

# TERMS AND CONDITIONS - Services

No terms or conditions submitted at any time by the Contractor shall form any part of the Contract. In the event of a conflict between any of these Conditions and any specific term or condition (whether in the main Contract or otherwise) referred to in the Purchase Order, the latter shall prevail.

## 1. DEFINITIONS

### 1.1 In these Conditions:

'Charges' means the Charges for the services as agreed between the parties;

'Client' means the School named in the Purchase Order;

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

'Contractor' means the person, firm or company who is to provide the Service under the Contract, as detailed in the Purchase Order;

'FOIA' the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such legislation;

'Premises' means the location where the Services are to be performed, as specified in the Purchase Order;

'Property' means the property, other than real property, issued or made available to the Contractor by the Client in connection with the Contract.

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

'Request for Information' a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;

'Services' means the services to be provided as specified in the Purchase Order and shall, where the context requires, include any and all materials, articles and goods to be supplied under the Contract; and

'Staff' means the Contractor and its employees, agents, representatives and sub-contractors.

'Working Day' any day other than a Saturday, Sunday or public holiday in England and Wales.

### 1.2 The headings in these Conditions are for convenience only and shall not affect its construction or interpretation.

## 2. VARIATION OF THE SERVICES

### 2.1 These Conditions may only be varied with the written agreement of the Client.

2.2 The performance of Services by the Contractor pursuant to the Purchase Order shall constitute acceptance of these Conditions where acceptance has not previously been communicated.

2.3 The Client reserves the right by notice to the Contractor to vary the Services and any alteration to the Contract price or the completion date arising by reason of such modification shall be agreed between the parties and evidenced in writing.

## 3. INSPECTION OF PREMISES AND NATURE OF SERVICES

3.1 The Contractor is deemed to have inspected the Premises before tendering so as to have understood the nature and extent of the Services to be carried out and satisfied itself in relation to all matters connected with the Services and Premises.

3.2 The Client shall, at the request of the Contractor, grant such access to the Premises as it may deem to be reasonable for the purpose of the Services.

3.3 The Contractor shall not in any way be relieved from any of its obligations under the Contract on the ground that information is incorrect or insufficient

and the Contractor shall make its own assessment as to the accuracy and adequacy of the information provided in relation to the Contract.

#### **4. CONTRACTOR'S STATUS**

In carrying out the Services the Contractor shall act as an independent Contractor, and as principal and not as the agent of the Client and nothing in the Contract shall create the relationship of employer and employee, principal and agent or a partnership. Accordingly:

#### **5. CONTRACTOR'S PERSONNEL**

5.1 The Contractor shall take all reasonable steps to satisfy itself that its employees or sub-contractors (or their employees) are suitable in all respects to perform the Services.

5.2 The Contractor shall immediately notify the Client if they have any concerns regarding the propriety of any of its sub-contractors in respect of work/services rendered in connection with this Contract.

5.3 The Contractor, its employees and sub-contractors (or their employees), whilst on the Client's premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time.

5.4 The Contractor shall ensure the security of all the Property whilst in its possession, during the supply of the Services, in accordance with the Client's reasonable security requirements as required from time to time.

#### **6. MANNER OF CARRYING OUT THE SERVICES**

6.1 The Contractor shall make no delivery of materials, plant or other equipment to nor commence any work on the Premises without obtaining the prior consent of the Client.

6.2 Access to the Premises shall not be exclusive to the Contractor but only such as shall enable it to carry out the Services concurrently with the execution of work by others. The Contractor shall co-operate with such others as the Client may reasonably require.

6.3 The Client shall have the power at any time during the progress of the Services to order in writing:

6.3.1 the removal from the Premises of any materials which in the opinion of the Client are either hazardous, noxious or not in accordance with the Contract; and/or substitution of proper and suitable materials; and/or

6.3.2 the removal and proper re-execution, notwithstanding any previous test of any work of interim payment for such work which, in respect of material or workmanship, is not in the sole opinion of the Client in accordance with the Contract.

#### **7. TIME OF PERFORMANCE**

7.1 The Contractor shall begin performing the Services on the date stated in the Purchase Order and shall complete or continue to perform the Services for the period stated in the Purchase Order. Time for performance of the Services shall be of the essence for the purposes of the Contract. The Client may by written notice require the Contractor to execute the Services in such order as the Client may decide. In the absence of such notice the Contractor shall submit such detailed programmes of work and progress reports as the Client may from time to time require.

7.2 Failure by the Contractor to adhere to any provision as to time contained in the Purchase Order shall entitle the Client at its option to terminate the Services (in whole or in part) under the Contract. The Client shall be entitled to exercise its option at any time notwithstanding that it has waived any delay, unless a written extension of time has been given to the Contractor by the Client and the time of any extension has not elapsed. Failure by the Client to exercise its option to terminate in respect of any part of the Contract shall not be deemed to constitute a waiver with respect to any subsequent part.

#### **8. WARRANTIES**

8.1 The Contractor warrants and represents to the Client that the Contractor and its Staff:

8.1.1 are properly trained, qualified, and adequately skilled and competent to the levels necessary to undertake the Services; and

8.1.2 shall undertake the Services in a workmanlike manner using reasonable skill, care and expertise to be expected on a competent Contractor using good industry practice.

8.2 The Client will be relying upon the Contractor's skill, expertise and experience in the performance of the Services and also upon the accuracy of all representations or statements made and any advice given by the Contractor in connection with the performance of the Services.

8.3 The Contractor shall ensure that any goods procured for the purposes of the Services shall be of satisfactory quality, fit for their purpose and be free from defects in materials and workmanship.

#### **9. PAYMENT**

- 9.1 The Client undertakes to pay valid invoices within 30 days of receipt from the day of physical or electronic arrival at the nominated address of the Client..
- 9.2 A valid invoice is one that is:
- 9.2.1 delivered in timing in accordance with the contract;
  - 9.2.2 that is for the correct sum;
  - 9.2.3 in respect of goods / services supplied or delivered to the required quality (or are expected to be at the required quality);
  - 9.2.4 which quote the relevant purchase order / contract reference (where used)
  - 9.2.5 which has been delivered to the nominated address .
- 9.3 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.
- 9.4 The Client specifically reserves the right to withhold or deduct by way of set-off or otherwise due or to become due to the Contractor any monies due to the Client from the Contractor, arising under the Contract or any other agreement between the Client and the Contractor.
- 9.5 The Client shall not be liable for any Charges relating to changes to the Services or additional Services other than those issued or confirmed on the Purchase Order or by agreed written variations signed by the duly authorised representatives of either party.
- 9.6 No payment of or on account of the Charges shall constitute any admission by the Client as to proper performance by the Contractor of its obligations.
- 9.7 The Contractor shall be exclusively responsible for the discharge of any income tax in relation to its Staff or such similar liability arising out of remuneration of the performance of the Services under the Contract.

#### **10. FREE ISSUE MATERIALS**

Where the Client for the purpose of the Contract issues materials free of charge to the Contractor such materials shall be and remain the property of the Client. The Contractor shall maintain all such materials in good order and condition and shall use such materials solely in connection with the Contract. The Contractor shall notify the Client of any surplus materials remaining after completion of the Services and shall dispose of them as the Client may direct. Waste of such materials arising from defective workmanship or negligence of the Contractor or its Staff shall be made good at the Contractor's expense. Without prejudice to any other of the rights of the Client, the Contractor shall deliver up such materials whether processed or not to the Client on demand.

#### **11. AUDIT**

The Contractor shall keep and maintain, until two years after the Contract has been completed, records to the satisfaction of the Client of all expenditure which are reimbursable by the Client and of the hours worked and costs incurred in connection with any of the Contractor's Staff paid for by the Client on a time charge basis. The Contractor shall on request afford the Client or its representatives such access to those records as may be required by the Client in connection with the Contract.

#### **12. COPYRIGHT**

Copyright in all reports and other documents and materials arising out of the performance by the Contractor of their duties under this Contract are to be assigned to and shall vest in the Client absolutely. This condition shall apply during the continuance of this Contract and after its termination howsoever arising.

#### **13. INDEMNITY AND INSURANCE**

- 13.1 The Contractor shall indemnify and keep indemnified the Client against any and all actions, claims, demands, costs and expenses (including legal expenses and disbursements) incurred by or made against the Client in respect of any loss or damage or personal injury (including death) which arises out of or in connection with the Contract except to the extent that such loss, damage or injury is caused by the negligence or wilful default of the Client.
- 13.2 The Contractor shall have in force and shall require any sub- contractor to have in force with an insurer of good repute:
- 13.2.1 employer's liability insurance in accordance with any legal requirements for the time being in force;
  - 13.2.2 public liability insurance for such sum and range of cover as the Contractor deems to be 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 £500,000 for any one incident and unlimited in total, unless otherwise agreed by the Client in writing; and
  - 13.2.3 such other adequate and suitable insurance as required under contracts of the nature of the Contract.
- 13.3 The policy or policies of insurance referred to in Condition 13.2 shall be shown to the Client whenever it requests, together with satisfactory evidence

of payment of premiums.

13.4 Nothing in the Contract shall exclude or limit the liability of either party for death or personal injury caused by its negligence or for fraudulent misrepresentation.

#### 14. CONFIDENTIALITY & DATA PROTECTION

14.1 The Contractor shall and shall procure that its staff keep secret and do not disclose any information of a confidential nature obtained by reason of the Contract except information which is in the public domain otherwise than as required to be by reason of a breach of this Condition 14 or disclosed by law.

14.2 The provision of this Condition 14 shall apply during the continuance of the Contract and after its termination howsoever arising without limitation in time.

14.3 The Contractor shall comply with any and all requirements under the Data Protection Act 1998 and any subordinate legislation ("**DPA**") as amended from time to time as though it were the Data Controller (as defined under the DPA) and shall not disclose or allow access to any Personal Data (as defined under the DPA) provided or acquired during the term of the Contract.

14.4 The Contractor shall use, disclose or allow access to any data produced as a result of the Contract in accordance with the Client's strict instructions and only to the extent that is specifically necessary for the purposes of the Contract.

14.5 The Contractor shall store or process such Personal Data provided as a result of the Contract only at site specifically agreed by the parties in writing in advance and shall take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.

#### 15. TERMINATION

15.1 The Contract may be terminated by the Client giving to the Contractor at least 30 days' notice in writing.

15.2 In the event of any breach of the Contract by either party, the non-breaching party may serve a notice on the party in breach requiring the breach to be remedied within a period specified in the notice which shall be reasonable in all the circumstances. If the breach has not been remedied by the expiry of the specified period, the non-breaching party may terminate the Contract with immediate effect by notice in writing.

15.3 In the event of a material breach of the Contract by either party, the non-breaching party may terminate the Contract with immediate effect by notice in writing.

15.4 The Client may terminate the Contract with immediate effect by notice in writing to the Contractor if at any time:-

15.4.1 the Contractor passes a resolution that it be wound-up or that an application be made for an administration order or the Contractor applies to enter into a voluntary arrangement with its creditors;

15.4.2 a receiver, liquidator, administrator, supervisor or administrative receiver be appointed in respect of the Contractor's property, assets or any part thereof;

15.4.3 the court orders that the Contractor be wound-up or a receiver of all or any part of the Contractor's assets be appointed;

15.4.4 the Contractor is unable to pay its debts in accordance with Section 123 of the Insolvency Act 1986;

15.4.5 the Contractor (being an individual or partnership) is declared or adjudicated bankrupt or enters into any arrangement or composition with its creditors; there is a change in the legal or beneficial ownership of 50% or more of the Contractor's share capital issued at the date of the Contract or there is a change in the control of the Contractor. For the purpose of this Sub-Condition

15.4.6 "control" means the power of a person to secure that the affairs of the Contractor are conducted in accordance with the wishes of that person by means of the holding of shares or the possession of voting power;

15.4.5 the Contractor is convicted (or being a company, any officers or representatives of the Contractor are convicted) of a criminal offence related to the business or professional conduct;

15.4.6 the Contractor commits (or being a company, any officers or representatives of the Contractor commit) an act of grave misconduct in the course of the business;

15.4.7 the Contractor fails (or being a company, any officers or representatives of the Contractor fail) to disclose any serious misrepresentation in supplying information required by the Client in or pursuant to the Contract.

15.5 Nothing in this Condition 15 shall affect the coming into, or continuance in force of any provision of the Contract which is expressly or by implication intended to come into force or continue in force upon termination of the Contract.

15.6 On termination of the Contract for any reason whatsoever, the Contractor shall:

15.6.1 cease to have any right to use any intellectual property rights owned by the Client;

15.6.2 return any and all documents or information (in a tangible or intangible form) belonging to the Client and shall destroy all copies of such documentation or information relating to or supplied by the Client to the Contractor for the purposes of the Contract and being in the Contractor's possession, power or control.

## 16. ASSIGNMENT AND SUB-CONTRACTING

16.1 The Contractor shall not assign, transfer or sub-contract any portion of the Contract without the prior written consent of the Client. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations duly attributable under the Contract.

16.2 Where the Client has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Contractor to the Client immediately when it is issued. Any authority given by the Client for the Contractor to sub-contract the Contract (or any part of it) shall not impose any duty on the Client to enquire as to the competency of any authorised sub-contractor but that the Contractor shall ensure that any authorised sub-contractor is competent and that the work is properly done.

## 17. NOTICES

Any notices to be given under the Contract shall be delivered personally or sent by post or by facsimile transmission to the Services Manager (in the case of the Client) or to the address set out in the Contract (in the case of the Contractor). Any such notice shall be deemed to be served, if delivered personally, at the time of delivery, if sent by post, 48 hours after posting or, if sent by facsimile transmission, 12 hours after proper transmission.

## 18. THIRD PARTY RIGHTS

The Contract is not intended to create any rights of any kind whatsoever enforceable by any person who is not a party to the Contract (including any rights enforceable under the Contracts (Rights of Third Parties) Act 1999).

## 19. SEVERABILITY

If any provision under the Contract is or becomes unenforceable, void or invalid, such provision shall not take effect and shall be deemed to be severed from the remainder of the Contract to the extent that the remainder of the Contract and the unaffected part of the provision shall continue to be fully enforceable.

## 20. WAIVER

No delay or omission by the Client in exercising any of its rights under the Contract shall constitute a waiver of that right and any partial exercise of any such right shall not prevent any future exercise of the right.

## 21. DISCRIMINATION

21.1 The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise) in employment.

21.2 The Contractor shall take all reasonable steps to secure the observance of Clause 22.1 by all servants, employees or agents of the Contractor and all suppliers and sub-contractors employed in the execution of the Contract.

## 22. FREEDOM OF INFORMATION

22.1 The Contractor acknowledges that the Client is subject to the requirements of the Code of Practice on Government Information, FOIA and the Environmental Information Regulations and shall assist and cooperate with the Client to enable the Client to comply with its Information disclosure obligations.

22.2 The Contractor shall and shall procure that its Sub-contractors shall:

22.2.1 transfer to the Client all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;

22.2.2 provide the Client with a copy of all Information in its possession, or power in the form that the Client requires within five Working Days (or such other period as the Client may specify) of the Client's request; and

22.2.3 provide all necessary assistance as reasonably requested by the Client to enable the Client to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

22.3 The Client shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether any Information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the Environmental Information Regulations.

22.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Client.

22.5 The Contractor acknowledges that (notwithstanding the provisions of Clause 23) the Client may, acting in accordance with the Client of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Project:

22.5.1 In certain circumstances without consulting the Contractor; or

22.5.2 following consultation with the Contractor and having taken their views into account; provided always that where 23.5.1 applies the Client shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

22.6 The Contractor shall ensure that all Information is retained for disclosure and shall permit the Client to inspect such records as requested from time to time.

## **23 LAW AND JURISDICTION**

23.1 The Contract and any dispute arising under or in any way connected with the subject matter of the Contract (whether of a contractual or tortious nature or otherwise) shall be governed by and interpreted in accordance with English Law and the parties submit to the jurisdiction of the English courts only except that the Client may seek injunctive relief outside such jurisdiction.