

YORK COLLEGE

TERMS AND CONDITIONS OF PURCHASE OF GOODS AND SERVICES

THESE TERMS AND CONDITIONS MAY ONLY BE VARIED WITH THE WRITTEN AGREEMENT OF THE COLLEGE. NO TERMS OR CONDITIONS PUT FORWARD AT ANY TIME BY THE SUPPLIER SHALL FORM ANY PART OF THE CONTRACT.

1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions:-

‘Access Law’ means both the Freedom of Information Act 2000 and the Environmental Information Regulations 2004, as either may be amended from time to time or any other applicable legislation or codes of practice governing access to information in force from time to time;

‘Authorised Officer’ means the College’s employee authorised, either generally or specifically, by the College to sign its purchase order, confirmation of which may be obtained from the Director of Finance;

‘Conditions’ means these terms and conditions of purchase;

‘Contract’ has the meaning given in condition 2 below;

‘Goods’ means the materials and articles described in the Purchase Order;

‘Order Amendment’ means the College’s authorised order amendment or series of order amendments, each Order Amendment having precedence over any earlier Order Amendment;

‘Packaging’ means any type of package including but without limitation bags, cases, carboys, cylinders, drums, pallets, tank wagons and other containers;

‘Purchase Order’ means the College’s authorised purchase order

‘Services’ means the services (if any) described in the Purchase Order;

‘Supplier’ means the person, firm or company to whom the Purchase Order is addressed and any employees, sub-suppliers or agents of said person, firm or company; and

‘College’ means The York College trading as ‘York College’

GDPR CLAUSE DEFINITIONS:

‘Data Protection Legislation’ means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

‘Data Protection Impact Assessment’ means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

‘Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer’ take the meaning given in the GDPR.

‘Data Loss Event’ means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

‘Data Subject Access Request’ means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

‘DPA 2018’ means Data Protection Act 2018

‘GDPR’ means the General Data Protection Regulation (*Regulation (EU) 2016/679*)

'LED' means Law Enforcement Directive (*Directive (EU) 2016/680*)

'Protective Measures' means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

'Sub-processor' means any Third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement

1.2 Any reference to any gender includes any other gender.

2. **BASIS OF PURCHASE**

2.1 The Purchase Order constitutes an offer by the College to buy the Goods and/or acquire the Services subject to these Conditions. Any offer and/or acceptance of a Purchase Order by the Supplier shall be deemed to constitute an agreement to comply with these Conditions.

2.2 The Supplier agrees to sell and/or provide and the College agrees to purchase and/or acquire the Goods and/or Services in accordance with the Contract. The Contract shall comprise (in order of precedence):

2.2.1 any Order Amendments;

2.2.2 the Purchase Order;

2.2.3 these Conditions; and

2.2.4 any other document (or part document) referred to on the Purchase Order.

2.3 The Purchase Order shall not include any of the Suppliers' conditions of sale, notwithstanding reference to them in any document. However, should the Order be held by a Court of competent jurisdiction to include the Suppliers' terms and conditions of sale then in the event of any conflict or apparent conflict these Conditions shall always prevail over the Suppliers' terms and conditions of sale.

2.4 The Supplier is deemed to have understood the nature and extent of the supply requirements and shall make no claim founded on their failure to do so. The College shall not be liable for any Order unless it is issued and confirmed on an official College Purchase Order.

2.5 An Order for Goods and/or Services by the College from the Supplier shall be deemed to be an offer by the College to purchase the Goods and/or Services subject to these Conditions and no Order shall be accepted until the Supplier either expressly by giving notice of acceptance or impliedly by fulfilling the Order, in whole or in part, accepts the offer.

3. **PRICE AND PAYMENT**

3.1 The price of the Goods and the Services shall be as stated in the Order and unless otherwise agreed in writing by the College shall be exclusive of VAT but inclusive of all other charges including, but not limited to costs of packaging, packing, carriage, insurance, delivery and off-loading.

3.2 No increase in the price may be made for any reason without the prior written consent of the College. The College shall be entitled to any discount for prompt payment, bulk purchase, volume or purchase customarily granted by the Supplier.

3.3 Unless otherwise stated by the College, it shall pay the price of the Goods and Services within 30 days of receipt by it of a proper invoice, or, if later, after acceptance of the Goods or Services in question. The invoice must be addressed to the College's Purchase Ledger department as stated on the Purchase Order and must quote the full number of the Purchase Order.

3.4 The College may set off against the price any sums owed to it by the Supplier.

- 3.5 Unless otherwise agreed in writing with the College, the Supplier will render a separate invoice in respect of each consignment delivered under the Contract. The Supplier will comply with the Colleges reasonable administrative requirements relating to invoicing as notified to it from time to time.
- 3.6 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.
- 3.7 Where the Supplier represents that they are regarded by HM Revenue and Customs and the Department of Social Security as self-employed in relation to the prospective work to be undertaken for the College, the Supplier shall indemnify the College against any and all claims that may be made against the Group in respect of any tax (including PAYE), national insurance contributions or similar impost (and any interest, fines, penalties relating to the same) for which the College may be liable in respect of the Supplier by reason of the Contract. The Supplier shall provide to the College on request satisfactory evidence of the Supplier's self-employed status.
- 3.8 The College shall have the right before delivery, to send to the Supplier an Order Amendment adding to, deleting, or modifying the Goods to be delivered or the Service to be performed. If that Amendment causes a change to the price, delivery or performance date then the Supplier should calculate the new price and delivery or performance date using the same level of cost and profitability as the original price and seek agreement from the College prior to delivery.

4. WORK ON COLLEGE PREMISES

If the Contract involves Services which the Supplier performs on College premises then the following conditions shall apply:

- 4.1 the Supplier shall ensure that it will and its employees, sub-suppliers and their employees and any other person associated with it will adhere in every respect to the obligations imposed on it by current health and safety legislation; and
- 4.2 the Supplier shall ensure that it will and its employees, sub-suppliers and their employees and any other person associated with it will comply with any rules, regulations or requirements from time to time in force on those premises and will be deemed to have full knowledge of such rules, regulations and requirements, copies of which shall be supplied on request.

5. SPECIFICATIONS AND EQUIPMENT

- 5.1 The quantity, quality and description of the Goods and the Services shall be as specified in the Purchase Order and/or in any specification supplied. The Supplier will not supply Goods to or perform Services for the College unless they are the subject of a Purchase Order.
- 5.2 Any specification produced or supplied together with the copyright, design rights and any intellectual property rights shall be the exclusive property of the College.
- 5.3 Goods made to the College's specification shall not be manufactured for or supplied to any other party.
- 5.4 The College shall be entitled to inspect and test the Goods during manufacture, processing or storage prior to despatch, without relieving the Supplier of its obligations.
- 5.5 The Supplier shall comply with all applicable regulations and legal requirements concerning the manufacture, packaging, labelling, packing and delivery of the Goods.
- 5.6 The Goods shall be marked in accordance with the College's instructions and any applicable regulations or requirements of the carrier and properly packed and secured so as to reach their destination in an undamaged condition.
- 5.7 The Supplier shall at its own expense provide any programmes of manufacture and delivery that the College may reasonably require and shall notify the College without delay in writing if its progress falls behind or may fall behind any of these programmes.

6. DELIVERY AND PERFORMANCE

- 6.1 Delivery includes packaging, securing, despatching, delivering, installing and commissioning the Goods at the Supplier's expense. The Goods shall be delivered to, and the Services shall be performed at, the address specified by the College on the date or within the period specified in the

Purchase Order, in either case during the College's usual working hours. The College reserves the right to amend any delivery instructions. Delivery shall be deemed to be made on receipt of the Goods and/or Services in accordance with the terms of the Contract.

- 6.2 Where the date of delivery of the Goods or of performance of Services is to be specified after the placing of the Purchase Order, the Supplier shall give the College reasonable notice of the specified date and all information reasonably required by the College to enable it to accept delivery.
- 6.3 Time of delivery of the Goods and of performance of the Services is the essence of the Contract. Notwithstanding this:-
 - 6.3.1 if for any reason the College requests delivery or performance to be delayed, the Supplier shall agree to such request at no extra cost to the College and the provisions of this condition 6 shall apply to any such revised date for delivery or performance; and
 - 6.3.2 the Supplier shall immediately notify the College of any occurrence which it considers will delay the delivery of the Goods or the performance of the Services and the College shall, in its absolute discretion, decide whether any extension of time is to be granted.
- 6.4 The Supplier shall ensure that each delivery is accompanied by a delivery note (a copy of which may be retained by the College) which shows the order number, date of Order, number of packages, contents (if appropriate) and in the case of part delivery the outstanding balance to be delivered.
- 6.5 Delivery of the Goods or performance of the Services by instalments shall not be accepted by the College unless previously agreed in writing. If Goods are to be delivered or Services are to be performed by instalments, the Contract will be treated as a single contract and not severable.
- 6.6 Unless otherwise stated in the Contract, all Packaging shall be non-returnable whether or not any Goods are accepted by the College. If the Contract states that Packaging is returnable, the Supplier must give the College full disposal instructions before the time of delivery. The Packaging must be clearly marked to show to whom it belongs. The Supplier must pay the costs of all carriage and handling for the return of the Packaging. The College shall not be liable for any Packaging lost or damaged in transit.
- 6.7 If the Supplier or its carrier delivers any Goods at the wrong time or to the wrong place then the College may deduct from the price any resulting costs of storage or transport.
- 6.8 Any access to premises and any labour and equipment that may be provided by the College in connection with delivery of the Goods and/or performance of the Services shall be provided without acceptance by it of any liability whatsoever and the Supplier shall indemnify the College in full in respect of any actions, suits, claims, demands, losses, charges, costs and expenses which it may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of delivery or installation to the extent that any such damage or injury is attributable to any of the Supplier's actions or omissions, or to any act or omission of its sub-suppliers, agents or employees.
- 6.9 Where any access to the premises is necessary in connection with delivery or installation or the Goods or performance of the Services, the Supplier, its employees, sub-suppliers or agents shall at all times comply with the reasonable requirements of the College.
- 6.10 The Supplier shall provide the College with such reports of the Services performed and the Goods provided at intervals and in such form as the College may from time to time require.

7. PROPERTY AND RISK

- 7.1 Risk of loss or damage to the Goods shall pass to the College upon delivery to the College in accordance with the Contract (including unloading and full installation where relevant).
- 7.2 Ownership of the Goods shall pass to the College:-
 - 7.2.1 when the Goods have been delivered but without prejudice to the College's right of rejection under the Contract; or
 - 7.2.2 If the College makes any part, advance or stage payment against the price specified in the Contract at the time such payment is made and the Goods have been appropriated to the

Contract, upon which the Supplier must as soon as practicable mark or otherwise identify the Goods as the College property and keep them separate and identifiable from other goods held by the Supplier for itself or third parties.

8. **ACCEPTANCE**

- 8.1 If any of the Goods or Services fail to comply with any of the provisions of this clause, the College shall be entitled (without limitation) to any one or more of the following remedial actions.
 - 8.1.1 Rescind the Contract to which the Order relates.
 - 8.1.2 Reject the Goods (in whole or part) and return them to the Supplier (if already delivered) at the risk and cost of the Supplier's on the basis that a full refund for the Goods returned shall be paid forthwith by the Supplier.
 - 8.1.3 Give the Supplier the opportunity at the Supplier's expense either to replace or remedy any defect in the Goods or Services and carry out any necessary work to ensure that the terms of the Contract are fulfilled.
 - 8.1.4 Refuse to accept any further deliveries of the Goods or performance of the Services.
 - 8.1.5 Carry out at the Supplier's expense any work necessary to make the Goods or Services comply with the Contract.
 - 8.1.6 Claim such damages as may be sustained in consequence of the Supplier's breach or breaches of Contract. The College shall not be deemed to have accepted any Goods or Services until it has had a reasonable period to inspect or test them following delivery or, if later, within a reasonable time after any later defect has become apparent.
- 8.2 The College shall not be deemed to have accepted Goods merely by virtue of it having sold the Goods to a third party upon or after delivery or its having incorporated or converted them into other products or works.
- 8.3 The College shall not be deemed to have accepted the Goods by virtue of it having required the Supplier to repair or replace the Goods under these Conditions.
- 8.4 Should the College exercise its right to reject the Goods, the Supplier must collect such rejected Goods and in the event that the Supplier does not do so within a reasonable period of time, the College shall be entitled to return them to the Supplier at the Supplier's own risk and expense.

9. **SUPPLIER'S WARRANTIES**

- 9.1 The Supplier warrants to the College that it has full right, power and authority to provide the Goods and perform the Services and it is fully qualified, equipped, financed and organised to perform the Contract.
- 9.2 The Supplier will comply and will ensure that the Goods and Services, its agents, employees and sub-contractors will comply with all legal and statutory obligations, provisions and regulations in relation to health, safety, labour, welfare, hygiene and environmental laws within the EU and outside the EU in the country of production, and will use its best endeavours to comply with best practice.
- 9.3 The Supplier warrants to the College that the Goods shall:-
 - 9.3.1 conform in every respect with the provisions of the Contract;
 - 9.3.2 be capable of all standards of performance specified in the Contract;
 - 9.3.3 be of satisfactory quality **and fit for any purpose** made known to the Supplier expressly or by implication and in this respect the College relies on the Supplier's skill and judgement;
 - 9.3.4 be new unless otherwise specified on the Purchase Order;
 - 9.3.5 be free from defects in design, material and workmanship;

- 9.3.6 correspond to their description or any samples, patterns, drawings, plans and specifications referred to in the Contract;
 - 9.3.7 comply with the general requirements of safety in terms of risk presented to the health and safety of persons; and
 - 9.3.8 comply with any current legislation relating to the manufacture and sale of the Goods, product safety, packaging, labelling and hazardous substances (including the appropriate British Standard or equivalent specification unless otherwise agreed).
- 9.4 The Supplier confirms that neither it nor any of the Supplier's Personnel have been: (i) convicted of any offence; or (ii) the subject of an investigation, inquiry, or enforcement proceedings involving slavery or human trafficking. The Supplier shall: (i) comply with all Applicable Law relating to slavery, including the Modern Slavery Act 2015; (ii) comply with the College's own Anti-Slavery policies, as in force from time to time; (iii) ensure that all Goods and Services provided under this contract comply with the provisions of the Modern Slavery Act 2015; (iv) maintain a complete set of records to trace the supply chain of all Goods and Services provided to the College under the Contract; (v) implement a suitable system of related training for its employees, suppliers, and subcontractors.
- 9.5 The Supplier warrants to the College that any Services will be performed by appropriately qualified and trained personnel, with due care and due diligence and to such high standards of quality as it is reasonable for the College to expect in all the circumstances
- 9.6 The Supplier warrants to the College that unless specifically required under the Contract, there shall be no asbestos content in the Goods.
- 9.7 The Supplier warrants to the College that it will use its best endeavours to assist the College, as soon as reasonably practicable upon request by the College, (at the cost of the College insofar as this condition 9.7 requires the Supplier to do anything that it is not already obliged to do by law or in accordance with these terms and conditions) to comply with any obligations imposed on the College by any Access Law, including (but not limited to):-
- 9.7.1 where applicable, to provide the College as soon as possible and, in any event, within five working days of notification by the College of any Access Law requirement, with all such information which is in the possession of the Supplier that is necessary to enable the College to comply with any request for information served on the College pursuant to any Access Law which relates to or arises out of or under these terms and conditions, and/or the documentation associated with the Goods and/or Services and/or relates to the Supplier; and
 - 9.7.2 the Freedom of Information Act 2000 and/or any other Access Law, as appropriate, and any associated legislation and codes of practice notified to the Supplier by the College.
- 9.8 The Warranties set out in this condition 9 shall continue in force (notwithstanding acceptance by the College of all or any part of the Goods and any services) for 12 months from the date of first use of the Goods or completed performance of the Services.
- 9.9 Shall not in the supply to or use by the College infringe any trade mark, copyright, patent, licence, royalty, moral or design right or other intellectual property or third party right whatsoever.
- 9.10 Will be free to be used and/or sold without the payment of any royalty, licence fee or other payment to any third party of whatever nature (excepting UK VAT on sales).
- 9.11 The Supplier warrants that all information, representations or statements provided by it to the College in connection with Goods and/or Services are accurate and acknowledges that the College was induced to contract with it in reliance upon such information, representations and statements.
- 9.12 The College's rights under these conditions are for the avoidance of doubt in addition to any statutory or common law rights including without limitation, any rights arising under the Sale of Goods Act 1979 (as amended) and the Supply of Goods and Services Act 1982 implied in its favour.

10. **SUPPLIER'S STATUS**

In carrying out the Services, the Supplier shall be acting as principal and not as the agent of the College. Accordingly:-

- 10.1 the Supplier 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 Supplier is acting as the agent of the College; and
- 10.2 nothing in the Contract shall impose any liability on the College in respect of any liability incurred by the Supplier to any other person, but this shall not be taken to exclude or limit any liability of the College to the Supplier that may arise by virtue of either a breach of this Contract or of any negligence on the part of the College, its staff or agents.

11. SUPPLIER'S PERSONNEL

- 11.1 The Supplier shall take the steps reasonably required by the College to prevent unauthorised persons being admitted to the Premises. If the College gives the Supplier notice that a 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 Supplier shall take all reasonable steps to comply with such notice and if required by the College, the Supplier shall replace any person removed under this Condition with another suitably qualified person and procure that any pass issued to the person removed, is surrendered.
- 11.2 If and when instructed by the College, the Supplier shall give the College a list of names and addresses of all persons who are or maybe at any time concerned with the Services or any part of them, 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.
- 11.3 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 Supplier has furnished the information or taken the steps required of him by this Condition, shall be final and conclusive.
- 11.4 The Supplier shall bear the cost of any notice, instruction or decision of the College under this Condition.

12. INDEMNITY AND INSURANCE

- 12.1 The Supplier shall indemnify and keep indemnified the College, its servants and agents in full against any and all liabilities, losses (whether direct or indirect and including loss of profits), damages, actions, costs, claims, demands and expenses (including legal expenses) awarded against or incurred or paid by the College as a result of or in connection with:-
 - 12.1.1 breach of any warranty given by the Supplier in relation to the Goods or Services;
 - 12.1.2 any claim that the Goods infringe, or their incorporation, use or resale infringes the intellectual property rights of any other person except to the extent that the claim arises from compliance with any specification supplied by the College;
 - 12.1.3 any claim made against the College in respect of any breach or alleged breach by the College of any statutory provision, regulation or bye-law or other rule of law arising from the acts or omissions of the Supplier or its employees, agents or sub-suppliers;
 - 12.1.4 any liability under the Consumer Protection Act 1987 in respect of the Goods;
 - 12.1.5 any liability under the General Product Safety Regulation 1994 in respect of the Goods and any claims which might give rise as a result of the Goods being a risk to health and safety/unsafe;
 - 12.1.6 any liability under regulations relating to hazardous substances or under the Environment Protection Act 1990 in respect of the Goods; and
 - 12.1.7 any act or omission of the Supplier or its employees, agents or sub-suppliers in supplying, delivering and installing the Goods or performing the Services, including any injury, loss or damage to persons or to College property caused or contributed to by any of their negligence or by faulty design, workmanship or materials (except to the extent that the injury, loss or damage is caused by the negligent act or omission of the College).

- 12.2 The Supplier shall maintain in force, with a reputable insurance company, satisfactory insurance cover to fulfil the Supplier's insurance and liability obligations for the duration of this Contract, including:
- 12.2.1 Public liability to an amount of at least £5m (five million pounds) for any one occurrence in relation to inter alia personal injuries or deaths arising out of, or in the course of, or caused by the supply of the Goods and/or performance of the Service.
 - 12.2.2 Product liability in respect of the Goods to an amount of £5m (five million pounds) for any one occurrence.
 - 12.2.3 Professional indemnity insurance in respect of the performance of the Services to an amount of at least £5m (five million pounds) for any one occurrence.
 - 12.2.4 Employer's liability insurance for an amount of at least £5m (five million pounds) for any one occurrence.
 - 12.2.5 The Supplier shall, on the request of the College, produce evidence of these insurance certificates giving details of cover, and evidence of the payment of current premiums in respect of each insurance. payment of all premiums.

13. **DEFAULT**

- 13.1 Each right or remedy of the College is without prejudice to any other right or remedy of the College, whether or not under the Contract.
- 13.2 Failure to deliver the Goods or perform the Services within the promised or specified time shall enable the College (at its option) to:-
- 13.2.1 release itself from any obligation to accept and pay for the Goods or Services and/or to cancel all or part of the Purchase Order without liability to the Supplier and purchase substitute goods or services from elsewhere and recover from the Supplier any loss or additional costs incurred; and
 - 13.2.2 return for full credit and at the Supplier's expense any Goods that in its opinion cannot be used owing to this cancellation.
- 13.3 If the Goods or Services are not supplied in accordance with the Contract, then the College shall be entitled:-
- 13.3.1 to require the Supplier to repair the Goods or (at the College's sole option) to supply replacement Goods or Services in accordance with the Contract within ten working days (and the provisions of this Condition 13 shall apply to any such repaired or replaced Goods or Services); or
 - 13.3.2 whether or not the College has previously required the Supplier to repair the Goods or to supply any replacement Goods or Services, to treat the Contract as discharged by the Supplier's breach and require the repayment of any part of the Contract price which has been paid.

14. **TERMINATION**

- 14.1 The College shall be entitled to cancel the Purchase Order and any Order Amendment in respect of all or part only of the Goods and/or the Services by giving notice to the Supplier at any time prior to delivery without incurring any liability to the Supplier other than to pay for Goods and/or Services already delivered or performed at the time of such notice such payment shall not include loss of anticipated profits or consequential loss.
- 14.2 The College shall be entitled to terminate the Contract immediately without liability to the Supplier and reserving all rights of the College by giving notice to the Supplier at any time if:-
- 14.2.1 the Supplier is in breach of any of its obligations under these Conditions and that breach cannot be remedied; or

- 14.2.2 the Supplier is in breach of a material obligation under these Conditions which can be remedied, but the Supplier fails to do so within 30 days of being given notice of such breach; or
- 14.2.3 the Supplier commits more than one breach of any of its obligations under the Contract, the cumulative effect of such breaches is such that the College believes that the Supplier would continue to deliver a sub-standard performance over the one month period immediately after such breach; or
- 14.2.4 the Supplier enters into any compromise, deed or voluntary arrangement with its creditors, if a bankruptcy order is made against it or if an order is made or an effective resolution is passed for its winding up (except for the purposes of amalgamation or reconstruction as a solvent company) or if a winding up or bankruptcy petition is presented to court, or if a receiver and/or manager, receiver, administrative receiver or administrator is appointed in respect of the whole or any part of the Supplier's undertaking or assets;
- 14.2.5 the Supplier ceases or threatens to cease to carry on its business;
- 14.2.6 the financial position of the Supplier deteriorates to such an extent that in the opinion of the College the capability of the Supplier adequately to fulfil its obligations under the Contract has been laced in jeopardy.

15. WASTE ELECTRONIC AND ELECTRICAL EQUIPMENT DIRECTIVE (WEEE) 2005 & 2012

In accordance with the WEEE Directive, the College requires the Supplier to and any agents, employees and sub-suppliers to comply with the following terms:-

- 15.1 the Supplier warrants that its own practices and procedures comply with the legislation;
- 15.2 the Supplier shall provide such information as required by the College in relation to its compliance and shall co-operate with any investigations by the College or by a body empowered to carry out such investigations under the relevant legislation;
- 15.3 where any investigation is conducted, or proceedings are brought which arise directly or indirectly out of any act or omission of the Supplier, its agents, employees or sub-suppliers and where there is a finding against the Supplier in any such investigation or proceedings, the Supplier shall indemnify the College in full against any and all costs, charges and expenses (including legal and administrative expenses) incurred by the College during or in connection with any such investigation or proceedings and further indemnify the College for any compensation, damages, costs or other award the College may be ordered or required to pay to a third party; and
- 15.4 without prejudice to its remedies set out above, the College may terminate the Contract if notice has been given to the Supplier 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 Supplier has failed to remedy the breach within the stated period.

16. SPARE PARTS

If the Contract involves Goods, where appropriate, the Supplier shall ensure that all spare and/or replacement parts, components and materials for the Goods shall be available from the Supplier for 10 years from the date of first use by the College of the Goods in question, unless the Supplier provides the College with all drawings, plans, specifications and other technical data as the College reasonably believes are necessary to enable the College to manufacture such parts or the Goods.

17. THE EQUALITY ACT

- 17.1 The Equality Act 2010 brings together and significantly adds to and strengthens a number of existing pieces of legislation, including race and disability.
- 17.2 The Act also makes explicit the concept of "dual discrimination" where someone may be discriminated against or treated unfairly on the basis of a combination of two of the protected characteristics.
- 17.3 In accordance with its responsibilities under the Equality Act (including all other equality and diversity legislation) to eliminate unlawful discrimination, promote equal opportunities and promote good

relations between people of different social groups, the College requires the Supplier and its agents, employees and sub-suppliers to comply with the following terms:-

- 17.3.1 the Supplier agrees to conform with the Equality Act 2010, other relevant legislation and with College policies and procedures regarding such discrimination and equal opportunities;
- 17.3.2 and with the College's policies and procedures regarding such discrimination and equal opportunities;
- 17.3.3 the Supplier warrants that its own practices and procedures comply with legislation to prevent unlawful discrimination and that its employees are trained on matters relating to the prevention of unlawful discrimination;
- 17.3.4 the Supplier will 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 body empowered to carry out such investigations under the relevant legislation & when authorised by the College to do so;
- 17.3.5 where any investigation is conducted, or proceedings are brought which arise directly or indirectly out of any act or omission of the Supplier, its agents, employees or sub-suppliers and where there is a finding against the Supplier in any such investigation or proceedings, the Supplier shall indemnify the College in full against any and all costs, charges and expenses (including legal and administrative expenses) incurred by the College during or in connection with any such investigation or proceedings and further indemnify the College for any compensation, damages, costs or other award the College may be ordered or required to pay to a third party; and
- 17.3.6 without prejudice to its remedies set out above, the College may terminate the Contract if notice has been given to the Supplier 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 Supplier has failed to remedy the breach within the stated period.

18. **VARIATION**

The College shall have the right, before delivery, to send to the Supplier an Order Amendment adding to, deleting or modifying the Goods to be delivered or the Services to be performed. If the Order Amendment will cause a change to the price, or delivery or performance date, then the Supplier must suspend performance of the Contract and notify the College without delay, calculating the new price and delivery or performance date at the same level of cost and profitability as the original price. The Supplier must allow the College at least 10 working days to consider any new price and delivery or performance date. The Order Amendment shall take effect then but only if the Authorised Officer accepts in writing the new price and delivery or performance date within the time stipulated by the Supplier. If an Authorised Officer fails to confirm the Order Amendment within the time stipulated 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 its right of cancellation in accordance with condition 13.1).

19. **CORRUPTION AND BRIBERY**

- 19.1 The Supplier shall not offer or give, or agree to give, to any employee, their associate, family member or dependent or representative of the College, any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract with the College or any other Contract with the College, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such other contract.
- 19.2 The Supplier shall:
 - 19.2.1 Comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;
 - 19.2.2 Not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

19.2.3 Have and shall maintain in place throughout the term of this agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with clause 19.2.2 and will enforce them where appropriate;

19.2.4 Comply with the College's Anti-Bribery Policy as in force from time to time.

19.3 The Supplier will confirm that as at the date of signature of this Contract there is no outstanding investigation of the Supplier under any Bribery Legislation and in the last six years the Supplier has not been convicted of any offence under any Bribery Legislation, or reached any settlement in relation to any alleged breach of any Bribery Legislation, and has not self-reported any breach or suspected breach of any Bribery Legislation; and will obtain equivalent warranty from each of its agents, sub-contractors, or persons performing services on its behalf in relation to this Contract.

19.4 **Sanctions**

19.4.1 Without prejudice to the College's other rights and remedies, the College may terminate this Contract with immediate effect at any time by written notice to the Supplier if the Supplier:

- (i) commits any breach of Clause 19 whatsoever (and both parties acknowledge and agree that any breach of Clause 19 will be a material irremediable breach of this Contract); or
- (ii) commits a material breach of any of Clauses 19.1 to 19.3 inclusive which is incapable of remedy or, if capable of remedy, is not remedied within 30 days of receipt of notice of such breach.

19.4.2 If at any time any employee, agent, sub-supplier or other person performing services on behalf of the Supplier does (or agrees to do) anything which amounts (or if done, would amount) to:

- (i) any breach of Clause 19 whatsoever; or
- (ii) a material breach of any of Clauses 19.1 to 19.3 inclusive which is incapable of remedy or if capable of remedy is not remedied within 30 days of receipt of notice of such breach,

then (without prejudice to the College's other rights and remedies):

- (i) the College may require the Supplier immediately and permanently to terminate the involvement of such employee, agent, sub-supplier or other person with the subject matter of this Contract and, if necessary, to replace him with an appropriate alternative employee, agent, sub-supplier or other person; and
- (ii) if the Supplier fails to terminate (and if necessary replace) such employee, agent, sub-supplier or other person within 30 days of receipt of notice from the College requiring such termination (and, if relevant, replacement), the College may terminate this Contract with immediate effect by written notice to the Supplier.

19.4.3 Without prejudice to the College's other rights and remedies, if at any time the College has reasonable grounds to suspect that:

- (i) the Supplier has committed any breach of Clause 19 whatsoever; or
- (ii) the Supplier has committed a material breach of any of Clauses 19.1 to 19.3 inclusive;

then (without prejudice to the College's other rights and remedies):

- (iii) the College may notify the Supplier of its suspicion, together with details of evidence supporting the College's suspicion; and
- (iv) if the Supplier does not (within 30 days of the date on which the College provides to the Supplier details of evidence supporting the College's suspicion):
 - (A) satisfy the College (acting reasonably and in good faith) that the College's suspicion is unfounded; or

- (B) in the case of any breach (or suspected breach) of Clauses 19.1 to 19.3 inclusive which is capable of remedy, remedy that breach,

then the College may terminate this Contract with immediate effect by written notice to the Supplier.

19.4.4 Without prejudice to the College's other rights and remedies, if at any time the College has reasonable grounds to suspect that any employee, agent, sub-supplier or other person performing services on behalf of the Supplier has done (or agreed to do) anything which amounts (or if done, would amount) to any breach of Clause 19 whatsoever or to a material breach of any of Clauses 19.1 to 19.3 inclusive, then (without prejudice to the College's other rights and remedies):

- (i) the College may notify the Supplier of its suspicion, together with details of evidence supporting the College's suspicion; and
- (ii) if the Supplier does not (within 30 days of the date on which the College provides to the Supplier details of evidence supporting the College's suspicion):

- (A) satisfy the College (acting reasonably and in good faith) that the College's suspicion is unfounded; or

- (B) in the case of any breach (or suspected breach) of Clauses 19.1 to 19.3 inclusive which is capable of remedy, remedy that breach,

then:

- (a) the College may require the Supplier immediately and permanently to terminate the involvement of the relevant employee, agent, sub-supplier or other person with the subject matter of this Contract and, if necessary, replace him with an appropriate alternative employee, agent, sub-supplier or other person; and

- (b) if the Supplier fails to terminate (and if necessary replace) such employee, agent, sub-supplier or other person within 30 days of receipt of notice from the College requiring such termination (and, if relevant, replacement), the College may terminate this Contract with immediate effect by written notice to the Supplier.

19.4.5 Any termination pursuant to this Clause 19.4 will be without prejudice to any right and/or remedy that has already accrued, or may subsequently accrue, to the College.

19.5 Audit

The Contractor shall keep full and proper records and all the documents relating to the transactions affecting the Services. The College shall have, at all reasonable times, access to and the right to reproduce the Contractor's and its sub-contractors books, documents, correspondence, instructions, receipts, vouchers and memoranda of any description including that stored on microfilm or in computers which shall be made available in legible form together with any other information (such as codes) needed for its comprehension. (hereinafter referred to collectively as 'the Documents'), plus access to the Contractors personnel and Staff and their records relating to the Services undertaken under this Contract for the purpose of auditing and verifying costs of the Services and for any other reasonable purposes. The Contractor or its sub-contractors shall preserve the Documents for seven (7) years after the Termination Date.

19.6 Indemnity

The Supplier will at all times indemnify the College, and keep it fully and effectively indemnified against any and all liabilities, losses, damages, charges, costs (including legal and other professional expenses) and expenses of any nature incurred by the College directly or indirectly as a result of or in connection with any investigation, prosecution, claim or allegation that the Supplier (or any of its employees, agents, sub-suppliers or other persons performing services on its behalf) has breached any Bribery Legislation and/or has done, or is alleged to have done, anything which would cause the College to have breached any Bribery Legislation. Nothing in this Clause 19 will require the Supplier

to indemnify the College for any liability if and to the extent that such indemnification would be contrary to public policy.

20. ASSIGNMENT AND SUB-LETTING

The Contract shall not be assigned by the Supplier nor sub-let as a whole. The Supplier shall not sub-let any part of the Contract without the written consent of the College, but the College 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. The Supplier shall be responsible for all work done and Goods and Services supplied or performed by all sub-suppliers.

21. CONFIDENTIALITY AND DATA PROTECTION

21.1 The Supplier shall take every precaution to ensure that information about the Contract, or arising from or connected with the Contract, is divulged only to the minimum number of employees and then only to the extent essential to each person's action in carrying out the Contract. No information regarding the Goods or Services being provided under the Contract or facilities to photograph or film shall be given to any third party or permitted by the Supplier, except with prior written permission of the College.

21.2 The Supplier shall not communicate with representatives of the press, radio, television or other communications media unless specifically granted permission to do so in writing by the College.

21.3 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in Schedule [A] by the Customer and may not be determined by the Contractor.

21.4 The Contractor shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.

21.5 The Contractor shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

21.6 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- (a) process that Personal Data only in accordance with Schedule [A], unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (c) ensure that:

- (i) the Contractor's Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule A);
- (ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Contractor's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (i) the Customer or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations); and
 - (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- (e) at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data.

21.7 Subject to clause 1.6, the Contractor shall notify the Customer immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

21.8 The Contractor's obligation to notify under clause 1.5 shall include the provision of further information to the Customer in phases, as details become available.

21.9 Taking into account the nature of the processing, the Contractor shall provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:

- (a) the Customer with full details and copies of the complaint, communication or request;

- (b) such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the customer (or Data Controller), at its request, with any Personal Data it holds in relation to a Data Subject, within good time to enable the Data Controller to comply with the 30-day response deadline. Where the Data Processor cannot comply with this timescale, immediate notification must be given to the requestor advising the reasons for the delay and the estimated timescale for providing the information.
 - (d) assistance as requested by the Customer following any Data Loss Event;
 - (e) assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.
- 21.10 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
- (a) the Customer determines that the processing is not occasional;
 - (b) the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - (c) the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 21.11 The Contractor shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.
- 21.12 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- 21.13 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:
- (a) notify the Customer in writing of the intended Sub-processor and processing;

- (b) obtain the written consent of the Customer;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 1.11 such that they apply to the Sub-processor; and
- (d) provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.

21.4 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.

21.5 The Customer may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

21.6 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

22. **INTELLECTUAL PROPERTY AND COLLEGE PROPERTY**

If the Contract involves design and/or development work:-

- 22.1 The Supplier retains the intellectual property rights and copyright of all documents prepared by him. The College shall be entitled to use them or copy them only for the project and the purpose they were intended and need not obtain the Supplier's permission to copy for such use.
- 22.2 the Supplier shall promptly communicate to the College all such results and shall if requested and at the expense of the College do all acts and things necessary to enable the College or its nominee to obtain patents, registered designs or other protection for such results in all territories and to assign the same to the College or its nominee; and
- 22.3 the Supplier shall ensure that all technical information (including computer programs and programming information) arising out of or deriving from the Contract is held in strict confidence except for any such information which becomes public knowledge other than by breach of the Contract.

23. **ARTICLES ON LOAN AND USE OF INFORMATION**

- 23.1 All tools, materials, drawings, specifications and other equipment ("the Articles") loaned by the College to the Supplier in connection with the Contract shall remain always College property and shall be surrendered to the College upon demand in good and serviceable conditions (fair wear and tear allowed) and shall be used by the Supplier solely for the purpose of completing the Contract. The Supplier agrees that no copy of any of the Articles will be made without the consent in writing of the College. Until the Supplier returns all the Articles to the College it shall be at the Supplier's risk and insured by the Supplier at its own expense against the risk of loss, theft or damage. Any loss of or damage to the Articles shall be made good by the Supplier at its own expense. All scrap arising from the supply of the Articles must be disposed of at the discretion of the College and all proceeds of sales of such scrap must promptly be paid to the College in full.
- 23.2 Any information derived from College property or otherwise communicated to the Supplier in connection with the Contract shall be kept secret and confidential and shall not without the consent in writing of the College be published or disclosed to any third party, or made use of by the Supplier except for the purpose of implementing the Contract

24. **FORCE MAJEURE**

The College reserves the right to defer the date of delivery or payment or to cancel the Contract or reduce the volume of Goods and Services ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond its reasonable control including, without limitation, acts of God, governmental actions, war or national emergency, terrorism, riot, terrorist act, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies or suitable materials.

25. **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 to be a waiver of the provision itself.

26. **NOTICE**

All notices and communications required to be sent by either party under the Contract shall be made in writing and, if sent to the College shall be sent to its Procurement Coordinator.

27. **ENFORCEABILITY**

If any provision of the Contract is found by any court, tribunal or administrative body or competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidance, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

28. **THIRD PARTY RIGHTS**

The Contract does not create, confer or purport to confer any benefit or right enforceable by any person not a party to it by virtue of the Contracts (Rights of Third Parties) Act 1999.

29. **AMENDMENT**

No addition, alteration or substitution of these Conditions will bind the College or form part of the Contract unless and until accepted in writing by the Authorised Officer.

30. **LAW**

30.1 The formation, existence, construction, performance validity and all aspects of the Contract shall be governed by English Law and the parties submit to the exclusive jurisdiction of the English courts.

30.2 In no circumstances shall the College be liable in contract, tort (including negligence or breach of statutory duty) or otherwise whatsoever, for any loss of profit or business or for any special, indirect or consequential damage

31. **PUBLICITY**

The College or its representatives shall review the content of all notices for issue to the public for any financial impact relating to this contract and any other impact on the college. Delivery of any notices shall not deviate from the script.