

WILTSHIRE COLLEGE CONDITIONS OF CONTRACT

1 DEFINITIONS

'We', 'Us', 'Our' and 'Wiltshire College' means (The College).

'You' and 'Your' means the person, firm, contractor or company to whom the purchase order is addressed and any employees, subcontractor or agents of said person, firm or company.

'Goods' means the materials, articles, works and services described in the contract.

'Package' means any type of package including bags, cases, carboys, cylinders, drums, pallets, tank wagons and other containers.

'Authorised Officer' means our employee authorised either generally or specifically by us to sign our purchase order, confirmation of which may be obtained from The Procurement Manager.

'Authorised' means signed by one of our authorised officers.

'Purchase Order' means our authorised purchase order having these general conditions of purchase on its reverse or attached to it or referring to these general conditions of purchase on its face.

'Order Amendment' means our authorised order amendment or series of order amendments, each order amendment having precedence over any earlier order amendment.

'Contract' has the meaning given in Condition 2 below.

'Price' has the meaning given in Condition 3 below.

'Sale of Goods Act 1979' shall mean the Sale of Goods Act 1979 as amended by the Sale and Supply of Goods Act 1994.

'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.

2 THE AGREEMENT

You agree to sell and we agree to purchase the goods in accordance with the contract. The contract shall comprise (in order of precedence) any order amendments, the purchase order, these general conditions of purchase and any other document (or part document) referred to on the purchase order. The contracts shall not include any of your conditions of sale, notwithstanding reference to them in any document.

However, should this contract be held by a court of competent jurisdiction to include your terms and conditions of sale then in the event of any conflict or apparent conflict, these general conditions of purchase shall always prevail over your terms and conditions of sale. Delivery of goods in response to a purchase order or order amendment shall be taken to imply that you have accepted the terms and conditions of this contract.

3 PRICE

You will sell us the goods for the firm and fixed price stated in the contract. If no price is stated in the contract then the price shall be a fair price, taking into account prevailing market conditions. The price shall include storage, packing, insurance, delivery, installation and commissioning (as applicable) but shall exclude VAT.

4 SUBSTITUTIONS

The Supplier is expected to supply all of the Goods covered within this Agreement. If the Supplier is unable to supply the exact type of Goods ordered, then the Supplier shall advise the College accordingly and shall, with the prior agreement of the College, supply alternative Goods of equal or better quality at the same prices as the Goods originally ordered.

5 VARIATIONS

We shall have the right, before delivery, to send you an order amendment adding to, deleting or modifying the goods. If the order amendment will cause a change to the price or delivery date then you must suspend performance of the contract and notify us without delay, calculating the new price and delivery date at the same level of cost and profitability as the original price, you must allow us at least 10 working days to consider any new price and delivery date. The order amendment shall take effect when but only if our authorised officer accepts in writing the new price and delivery date within the time you stipulate. If our authorised officer fails to confirm the order amendment within the time you stipulate then performance of the contracts shall immediately resume as though the said order amendment had not been issued (except that we may still exercise our right of cancellation in accordance with Condition 6).

6 OUR RIGHT OF CANCELLATION

In addition to our other rights of cancellation under this contract, we may cancel the purchase order and any order amendment thereto at any time by sending you a notice of termination. You will comply with any instructions that we may issue with regard to the goods. If you submit a termination claim then we will pay to you the cost of any commitments, liabilities or expenditure which in our reasonable opinion were a consequence of this contract at the time of termination. The total of all payments made or due to you under this contract, including any termination payment, shall not exceed the price. If you fail to submit a termination claim within three months of the date of our notice of termination then we shall have no further liability under the contract.

7 QUALITY AND DESCRIPTION

a) The goods shall:

- i) Conform in every respect with the provisions of the contract
- ii) Be capable of all standards of performance specified in the contract
- iii) Be fit for any purpose made known to you expressly or by implication and in this respect we rely on your skill and judgement
- iv) Be new (unless otherwise specified on the purchase order) and be of sound materials and skilled and careful workmanship
- v) correspond to their description or any samples, patterns, drawings, plans and specification referred to in the contract
- vi) Be of satisfactory quality
- vii) Comply with any current legislation

b) Unless specifically required under the contract, there shall be no asbestos content in the goods.

8 SUPPLY OF SERVICES

- a. The Supplier shall provide the Services to the Customer in accordance with the Service Specification in all material respects.
- b. The Supplier shall use all reasonable endeavors to meet any performance dates for the Services specified in Service Specification or in written correspondence, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- c. The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- d. The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill. Performance of the service to be detailed in the service specification or the applicable contract

10 PROGRESS AND INSPECTION

- a. You shall at your expense provide any programmes of manufacture and delivery that we may reasonably require. You shall notify us without delay in writing if your progress falls behind or may fall behind any of these programmes.
- b. We shall have the right to check progress at your works or the works of sub-contractors at all reasonable times, to inspect and to reject goods that do not comply with the contract. Your sub-contracts shall reserve such right for us.
- c. Any inspection, or approval shall not relieve you from your obligations under this contract.

11 PACKAGE

Unless otherwise stated in the contract, all packages shall be non-returnable. If the contract states that package is returnable, you must give us full disposal instructions before the time of delivery. The package must be clearly marked to show to whom it belongs. You must pay the cost of all carriage and handling for the return of package. We shall not be liable for any package lost or damaged in transit

12 SAFETY

You shall observe all legal requirements of the United Kingdom, European Union and relevant international agreements in relation to health, safety and environment, and in particular to the marking of hazardous goods, the provision of data sheets for hazardous materials and all provisions relating to Food.

13 DELIVERY

- a The goods shall be properly packed, secured and dispatched at your expense to arrive in good condition at the time or times and the place or places specified in the contract.
- b. If you or your carrier deliver any goods at the wrong time or to the wrong place then we may deduct from the price any resulting costs of storage or transport.

14 LATE DELIVERY

If the goods or any part of them are not delivered by the time or times specified in the contract then we may by written notice cancel any undelivered balance of the goods. We may also return for full credit and at your expense any goods that in our opinion cannot be used owing to this cancellation. In the case of services, we may have the work performed by alternative means and any additional costs reasonably so incurred shall be at your expense. This shall not affect any other rights that we have.

15 PROPERTY AND RISK

- a. You shall bear all risks of loss or damage to the goods until they have been delivered and shall insure accordingly.
- b. Ownership of the goods shall pass to us
 - i) when the goods have been delivered but without prejudice to our right of rejection under this contract, and
 - ii) If we make any advance or stage payment, at the time such payment is made, in which case you must as soon as possible mark the goods as our property.

16 ACCEPTANCE

16.1 ACCEPTANCE OF GOODS

We shall have the right to reject the Goods in whole or in part whether or not paid for in full or in part within a reasonable time of delivery if they do not conform to the requirements of this Agreement. It is agreed that the College may exercise the right of rejection notwithstanding any provision contained in Section 13, or Section 17, or Section 35 of the Sale of Goods Act 1979. We shall give the Supplier a reasonable opportunity to replace the Goods with new Goods that conform to this Agreement, after which time the College shall be entitled to cancel the Purchase Order and purchase the nearest equivalent Goods elsewhere and any additional costs reasonably so incurred shall be at the your expense. In the event of cancellation under this condition the Supplier shall promptly repay any monies paid under the Agreement without any retention or offset whatsoever. Cancellation of the Purchase Order under this condition shall not affect any other rights we may have. The Supplier must collect all rejected Goods within a reasonable time of rejection or the College shall return them to the Supplier at your risk and expense.

16.2 ACCEPTANCE OF SERVICES

In the case of Services performed by the Contractor not conforming with the Contract whether by reason of being a quality not stipulated or being unfit for the purpose for which they are required, the College shall have the right to reject such Services within a reasonable time of their performance and to purchase a Service elsewhere as near as practicable to the same Contract specifications and conditions as circumstances shall permit but without prejudice to any other right which the College may have against the Contractor.

Before exercising the right to purchase elsewhere the College shall give the Contractor a reasonable opportunity to improve the service with that which conforms to the contract. The making of payment shall not prejudice the College's right of rejection. Any inspection, checking, approval or acceptance given on behalf of the College shall not relieve the Contractor or his sub-contractor from any obligation under the Contract.

17 PAYMENT

Unless stated otherwise in the contract we shall pay you within 30 days of receipt of a correctly rendered invoice. Your invoice must be addressed to the department indicated on the purchase order and must quote the full purchase order number. We shall not be held responsible for delays in payment caused by your failure to

comply with our invoicing instructions. Invoices that do not quote a Wiltshire College Purchase Order Number will automatically be rejected and returned to the supplier.

18 CORPORATE PURCHASE CARDS

You shall if requested by the College accept the use of corporate purchasing cards at no additional cost to the College.

19 YOUR WARRANTY

It is expressly agreed between us that:

- a You shall promptly make good at your expense any defect in the goods that we discover under proper usage during the first of 12 months of actual use or 18 months from the date of acceptance by us whichever period shall expire first. Such defects may arise from your faulty design, your erroneous instructions as to use or inadequate or faulty materials or poor workmanship or any other breach of your obligations whether in this contract or at law.
- b Repairs or replacements will themselves be covered by the above warranty but for a period of 12 months from acceptance by us.
- c You will 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.

20 INDEMNITY AND INSURANCE

- a You shall indemnify us against all loss, actions, costs, claims, demands, expenses and liabilities whatsoever (if any) which we may incur either at common law or by statute in respect of personal injury to or death of any person or in respect of any loss or destruction of or damage to property (other than as a result of any default or neglect of ourselves or of any person for whom we are responsible) which shall have occurred in connection with any work executed by you under this contract or shall be alleged to be attributable to some defect in the goods.
- b This purchase order is given on the condition that (without prejudice to the generality of Condition 20(a)) you will indemnify us against all loss, costs, claims, demands, expenses and liabilities whatsoever (if any) which we may incur either at common law or by statute (other than as a result of any default or neglect of ourselves or of any person for whom we are responsible) in respect of personal injury to or death of any of your or our employees, agents, sub-contractors or other representatives while on our premises whether or not such persons are (at the time such personal injury or death is caused) acting in the course of their employment
- c You will indemnify us against any and all loss, costs, expenses and liabilities caused to us whether directly or as a result of the action, claim or demand of any third party by reason of any breach by you of these conditions or of any terms or obligations on your part implied by the Sale of Goods Act 1979, the Supply of Goods and Services Act 1982 or any other statute or statutory provision relevant to the contractor to goods or work covered thereby. This indemnity shall not be prejudiced or waived by any exercise of our rights under Condition 14.
- d You shall hold satisfactory insurance cover with a reputable insurer to fulfil your insurance obligations for the duration of this contract including public liability insurance cover of at least £2M (two million pounds Sterling). You shall effect insurance against all those risks arising from your indemnity in Condition 17(c). Satisfactory evidence of such insurance and payment of current premiums shall be shown to us upon request.

21 HEALTH AND SAFETY

The Supplier in making the supply shall have full regard to safety of persons who may be affected in any way and shall comply with the requirements of the Health & Safety at Work Act 1974 and its subordinate regulatory framework, and of any other Acts pertaining to the health and safety of persons.

22 ENVIRONMENTAL REQUIREMENTS

The Supplier shall:

- 22.1 When working on the College's Premises, aim to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment; and
- 22.2 Comply fully with any other acts, orders, regulations and codes of practice relating to environmental regulations, which may apply in the performance of this Agreement including (if applicable) the requirements of the Waste Electrical and Electronic Equipment Regulations 2006 (WEEE).

23 WORK ON OUR PREMISES

If the contract involves any works or services which you perform on our premises then the following conditions shall apply:

- a. You shall ensure that you and your employees, your subcontractors and their employees and any other persons associated with you will adhere in every respect to the obligations imposed on you by current safety legislation and the Colleges health and safety, sustainability, E&Q and Safeguarding Policies and Compliance.
- b. You shall ensure that you and your employees, your subcontractors and their employees and any other person associated with you will comply with any regulations that we may notify to you in writing.

24 SAFEGUARDING

Wiltshire College is committed to prioritising and promoting safeguarding and protecting children, young people and vulnerable adults from harm and has clearly defined responsibilities under the Children Act 1989. The College requires you to extend these responsibilities, within the scope of the college policy, to all your employees, your subcontractors and their employees and any other persons associated with you will adhere in every respect to the obligations imposed on you by current legislation and compliance can be audited.

25 EQUALITY AND DIVERSITY

The contractor shall at all times provide the service in accordance with the College's commitment to equal opportunities to all sections of the community including the obligations placed on public bodies by the Equalities Act 2006, the Disability Discrimination Act 2005, the Employment Equality (Age) Regulations, the Race Relations Amendment Act 2000 and the Sex Discrimination Act 1975.

- a. The contractor shall establish adequate managerial and supervisory arrangements for staff to be made aware of and to comply with discrimination legislation and the equality specifications within this contract.
- b. The contractor shall ensure that sufficient, instructed and competent staff are available to provide services to all sections of the community including those who do not speak English.
- c. The contractor shall provide any information regarding the delivery of its services to ensure the College meets its statutory obligations.
- d. The Contractor will train its staff and subcontractors of the College Equality and Diversity Policies and provide a audit trail.

26 SAFETY

You shall observe all legal requirements of the United Kingdom, European Union and relevant international agreements in relation to health, safety and environment, and in particular to the marking of hazardous goods, the provision of data sheets for hazardous materials and all provisions relating to Food.

27 PROGRESS AND INSPECTION

We shall have the right to check progress at your works or the works of sub-contractors at all reasonable times, to inspect and to reject goods or services that do not comply with the contract. This also includes assurances of adherence or commitment to all Wiltshire Colleges policies and procedures. Your sub-contracts shall also reserve such right for us.

28 RECOVERY OF SUMS DUE

Whenever under the contract any sums of money shall be recoverable from or payable by you, they may be deducted from any sums then due, or which at any later time may become due to you under this contract or under any other contact you may have with us.

29 MATTERS BEYOND CONTROL

If either party is delayed or prevented from performing its obligations under this contract by circumstances beyond the reasonable control of either party (including without limitation any form of government intervention, strikes and lockouts relevant to the purchase order or breakdown of plant), such performance shall be suspended and if it cannot be completed within a reasonable time after the due date as specified in the purchase order, then the contract may be cancelled by either party. We shall pay to you such sum as may be fair and reasonable in all the circumstances of the case in respect of work performed by you under the purchase order prior to cancellation but only in respect of work for which we have received full benefit as originally contemplated in the contract. This provision can have effect only if it is called into operation by the party wishing to rely on it giving written notice to the other to that effect.

30 ARTICLES ON LOAN AND USE OF INFORMATION

- a. All tools, materials, drawings, specifications and other equipment and data (the Articles') loaned by us to you in connection with the contract shall remain always our property and be surrendered to us upon demand in good and serviceable condition (fair wear and tear allowed) and are to be used by you solely for the purpose of completing the contract. You agree that no copy of any of the articles will be made without the consent in writing of our authorised officer. Until you return all the articles to us they shall be at your risk and insured by you at your own expense against the risk of loss, theft or damage. Any loss of or damage to such articles shall be made good by you at your expense. All scrap arising from the supply of such articles must be disposed of at our discretion and all proceeds of sales of such scrap must promptly be paid to us in full.
- b. Any information derived from our property or otherwise communicated to you in connection with the contracts shall be kept secret and confidential and shall not without the consent in writing of our authorised officer be published or disclosed to any third party, or made use of by you except for the purpose of implementing the contract.

31 OWNERSHIP OF RESULTS

If the contract involves design and/or development work:

- a. All rights in the results of work arising out of or deriving from this contract, including inventions, designs, copyright and knowledge shall be our property and we shall have the sole right to determine whether any letters patent, registered design, trademark and other protection shall be sought.
- b. You shall promptly communicate to us all such results and shall if requested and at our expense do all acts and things necessary to enable us or our nominee to obtain letters patents, registered designs and other protection for such results in all territories and to assign the same to us or our nominee.
- c. You shall ensure that all technical information (including computer programs and programming information) arising out of or deriving from this contract be held in strict confidence except for any such information which becomes public knowledge other than by breach of this contract.

32 INFRINGEMENT OF PATENTS

With the exceptions of goods made to our design or instruction, you warrant that neither goods or our use of them will infringe any patent registered design trade mark copyright or other protected right and undertake to indemnify us against all actions, claims, demands, costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of any such right.

32 NON-OBSERVANCE OF CONDITIONS

if you breach or fail to observe any provision of this contract we may give you written notice of such breach or non-observance and you shall have 28 days from receipt of the notice in which to rectify the breach or non-observance. Shall you fail to rectify the breach or non-observance than we shall have the right to give you written notice terminating the contract with immediate effect.

33 YOUR INSOLVENCY

If you become insolvent or bankrupt or (being a company) make an arrangement with your creditors or have an administrative receiver or administrator appointed or commence to be wound up (other than for the purpose of amalgamation or reconstruction) we may without replacing or reducing any other of our rights terminate the contract with immediate effect by written notice to you or any person whom the contract may have become vested.

35 INSOLVENCY AND BANKRUPTCY

If the Supplier shall:

- Become insolvent or bankrupt or
- Have a receiving order or administration order made against it or compound with its creditors, or
- Being a corporation commences to be wound up (not being a member's voluntary winding up for the purposes of reconstruction or amalgamation) or
- Carries on business under an administrator or administrative receiver for the benefit of its creditors or any of them

We "the College" shall have the right forthwith by notice in writing to that party or to the administrator, administrative receiver or to the liquidator or to any person in whom the Contract shall have become vested terminate the Contract.

Alternatively We "the College" may give notice at his sole option give such administrator, administrative receiver, liquidator or other person the option of carrying out the Contract subject to its providing a guarantee for the due and faithful performance of the Contract in such form and up to such amount as the College giving notice shall decide.

36 ASSIGNMENT AND SUB-LETTING

The contract shall not be assigned by you nor sub-let as a whole. You shall not sub-let any part of the contract without our written consent, but we shall not refuse such consent unreasonably. The restriction contained in this condition shall not apply to sub-contracts for materials for minor details or for any part of which the makers are named in the contract. You shall be responsible for all work done and goods supplied by all sub-contractors.

37 CORRUPT GIFTS

In connection with this or any other contract between you and us you shall not give, provide, or offer to our staff and agents any loan, fee, reward, gift or any emolument or advantage whatsoever. In the event of any breach of this Condition, we shall, without prejudice to any other rights we may possess, be at liberty forthwith to terminate this and any other contract and to recover from you any loss or damage resulting from such termination.

38 WAIVER

A failure at any time to enforce any provision of the contract shall in no way affect the right at a later date to require complete performance of the contract, nor shall the waiver of the breach of any provision be taken or held to be a waiver of any subsequent breach of the provision or be a waiver of the provision itself.

39 NOTICE

All notices and communications required to be sent by you or us in this contract shall be made in writing and sent by first class mail and if sent to you sent to your registered or head office and if sent to us sent to (Procurement Manager, Wiltshire College, College Road, Trowbridge, BA14 0ES) and shall be deemed to have reached the party to whom it is addressed on the next business day following the date of posting.

40 AMENDMENT

No addition, alteration or substitution of these conditions will bind us or form part of the contract unless and until accepted in writing by our authorised officer.

41 CONFIDENTIALITY AND DATA PROTECTION

- 41.1 Each party shall treat the Agreement and any information it may have obtained or received in relation thereto or arising out of or in connection with the performance of the Agreement or its negotiation or relating to the business or affairs of the other as private and confidential and neither party shall publish or disclose same or any particulars thereof without the prior consent of the other or as may be permitted under the later provision of this clause.
- 41.2 The obligations expressed in sub-clause 40.1 above shall not apply to any information which:
- is or subsequently comes into the public domain otherwise than by breach of this clause
 - is already in the possession of the receiving party without an accompanying obligation of confidentiality
 - is obtained from a third party who is free to divulge the same
 - is independently and lawfully developed by the recipient or its sub-contractor outside the scope of the Agreement
- 41.3 So far as it may be necessary for the performance of the Agreement or for the operation and maintenance of the subject matter of the Agreement each party may divulge any information to be kept confidential under sub-clause A above of this clause to their employees, agents and sub-contractors on a 'need to know' basis but undertake that they will take all steps necessary to ensure compliance by such employees, agents and sub-contractors with the obligations as to confidentiality expressed in this clause and will be responsible to the other party for any failure by any employee, agent or sub-contractor to comply with such obligations whether such employee, agent or sub-contractor was aware of them or not.
- 41.4 Both parties shall ensure that they, their employees, agents and sub-contractors shall observe the requirements of the Data Protection Act 1984 and all amendments or revisions thereto in the provision and use of the subject matter of the Agreement and shall comply with any request made or direction given to the other which is directly due to the requirements of such Act.
- 41.5 On the conclusion or termination of the Agreement both parties shall destroy all copies of confidential information obtained from the other and the obligations relating to confidentiality shall continue for a period of ten years from the date of the Agreement's conclusion, or termination

42 FREEDOM OF INFORMATION ACT

“FOIA” means the Freedom of Information Act 2000 and all regulations made there under from time to time or any superseding or amending enactment and regulations, and words and expressions defined in the FOIA shall have the same meaning in this Clause ; and

- a. the Supplier acknowledges and agrees that the College is subject to legal duties under FOIA which may require the College to disclose on request information relating to this Contract or otherwise relating to the Supplier.
- b. the Supplier acknowledges and agrees that the College is required by law to consider each and every request made under FOIA for information.
- c. The Supplier acknowledges and agrees that all decisions made by The College pursuant to a request under FOIA is solely a matter for and at the discretion of the College

43 DISPUTE RESOLUTION

- 43.1 If any dispute or difference whatsoever shall arise between the parties in connection with or arising out of the Agreement, except any matter which under the Agreement is to be referred to ‘Expert Determination’, either party may give 7 days’ notice to resolve the dispute or difference through ‘Alternative Dispute Resolution’ (ADR) in accordance with the mediation procedure of the Centre for Dispute Resolution. If the parties fail to agree terms of settlement of their dispute or difference within 56 days of the receipt of such notice or the party to whom the notice was given refuses to participate in the ADR procedure then the matter shall be referred to Arbitration in accordance with sub-clause 42.2.
- 43.2 Subject to sub-clause 42.3 below if any dispute or difference which may arise between the parties in connection with or arising out of the Agreement is referred to ADR mediation, but is not so settled as specified in sub clause 42.1, then neither party shall give notice to the other and such dispute or difference shall be referred to Arbitration. The parties shall agree on the appointment of a single arbitrator within 14 days after the date of such notice or in default of agreement the arbitrator shall be nominated on the application of either party by the President for the time being of the Chartered Institute of Arbitrators. The arbitration shall be conducted in accordance with the current arbitration rules as published by the Chartered Institute of Arbitrators.
- 43.3 There are excluded from arbitration any proceedings brought by one party against the other which arise out of the failure by that other party to comply with the provisions of any binding agreement setting out the terms upon which the dispute or difference was settled as a result of or following from the ADR mediation procedure referred to in sub-clause 42.1 above.

44 TERMINATION

- 44.1 If the Contractor fails to fulfil his obligations under the Contract, the College may terminate the contract forthwith and recover any costs from the Contractor. Whenever under the Contract any sum or sums of money shall be recoverable from or payable by the Contractor to the College, the same may be deducted from any sum then due, or which at any later time may become due, to the Contractor under the Contract or under any other Contract with the College.
- 44.2 The College shall have the power to terminate the contract at any time by giving the Contractor written notice. The College reserves the right to direct the Contractor to cease all work connected with the Contract. Where the College has invoked either of these rights, the Contractor may claim “reasonable” costs necessarily and properly incurred, excluding loss of profit. For the avoidance of doubt the Contractor's claim under this condition may not exceed the total cost of the Contract.

45 LAW

This contract shall be subject to *English* Law and the jurisdiction of the *English* courts.