and/or documentation loaned by the College to the Contractor.

“Authorised Officer” shall mean any person(s) nominated by the College and notified to the Contractor on the Purchase Order or at a later date in writing.

“College” shall mean North Kent College.

“Contract” shall mean the agreement made between the College and the Contractor, including all specifications, patterns, Contractor’s samples, plans, drawings, Purchase Order; and other documents and the Contract shall comprise of these Conditions.

“Contractor” shall mean the Contracting party who undertakes to provide the Goods to the College, as detailed in the Specification or Purchase Order and as provided for in the Contract, meaning a person or persons, firm, Company or other legal entity whose quotation has been accepted by the College.

“Contract Price” shall mean the price exclusive of Value Added Tax payable to the Contractor by the College under the Contract for the full and proper performance by the Contractor of his part of the Contract.

“Goods” shall mean any materials, articles, instruction manuals, certificates, computer programmes and data, goods and equipment to be supplied by the Contractor under this Contract in accordance with the Sale of Goods Act.

“Intellectual Property Rights” shall mean all patents, inventions, trademarks, trade names, logos, design rights, registered designs, copyright, software, database right, knowledge and trade secrets.

“Order” shall mean the College’s Purchase Order or other official document specifying the College’s requirements for the Contract to which these Conditions are annexed.

|                                         |                                                                                                                                                                                                                                                                                                  |
|-----------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| “Order Amendment”                       | shall mean a variation to the original Purchase Order, adding to, deleting or modifying the original requirements.                                                                                                                                                                               |
| “Premises”                              | shall mean the site(s) or location(s) where the Goods are to be delivered as detailed in the Specification or Purchase Order.                                                                                                                                                                    |
| “Programme”                             | shall mean any programme or timetable agreed by the parties to the Contract which regulates or specifies the period or periods for the manufacture, assembly and delivery of the Goods together with any Services or activities ancillary to the delivery of the Goods.                          |
| “Sale of Goods Act”                     | shall mean the Sale of Goods Act 1979 as amended by the Sale and Supply of Goods Act 1994.                                                                                                                                                                                                       |
| “Services”                              | shall mean all work related to the supply of Goods which the Contractor is required to supply under the Contract including: any installation; testing; certification; and operator training Services in accordance with the Supply of Goods and Services Act 1982.                               |
| “Specification”                         | shall include, but not be limited to, any plans, drawings, data, photographs, information or samples which explain the design, structure or operation of the Goods to be manufactured and/or supplied and any Services to be performed, and are relied upon in the performance of this Contract. |
| “Sub-Contractor”                        | shall mean any person, firm or company under contract to the Contractor to perform work or provide professional services and/or manufacture and/or supply the Goods.                                                                                                                             |
| “Supply of Goods and Services Act 1982” | shall mean the Supply of Goods and Services Act 1982 as amended by the Sale and Supply of Goods Act 1994.                                                                                                                                                                                        |

“He” and “His” are used for narrative purposes only and are not meant to favour or refer to a particular gender. As the context requires “he” and “his” may be used in a collective sense in relation to personnel of the Contractor.

Use of the singular includes the plural and vice versa, according to context.

Unless the context otherwise requires, reference in these Conditions to any enactment, order, Regulation or other similar instrument shall be construed as a

reference to the enactment, order, Regulation or instrument as amended or re-enacted by any subsequent enactment, order, Regulation or instrument.

The headings to these Conditions shall not affect their interpretation.

## **2. Validity**

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 provision in question shall not be affected thereby.

## **3. Variation of Contract Conditions**

The Goods shall be supplied in accordance with these Conditions. Any conditions which the Contractor may seek to impose and which in any way add to, vary or contradict these Conditions shall be excluded and not form part of the Contract, unless each of such conditions has been specifically agreed to in writing by the College.

## **4. Purchase Order**

4.1. A Purchase Order raised electronically or in writing by the College constitutes an Offer on the part of the College to acquire the Goods subject to these Conditions which must be accepted either in writing by the Contractor or by the actual execution of the Purchase Order.

4.2. Acceptance of the Purchase Order will be deemed to bind the Contractor to these Conditions and the Goods shall not be supplied or performed by the Contractor; his employees; agents; or representatives, except in accordance herewith. The Contractor's Conditions of Sale do not form any part of the Contract whatsoever.

4.3. The Contractor is deemed to have understood the nature and extent of the supply requirements and to have visited the Premises and shall make no claim founded on his failure to do so. The College shall not be liable for any Order unless it is issued or confirmed on its Purchase Order or other official document and signed by an Authorised Officer of the College.

## **5. Purchase Order Amendment**

5.1. The College shall have the right, before delivery, to send the Contractor an Order Amendment adding to, deleting or modifying the Goods required.

5.2. If the Order Amendment will cause a change to any price or delivery date then the Contractor must suspend performance of the Contract and notify the College without delay, calculating the new price and delivery date at the same level of cost and profitability as the original

price. The Contractor must allow the College at least ten working days to consider any new price and delivery date.

- 5.3. The Order Amendment shall take effect when, but only if, the College accepts in writing the new price and delivery date within the time the Contractor stipulates. If the College fails to confirm the Order Amendment within the time the Contractor stipulates then performance of the Contract shall immediately resume as though the said Order Amendment had not been issued (except that the College may still exercise the College's right of cancellation as detailed in the following clause).

## **6. College's Right of Cancellation**

- 6.1. In addition to the College's other rights of cancellation under this Contract, the College may cancel the Purchase Order and any Order Amendment thereto at any time by sending the Contractor a notice of termination.
- 6.2. The Contractor shall comply with any instructions that the College may issue with regard to the Goods.
- 6.3. If the Contractor submits a termination claim then the College will pay to the Contractor the cost of any commitments, liabilities or expenditure which in the College's reasonable opinion were a consequence of this Contract at the time of termination. The total of all payments made or due to the Contractor under this Contract, including any termination payment, shall not exceed the Contract Price. If the Contractor fails to submit a termination claim within three months of the date of the College's notice of termination then the College shall have no further liability under the Contract.

## **7. Contract Price**

- 7.1. The Contract Price shall be quoted in Sterling (GB Pounds) "Net", that is, after deduction of all agreed discounts. Value Added Tax, where applicable, should be shown as a separate charge.
- 7.2. The Contract Price shall be inclusive of all royalties, licence fees or similar expenses in respect of the making, use or exercise by the Contractor of any invention or design for the purpose of supplying the Goods or performing the Services under this Contract.
- 7.3. All pricing must include the full costs of supplying under this Contract all Goods and Services at the required times and locations detailed in the Specification and/or Purchase Order under this Contract.
- 7.4. Transportation of personnel and any plant or vehicle between Contractor bases and College premises shall be at the expense of the Contractor.

- 7.5. Contract Prices shall be fixed for the period between any initial part delivery and acceptance of the Goods to the final delivery and acceptance of all Goods, or for a period of 12 calendar months, whichever period terminates earlier.
- 7.6. Thereafter the Contractor may apply for a price amendment on an annual basis and shall give not less than three calendar months notice in writing of the proposed increased price to the College.
- 7.7. When applying for a price amendment the Contractor shall clearly identify the proposed price in pounds Sterling, rather than expressed as a percentage or any other measure of movement.
- 7.8. Any application for a price amendment must be accompanied by factual supporting information, including, but not limited to, copies of third party invoices, which detail all cost increases incurred since the commencement of the Contract or the implementation of the last price amendment (whichever is the most recent). The College cannot consider any price application without such supportive information.
- 7.9. The maximum price amendment in any one year shall be 5%, or the Retail Price Index percentage movement over the immediately preceding 12 months, whichever is the lesser.
- 7.10. Any agreed variation in pricing shall be confirmed in writing at least 28 calendar days in advance of implementation.
- 7.11. After any Contract extension or acceptance of a price amendment, no further price amendments may be made whatsoever (whether on account of increased material, labour or transport costs, fluctuations in rates of exchange or otherwise) within the next twelve calendar months.

## **8. Invoicing and Payment**

- 8.1. Invoices should be submitted after the end of the month for which Goods have just been provided.
- 8.2. To prevent delays in payment invoices should always quote the Purchase Order number, along with the relevant Delivery Note numbers, a sufficient description, and the quantity of the Goods delivered.
- 8.3. Any deposit fee or charge made against returnable packaging, containers or pallets shall be clearly detailed and shown on all invoices as a separate charge.
- 8.4. Value Added Tax (where applicable), shall be shown separately on all invoices as a strictly net extra charge.

- 8.5. The College will pay the Contractor in accordance with the agreed Contract rates or as modified from time to time as provided for in the Contract.
- 8.6. Whenever under the Contract any sum of money shall be recoverable from, or payable by, the Contractor, the same may be deducted from any sum then due, or which at any time thereafter may become due to the Contractor under this Contract or under any other Contract with the College.
- 8.7. Payment for the Services rendered, unless stated otherwise in the Contract, shall be made 30 days after receipt of a correctly submitted invoice.
- 8.8. The College will seek to encourage genuine early settlement discounts offered by the Contractor.
- 8.9. These Payment Terms shall not be varied without the express written authority of the Vice Principal Finance and Resources or an Authorised Officer of the College.

## **9. Notices and Correspondence**

- 9.1. Any notice required to be given in writing under the Contract shall be sent by email, fax, first class or Registered post, or delivered by hand to an agreed address of the party for which it is intended.
- 9.2. Notices sent by email or fax shall be deemed to have been given and received upon successful transmission to an agreed electronic / telephone line or email address.
- 9.3. A correctly addressed envelope, posted 1st class, or sent by Recorded Delivery, shall be sufficient proof of the serving of a notice by post, and shall be assumed to have been received within forty-eight hours of posting.
- 9.4. Any notice delivered by hand shall be deemed to have been delivered and received.

## **10. Contract Management**

- 10.1. The Contractor and the College shall each confirm in writing the appointment of an individual responsible for Contract Management and general liaison between the parties and a further individual to be contacted should problems need to be escalated.
- 10.2. It is a requirement of this Contract to hold regular Contract Reviews to monitor performance against the terms and conditions of this Contract, to review past performance and to plan for future services. These

meetings will be formally agreed at the start of the Contract, however it is expected that the reviews shall be held at least every six months, or more frequently if the need is required.

- 10.3. The Contractor and the College shall ensure that senior staff assigned to the Contract and other appropriate members of staff attend those meetings required by the Contract.
- 10.4. Should the most appropriate member of the Contractor's or College's staff be unable to attend the meeting, then a suitable replacement of equivalent status shall be fully briefed and attend on their behalf.
- 10.5. The Contractor shall keep sufficient records and management information as requested by the College and shall be required to bring such information to the Contract Reviews.

## **11. Contractor's Status**

- 11.1. In carrying out the requirements of this Contract the Contractor shall be acting as principal and not as the agent of the College.
- 11.2. The Contractor shall not (and shall procure that his agents and servants do not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent of the College.
- 11.3. Nothing in the Contract shall impose any liability on the College in respect of any liability incurred by the Contractor to any other person, but this shall not be taken to exclude or limit any liability of the College to the Contractor that may arise by virtue of either a breach of the Contract, or any negligence on the part of the College, its staff or agents.

## **12. Contractor's Personnel**

- 12.1. The Contractor shall employ sufficient persons of good character, with the appropriate training, qualifications, levels of competence, skills and experience to ensure all requirements of this Contract are met at all times.
- 12.2. All Contractor personnel and any sub contractors used in the performance of this Contract shall be deemed to be employed directly by the Contractor at all times throughout the duration of this Contract.
- 12.3. If and when instructed by the College, the Contractor shall give to the College a list of names, addresses and telephone numbers of all key personnel who are or may be at any time concerned with this Contract, specifying the capacities in which they are so concerned and giving such other particulars and evidence of identity and other supporting evidence as the College may reasonably require.

- 12.4. The Contractor shall take the steps reasonably required by the College to prevent unauthorised persons being admitted to the Premises. If the College gives the Contractor notice that any person is not to be admitted to or is to be removed from the Premises, or is not to become involved in or is to be removed from involvement in the performance of the Contract, the Contractor shall take all reasonable steps to comply with such notice including the surrender of all identity cards, badges or passes issued to that person.
- 12.5. The decision of the College as to whether any person is to be admitted to, or is to be removed from the Premises, or is not to become involved in, or is to be removed from involvement in the performance of the Contract, and as to whether the Contractor has furnished the information or taken the steps required of him by this Condition shall be final and conclusive.
- 12.6. If required by the College the Contractor shall replace any person removed under this Condition with another suitably qualified person.
- 12.7. The Contractor shall bear the cost of any notice, instruction or decision of the College under this Condition.

### **13. Time of Performance**

The Contractor shall begin performing the manufacture, assembly or supply of Goods on the date stated in the Purchase Order and shall complete them by the date stated in the Purchase Order or continue to perform them for the period stated in the Purchase Order (whichever is applicable). Time is of the essence of this Contract.

### **14. Testing, Inspection and Progress**

- 14.1. All Goods and any materials, components, machinery and Services associated with the supply of the Goods shall be subject to any tests required in the Purchase Order, at the Contractor's expense, and the College shall be entitled to be present at all such tests.
- 14.2. The Contractor shall at his own expense provide any programmes of manufacture, assembly and delivery that the College may reasonably require and shall notify the College without delay in writing if the Contractor's progress falls behind or may fall behind any of these programmes.
- 14.3. For operational reasons the College may issue a notice to the Contractor requiring him to amend any manufacturing or assembly schedules, or to provide particular Goods or associated Services at specified times.
- 14.4. The College shall have the right to check progress on College premises, at the Contractor's works or the works of any

sub-contractors at all reasonable times, to inspect, test and to reject Goods that do not comply with the Contract. The Contractor shall ensure that any sub-contractors shall reserve such right for the College.

- 14.5. Any inspection or approval shall not relieve the Contractor from his obligations under this Contract.

## **15. Specification of the Goods**

- 15.1. The Supplier warrants to the College that the Goods shall:
- 15.1.1. correspond and conform with any quantities, description, samples, presentations, patterns, drawings or other stipulation detailed in the Specification, Purchase Order or any Contractor documentation associated with this Contract;
  - 15.1.2. be of satisfactory merchantable quality and fit for their normal purpose and any other purpose made known to the Supplier expressly or by implication and in this respect the College shall rely on the Supplier's skill and judgement;
  - 15.1.3. be capable of all standards of performance specified in the Contract;
  - 15.1.4. be free from defects in design, material and workmanship;
  - 15.1.5. be supplied new unless otherwise stated in the Specification or Purchase Order;
  - 15.1.6. comply with all current legislation and meet current British Standards where such Standards exist;
  - 15.1.7. not have any asbestos content unless stated in the Specification or Purchase Order; and
  - 15.1.8. comply with all statutory requirements and regulations relating to the sale or supply of the Goods.
- 15.2. The Contractor shall advise the College of any changes in specification or the methods of construction of the Goods to be supplied before such changes are implemented. The College shall confirm to the Contractor the College's acceptance or rejection of any such proposed change. If the College rejects any such change it shall be entitled to cancel the supply of such Goods and shall issue an Order Amendment or Order Cancellation as appropriate.

## **16. Defect Liability Period**

It is expressly agreed between the parties that:

- 16.1. The Contractor shall promptly make good at his own expense any defect in the Goods that the College discover under proper usage during the first 12 months of actual use or 18 months from the date of acceptance by the College whichever period shall expire first. Such defects may arise from the Contractor's faulty design, the Contractor's erroneous instructions as to use, inadequate or faulty materials, poor workmanship or any other breach of the Contractor's obligations whether in this Contract or at law.
- 16.2. Repairs or replacements for defective Goods will themselves be covered by the above warranty but for a period of 12 months from acceptance by the College.
- 16.3. The Contractor shall ensure that compatible spares are available to facilitate repairs (where applicable) for a period of at least five years from the date of delivery of the Goods.

## **17. Identification and Labelling of the Goods**

- 17.1. All Goods which customarily bear any mark, tab, brand, label or other device indicating place of origin, inspection by any Government or other body, or standard of quality must be delivered with all said marks, tabs, brands, labels or other devices intact.
- 17.2. Provisions of drink and food shall be labelled in accordance with the Food Safety Act 1990, the Food Labelling Regulations 1996 and current Food compositional legislation.
- 17.3. Hazardous Goods, chemicals, mixtures or other substances must be marked with the appropriate International Danger Symbols and the name of the materials in English.
- 17.4. The Contractor shall be required to ensure sufficient marking and labelling on any external packaging.

## **18. Health and Safety**

- 18.1. The Contractor warrants that in the design, manufacture and installation of Goods and any information relating thereto, he will comply with all duties imposed on him by the Health and Safety at Work Act 1974 and with all other statutory regulations applicable to the Goods and all sites of work, including College premises.
- 18.2. The Contractor shall ensure that all personnel have received sufficient training in all areas of Health and Safety relating to the delivery of this

Contract and that they carry out their duties in compliance with all such Regulations currently in force.

- 18.3. The Contractor shall make all his Health and Safety documents available to the College upon request.
- 18.4. All Contractor personnel shall observe the correct procedures for the lifting, handling and movement of equipment in accordance with the Manual Handling Operations Regulations 1992 (“MHOR”) as amended (2002).
- 18.5. All injuries and accidents must be reported immediately to the College.
- 18.6. The Contractor shall have procedures in place for the reporting and investigation of injuries and accidents, which shall satisfy the requirements of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (“RIDDOR”).
- 18.7. The Contractor shall comply with safety and security instructions issued by the College and shall prohibit his employees from smoking on the Premises.
- 18.8. For all Goods, chemicals, mixtures or other substances hazardous to health the Contractor shall:
  - 18.8.1. ensure the College is fully informed of any risks or hazards known or believed to exist in exposure to, or the transport, storage, handling, or use of, the Goods;
  - 18.8.2. comply with all current legislation and guidance under the Control of Substances Hazardous to Health (“COSHH”) and the Chemical (Hazard Information and Packaging for Supply) Regulations 2002; and
  - 18.8.3. ensure an English version of the appropriate Material Safety Data Sheet (MSDS), relevant safety information and instructions for use accompanies such Goods during transportation, and that a copy of such documentation is presented to an Authorised Officer of the College at the point of delivery.

## **19. Packaging**

- 19.1. Unless otherwise stated in the Contract, all packaging shall be non-returnable.
- 19.2. Any returnable packaging, containers and pallets shall be collected by the Contractor at his own cost within fourteen days of the date of the relevant delivery note, unless otherwise instructed by the College.

- 19.3. Returnable packaging, containers and pallets not so removed may be returned to the Contractor or disposed of by the College at the Contractor's expense.
- 19.4. Charge fees and deposits made against such returnable items shall be credited in full by the Contractor upon their collection or return.
- 19.5. The Contractor shall be responsible for the cost of all carriage and handling.
- 19.6. The Goods shall be securely packed in trade packages of a type normally used by the Contractor for commercial deliveries of the same or similar goods either in retail or in bulk quantities within the United Kingdom.
- 19.7. The College shall not be liable for any parcel or package lost or damaged in transit.
- 19.8. The following details shall be shown on the outside of every parcel or package unless otherwise specified in the Contract:
  - 19.8.1. details of the supplier;
  - 19.8.2. description of the Goods;
  - 19.8.3. name of the manufacturer;
  - 19.8.4. hazardous goods labels and symbols (where applicable);
  - 19.8.5. any special directions for handling and storage;
  - 19.8.6. expiry date of the contents (where applicable);
  - 19.8.7. quantity in the package; and
  - 19.8.8. batch number.
- 19.9. Parcels or packages which do not comply with these requirements may be rejected by the College.

## **20. Delivery**

- 20.1. The Goods shall be correctly addressed and despatched, carriage paid, at the Contractor's risk to arrive in good condition at the time(s) and place(s) stated in the Purchase Order.
- 20.2. If Goods or any part of them are delivered at the wrong time(s) or place(s) the College reserves the right to deduct from the price any resulting costs of storage or transport.

- 20.3. If the Goods or any part of them are not delivered by the time or times specified in the Contract then the College may by written notice cancel any undelivered balance of the Goods. The College may also return for full credit and at the Contractor's expense any Goods that in the College's opinion cannot be utilised owing to this cancellation. This shall not affect any other rights that the College may have.

## **21. Delivery Notes**

A delivery note shall accompany each delivery of the Goods clearly marked with the College's Purchase Order number, the consignee, the description and quantity of the Goods delivered and shall state whether any packaging, containers or pallets are to be disposed of or remain the property of the Contractor.

## **22. Property and Risk**

- 22.1. The Contractor warrants that it shall have title free from all claims, liens and encumbrances to all Goods supplied under this Contract.
- 22.2. Property in all components, Goods in the process of being assembled and finished Goods shall pass to the College upon appropriation of such components and Goods by the Contractor or upon accepted delivery of the Goods, or upon partial or full payment of the components or Goods by the College.
- 22.3. The Contractor shall bear all risks of loss and damage to the Goods during delivery to the College and shall insure the Goods accordingly.
- 22.4. Risk of loss or damage of the Goods shall only pass to the College once the Goods have been unloaded and, where practical, checked against the delivery note for content, loss and obvious cosmetic damage.

## **23. Acceptance and Rejection of Goods**

- 23.1. Goods shall not be deemed to have been accepted where the College has had insufficient time or it has not been practical to unpack and fully inspect the Goods following delivery, regardless of any signature confirming receipt on any advice note or delivery note.
- 23.2. Where an advice note or delivery note is endorsed with "goods unchecked" or similar wording the College shall rely upon this wording and shall inspect the Goods when practical within a reasonable time after delivery.
- 23.3. The College shall notify the Contractor of any shortage of Goods as soon as it becomes aware of any such shortage. The Contractor may first inspect the package but shall be required to supply the missing Goods at his own expense.

- 23.4. Notwithstanding any provision contained in Section 11; Section 15A; Section 30 (subsections 2A and 2B); Section 34; and Section 35 of the Sale of Goods Act 1979, the College shall be entitled to reject the Goods in whole or in part whether paid in full or in part within a reasonable time of delivery if they are defective, inferior in quality, material, or performance, or do not otherwise comply with any express or implied term of this Contract.
- 23.5. The College's rights of rejection shall continue irrespective of whether the College has legally accepted the Goods.
- 23.6. The Contractor must collect all rejected Goods within a reasonable time of rejection or the College shall return them to the Contractor at the Contractor's risk and expense.
- 23.7. The Contractor shall be given a reasonable opportunity to replace the rejected Goods with new Goods that conform with this Contract, after which time the College shall be entitled to cancel the Purchase Order and purchase the nearest equivalent goods elsewhere. In the event of such cancellation under this condition the Supplier shall promptly repay any monies paid under the Contract without any retention or offset whatsoever. Cancellation of the Purchase Order under this condition shall not affect any other rights the College may have.

## **24. Articles on Loan**

- 24.1. All tools, free issue materials, patterns, drawings, specifications, data, and other equipment and documentation ("Articles") loaned by the College to the Contractor shall always remain the property of the College together with all intellectual property rights of whatever nature therein.
- 24.2. All such Articles shall be treated as confidential, used solely for the purpose of this Contract, and shall not be published or disclosed to any third party or copied or made use of by you without the express written permission of the College.
- 24.3. Risk in such Articles shall pass to the Contractor upon delivery/collection to/by the Contractor until the same are returned to the College. The Contractor shall indemnify the College in full against any and all loss and/or damage of such Articles and shall insure the same whilst at its risk.
- 24.4. The Contractor shall return any such Articles to the College in good and serviceable condition (fair wear and tear allowed) upon request or upon completion of the Contract.

- 24.5. All scrap arising from the supply of such Articles must be disposed of at the discretion of the College and any proceeds of sale of such scrap must be paid to the College in full.
- 24.6. In the event that the Contractor fails so to return such Articles the College is hereby irrevocably authorised, without any requirement as to notice, to enter upon the premises of the Contractor for the sole purpose of recovering the said Articles.

## **25. Intellectual Property Rights**

- 25.1. All rights (including ownership and copyright) in any specifications, instructions, plans, drawings, patents, models, designs, or other materials furnished to or made available to the Contractor by the College are hereby assigned to and shall vest in the College absolutely.
- 25.2. All reports and other documents and materials and the copyright, intellectual property rights or similar protection therein arising out of the manufacture and/or assembly of the Goods and/or the performance of associated Services by the Contractor are hereby assigned to the College.
- 25.3. It shall be a condition of the Contract that, except to the extent that the Goods or associated Services incorporate designs furnished by the College, the Contractor will not infringe any patent, trade mark, registered design, copyright or other right in the nature of industrial property of any third party and the Contractor shall indemnify the College against all actions, claims, demands, costs and expenses which the College may suffer or incur as a result of or in connection with any breach of this Condition.
- 25.4. In the event of any infringement of the Intellectual Property Rights of any third party by the Contractor during the performance of this Contract, the Contractor shall at his own cost procure for the College a licence to use the Goods and/or associated Services, or shall provide to the College alternative Goods and/or Services which are non-infringing and which are reasonably acceptable to the College.
- 25.5. The provisions of these Conditions shall apply during the continuance of the Contract and after its termination howsoever arising.

## **26. Assignment and Sub Letting**

- 26.1. Any change in ownership of the Contractor's company or business, or change of partners and in the case of a Company a change in shareholders that constitutes a substantial change in the ownership of the business, whether or not this involves change of name, must be notified by the Contractor to the College in writing fourteen days prior

to such change occurring. Failure to do so may be regarded as a breach of Contract.

- 26.2. No part of this contract shall be sub-contracted, transferred or assigned to a third party without the express written agreement of the College.
- 26.3. In the event of an emergency the Contractor may arrange for temporary sub-letting in order to ensure supplies and services are maintained, but must notify the College immediately of its actions. In such circumstances the College will decide whether to permit the continuance of the temporary emergency arrangements or arrange suitable provision itself. Failure to comply with this condition will allow the College to terminate the contract immediately and without warning.

## **27. Substitution of Contractor**

- 27.1. The College shall be entitled to immediately source an alternative provider to perform any part or the Contractor's entire obligation under the Contract and the Contractor shall not be paid the sums due for supplying the Goods or Services during these periods if:
  - 27.1.1. the Contractor fails to deliver the Goods or associated Services on or by the date and time at the place specified for performance;
  - 27.1.2. the Contractor informs the College that supply of such Goods or associated Services shall not be delivered on time as required in the specification; and/or
  - 27.1.3. The Contract is suspended or terminated.
- 27.2. The Contractor shall co-operate fully with any transfer to another provider as requested by the College to ensure minimal disruption to College supplies.
- 27.3. If the College is required to pay to the replacement Contractor a sum of money greater than that due to the original Contractor the excess may be recovered by the College from the original Contractor as a debt.

## **28. Default by Contractor**

- 28.1. If the Contractor fails to comply with any terms of the Contract, either in relation to provision of the Goods or Services or otherwise, the College shall be entitled (whether or not the Goods or Services or any part thereof have been accepted by the College) to avail itself of any of the following remedies at the College's discretion:
  - 28.2. rescind the Contract;

- 28.3. give the Contractor the opportunity to supply replacement Goods or carry out remedial work in respect of the Services at the Contractor's expense so that they comply with the terms of the Contract;
  - 28.4. refuse to accept any further performance of delivery of the Goods or the Services without any liability to the Contractor;
  - 28.5. carry out at the Contractor's expense such work as may be necessary to satisfy the requirements of the Contract; or
  - 28.6. claim such damages, costs and expenses as the College may have sustained in consequence of any breach of the terms of the Contract or failure by the Contractor to comply with any statutory or other legal obligations herein specified or implied by law.
- 28.7. These rights shall be in addition to and without prejudice to any other rights the College may have.

## **29. Liquidated Damages**

If performance of the Contract shall not have been achieved by the dates(s) specified in the Contract or, where an extension of time has been agreed, the revised date for delivery/performance, the Contractor shall pay to the College as liquidated damages for each day of delay after the date of delivery or the revised date for delivery, as applicable, a sum of 1% of the total Contract Price, up to a maximum of 5% of the Contract Price.

## **30. Data Protection**

- 30.1. The Contractor shall take such appropriate technical and organisational measures as are necessary to comply with the seventh data protection principle as provided by Part 1 of the Data Protection Act 1998 to protect against unauthorised or unlawful processing of personal data (as defined in section 1(1) of the Data Protection Act 1998) and against accidental loss or destruction of, or damage to, personal data.
- 30.2. The Contractor shall ensure that all technical information (including computer programmes and programming information) arising out of or deriving from this Contract is held in strict confidence except for any such information which becomes public knowledge other than by breach of this Contract.

## **31. Publicity and Confidentiality**

- 31.1. The Contractor shall at all times endeavour to act in the best interests of the College under a duty of trust and confidence.
- 31.2. The Contractor and the College shall not, without prior written permission, use any confidential information for any purpose other than is necessary for the performance of its obligations under the Contract, nor make use of any information contained in any material prepared or provided by the College or the Contractor pursuant to the Contract, all of which information shall be deemed to be confidential.
- 31.3. The Contractor shall not refer to the College or the Contract nor use the College logo or other identifier in any advertisement or other public announcement without the College's prior written consent. This does not preclude the Contractor from issuing publicity approved in advance by the College.

## **32. Freedom of Information**

- 32.1. The Contractor acknowledges that the College is subject to legal duties under the Freedom of Information Act 2000 (FOI) and/or Environmental Information Regulations 2004 (EIR) which may require the release of information on request, including matters relating to, arising out of, or under, this Contract.
- 32.2. The Contractor shall respond to any related request for assistance from the College, at its own cost within five days.
- 32.3. The College shall be entitled to disclose all Information to the extent that it is obliged to do so, within the required 20 days, in order to respond to that request in accordance with FOIA and/or EIR.
- 32.4. Where the College believes the information requested is Exempted Information or Confidential Information and should not be disclosed it shall inform the Contractor of the request, and unless agreed otherwise by the Contractor the College shall not disclose the information or confirm or deny that the information is held by the College.
- 32.5. If the College is issued with guidance or an enforcement notice by the Information Commissioner it shall inform the Contractor of the details. The Contractor may request the College to appeal to the Information Tribunal against the guidance or enforcement notice and disclosure of the information.
- 32.6. The College shall at all times be entitled to seek legal advice where appropriate, and the Contractor shall indemnify the College for all legal costs and expenses incurred in obtaining legal opinion or preventing the release of the information.

### 33. Audit Requirements

The Contractor shall keep and maintain all documentation relating to this Contract until two years after the Contract has been completed and shall make such records available to the College and/or the National Audit Office if requested.

### 34. Liability and Indemnity

34.1. Without prejudice to his liability for breach of any of his obligations under the Contract the Contractor shall be liable for and shall indemnify the Institution against any liability, loss, damages, costs, expenses, legal costs and expenses, claims or proceedings whatsoever arising under any statute or at common law as a result of or in connection with:

34.1.1. any breach of any warranty given by the Contractor in relation to the Goods or Services supplied;

34.1.2. any claim of infringement of patent, copyright, design, trade mark or other intellectual property rights of any other person;

34.1.3. any act or omission of any of the Contractor's personnel in connection with the performance of the Services;

34.1.4. any loss of or damage to property (whether real or personal);

34.1.5. any injury to any person, including injury resulting in death; and/or

34.1.6. any financial or economic loss

except insofar as such loss, damage or injury shall have been caused by negligence on the part of the Institution, its servants or agents.

### 35. Insurance

35.1. Without prejudice to his liability to indemnify the College the Contractor and all Sub-Contractors, shall affect and maintain at all times during the period of this Contract, at his own expense, and from a reputable organisation:

35.1.1. **Public Liability Insurance** in a sum not less than £5 million for each and every occurrence; and

35.1.2. **Employer's Liability Insurance** in a sum not less than £10 million for each and every occurrence.

35.2. Any such insurance shall name the College as a Co-insured Party on all relevant policies, and must be endorsed by the Underwriters /

Insurers to prevent any exercise or rights of subrogation against the College, its other Contractors, and/or its employees.

35.3. If the Contractor wishes to self-insure against such risks, details of these arrangements must have first been approved by the College in writing prior to the execution of the Contract.

35.4. The Contractor shall provide sight of original documentation (including cover notes, policies, and premium receipts) and shall provide copies of this documentation to the College. The Contractor shall notify the College in the event of any change therein, including policy expiry and renewal. The details of such insurance shall be supplied to the College as and when required.

35.5. If the Contractor defaults in insuring, the College may itself effect insurance and charge the cost together with an administrative charge of 5% to the Contractor.

### **36. Conflicts of Interest**

The Contractor shall take all appropriate steps to ensure that neither it nor any employee, servant, agent, supplier or sub-contractor is placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor, or such persons, and the duties owed to the College under the provisions of the Contract. The Contractor shall disclose to the College full particulars of any such conflict of interest which may arise.

### **37. Fraud**

The Contractor shall safeguard the College's funding of the Contract against fraud generally and, in particular, fraud on the part of the staff, or the Contractor's directors. The Contractor shall notify the College immediately if it has reason to suspect that any fraud has occurred, or is occurring, or is likely to occur.

### **38. Competition Law**

The Contractor warrants that it has engaged in no price fixing, bid rigging, illegal price information exchange agreement or other arrangement in breach of UK, EU or other competition laws relevant to the Contract or arrangements between the parties.

### **39. Discrimination**

39.1. The Contractor, his employees and any sub-contractors shall comply with all current legislation relating directly or indirectly to the supply of Goods and shall not discriminate against any individual as detailed in the:

- 39.1.1. Race Relations Act 1976 (as amended by the Race Relations (Amendment) Act 2000 and the Race Relations Act 1976 (Amendment) Regulations 2003);
  - 39.1.2. Human Rights Act 1998 and the Human Rights Act 1998 (Commencement No.2) Order 2000;
  - 39.1.3. Sex Discrimination Act 1975, Sex Discrimination Act 1984, Sex Discrimination Act 1975 (Amendment) Regulations 2003, Sex Discrimination Act 1975 (Amendment) Regulations 2008;
  - 39.1.4. Disability Discrimination Act 1995, Disability Rights Commission Act 1999, Disability Discrimination Act 2005; and
  - 39.1.5. Equality Act 2006
- 39.2. The Contractor, his employees and any sub-contractors shall also comply with the College's policies and procedures to prevent unlawful discrimination on the grounds of sex, race, disability, sexual orientation, age, religion and belief.
- 39.3. The Contractor warrants that its own practices and procedures comply with all legislation to prevent unlawful discrimination and that its employees are fully trained on matters relating to the prevention of unlawful discrimination.
- 39.4. The Contractor shall provide such information as required by the College in relation to its compliance with anti-discrimination legislation and will co-operate with any investigation by the College or a body empowered to carry out such investigations under the relevant legislation.

#### **40. Rights of Third Parties**

Nothing in this Contract is intended to confer a benefit of any kind on any third party in relation to it, and in particular a person who is not a Party to the Contract may not enforce any of the terms nor object to any variation, and neither shall any person who is not a Party have any rights under the Contracts (Rights of Third Parties) Act 1999 in relation to this Contract.

#### **41. Dispute Resolution and Arbitration**

- 41.1. In the event of any dispute arising from or in connection with the Services or this Contract which cannot be settled by negotiations between the Contractor and the College within 14 days, either party may serve written notice on the other to request the matter is referred to arbitration, in which case each party shall jointly appoint a sole

arbitrator within 28 days in accordance with the terms of the Arbitration Acts 1996.

- 41.2. The seat of arbitration shall be England and the arbitrator's decision shall be final and binding on both parties. Costs shall be in the award of the arbitrator.

## **42. Termination**

- 42.1. Without prejudice to any other rights or remedies it may have, the College shall have the right at any time to terminate the Contract forthwith, in whole or in part, and to claim for all resulting losses and expenses (including, without limitation, the cost of replacing the supply requirements in respect of which the Contract has been terminated with supply of a similar description) if:

### **42.1.1. Breach of Contract**

The Contractor commits a breach of the Contract and, in the case of such a breach which is capable of remedy, fails to remedy the breach within seven calendar days (or such longer period as the College may as its option agree in writing) of written notice from the College to do so;

### **42.1.2. Statutory Health and Safety Regulations**

There is any infringement by the Contractor of any Statutory Health and Safety Regulation;

### **42.1.3. Insolvency**

42.1.3.1. The Contractor shall become insolvent or cease to trade or compound with its creditors;

42.1.3.2. a bankruptcy petition or order is presented or made against The Contractor or, where The Contractor is a partnership, against any such partner, or if a trustee in sequestration is appointed in respect of the assets of The Contractor or (where applicable) any such partner;

42.1.3.3. a receiver or an administration receiver is appointed in respect of any of The Contractor's assets;

42.1.3.4. a petition for an administration order is presented or such an order is made in relation to The Contractor; and/or

42.1.3.5. a resolution or petition or order to wind up The Contractor is passed or presented or made or a liquidator is appointed in respect of The Contractor (otherwise than for reconstruction or amalgamation); and

42.1.4. Corruption

42.1.4.1. The Contractor has offered, given, agreed to give, received or solicited to or from anyone a bribe, gift, consideration, inducement or reward for doing or not doing anything in relation to the Contract, the delivery of the Service;

42.1.4.2. The Contractor has committed any offence under the Prevention of Corruption Acts 1889-1916; and/or

42.1.4.3. The Contractor has given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

42.1.5. Discrimination

The College may terminate the Contract if notice has been given to the Contractor of a substantial or persistent breach of this clause providing that a reasonable period has been given during which the breach may have been rectified and the Contractor has failed to remedy the breach within the stated period.

42.1.6. Non-Fault Termination

42.1.6.1. otherwise than by the seller's insolvency or bankruptcy, the Purchase Order and Contract may be terminated at any time by the College giving the Contractor notice in writing;

42.1.6.2. a fair and reasonable price shall be paid for all work in progress and/or any part of the Goods supplied and Services performed at the time of the cancellation which is subsequently received by the College; and/or

42.1.6.3. the College shall not be liable for any loss to the Contractor including consequential loss.

#### **43. Consequences of Termination**

- 43.1. On termination of this Contract for whatsoever reason, the Supplier shall hand over to the College all Confidential Information, and all Company books, documents, materials, computer discs and software (whether in human readable or machine readable form) and all other property of the College which may then be in its possession or under its control and, if required by the College, shall swear a statutory declaration that it has done so.
- 43.2. The Supplier shall if the College so requires deliver to the College any Goods which are in preparation and have not yet been provided to the College and the College shall pay a reasonable amount in respect of the same.
- 43.3. Termination shall not affect any remedies of either party which have accrued prior to the date of termination.

#### **44. Force Majeure**

- 44.1. For the purpose of the contract the term Force Majeure shall mean:
  - 44.1.1. war and hostilities (whether war be declared or not) invasion, act of foreign enemies, mobilisation, requisition or embargo;
  - 44.1.2. rebellion, revolution, insurrection, military or usurped power or civil war;
  - 44.1.3. riot, commotion or disorder except where solely restricted to employees of the supplier or its nominated sub-contractors or sub suppliers;
  - 44.1.4. earthquake, flood, fire or other natural physical disaster except to the extent that any such disaster is caused by, or its effects contributed to by, the party claiming Force Majeure; and/or
  - 44.1.5. a general industrial dispute not limited to the employees of the supplier or the employees of any of its sub-contractors or sub suppliers.
- 44.2. If either party considers that any circumstance of Force Majeure has occurred which may affect materially the performance of its obligations then he shall forthwith notify the other in writing to that effect giving full details of the circumstances giving rise to the Force Majeure event.
- 44.3. Neither party shall be considered to be in default of its obligations under the contract to the extent that it can establish that the performance of such obligations is prevented by any circumstance of

Force Majeure which arises after the date of the contract and which was not foreseeable at the date of the contract.

- 44.4. If the performance of the obligations of either party under the contract is so prevented by circumstances of Force Majeure and shall continue to be prevented for a period less than 30 days, then during that period the contract shall be considered as suspended.
- 44.5. Upon the ending of the Force Majeure event, the contractual obligations of the parties shall be reinstated with such reasonable modifications as to take account of the consequences of the Force Majeure event as may be agreed between the parties, or in default of such agreement, as may be determined by an independent arbitrator.
- 44.6. If performance of the obligations of either party under the contract is so prevented by the circumstances of Force Majeure and shall continue to be so prevented for a period in excess of 30 days, then the contract shall be terminated by mutual consent and, subject to the clauses detailed below; neither party shall be liable to the other as a result of such termination.
- 44.7. If the contract is so terminated then subject to the transfer to the College of the benefit referred to in the sub clause below the College shall pay to the Contractor such reasonable sum as may be agreed between the parties or in default of any agreement as may be determined by expert determination in respect of costs incurred and commitments already entered into by the Contractor at the date of the Force Majeure notice, less the amount of any payments already made to the Contractor at the date of the Force Majeure notice. If the amount of such advance payments made to the Contractor exceeds the sum due to him under this sub clause then he shall repay the balance to the College.
- 44.8. The Contractor shall transfer to the College the benefit of all work done by him or his sub contractors up to the date of the Force Majeure notice, and if applicable it shall include the rights in any licensed and developed software and licensed firmware so far as the rights in the same have accrued to the College prior to the Force Majeure notice, or will do so on payment under the sub clause above.

#### **45. Waiver**

Any failure or delay by the College to insist at any time upon the performance of any of the terms, provisions or undertakings of the Contractor contained in the Contract, or failure to exercise any rights under the Contract, shall not constitute or be construed as a waiver thereof or a relinquishment of the College's rights to require the future performance of any such term, provision or undertaking, but the obligation of the Contractor with regard to the same shall continue in full force and effect.

**46. Law**

This Contract shall be governed by and interpreted in accordance with English Law and shall be subject to the jurisdiction of the Courts of England and Wales. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the College to take proceedings against the Contractor in any other court of competent jurisdiction, nor shall the taking of proceedings in any other court of competent jurisdiction preclude the taking of proceedings in any other jurisdiction whether concurrently or not.