

Bournemouth & Poole College – Conditions of Purchase

1. DEFINITIONS

In these conditions the following terms shall have the following meanings:

“The College” shall mean THE BOURNEMOUTH AND POOLE COLLEGE, North Road, Parkstone, Poole, Dorset BH14 0LS;

“The Seller” shall mean any person, firm or company whom this order is addressed.

“The Goods” shall mean the goods (if any) described in the order and any accessories or additions thereto and/or replacements therefore;

“The Order” means this purchase order placed by The College for goods or services which refers to or incorporates The College’s Conditions of Purchase;

“Services” means the services (if any) described in the relevant order;

“Specification” includes any plans, drawings, data or any other information relating to the Goods or Services.

2. GENERAL

- 2.1 Orders for Goods and/or Services are placed by The College and delivery of Goods and/or Services will be accepted by The College subject only to these conditions.
- 2.2 The College shall not be liable to pay for any Goods or Services unless an order has been placed on its standard purchase order form or via an agreed secure electronic ordering system.
- 2.3 No contract shall be made between The Seller and The College other than upon these conditions unless otherwise specifically agreed in writing by The College.
- 2.4 These Conditions shall apply to the contract to the exclusion of any other terms and conditions on which any quotation has been given to The College or subject to which the Order is accepted or purported to be accepted by the Seller.
- 2.5 Acceptance by the Seller of this Order and these Conditions shall be constituted by the Seller signing and returning an acknowledgement copy of The College’s Purchase Order OR delivering the Goods OR providing the Services to The College.
- 2.6 The Order will lapse unless unconditionally accepted by the Seller in writing within 28 days of its date.
- 2.7 The rights of The College hereunder shall be in addition to and without prejudice to any other rights it may have at Common Law or otherwise.

3. VARIATION

Any variation or addition shall not bind The College to the Order or these Conditions unless agreed in writing and signed by an authorised representative of The College.

4. SPECIFICATIONS

- 4.1 The quantity, quality and description of the Goods and the Services shall, subject as provided in these Conditions, be as specified in the Order and/or in any applicable Specification.
- 4.2 Any Specification, supplied by The College to the Seller, or specifically produced by the Seller for The College, in connection with the Order, together with the copyright, design rights or any other intellectual property rights in any such specification, shall be the exclusive property of The College.

5. DELIVERY

- 5.1 Any date of delivery of Goods or performance of Services specified in the Order or in any appropriate Specification shall be of the essence of the Contract. If no date is specified, delivery or performance will be within a reasonable period. Where the date of delivery of the Goods or of performance of the Services is to be specified after the placing of the Order, the Seller shall give The College reasonable notice of the specified date.

- 5.2 The College shall be entitled at any time prior to delivery of performance to cancel or vary the whole or any undelivered or unperformed part of any Order by notice in writing to the Seller and on such cancellation The College shall have no liability to the Seller unless any such cancellation or variation is notified by The College within 28 days of any projected delivery date of performance of Services in which case The College's sole liability shall be to pay the Seller the price for the Goods or Services in respect of which The College has exercised its right of cancellation, less the Seller's net saving of cost arising from cancellation.
- 5.3 The Seller shall give The College immediate written or electronic notice of any anticipated delay in delivery of the Goods/or performance of the Services.
- 5.4 The Seller shall procure at its expense delivery and unloading of the Goods at the place of delivery and in the manner specified in the Order or in the Service Specification. The Goods shall be properly packed and secured so as to arrive at the place of delivery in good condition. The Seller will ensure that a delivery note is signed by an appropriate representative of The College whenever goods are delivered to College premises.
- 5.5 The Seller will deliver the Goods to locations and at times agreed with The College.
- 5.6 Unless otherwise specified in the order, all packaging shall be considered non-returnable and its cost included in the price.
- 5.7 If for any reason The College is unable to accept delivery of goods on the date of delivery specified in the Quotation and during the hours referred to in clause 5.5 the Seller will store the goods, safeguard them, and take all reasonable steps to prevent deterioration until their actual delivery. The College shall be responsible for reasonable costs (including insurance) for so doing.
- 5.8 If the Goods are to be delivered, or the Services are to be performed, by instalments, the Contract will be treated as a single contract and not severable.
- 5.9 The Seller shall supply The College in good time with any instructions or other information required to enable The College to accept delivery of the Goods and performance of the Services.

6. PRICE AND PAYMENT

- 6.1 The price for the Goods and Services shall be as stated in the Order and unless otherwise specified by the Seller in writing in its Quotation shall include all insurance, packing and delivery costs. The College shall not be liable for any costs or charges in addition to the stated price.
- 6.2 The price stated on the Order shall be shown inclusive of any applicable VAT (which shall be payable by The College subject to the receipt of a correct VAT invoice).
- 6.3 Unless otherwise agreed by The College in writing, the Seller's invoice shall be raised no earlier than the date of delivery of the Goods or completion of performance of the Services and payment of the Goods or Services shall be due at the end of the month following the month in which delivery is made or the Services provided as the case may be.
- 6.4 The College shall be entitled to set off against the price any sums owed to The College by the Seller.

7. PROPERTY AND RISK

Without prejudice to any right of The College hereunder to reject unsatisfactory Goods property and risk in the Goods shall pass to The College when the Goods have been safely unloaded at the place of delivery and a delivery note signed on behalf of The College.

8. ACCEPTANCE AND REJECTION OF GOODS

- 8.1 Acceptance of delivery of the Goods by The College shall be subject to inspection and approval of the Goods after delivery. Any delivery note or other document signed by The College on or shortly after the delivery shall operate only as an acknowledgement of delivery and shall not be construed as an acceptance by The College of the Goods.
- 8.2 The College shall be entitled at any time within thirty (30) days of delivery or within such longer periods as may be specified in the Order (or in the case of latent defects within a reasonable time after the defect has become apparent) to reject any Goods delivered which do not conform to specification or sample or if the design material or workmanship of the Goods is not to the reasonable satisfaction of The College.
- 8.3 If any Goods are rejected The College shall notify the Seller that it intends to return the Goods and may without prejudice to any right it may have return the Goods to the Seller or require the Seller to arrange

collection of the Goods from the Premises at the sole risk and expense of the Seller and any sums paid by The College in respect of the Goods shall be reimbursed by the Seller upon demand and The College may either cancel the Order or require the Seller at its option to repair or replace the Goods.

9. WARRANTY

9.1 The Seller warrants The College that the Goods shall:

- a) Conform as to quantity, quality and description with the particulars specified in Specification, the Order and any relevant sample, and
- b) Be free from defects in design, materials and workmanship whether discoverable by inspection or not; and
- c) Will be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and other relevant legislation, and be fit for any purpose and
- d) Perform in accordance with the Specification (if any) as set out in the Order.

9.2 The Seller warrants to The College that the services will be provided in accordance with the Specification and will be provided in an efficient and professional manner and will be performed by appropriately qualified and trained personnel, with due care and diligence and to such a high standard of quality as it is reasonable for The College to expect of a competent and qualified contractor experienced in providing services of that kind.

9.3 If within 12 months (or such a period as the parties may agree in writing) of delivery of the Goods or performance of the Services The College shall give written notice to the Seller of any defects in the Goods or in performance of the Services or any breach of the Seller's warranties contained herein then The College may at its option and without prejudice to any other rights it may have, require the Seller immediately and at its own cost to repair or replace the Goods or to supply any replacement Goods or Services, to treat the Contract as discharged by the Seller's breach and require the repayment of any part of the price which has been paid.

9.4 The Seller warrants that the design, construction and the quality of the Goods and the standard of any Services shall comply in all respects with the requirements or any applicable statute, statutory instrument or other regulation, rule or order having the force of law and any applicable BSI or other generally accepted specification, tolerance or standard in force at the time when the Goods are supplied including (without limitation) any relevant College codes of practice and standards.

9.5 The Seller will promptly notify The College of any breach of the terms in clause 9.4 above from which time to time comes to its attention.

9.6 The Seller will indemnify and hold harmless The College against all loss, damage, costs, claims and expenses whatsoever and howsoever arising suffered by The College or in respect of which The College may be or become liable to third parties.

9.7 Without prejudice to its liability to indemnify The College under clause 9.6 the Seller shall take out and maintain insurance in such sum and on such terms as are necessary to cover the liability of the Seller under 9.6. The Seller shall produce such evidence as The College may require that the said insurance has been taken out and is in force at all material times.

9.8 All other conditions and warranties implied by law applicable to the Goods and Services shall be deemed to be incorporated in these conditions.

10. ASSIGNMENT

Unless otherwise agreed in writing by The College the Seller shall not be entitled to assign or sub-contract its obligations under the Contract.

11. TERMINATION

The College shall be entitled to terminate the Contract without liability to the Seller by giving notice to the Seller at any time if:

11.1 The Seller becomes insolvent or bankrupt, makes any voluntary arrangement with its creditors (within the meaning of the insolvency act 1986) or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or

- 11.2 An encumbrance takes possession, or a receiver is appointed, of any of the property or assets of the Seller; or
- 11.3 The Seller ceases, or threatens to cease, to carry on business; or
- 11.4 The Seller is in breach of these Conditions, the Quotation of the Order; or
- 11.5 The Seller acts in a manner which could cause discredit to The College or its goodwill or reputation; or
- 11.6 The College reasonably apprehends that any of the events mentioned above is about to occur in relation to the Seller and notifies the Seller accordingly.

12. INTELLECTUAL PROPERTY

All copyrights, patents, design rights and other intellectual property rights in any documents, designs specifications or other work carried out for The College shall be the property of The College unless otherwise agreed in writing.

13. CONFIDENTIALITY

The Seller agrees to keep all confidential or secret information relating to The College or its affairs in the strictest confidence and secret and not at any time for any reason whatsoever to disclose them or permit them to be disclosed to any third party except as permitted hereunder to enable the Seller to carry out its duties and obligations. The Seller will not, in any publicity or promotional material or documentation include any reference to The College without the prior written approval of The College.

14. WAIVER

The rights of The College hereunder shall not be prejudiced or restricted by any indulgence or forbearance extended to the Seller and no waiver by The College in respect of any breach of these Conditions by the Seller shall operate as a waiver in respect of any subsequent breach.

15. NOTICE

All notices which are required to be given hereunder shall be in writing and shall be sent to the usual or last known address of either party or such other addresses as the recipient may designate by notice given in accordance with the provisions of this sub-clause. Any such notice may be delivered personally or by first class prepaid letter and shall be deemed to have been served if by personal delivery when delivered, if by first class post 48 hours after posting.

16. GOVERNING LAW

The Quotation, this Order and the Conditions and the Contract shall be governed by and constructed exclusively in accordance with English Law. The parties hereby agree to submit to the jurisdiction of the English Courts.

17. CONFLICTS OF INTEREST AND CORRUPTION

- 17.1 The Seller, its servants or agents shall not offer or give or agree to give to any person, company or firm any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do anything in relation to the performance of the Seller's obligations under the Contract or for showing or forbearing to show favour or disfavour to any person, company or firm.
- 17.2 The Seller shall at all times act in good faith towards The College and shall not knowingly place itself into a position of conflict of interest between The College and any third party.
- 17.3 Any breach of clauses 17.1 and 17.2 above by the supplier, its servants or agents or the commission of any offence by the supplier, its servants or agents under the Prevention of Corruption Acts 1889 to 1916 shall entitle The College to determine the Contract forthwith and recover from the Seller the amount of any loss resulting from such cancellation.

18. FORCE MAJEURE

Neither the Seller nor The College shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing or failure to perform, any of its obligations in relation to the Goods or Services, if the delay or failure results from an event beyond the party's reasonable control which shall include, without limitation, act of God, explosion, fire, flood, accident, legal restrictions, regulations, strikes, lookouts, or third party intervention.

The College's full Conditions of Contract are available on request.

January 2006