

Terms & Conditions For the Provision of Goods / Services

1. DEFINITIONS

In these Conditions:-

- 1.1 "The Contract" shall mean the agreement concluded between the College and the Supplier, including all Specifications, patterns, samples, plans, drawings, reports, Purchase Orders and other documents which are incorporated or referred to therein;
- 1.2 "The Supplier" shall mean the Organisation, Company or Person who under the terms of the Contract undertakes to supply the Services to the College;
- 1.3 "The College" shall mean Middlesbrough College;
- 1.4 "The Services" shall mean the goods / service or goods / services to be provided as specified in the Contract and or Purchase Order and shall, where the context so admits, include any materials, articles and goods to be supplied thereunder;
- 1.5 "The Contract Price" shall mean the price exclusive of Value Added Tax payable to the Supplier by the College under the Contract for the full and proper performance by the Supplier of its obligations as determined under the provisions of the Contract;
- 1.6 "The Premises" shall mean the location where the services are to be performed, as specified in the Contract or Purchase Order;
- 1.7 "The College's Authorised Representative" shall mean the duly nominated and authorised representative of the College for all operational and technical purposes connected with the Contract.
- 1.8 The headings to any Conditions shall not affect their interpretation.

2. NATURE OF THE SERVICES

- 2.1 The Services shall be to the reasonable satisfaction of the College and shall conform in all respects with any particulars specified in the Contract, the Purchase Order or any variations thereto.
- 2.2 Unless expressly stated in this Agreement, the Supplier shall provide all staff, equipment, materials and other things whatsoever required for the provision of Services to the Contract Standard.
- 2.3 The Supplier shall provide the College with such progress reports of its work at such intervals and in such form as is detailed in the Specification or as otherwise agreed between the Supplier and the College's Authorised Representative.
- 2.4 The Supplier shall begin performing the Services on the date stated in the Contract or Purchase Order and shall complete them by the date specified or continue to perform them for the period stated in the Contract or Purchase Order. Time is of the essence in the Contract. The College may by written notice require the Supplier to execute the Services in such order as the College may decide. In the absence of such notice the Supplier shall submit such detailed programmes of work and progress reports as the College may from time to time require.

3. PRICE AND PAYMENT TERMS

- 3.1 The Contract Price shall be "net", that is, after deduction of all agreed discounts. The amount of any Value Added Tax or other duty and any early settlement discounts shall be shown separately in the Contract.
- 3.2 Unless otherwise agreed in writing with the College Purchasing Officer, the College shall pay for services received 30 days from the date of the suppliers invoice(s) or the date received by College, whichever is the later.
- 3.3 Wherever under this Contract any sum of money is recoverable from or payable by the Supplier, that sum may be deducted from any sum then due, or which at any later time may become due, to the Supplier under this Contract or under any other agreement or Contract with the College.

4. CONTRACTOR'S STATUS

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

- a) the Supplier shall not (and shall procure that its employees, servants and agents 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

- b) nothing in this 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 any negligence on the part of the College.

Nothing in the contract shall have the effect of making the contractor's staff employees of the College.

5. PERSONNEL

- 5.1 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 any 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 or permit issued to the person removed is surrendered.

- 5.2 If and when directed by the College, the Supplier shall provide a list of names and addresses of all persons who are or may be 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 details as the College may reasonably require.

- 5.3 The Supplier is required, in the performance of the Contract, to comply with:-

- (a) all relevant legislation relating to unlawful discrimination in employment; and
- (b) the relevant sections of the College's Equal Opportunities Policy (a copy of which is available on request).

6. SERVICE MONITORING

- 6.1 The work shall be in accordance with the Contract requirements to the satisfaction of the College or its Authorised Representative.

The College's Authorised Representative shall have the right to inspect and examine the work being performed on the College's behalf at any reasonable time; where any part of the work is being performed on premises other than the College's Premises, reasonable notice shall be given to the Supplier. The Supplier shall give all such facilities as the College or its Authorised Representative may reasonably require for such inspection and examination.

- 6.2 The Supplier shall keep and maintain until two years after the Contract has been completed records to the satisfaction of the College of all expenditures which are reimbursable by the College and of the hours worked and costs incurred in connection with any employees of the Supplier paid for by the College. The Supplier shall on request afford the College or its representatives such access to those records as may be required by the College in connection with the Contract.

7. AUDIT

An open audit system will operate at all times whereby selected representatives from the College may inspect the Suppliers records for accounting systems to verify any account received or anticipated. The College's representatives will be entitled to inspect the Suppliers related records and paperwork for checking and auditing purposes.

8. DEFAULT

- 8.1 If the Supplier shall fail to provide to the Contract Specification any part of the Services at any time when the same ought to have been provided under the terms of this Agreement then, without prejudice to any other right or remedy which the College may possess in respect of such failure, the College may:-

- 8.1.1 require the Supplier to remedy such default within such time as may be specified by the College's Authorised Representative by providing or providing again (as the case may be) without further charges to the College such part of the Services to the Contract Standard; and or
- 8.1.2 without determining this Agreement in whole or in part, itself provide or procure the provision of such part of the Services until such time as the Supplier shall have proved to the reasonable satisfaction of the College's Authorised Representative that such part of the Services will once more be provided by the Supplier to the Contract standard or, at the College's option until such later time as the College's Authorised Representative may specify as being reasonable notice in all the circumstances that the Supplier will once more so provide such part of the services; and
- 8.1.3 Without determining the whole of this Agreement, determine this Agreement in respect of such part of the Services only and thereafter itself provide or procure the provision of such part of the Services.

9. COPYRIGHT, ETC.

- 9.1 It shall be a Condition of this Contract that, except to the extent that the Services incorporate designs furnished by the College, the Services will not infringe any patent, trade mark, registered design, copyright or other right in the nature

of intellectual property of any third party and the Supplier shall indemnify the College against all actions, claims, demands, costs and expenses which the College may suffer or incur as a result of or in connection with any breach of this Condition.

- 9.2 All rights (including ownership and copyright) in any specifications, instructions, plans, drawings, patents, models, artwork, designs or other materials:
- 9.2.1 furnished to or made available to the Supplier by the College are hereby assigned to and shall vest in the College absolutely;
- 9.2.2 prepared by or for the Supplier for exclusive use, or intended use, in relation to the performance of the Contract are hereby assigned to and vest in the College absolutely.
- 9.2.3 where prepared by or for the Supplier for non-exclusive use, or intended use, in relation to the performance of the Contract are hereby irrevocable licensed to the College royalty free and worldwide on a non-exclusive basis.
- 9.3 All rights in the work including any copyright therein and any right to apply for patents or any other form of intellectual property rights, used in connection with the Contract shall vest in and remain the property of the College.
- 9.4 The Supplier, if requested, and at the expense of the College shall do all things necessary to enable the College to obtain patents or similar protection as the College may require.

10. PUBLICITY AND ADVERTISING

The Supplier hereby undertakes with the College that it will not at any time during the continuance of or after the termination of this Contract publicise the existence or claim, represent or otherwise indicate any present or past association with the College without the prior written consent of the College Purchasing representative.

11. INDEMNITY AND INSURANCE

- 11.1 Without prejudice to its liability for breach of any obligations under the Contract the Supplier shall be liable for and shall indemnify the College against any liability, loss, costs, expenses, claims or proceedings whatsoever arising under any statute or at common law in respect of:
- 11.1.1 any loss of or damage to property (whether real or personal);
- 11.1.2 any injury to any person, including injury resulting in death;
- 11.1.3 any financial or economic loss in consequence of or in any way arising out of any connection with the Services or the performance of them, or the delivery or unloading of any materials by the Supplier, its servants or agents.
- 11.2 The Supplier shall have in force and shall require any sub-contractor to have in force:
- a) Employers liability insurance in accordance with any legal requirements for the time being in force, and
- b) Public liability insurance for such sum and range of cover as the Supplier deems appropriate but covering at least all matters which are the subject of indemnities or compensation obligations under these Conditions in the sum of not less than £1 million for any one incident and unlimited in total, unless otherwise agreed by the College Purchasing representative in writing.

The Supplier or sub-contractor shall effect the above policy or policies with a reputable insurance company and shall at the request of the College produce the relevant policy or policies together with receipts or other evidence of payment of the latest premium due thereunder.

- 11.3 If the Supplier defaults in insuring, the College may itself effect insurance and charge the cost together with an administration charge of 5% to the Supplier.

12. INSOLVENCY

Without prejudice to any other rights or remedies of the College under this Contract the College shall have the right forthwith to terminate this Contract by written notice to the Supplier or its trustee in bankruptcy or receiver or (if a Company) liquidator or administrator if the Supplier shall have a receiver appointed over all or a substantial part of their assets or (if an individual) be declared bankrupt or (if a company) shall go into liquidation or have an administrator appointed to manage its affairs.

In any case, the Supplier is required to notify the College in writing immediately upon the occurrence of any of the above events.

13. ASSIGNMENT AND SUB-LETTING

- 13.1 Neither party shall assign the whole or any part of the Contract. The Supplier shall not sub-contract the production, supply, or other provision of this Contract without the prior written consent of the College Purchasing representative.

- 13.2 In any case where the Contract or part is sub-contracted in accordance with Clause 13.1, such sub-contract shall in no way limit or affect the obligations of the Supplier who shall remain responsible for all Services performed under, and the full performance of its obligations under, the terms of the Contract.
- 13.3 The names and addresses of any proposed sub-contractors the tenderer proposes to employ must be detailed in the tender submission.
- 14. PREVENTION OF CORRUPTION**
- 14.1 The College shall be entitled to terminate the Contract, if the Supplier shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to obtaining or execution of the Contract, or for showing or forbearing to show favour or disfavour to any person in relation to the Contract, or if the like acts shall have been done by any person employed by the Supplier or acting on its behalf (whether with or without the knowledge of the Supplier), or if in relation to the Contract the Contractor or any person employed by it or acting on its behalf shall have committed an offence under the Prevention of Corruption Acts 1889 to 1916.
- 14.2 In the event of the Contract being terminated under Clause 14.1., the Supplier shall allow or pay to the College on demand the amount of any direct loss and/or damaged caused to the College by the termination.
- 14.3. The Supplier is required to notify the College of any conflict of interests immediately any such conflict arises.
- 15. HEALTH & SAFETY**
- 15.1 The Supplier shall ensure that its employees, servants or agents act in full accordance with the provisions of the Health and Safety at Work etc. Act 1974 and shall notify the College of any hazard to health and safety relating to the Services.
- 15.2 The Supplier undertakes that its employees, servants or agents shall comply with any instruction issued by or on behalf of the College's Health, Safety and Environment Officer which relates to the College's Health and Safety Policy (a copy of which is available on request).
- 15.3 The Supplier shall indemnify the College against all actions, suits, claims, demands, losses, charges, costs and expenses which the College may suffer or incur as a result of or in connection with any breach of clauses 15.1 and 15.2.
- 16. DATA PROTECTION**
- 16.1 The Supplier shall comply with the requirements and obligations of the Data Protection Act 1984.
- 16.2 The Supplier, its employees and agents shall at all times keep confidential and secret and shall not disclose to any person other than a person authorised by the College all information and other matters acquired by the Supplier in connection with the Contract.
- 16.3 Where the Service Provider, pursuant to its obligations under this contract, processes confidential data on behalf of The College, it shall implement appropriate technological measures to protect against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the confidential data and having regard to the nature of the confidential data which is to be protected.
- 17. FREEDOM OF INFORMATION**
- 17.1 The College is a Public Authority within the meaning of the Freedom of Information Act 2000.
- 17.2 Consequently, even if a confidentiality agreement has been agreed, information in relation to this tender and all correspondence received may be made available on demand in accordance with the Freedom of Information Act 2000.
- 17.3 Applicants should state if any of the information supplied by them in response to this contract notice is confidential or commercially sensitive. This will not guarantee that the information will not be disclosed in response to Freedom of Information requests but it will be examined in the light of exemptions provided in the Freedom of Information Act before a decision to disclose or not disclose is made.
- 17.4 For further information, refer to the Information Commissioner's Guidance – "Awareness Guidance 5 Annex: <http://www.informationcommissioner.gov.uk/eventual.aspx?id=1024>
- 18. EQUALITY**
- 18.1 Suppliers to the College will comply with legislation for the prevention of discrimination on the grounds of disability, race, gender, sexual orientation, age, religion and belief and the promotion of race equality. The supplier is required, where appropriate, to provide information to The College on its compliance with such legislation and the practices and procedures it has in place to prevent unlawful discrimination and to promote race equality and equal opportunities.

Suppliers to the College shall not discriminate directly or indirectly against any person on the grounds of their colour, race, nationality or ethnic or national origins contrary to Part II of the Race Relations Act 1976

- 18.2 (Discrimination in the Field of Employment) and/or contrary to Part III of the Act (Discrimination in Other Fields) either in employment or in service and/or contravene Part IV of the Act (Other Unlawful Acts), Race Relations (Amendment) Act 2000.
- 18.3 Suppliers to the College shall comply with the provisions of the Race Relations Act 1976 in all dealings with sub-contractors.
- 18.4 Suppliers to the College will comply with the Employment Equality (Age) Regulations which came into force on 1st October 2006.

19. PROPERTY

- 19.1 All property issued by the College to the Supplier in connection with the Contract, shall remain the property of the College and shall be used in the execution of the Contract and for no other purpose whatsoever without the prior written approval of the College's Authorised Representative.
- 19.2 The Supplier shall be responsible for the security of all goods and equipment belonging to the College and used by the Supplier in or about the provision of Services or otherwise belonging to the Supplier on the College's Premises.
- 19.3 The Supplier shall be responsible for establishing its own sources of supply for materials and shall be responsible for ensuring reasonable and proper conduct by their suppliers and employees whilst on the College's Premises.

20. TERMINATION

- 20.1 If the Supplier is in breach of any of the terms hereof, the College may without any liability whatsoever to the Supplier terminate the Contract in whole or in part by notice in writing to the Supplier. In such event, the College shall pay to the Supplier the pro-rata invoice value of any Services received by the College under the Contract at the date of receipt of the notice cancelling the Contract.
- 20.2 Without prejudice to its other rights and remedies, the College may at its sole discretion be entitled to terminate this Contract by giving the Supplier not less than 30 days written notice to that effect.
- 20.3 In the event of such notice being given the College shall indemnify the Supplier against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Supplier by reason of the determination of the Contract and shall further negotiate a payment representing reasonable loss of profit to the Supplier, if any.

The College shall not be liable to pay under this Condition any sum which, when taken together with any sums paid or due or becoming due to the Supplier under the Contract, shall exceed such total sum as would have been payable under the Contract if the work had been completed in accordance with the requirements of the Contract.

21. ARBITRATION

All disputes, differences or questions between the parties to the Contract with respect to any matter or thing arising out of or relating to the Contract, other than a matter or thing as to which the decision of the College is under the Contract to be final and conclusive, and except to the extent to which special provision for arbitration is made elsewhere in the Contract, shall be referred to the arbitration of two persons one to be appointed by the College and one by the Supplier or their umpire, in accordance with the provisions of the Arbitration Act 1950 or any statutory modification or re-enactment thereof.

22. VARIATION

The Services shall be performed in accordance with these Conditions and other Contract documentation. Any conditions which the Supplier may seek to impose and which in any way add to, vary or contradict these Conditions shall be excluded and not form part of the Contract, unless each of such conditions has been agreed in writing by the College Purchasing representative.

23. FORCE MAJEURE

Neither party shall be liable to the other for any failure to perform its obligations under the Contract where such performance is rendered impossible by circumstances beyond its control, but nothing in this Condition shall limit the obligations of the Supplier to use its best endeavours to fulfil its obligations under the Contract.

24. LAW

These conditions shall be governed by, and construed in accordance with, UK Law and the contractor hereby irrevocably submits to the jurisdiction of the relevant Courts. The submission of such jurisdiction shall not and shall not be construed so as to) limit the right of the College to take proceedings against the Service Provider in any other court of competent jurisdiction.