

TERMS AND CONDITIONS OF AGREEMENT

DEFINITIONS AND INTERPRETATIONS

1.1 In this Agreement, the following words shall have the following meanings:

“Agreement” shall mean the ‘Agreement’, these Terms and Conditions of Contract for Agreements and any and all Schedules and Appendices attached and / or referred to herein.

“Appendices” shall mean any and all Appendices attached and referred to in the Agreement.

“Delivery” shall mean the act of delivery of Goods to the Delivery Address/es.

“Delivery Address” shall be the point/s of delivery as specified on the Purchase Order/s or other order placement mechanisms agreed between the College and the Supplier.

“Agreement” shall mean the Agreement entered into by the Supplier and the College governing the use of these Terms and Conditions.

“Goods” shall mean all goods, materials and / or products supplied by the Supplier in connection with this Agreement.

“Performance” shall mean all aspects and activities related to performing the Services in accordance with the requirements herein.

“Price” shall mean the Price set out in the pricing schedule.

“Price Variation Mechanism” shall mean the mechanism to be used in any variation of the Price.

“Purchase Order” shall mean Purchase Order/s issued from time to time to the Supplier by the College.

“Schedules” shall mean any and all Schedules attached and referred to in the Agreement.

“Services” shall mean any and all activities and actions performed by the Supplier in connection with this Agreement. Unless the context demands otherwise, the term Services shall also include the act of Delivery.

“Specification” shall mean the standard of quality required by the College as amended and notified to the Supplier from time to time.

“Supplier” shall mean the person, firm or company named in this Agreement and to whom Purchase Order/s are issued.

“Supply” shall mean all aspects and activities related to the delivery of Goods in accordance with the requirements herein.

“Term” shall mean the date from which this Agreement commences until the date of expiry or termination as defined herein.

“Terms and Conditions” shall mean these terms and conditions and any and all Appendices and / or Schedules as defined herein.

“College” shall mean Pembrokeshire College.

1.2 Unless the context requires otherwise, the singular shall include the plural, plural the singular, and any words importing persons shall include firms, companies and corporations.

- 1.3 Any reference in this Agreement to any provision of statute shall be construed as a reference to that provision as from time to time amended or re-enacted.
- 1.4 The headings in this Agreement are for the convenience of the parties only and shall in no way be used to affect the interpretation or construction of this Agreement.

2. **GENERAL PROVISIONS**

- 2.1 All Goods supplied and Services rendered by the Supplier resulting from the requirements of this Agreement and the Specification shall be in accordance with these Terms and Conditions. Furthermore, these Terms and Conditions shall supersede and render void any and all terms, written or implied, submitted by the Supplier or the College at any time and / or under which similar Goods or Services may have been previously supplied to the College.
- 2.2 Acceptance in writing or by performance by the Supplier of a Purchase Order issued by the College shall constitute full acknowledgement and acceptance of the requirements of this Agreement by the Supplier, and any conflicting or subsequent terms and conditions proffered by the Supplier in any form or medium whatsoever shall be deemed void and unenforceable and have no bearing whatsoever on the function or requirements of this Agreement or on the parties hereto unless specifically agreed to the contrary in writing by both parties.
- 2.3 In addition to the requirements of clause 2.2 hereto, unless otherwise agreed in writing between the parties, these Terms and Conditions will supersede and render void any conflicting or inconsistent terms and / or conditions contained in any and all Purchase Orders issued to the Supplier in respect of the purchases made under this Agreement.

3 **SCOPE OF AGREEMENT**

The Supplier hereby agrees, upon the Terms and Conditions of this Agreement, to:

- 3.1 Supply Goods and Services to the College free from encumbrances and in accordance with the Specification and Purchase Order/s.
- 3.2 Effect delivery of the Goods and Services in accordance with the requirements laid down in the Purchase Order/s issued to the Supplier.
- 3.3 Provide any and all information and / or data as required by this Agreement or by any relevant statutory instrument. Such provision shall be effected no later than the initial date of delivery or Performance unless otherwise agreed in writing.
- 3.4 The Supplier is deemed to have examined the locations of any and all deliveries of Goods and Services and to have understood the nature and extent of the requirements of this Agreement and shall make no claim founded on his failure to do so save in the event of such failure being directly occasioned by errors or omissions in information supplied in writing by the College to the Supplier

4 **QUALITY**

- 4.1 The Supplier warrants that Goods supplied to the College shall conform to the Specification and / or descriptions set out in this Agreement. Furthermore the Supplier warrants that the Goods shall be fit for the intended purpose, shall be of sound materials and workmanship, shall be of satisfactory quality and durability, free from any defects, latent or otherwise, and the same as any sample supplied to and approved by the College.
- 4.2 In addition to the requirements of clause 4.1 herein, the Supplier warrants that those aspects of this Agreement that comprise Services as defined in this Agreement shall be performed in accordance with the standards specified herein and within the Specification. In the absence of any such specified standards or where the standards specified are not applicable to any or all elements of the Services, the Services, or those elements of the Services not covered by the

standards specified herein, shall be performed to a standard deemed as complying with the best standards normally applied within the Suppliers' own industry or profession.

4.3 The Supplier further warrants that the Goods supplied and any related Services provided shall conform in all respects with all relevant statute, orders and regulations in force at the date of Supply or Performance, and that the use of the Goods or Services by the College shall not infringe any patent, trade mark, intellectual property or any other similar rights.

4.4 The Supplier shall indemnify the College against any and all costs, losses, liabilities or expenses they may incur as a result of any breach of the Suppliers' warranties contained in Clause 4 herein.

5 DELIVERY

5.1 The dates and / or frequencies and / or conditions of Supply or Performance shall be as specified in the Purchase Order/s from time to time issued to the Supplier unless otherwise agreed in writing.

5.2 The Supplier shall ensure the Goods are packed and supplied in such a manner as to reach the Delivery Address in good condition, and that the packaging and supply complies with all relevant statute and regulations.

6 PROPERTY AND RISK

6.1 Risk in delivered Goods shall pass to the College ordering said goods upon the Goods being delivered to the Delivery Address in accordance with the College's delivery requirements, in correct quantity and in good condition. The College shall not assume any risk after delivery if the Goods are received in a damaged condition or if there are any discrepancies or variances of any kind between the quantity or extent of Goods delivered and the quantity or extent described on the delivery documentation until such time as the cause of the damage or extent of discrepancy is ascertained and the cost and liability of replacement and / or rectification is agreed.

6.2 Property in the Goods shall pass to the College upon payment by the College for the Goods in full.

6.3 Neither the assumption of Risk or Property as defined in this clause nor the making of any payment whatsoever shall prejudice the College's rights of rejection or any other right or remedy, whether under this Agreement or at law.

7 ACCEPTANCE

7.1 Notwithstanding the requirements of clause 6 herein, the College reserve the right to reject any Goods supplied or Services performed which in its opinion fail to comply fully with the Specification or other requirements set out in this Agreement or on the Purchase Order issued to the Supplier.

7.2 In the event of rejection as herein defined, the College shall have the right to exercise the option to demand the removal of Goods or the suspension or termination of Services, and to purchase the Goods and / or Services elsewhere. Before exercising the right to purchase elsewhere, the College shall give the Supplier reasonable opportunity to replace the rejected Goods or to reperform the rejected Services with Goods and / or Services that comply fully with the requirements herein.

7.3 Save where performance and remedy criteria are agreed between the parties hereto and incorporated elsewhere in this Agreement, and notwithstanding Suppliers' opportunities under 7.2 herein, should the Supplier fail to provide replacement Goods or reperformed Services that meet the requirements herein within a period of fourteen (14) days from date of initial rejection by the College, then the College shall be entitled to terminate and Purchase Order

issued forthwith without liability by giving notice to the Supplier and the College, on behalf of the College, shall have the right to terminate this Agreement in accordance with its terms.

8 PRICE AND PAYMENT

- 8.1 The price payable shall be set out in the Pricing Schedule and shall be inclusive of all charges. No variation to the Price shall be permitted between the Supplier and the College other than in accordance with the Price Variation Mechanism.
- 8.2 All Prices shall be fixed for a period of not less than 12 months of any subsequent Agreement. Proposals for the revision of prices must be submitted in writing to the Procurement Manager, Pembrokeshire College/the Contractor at least 30 days prior to the effective date of the variation. The Contractor(s) must furnish such evidence as may be reasonably required to satisfy the College that the amount of any increase in cost is justified and/or decrease in cost is adequate.
- 8.3 Where VAT or any other tax or duty is applicable, the Supplier shall provide a valid tax invoice, with such duty or taxes itemised. Payment of monies due shall be made in accordance with the College standard payment terms or in the Purchase Order/s issued to the Supplier provided that invoices are correctly addressed, completed and presented in accordance with the requirements herein. All invoices, which are incorrectly completed or submitted, shall be returned to the Supplier unpaid to be corrected and re-submitted.

9 LIABILITIES AND INDEMNITY

- 9.1 The Supplier shall be liable for and shall indemnify and hold harmless the College and its employees, agents and sub-contractors against any and all liabilities resulting from personal injury or death or loss or damage to any property which may arise from any act or omission, negligent or otherwise or wilful misconduct of the Supplier, Suppliers' employees, agents or sub-contractors out of or in consequence of any operations under this Agreement, and the Supplier shall indemnify the College against all actions, demands, damages, costs, charges and expenses arising in connection therewith provided however that nothing in this condition shall render the Supplier liable for any injury or damage resulting from any negligent act or omission of the College to their respective agents or sub-contractors.
- 9.2 In addition to maintaining adequate levels of insurance as required by law, the Supplier shall be responsible for effecting and maintaining for a period of 12 years from the date of completion of the project adequate professional indemnity insurance with a well-established insurer or underwriter of good repute with a limit of indemnity of not less than one million pounds (£2,000,000) for any one occurrence or series of occurrences arising out of the same originating cause.
- 9.3 The level of insurance required by clause 9.2 shall be increased in line with the retail prices index ("**RPI**") but only upon each successive occasion that the aggregate of RPI cumulative increases totals 10%. The base date for calculating such indexation is the date upon which the Consultant first commenced performance of the Services.
- 9.4 The Consultant shall annually if so requested, within seven days of a written request, supply documentary evidence to the Employer that the insurance required by this clause 9 has been properly maintained.

10 FORCE MAJEURE

- 10.1 For the purpose of this Agreement "Force Majeure" shall mean any event(s) or circumstance(s) beyond the control of either party which impedes the due performance of the obligations of such party and which by the exercise of all reasonable diligence such party is unable to prevent provided that the mere shortage of labour materials Goods or supplies shall not constitute Force Majeure.

- 10.2 If either party is prevented or impeded from or in performing its obligations under this Agreement by reason of Force Majeure it shall promptly give notice to the other party stating the circumstances constituting Force Majeure and the extent thereof. The obligations of the parties shall thereupon be suspended for so long as the circumstances of Force Majeure may continue and neither party shall be liable to the other for breach or failure to perform its obligations under this Agreement if it is unable to do so under the circumstances of Force Majeure. A party affected by Force Majeure shall use every reasonable effort to minimise the effects of Force Majeure and shall promptly resume performance of its obligations as soon as is reasonably possible after removal of the circumstances of Force Majeure.
- 10.3 If Force Majeure causes the prevention of any of the requirements of this Agreement being performed by the Supplier for a continuous period of twenty-one (21) days, the College may cancel or terminate any outstanding Purchase Order and the College shall be entitled by written notice to the Supplier to terminate the Agreement in accordance with its terms.

11 **WARRANTY AND DEFECTS LIABILITY**

- 11.1 The Supplier shall, as soon as reasonably practicable, repair or replace any of the Goods which are or become defective during the period of 12 months from the date of supply where such defects occur under proper usage and are due to faulty design, erroneous use data provided by the Supplier or inadequate or faulty materials or workmanship or any other breach of Suppliers' warranties, express or implied.
- 11.2 The Supplier shall not be liable for any repairs or replacement if and to the extent that such defect or damage is caused by the proven negligence of the College or their respective agents or sub-contractors.

12 **TERMINATION**

- 12.1 The College shall have the right to terminate any Purchase Order issued by it; likewise the College shall have the right to terminate this Agreement:
- 12.1.1 forthwith by notice to the Supplier in the event the Supplier is adjudicated or found bankrupt or insolvent or any order is made or resolution passed for the winding up, liquidation or dissolution of the Supplier, or the Supplier enters into any composition or arrangement for the benefit of its creditors or a receiver administrator administrative received Manager or similar officer is appointed in respect of the whole or any part of the Suppliers' assets.
- 12.1.2 forthwith by notice to the Supplier if the Supplier fails to perform or observe any of the terms of this Agreement in any material respect and in the case of breach capable of remedy fails to remedy same within 14 days or in the event of a breach capable of remedy on more than one occasion notwithstanding that the Supplier has taken steps to remedy such breach on previous occasions.
- 12.1.3 forthwith by notice to the Supplier if the Supplier fails to remedy any failure to supply acceptable Goods and / or Services in accordance with the requirements of this Agreement.
- 12.1.4 at any time by giving not less than 60 days notice in writing to the Supplier.
- 12.1.5 if the Supplier is convicted or adjudged by a competent body to have infringed any statutory regulations.
- 12.2 Subject to clause 12.1.3 no remuneration or compensation shall become due to the Supplier in respect of any period after termination of this Agreement with the exception of monies previously and correctly accrued under this Agreement.

- 12.3 In the event of termination in accordance with 12.1.4 herein, the liability of the College shall be limited to the Price for any Goods purchased by the Supplier clearly intended for performance of the terminated Purchase Order and where such Goods cannot be utilised under any other Suppliers' agreements or business opportunities whether existing or prospective.
- 12.4 Termination shall be without prejudice to any accrued rights or remedies or any continuing obligations (whether express or implied) of the Supplier.

13 PROPERTY, INTELLECTUAL PROPERTY AND PATENTS

- 13.1 The Supplier agrees that any and all property, information and / or intellectual property furnished by the College under or in connection with this Agreement shall belong to the organisation so furnishing such property, information and / or intellectual property and the Supplier shall take all reasonable steps to ensure protection of all such rights where such are not already in the public domain.
- 13.2 The Supplier hereby agrees to indemnify the College against any and all costs, claims or actions arising out of any infringement of patent, registered design, trademark, copyright or any other form of intellectual property rights arising out of the purchase or use of any Goods or Services supplied under this Agreement save where the Goods or Services are supplied to the particular specification of the College.

14 ADVERTISING AND CONFIDENTIALITY

- 14.1 Neither the Supplier or Suppliers' agents or sub-contractors shall make any reference to this Agreement, the College and their affiliates in any medium whatsoever without the express prior permission of the College.
- 14.2 Neither the Supplier or Suppliers' agents or sub-contractors shall make use of any images nor photographs nor use any information given by or gleaned from the College save where such is either in the public domain or is essential for the due performance of this Agreement.

15 WAIVERS

- 15.1 No failure or neglect on behalf of the College or their representatives to enforce any of the terms and conditions of this Agreement shall be considered as a waiver unless expressly stated to be a waiver in writing by the College. A waiver by the College shall not automatically be construed as permitting a waiver under any circumstances at any time in the future.

16 SEVERANCE

- 16.1 Any provision of this Agreement which is declared void or unenforceable by any competent and approved authority or court shall to the extent of such invalidity or un-enforceability be deemed severable and shall not effect the other provisions of this Agreement, which shall continue un-affected.

17 RIGHTS OF THIRD PARTIES

- 17.1 Save as expressly provided in these Terms and Conditions, these Terms and Conditions shall not create any rights under the Contracts (Rights of Third Parties) Act 1999 and shall not be enforceable by any other party other than the Supplier and the College in respect of any Purchase Order issued by the College.

18 ASSIGNMENT

18.1 The College may transfer, assign, novate, dispose or sub-contract the whole or any part of this Agreement to another public authority constituted or authorised to discharge the functions and /or responsibilities of the College.

18.2 The Supplier shall not assign novate, sub-contract, transfer or otherwise dispose of this Agreement, in whole or in part, without the prior written consent of the College.

19 ENTIRE AGREEMENT

19.1 This Agreement constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matters of this Agreement.

19.2 Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on and shall have no remedy in respect of any statement representation warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement.

19.3 The only remedy available to a party for breach of the warranties shall be for breach of contract under the terms of this Agreement.

19.4 Nothing in this sub-clause shall operate or exclude any liability for fraud.

20. DENIAL OF PARTNERSHIP

20.1 This Agreement shall not operate so as to create a partnership, relationship of agency or joint venture of any kind between the parties.

21 GOVERNING LAW

21.1 This Agreement shall be construed and governed in all respects by the laws of England and Wales and shall be subject to the exclusive jurisdiction of the English and Welsh courts.