

## NEWHAM COLLEGE OF FURTHER EDUCATION

### Standard Terms and Conditions for The Purchase of Goods and/or Services

#### 1. Interpretation

1.1 In these Conditions the following words shall have the following meanings:

**“Booking Reference”** means a reference number issued by NCFE’s “Goods In” department to the Supplier upon the registration of delivery of the Goods;

**“Conditions”** means the Standard Terms and Conditions for the Purchase of Goods and Services, including the Special Terms;

**“Contract”** means the Order and the Supplier’s acceptance of the Order;

**“Delivery Address”** means the place specified on the Order to which the Goods will be delivered and/or where the Services will be performed;

**“Goods”** means any goods agreed in the Contract to be purchased by NCFE from the Supplier (including any part or parts of them), whether noted on the Purchase Order to which these Conditions are attached or otherwise;

**“NCFE”** means Newham College of Further Education, East Ham Campus, High Street South, London E6 4ER;

**“Order”** means NCFE’s official written instruction to supply Goods and/or Services, incorporating these Conditions, which may or may not take the form of the Purchase Order to which these Conditions are attached;

**“Order Supervisor”** means the individual duly authorised by Newham to conduct the purchase of the Goods and Services and named on the Purchase Order;

**“Purchase Order”** means the order form attached to these Conditions and marked accordingly, which may be supplemented by other written instructions from NCFE concerning the supply of Goods or Services;

**“Supplier”** means the person, firm or company who accepts NCFE’s Order;

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**“Services”** means any Services agreed in the Contract to be purchased by NCFE from the Supplier or to be provided by the Supplier to NCFE or to such third party as NCFE may direct in the Special Terms, whether noted on the Purchase Order to which these Conditions are attached or otherwise;

**“Special Terms”** means the terms and conditions laid out in the Order or any other written instruction from NCFE concerning the supply of the Goods and Services.

- 1.2 In these Conditions references to any statute or statutory provision, shall unless the context otherwise requires, be construed as a reference to that statute or provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.
- 1.3 In these Conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.
- 1.4 In these Conditions the headings will not affect the construction of these Conditions.
- 1.5 Reference to statutory obligations and requirements shall include obligations arising under Articles of the Treaties establishing the European Community and Union and directives of the European Union as well as UK Acts of Parliament and subordinate legislation.

## **2. Application of Terms**

- 2.1 These Conditions, the Purchase Order, the Special Terms and any formal letter from NCFE accompanying them or any signed agreements of which they form part are the only conditions upon which NCFE is prepared to deal with the Supplier and they shall govern the Contract to the entire exclusion of all other terms or conditions save where expressly agreed or stated otherwise in writing and in advance by an authorised signatory of NCFE. These Conditions will not exclude or limit any party’s liability for any fraudulent act or for death or personal injury caused by its negligence or breach of this contract.
- 2.2 Each order for Goods and/or Services by NCFE from the Supplier shall be deemed to be an offer by NCFE to purchase Goods and/or Services subject to these Conditions and no Order shall be accepted until the Supplier accepts the offer either expressly by giving notice of acceptance or by implication through the fulfilment of the Order in whole or in part.
- 2.3 For the avoidance of doubt, terms or conditions endorsed upon, delivered with or contained in the Supplier’s quotation, acknowledgment or acceptance of order, specification or similar document are rejected by NCFE and will not form part of the Contract and the Supplier waives any right which it otherwise might have to rely on such terms and conditions.
- 2.4 These Conditions apply to all NCFE’s purchases and any variation to these Conditions shall have no effect unless expressly agreed in writing and signed by the Order Supervisor or another properly authorised signatory of NCFE.

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### **3. Quality Defects And Specifications**

- 3.1 The Goods shall be of the best quality, safe and fit for their purpose and the Goods and the Services shall be without fault and conform in all respects (including quantity, and description) with the Order and specification supplied or advised by NCFE to the Supplier.
- 3.2 The Goods shall be fully compliant with all applicable statutory requirements.
- 3.3 The Supplier warrants to NCFE that the Services will be performed professionally and safely by fully qualified and trained personnel with due care and diligence.
- 3.4 NCFE's rights under these Conditions are for the avoidance of doubt in addition to any statutory or common law rights implied in its favour, whether under the Sale of Goods Act 1979, the Supply of Goods and Services Act 1982, or otherwise.
- 3.5 The Supplier warrants that all information, representations or statements provided by it to NCFE in connection with the Goods and/or the Services are accurate. The Supplier acknowledges that NCFE was induced to contract with it in reliance upon such information, representations and statements.
- 3.6 The Supplier warrants that the performance of the Services and the supply of the Goods to NCFE and the use and/or sale of the Goods by NCFE in the course of its business do not and will not infringe any trade mark, copyright, patent, moral or design right or other intellectual property or third party right whatsoever.
- 3.7 The Supplier warrants that resale of the Goods by NCFE to its students, staff or customers and the use of the Goods thereby for their intended purpose will not infringe any trade mark, copyright, patent, moral or design right or other intellectual property or third party right whatsoever.
- 3.8 The Supplier warrants that NCFE will be free to use and/or sell the Goods without payment of any royalty, licence fee or other payment to any third party of whatever nature (except UK VAT arising on sale).
- 3.9 The Supplier warrants that it will on the date of delivery of the Goods hold full, clear and unencumbered title in and to the Goods and will on the date of delivery of the Goods have full right and power to transfer the Goods to NCFE whereupon NCFE will acquire valid and unencumbered title thereto.
- 3.10 At any time prior to delivery of the Goods and/or the Services to NCFE, NCFE shall have the right to inspect and test the Goods or assess the Services.
- 3.11 If the results of such inspection or testing cause NCFE to be of the opinion that the Goods and/or the Services do not conform or are unlikely to conform with the Order or to any specifications supplied or advised by NCFE to the Supplier, NCFE shall inform the Supplier and the Supplier shall immediately take such action as is necessary to ensure conformity and in addition NCFE shall have the right to require and witness further testing and inspection.
- 3.12 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible

for the Goods and/or the Services, and any such inspection or testing shall not diminish or otherwise affect the Supplier's obligations under the Contract.

- 3.13 If any of the Goods or the Services fail to comply with any of the provisions set out in this condition 3, NCFE shall be entitled (without limitation) to avail itself of any one or more remedies listed in condition 13.
- 3.14 The Goods shall be marked and labelled in accordance with NCFE's instructions and any applicable regulations or requirements of any carrier and properly packed and secured so as ordinarily to reach their destination in an undamaged condition.
- 3.15 Before despatching the Goods the Supplier shall carefully inspect and test the same for compliance with the required specification.
- 3.16 The Supplier shall supply to NCFE upon request copies of the Supplier's test sheets certified by the Supplier to be true copies.

#### **4. Indemnity**

- 4.1 The Supplier shall keep NCFE indemnified in full against all direct, indirect or consequential liability, loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by NCFE as a result of or in connection with:-
  - 4.1.1 defective workmanship, quality or materials;
  - 4.1.2 any act or omission of the Supplier, its employees, permitted agents or sub-contractors in supplying, delivering and/or installing the Goods or in connection with the performance of the Services;
  - 4.1.3 any infringement or alleged infringement of any intellectual property rights by the use, manufacture or supply of the Goods or performance of the Services;
  - 4.1.4 any claim made against NCFE in respect of any liability, loss, damage, injury, cost or expense sustained by NCFE's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods or the Services;
  - 4.1.5 any breach of these terms and conditions by the Supplier.

#### **5. Insurance**

- 5.1 Without prejudice to its liability to indemnify NCFE, the Supplier shall maintain such insurances as are necessary to cover the liability of the Supplier or, as the case may be, its employees, permitted agents or sub-contractors in respect of personal injuries or deaths arising out of, or in the course of, or caused by the supply of the Goods (whether during delivery or at any time thereafter) or the performance of the Services and shall upon the request of NCFE produce forthwith evidence of such insurances and of payment of premiums in respect thereof.
- 5.2 Without prejudice to its liability to indemnify NCFE, the Supplier shall maintain such

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insurances as are necessary to cover the liability of the Supplier or, as the case may be, of its employees, permitted agents or sub-contractors in respect of any damage to property (to an amount of at least £5 million for any one occurrence) arising out of, or in the course of, or caused by the supply of Goods or the performance of the Services and shall, upon the request of NCFE, produce forthwith evidence of such insurances and of payment of premiums in respect thereof.

## **6. Delivery**

- 6.1 The Goods shall be delivered carriage paid to and the Services performed at the Delivery Address or to/at such other place of delivery as is agreed by NCFE in writing prior to delivery of the Goods or performance of the Services. The Supplier shall off-load the Goods as directed by NCFE.
- 6.2 The date for delivery shall be specified on the Order, or if no such date is specified then the Goods shall be delivered or the Services performed at such time as NCFE may specify after receipt of the Order by the Supplier.
- 6.3 The Supplier shall ensure that each delivery of Goods is accompanied by a delivery note (a copy of which may be retained by NCFE) which shows, without limitation, the Order number, the Order Supervisor, date of Order, number of packages and contents (if appropriate) and, in the case of part delivery, the outstanding balance remaining to be delivered. Whenever Services are performed, the Supplier shall provide to NCFE a service report prior to leaving the Delivery Address. The service report shall detail the services performed and the services remaining to be performed, together with confirmation of the date on which the remaining services will be performed. No interim payments will be made and no interim invoices will be accepted unless a service report to the satisfaction of the Order Supervisor has been produced.
- 6.4 Time for delivery shall be of the essence.
- 6.5 Unless otherwise stipulated by NCFE in the Order, deliveries shall only be accepted by NCFE in the hours of 8:00am to 5:00pm Monday to Friday inclusive but excluding public and statutory holidays).
- 6.6 If the Goods are not delivered or the Services are not performed on the due date (or dates) then, without prejudice to any other rights which it may have, NCFE reserves the right to: -
- 6.6.1 cancel the Contract in whole or in part;
  - 6.6.2 refuse to accept any subsequent delivery of the Goods or performance of the Services which the Supplier attempts to make;
  - 6.6.3 recover from the Supplier any expenditure reasonably incurred by NCFE in obtaining the Goods or the Services in substitution from another supplier; and
  - 6.6.4 claim damages for any additional cost, loss or expenses incurred by NCFE which are in any way attributable to the Supplier's failure to deliver the Goods or perform the Services on the due date or dates.

- 6.7 All deliveries of the Goods must be registered with NCFE's "Goods In" department, which will issue a Booking Reference upon registration. Any deliveries of the Goods arriving outside of the allocated due date and time for delivery or without a valid Booking Reference may be refused by NCFE at its sole discretion.
- 6.8 Where NCFE agrees in writing to accept delivery by instalments, each instalment shall be construed as being the subject of a single and severable contract in respect thereof. Notwithstanding the foregoing, failure by the Supplier to deliver any one instalment shall entitle NCFE at its option to treat the whole Contract (or, on the adoption of the above construction, the whole sequence of Contracts) as repudiated.
- 6.9 If Goods are delivered to NCFE in excess of the quantities ordered NCFE shall not be bound to pay for the excess and any excess will be and will remain at the Supplier's risk and will be returnable at the Supplier's expense.
- 6.10 The Goods shall upon delivery be stacked safely and securely by the Supplier at a location directed by the Goods In department.

## **7. Risk and Property**

- 7.1 The Goods shall remain at the risk of the Supplier until delivery to NCFE is complete (including off-loading, stacking and full installation where relevant) when full, unencumbered ownership of the Goods shall pass to NCFE.

## **8. Price**

- 8.1 The price of the Goods and the Services shall be stated in the Order and unless otherwise agreed in writing by NCFE shall be exclusive of value added tax but inclusive of all other charges including, but not limited to, costs of packaging, packing, carriage, insurance, delivery and off-loading.
- 8.2 No variation in the price nor extra charges will be accepted by NCFE unless expressly agreed in writing and signed by the Order Supervisor or another properly authorised signatory of NCFE.
- 8.3 NCFE shall be entitled to all allowances, discounts, overrides and rebates customarily granted by the Supplier whether for prompt payment, volume of purchase or otherwise.

## **9. Payment and Invoices**

- 9.1 Subject to condition 9.4 below and to any other terms agreed in writing by NCFE, NCFE shall pay the price of the Goods and/or the Services by the end of the month immediately following the month in which the Supplier's invoice was received by NCFE but time for payment shall not be of the essence of the Contract.
- 9.2 Without prejudice to any other right or remedy, NCFE reserves the right to set off any amount owing at any time from the Supplier to NCFE against any amount payable by NCFE to the Supplier under the Contract.

- 9.3 Any amount paid by NCFE to the Supplier in error shall be repaid within 14 days of NCFE's request.
- 9.4 The Supplier shall invoice NCFE (which invoice shall quote the number of the Order) upon, but separately from, despatch of the Goods to NCFE or performance of the Services. The Supplier will comply with all NCFE's reasonable administrative requirements relating to invoicing as notified to it from time to time.
- 9.5 Invoices shall (unless otherwise required by NCFE) be forwarded for the attention of the Finance Department at NCFE.

## **10. Confidentiality**

- 10.1 Save as otherwise required by law, the Supplier shall keep in strict confidence its terms of trade with NCFE, all technical or commercial know-how, specifications, inventions, process or initiatives which are of a confidential nature and have been disclosed to the Supplier by NCFE or its agents and any other confidential information concerning NCFE's business or its products and services that the Supplier may obtain and the Supplier shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Supplier's obligations to NCFE and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Supplier.

## **11. NCFE Property**

- 11.1 Copyright, design rights, trademarks, patents or any other forms of intellectual property rights in all drawings, designs, logos, specifications and data supplied by NCFE to the Supplier shall at all times be and remain the exclusive property of NCFE but shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until returned to NCFE and shall not be disposed of other than in accordance with NCFE's written instructions, nor shall such items be used otherwise than as authorised by NCFE in writing.

## **12. Termination**

- 12.1 NCFE shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Supplier written notice whereupon all work on the Contract shall be discontinued and NCFE shall pay to the Supplier fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss.
- 12.2 NCFE shall have the right at any time by giving notice in writing to the Supplier to terminate the Contract forthwith (without payment of compensation) if:
- 12.2.1 the Supplier commits a breach of any of the Conditions;
- 12.2.2 any distress, execution or other process is levied upon any of the assets of the

Supplier;

12.2.3 the Supplier shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or if the Supplier shall be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or if a trustee receiver administrative receiver administrator (whether out of court or otherwise pursuant to the provisions of Schedule B1 of the Insolvency Act 1986) or similar officer is appointed in respect of all or any part of the business or assets of the Supplier or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the Supplier or an application is made to court for the appointment of an administrator (otherwise than for the purpose of an amalgamation or reconstruction), or the Supplier ceases or threatens to cease to carry on its business; or

12.2.4 the financial position of the Supplier deteriorates to such an extent that in the opinion of NCFE the capability of the Supplier adequately to fulfill its obligations under the Contract has been placed in jeopardy.

12.3 The termination of the Contract, however arising, will be without prejudice to the rights and duties of NCFE accrued prior to termination. Any terms or conditions of the Contract that expressly or by implication have effect after termination will continue to be enforceable notwithstanding termination.

### **13. Remedies**

13.1 Without prejudice to any other right or remedy that NCFE may have, if any of the Goods or the Services are not supplied in accordance with, or the Supplier fails to comply with, any of the Conditions, NCFE shall, whether or not any part of the Goods or the Services have been accepted or the Supplier's invoice has been paid by NCFE, be entitled to avail itself of any one or more of the following remedies at its discretion:

13.1.1 to rescind the Order;

13.1.2 to reject the Goods (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Goods so returned shall be paid forthwith by the Supplier;

13.1.3 at NCFE's option to give the Supplier the opportunity at the Supplier's expense either to remedy any defect in the Goods or the Services or to supply replacement Goods and carry out any other necessary work (including further performance of the Services) to ensure that the terms of the Contract are fulfilled;

13.1.4 to refuse to accept any further deliveries of the Goods or performance of the Services but without any liability to the Supplier;

13.1.5 to carry out at the Supplier's expense any work necessary to make the Goods or

the Services comply with the Contract; and

13.1.6 to claim such damages as may have been sustained in consequence of the Supplier's breach or breaches of the Contract.

13.2 Each right or remedy of NCFE under the Contract is without prejudice to any other right or remedy of NCFE whether under the Contract or not.

#### **14. Assignment**

14.1 The Supplier shall not be entitled to assign the Contract or any part of it without the prior written consent of NCFE.

14.2 NCFE may assign the Contract or any part of it to any person, firm, company or other corporate body, unincorporated association or public sector body or organisation.

14.3 The Supplier may not sub-contract any of its rights or obligations under the contract without NCFE's prior written consent.

#### **15. Force Majeure**

15.1 NCFE reserves the right to defer the date of delivery or payment or to cancel the Contract or reduce the volume of the Goods or 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.

#### **16. Data Protection**

16.1 The parties will process all personal data (as defined by the Data Protection Act 1998 - "the Act") provided to each other pursuant to the Contract in accordance with the Act and any associated or subsequent legislation, codes of practice or regulations. Each party in receipt of such personal data will take reasonable precautions to keep such personal data secure and to prevent unauthorised disclosure. NCFE accepts no liability for any breach of the Data Protection Act 1998 by any agent employee or sub-contractor to whom it may lawfully pass personal data.

16.2 For the purposes of the Data Protection Act 1998, by signing the document to which these Conditions are attached, the Supplier gives its consent to the holding, processing and accessing of data provided to NCFE for purposes relating to the performance of the Contract.

#### **17. Equal Opportunities**

17.1 The Supplier will comply with legislation for the prevention of discrimination on the grounds

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of disability, race, ethnic origin, gender, sexual orientation, marital status, age, religion and belief and the promotion of race equality.

- 17.2 On request, the Supplier will provide information to NCFE on its compliance with legislation and its practices and procedures to prevent unlawful discrimination and to promote race equality and equal opportunities and will disclose to NCFE its policies in respect of the same.

## **18. General**

- 18.1 If any part of 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, voidness, 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.
- 18.2 Failure or delay by NCFE in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 18.3 Any waiver by NCFE of any breach of, or any default under, any provision of the Contract by the Supplier will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 18.4 In no circumstances shall NCFE be liable, in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever, for any loss of profit or business or for any special, indirect or consequential damage.
- 18.5 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.
- 18.6 A person who is not a party to the Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. This clause does not affect any right or remedy of any person which exists or is available other than under the Contracts (Rights of Third Parties) Act 1999.