

# NELSON AND COLNE COLLEGE

## **CONDITIONS OF CONTRACT FOR THE PROVISION OF GOODS**

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## 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 Goods to the College;
- 1.3 "The College" shall mean Nelson & Colne College;
- 1.4 "The Goods" shall mean all goods, materials or articles which are the subject of the College's Purchase Order and which the Supplier is required to supply under the Contract;
- 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 headings to any Conditions shall not affect their interpretation.

## 2. THE GOODS

- 2.1 The Goods 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 The Goods shall conform in all respects with the requirements of any statutes, orders, regulations or by-laws from time to time in force.
- 2.3 The Goods shall be fit and sufficient for the purpose for which such goods are ordinarily used and for any particular purpose made known to the Supplier by the College and the College relies on the skill and judgement of the Supplier in the supply of the Goods and the execution of the Order.

## 3. PRICE AND PAYMENT TERMS

- 3.1 The Contract Price shall be "net", that is, after deduction of all agreed discounts it shall include the cost of packaging, packing materials, addressing, labelling, loading and supply/delivery/installation to the address(es) specified in the Contract. 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 Chief Financial Officer, the College shall pay the Contract Price to the Supplier 30 days from receipt of the Invoice or when the Goods are delivered and accepted, 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. DELIVERY AND INSTALLATION

4.1 The Goods shall be supplied delivered and - if necessary - installed in accordance with the date and address(es) specified in the Contract. If no date for delivery is specified therein, delivery shall be made within 14 days of receipt by the Supplier of a Purchase Order from the College.

4.2 The time of delivery shall be of the essence and failure to deliver within the time promised or specified shall enable the College (at its sole option) to release itself from any obligation to accept and pay for the Goods and/or to cancel all or part of the Order or Contract, in either case without prejudice to its other rights and remedies.

Furthermore, the Supplier shall be liable to the College for any loss or damage (whether direct, indirect or consequential) suffered or incurred by the College as a result of the supplier's failing to deliver the Goods (in whole or part) on the due date of delivery.

4.3 Delivery will be made by the method specified in the Contract or Purchase Order and the College shall not be obliged to accept delivery in instalments.

## 5. PACKAGING

5.1 The Supplier will package and protect the Goods with appropriate non-returnable packaging so as to avoid damage, destruction or theft in transit.

5.2 Hazardous Goods must be marked by the Supplier with the International Danger Symbol(s) and display the name of the material in English. The Goods must be accompanied by emergency information in English in the form of written instructions, labels or markings.

5.3 The following details shall be shown on the outside of every package unless otherwise specified in the Contract:

- Description of the Goods.
- Quantity in package.
- Any special directions for storage.
- Expiry date of contents (where applicable).
- Purchase Order number.
- Name of intended recipient (if known).

## 6. INSPECTION, REJECTION AND GUARANTEE

6.1 The Supplier shall permit the College or its authorised representatives to make any inspection or tests it may reasonably require and the Supplier shall afford all reasonable facilities and assistance free of charge at the Supplier's premises. No failure to make complaints 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 College of any rights or remedies in respect of the Goods.

6.2 The College may by written notice to the Supplier reject any Goods if found to be defective or inferior in quality to, or differing in form or material from, the requirements of the Contract or if they do not comply with any term, express or implied, of the Contract. Such notice shall be given within a reasonable time after delivery. If the College shall reject any of the Goods pursuant to this Condition the College shall be entitled (without prejudice to its other rights and remedies) either:

- (a) to have the Goods concerned as quickly as possible either repaired by

- the Supplier or (as the College shall elect) replaced by the Supplier with Goods which comply in all respect with the requirements of the Contract; or
- (b) to obtain a refund from the Supplier in respect of the Goods concerned.
- 6.2.1 The whole of any consignment may be rejected if a reasonable sample of the Goods taken indiscriminately from that consignment is found not to conform in every material respect to the requirements of the Contract.
- 6.3 The guarantee period applicable to the Goods shall be 12 months from putting into service or 18 months from delivery, whichever shall be the shorter (subject to any alternative guarantee arrangements agreed in writing between the College Chief Financial Officer and the Supplier). If the College shall within such guarantee period or within 30 days thereafter give notice in writing to the Supplier of any defect in any of the Goods as may have arisen under proper and normal use the Supplier shall (without prejudice to any other rights and remedies which the College may have) as quickly as possible remedy such defects (whether by repair or replacement as the College shall elect) without cost to the College.
- 6.4 Any Goods rejected or returned by the College as described in paragraphs 6.2, 6.2.1 or 6.3 shall be returned to or collected by the Supplier at the Supplier's risk and expense.
- 7. PROPERTY AND RISK**
- The property and risk in the Goods shall remain with the Supplier until they are delivered and accepted at the point specified by the Contract or Purchase Order.
- 8. DEFAULT**
- 8.1 Without prejudice to any other right or remedy if the Supplier does not deliver the Goods or any part of them within the time(s) specified in the Contract, the College may:
- 8.1.1 terminate the Contract and purchase other goods of the same or similar description to make good such default;
- 8.1.2 recover from the Supplier the amount by which the cost of so purchasing other goods exceeds the amount which would have been payable to the Supplier in respect of the Goods replaced by such purchase.
- 9. COPYRIGHT, ETC.**
- 9.1 The Contract Price shall include all royalties, licence fees or similar expenses in respect of the making, use or exercise by the Supplier of any invention, artwork or design for the purpose of performing the Contract.
- 9.2 The Supplier shall indemnify the College against any costs, claims, proceedings, actions, loss, damage or expense arising from the use, manufacture, supply or delivery of any process, article, matter or thing supplied under the Contract, which would constitute an infringement of any right, patent, design, trademark or copyright.
- 9.3 Any and all Intellectual Property arising or resulting from any work carried out or materials produced by the Supplier in execution of the Contract shall belong to and vest exclusively in the College and the Supplier hereby assigns all such Intellectual Property to the College absolutely. In the event that the Supplier is

unable to effect the foregoing assignment, the Supplier hereby grants to the College an irrevocable, non-exclusive, royalty free, world-wide licence to use such work and or materials for any purpose whatsoever.

**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's Chief Financial Officer.

**11. INDEMNITY AND INSURANCE**

- 11.1 Without prejudice to its liability for breach of any of its 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 Goods or the Supply, use or intended use of them, or the delivery or unloading of the Goods by the Supplier, its servants or agent

- 11.2 The Supplier shall effect with a reputable insurance company a policy or policies of insurance covering all the matters which are the subject of indemnities under these Conditions 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 his or its 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 Chief Financial Officer.
- 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 Goods supplied under, and the

full performance of its obligations under, the terms of the Contract.

#### **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 Bribery Act 2010.

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 AND 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 contained in or relating to the Goods.

15.2 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 clause 15.1

#### **16. DATA PROTECTION**

16.1 The Supplier shall comply with the requirements and obligations of the General Data Protection Regulation Act 2018.

16.2 The Supplier, its employees and agents shall at all times keep confidential 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. Failure to comply with these regulations will result in a data breach meaning any act or omission that (i) compromises the security, confidentiality or integrity of the Personal Data that a Supplier processes for and on behalf of the College (including, by way of example, the unauthorised loss or disclosure of any such Personal Data by Supplier); (ii) compromises the physical, technical, administrative or organisational safeguards put in place by the Supplier that relate to the protection of the security, confidentiality or integrity of such Personal Data (including any breach of the IT and data security requirements); or (iii) causes the College or Supplier to be in breach of data protection Law; in particular the General Data Protection Regulation..

#### **17. TERMINATION**

17.1 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 Goods received by the College under the Contract at the date of receipt of the notice cancelling the Contract.

17.2 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.

#### **18. VARIATION**

The Goods shall be supplied 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 Chief Financial Officer.

#### **19. 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.

#### **20. ANTI BRIBERY**

##### **United Kingdom Bribery Act 2010**

Nelson and Colne College has zero- tolerance for bribery and corruption. The College's reputation with the community it serves and other stakeholders is underpinned by ethical behaviour, financial probity and honesty. In performing its obligations under this Agreement, you the supplier shall comply with the College's Anti Bribery Policy and with the United Kingdom Bribery Act 2010.

The College's Anti Bribery Policy prohibits:-

- The offering or giving of any bribe, whether cash, a gift or other inducement.
- The requesting, agreeing to receive or the acceptance of any bribe, whether cash, a gift or other inducement.
- The offer to gain any commercial, contractual or regulatory advantage in a way which is unethical; in order to obtain or retain business or an advantage in the conduct of business.
- The offer to gain any personal advantage, pecuniary, or otherwise for the individual or anyone connected with the individual.

The supplier will ensure that they comply with the United Kingdom Bribery Act 2010 and that adequate procedures are in place to prevent bribery.

#### **21. LAW**

This Contract shall be governed by and construed in accordance with English Law and both parties hereby submit to the jurisdiction of the English Courts.