

THESE TERMS AND CONDITIONS MAY ONLY BE VARIED WITH THE WRITTEN AGREEMENT OF THE COLLEGE. NO TERMS OR CONDITIONS PUT FORWARD AT ANY TIME BY THE SUPPLIER SHALL FORM ANY PART OF THE CONTRACT.

1 Definitions

- In these conditions, unless the context requires otherwise:
- 1.1 **'Buyer'** means Askham Bryan College and all associated and subsidiary colleges and companies;
- 1.2 **'Conditions'** means the terms and conditions of purchase set out in this document, any variation to these terms and conditions must be agreed in writing by an authorised representative of the Buyer,;
- 1.2 **'Contract'** means any contract for the purchase of goods or services by the Buyer from the Supplier whether by Buyer's Purchase Order or other written documentation;
- 1.3 **'Delivery Date'** means the date specified by the Buyer when the goods are to be delivered;
- 1.4 **'Goods'** means all the goods and services which the Buyer agrees to buy from the Supplier;
- 1.5 **'Intellectual Property Rights'** means the following:
 (a) patents, trademarks, registered designs and all applications for registration of them;
 (b) copyright or design rights;
 (c) any moral rights;
 (d) any know how;
 (e) any trade or business name.
- 1.6 **'Order'** means the Buyers written Order which specifies that these conditions apply to it;
- 1.7 **'Price'** means the price for the Goods excluding carriage, packing, insurance and VAT; and
- 1.8 **'Supplier'** means the person, firm or company to whom the Order is issued.
- 1.9 **GDPR Clause definitions:**
 a) 'Data Protection Legislation' means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
 b) 'Data Protection Impact Assessment' means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
 c) 'Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer' take the meaning given in the GDPR.
 d) 'Data Loss Event' means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
 e) 'Data Subject Access Request' means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
 f) 'DPA 2018' means Data Protection Act 2018
 g) 'GDPR' means the General Data Protection Regulation (*Regulation (EU) 2016/679*)
 h) 'LED' means Law Enforcement Directive (*Directive (EU) 2016/680*)
 i) 'Protective Measures' means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.
 j) 'Sub-processor' means any Third Party appointed to process Personal Data on behalf of the Supplier related to this Agreement

2 Conditions applicable

- 2.1 These Conditions shall apply to all contracts and Orders for the purchase of Goods by the Buyer from the Supplier to the exclusion of all other terms and conditions including any terms or conditions which the Supplier may purport to apply under any quotation, purchase order, confirmation of order, invoice or similar document.
- 2.2 All Orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions.
- 2.3 Acceptance of an Order for Goods shall be deemed conclusive evidence of the Supplier's acceptance of these Conditions.
- 2.4 Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by an authorised representative of the Buyer. The signing by the Buyer of any of the Suppliers documentation shall not imply any modification of these terms.
- 3 **Price and payment**
- 3.1 The Price shall be the Supplier's quoted price accepted by the Buyer and as stated in the Order. The Price is exclusive of any VAT which shall be due (where applicable) at the rate applicable on the date of the Supplier's invoice.
- 3.2 Claims for price increases must be submitted to the Buyer in writing giving reasonable notice and supported by adequate documentary evidence together with a detailed cost breakdown. No price increases shall apply without the Buyer's written agreement.
- 3.3 Unless otherwise stated in the Order or otherwise agreed in writing the Supplier may not submit its invoice for the Goods until delivery has been made and accepted by the Buyer.
- 3.4 Unless otherwise stated in the Order payment of the Price and any VAT applicable shall be due within 30 days of the end of the calendar month in which the Supplier submits a valid and undisputed invoice quoting the purchase order number to the Buyer.
- 3.5 The Buyer will not pay for Goods ahead of delivery under any circumstances.

4 The Goods

- 4.1 The quantity and description of the Goods shall be as set out in the Supplier's quotation accepted by the Buyer. All Goods manufactured or supplied shall be of best quality, material and workmanship, without material fault. Services shall be performed with all reasonable skill and care.
- 4.2 All representations, statements or warranties made or given by the Supplier, its servants and agents (whether orally in writing or in any of the Supplier's brochures, catalogues and advertisements) regarding the quality and fitness for purpose of the Goods or any of the Goods shall be deemed to be express conditions of the contract or Order.
- 4.3 The Supplier shall comply with the specification (from time to time this will be provided by the Buyer) and all applicable British Standards and legal requirements concerning the design, manufacture, processing, storage and testing of the Goods. Where any government, EU or other regulatory authority prescribes safety or quality regulations with which the Goods supplied must comply, the Supplier shall ensure compliance with such regulations.
- 4.4 The Supplier shall permit the Buyer to inspect and test the Goods during their manufacture and processing. If the Buyer is not reasonably satisfied that the Goods or their manufacture or processing comply in all material respects with the contract or Order the Supplier without extra cost to the Buyer shall take all steps necessary to ensure due compliance.
- 4.5 Where any specification(s) and design(s) of the Goods or any of the Goods have been provided by the Buyer the Intellectual Property Rights in them shall remain the property of the Buyer. All Intellectual Property Rights created by the Supplier specifically for the purposes of the contract shall belong to the Buyer and the Supplier assigns absolutely all such Intellectual Property Rights and shall do all things and execute all such documents as may be reasonably required by the Buyer to ensure that the Intellectual Property Rights are effectively assigned to the Buyer.

5 Variations

- 5.1 The Supplier shall not alter the Goods, except as directed in writing by the Buyer, but the Buyer shall have the right from time to time during the contract by notice in writing to the Supplier to add or omit, or otherwise vary, the Goods and the Supplier shall carry out such variations and be bound by the same terms and conditions so far as applicable as though the said variations were stated in the contract.
- 5.2 Where the Supplier receives any such direction from the Buyer which requires an amendment to the Price the Supplier shall promptly advise the Buyer in writing to that effect giving the amount of any such amendment and applying the same level of pricing as that contained in the Supplier's quotation.
- 5.3 If in the opinion of the Supplier any such direction is likely to prevent the Supplier from fulfilling any of its obligations under the contract the Supplier shall so notify the Buyer and the Buyer shall decide as soon as possible whether or not the same shall be carried out and shall confirm its instructions in writing and modify the said obligations to such an extent as may be justified. Until the Buyer confirms its instructions they shall be deemed not to have been given.

6 Warranties and liability

- 6.1 The Supplier warrants that the Goods supplied will conform to the specification given by the Buyer, will be of merchantable quality and be fit for the purpose for which the Buyer has notified the Supplier they are to be used.
- 6.2 The Supplier shall as soon as reasonably practical and at the Buyer's option, repair or replace all Goods which are or become defective during the period of six (6) months from putting into service or twelve (12) months from delivery or such timescales as otherwise agreed in writing, whichever shall be the shorter including without limitation, defects which occur due to the Supplier's incorrect instructions as to use, incorrect use of data, inadequate or faulty materials or workmanship, or any other breach of the Supplier's obligations, express or implied or any failure to conform with the contract or Order. Repaired and replacement Goods shall themselves be subject to the foregoing warranty for a period of 12 months from the date of delivery, reinstallation or passing of tests (if any) whichever is appropriate after repair or replacement.
- 6.3 The Supplier confirms that neither it nor any of the Supplier's Personnel have been: (i) convicted of any offence; or (ii) the subject of an investigation, inquiry, or enforcement proceedings involving slavery or human trafficking. The Supplier shall: (i) comply with all Applicable Law relating to slavery, including the Modern Slavery Act 2015; (ii) comply with the College's own Anti-Slavery policies, as in force from time to time; (iii) ensure that all Goods and Services provided under this contract comply with the provisions of the Modern Slavery Act 2015; (iv) maintain a complete set of records to trace the supply chain of all Goods and Services provided to the College under the Contract; (v) implement a suitable system of related training for its employees, suppliers, and sub-contractors.
- 6.4 The Supplier warrants to the College that any Services will be performed by appropriately qualified and trained personnel, with due care and due diligence and to such high standards of quality as it is reasonable for the College to expect in all the circumstances.

7 Delivery of the Goods

- 7.1 Delivery of the Goods shall be made to the Buyer's address (or such other address notified to the Supplier by the Buyer) on the Delivery Date. The time for delivery is of the essence.
- 7.2 It is the Suppliers responsibility to ensure the Goods are adequately packaged and protected during delivery; the Buyer takes no responsibility for the same.
- 7.3 If Goods are incorrectly delivered the Supplier shall be responsible for any additional expense incurred in delivering them to the correct destination.
- 7.4 The Supplier shall provide such programmes of manufacture and delivery as the Buyer may reasonably require and the Supplier shall give notice to the Buyer as soon as practical if such programmes are or are likely to be delayed.
- 7.5 The Supplier will notify the Buyer of the anticipated time of delivery and the Buyer shall make all arrangements to take delivery of the Goods when they are tendered for delivery.
- 7.6 Delivery shall only be deemed to have occurred when Goods have been delivered correctly documented and in good and correct packaging at the address stated in the Order.
- 7.7 If delivery is delayed through any cause beyond the reasonable control of the Supplier and the Supplier immediately notifies the Buyer in writing when such cause arises giving full particulars, the Buyer may at its sole discretion grant a reasonable extension of time. If delivery is not made on the due date or within the extension of time granted the Buyer may cancel the contract in whole or part and refuse to accept any subsequent delivery of Goods without prejudice to any other right or remedy which the Buyer may have.

8 Acceptance of the Goods

- 8.1 The Buyer shall be deemed to have accepted the Goods 48 hours after delivery to the Buyer.
- 8.2 After acceptance the Buyer shall not be entitled to reject Goods unless they are not in accordance with the contract (whether because of a different quality or quantity measurement to that required by the contract or because they are not of a satisfactory quality or are unfit for the purpose for which they are required).

9 Title and risk

- 9.1 Title shall pass on the delivery of the Goods.
- 9.2 Risk shall pass on acceptance of the Goods by the Buyer.

10 Remedies of the Buyer

- 10.1 Where the Buyer rejects some of the Goods that shall not be taken as an acceptance of the remainder of the Goods and shall not prevent the Buyer rejecting all or some of the remainder of the Goods in the future.
- 10.2 Nothing in these Conditions shall be taken to restrict the Buyer's rights and remedies against the Supplier in respect of the Supplier's breach or non-performance of this contract.
- 10.3 Without prejudice to the other rights of the Buyer for breach by the Supplier where any of the Goods supplied to the Buyer are not in accordance with the contract the Supplier shall at the option of the Buyer forthwith upon notice being given either repair or replace such Goods. If it is necessary to open up or dismantle any other works or assemblies to permit such repair or replacement then the Supplier shall bear the cost of such opening up or dismantling and of re-assembly and making good after repairs, replacements and testing of such goods have been completed to the Buyer's reasonable satisfaction.

11 Indemnity

- The Supplier shall indemnify the Buyer against any costs (including legal costs on a full indemnity basis) charges, damages, interest and claims in relation to:
- (a) defective workmanship, quality and materials;
- (b) any actual or alleged infringement of Intellectual Property Rights by the use or supply of the Goods;
- (c) any claim made against the Buyer for any liability, loss damage, injury, cost or expense sustained by the Buyer's employees, agents, or any third party to the extent that this was caused by or arises from the Suppliers' failure to comply with the contract including these terms and conditions and in particular resulting from any defect in the Goods or their materials, construction, workmanship or design.

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12 Buyer's Rights in Specifications, Plans, Drawings, Patterns etc. and Confidentiality
Any Intellectual Property, specifications, plans, drawings, patterns or designs supplied by the Buyer to the Supplier in connection with the contract shall remain the property of the Buyer, and any information derived therefrom or otherwise communicated in connection with the contract shall be regarded by the Supplier as secret and confidential and shall not, without the consent in writing of the Buyer, be published or disclosed to any third party, or made use of by the Supplier except for the purpose of implementing the contract.

13 Responsibility for Information
The Supplier shall be responsible for any errors or omissions in any drawings, calculations, packing details or other particulars supplied by it, whether such information has been approved by the Buyer or not, provided that such errors or omissions are not due to inaccurate information provided in writing by the Buyer.

14 Termination

14.1 The Buyer may at any time by notice in writing immediately terminate the Order in whole or part without compensation to the Supplier if any of the following events occur:

- (a) the Supplier commits a material breach of any of the terms of the Order;
- (b) if the Supplier being an individual or, where the Supplier is a firm, any partner of that firm become bankrupt or shall have a receiving order or administration order made against him or shall make any arrangement with or for the benefit of his creditors or shall purport to do so;
- (c) if the Supplier being a company shall pass a resolution for winding-up, or a petition shall be presented to the court either for the appointment of an administrator or for the winding-up of the Supplier, or if a receiver or manager or administrative receiver shall be appointed, or if circumstances shall arise which entitle the court or a creditor to appoint a receiver or manager or to make a winding-up order or appoint an administrator;
- (d) the Supplier ceases or threatens to cease to carry on its business.

14.2 Any termination of the Order by the Buyer under this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Buyer. Any provisions which are expressly or impliedly intended to be enforceable after termination shall continue to be enforceable.

15 Notices

All notices served under these conditions shall be in writing and sent to the recipient party at its registered office address or where the recipient is not a company at the last known address. Notices may be sent by first class, recorded delivery mail or delivered by hand. Notices sent by post shall be deemed to have been received two (2) working days after the date of posting. Notices delivered by hand shall be deemed to have been received upon delivery.

16 Assignment and subcontracting

16.1 The Supplier shall not without the written consent of the Buyer assign the benefit or burden of the contract or any part thereof.

16.2 No sub-contracting by the Supplier shall in any way relieve the Supplier of any of its responsibilities under the contract.

17 Bribery and Corruption

The Buyer is committed to the highest standards of ethical conduct and integrity in its business activities and operates a clear policy which outlines the Buyer's position on preventing and prohibiting bribery, in accordance with the Bribery Act 2010. The Buyer will not tolerate any form of bribery by, or of, its employees, agents or consultants or any person or body acting on its behalf. The Buyer's governors and managers are committed to maintaining effective measures to prevent, monitor and eliminate bribery. Notwithstanding the provisions for termination which are made within these terms, if any employee or representative of the Supplier is found to have offered any form of bribe to any employee of the Buyer, the Buyer reserves the right to terminate the Order with immediate effect.

18 Third Parties

The Parties intend that no terms of these conditions may be enforced by any person who is not a party to this contract.

19 Dispute Resolution

The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with these conditions. By agreement, the Parties may refer a dispute to mediation by a neutral adviser. Unless otherwise agreed, all negotiations occurring in the course of such mediation shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

20 Proper law of contract

These conditions are subject to the laws of England and Wales and the Supplier consents to the exclusive jurisdiction of the English courts in all matters regarding it.

21 Confidentiality and Data Protection

21.1 The Supplier shall take every precaution to ensure that information about the Contract, or arising from or connected with the Contract, is divulged only to the minimum number of employees and then only to the extent essential to each person's action in carrying out the Contract. No information regarding the Goods or Services being provided under the Contract or facilities to photograph or film shall be given to any third party or permitted by the Supplier, except with prior written permission of the College.

21.2 The Supplier shall not communicate with representatives of the press, radio, television or other communications media unless specifically granted permission to do so in writing by the College.

21.3 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Buyer is the Controller and the Supplier is the Processor.

21.4 The Supplier shall notify the Buyer immediately if it considers that any of the Buyer's instructions infringe the Data Protection Legislation.

21.5 The Supplier shall provide all reasonable assistance to the Buyer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Buyer, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

21.6 The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- (a) process that Personal Data only in accordance with this purchase order unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Buyer before processing the Personal Data unless prohibited by

Law;

- (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Buyer as appropriate to protect against a Data Loss Event having taken account

- (i) nature of the data to be protected;
- (ii) harm that might result from a Data Loss Event;
- (iii) state of technological development; and
- (iv) cost of implementing any measures;

- c) ensure that:
 - (i) the Supplier's Personnel do not process Personal Data except in accordance with this Agreement;
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Supplier's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Buyer or as otherwise permitted by this Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
 - (d) not transfer Personal Data outside of the EU unless the prior written consent of the Buyer has been obtained and the following conditions are fulfilled:
 - (i) the Buyer or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Buyer;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Buyer in meeting its obligations); and
 - (iv) the Supplier complies with any reasonable instructions notified to it in advance by the Buyer with respect to the processing of the Personal Data;
 - (e) at the written direction of the Buyer, delete or return Personal Data (and any copies of it) to the Buyer on termination of the Agreement unless the Supplier is required by Law to retain the Personal Data.

21.7 Subject to clause 21.6, the Supplier shall notify the Buyer immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

21.8 The Supplier's obligation to notify under clause 1.5 shall include the provision of further information to the Buyer in phases, as details become available.

21.9 Taking into account the nature of the processing, the Supplier shall provide the Buyer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Buyer) including by promptly providing:

- (a) the Buyer with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Buyer to enable the Buyer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Buyer (or Data Controller), at its request, with any Personal Data it holds in relation to a Data Subject, within good time to enable the Data Controller to comply with the 30-day response deadline. Where the Data Processor cannot comply with this timescale, immediate notification must be given to the requestor advising the reasons for the delay and the estimated timescale for providing the information.
- (d) assistance as requested by the Buyer following any Data Loss Event;
- (e) assistance as requested by the Buyer with respect to any request from the Information Commissioner's Office, or any consultation by the Buyer with the Information Commissioner's Office.

21.10 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:

- (a) the Buyer determines that the processing is not occasional;
- (b) the Buyer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
- (c) the Buyer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects

21.11 The Supplier shall allow for audits of its Data Processing activity by the Buyer or the Buyer's designated auditor.

21.12 The Supplier shall designate a data protection officer if required by the Data Protection Legislation.

21.13 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Supplier must:

- (a) notify the Buyer in writing of the intended Sub-processor and processing
- (b) obtain the written consent of the Buyer;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 1.11 such that they apply to the Sub-processor; and
- (d) provide the Buyer with such information regarding the Sub-processor as the Buyer may reasonably require.

21.4 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.

21.5 The Buyer may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

21.6 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Buyer may on not less than 30 Working Days' notice to the Supplier amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.