



Standard Conditions of Purchase – Appendix D

1. General

- 1.1 These terms and conditions apply in preference to and supersede any terms and conditions referred to, offered or relied on by the supplier whether in negotiation or at any stage in the dealings between the purchaser and supplier with reference to the goods or services to which this contract relates. Without prejudice to the generality of the forgoing, the purchaser will not be bound by any standard or printed terms furnished by the supplier in any of its documents, unless the supplier specifically states, in writing, separately from such terms that it intends such terms to apply and the purchaser acknowledges such notification in writing.
- 1.2 For the purpose of these Conditions;
- "Purchaser"** shall mean Heart of Worcestershire College
- "Supplier"** shall mean the person, firm or company to whom the purchase order or contract to supply is issued.
- "Purchase Order"** shall mean the official purchase order (electronic or paper) or contract placed by the Purchaser with the supplier for the supply & or installation of goods or services.
- "Goods"** includes all goods or services to be supplied by the supplier under the purchase order or contract and includes any labels, instructions or handbooks relating to the goods.
- "Intellectual Property Rights"** shall mean patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.
- "Contract"** shall mean the contract between Heart of Worcestershire College and the supplier consisting of the purchase order, these conditions of purchase, any other documents (or parts thereof) referred to in the purchase order and the suppliers' acceptance of said purchase order and only the terms and conditions as detailed herein.
- "Date for delivery"** shall mean the date for delivery & installation as agreed in this contract and stipulated on the purchase order.
- "Contract price"** shall mean the sum stated in the purchase order to be paid by Heart of Worcestershire College to the supplier in accordance with the agreed payment terms.
- 1.3 Unless the context requires otherwise:
- any period of time from a specified date or day shall be calculated exclusive of that date or day;
 - the words "include" or "including" or "in particular" are to be construed as meaning without limitation;
 - words in the singular include the plural and vice versa and words for any gender shall include all genders;
 - reference to persons shall be deemed to include references to natural persons, to firms, to partnerships, to companies, to corporations, to associations, to organisations, to trusts (in each case whether or not having separate legal personality) but references to individuals shall be deemed to be references to natural persons only.
- 1.3 The headings are inserted for convenience only and shall not affect the construction of the Contract.

2. Effect of Purchase Order

- 2.1 The Purchaser shall only be bound by an order if it is issued on the Purchaser's standard Purchase Order form and signed by a duly authorised representative of the Purchaser.
- 2.2 The Purchase Order constitutes an offer by the Purchaser to purchase the Goods subject to these conditions. Accordingly, any acceptance of the Purchase Order by the Supplier shall establish a contract for the sale and purchase or supply of Goods on these conditions. Any counter-offer made by the Supplier to supply the Goods on other conditions shall only be validly accepted if such acceptance is in writing and signed by a duly authorised representative of the Purchaser.
- 2.3 The execution and return of the acknowledgement copy of the Purchase Order form by the Supplier, or the Supplier's execution, commencement of work or commencement of delivery pursuant to the Purchase Order constitutes acceptance of the Purchase Order on these conditions by the Supplier.

3. Supplier's Warranty

- 3.1 The Supplier warrants to the Purchaser that:
- it has full capacity and authority and has obtained all necessary approvals, consents, licenses and permissions for the performance of its obligations under the Contract;
 - The Goods will conform with the quality, description and other particulars of the Goods stated in the Purchase Order, contract or tender documentation;
 - The Goods will conform to all samples, drawings, descriptions and specifications provided to the Purchaser by the Customer;
 - The goods will be of satisfactory quality and free from defects in material, workmanship and installation for a period of 12 months from the date of delivery;
 - If the purpose for which the goods are required is made known to the supplier expressly or by implication the goods shall be fit for that purpose; and
 - the goods will comply with all performance and other specifications stated in the Purchase Order, and all applicable legislation for the time being in force.

- 3.2 The Purchaser's rights under the Contract are in addition to the statutory terms implied in favour of the Purchaser by the Sale of Goods Act 1979, Sale & Supply of Goods Act 1982 and any other statute.
- 3.3 The provisions in this condition 4 shall survive any delivery, acceptance, payment or performance pursuant to the Contract and shall extend to any replacement, repaired or substitute or remedial goods provided by the Supplier.

4. Inspection and Testing of the Goods

- 4.1 The supplier shall carefully test and inspect the Goods before delivery to ensure that they comply with the requirements of the Purchase Order.
- 4.2 The Purchaser reserves the right to call for certificates or test certificates for the Goods at any stage of manufacture or assembly. Such certificates shall clearly state the Purchaser's order numbers and any item or goods numbers. If, as a result of any inspection or test, the Purchaser finds that the Goods or any items comprised within it do not comply with the Purchase Order, or are unlikely to comply with it on completion of manufacture, processing or performance, the Purchaser may inform the Supplier, and the Supplier shall take such steps as are necessary to ensure compliance.

5. Delivery

- 5.1 The Supplier shall deliver the Goods on the date specified in the Purchase Order or, if no such date is specified, within 28 days of the date of the Purchase Order. Time is of the essence as to the delivery of the Goods under the contract and if the Supplier does not comply with its obligations, the Purchaser may terminate the contract and procure the goods elsewhere at the original Supplier's expense.
- 5.2 The Goods shall be properly packed and secured in such a manner as to enable them to reach the destination in good condition.
- 5.3 The Goods shall be delivered by the Supplier carriage paid to the place of delivery specified in the Purchase Order, or as otherwise specified by the Purchaser. The Goods shall be received at the place of delivery, subject to the Purchaser's inspection and approval. Any Goods which the Purchaser rejects as not conforming with the Purchase Order shall be returned at the Supplier's risk and expense.
- 5.4 The Purchaser shall not accept any responsibility for Goods delivered to a location other than that states on the Purchase Order or as otherwise specified by the Purchaser.
- 5.5 The Purchaser shall not be deemed to have accepted the Goods until it has had 14 days to inspect them after delivery. The Purchaser may also reject the Goods as though they had not been accepted for 3 months after any latent defect in the Goods has become apparent.

6. Labeling & Packing

The Supplier shall ensure that each delivery is accompanied by a delivery note which shows the Purchase Order number, date of order, number of packages, description of contents and, in the case of part delivery – details of any outstanding balances to follow. All packages should be clearly marked showing delivery address and supply location, and where applicable hazardous material warning signs should be prominent. No packaging material will be returned to the Supplier. If goods are delivered to the Purchaser in excess of the original quantities ordered, the Purchaser shall not be bound to pay for the excess – any excess will remain at the Supplier's risk and will be returnable at the Supplier's own expense.

7. Risk

The Goods shall be at the risk of the Supplier until delivery to the Purchaser at the place of delivery specified in the Purchase Order or as otherwise directed by the Purchaser.

8. Title

Title to the Goods shall pass to the Purchaser when the goods have been delivered to the purchaser, subject to the goods not being rejected.

9. Price

All prices shall be as stated in the Purchase Order, except that if the Supplier quotes or offers to a third party lower prices or better terms for equipment of similar quality, quantity or description to the Goods (or the items comprised in it), the Purchaser shall be entitled to purchase the Goods (or the relevant items comprised in it) on the same terms and shall be entitled to a refund of the amount of the difference in respect of all such Goods supplied after whichever is the earlier of the first quotation or the first supply at the lower price or better terms (as the case may be). All prices are fixed and inclusive of delivery, packaging, packing, shipping, carriage, insurance and other charges and dues, and are not subject to adjustment save as specifically provided in these conditions or the Purchase Order.

10. Payment

Unless otherwise stated in the Purchase Order, the Purchaser shall pay for the Goods within 30 days following receipt of invoice once goods have been accepted by the Purchaser. All invoices must be sent to the Finance Department at Heart of Worcestershire College, Osprey House, Albert Street, Redditch B97 4DE and must quote the Purchase Order number.

11. Liability

- 11.1 Subject always to condition 11.3, and except under the indemnity at conditions 12 and 18, neither party shall be liable in contract, delict (including negligence) or otherwise arising out of or in connection with this Contract excluding by way of indemnity for:
- a) any economic loss (including loss of revenues, profits, contracts, data, business or anticipated savings); or
 - b) any loss of goodwill or reputation; or
 - c) any special, indirect or consequential losses or damage;
- in any case, whether or not such losses were within the contemplation of the parties at the date of the Contract.
- 11.2 Subject always to condition 11.3, and except under the indemnity at conditions 12 and 18, the aggregate liability of either party for any breach of the terms of the Contract, or otherwise in relation to the subject matter of the Contract (including that arising from negligence, delict, tort or otherwise) shall in no event exceed a sum equal to the total price due by the Supplier to the Purchaser under the Contract.
- 11.3 Neither party excludes or limits liability to the other party for death or personal injury or any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.

12. Indemnity

- 12.1 The Supplier shall indemnify and hold the Purchaser harmless from all claims and all direct, indirect or consequential liabilities, costs, proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred or paid by, the Purchaser as a result or in connection with:
- (a) any alleged or actual infringement, whether or not under English law, of any third party's Intellectual Property Rights or other rights arising out of the use, manufacture or supply of the Goods; or
 - (b) defective workmanship, quality or materials in or in relation to the Goods; or
 - (c) any claim made against the Purchaser in respect of any liability, loss, damage, injury, cost or expense sustained by the Purchaser's employees or agents or by any third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the Contract by the Supplier howsoever arising.

13. Confidentiality and the Purchaser's Property

- 13.1 The Supplier shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Supplier by the Purchaser or its agents, and any other confidential information concerning the Purchaser's business or its products which the Supplier may obtain. The Supplier shall restrict disclosure of such confidential material to such of its employees as need to know the same for the purpose of discharging the Supplier's obligations to the Purchaser.
- 13.2 All materials, equipment, tools, copyright, rights in designs and any other Intellectual Property Rights in all drawings, specifications and data supplied by the Purchaser to the Supplier shall at all times be and remain the exclusive property of the Purchaser, and 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 the Purchaser, and shall not be disposed or used other than in accordance with the Purchaser's written instructions or authorisation. The Supplier shall return all copies of any such material to the Purchaser immediately on the Purchaser's first written request.
- 13.3 This condition 13 shall survive the termination of the Contract, however arising.

14. Termination

- 14.1 Without prejudice to any other rights or remedies to which the Purchaser may be entitled, the Purchaser may terminate the Contract without liability to the Supplier if:
- (a) the ability of the Purchaser to accept delivery of the Goods is delayed, hindered or prevented by circumstances beyond its reasonable control; or
 - (b) the Supplier commits a material breach of any term of which the breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of [NUMBER] days after being notified [in writing] to do so;
 - (c) the Supplier is unable to pay its debts as they fall due or admits inability to pay its debts, or is deemed unable to pay its debts within the meaning section 123 of the Insolvency Act 1986;
 - (d) the Supplier compounds or makes any voluntary arrangement with its creditors or an application is made to court or an order is made for the appointment of an administrator or (being an individual or firm) becomes the subject of a bankruptcy petition or (being a company) goes into liquidation (otherwise for the purposes of amalgamation or reconstruction);
 - (e) a receiver is appointed over any of the property or assets of the Supplier;
 - (f) the Supplier ceases or threatens to cease to carry on all or a substantial part of its business;
 - (g) the Purchaser reasonably apprehends that any of the events mentioned above are about to occur in relation to the Supplier and notifies the Purchaser accordingly; or
 - (h) there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010).
- 14.2 Any provision of these terms that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.
- 14.3 Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

15. Remedies

- 15.1 If any of the Goods are not supplied in accordance with, or the Supplier fails to comply with, any terms of the Contract, the Purchaser may (without prejudice to any other right or remedy) exercise any one or more of the following rights or remedies, whether or not any part of the Goods have been accepted by the Purchaser:
- (a) rescind the Contract;
 - (b) reject the Goods (in whole or in part) and return it 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 immediately by the Supplier; or
 - (c) require the Supplier, at the Supplier's expense, either (at the Purchaser's option) to remedy any defect in the Goods and carry out such other work as necessary to ensure that the Goods are in all respects in accordance with the Purchase Order or to supply replacement equipment, provided that if the Supplier refused to remedy the defect in the Goods or to supply replacement goods within 15 days of receiving such a request, the Purchaser may purchase replacement goods from another source and the Supplier shall reimburse the Purchaser for all costs and expenses incurred in doing so; or
 - (d) refuse to accept any further deliveries of the Goods, without liability to the Supplier;
- and in any case to claim such damages as it may have sustained in connection with the Supplier's breach or breaches of the Contract not otherwise covered by this clause.

16. Force Majeure

The Purchaser may defer the date of delivery or payment, or cancel the Contract or reduce the amount of Goods ordered, if it is prevented from or delayed in carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including without limitation strikes, lock-outs or other industrial disputes (whether involving the workforce of the Purchaser or any other party), failure of a utility service or transport or telecommunication network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

17. Anti Bribery

- 17.1 The Supplier shall and shall procure that persons associated with it or other persons who are involved in any way with this Contract shall:
- a) comply with all applicable laws, statutes and regulations (including but not limited to:- (i) anti-bribery and anti-corruption legislation as specifically outlined in the Bribery Act 2010 ("Relevant Requirements"); and (ii) antidiscrimination legislation as specifically outlined in the Equality Act 2010);
 - b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
 - c) comply with the Purchaser's Anti-Bribery Policy currently in force and any update thereof (a copy of which can be found on our website or available on request).
 - d) maintain in place throughout the term of this Contract adequate policies and procedures under the Bribery Act 2010 and inform the Purchaser immediately (in writing) in the case of any breach, investigation or prosecution thereunder;
 - e) promptly report to the Purchaser any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Contract;
 - f) immediately notify the Purchaser (in writing) if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier (and the Supplier warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this Contract).
- 17.2 For the purpose of this condition 17, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the avoidance of doubt, a breach of any of the terms of this condition 17 shall be a material breach in terms of the Contract.
- 17.3 The Supplier shall indemnify the Purchaser against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, the Purchaser as a result of any breach of this condition 17 by the Supplier or any persons associated with it in connection with the performance of this Contract.

18. Health and Safety

- 18.1 The Supplier represents and warrants to the Purchaser that the Supplier has satisfied itself that 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 and constructed so as to be safe and without risk to the health and safety of persons using the same, and that the Supplier 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. The Supplier shall indemnify the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any breach of condition 18.
- 18.2 Without prejudice to the foregoing, the Supplier shall in all matters arising in the performance of the Contract conform, and provide all such assistance to the Purchaser in order that the Purchaser is able to conform, and maintain conformance, with all and any environmental legislation and laws (including, without limitation, the Environmental Protection Act 1990 and the Waste Electrical Equipment Directive and the regulations made thereunder and any statutory amendments or re-enactments made thereto) applicable.
- 18.3 The Supplier shall observe, and ensure that all employees, consultants, agents, delivery people and subcontractors which it engages in relation to the Goods observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Purchaser's premises and that have been communicated to it or its employees, consultants, agents, delivery people and subcontractors. The Purchaser reserves the right to refuse such persons as it sees fit access to the Purchaser's premises, and any such access shall only be given to the extent necessary for the performance of the Contract.
- 18.4 The Supplier shall give the Purchaser such prior written notice as the Purchaser may require of the delivery of any Goods having a toxic hazard to the safety of health of persons or property, identifying those hazards and giving full details of any precautions to be taken by the Purchaser on the delivery of such Goods and their subsequent storage or handling.
- 18.5 The Supplier shall ensure that the Goods are designed and/or constructed and/or supplied safely and conform to the Purchaser's current Health and Safety policy, which is available on request. Where any access to the Purchaser's premises is necessary, in connection with delivery/ installation, the Supplier and any sub-contractors shall at all times comply with the Purchaser's Health and Safety policy.

19. Freedom of Information Act

The Supplier acknowledges that the Purchaser is subject to the requirements of the Freedom of Information Act 2000 ("the Act") and the Environmental Information Regulations 2004 ("the Regulations"). The Supplier further acknowledges that the Purchaser may be obliged under the Act or Regulations to disclose information (including information provided by the Supplier to the Purchaser) without consulting the Supplier, or having consulted the Supplier and having taken the Supplier's views into account. The Purchaser shall be responsible for determining at its absolute discretion whether information held by the Purchaser relating to the Contract shall be disclosed in response to a request for information under the Act or Regulations.

20. Environmental Considerations

The Purchaser is fully committed to supporting the Governments drive to integrate environmental considerations into public sector procurement. The Purchaser's procurement policy aims to achieve continuing improvement in value for money based on whole life cycle costs and quality, including environmental issues such as running costs, recyclability and disposal.

21. Variation

No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorized representatives)

22. Waiver

No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

23. Severance

23.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this condition shall not affect the validity and enforceability of the rest of the Contract.

23.2 If any provision or part-provision of the Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

24. Assignment

24.1 The Supplier shall not, without the written consent of the Purchaser, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

24.2 The Purchaser may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

25. Third Party Rights

The contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and it is not intended to benefit, or be enforceable by, anyone else.

26. Notices

Any notice required to be given under the Contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in the Contract (or such other address as may have been notified by that party for such purposes), or sent by fax to the other party's fax number as set out in the Contract. A notice delivered by hand shall be deemed to have been received when delivered (or, if delivery is not in business hours, at 9.00 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post provided this is within normal business hours. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

27. Disputes

If any dispute arises out of or in connection with the Contract the parties undertake that they will seek to have the dispute resolved amicably within a 30-day period, by use of an alternative resolution procedure acceptable to both parties. Either party will be entitled to initiate the process by written notice to the other.

28. Entire Agreement

The Contract constitutes the entire agreement and understanding between the parties and supersedes all prior written and oral representations, agreements or understandings between them relating to the subject matter of the Contract provided that neither party excludes liability for fraudulent misrepresentations upon which the other party has relied.

29. Governing Law

The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England and Wales.

30. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).