



MIDDLESBROUGH COLLEGE STANDARD TERMS AND CONDITIONS OF CONTRACT FOR THE PURCHASE OF GOODS

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MIDDLESBROUGH COLLEGE STANDARD TERMS AND CONDITIONS OF CONTRACT FOR THE PURCHASE OF GOODS

1. Definitions and Interpretation

(1) In these terms and conditions of contract for the purchase of goods ("Conditions"):

The "College" shall mean the Further Education Corporation of Middlesbrough College;

"College Premises" shall mean land or buildings owned or occupied by the College;

The "Contract Price" means the price in respect of the goods inclusive of packaging, marketing, handling, freight and delivery, insurance and any other applicable costs and charges but excluding Value Added Tax;

"Confidential Information" shall mean all information obtained by the Contractor from the College or any other department, agency or office of the College relating to and connected with the Contract and the Goods, including but not limited to the Contract itself and the provisions of the Contract;

The "Contract" shall mean the agreement concluded between the College and the Contractor for the supply of Goods, including without limitation the Conditions (to the extent that they are not expressly excluded or modified), all specifications, plans, drawings and other documents which are incorporated into the agreement;

The "Contractor" shall mean the person who agrees to supply the Goods provided for in the Contract and includes any person to whom all or part of the Contractor's obligations are assigned pursuant to Condition 4;

The "Contract Manager" shall mean the Manager of the College or such other person as may from time to time be notified by the College to the Contractor:

"College Property" shall mean anything issued or otherwise furnished in connection with the Contract by or on behalf of the College, including but not limited to documents, papers and other materials;

"Intellectual Property Rights" shall mean patents, trade marks, service marks, design rights (whether registrable or not), applications for any of those rights, copyright, database rights, know how, trade or business names and other similar rights or obligations, whether registrable or not, in any country, including but not limited to, the United Kingdom;

The "Goods" shall mean the goods to be supplied under the Contract;

"Purchase Order" shall mean the document so described by the College to purchase the Goods which makes reference to the Conditions.

The “Tender” shall mean the tender submitted by the Contractor in respect of the Goods and accepted by the College.

The “Specification” shall mean the Specification prepared by or on behalf of the College in respect of the Goods and signed by the parties.

(2) The interpretation and construction of the Contract shall be subject to the following provisions:

- (a) A reference to any statute, enactment, order, regulation or similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as subsequently amended or re-enacted;
- (b) The headings in these Conditions are for ease of reference only and shall not affect the interpretation or construction of the Contract;
- (c) References to “person”, where the context allows, includes a corporation or an unincorporated association.

2. Acts by the College

The Contract Manager may from time-to-time in writing authorise any person or persons to act on his/her behalf either generally in respect of the whole or part of the Contract or specifically in respect of particular Conditions or functions of the Contract Manager and any act of any such person within the scope of his/her authority shall, for the purpose of the Contract, be deemed to be an act of the Contract Manager.

3. Service of Notices and Communications

Any notice or other communication that either party gives under the Contract shall be made in writing and given either by hand, first class recorded postal delivery or facsimile transmission. Notice given by hand shall be effective immediately, notice given by recorded postal delivery shall be effective three working days after the date of posting, notice given by facsimile transmission shall be effective the working day after receipt by the notifying party of a transmission slip showing that the transmission has succeeded.

4. Assignment and Sub-contracting

- (1) The Contractor shall not give, bargain, sell, assign, sub-contract or otherwise dispose of the Contract or any part thereof without the previous agreement in writing of the College.
- (2) The Contractor shall not use the services of self-employed individuals in connection with the Contract without the previous agreement in writing of the College.
- (3) If the Contractor uses a sub-contractor for the purpose of providing the Goods, the Contractor shall include in the relevant contract a provision which requires the Contractor to pay for those goods or services within 30 days of the Contractor receiving a correct invoice from the sub-contractor.
- (4) The Contractor shall be responsible for the acts and omissions of his sub-contractors as though they were his own.
- (5) The College shall be entitled to assign any or all of its rights under the Contract to any organisation as defined in Regulation 3(1) of the Public Supply Contracts Regulations 1993, provided that such assignment shall not materially increase the burden of the Contractor’s obligations under the Contract.

5. Waiver

- (1) The failure by either party to exercise any right or remedy shall not constitute a waiver of that right or remedy.
- (2) No waiver shall be effective unless it is communicated to the other party in writing.
- (3) A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.

6. Severability

If any Condition, clause or provision of the Contract not being of a fundamental nature is held to be unlawful, invalid or unenforceable by a court or any other competent body in any proceedings relating to the Contract, the validity or enforceability of the remainder of the Contract shall not be affected. If the court finds invalid a provision so fundamental as to prevent the accomplishment of the purpose of the Contract, the parties shall immediately commence negotiations in good faith to remedy the invalidity.

7. Amendments and Variations

No amendment or variation to the terms of the Contract including these Conditions shall be valid unless previously agreed in writing between the College and the Contractor.

8. Invoices and Payment

- (1) The Contractor shall submit invoices at times or intervals agreed by the College in the Contract or otherwise. The Contractor shall ensure that any invoice it submits sets out the College's Purchase Order or contract number, the amount and, where not all of the Goods to which the invoice relates have been supplied, confirmation when those Goods will be supplied and its confirmation that the Goods have been supplied.
- (2) In consideration for the supply of the Goods by the Contractor, the College shall pay the amount after receiving a correctly submitted invoice as set out in paragraph (1) of this Condition. Such payment shall normally be made within 30 days of receipt of the correctly submitted invoice.
- (3) The Contractor shall not be entitled to charge for the supply of any goods that are not part of the Goods agreed within the Contract, unless the Contract has been properly varied in advance in accordance with Condition 7.
- (4) The College may reduce payment in respect of any Goods that the Contractor has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the College.
- (5) If the Contractor believes that payment for a correctly submitted invoice is overdue, he should, in the first instance, speak to the named contact on the face of the Contract. In the event that the problem is not resolved to his satisfaction, he should write to the Procurement Manager at the College setting out his case. The Procurement Manager shall ensure that the complaint is dealt with by an official who is independent of the main contact and that the Contractor is not treated adversely in future for having made a complaint.
- (6) The relevant date for the payment of the debt shall be deemed to be the last day of a period of 30 days commencing on the day when the College received the invoice, or, if the Contractor had not supplied the Goods before submitting the invoice, the last

day of a period of 30 days commencing on the day when the Contractor supplied the Goods.

9. Accounts

- (1) The Contractor shall keep full and proper accounts, records and vouchers relating to all expenditure reimbursed by the College and all payments made by the College in respect of the Goods.
- (2) The Contractor shall permit the College by its officers, servants and agents or independent auditor on request and at all reasonable times to examine all accounts, records and vouchers at the offices of the Contractor or at such other places as the College shall direct, and to take copies of such accounts, records and vouchers and the Contractor shall provide the College or its independent auditor with such explanations relating to that expenditure as the College may request.
- (3) The Contractor shall ensure that the said accounts, records and vouchers are available for a period equivalent to that of the agreed contract period after termination or expiry of the Contract.

10. Recovery of Sums Due

- (1) Whenever under the Contract or otherwise any sum of money shall be recoverable from or payable by the Contractor, such sum will be deducted from any amount then due, or which at any time thereafter may become due, to the Contractor under this Contract or any other agreement or arrangement with the College or with any other department, agency or office of the College.
- (2) Any over-payment by the College to the Contractor whether in respect of the charges or Value Added Tax shall be a sum of money recoverable from the Contractor pursuant to paragraph (1) of this Condition or otherwise.

11. Value Added Tax

- (1) The College shall pay to the Contractor, in addition to the charges, a sum equal to the Value Added Tax chargeable on the value of the Goods provided in accordance with the Contract.
- (2) Any invoice or other request for payment of monies due to the Contractor under the Contract shall, if he is a taxable person, be in the same form and contain the same information as if the same were a tax invoice for the purposes of Regulations made under the Value Added Tax Act 1994.
- (3) The Contractor shall, if so requested by the College, furnish such information as may reasonably be required by the College relating to the amount of Value Added Tax chargeable on the Goods.

12. Delivery

- (1) The Goods shall be delivered at such times, at such places and in such manner as is specified in the Contract or on the purchase order.

- (2) Unless the Contract specifically otherwise provides, time of delivery shall be of the essence and failure to deliver within the specified time shall entitle the College, at its option, and without prejudice to its other rights and remedies, to treat such failure as a fundamental breach of Contract so as to release the College from any obligation to accept the Goods or pay for them, or entitle it to cancel by notice in writing to the Contractor all or part of any order in relation to the Goods.
- (3) Any access to the College's Premises and any labour and equipment provided by the College in connection with delivery shall be provided without acceptance by the College of any liability in respect of any actions, claims, demands, costs and expenses incurred by third parties (including any agent of the College) for any loss or damages to the extent that such loss or damage is not attributable to the negligence or other wrongful act of the College, or any servant or agent thereof.
- (4) Where any access to College Premises is necessary in connection with delivery or installation, the Contractor and his sub-contractors shall at all times comply with the reasonable requirements of the College's Head of Security and Health & Safety Officer.

13. Inspection

- (1) The College may inspect or arrange for the inspection of all or any of the Goods in the course of production at the Contractor's premises, or the premises where the goods are being produced, at any reasonable time.
- (2) Without prejudice to the College's right of inspection under (1) of this Condition, the College may inspect or arrange for the inspection of all or any of the Goods at the Contractor's premises or premises where the goods have been produced, or after delivery, or as otherwise provided in the Contract.
- (3) When the College wishes to exercise its right of inspection under this Condition, the Contractor shall give the College full and free access to the said premises as and when required for that purpose and shall provide at its own expense all such accommodation and facilities in connection with the inspection and all appliances, materials and labour required for inspection purposes as the College may reasonably require.

14. Rejection of the Goods

- (1) The College may reject any Goods which on inspection are found not to conform to the requirements of the Contract.
- (2) The College may reject the whole of any consignment of the Goods if an inspection shows that:
 - (a) Such proportion or percentage of the Goods in that consignment as the Contract may specify as being appropriate for the purposes of this Condition; or
 - (b) Such samples taken indiscriminately from that consignment by the College do not conform to the requirements of the Contract.
- (3) When under this Condition the College rejects any Goods or consignment after delivery, the Contractor shall, subject to the provisions of paragraph (7) of this Condition, at his own expense remove the rejected Goods and shall do so within such period as is provided by the Contract or, if the Contract makes no such provision, within 8 working days of the College's notice of rejection.

- (4) If the Contractor fails to remove the Goods or any of them in accordance with paragraph (3) of this Condition, the College may return the rejected Goods or any of them to the Contractor at the Contractor's risk, the cost of carriage being recoverable by the College from the Contractor.
- (5) When under this Condition the College rejects any Goods or consignment after delivery, the Contractor shall at its own expense deliver in the place of the rejected Goods, Goods which conform with the requirements of the Contract and shall do so within the period for delivery stipulated in the Contract or within such further reasonable period as the College may allow.
- (6) If the Contractor considers himself aggrieved by a rejection under this Condition, he may give the College notice of objection. Such notice shall be given within 8 working days from the College's notice of rejection and before removing the rejected Goods from the College. The objection shall constitute a dispute between the parties, which, if not otherwise resolved within a reasonable time, shall be dealt with in accordance with the provisions of the Contract relating to the settlement of disputes. If the Contractor gives notice of objection the Goods shall not be removed until the College so requires.
- (7) If any Goods whether completed or in course of production are rejected on inspection by the College, the same shall, if the College so requires, be marked in a manner satisfactory to the College to ensure their subsequent identification as rejected Goods.

15. Loss of or Damage to the Goods

- (1) The Contractor is responsible for the Goods and any materials, equipment, fittings or things acquired or allocated by it for incorporation therein until delivery has been effected in accordance with Condition 12 and the Contractor shall make good any loss or destruction of or damage to the Goods or any such materials, equipment, fittings or things however sustained which may occur before such delivery.
- (2) Paragraph (1) of this Condition shall apply notwithstanding that the Goods concerned may have been inspected in accordance with the Contract or that the property therein may have passed, in accordance with provisions specifically made in the Contract, from the Contractor to the College or its agent earlier than upon delivery.
- (3) Unless the Contract specifically provides otherwise, the Contractor is not responsible for the Goods after delivery save that he shall become responsible in all respects for any Goods which under Condition 14 the College rejects after delivery and such responsibility shall take effect upon the Contractor:
 - (a) Removing the Goods in accordance with paragraph (3) of Condition 14; or
 - (b) Upon the returning of the Goods to the Contractor in accordance with paragraph (4) of Condition 14; or
 - (c) If he fails so to remove the Goods, or if the College does not exercise the right to return the Goods, on the expiry of the period provided by the Contract or, where no such period is provided, on the expiry of the 8th working day after the College's notice of rejection of the Goods.
- (4) Notwithstanding the provisions of paragraph (3) of this Condition, the Contractor shall not be responsible for any Goods which remain in the possession of the College after the College has rejected them for so long as they so remain after notice of objection to the rejection has been given under paragraph (6) of Condition 14 and the dispute between the parties relating to the rejection remains unresolved.

16. Acceptance of the Goods

- (1) Acceptance of the Goods or a consignment of Goods shall take place when the College confirms acceptance of the Goods in accordance with the procedure specified in the Contract, and if none is so specified, the College shall be deemed to have accepted the Goods or a consignment of Goods without prejudice to any remedies, on the occurrence of any of the following:
 - (a) The College takes the Goods into use;
 - (b) The College fails to exercise its right of rejection of the Goods under Condition 14 within any period specified for that purpose in the Contract;
 - (c) Where no period for exercising the right of rejection is specified in the Contract a reasonable time has elapsed since delivery of the Goods was effected in accordance with the manner specified under Condition 12 or in accordance with the Contract.

17. Marking of Goods

If so required by the Contract, the Contractor shall at its own expense mark or permit the representative of the College to mark all approved materials, Goods or parts thereof with recognised College marks. In the case of materials, Goods or parts thereof which cannot be so marked, the same shall, if so required by the College, be packed in suitable packages or cases, each of which shall be sealed and shall have the College mark placed on the seals.

18. Identification of Goods

All goods which customarily have any mark, tab, brand, label or other device indicating place of origin, inspection by any body or standard of quality must be delivered with all the said marks, tabs, brands, labels or other devices intact.

19. Packaging Containers and Pallets

Unless otherwise provided in the Contract, the College will not be obliged to return any containers (including packing cases, boxes, pallets, tins, drums and wrappings) supplied by the Contractor, and the cost of such packaging shall be considered as having been included in the charges.

20. Specifications and Quality Assurance

- (1) The Goods shall be of the quality and kinds described and equal in all respects to the description, specification, patterns and Contractor's samples which form part of the Contract or are otherwise relevant for the purpose of the Contract. Except in so far as may otherwise be indicated by such descriptions, specifications, patterns or Contractor's samples, the Goods shall be strictly in compliance with the latest British Standards (or equivalent international Standard) where such exist.
- (2) The contractor shall ensure that the design, construction, quality and safety of any goods manufactured or supplied by it comply with any Rule or Regulations which may be in force at the time.

- (3) The Contractor shall, if so requested by the College, furnish details of its quality management system and produce evidence, if appropriate, of certification to BS5750/EN29000/ ISO9000 or equivalent.

21. Default by Contractor

- (1) If the Contractor commits a material breach of any term of the contract, either in relation to time of delivery or otherwise, the College shall be entitled (whether or not the goods have been accepted by the College and whether the property in the goods has passed to the College) to take any of the following actions at its discretion:-
 - (a) Terminate the contract under clause 23;
 - (b) Return the Goods or any part thereof to the Contractor. The Contractor shall pay any costs incurred thereby. The College shall be entitled to be repaid in full for any Goods so returned;
 - (c) Give the Contractor the opportunity to replace, repair or reinstate the Goods at the Contractor's expense so that they comply with the terms of the contract;
 - (d) Refuse to accept any further deliveries of Goods without any liability to the Contractor;
 - (e) Carry out at the Contractor's expense such work as may be necessary to make the Goods comply with the contract;
 - (f) Claim such damages, cost and expenses as the College may have sustained in consequence of any breach of the terms of the contract or failure by the contractor any statutory or other legal obligations specified or implied by law;
- (2) These rights shall be in addition to and without prejudice to any rights the College may have.

22. Termination for Insolvency or Change of Control

- (1) The Contractor shall notify the College in writing immediately upon the occurrence of any of the following events:
 - a) Where the Contractor is an individual, if a petition is presented for his bankruptcy, or he makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage his affairs; or
 - b) Where the Contractor is not an individual but is a firm or a number of persons acting together, if any event in Condition 22(1) (a) or (c) occurs in respect of any partner in the firms or any of those persons, or if a petition is presented for the Contractor to be wound up as an unregistered company; or
 - c) Where the Contractor is a company or a limited liability partnership, if the company or limited liability partnership enters administration or passes a resolution to wind up or the court makes an administration order or a winding-up order, or the company or limited liability partnership makes a composition or arrangement with its creditors, or an administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge; or

- d) The Contractor undergoes a change of control, where “control” has the meaning given in Section 416 of the Income and Corporation Taxes Act 1988.
- (2) After receipt of the notice under paragraph (1) above or earlier discovery by the College of the occurrence of any of the events described in that paragraph, the College may, by notice in writing to the Contractor, terminate the Contract with immediate effect without compensation to the Contractor and without any prejudice to any right or action or remedy which may accrue to the College thereafter. The College’s right to terminate the Contract under Condition 22(1) (d) will exist until the end of a period of three months starting from receipt of the notice provided by the Contractor pursuant to Condition 22(1), or such other period as is agreed by the parties.

23. Termination for Breach of Contract

If either party commits a material breach of any term of the Contract which is either not capable of remedy, or, if it is capable of remedy, he fails to remedy such breach within 28 days of being notified by the other party in writing to do so, that other party shall be entitled to terminate the Contract with immediate effect by notice in writing to the party that committed the breach and without prejudice to any other rights or remedies of either party in respect of the breach concerned or otherwise in relation to the Contract.

24. Cancellation

The College shall be entitled to terminate the Contract by giving to the Contractor not less than 28 days’ notice in writing to that effect without prejudice to any rights or remedies of the Contractor for breach of contract.

25. Dispute Resolution

- (1) The parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract.
- (2) If the parties cannot resolve the dispute pursuant to paragraph (1) of this Condition, the dispute may, by agreement between the parties, be referred to mediation pursuant to paragraph (4) of this Condition.
- (3) The supply of the Goods shall not cease or be delayed by the reference of a dispute to mediation pursuant to paragraph (2) of this Condition.
- (4) If the parties agree to refer the dispute to mediation:
 - (a) In order to determine the person who shall mediate the dispute (the “Mediator”) the parties shall by agreement choose a neutral adviser or mediator within 30 days after agreeing to refer the dispute to mediation;
 - (b) The parties shall within 14 days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held.
 - (c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings;
 - (d) If the parties reach agreement on the resolution of the dispute within 60 days of the Mediator being appointed, or such longer period as may be agreed between the parties, the agreement shall be reduced to writing and shall be binding on the parties once it is signed by both the College and the Contractor;

- (e) Failing agreement within 60 days of the Mediator being appointed, or such longer period as may be agreed between the parties, either of the parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both parties.
- (5) If the parties do not agree to refer the dispute to mediation, or if the parties fail to reach agreement as to who shall mediate the dispute pursuant to Condition 25(4) (a) or if they fail to reach agreement in the structured negotiations within 60 days of the Mediator being appointed or such longer period as may be agreed by the parties, then any dispute or difference between them may be referred to the courts.

26. Confidentiality

- (1) The Contractor agrees not to disclose any Confidential Information to any third party without the prior written consent of the College. To the extent that it is necessary for the Contractor to disclose Confidential Information to its staff, agents and sub-contractors, the Contractor shall ensure that such staff, agents and sub-contractors are subject to the same obligations as the Contractor in respect of all Confidential Information.
- (2) Condition 26 (1) shall not apply to information which:
 - (a) Is or becomes public knowledge (otherwise than by breach of these Conditions) or a breach of an obligation of confidentiality;
 - (b) Is in the possession of the Contractor, without restriction as to its disclosure, before receiving it from the College; or
 - (c) Is required by law to be disclosed.
- (3) The obligations contained in this Condition shall continue to apply after the expiry or termination of the Contract.
- (4) Except with the prior consent in writing of the College, the Contractor shall not make use of the Contract or any Confidential Information otherwise than for the purposes of supplying the Goods.

27. College Property

- (1) All College Property shall remain the property of the College and shall be used in the execution of the Contract and for no other purpose whatsoever except with the prior agreement in writing of the College.
- (2) All College Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless he notifies the College to the contrary within 14 days or such other time as is specified in the Contract.
- (3) The Contractor undertakes to return any and all College Property on completion of the Contract or on any earlier request by the College.
- (4) The Contractor shall, except as otherwise provided for in the Contract, repair or replace or, at the option of the College, pay compensation for all loss, destruction or damage occurring to any College Property caused or sustained by the Contractor, or by his servants, agents or sub-contractors, whether or not arising from his or their

performance of the Contract and wherever occurring, provided that if the loss, destruction or damage occurs at the College's Premises or any other College premises, this Condition shall not apply to the extent that the Contractor is able to show that any such loss, destruction or damage was not caused or contributed to by his negligence or default or the negligence or default of his servants, agents, or sub-contractors.

28. Indemnities and Insurance

- (1) The Contractor shall indemnify and keep indemnified the College against the injury to or death of any person or loss or damage to property which may arise out of the act, default or negligence of the Contractor, its employees, servants or agents and against all actions, claims, demands, proceedings, damage costs, charges and expenses whatsoever in respect thereof or in relation thereto PROVIDED that the Contractor shall not be liable for nor be required to indemnify the College against any compensation or damages for or in respect of injuries, loss or damage resulting wholly from any act, default or negligence on the part of the College, its employees, servants or agents not being the Contractor or employed by the Contractor. In addition the Contractor shall indemnify the College against any claims from employees of the current Contractor adversely affected by the award of the Contract.
- (2) Without limiting its responsibilities under this condition, the Contractor shall insure with a reputable Insurance Company against all loss of and damage to property and injury to or death of persons arising out of or in consequence of the Contractor's obligations under the Contract and against all actions, claims, demands, proceedings, damages, costs, charges and expenses in respect thereof.
- (3) The insurance in respect of personal injury or death of any person arising out of an incident occurring during the course of such person's employment shall comply with the Employer's Liability Compulsory Insurance Act 1969 and the Road Traffic Act 1972 and any statutory orders made thereunder. For all other claims to which this condition applies the insurance cover shall be the minimum of ten million pounds (£10,000,000) or such greater sum as the Contractor may choose in respect of any one incident and its insurance policy effecting such cover shall have the interest of the College endorsed therein or shall otherwise expressly by its terms confer its benefits upon the College.
- (4) The Contractor shall supply to the College immediately upon request copies of all insurance policies, cover notes, premium receipts and other documents necessary to comply with this condition.
- (5) The College shall indemnify and keep indemnified the Contractor and insure with a reputable Insurance Company or self insure against the injury to or death of any persons or loss of or damage to any property which may arise out of the act, default or negligence of the College, its employees, servants or agents other than the Contractor, its employees, servants or agents and against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.
- (6) The Contractor shall not be deemed to be in breach of the agreement or otherwise liable to the College for any failure or delay in performance by the Contractor of the services to the extent that such failure or delay is due to any event which is beyond the Contractor's reasonable control (excluding computer malfunction as a result of the date change) and including without limitation;

- (1) Flood, storm, weather conditions or other natural events;
- (2) War, terrorist action, hostilities, revolution, riot or civil disorder;
- (3) Any destruction, breakdown (permanent or temporary) or malfunction of, or damage to any premises, plant, equipment, materials (including any computer hardware or software or any records) unless by an act or omission of our employees, agents or sub-contractors;
- (4) The introduction of, or any amendment to, a law or regulation, or any change in your interpretation or application by an authority;
- (5) Any strike, lockout or other industrial action;
- (6) Any obstruction or public or private highway or road or any event which prevents or obstructs access to the site;
- (7) Any breach of contract or default by, or insolvency of a third party (including an agent or sub-contractor) other than a company in the Contractors group of companies or an officer or employee of the Contractor or of the group company.

29. Corrupt Gifts and Payments of Commission

- (1) The Contractor shall not:
 - a) Offer or give, or agree to give, to any person employed by or on behalf of the College any gift or consideration of any kind as an inducement or reward for doing, or having done, or not doing, any act in relation to the obtaining or execution of this Contract or any other contract with the College, or for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the College;
 - b) Enter into the Contract or any other contract with the College or any other department of the College in connection with which commission has been paid, or agreed to be paid by him or on his behalf, or to his knowledge, unless, before the Contract is made, particulars of any such commission and the terms and conditions of any agreement for the payment thereof, have been disclosed in writing to any person duly authorised by the College to act as its representative for the purpose of this Condition.

Nothing contained in this Condition shall prevent the Contractor paying such commission or bonuses to his own staff in accordance with their agreed contracts of employment.

- (2) Any breach of this Condition by the Contractor, or by anyone employed by him or acting on his behalf (whether with or without his knowledge), or the commission of any offence by the Contractor or by anyone employed by him or acting on his behalf under the Prevention of Corruption Acts 1889-1916, in relation to this Contract or any other contract with the College, shall entitle the College to terminate the Contract with immediate effect and recover from the Contractor the amount of any loss resulting from such termination and the amount of the value of any such gift, consideration or commission as the College shall think fit.
- (3) Where the Contract has been terminated under paragraph (2) of this Condition, there shall be deemed to be a failure to commence the supply of the Goods, enabling the College to terminate the Contract with immediate effect and the College will not be obliged to pay the charges.

- (4) In any dispute, difference or question arising in respect of:
- a) The interpretation of this Condition (except so far as the same may relate to the amount recoverable from the Contractor under paragraph (2) of this Condition in respect of any loss resulting from such determination of the Contract); or
 - b) The right of the College to determine the Contract; or
 - c) The amount or value of any gift, consideration or commission,
- The decision of the College shall be final and conclusive.

30. Special Provisions

In the case of any conflict or inconsistency between these general Conditions and any specific terms of the Contract, the latter shall prevail.

31. Conflict of Interest

- (1) The Contractor shall ensure that there is no conflict of interest as to be likely to prejudice his independence and objectivity in performing the Contract and undertakes that upon becoming aware of any such conflict of interest during the performance of the Contract (whether the conflict existed before the award of the Contract or arises during its performance) he shall immediately notify the College in writing of the same, giving particulars of its nature and the circumstances in which it exists or arises and shall furnish such further information as the College may reasonably require.
- (2) Where the College is of the opinion that the conflict of interest notified to it under paragraph (1) above is capable of being avoided or removed, the College may require the Contractor to take such steps as will, in its opinion, avoid, or as the case may be, remove the conflict and:
- a) If the Contractor fails to comply with the College's requirements in this respect; or
 - b) If, in the opinion of the College, it is not possible to remove the conflict,
- The College may terminate the Contract immediately and recover from the Contractor the amount of any loss resulting from such termination.
- (3) Notwithstanding paragraph (2) of this Condition, where the College is of the opinion that the conflict of interest which existed at the time of the award of the Contract could have been discovered with the application by the Contractor of due diligence and ought to have been disclosed as required by the tender documents pertaining to it, the College may terminate the Contract immediately for breach of a fundamental condition and, without prejudice to any other rights, recover from the Contractor the amount of any loss resulting from such termination.

32. Intellectual Property Rights

- (1) The Contractor warrants that the supply of the goods specified in this contract does not and will not infringe the industrial property rights of every kind of any third party.
- (2) The Contractor shall ensure that all royalties licence fees or similar expenses in respect of intellectual property used in connection with the Goods have been paid and are included with the Contract price.

33. Rights of Third Parties

It is not intended that the Contract, either expressly or by implication, shall confer any benefit on any person who is not a party to the Contract and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply.

34. Law and Jurisdiction

The Contract shall be governed by and construed in accordance with English Law and shall be subject to the exclusive jurisdiction of the courts of England.

35. Non-discrimination

The Contractor shall not unlawfully discriminate within the meaning and scope of the anti-discrimination legislation within the UK in relation to the provision of the Services or otherwise and shall take all reasonable steps to ensure that all servants, employees or agents of the Contractor and all sub-contractors employed in the execution of the Agreement do not unlawfully discriminate.

36. Other Legislation

The Contractor shall, and shall procure that its sub-contractors, agents and personnel, comply with all applicable law.

37. Contractor Status

Nothing in the Contract shall create or be construed as creating a partnership, joint venture, a contract of employment or relationship of employer and employee, or a relationship of principal and agent between the College and the Contractor.

38. 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.