

NELSON AND COLNE COLLEGE

CONDITIONS OF CONTRACT FOR THE PROVISION OF SERVICES

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1. DEFINITIONS

In these Conditions:-

- 1.1 "The Contract" shall mean the agreement concluded between the College and the Supplier, including all Specifications, patterns, samples, plans, drawings, reports, Purchase Orders and other documents which are incorporated or referred to therein;
- 1.2 "The Supplier" shall mean the Organisation, Company or Person who under the terms of the Contract undertakes to supply the Services to the College;
- 1.3 "The College" shall mean Nelson & Colne College;
- 1.4 "The Services" shall mean the service or services to be provided as specified in the Contract and or Purchase Order and shall, where the context so admits, include any materials, articles and goods to be supplied thereunder;
- 1.5 "The Contract Price" shall mean the price exclusive of Value Added Tax payable to the Supplier by the College under the Contract for the full and proper performance by the Supplier of its obligations as determined under the provisions of the Contract;
- 1.6 "The Premises" shall mean the location where the services are to be performed, as specified in the Contract or Purchase Order;
- 1.7 "The College's Authorised Representative" shall mean the duly nominated and authorised representative of the College for all operational and technical purposes connected with the Contract.
- 1.8 The headings to any Conditions shall not affect their interpretation.

2. NATURE OF THE SERVICES

- 2.1 The Services shall be to the reasonable satisfaction of the College and shall conform in all respects with any particulars specified in the Contract, the Purchase Order or any variations thereto.
- 2.2 Unless expressly stated in this Agreement, the Supplier shall provide all staff, equipment, materials and other things whatsoever required for the provision of Services to the Contract Standard.
- 2.3 The Supplier shall provide the College with such progress reports of its work at such intervals and in such form as is detailed in the Specification or as otherwise agreed between the Supplier and the College's Authorised Representative.
- 2.4 The Supplier shall begin performing the Services on the date stated in the Contract or Purchase Order and shall complete them by the date specified or continue to perform them for the period stated in the Contract or Purchase Order. Time is of the essence in the Contract. The College may by written notice require the Supplier to execute the Services in such order as the College may decide. In the absence of such notice the Supplier shall submit such detailed programmes of work and progress reports as the College may from time to time require.

3. PRICE AND PAYMENT TERMS

3.1 The Contract Price shall be "net", that is, after deduction of all agreed discounts. The amount of any Value Added Tax or other duty and any early settlement discounts shall be shown separately in the Contract.

3.2 Unless otherwise agreed in writing with the College Purchasing representative, the College shall pay the Contract Price to the Supplier 30 days from receipt of the Invoice or when the Services are delivered and accepted, whichever is the later.

3.3 Wherever under this Contract any sum of money is recoverable from or payable by the Supplier, that sum may be deducted from any sum then due, or which at any later time may become due, to the Supplier under this Contract or under any other agreement or Contract with the College.

4. CONTRACTOR'S STATUS

In carrying out the Services the Supplier shall be acting as principal and not as the agent of the College. Accordingly:

- a) the Supplier shall not (and shall procure that its employees, servants and agents do not) say or do anything that might lead any other person to believe that the Supplier is acting as the agent of the College, and
- b) nothing in this Contract shall impose any liability on the College in respect of any liability incurred by the Supplier to any other person but this shall not be taken to exclude or limit any liability of the College to the Supplier that may arise by virtue of either a breach of this Contract or any negligence on the part of the College.

5. PERSONNEL

5.1 The Supplier shall take the steps reasonably required by the College to prevent unauthorised persons being admitted to the Premises. If the College gives the Supplier notice that any person is not to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract, the Supplier shall take all reasonable steps to comply with such notice and if required by the College the Supplier shall replace any person removed under this Condition with another suitably qualified person and procure that any pass or permit issued to the person removed is surrendered.

5.2 If and when directed by the College, the Supplier shall provide a list of names and addresses of all persons who are or may be at any time concerned with the Services or any part of them, specifying the capacities in which they are so concerned and giving such other particulars and evidence of identity and other supporting details as the College may reasonably require.

5.3 The Supplier is required, in the performance of the Contract, to comply with:-

- (a) all relevant legislation relating to unlawful discrimination in employment; and
- (b) the relevant sections of the College's Equal Opportunities Policy (a copy of which is available on request).

6. SERVICE MONITORING

6.1 The work shall be in accordance with the Contract requirements to the satisfaction of the College or its Authorised Representative.

The College's Authorised Representative shall have the right to inspect and examine the work being performed on the College's behalf at any reasonable time; where any part of the work is being performed on premises other than the College's Premises, reasonable notice shall be given to the Supplier. The Supplier shall give all such facilities as the College or its Authorised Representative may reasonably require for such inspection and examination.

6.2 The Supplier shall keep and maintain until two years after the Contract has been completed records to the satisfaction of the College of all expenditures which are reimbursable by the College and of the hours worked and costs incurred in connection with any employees of the Supplier paid for by the College. The Supplier shall on request afford the College or its representatives such access to those records as may be required by the College in connection with the Contract.

7. AUDIT

An open audit system will operate at all times whereby selected representatives from the College may inspect the Suppliers records for accounting systems to verify any account received or anticipated. The College's representatives will be entitled to inspect the Suppliers related records and paperwork for checking and auditing purposes.

8. DEFAULT

8.1 If the Supplier shall fail to provide to the Contract Specification any part of the Services at any time when the same ought to have been provided under the terms of this Agreement then, without prejudice to any other right or remedy which the College may possess in respect of such failure, the College may:-

8.1.1 require the Supplier to remedy such default within such time as may be specified by the College's Authorised Representative by providing or providing again (as the case may be) without further charges to the College such part of the Services to the Contract Standard; and or

8.1.2 without determining this Agreement in whole or in part, itself provide or procure the provision of such part of the Services until such time as the Supplier shall have proved to the reasonable satisfaction of the College's Authorised Representative that such part of the Services will once more be provided by the Supplier to the Contract standard or, at the College's option until such later time as the College's Authorised Representative may specify as being reasonable notice in all the circumstances that the Supplier will once more so provide such part of the services; and

8.1.3 without determining the whole of this Agreement, determine this Agreement in respect of such part of the Services only and thereafter itself provide or procure the provision of such part of the Services.

8.2 The College may charge the cost of any Services provided or procured by it under paragraph 8.1

together with an administration charge equal to 10% of the cost of such Services, to the Supplier.

9. COPYRIGHT, ETC.

9.1 It shall be a Condition of this Contract that, except to the extent that the Services incorporate designs furnished by the College, the Services will not infringe any patent, trade mark, registered design, copyright or other right in the nature of intellectual property of any third party and the Supplier shall indemnify the College against all actions, claims, demands, costs and expenses which the College may suffer or incur as a result of or in connection with any breach of this Condition.

9.2 All rights (including ownership and copyright) in any specifications, instructions, plans, drawings, patents, models, artwork, designs or other materials:

9.2.1 furnished to or made available to the Supplier by the College are hereby assigned to and shall vest in the College absolutely;

9.2.2 prepared by or for the Supplier for exclusive use, or intended use, in relation to the performance of the Contract are hereby assigned to and vest in the College absolutely.

9.2.3 where prepared by or for the Supplier for non-exclusive use, or intended use, in relation to the performance of the Contract are hereby irrevocable licensed to the College royalty free and worldwide on a non-executive basis.

9.3 All rights in the work including any copyright therein and any right to apply for patents or any other form of intellectual property rights, used in connection with the Contract shall vest in and remain the property of the College.

9.4 The Supplier, if requested, and at the expense of the College shall do all things necessary to enable the College to obtain patents or similar protection as the College may require.

10. PUBLICITY AND ADVERTISING

The Supplier hereby undertakes with the College that it will not at any time during the continuance of or after the termination of this Contract publicise the existence or claim, represent or otherwise indicate any present or past association with the College without the prior written consent of the College Purchasing representative.

11. INDEMNITY AND INSURANCE

11.1 Without prejudice to its liability for breach of any obligations under the Contract the Supplier shall be liable for and shall indemnify the College against any liability, loss, costs, expenses, claims or proceedings whatsoever arising under any statute or at common law in respect of:

11.1.1 any loss of or damage to property (whether real or personal);

11.1.2 any injury to any person, including injury resulting in death;

11.1.3 any financial or economic loss in consequence of or in any way arising out of any connection with the Services or the performance of them, or the delivery or

	unloading of any materials by the Supplier, its servants or agents.		(whether with or without the knowledge of the Supplier), or if in relation to the Contract the Contractor or any person employed by it or acting on its behalf shall have committed an offence under the Bribery Act 2010.
11.2	The Supplier shall have in force and shall require any sub-contractor to have in force:		
	a) employers liability insurance in accordance with any legal requirements for the time being in force, and	14.2	In the event of the Contract being terminated under Clause 14.1., the Supplier shall allow or pay to the College on demand the amount of any direct loss and/or damaged caused to the College by the termination.
	b) public liability insurance for such sum and range of cover as the Supplier deems appropriate but covering at least all matters which are the subject of indemnities or compensation obligations under these Conditions in the sum of not less than £2 million for any one incident and unlimited in total, unless otherwise agreed by the College Chief Financial Officer in writing.	14.3.	The Supplier is required to notify the College of any conflict of interests immediately any such conflict arises.
	The Supplier or sub-contractor shall effect the above policy or policies with a reputable insurance company and shall at the request of the College produce the relevant policy or policies together with receipts or other evidence of payment of the latest premium due thereunder.	15. HEALTH & SAFETY	
11.3	If the Supplier defaults in insuring, the College may itself effect insurance and charge the cost together with an administration charge of 5% to the Supplier.	15.1	The Supplier shall ensure that its employees, servants or agents act in full accordance with the provisions of the Health and Safety at Work etc. Act 1974 and shall notify the College of any hazard to health and safety relating to the Services.
12. INSOLVENCY		15.2	The Supplier undertakes that its employees, servants or agents shall comply with any instruction issued by or on behalf of the College's Health, Safety and Environment Officer which relates to the College's Health and Safety Policy (a copy of which is available on request).
	Without prejudice to any other rights or remedies of the College under this Contract the College shall have the right forthwith to terminate this Contract by written notice to the Supplier or its trustee in bankruptcy or receiver or (if a Company) liquidator or administrator if the Supplier shall have a receiver appointed over all or a substantial part of their assets or (if an individual) be declared bankrupt or (if a company) shall go into liquidation or have an administrator appointed to manage its affairs.	15.3	The Supplier shall indemnify the College against all actions, suits, claims, demands, losses, charges, costs and expenses which the College may suffer or incur as a result of or in connection with any breach of clauses 15.1 and 15.2.
	In any case, the Supplier is required to notify the College in writing immediately upon the occurrence of any of the above events.	16. DATA PROTECTION (GDPR)	
13 ASSIGNMENT AND SUB-LETTING		16.1	The Supplier shall comply with the requirements and obligations of the General Data Protection Regulation Act 2018.
13.1	Neither party shall assign the whole or any part of the Contract. The Supplier shall not sub-contract the production, supply, or other provision of this Contract without the prior written consent of the College Purchasing representative.	16.2	The Supplier, its employees and agents shall at all times keep confidential and shall not disclose to any person other than a person authorised by the College all information and other matters acquired by the Supplier in connection with the contract. Failure to comply with these regulations will result in a data breach meaning any act or omission that (i) compromises the security, confidentiality or integrity of the Personal Data that a Supplier processes for and on behalf of the College (including, by way of example, the unauthorised loss or disclosure of any such Personal Data by Supplier); (ii) compromises the physical, technical, administrative or organisational safeguards put in place by the Supplier that relate to the protection of the security, confidentiality or integrity of such Personal Data (including any breach of the IT and data security requirements); or (iii) causes the College or Supplier to be in breach of data protection Law; in particular the General Data Protection Regulation.
13.2	In any case where the Contract or part is sub-contracted in accordance with Clause 13.1, such sub-contract shall in no way limit or affect the obligations of the Supplier who shall remain responsible for all Services performed under, and the full performance of its obligations under, the terms of the Contract.		
14. PREVENTION OF CORRUPTION		17. PROPERTY	
14.1	The College shall be entitled to terminate the Contract, if the Supplier shall have offered or given or agreed to give to any person 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 any action in relation to obtaining or execution of the Contract, or for showing or forbearing to show favour or disfavour to any person in relation to the Contract, or if the like acts shall have been done by any person employed by the Supplier or acting on its behalf	17.1	All property issued by the College to the Supplier in connection with the Contract, shall remain the property of the College and shall be used in the execution of the Contract and for no other purpose whatsoever without the prior written approval of the College's Authorised Representative.

17.2 The Supplier shall be responsible for the security of all goods and equipment belonging to the College and used by the Supplier in or about the provision of Services or otherwise belonging to the Supplier on the College's Premises.

17.3 The Supplier shall be responsible for establishing its own sources of supply for materials and shall be responsible for ensuring reasonable and proper conduct by their suppliers and employees whilst on the College's Premises.

18. TERMINATION

18.1 If the Supplier is in breach of any of the terms hereof, the College may without any liability whatsoever to the Supplier terminate the Contract in whole or in part by notice in writing to the Supplier. In such event, the College shall pay to the Supplier the pro-rata invoice value of any Services received by the College under the Contract at the date of receipt of the notice cancelling the Contract.

18.2 Without prejudice to its other rights and remedies, the College may at its sole discretion be entitled to terminate this Contract by giving the Supplier not less than 30 days written notice to that effect.

18.3 In the event of such notice being given the College shall indemnify the Supplier against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Supplier by reason of the determination of the Contract and shall further negotiate a payment representing reasonable loss of profit to the Supplier, if any.

The College shall not be liable to pay under this Condition any sum which, when taken together with any sums paid or due or becoming due to the Supplier under the Contract, shall exceed such total sum as would have been payable under the Contract if the work had been completed in accordance with the requirements of the Contract.

19. ARBITRATION

All disputes, differences or questions between the parties to the Contract with respect to any matter or thing arising out of or relating to the Contract, other than a matter or thing as to which the decision of the College is under the Contract to be final and conclusive, and except to the extent to which special provision for arbitration is made elsewhere in the Contract, shall be referred to the arbitration of two persons one to be appointed by the College and one by the Supplier or their umpire, in accordance with the provisions of the Arbitration Act 1950 or any statutory modification or re-enactment thereof.

20. VARIATION

The Services shall be performed in accordance with these Conditions and other Contract documentation. Any conditions which the Supplier may seek to impose and which in any way add to, vary or contradict these Conditions shall be excluded and not form part of the Contract, unless each of such conditions has been agreed in writing by the College Chief Financial Officer.

21. FORCE MAJEURE

Neither party shall be liable to the other for any failure to perform its obligations under the Contract where such performance is rendered impossible by

circumstances beyond its control, but nothing in this Condition shall limit the obligations of the Supplier to use its best endeavours to fulfil its obligations under the Contract.

22. ANTI BRIBERY

United Kingdom Bribery Act 2010

Nelson and Colne College has zero- tolerance for bribery and corruption. The College's reputation with the community it serves and other stakeholders is underpinned by ethical behaviour, financial probity and honesty. In performing its obligations under this Agreement, you the supplier shall comply with the College's Anti Bribery Policy and with the United Kingdom Bribery Act 2010.

The College's Anti Bribery Policy prohibits:-

- The offering or giving of any bribe, whether cash, a gift or other inducement.
- The requesting, agreeing to receive or the acceptance of any bribe, whether cash, a gift or other inducement.
- The offer to gain any commercial, contractual or regulatory advantage in a way which is unethical; in order to obtain or retain business or an advantage in the conduct of business.
- The offer to gain any personal advantage, pecuniary, or otherwise for the individual or anyone connected with the individual.

The supplier will ensure that they comply with the United Kingdom Bribery Act 2010 and that adequate procedures are in place to prevent bribery.

23. LAW

This contract shall be governed by and construed in accordance with English Law and both parties hereby submit to the jurisdiction of the English Courts.