

NEWHAM COLLEGE OF FURTHER EDUCATION

CONDITIONS OF PURCHASE FOR GOODS & SERVICES

1. DEFINITIONS

1.1 In these Conditions:

"Contract" means the contract between the Purchaser and the Supplier consisting of the Purchase Order, these Conditions, and any other documents (or parts thereof) specified in the Purchase Order;

"Delivery Date" means the date on which Goods are to be delivered to the Purchaser, As specified in the Purchase Order

"Goods" means the materials and articles to be provided by the supplier as set out in the Purchaser order and Contract.

"Intellectual Property" means all intellectual and industrial patents, know-how, registered trade marks, designs, utility models, applications for and rights to apply for any of the foregoing.

"Price" means the price of the Goods as specified on the Purchase Order;

"Purchaser" means Newham College of Further Education London

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

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

"Services" means the services to be provided by the supplier as set out in the specification and contract

2. VARIATION

2.1 These Conditions 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 Conditions shall be deemed to have been accepted by the supplier on acceptance of the Purchase Order (either verbally or in writing) or on delivery of the Goods, whichever is the earlier.

3. GOODS

3.1 The supplier shall ensure that the Goods shall:

3.1.1 correspond with their description, drawings, or specification specified on the Purchase Order including any variations;

3.1.2 be capable of all standards of performance specified in the contract by the purchaser.

3.1.3 be free from defects in design, material and workmanship and remain so for 12 months after delivery.

3.1.4 be of satisfactory quality and fit for the purpose for which such goods are ordinarily used and for any particular purpose made known to the Supplier by the Purchaser.

3.1.5 Newham College London shall have the right to inspect and test the Goods at any time before delivery.

4. PRICE AND PAYMENT

4.1 The supplier will sell the goods for the firm and fixed price stated in the contract and shall not increase the Price unless it is accepted by the purchaser and agreed in writing before the execution of the Purchase Order.

4.2 The Price shall include storage, packaging, all delivery and insurance costs (as applicable) but shall exclude VAT.

4.3 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.

- 4.4 A valid invoice is one that is for the correct sum, in respect of goods / services supplied or delivered to the required quality in accordance with the contract referencing the correct Purchase Order, which was 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.
- 4.8 The supplier's Invoice must be addressed to the Finance Department at Newham College of Further Education East Ham Campus High Street South London E6 6ER and must quote the full purchase order number and must specify the Currency of payment. The supplier must send Electronic Invoices to Newham College at the following email address: purchaseledger@newham.ac.uk
- 4.9 The Purchaser will not be held responsible for delays in payment caused by the supplier's failure to comply with the purchaser's invoicing Instructions

5. DELIVERY

- 5.1 The supplier shall ensure that:
 - a. the Goods are properly packed, secured and dispatched at their expense to arrive in good condition at the time or times and the place or places specified in the Contract.
 - b. each delivery of Goods is accompanied by a delivery note which shows the date of the Purchase Order, the order number (if any), the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and if the Goods are being delivered by instalments, the

outstanding balance of Goods remaining to be delivered.

- c. if the supplier or their carrier deliver any Goods at the wrong time or to the wrong place then we may deduct from the price any resulting costs of storage or transport.

5.2 The Supplier shall deliver the Goods:

- a. on the date specified in the Contract or if no such date within 28 days of the Purchase Order.
- b. to the purchaser's premises as or such other location as is specified in the Purchase Order, or as instructed by the purchaser prior to delivery.
- c. between the hours of 8:00hrs – 17:00hrs Monday to Friday, unless we instruct the Supplier otherwise.

5.3 The supplier shall not deliver the Goods in instalments without prior written consent from the purchaser, however where it is agreed by the purchaser that the Goods shall be delivered by instalments, the purchaser shall be entitled to pay for the Goods separately.

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

5.6 If the supplier delivers:

- a. less than 95% of the quantity of Goods ordered, the purchaser has the right to reject the goods
- b. more than 105% of the quantity of Goods ordered the purchaser may either reject all of the Goods or reject the excess quantity of Goods.

And for the avoidance of doubt, the Supplier shall Meet the costs and expenses of the return of any Rejected Goods.

6. TITLE AND RISK

- 6.1 Title and risk in the Goods shall pass to the purchaser on completion of delivery until then, the supplier shall bear all risk in respect of loss or damage to the Goods and shall ensure that appropriate insurance policy is in place.
- 6.2 If the purchaser makes any advance payment to the Supplier in respect of the Goods, the Supplier shall at the time such payment is made or as soon as possible mark the goods as Purchaser's property.

7. SUPPLIER'S WARRANTY

- 7.1 The supplier warrants that on acceptance of the Goods by the purchaser and for a period of 12 months following delivery that the Goods shall:
- a. Conform in all material respects with their description and any applicable specification.
 - b. Be free from defects in design, material and workmanship
 - c. Be of satisfactory quality (within the meaning of the sale of Goods Act) and
 - d. Be fit for any purpose that the supplier have held them out to be fit for or which we have made known to the supplier.
 - e. Be capable of all standards of performance specified in the Contract
 - f. Comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling packaging, storage and handling of the Goods.
- 7.2 If during the warranty period the Purchaser gives notice to the supplier that some or all of the Goods do not comply with the warranty set out above, the supplier shall at own expense repair or replace the defective Goods or promptly refund the price of the defective Goods to the purchaser in full.
- 7.3 The supplier shall also ensure that compatible spares and any relevant parts are made available to the purchaser to facilitate any necessary repairs to the Goods for a period of no less than 10 years from the date of delivery of the Goods.

8. INSURANCE

During the duration of the Contract and for a period of 24 months thereafter, the Supplier shall maintain in force with a reputable insurance company professional indemnity insurance, product liability insurance and public liability insurance to cover such heads of liability as may arise under or in connection with the Contract and shall, upon the purchaser's request produce both the insurance certificate and the receipt for the current year's premium in respect of each insurance.

9. CONFIDENTIALITY

- 9.1 The supplier shall treat all confidential information belonging to the purchaser as confidential and safeguard it accordingly and shall not disclose any such confidential information to any other person without the purchaser's prior written consent, except to such persons and to such extent as may be necessary for the performance of the contract or except where disclosure is otherwise expressly permitted by the provisions of this Contract.
- 9.2 The supplier shall take all necessary precautions to ensure that all Confidential Information obtained from the purchaser under or in connection with the Contract:
- Is given only to such staff and professional advisors or consultants engaged to advise in connection with the Contract as is strictly necessary for performance of the Contract.
 - is treated as confidential and not disclosed (without prior approval) or used by any staff or such professional advisors or consultants otherwise than for the purposes of the Contract.
- 9.3 The supplier shall not use any Confidential information they receive from the purchaser otherwise than for the purposes of the Contract.
- 9.4 The provisions of Confidentiality shall apply during the continuance of the Contract and after its termination howsoever arising without limitation in time.

10. FORCE MAJEURE

10.1 Neither Party shall be liable to the other or be deemed to be in breach of Contract by reason of any delay or failure in performing its obligations under the Contract to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that Party and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable, provided that each Party shall use all reasonable endeavours to cure any such events or circumstances and resume performance of the Contract.

11. DAMAGE IN TRANSIT

11.1 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.

11.2 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:

11.2.1 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

11.2.2 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 not been delivered.

12. INSPECTION, REJECTION AND GUARANTEE

12.1 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.

12.2 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 the Supplier shall afford all reasonable facilities and assistance free of charge at the Purchaser's premises. 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. 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.

12.3 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, the Supplier shall at the purchaser's sole option (without prejudice to its other rights and remedies) either:

12.3.1 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

12.3.2 refund to the purchaser the Price in respect of the defective Goods.

12.4 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 or 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.

12.5 Any Goods rejected or returned by the purchaser shall be returned to the Supplier at the Supplier's risk and expense.

13.. **PACKAGING**

13.1 The Goods shall be packed and marked in accordance with the purchaser's instructions, statutory requirements and requirements of the carriers. Hazardous goods (and all relating documents) shall bear prominent and adequate warnings.

13.2 Unless otherwise stated in the Contract all Packaging shall be non-returnable. If the Contract states that Packaging is returnable the Supplier must give the purchaser full and clear instructions before the time of delivery. The Packaging must be clearly marked to show to whom it belongs. The Supplier must pay the cost of carriage and handling for the return of Packaging. The Purchaser shall not be liable for packaging lost or damaged in transit.

14. **INTELLECTUAL PROPERTY**

14.1 In respect of Goods that are transferred to the purchaser under the Contract, the supplier warrants clear and unencumbered title to them and that at the date of delivery of the Goods, the supplier will have full and unrestricted rights to transfer them to the purchaser.

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

14.1.1 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

14.1.2 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).

14.1.3 The supplier shall ensure that all royalties, licence fees or similar expenses in respect of intellectual property rights in materials used in connection with the Contract have been paid and are included in the Charges.

15. **HEALTH AND SAFETY**

15.1 The supplier warrants to the purchaser that it has satisfied itself that:

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

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

15.2 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 Condition (Health and Safety).

16. **TERMINATION**

16.1 The Purchaser may terminate the Contract at any time before the supply of goods and services, with immediate effect by giving the supplier written notice immediately after which the Supplier shall

- discontinue all work on or in relation to the Contract.
- 16.1.1 the total amount of all payments made or due to the supplier under this Contract including any termination payment shall not exceed the Price and shall under no circumstances include the loss of anticipated profits or any direct loss or consequential loss.
- 16.1.2 If the supplier fails to submit a termination claim in writing within three months date of the purchaser's notice of termination then the Purchaser shall have no further liability under the Contract.
- 16.1.3 The purchaser may terminate the Contract with immediate effect by giving the supplier written notice if the supplier commits a breach of any term of the Contract and (if such breach is remediable) fail to remedy that breach within a period of 10 business Days after being notified by the purchaser.
- 16.1.4 The purchaser may terminate the Contract with immediate effect by giving the supplier written notice if the supplier becomes subject to the following:
- a. supplier suspends or threatens to suspend, payment of supplier's debts or are unable
 - b. the supplier commences negotiations with a view to rescheduling any of your debts or proposal to enter into compromise or arrangement to with supplier's creditors
 - c. a petition is filed, notice is given, a resolution passed.
 - d. you are the subject of a bankruptcy petition order.
 - e. a creditor or encumbrance of supplier attaches or takes possession of, or a distress, execution sequestration or other such process is levied
 - f. an application is made to court, or an order is made for the appointment of an administrator
 - g. a floating charge holder over supplier's assets has become entitled to appoint or has appointed an administrator receiver.
 - h. a person becomes entitled to appoint a receiver over supplier's assets
 - l any event occurs or proceeding is taken with
- Respect to the supplier in any jurisdiction to Which the supplier is subject that has an effect Equivalent or similar to any of the events Mentioned in this clause
- j. the supplier suspend or threaten to suspend or cease or threaten to cease to carry on, all or sustainability the whole of supplier's business
 - k. the supplier's financial position deteriorates to such an extent that in the opinion of the purchaser supplier capability to adequately fulfil supplier's obligations under the Contract has been placed in jeopardy or (being an individual) the supplier dies or by reason of illness or incapacity (weather mental or physical), are incapable of managing the supplier's own affairs or becomes a patient under any mental health legislation
17. **PURCHASER'S PREMISES**
- 17.1 If the Contract requires the supplier to enter the purchaser's premises, the supplier shall ensure that their employees, sub-contractors and their employees and any other person associated with the supplier will adhere in every respect to the obligations imposed on the supplier by current safety legislation, any relevant health and safety regulations and any applicable internal policies that we may notify to the supplier from time to time.
18. **ASSIGNMENT AND SUB-CONTRACTING**
- 18.1 The purchaser may at any time assign, transfer, change, subcontract or deal in any other manner with any or all of their rights or obligations under the Contract.
- 18.2 The supplier may not assign, transfer, change, subcontract or deal in any other manner with any or all of their rights or obligations under the Contract without the purchaser's prior written consent, which shall not be unreasonably refused.
- 18.3 For the avoidance of doubt, the supplier shall be responsible for all Goods supplied by their sub-contractors.
19. **ANTI-BRIBERY**
- 19.1 The supplier shall comply and ensure that any person or organisation associated with the supplier who is supplying services in connection with the Contract shall 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 and shall not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010.

20. **NOTICES**

All notices and communications to be sent by the supplier or purchaser in this Contract shall be made in writing and sent by first class mail and if sent to the supplier shall be sent to the supplier's registered or head office and if sent to the purchaser send to the Invoice address stated on the purchase order and shall be deemed to have reached the party to whom it is addressed on the next Business Day following the date of posting.

22. **SERVICES**

22.1 The supplier shall ensure that they:

- a. meet any performance dates for the Services specified in the Purchase Order or notified to the supplier by the purchaser.
- b. Co-operate with the purchaser in all matter relating to the Services and comply with all instructions issued by the purchaser.
- c. Perform the Services with the best care, skill and diligence in accordance with practice in the supplier's industry, profession or trade;
- d. Use personnel who are suitably skilled and experienced to perform tasks assigned to them and in sufficient number to ensure that the supplier fulfil their obligations under this Contract;
- e. Ensure that the services will conform with all descriptions and specifications set out and that any documents, products and materials developed by the supplier in relation to the Services shall be fit for any purpose expressly or impliedly made known to the supplier by the purchaser.
- f. Provide all equipment, tools vehicles and such other items as are required to provide the Services.
- g. Use the best quality goods, materials, standards and techniques and ensure that all goods and materials supplied and used in the Services or transferred to the purchaser are free from defects

in workmanship, installation and design;

- h. Obtain and at all times maintain all necessary licences and consents and comply with all applicable laws and regulations.
- i. Observe all health and safety rules and regulations and any other security requirements that apply at the purchaser's premises.
- j. Hold all materials, equipment and tools, drawings, specifications and data (purchaser's materials) supplied by the purchaser to the supplier in safe custody at the supplier's own risk and maintain purchaser's materials in good condition until such time as they are returned to the purchaser and do not dispose of or use purchaser's materials other than in accordance with the purchaser's written instructions or authorisation and
- k. Do no or omit to do anything which may cause the purchaser to lose any licence, authority, consent or permission upon which the purchaser depends for the purposes of conducting the purchaser's business and the supplier acknowledges that the purchaser may rely or act on the Services.

22.2 The supplier shall at all times ensure that the they have and maintain all the licences, permissions, authorisations, consents and permits that the supplier needs to carry out their obligations under the Contract.

23. **SEVERANCE**

23.1 If a Court or any other competent authority finds that any provision (or part of any provision) of the Contract is unenforceable, that provision or part provision shall to the extent required be deemed deleted and the validity and enforceability of the other provisions of the Contract shall not be affected.

24. **EQUAL OPPORTUNITIES**

24.1 The supplier warrants that their practices and procedures comply with legislation to prevent unlawful discrimination and that their employees are fully trained on matters relating to the prevention of unlawful discrimination.

24.2 Without prejudice to its remedies set out above, the purchaser 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 you have failed to remedy the breach within the stated period.

25. **FREEDOM OF INFORMATION**

25.1 The supplier acknowledges that the purchaser is subject to the requirements of the Code of practice on Government Information, Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR) and shall assist and cooperate with its Information disclosure obligations.

25.2 The supplier shall ensure that their sub-contractors shall:

- Transfer any request for information to the purchaser as soon as practicable after receipt and in any event within two Business Days or receiving a request for information.
- Provide the purchaser with a copy of all information in the supplier's possession or power in the form that we require within five Business Days (or such other period as we may be specified) of purchaser requesting that information and
- Provide all necessary assistance requested by the purchaser to enable the purchaser to respond to information within the time for compliance set out in FOIA for regulation of the Environmental Information Regulations.

26. **WAIVER**

26.1 A delay, omission or 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 the provision itself.

27. **LAW AND JURISDICTION**

27.1 The Contract shall be subject to English Law and the supplier and purchaser submit to the jurisdiction of the English Courts except the purchase has the right to enforce their intellectual property rights anywhere in the world.