

SOUTH STAFFORDSHIRE COLLEGE TERMS OF PURCHASE FOR GOODS/SERVICES FOR SUPPLIERS

These Terms shall govern each Contract and shall constitute the only Terms on which the Purchaser is prepared to Contract with the Supplier. Any order from the Purchaser shall only be capable of acceptance by the Supplier if given on the Purchaser official Purchase Order form. The Purchaser operates a "no Purchase Order, no payment" policy and therefore all invoices must quote a valid Purchase Order number from the Purchaser.

No addition or variation to these Terms shall be binding on the Purchaser unless in writing and signed by the Purchaser duly authorised representatives. These Terms shall prevail over and supersede any Terms or Conditions contained in or referred to in the Supplier quotation or acceptance elsewhere.

No Terms or Conditions submitted at any time by the Supplier shall form any part of the Contract. In the event of a conflict between any of these Terms and any specific Term or Condition (whether in the Contract or otherwise) referred to on the Purchase Order, the latter shall prevail.

1. Definitions/Interpretation

1.1 In these Terms:

"Contract" means the contract between the Purchaser and the Supplier for the creation, preparation or supply of any Goods and/or the provision of Services;

"Delivery Date" means the date on which the Goods/Services supplied to the Purchaser, as specified in the Purchase Order;

"Goods" means any such Goods, work and/or materials (Including any instalment or any part of Goods) supplied to the Purchaser pursuant to or in connection with the Purchase Order;

"Price" means the Price of the

Goods/Services as specified in the Purchase Order;

"Purchaser" means South Staffordshire College;

"Purchase Order" means the document setting out the Purchaser's requirements for the Contract;

"Services" means any services (Including or any part thereof) which you are to provide to the Purchaser or to the Purchaser Purchase Order in accordance with each Contract;

"Supplier" means the person, firm or company is the supplier of the Goods/Services named in the Purchase Order.

1.2 The headings in these Terms are for convenience only and shall not affect their Interpretation.

1.3 Where you compromise two or more persons your obligations under each Contract shall be joint and several.

1.4 The singular includes the plural and vice versa.

2. Variation

2.1 These Terms may only be varied with the written agreement of the Purchaser.

2.2 The Purchaser reserves the right by reasonable notice to the Supplier to vary the Goods detailed in the Purchase Order and any alteration to the Price or delivery date arising by reason of such modification shall be agreed between the parties and evidenced in writing.

2.3 The Contract shall become binding, and these Terms shall be deemed to have been accepted by the Supplier on the acceptance of the Purchase Order by the Supplier (either verbally or in writing) or on delivery of the Goods, whichever is the earlier.

3. Goods and Services

3.1 The Supplier warrants and represents to the Purchaser that the Goods and Services shall:

3.1.1 conform in all respects with any particulars or specification specified in the Purchase Order including any variations;

3.1.2 conform in all respects with the requirements of any statutes, orders, regulations or bye-laws from time to time in force;

3.1.3 be of satisfactory quality and free from defects in materials and workmanship; and

3.1.4 be fit and sufficient for the purpose for which such Goods and Services are ordinarily used and for any particular purpose made known to the Supplier by the Purchaser and the Purchaser relies on the skill and judgement of the Supplier in the supply of the Goods and Services and the execution of the Purchase Order.

3.2 The Purchaser reserves the right without liability to on any account or ground whatsoever from time to time:

3.2.1 To require at any time prior to delivery of Goods or completion of performance of Services to make such alterations as may specify from time to time provided that reimburse to any additional costs reasonably incurred by as a result.

3.2.2 To make such revisions to the Goods and/or Services as shall in all circumstances consider necessary or desirable;

3.3.3 Not to use the Goods and Services;

3.3.4 To use any Goods and Services in conjunction with the Goods and Services of any other person;

4. Price

4.1 The total Price payable under each Contract shall (subject to any Increase in the rate of VAT) be as specified in the relevant Contract. The Supplier shall not increase the Price unless it is validly accepted by the Purchaser and agreed in writing before the execution of the Purchase Order.

4.2 Unless expressly agreed otherwise between the parties in writing, the Price shall be inclusive of all storage, packaging, delivery, installation, commissioning (as applicable), and insurance costs, and will include VAT as appropriate and any other applicable sales taxes, duties or levies.

4.3 Unless otherwise agreed in writing by the Purchaser, the Supplier shall render a separate invoice in respect of each consignment of the Goods delivered under the Purchase Order. The Purchaser undertakes to pay correctly submitted invoices within 30 days of receipt from the day of physical or electronic arrival at the nominated address of the Purchaser. Invoices shall not be rendered by the Supplier until completion of delivery of all the Goods which are the subject of the Purchase Order or of the consignment (as appropriate).

4.4 A valid invoice is one that is:

-delivered in timing in accordance with the Contract;

-that is for the correct sum;

-in respect of Goods/Services supplied or delivered to the required quality (or are expected to be at the required quality);

-which quote the relevant Purchase Order;

-which has been delivered to the nominated address.

4.5 The Purchaser specifically reserves the right to withhold or deduct by way of set-off or otherwise from any monies due or to become due to the Supplier any monies due to the Purchaser from the Supplier.

4.6 The Purchaser shall not be liable for any orders or amendments to orders other than those issued or confirmed on the official Purchase Order and shall not be responsible for the payment of the Price for Goods supplied in excess of those required by the Purchase Order.

4.7 No payment of or on account of the Price shall constitute any admission by the Purchaser as to proper performance by the Supplier of its obligations under the Contract.

5. Delivery

5.1 The Goods shall be delivered to the place named on, and in accordance with, the Purchase Order. Delivery shall be completed when the Goods have been unloaded at the point of delivery specified in the Purchase Order and delivery has been accepted by the Purchaser or its authorised representatives. Any access to premises and any labour and equipment that may be provided by the Purchaser in connection with delivery shall be provided without acceptance by the Purchaser of any liability whatsoever or howsoever arising and the Supplier shall indemnify and keep indemnified the purchaser in respect of any actions, suits, claims, demands, losses, charges, costs and expenses (including legal expenses and disbursements) which the Purchaser may suffer or incur as a result of or in connection with any damage or injury (including death) occurring in the course of delivery or installation to the extent that any such damage or injury is attributable to any act, omission or negligence of the Supplier or any of its sub-contractors.

5.2 Where any access to the premises is necessary in connection with delivery or installation, the Supplier and its sub-contractors shall at all times comply with the reasonable requirements of the Purchaser's Head of Security or other authorised representative.

5.3 The time of delivery shall be of the essence for the purposes of the Contract and failure to deliver by the Delivery Date shall enable the Purchaser (at its option) to release itself from any obligation to accept and pay for the Goods and/or to cancel all or part of the Goods under the Purchase Order, in either case without prejudice to its other rights and remedies.

5.4 The Supplier's failure to effect delivery on the Delivery Date specified shall entitle the Purchaser to purchase substitute Goods and to hold the Supplier accountable for any and all loss and/or additional costs incurred as a result of such failure.

5.5 Failure of the Purchaser to exercise its options under Terms 5.3 and/or 5.4 in respect of any part of a Purchase Order shall not be deemed to constitute a waiver with respect to any subsequent part of that Purchase Order.

5.6 If Goods are delivered before the Delivery Date, the Purchaser shall be entitled to its sole discretion to refuse to take delivery or to charge for insurance and storage of the Goods until the Delivery Date.

5.7 All Goods shall be delivered carriage paid to the address specified in the Purchase Order (or as the Purchaser otherwise notifies the Supplier) and the property and risk in any Goods shall pass to the Purchaser only when those Goods are delivered in accordance with the relevant Contract and accepted by the Purchaser and until such time the Purchaser shall be under no obligation to pay therefore. Unless otherwise stated in the Purchase Order, the Supplier is responsible for obtaining and the cost of all the export and import licences for the Goods, and in the case of the Goods supplied from outside the UK, the Supplier shall ensure that accurate information is provided to the Purchaser as to the country of origin and the Supplier shall be liable for additional duties or taxes should the country of origin prove to be different to the one stated.

5.8 The signing of a delivery note for Goods shall not constitute acceptance by the Purchaser of the Goods in question.

5.9 The purchaser reserves the right without liability to the Supplier on any account or ground whatsoever from time to time to require the Supplier to suspend or

delay delivery of Goods and/or the performance of Services if for any cause beyond the Purchaser's control or the control of the Purchaser's principals the Purchaser or the Purchaser's principals are hindered or prevented from using the Goods and Services in question.

6. Ownership and Risk

Ownership and risk in the Goods shall without prejudice to any of the rights or remedies of the Purchaser (including the Purchaser's rights and remedies under Condition 8) shall pass to the Purchaser on delivery.

7. Damage in Transit

7.1 On despatch of any consignment of the Goods, the Supplier shall send to the Purchaser at the address for delivery of the Goods, an advice note specifying the means of transport, the place and date of despatch, the number of packages and their weight and volume.

7.2 The Supplier shall, free of charge and as quickly as possible, either repair or replace (as the Purchaser shall elect in its sole discretion) such of the Goods as may either be damaged in transit or having been placed in transit fail to be delivered to the Purchaser provided that:

7.2.1 in the case of damage to such Goods in transit the Purchaser shall within thirty (30) days of delivery give notice to the Supplier that the Goods have been damaged; and

7.2.2 in the case of non-delivery the Purchaser shall (provided that the Purchaser has been advised of the despatch of the Goods) within ten (10) days of the notified date of delivery give notice to the Supplier that the Goods have been delivered.

8. Inspection, Rejection and Guarantee

8.1 Nothing contained in these Conditions shall in any way detract from the Supplier's obligations under common law or statute or

any express warranty or condition contained in the Purchase Order.

8.2 The Supplier shall permit the Purchaser or its authorised representatives to make any inspections or tests it may reasonably require in relation to the Goods and Services the Supplier shall afford all reasonable facilities and assistance free of charge at the Purchaser's premises.

8.3 The Supplier shall make good any defects or deficiencies in the event of any failure (in the sole opinion of the Purchaser) to comply with the Terms of the Purchase Order or the Contract.

8.4 No failure to make a complaint at the time of such inspection or tests and no approval given during or after such tests or inspections shall constitute a waiver by the Purchaser of any rights or remedies in respect of the Goods and Services.

8.5 The Purchaser may by written notice to the Supplier reject any of the Goods which fail to meet the requirements in the Contract. Such notice shall be given within a reasonable time after delivery to the Purchaser of the relevant Goods. If the Purchaser rejects any of the Goods pursuant to this Condition 8.3, the Supplier shall at the Purchaser's sole option (without prejudice to its other rights and remedies) either:

8.5.1 repair the defective Goods as quickly as possible or (as the Purchaser shall elect in its sole discretion) replace the defective Goods with Goods which comply in all respects with the requirements under the Contract; or

8.5.2 refund to the Purchaser the Price in respect of the defective Goods.

8.6 The Supplier shall guarantee the Goods for a period of twelve (12) months from installation or eighteen (18) months from delivery, whichever shall be the shorter (subject to any alternative guarantee arrangements agreed in writing between the Purchaser and the Supplier). If the Purchaser shall, within such guarantee period within thirty (30) days thereafter, give notice in writing to the Supplier of any defect in any of the Goods that have arisen during the guarantee period under proper

and normal use, the Supplier shall (without prejudice to any of the Purchaser's other rights and remedies) as quickly as possible remedy such defects (whether by repair or replacement as the Purchaser shall elect in its sole discretion) without cost to the Purchaser.

8.7 Any Goods rejected or returned by the Purchaser pursuant to this Condition 8 shall be returned to the supplier at the Supplier's risk and expense.

9. Labelling and Packaging

9.1 The Goods shall be packed and marked in a proper manner and in accordance with the Purchaser's instructions and any statutory requirements and any requirements of the carriers. In particular the Goods shall be marked with the Purchase Order number, the net, gross and the weights, details of the contents shall be clearly marked on each container and all containers of hazardous Goods (and all relating documents) shall bear prominent and adequate warnings. The Supplier will supply a copy of any data hazard sheet in accordance with COSHH Regulations 1988 if COSHH regulated materials are supplied to the Purchaser. The Supplier shall indemnify and keep indemnified the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses (including legal expenses and disbursements) may suffer or incur as a result of or in connection with any breach of Term 9.1.

9.2 All packaging materials will be considered non-returnable and will be destroyed unless the Supplier's advice note states that such materials will be charged for unless returned. The Purchaser accepts no liability in respect of the non-arrival at the Supplier's premises of empty packages returned by the Purchaser.

10. Assignment and Sub-Contracting

10.1 The Supplier shall not without the prior written consent of the Purchaser assign or transfer the benefit or burden of the Contract.

10.2 No sub-contracting by the Supplier shall in any way relieve the Supplier of any of its responsibilities under the Contract.

10.3 Where the Purchaser enters a sub-contract with a Supplier or contractor for the purpose of performing the Contract, it shall cause a clause to be included in such sub-contract which requires payment to be made to the Supplier or Contractor within a specified period not exceeding thirty (30) days from receipt of a valid invoice as defined by the sub-contract requirement.

11. Indemnity and Insurance

11.1 Without prejudice to any rights or remedies of the Purchaser (including the Purchaser's rights and remedies under Condition 8 above) the Supplier shall indemnify and keep indemnified the Purchaser against any and all actions, suits, claims, demands, losses, charges, costs and expenses (including legal expenses and disbursements) which the Purchaser may suffer or incur as a result of or in connection with any damage to property or in respect of any injury (including death) to any person which may result directly or indirectly from any defect in the Goods or the negligence, acts or omissions of the Supplier or any of its employees, agents or sub-contractors.

11.2 The Supplier shall take out and maintain with a reputable insurance company a policy or policies of insurance that are normal for the contract and covering all the matters which are the subject of indemnities under these Conditions.

11.3 The Supplier shall at the request of the Purchaser produce the relevant policy or policies together with receipts or other evidence of payment of the latest premium.

11.4 The Supplier shall be liable under the provisions of the Contract (including Term 11.1) whether or not it complies with the insurance provisions in this Term 11.

11.5 Nothing in these Terms or the Contract shall exclude or limit the liability of either party for death or personal injury caused by its negligence or for fraudulent misrepresentation.

11.6 Anything which is supplied to the Supplier by the Purchaser or by arrangement with the Purchaser in connection with the carrying out of any

obligations under the Contract shall remain the property of the Purchaser;

11.7 be returned to the Purchaser or as the Purchaser shall direct at any time on written demand;

11.8 only be used for the specific purpose for which it was supplied to the Supplier;

11.9 be at the Supplier's risk from the time of its supply to the Supplier until its return to the Purchaser and shall at all times be protected by satisfactory safety precautions;

11.10 be kept insured by the Supplier at the Supplier's own cost for the Purchaser's benefit for the full replacement value concerned and the consequences of its loss or damage

12. Law and Jurisdiction

12.1 The Contract and any dispute arising under or in any way connected with the subject matter of the Contract (whether of a contractual or tortious nature or otherwise) shall be governed by and interpreted in accordance with English Law and the parties submit to the jurisdiction of the English courts only except that the Purchaser may seek injunctive relief outside such jurisdiction.

13. Third Party Rights

13.1 The Contract is not intended to create any rights of any kind whatsoever enforceable by any person who is not a party to the Contract, including any rights enforceable under the Contracts (Rights of Third Parties) Act 1999.

14. Termination

14.1 In the event of a material breach of the Contract by either party, the non-breaching party may terminate the Contract with immediate effect by notice in writing.

14.2 The Purchaser may terminate the Contract with immediate effect by notice in writing to the Supplier if at any time:-

14.2.1 the Supplier passes a resolution that it be wound-up or that an application be made for an administration order or the Supplier applies to enter into a voluntary arrangement with its creditors;

14.2.2 a receiver, liquidator, administrator, supervisor or administrative receiver be appointed in respect of the Supplier's property, assets or any part thereof;

14.2.3 the court orders that the Supplier be wound-up or a receiver of all or any part of the Supplier's assets be appointed;

14.2.4 the Supplier is unable to pay its debts in accordance with Section 123 of the Insolvency Act 1986;

14.2.5 the Supplier (being an individual or partnership) is declared or adjudicated bankrupt or enters into any arrangement or composition with its creditors.

14.3 Nothing in this Term 14 shall affect the coming into, or continuance in force of any provision of the Contract which is expressly or by implication intended to come into force or continue in force upon termination of the Contract.

14.4 The Purchaser has a clear policy on preventing bribery and corruption of any type, in line with the Bribery Act 2010, and will not tolerate any such act undertaken by or to any Purchaser representative. The Purchaser reserves the right to terminate a Contract or order with the Supplier if any illegal activity is found to have happened.

14.5 Neither the Purchaser nor the Supplier shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing or failure to perform, any of its obligations in relation to the supplies, if the delay or failure results from an event beyond the parties reasonable control which shall include, without limitation, act of God, explosion, fire, flood, accident, legal restriction, regulations, strikes, lockouts, pandemic, power cut or third party intervention.

15. Intellectual Property

15.1 Except to the extent that the Goods are supplied in accordance with designs provided by the Purchaser, it shall be a condition of the Purchase Order that none of the Goods will infringe any patent, trade mark, design right (whether registered or not), copyright or any other right in the nature of intellectual property of any third party and the Supplier shall indemnify and keep indemnified the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses (including legal expenses and disbursements) which the Purchaser may suffer or incur as a result of or in connection with any breach of this Term 15.

15.2 All materials, equipment, software, inventions, specifications, instructions, plans or any form of intellectual property right in any of the foregoing ("Intellectual Property"):

15.2.1 furnished to or made available to the Supplier by the Purchaser pursuant to the Purchase Order are hereby assigned to and shall remain vested solely in the Purchaser; and

15.2.2 the Supplier shall not (except to the extent necessary for the implementation of the Purchase Order) without prior written consent of the Purchaser, use or disclose any such Intellectual Property or any information (whether or not relevant to the Contract) which the Supplier may obtain pursuant to the Contract and in particular (but without prejudice to the generality of the foregoing) the Supplier shall not refer to the Purchaser or the Contract in any marketing and/or advertisement without the Purchaser's prior written agreement.

15.3 All copyrights, patents, design rights and other intellectual property rights in any documents, designs and specifications or other works carried out for the Purchaser shall be the property of the Purchaser unless otherwise agreed in writing.

16. Health and Safety

22. Cumulative Rights

16.1 The Supplier represents and warrants to the Purchaser that the Supplier has satisfied itself that:

16.1.1 all necessary tests and examinations have been made or will be made prior to delivery of the Goods to ensure that the Goods are designed, manufactured, supplied and installed so as to be safe and without risk to the health or safety of persons using the same; and

16.1.2 that it has made available to the Purchaser adequate information about the use for which the Goods have been designed and have been tested and about any conditions necessary to ensure that when put to use the Goods will be safe and without risk to health.

16.2 In any event, the Supplier will comply with the duties imposed on it by the Health & Safety at Work etc Act 1974 or any amendment thereto and of all other statutory provisions, rules and regulations so far as they are applicable. The Supplier shall indemnify and keep indemnified the Purchaser against any and all actions, suits, claims, demands, losses, charges, costs and expenses (including legal expenses and disbursements) which the Purchaser may suffer or incur as a result of or in connection with any breach of this Term 16.

17. Confidentiality

17.1 The Supplier shall and shall procure that its staff shall keep secret and do not disclose any information of a confidential nature obtained by reason of the Contract except information which is in the public domain otherwise than as required to be by reason of a breach of this Term 17 or disclosed by law.

17.2 The provisions of this Term 17 shall apply during the continuance of the Contract and after its termination howsoever arising without limitation in time.

18. Notices

22.1 All rights shall be cumulative and the exercise by the Purchaser of any right under these Terms or any Contract shall not restrict the Purchaser's right to seek

18.1 Any notices to be given under the Contract shall be sent by post to the Purchaser in writing to the Finance Office, South Staffordshire College, Rodbaston Campus, Penkridge, Staffs, ST19 5PH.

19. Severability

19.1 If any provision under this Contract is or becomes unenforceable, such provision shall not take effect and shall be deemed to be served from the remainder of the Contract to the extent that the remainder of the Contract and the unaffected part of the provision shall continue to be fully enforceable.

20. Waiver

20.1 No delay or omission by the Purchaser in exercising any of its rights under the contract shall constitute a waiver of that right and any partial exercise of any such right shall not prevent any future exercise of the right.

21. Warranty

21.1 Notwithstanding anything contained in these Terms or in any other document shall be entitled to all implied Terms and all right and benefits conferred by statute or otherwise in connection with each Contract and the relevant Goods and Services. The Supplier warrants the Goods and Services shall be of the nature, quantity, substance, make-up and quality described in the relevant Contract and that the Goods and Services will comply in all respects with the provisions of all existing United Kingdom legislation at the time of performance relating to or controlling the nature, quantity, substance and quality of the Goods and/or Services and their sale, use, marketing or labelling.

damages (including without limitation damages for any consequential loss) or restrict or prejudice any right or remedy otherwise available to the Purchaser.