

West Nottinghamshire College – Standard Terms and Conditions of Purchase

1. Definitions

1.1 In these Conditions unless the context otherwise requires:

“**Address**” means the address for delivery of the Goods or performance of the Services, as stated in the Order or such other address as the Purchaser may subsequently notify in writing;

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

“**Confidential Information**” means all information (including Personal Data) provided by or on behalf of the Purchaser pursuant to or in anticipation of the Contract that relate to the Purchaser or the business, operations, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Purchaser, including matters connected with the Goods and/or Services, information concerning the Purchaser’s relationships with actual or potential clients, customers or suppliers and the needs and requirements of the Purchaser and of such persons (in each case whether marked as confidential or not) and any other information which, if disclosed, may or will be liable to cause harm to the Purchaser;

“**Contract**” means the agreement between the Purchaser and the Supplier consisting of the Order, these Conditions and any other documents, or parts thereof, specified in the Order for the sale and/or purchase of the Goods or supply of the Services;

“**Correct Invoice**” means a separate detailed invoice, to be provided by the Supplier, quoting the Purchaser’s Order number, expenditure and project codes (if any) and setting out full and sufficiently detailed particulars of the Goods and/or Services supplied pursuant to the Contract and any discounts given;

“**Data Processing Agreement**” means the Purchaser’s form of data processing agreement for use with suppliers who act as the Purchaser’s data processor (as ‘data processor’ is defined in the Data Protection Legislation);

“**Data Protection Legislation**” means all applicable laws relating to data protection, the processing of personal data, and privacy, including:

(a) the Data Protection Act 2018;

(b) the General Data Protection Regulation (EU) 2016/679; and

(c) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as may be amended by the proposed Regulation on Privacy and Electronic Communications),

and references to “**Data Processor**”, “**Data Subjects**”, “**Personal Data**”, “**Process**”, “**Processed**”, “**Processing**”, “**Processor**” and “**Supervisory Authority**” have the meanings set out in, and will be interpreted in accordance with, such Applicable Laws;

“**Delivery**” means the receipt by the Purchaser of the Goods or performance of the Services at the Address;

“**Disclosure and Barring Service**” means the non-departmental public body established pursuant to the Protection of Freedoms Act 2012;

“**Dispute**” means any dispute, difference or question of interpretation arising out of or in connection with the Contract;

“**Goods**” means all products, articles and/or materials (as more specifically detailed in the Order) to be supplied by or on behalf of the Supplier in accordance with the Contract;

“**Good Industry Practice**” means at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of goods and/or services (as relevant) similar to the Good and/or Services (as relevant) to a customer like the Purchaser, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws;

“**Law**” means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;

“**Order**” means the Purchaser’s officially numbered purchase order together with all the documents attached or referred to therein;

“**Purchaser**” means West Nottinghamshire College;

“**Services**” means the services and/or work (as more specifically detailed in the Order) to be provided by or on behalf of the Supplier in accordance with the Contract;

“**Supplier**” means the supplier named in the Order;

“**Work**” means all designs, models, drawings, prints, samples, transparencies, specifications, reports, manuscripts, working notes, documentation, manuals, photographs, negatives, tapes, discs, software or any other similar items.

In these Conditions, unless the context otherwise requires:

(a) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time; and

(b) the words “including”, “other”, “in particular”, “for example” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “without limitation”.

2. Basis of Purchase

2.1 These Conditions are the only conditions upon which the Purchaser is prepared to deal with the Supplier and they shall govern the Contract to the entire exclusion of any other terms and conditions on which any quotation has been provided to the Purchaser or subject to which the Order is accepted or purported to be accepted by the Supplier, unless the Purchaser agrees otherwise in writing (such written agreement only to be valid where it (i) specifically states that different and/or additional terms and conditions have been agreed by the Purchaser and (ii) append such terms and conditions).

2.2 An Order constitutes an offer by the Purchaser to purchase the Goods and/or Services at the price stated in the Order and subject to these Conditions. No Contract shall be concluded until the Supplier, either expressly by giving notice of acceptance to the Purchaser or impliedly by fulfilling the Order in whole or in part accepts the offer. No variation or addition to these Conditions or an Order or the Contract shall be binding upon the Purchaser unless agreed in writing between an authorised

representative of the Purchaser and an authorised representative of the Supplier (such agreement to be at the absolute discretion of the Purchaser).

- 2.3 Subject to any amendment in accordance with Conditions 2.1 and/or 2.2, the Contract embodies the entire agreement and understanding between the Purchaser and the Supplier in relation to its subject matter and extinguishes all prior negotiations, agreements, promises, undertakings and/or representations in relation to its subject matter, whether written or oral.

3. Cancellation of Order

- 3.1 The Purchaser may cancel any Contract at any time prior to the receipt of express or implied acceptance (as implied acceptance shall be interpreted pursuant to Condition 2.2) by the Supplier without liability to the Supplier by giving written notice to the Supplier.
- 3.2 The Purchaser shall be entitled to cancel any Contract in respect of all or part only of the Goods and/or the Services at any time after express or implied acceptance (as implied acceptance shall be interpreted pursuant to Condition 2.2) of an Order by the Supplier, by giving written notice to the Supplier at any time prior to Delivery. In the circumstances set out in this Condition 3.2, the Purchaser's sole liability shall be to pay to the Supplier fair and reasonable payment for work-in-progress at the time of cancellation, (to the extent such work is compliant with the terms of the Contract), but such payment will not include (i) loss of profits, turnover, business opportunities, damage to goodwill or any economic loss of any kind (in each case whether direct or indirect and whether actual or anticipated), and/or (ii) any indirect, special or consequential losses.
- 3.3 The Supplier may not cancel or terminate the Contract.

4. Price

- 4.1 The price payable for the Goods or the Services shall be that stated on the Order and, unless otherwise so stated, shall be:
- 4.1.1 exclusive of any applicable Value Added Tax (which shall be payable by the Purchaser subject to receipt of a VAT invoice from the Supplier);
- 4.1.2 inclusive of all charges for packaging, packing, shipping, carriage, insurance, delivery and installation of the Goods to the Address and any taxes, duties or levies other than Value Added Tax (details of which must be stated on the face of the invoice by the Supplier).
- 4.2 No increase in the price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior written consent of the Purchaser.
- 4.3 The Purchaser shall be entitled to any discount for prompt payment, bulk purchase, volume of purchase or discounts otherwise granted by the Supplier to any third party or offered by the Supplier to the Purchaser, whether or not shown on the Order.

5. Terms of Payment

- 5.1 Unless otherwise agreed in writing, the Purchaser will pay for the Goods and/or the Services at the end of the month following the month in which a Correct Invoice is received.
- 5.2 The Purchaser reserves the right to deduct from or offset against any monies due or becoming due to the Supplier in respect of the Contract any monies due from the Supplier on any account in respect of materials supplied, services rendered or otherwise.
- 5.3 No invoice is to be dated or submitted by the Supplier prior to the Delivery of the Goods and/or the Services.
- 5.4 The Supplier's invoice must be addressed to the Purchaser's "Finance Department" and must be a Correct Invoice. The Purchaser shall not be required to pay against an invoice which is not a Correct Invoice and shall not be responsible for any damage caused by delay in payment due to an invoice not being a Correct Invoice.
- 5.5 If any sum payable under the Contract is not paid on or before the due date for payment the Supplier shall be entitled to charge the Purchaser interest on that sum at the base lending rate of the Bank of England from time to time from the due date until the date of payment (whether before or after judgement), such interest to accrue on a daily basis. The parties agree that this Condition 5.5 is a substantial remedy for late payment of any sum payable under the Contract in accordance with section 8(2) Late Payment of Commercial Debts (Interest) Act 1998.
- 5.6 The Supplier shall not be entitled to suspend any delivery of the Goods and/or provision of the Services in the event of a failure by the Purchaser to pay any monies due or becoming due to the Supplier in respect of the Contract.

6. Specification

- 6.1 The quantity, quality and description of the Goods and/or the Services shall, subject as provided in these Conditions, be as specified in the Order and/or in any applicable specification supplied or advised by the Purchaser to the Supplier.
- 6.2 The Supplier shall comply with all applicable Laws and Good Industry Practice in the provisions of the Goods and/or the Services to the Purchaser, including in relation to the manufacture, packaging, packing and Delivery of the Goods or performance of the Services.
- 6.3 The Purchaser shall have the right to inspect and test the Goods at all times and the Supplier shall not unreasonably refuse any request by the Purchaser to inspect and test the Goods during manufacture, processing or storage at the premises of the Supplier or any third party prior to despatch and in the event of any such request the Supplier shall provide the Purchaser with all facilities reasonably required for inspection and testing.
- 6.4 If as a result of such inspection or testing the Purchaser is not satisfied that the Goods will comply in all respects with the Order, and the Purchaser so informs the Supplier within a reasonable time of inspection or testing, the Supplier shall take all steps prior to Delivery necessary to ensure compliance.
- 6.5 Notwithstanding any such inspection or testing as referred to in Condition 6.3, the Supplier shall remain responsible for the quality of the Goods and/or the Services and any such inspection or testing shall not diminish or otherwise affect the Supplier's obligations under the Contract.

7. Delivery

- 7.1 The Goods shall be delivered to, or the Services shall be performed at, the Address on or before the date or within the period specified in the Order during the Purchaser's usual business hours. The Purchaser reserves the right to make alternative delivery arrangements by written notice to the Supplier.

- 7.2 Time for Delivery shall be of the essence. Without prejudice to any other rights which the Purchaser may have, the Purchaser shall be entitled (without prejudice to any other rights in the Contract or at Law), in the event that Delivery is not made in accordance with the time limits specified in the Order:
- 7.2.1 to cancel the Order;
 - 7.2.2 to refuse to accept any subsequent delivery of the Goods or performance of the Services which the Supplier attempts to make; and
 - 7.2.3 claim damages for any loss incurred in obtaining the Goods or Services from another supplier.
- 7.3 All Goods and Services must be delivered or performed at the Address. If Goods or Services are incorrectly delivered or performed, the Supplier shall be responsible for; (i) remedying the situation and effecting redelivery or re-performance at the correct Address and (ii) for any additional expenses occurred in delivery or performance at the correct Address. Where the Supplier or its carrier delivers Goods at the wrong time or to the wrong Address and the Purchaser remedies such misdelivery, the Purchaser shall be entitled to deduct from the price any resulting costs of storage or transport.
- 7.4 The Purchaser shall not be deemed to have accepted the Goods until the Purchaser has had a reasonable time to inspect them following Delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.
- 7.5 The Purchaser reserves the right to mark the Goods immediately on Delivery for the purposes of security. The Purchaser will not be deemed to have accepted the Goods if it marks them nor shall the Supplier be entitled to raise an objection on this ground to any subsequent rejection of the Goods.
- 7.6 The Supplier shall supply the Purchaser on Delivery of the Goods or Services with all operating, maintenance, repair and safety instructions and other such information as is necessary for safe operation and which is required to enable the Purchaser to accept Delivery of the Goods and/or enjoy performance of the Services.
- 7.7 Each Delivery of Goods must be accompanied by a delivery note setting out full particulars of the Goods, delivery Address and quoting the Purchaser's Order number. The outside of each package will be clearly marked with the Purchaser's Order number, quantity, batch number and expiry date of contents (where applicable) and any other information appropriate to the Goods.
- 7.8 The Purchaser shall not be obliged to return to the Supplier any packaging or packing materials for the Goods, whether or not any Goods are accepted by the Purchaser. Where requested by the Purchaser at the time of Delivery, the Supplier shall remove and undertake to dispose of any packaging.
- 7.9 If the Goods are to be delivered or the Services are to be performed by instalments, a Contract shall be treated as a single contract and not severable.

8. Documentation and Marking

- 8.1 Any Goods supplied or installed under an Order shall be designed, constructed, finished, packaged and marked in a proper manner and in accordance with the Purchaser's instructions, Good Industry Practice, applicable Laws and any requirements of the carriers. The Supplier shall ensure that all necessary warning notices are clearly displayed so as to be safe and without risk to health and safety and to reach the Address in an undamaged condition.
- 8.2 The Supplier shall provide the Purchaser with such advice notes, delivery notes, statements and other documentation as the Purchaser may from time to time require, including specifying on each delivery note full particulars of the Goods, the Purchaser's Order number, expenditure and project codes (if any).

9. Risk and Property

- 9.1 Risk of damage to or loss of the Goods shall pass to the Purchaser upon Delivery to the Purchaser in accordance with these Conditions. Accordingly, the Supplier shall bear all risks of loss or damage to the Goods until Delivery and shall maintain appropriate insurance.
- 9.2 Ownership of and title in the Goods shall pass to the Purchaser upon Delivery and acceptance by the Purchaser. Unless payment or part payment for the Goods is made prior to Delivery, in which case the ownership of and title in any materials purchased or allocated by the Supplier for the purpose of an Order and the ownership of and title in any completed Goods appropriated to an Order shall immediately vest in the Purchaser.

10. Warranties

- 10.1 The Supplier warrants to the Purchaser that the Goods:
- 10.1.1 will be of satisfactory quality and fit for the purpose which the Purchaser has made known to the Supplier or, where the Purchaser does not make any purpose known to the Supplier, for the purpose for which the Goods are normally used;
 - 10.1.2 will be of the very best quality and free from defects in design, material and workmanship;
 - 10.1.3 will comply in every respect with any specifications, drawings, samples or descriptions provided by the Purchaser; and
 - 10.1.4 will comply with any statute, statutory order, directive of regulation or relevant International, European or British Standard (or equivalent required by the Purchaser) and any voluntary codes of conduct relating to the Goods and their sale in force at the time of Delivery.
- 10.2 The Supplier warrants that it has free and unencumbered title and right to sell the Goods to the Purchaser and that the sale or use of the Goods for any purpose whatsoever by the Purchaser shall not infringe any patent, copyright, trade name, trade mark, design right or any other intellectual property right whatsoever of any third party.
- 10.3 The Supplier warrants to the Purchaser that the Services will be performed by appropriately qualified, skilled and trained personnel with competence, due care and diligence and in accordance with the Purchaser's instructions for the provision of such Services and will comply in every respect with all relevant specifications and the Order.
- 10.4 The Supplier shall ensure that compatible spares are available to facilitate repairs (where applicable) for a period of at least 10 years from the date of Delivery of the Goods or performance of the Services.

11. Indemnity

- 11.1 The Supplier shall indemnify the Purchaser fully and shall keep the Purchaser fully indemnified against all liability, loss, damages, injury, costs, claims and expenses (including legal expenses) suffered or incurred by the Purchaser in connection with:
- 11.1.1 breach of any warranty given by the Supplier in relation to the Goods and/or the Services;

- 11.1.2 any claim that the Goods infringe, or their use or resale infringes, the patent, copyright, design right, trademark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any specifications, drawings, samples or descriptions provided by the Purchaser;
- 11.1.3 any liability under the Consumer Protection Act 1987 and/or the Consumer Rights Act 2015 in respect of the Goods and/or Services;
- 11.1.4 any act or omission of the Supplier or its employees, agents or sub-contractors in supplying, delivering and installing the Goods;
- 11.1.5 any act or omission of any of the Supplier of its employees, agents or Sub-contractors in connection with the performance of the Services;
- 11.1.6 any injury or other loss caused to an employee of the Purchaser or any other person on the Purchaser's premises, caused by any default or negligence on the Supplier's part, including without prejudice to the generality of the foregoing, any failure by the Supplier or the Supplier's agents, employees or sub-contractors to comply with any provisions of the Health and Safety at Work Act 1974 (and any amendments or modifications thereof) or any regulations or code of practice there under; and
- 11.1.7 any investigation or proceedings or financial redress which arises out of a breach of Condition 15.

12. Termination

- 12.1 The Purchaser shall have the right at any time, by giving notice in writing to the Supplier, to terminate the Contract forthwith without liability in any of the following events:
 - 12.1.1 if the Supplier commits a breach of any of the terms of the Contract;
 - 12.1.2 if the Supplier (being an individual) becomes bankrupt or (being a company) holds a meeting of creditors or enters into or proposes any arrangement or composition with or for the benefit of creditors or has a supervisor or receiver appointed over or has any distress execution or other process levied or enforced on the whole or a substantial part of its assets or enters administration or is the subject of an application for administration filed at any court or a notice of intention to appoint an administrator given by any person filed at any court or presents or has presented in respect of it a petition or convenes a meeting for the purposes of considering a resolution for its winding up or liquidation (or are the subject of anything analogous to the foregoing under the laws of any applicable jurisdiction);
 - 12.1.3 if the Supplier ceases or threatens to cease to carry on its business or trade; and
 - 12.1.4 where a right to terminate is specifically mentioned in these Conditions other than in this Condition 12.
- 12.2 Without prejudice to the rights of the Purchaser under Conditions 7.2, 12.1, 15.2 and 15.8, the Purchaser may for any other reason whatsoever terminate the Contract and/or Orders at any time by giving reasonable notice to the Supplier and specifying the date from which termination shall be effective.
- 12.3 The termination of the Contract howsoever arising will be without prejudice to the rights, duties and liabilities of either party accrued prior to termination. The Conditions which impliedly or expressly have effect after termination will continue to be enforceable notwithstanding termination.

13. Remedies

- 13.1 If the Supplier fails to comply with any of the terms of the Contract the Purchaser shall be entitled (whether or not any part of the Goods or Services have been accepted by the Purchaser) to avail itself of any one or more of the following remedies at its discretion:
 - 13.1.1 to rescind the Contract;
 - 13.1.2 to return the Goods to the Supplier at the cost and risk of the Supplier on the basis that a full refund for Goods so returned shall be paid forthwith by the Supplier;
 - 13.1.3 to require the Supplier at the Supplier's expense to remedy defects in the Goods and/or Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled within 7 days or any other period agreed in writing by the Purchaser;
 - 13.1.4 to refuse to accept any further deliveries of the Goods or the provision of any further Services with the Purchaser having no further liability to the Supplier;
 - 13.1.5 to carry out, at the Supplier's expense, any actions or work necessary to make the Goods or Services comply with the Contract; and
 - 13.1.6 to claim such damages as may have been sustained in consequence of the Supplier's breach or breaches of the Contract.
- 13.2 These rights shall be in addition to and without prejudice to any other rights which the Purchaser may have within this Contract or in Law.

14. Health and Safety and Environmental Protection

- 14.1 The Supplier shall comply with all Laws and Good Industry Practice in relation to health and safety and the environment. Further, the Supplier shall before Delivery provide to the Purchaser written details of any harmful or hazardous (or potentially harmful or hazardous) properties or ingredients in the Goods supplied whether in use or otherwise and thereafter provide any information concerning any changes that may take place in such properties or ingredients. The Purchaser will rely on the supply of such information from the Supplier in order to satisfy its own obligations under Law relating to health and safety at work and the control of substances hazardous to health.
- 14.2 The Supplier shall bring to the attention of all employees, agents, sub-contractors and representatives of the Supplier involved in any way in the provision of the Goods and/or performance of the Services, the Purchaser's health and safety requirements and contractors on site requirements (in each case which the Purchaser may provide to the Supplier from time to time) and the Supplier shall be responsible for ensuring that such requirements are duly observed by all such employees, agents, sub-contractors and representatives of the Supplier.
- 14.3 The Supplier shall:

- 14.3.1 in relation to all persons likely to be affected by (i) the execution of an Order and/or (ii) coming into contact with the Goods and/or receiving the Services, take all such steps as may be reasonably practicable to ensure their health and safety; and
- 14.3.2 during the performance of an Order take such steps as are reasonably practicable to avoid harm to the environment.
- 14.4 The Supplier will make the Purchaser aware of any incidents and accidents notified to the Health and Safety Executive; or any civil, statutory or industrial tribunals relating to Health and Safety matters; or improvement/prohibition notices or prosecutions served on the Supplier by the Health and Safety Executive or Local Authority, in each case whether or not they relate to the provision of the Goods and/or the Services.
- 15. Non-Discrimination**
- 15.1 The Supplier shall ensure that all personnel employed by the Supplier (and any agent or sub-contractor of the Supplier) for the purpose of performing the Contract shall be suitably trained, qualified and experienced, and shall fulfil their duties in a professional and ethical manner, consistent with the Purchaser's commitment to equal opportunities and race equality.
- 15.2 The Supplier accepts and agrees to comply with (and provide the Goods and the Services in accordance with) its legal and moral obligations to comply with its responsibilities under all equalities, human rights and discrimination Laws (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise) (including the Equality Act 2010 and the Race Relations (Amendment) Act 2000) ("**Discrimination Law**") and shall, at all times, operate a policy of equal opportunity in both staff recruitment, relations and service delivery. The Supplier shall when required answer queries raised by the Purchaser on matters referred to in this Condition and breach of statutory obligations will entitle the Purchaser to terminate the Contract with immediate effect.
- 15.3 The Supplier, his sub-contractors, personnel and agents shall observe the guidance and requirements of the Commission for Equality and Human Rights and any codes of practice published by them.
- 15.4 In the event of an unlawful discrimination finding being made by the court or employment tribunal against the Supplier or any sub-contractor appointed by the Supplier during the period of the Contract, or of an adverse finding in any formal investigation by the Commission for Equality and Human Rights or under any Discrimination Law over the same period, the Supplier shall inform the Purchaser of this finding and shall take the appropriate steps to prevent repetition of the unlawful discrimination.
- 15.5 The Supplier shall indemnify the Purchaser in the case of any finding under Discrimination Law arising out of the Supplier's acts or omissions.
- 15.6 In the event that the Supplier enters into any sub-contract (only if and where permitted elsewhere in these Conditions) in connection with the Contract, it shall impose obligations on its sub-contractors in terms substantially similar to those imposed on it pursuant to this Condition 15.
- 15.7 If a finding of unlawful discrimination or breach of equal opportunities Law is made against the Supplier or against the Purchaser arising from the conduct of the Supplier, the Purchaser may require the Supplier to take immediate remedial steps to prevent further recurrences.
- 15.8 Without prejudice to any of its other rights or remedies available to it, the Purchaser may terminate the Contract if notice has been given to the Supplier of a material or persistent breach of the provisions of this Condition 15.
- 16. Data Protection**
- 16.1 Where the Purchaser requires the Supplier to process Personal Data on their behalf, the parties shall seek to agree a separate Data Processing Agreement to ensure the parties compliance with the Data Protection Legislation. The Supplier shall not be entitled to process any Personal Data as the Purchaser's Data Processor until the parties have entered into the relevant Data Processing Agreement.
- 17. Freedom of Information**
- 17.1 The Supplier acknowledge that the Purchaser may be deemed a public authority as defined by Freedom of Information Act 2000 and any subordinate legislation made under it or any superseding enactment and regulations (the "**FOI Legislation**") and, therefore, recognises that the Purchaser may be the subject of a request for information made by any person to the Purchaser.
- 17.2 The Purchaser shall use all reasonable endeavours to inform the Supplier whenever it receives a request for any information or class of information relating to this Agreement or otherwise relating to the Supplier which has been designated as falling within an exemption to disclosure under FOI Legislation ("**Exempt Information**") setting out:
- 17.2.1 the nature of the request;
- 17.2.2 where possible, the identity of the person making the request for information;
- 17.2.3 what Exempt Information is covered by the request;
- 17.2.4 whether the Purchaser intends to disclose the information requested (including the intention to disclose any Exempt Information); and
- 17.2.5 a reasonable timescale in which the Supplier must make any representations to the Purchaser or express any objection to the disclosure of the Exempt Information.
- 17.3 The Supplier shall provide the Purchaser with all information held by the Supplier that is the subject of any freedom of information request within five (5) working days (or such other period as the Purchaser may reasonably specify) and shall (i) provide the Purchaser with all necessary assistance to enable the Purchaser to comply with FOI Legislation and (ii) transfer to the Purchaser any freedom of information requests it receives directly as soon as practicable and in any event within two (2) working days of receipt.
- 17.4 This condition 17 shall survive the expiry or termination of the Contract.**
- 18. Intellectual Property**
- 18.1 All copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information ("**IP Rights**") in all Work prepared or supplied by the Purchaser to the Supplier shall remain the property of the Purchaser. All IP Rights in all Work prepared or

- developed by the Supplier under or in connection with the Contract shall vest in the Purchaser, unless otherwise agreed in writing by the parties.
- 18.2 All IP Rights in all Work not prepared or developed by the Supplier under or in connection with the Contract, but which are:
- 18.2.1 already vested in the Supplier; and
 - 18.2.2 used by the Supplier in connection with the Contract,
- shall remain vested in the Supplier but the Supplier hereby grants a non-exclusive, irrevocable, royalty-free licence to both the Purchaser and to any third party whom the Purchaser has authorised or may in the future authorise to use, copy or modify such Work provided it is to enable the Purchaser or such third party to utilise the Work prepared or developed under or in connection with the Contract.
- 18.3 If at any time during the continuance of the Contract the Supplier or any of its personnel or agents or sub-contractors (whether alone or with any other person) in the course of the provision of the Goods and/or the Services makes or discovers, or participates in the making or discovery of any invention, development or discovery (an "**Invention**") it shall treat the Invention and all information relating to it as confidential to the Purchaser and shall promptly disclose to the Purchaser full details, including drawings and models (if any) of the Invention. The Supplier agrees to assign to the Purchaser all right, title and interest in and to any Inventions so that the property, including all intellectual property rights in the Inventions, shall vest in the Purchaser absolutely and the provisions of Condition 18.8 shall apply.
- 18.4 If at any time during the continuance of the Contract the Supplier or any of its personnel or agents or sub-contractors (whether alone or with any other person) in the course of the provision of the Goods or the Services creates any logo, trade or service mark whether or not capable of registration, it shall treat such logo, trade or service mark and all information relating to it as confidential to the Purchaser and shall promptly disclose to the Purchaser full details, including drawings or models (if any) of such logo, trade or service mark. The property, including all intellectual property rights in such logo, trade or service marks shall vest in the Purchaser absolutely.
- 18.5 In consideration of the Purchaser entering into the Contract, the Supplier hereby assigns to the Purchaser (including, to the extent necessary, by way of future assignment) all copyright and other intellectual property rights for their full terms throughout the world in designs and copyright works, whether or not capable of registration, which have been or will be created by the Supplier or any of its personnel or agents or sub-contractors (except only those designs or works created by the Supplier or any of its personnel wholly outside of the Contract and wholly unconnected with the provision of the Goods or the Services).
- 18.6 The Supplier hereby irrevocably and unconditionally waives and shall procure that any of its personnel engaged in the provision of the Services irrevocably and unconditionally waive in favour of the Purchaser any and all moral rights conferred on him by virtue of the Copyright Designs and Patents Act 1988 for any logo, service or trade mark referred to in Condition 18.5.
- 18.7 Notwithstanding any prior termination of the Contract, at the request and expense of the Purchaser the Supplier shall and shall procure that its personnel shall:
- 18.7.1 do all things necessary or desirable to enable the Purchaser or its nominee to confirm absolute title to and ownership of and to obtain the benefit of an Invention (as the case may be) and to secure patent or other appropriate forms of protection for it throughout the world;
 - 18.7.2 provide to the Purchaser all such assistance as the Purchaser may require in relation to the resolution of any questions concerning patent, copyright or other IP Rights assigned by virtue of this Condition 18,
- provided that decisions as to the procuring of a patent or other appropriate protection and exploitation shall be in the sole discretion of the Purchaser.
- 18.8 The Supplier irrevocably appoints the Purchaser to be its attorney in its name and on its behalf to execute, sign and do all such deeds, instruments or things and generally to use the Supplier's name for the purpose of giving to the Purchaser or its nominee the full benefit of the provisions of this Condition 18 and a certificate in writing signed by any director or the secretary of the Purchaser that any instrument or act falls within the authority hereby conferred shall be conclusive evidence that such is the case so far as any third party is concerned.
19. **Protection of the Purchaser's Site**
The Supplier shall, in delivering the Goods or carrying out the Services, abide at all times with the Purchaser's work place regulations, as the same may be communicated to the Supplier from time to time.
20. **Insurance**
The Supplier shall effect and maintain, and shall procure that its sub-contractors and agents effect and maintain, throughout the continuance of the Contract satisfactory insurance cover with a reputable insurer to fulfil its liabilities under the Contract and as may be required by applicable Law, including public liability insurance cover of at least £2,000,000. The Supplier shall provide to the Purchaser on request satisfactory evidence of such insurance and payment of current premiums.
21. **Publicity**
Any Order placed by the Purchaser shall be treated as confidential and in particular the Supplier shall not make use of the Purchaser's name or the name of any of the Purchaser's customers for publicity purposes without the prior written consent of the Purchaser (such consent to be at the absolute discretion of the Purchaser).
22. **Assignment**
The Supplier shall not (i) assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under the Contract or (ii) sub-contract any of its rights, obligations, liabilities or duties under the Contract, without the Purchaser's prior written consent (such consent to be at the absolute discretion of the Purchaser).
23. **Force Majeure**
The Purchaser reserves the right to cancel or reduce the volume of the Goods ordered and/or the Services contracted for under the Contract if it is prevented from or hindered in the carrying on of its business through any circumstances beyond its control including any Act of God, act of Government or State, insurrection or industrial action, civil commotion, war, act of

terrorism, fire, flood, storm, earthquake, disaster or prohibition or enactment of any kind, without incurring any liability for any loss or damage whatsoever resulting therefrom.

24. **Staffing**

- 24.1 The Supplier shall ensure checks are made regarding any potential employees' legal right to work and seek references and Disclosure and Barring Services (DBS) checks for all employees to be used by the Supplier (or any agent or sub-contractor) in the provision of the Goods and the Services pursuant to the Contract.
- 24.2 The Supplier shall, where specifically requested by the Purchaser, or where required by any Safeguarding Policy issued by the Purchaser to the Supplier from time to time, ensure that satisfactory vetting of enhanced DBS checks (of the most extensive kind available) for all their staff working or visiting any Purchaser site and that it complies with the Protection of Freedoms Act 2012 throughout the provision of the Services under this Contract.
- 24.3 The Supplier shall ensure that no person who appears on a Barred List or who has any Relevant Conviction(s) (whether as a result of a police check or through the DBS procedures or otherwise), is employed or engaged in the provision of any part of the provision of Good or Services. "**Relevant Convictions**" for this purpose means a Conviction that involves dishonesty, violence or an offence of a sexual nature or against children or other vulnerable persons and "**Convictions**" for this purpose means, other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being made the subject of a prohibition or restriction under section 218(6) of the Education Reform Act 1988) and shall include anti-social behaviour orders.

25. **Confidentiality**

- 25.1 The Supplier will keep (i) confidential and in secure custody (which is appropriate depending upon the form in which the such materials are stored and the nature of the Confidential Information in such materials) and (ii) not disclose any and all Confidential Information that it may acquire (whether directly or indirectly). The Supplier shall immediately notify the Purchaser if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Purchaser's Confidential Information.
- 25.2 The Supplier will not use the Confidential Information for any purpose other than to perform its obligations under the Contract. The Purchaser will ensure that its officers, employees, agents and sub-contractors comply with the provisions of this Condition 25.
- 25.3 The obligations on the Supplier set out in Conditions 25.1 and 25.2 will not apply to any information which:
- 25.3.1 is publicly available or becomes publicly available through no act or omission of the Supplier, its officers, employees, agents and/or sub-contractors; or
- 25.3.2 the Supplier is required to disclose by order of a court or regulatory body of competent jurisdiction.

26. **General**

- 26.1 No extension of time or other concessions (or any other waiver of any description) granted by the Purchaser shall in any way affect the Purchaser's rights and/or the Supplier's obligations under the Contract.
- 26.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing and addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been agreed in writing between the parties pursuant to this Condition.
- 26.3 No waiver by the Purchaser of any breach of the Contract by the Supplier shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 26.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 26.5 The Purchaser and the Supplier do not intend that any of the terms of the Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to the Contract.
- 26.6 The Contract and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matters shall be governed by and construed in accordance with the laws of England and Wales and the courts of England and Wales (to the jurisdiction of which the Supplier hereby irrevocably submits) shall have the exclusive jurisdiction to resolve any disputes or claims (whether contractual or non contractual) arising out of or in connection with the Contract.

27. **Disputes**

- 27.1 Subject to Condition 27.5, neither party may commence proceedings in relation to a Dispute that arises out of or in connection with this Agreement (including in relation to any non-contractual obligations) unless that party has:
- 27.1.1 served a written notice (a "**Dispute Notice**") on the other party notifying it of the relevant Dispute; or
- 27.1.2 already received a Dispute Notice from the other party in relation to the same Dispute.
- 27.2 Following service of the Dispute Notice in relation to a Dispute, each party will respectively procure that such Dispute will be referred for resolution to the Head of Service/School (or above) for the time being on behalf of the Purchaser and any person of manager level (or above) for the time being on behalf of Supplier. Those representatives will meet as soon as reasonably practicable and in any event within seven (7) days of the date of service of the relevant Dispute Notice and will negotiate (acting reasonably and in good faith at all times) in order to resolve the Dispute.
- 27.3 If a Dispute has not been resolved within seven (7) days of the date of service of the relevant Dispute Notice each party will respectively procure that such Dispute be referred for resolution to any person of Executive level (or above) for the time being on behalf of the Purchaser and any person of Director level (or above) for the time being on behalf of the Supplier. Those representatives will meet as soon as reasonably practicable and in any event within fourteen (14) days of the date of service of the relevant Dispute Notice and will negotiate (acting reasonably and in good faith at all times) in order to resolve the Dispute.

- 27.4 If a Dispute is not resolved within fourteen (14) days of service of the relevant Dispute Notice either party may commence proceedings or, if both parties agree in writing to do so, the parties will attempt to settle the Dispute by mediation in accordance with the CEDR Model Mediation Procedure in each case irrespective of whether Conditions 27.2 and 27.3 have been complied with. The provisions of this Condition 27.4 are without prejudice to any right that either party may have to damages in respect of any breach by the other party of Conditions 27.2 and 27.3. Either party may withdraw from mediation at any time. Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the parties.
- 27.5 Nothing in this clause 27 will prevent or delay the Purchaser from:
- 27.5.1 seeking orders for specific performance, interim or final injunctive relief;
 - 27.5.2 exercising any rights it has to terminate the Contract; or
 - 27.5.3 commencing any proceedings where this is necessary to avoid any loss of a claim due to the rules on limitation of actions, and either party may at any stage require the Dispute to be referred to the exclusive jurisdiction of the courts of England and Wales for determination.
28. **Limitation on Liability**
- 28.1 Neither the Supplier nor the Purchaser limits its liability for:
- 28.1.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);
 - 28.1.2 fraud or fraudulent misrepresentation by it or its employees;
 - 28.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - 28.1.4 any liability to the extent it cannot be limited or excluded by Law.
- 28.2 The Purchaser's aggregate liability for losses, liabilities, damages, costs and expenses (including legal fees) whether arising in contract, tort (including negligence), breach of statutory duty or otherwise under or in connection with the Contract shall be limited to the price payable for the Goods and Services in the Order.