

PERTH COLLEGE
GENERAL CONDITIONS OF CONTRACT
FOR THE SUPPLY OF GOODS

1. INTERPRETATION

The following terms shall have the following meanings, except where the context is otherwise required. "Contract" means the Contract/Agreement concluded between the College and the Contractor, consisting of the Purchase Order, these Conditions and any other documents (or parts thereof) specified in the Tender

Document and/or the Purchase Order, for the supply of any Goods and services.

"Contractor" means the person, firm or company who by the Contract undertakes to supply the Goods and to render such other Service to the College as is provided by the Contract, and, where the Contractor is an individual or a partnership, the expression shall include the personal representatives of that individual or of the partners, as the case may be and the expression shall also include any person to whom the benefit of the Contract may be assigned by the Contractor with the prior written consent of the College.

"Goods" means all goods, articles and services required under the Contract/Purchase Order to supply or in connection with which is required under the Contract to carry out.

"Loss" includes damage or destruction

"Month" means a calendar month.

"Person" includes a corporation, company, organisation or firm.

"Premises" means the location where the services are to be performed, as specified in the Contract/Purchase Order.

"Price" means the price of the Goods and/or the charge for the Services, excluding Value Added Tax, payable to the Contractor by the College under the Contract for the full and proper performance by the Contractor of his part of the Contract as determined under the provisions of the Contract.

"Purchase Order" means the document setting out the College's requirements for the Contract.

"Services" means the services to be provided under the Contract/Purchase Order and where the context so admits, include any materials, and Goods to be supplied thereunder.

"Specification" includes any plans, drawings, data, samples, patterns, or any other documents, which shall form part of the Contract.

"Supplier" means the person, firm or company who by the Contract undertakes to supply the Goods and to render such other Service to the College as is provided by the Contract, and, where the Supplier is an individual or a partnership, the expression shall include the personal representatives of that individual or of the partners, as the case may be and the expression shall also include any person to whom the benefit of the Contract may be assigned by the Contractor with the prior written consent of the College.

"College" means Perth College.

As used herein:-

(i) the masculine includes the feminine.

(ii) the singular includes the plural; and vice versa.

2. AMENDMENTS AND VARIATIONS

No amendment or variation in the terms and conditions of the Contract shall be valid unless previously agreed in writing between the College and the Contractor and no payment shall be made for unauthorised work.

3. SPECIFICATION

The Goods shall be of the qualities and sorts described in and equal in all respects to the samples, patterns, specifications, plans, drawings, or any other documents, individually or collectively which form part of the Contract. Except insofar as may otherwise be indicated by a sample, pattern, specification, plan, drawing or other document the Goods shall be strictly in accordance with the latest relevant British/European Standards, or equivalent, where such exist, published before the date of the Contract, or otherwise shall be to the satisfaction of the College.

4. GOODS

4.1 The Contractor shall supply to the College Goods, which conform in all respects to any particulars specified in the Purchase Order and/or Contract. Such goods supplied shall be to the reasonable satisfaction of the College. Where samples have been submitted, the Goods shall in all regards be equal to and in conformity with the samples, and be of the best quality and workmanship. The College may reject any Goods which do not satisfy the foregoing requirements as to satisfactory quality, workmanship, fitness for purpose for which they are required or are deficient in weight, quantity or measure or have not been supplied and delivered at the times and to the premises required by the College.

4.2 The Goods shall conform in all respects with the requirements of any statutes, orders, regulations or bylaws from time to time in force.

4.3 The Goods shall be fit and sufficient for the purpose for which such goods are ordinarily used and for any particular purpose made known to the Contractor by the College and the College relies on the skill and judgement of the Contractor in the supply of the Goods and the execution of the Contract.

4.4 No variation in the Goods to be supplied shall be accepted unless prior written agreement between the authorised representatives of the College and the Contractor has been provided.

5. PRICE OF GOODS AND SERVICES

5.1 The price of the Goods/services shall be as stated in the Contract and no increase in price shall be accepted by the College unless prior written acceptance by the College has been issued to the Contractor.

5.2 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.

5.3 No increase in the price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior written consent of the College. Documentary evidence to support such an increase shall be required to be submitted to the Procurement Manager of the College for approval.

5.4 Goods shall be delivered free of charge to the College, in such quantities and at such times and to such premises as the College may require.

5.5 Unless otherwise agreed in writing by the College, the Contractor shall render a separate invoice in respect of each consignment delivered under the Contract.

6. DELIVERY

6.1 The Goods shall be delivered to the place(s) named in the Contract or on the Purchase Order(s) and at the time(s) and in the manner specified in the Contract or on the Purchase Order.

6.2 The Contractor should ensure that the Goods are properly packed and secured, with any requirements stipulated in the Contract/Purchase Order being actioned, and be in accordance with all UK and EC regulations.

6.3 The Contractor should comply with any additional reasonable instructions which from time to time the College may give with regard to the transportation of the Goods (provided that any extra cost necessarily incurred in so doing shall be borne by the College as an addition to the Contract/Purchase Order price).

6.4 Any access to premises and any labour and any equipment that may be provided by the College in connection with delivery shall be provided without acceptance by the College of any liability whatsoever and the Contractor shall indemnify the College in respect of any 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 damage or injury (whether fatal or otherwise) occurring in the course of delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Contractor or any of the Contractor's sub contractors.

6.5 Where any access to the premises is necessary in connection with delivery or installation the Contractor and any of the Contractor's sub-contractors shall at all times comply with the reasonable requirements of an authorised College representative.

6.6 The time of delivery shall be of the essence and failure to deliver within the time promised or specified shall enable the College (at his option) to release himself from any obligation to accept and pay for the Goods and/or to cancel all or part of the Contract thereof, in either case without prejudice to his other rights and remedies.

6.7 When the Contract or Purchase Order issued under the Contract specifies that the Goods shall be handed over ex-works, the Contractor shall hand over or despatch the Goods accordingly, consigning them to such destinations as the College may require.

7. PROPERTY AND RISK

Property and risk in the Goods shall without prejudice to any of the rights or remedies of the College (including the College's rights and remedies under Condition 9 hereof) pass to the College at the time of delivery.

8. LABELLING AND PACKAGING

8.1 The Goods shall be packed and marked in a proper manner and in accordance with the College's instructions and any statutory requirements and any requirements of the carriers. In particular the Goods shall be marked with the Purchase Order Number, the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous goods (and all documents relating thereto) shall bear prominent and adequate warnings. The Contractor 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 this Condition.

8.2 All packaging materials shall be considered non-returnable and shall be destroyed/recycled unless the Contractor's advice note states that such materials shall be charged for unless returned. The College accepts no liability in respect of the non-arrival at the Contractor's premises of empty packages returned by the College unless the Contractor shall within 10 days of receiving notice from the College that the packages have been dispatched notify the College of such non-arrival.

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9. INSPECTION/REJECTION/GUARANTEES

9.1 The Contractor shall permit the College or his authorised representatives to make any inspections or tests he may reasonably require and the Contractor shall afford all reasonable facilities and assistance free of charge at his premises. No failure to make complaint at the time of such inspection or tests and no approval given during or after such tests or inspections shall constitute a waiver by the College of any rights or remedies in respect of the Goods.

9.2 The College may by written notice to the Contractor reject any of the Goods, which fail to meet the requirements specified in the Contract and/or on the Purchase Order. Such notice shall be given within a reasonable time after delivery to the College of the Goods concerned. If the College shall reject any of the Goods pursuant to this Condition the College shall be entitled (without prejudice to its other rights and remedies) either:

(a) to have the Goods concerned as quickly as possible either repaired or replaced, by the Contractor with Goods which comply in all respects with the requirements specified herein;

or

(b) to obtain a refund from the Contractor in respect of the Goods concerned.

9.3 Any Goods rejected or returned by the College as described in Conditions 9.1 and 9.2 shall be removed from the College by the Contractor at the Contractor's risk and expense. This shall be actioned within such period as is stated in the notification of rejection, or if the notification of rejection makes no such provision, within 8 working days from receipt of such notification of rejection.

9.4 The College may reject the whole of any consignment of the Goods if inspection in accordance 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) samples taken indiscriminately from that consignment: do not conform with the requirements of the Contract.

9.5 The guarantee period applicable to the Goods shall be 12 months from putting into service or 18 months from delivery, whichever shall be the shorter (subject to any alternative guarantee arrangements agreed in writing between the College and the Contractor). If the College shall within such guarantee period or within 30 days thereafter give notice in writing to the Contractor of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use the Contractor shall (without prejudice to any other rights and remedies which the College may have) as quickly as possible remedy such defects (whether by repair or replacement as the College shall elect) without cost to the College.

9.6 If the Contractor fails to remove the Goods or any of them in accordance with this Condition, the College may return the rejected Goods to the Contractor at the Contractor's risk, the costs of carriage being recoverable from the Contractor.

10 DAMAGE IN TRANSIT

On dispatch of any consignment of the Goods the Contractor shall send to the College at the address for delivery of the Goods, an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. The Contractor shall free of charge and as quickly as possible either repair or replace (as the College shall elect) such of the Goods as may either be damaged in transit or having been placed in transit fail to be delivered to the College provided that:-

(a) in the case of damage to such Goods in transit the College shall within 30 days of delivery give notice to the Contractor that the Goods have been damaged;

(b) in the case of non-delivery the College shall (provided that the College has been advised of the dispatch of the Goods) within 10 days of the notified date of delivery give notice to the Contractor that the Goods have not been delivered.

11 PAYMENT

The Contractor shall render an account for the amount due to him upon delivery of the Goods or Services to the College. Unless otherwise agreed in writing by the College, the Contractor shall render a separate invoice in respect of each consignment delivered under the Contract. Such accounts must clearly indicate settlement terms and if the accounts are in accordance with the terms of the Contract and shall be paid by the College normally by the end of the month following that in which the invoice is received.

12 PATENTS, INFORMATION AND COPYRIGHT

12.1 It shall be a condition of the Contract, except to the extent that the Goods incorporate designs provided by the College, that nothing done by the Contractor in the provision of the Goods shall infringe any patent, trade mark, registered design, copyright or other right in the nature of intellectual property of any third party and the Contractor 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.

12.2 All rights (including ownership and copyright) in any reports, documents, specifications, instructions, plans, drawings, patents, models or designs, whether in writing or on magnetic or other media, furnished to or made available to the Contractor by the College pursuant to this Contract/Purchase Order shall remain vested solely with the College and the Contractor shall not (except to the extent necessary for the implementation of this Contract/Purchase Order) without prior written consent of the College use or disclose any such specifications, plans, drawings, patterns, models or designs or any information (whether or not relevant to this Contract/Purchase Order) which the Contractor may obtain pursuant to this Contract/Purchase Order and in particular (but without prejudice to the generality of the foregoing) the Contractor shall not refer to the College or the Contract/Purchase Order in any advertisement without the College's prior written agreement.

12.3 The provisions of this Condition shall apply during the continuance of this Contract and after its termination howsoever arising.

13 HEALTH AND SAFETY

The Contractor represents and warrants to the College that the Contractor has satisfied himself that all necessary tests and examinations have been made or shall be made prior to delivery of the Goods to ensure that the Goods are designed and constructed so as to be safe and without risk to the health or safety of persons using the same, and that he has made available to the College adequate information about the use for which the Goods have been designed and have been tested and about any conditions necessary to ensure

that when put to use the Goods shall be safe and without risk to health. The Contractor 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 in connection with any breach of this Condition. The College may require the Contractor to show that the Goods bear a CE mark and may ask for a copy of the EC Declaration of Conformity, the Contractor shall comply with such requests timeously.

14 INDEMNITY AND INSURANCE

14.1 Without prejudice to any rights or remedies of the College (including the College's rights and remedies under Condition 9 hereof) the Supplier shall indemnify and keep indemnified the College against all claims for personal injuries (including death) and all loss or damage of any kind whatsoever which may be attributed directly or indirectly to any of the goods and/or services supplied under the Contract/Purchase Order or which arise from or are incurred by reason of negligence of the Contractor or its employees or any infringement or alleged infringement of letters, patent design, copyright or other intellectual property right in any of the goods supplied and services provided under the Contract/Purchase Order and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in relation thereto.

14.2 The Contractor's insurance cover, for Public and Product Liability cover for all such claims shall be to a minimum of £5,000,000.00 (or such greater sum as the Contractor may choose) for any one occurrence or series of occurrences arising out of one event.

14.3 The Contractor shall, prior to commencement of the Contract produce to the College the relevant policy or policies of insurance and if required the receipts of premiums paid. The Contractor shall in addition produce such evidence as the College may reasonably require that the insurance cover be in force throughout the duration of the Contract.

15 CORRUPT GIFTS OR PAYMENTS

The Contractor shall not offer or give, or agree to give, to any employee or representative of the College any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other contract with the College or for showing or refraining from showing favour or disfavour to any person in relation to this or any such Contract. The attention of the Contractor is drawn to the criminal offences created by the Prevention of Corruption Acts 1889 to 1916. The College shall be entitled to terminate the Contract and to recover from the Contractor the amount of any loss resulting from such termination, if the Contractor shall have been found to have breached this Condition.

16 FORCE MAJEURE

(a) Neither party shall be liable to the other for any failure or delay in the performance of its obligations hereunder if such failure or delay occurs as a result of circumstances beyond a party's reasonable control including but not limited to industrial action, fire, flood, riot, war, Act of God, lightning, aircraft impact, explosion, civil commotion, malicious damage, storm, tempest, earthquake, legal enactment or governmental or other regulation.

(b) Where as a result of the occurrence of any event beyond the reasonable control of a party as described in 16(a) above, the Contract has not been

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performed for a period exceeding two months or it appears impossible or unlikely that the whole or a substantial part of the Contract shall be capable of performance for a period exceeding two months, then the non-defaulting party may elect to terminate the Contract upon two weeks written notice without any liability on that party.

17 RACIAL DISCRIMINATION

The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976 or any statutory modification or re-enactment thereof relating to discrimination in employment. The Contractor shall take all reasonable steps to secure the observance of these provisions by all servants, employees or agents of the Contractor and all sub-contractors employed in the execution of the Contract.

18 TERMINATION

18.1 The College may at any time during the term of the Contract terminate the Contract without penalty and shall give twenty-eight days notice in writing to the Contractor of such intention. At the expiry of the said twenty-eight day period the Contract so far as regards any Goods and/or Services to be supplied under the Contract, shall in all respects cease and terminate.

18.2 The College reserves the right to resile from the Contract without penalty in whole or in part where increases or decreases in prices are considered, by the College, to be unreasonable.

18.3 If at any time, and from any cause, the Contractor shall fail to supply the College with any Goods or Services within the time mentioned in the Contract/Purchase Order and in accordance with the conditions thereof and of the Contract, or if he shall fail to replace any rejected Goods within eight days after receiving notice of such rejection, or if in any other respect the Contractor breaches, or fails to observe or perform any of his obligations under the Contract, the College may, if they consider fit, after giving the Contractor twenty-eight days notice in writing to terminate the Contract, enter into another Contract for the supply of such Goods or Services with some other firm or person or company. All losses, expenses, costs and charges incurred by the College in this connection shall be a debt due by the Contractor to the College and may be deducted from any monies in the hands of the College due to the Contractor or may be recovered by legal action.

18.4 Without prejudice to any other rights or remedies of the College under the Contract, the College shall have the right to forthwith terminate the Contract by written notice to the Contractor or the appropriate trustee in bankruptcy or sequestration, receiver, liquidator or administrator:

(a) where the Contractor is an individual and if a petition is presented for the Contractor's bankruptcy or the sequestration of his estate or a criminal bankruptcy order is made against the Contractor, or he is apparently insolvent, 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 or trustee 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 in any capacity, if any event in (a) or (c) of this Condition occurs in respect of the firm or any partner in the firm or any of those persons or a petition is presented for the Contractor to be wound up as an unregistered company; or

(c) where the Contractor is a company, if the company passes a resolution for winding-up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrator, 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.

19 RECOVERY OF SUMS DUE

Whenever under the Contract/Purchase Order any sum of money is recoverable from or payable by the Contractor, that sum may be deducted from any sum then due, or which at any time may become due, to the Contractor under the Contract/Purchase Order or under any other agreement or contract with the College.

20 ASSIGNMENT AND SUB-CONTRACTING

20.1 The Contractor shall not without the written consent of the College assign the benefit or burden of the Contract or any part thereof.

20.2 No sub-contracting by the Contractor shall in any way relieve the Contractor of any of his responsibilities under the Contract.

20.3 Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing the Contract, he shall cause a term to be included in such sub-contract which requires payment to be made to the Supplier or Contractor within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the sub-contract requirements.

21 NOTICES

Any notice given under or pursuant to the Contract may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted by telex, telemessage, facsimile transmission or other means of telecommunication resulting in the receipt of a written communication in permanent form and if so sent or transmitted to the address of the party shown on the Contract or Purchase Order, or to such other address as the party may by notice to the other have substituted therefor, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

22 CONFIDENTIALITY

The Contractor shall undertake to treat and keep confidential any information which may be derived from or obtained in the course of the Contract and shall not divulge the same to any third party without the prior written consent of the College. The Contractor shall take all necessary precautions to ensure that all such information is treated as confidential by the Contractor, and that his staff, agents and sub-contractors are similarly bound.

23 PUBLICITY

The Contractor is prohibited from advertising or publicly announcing that he is supplying or has supplied any goods, articles, materials or provided services to the College without the prior written consent of the College and, in the event of the College giving such consent, the form of the advertisement or announcement shall also require the prior written consent of the College.

24 SUBMISSION OF TENDERS

No tender shall be considered unless:-

(i) it is submitted in accordance with the Invitation to Tender enclosed with the issued tender document.

(ii) any samples requested by the College are submitted for examination on or before the date notified by the appropriate official of the College for submission thereof.

25 ACCEPTANCE OF TENDERS

The College do not bind themselves to accept the lowest or any Tender, and reserve the right to accept part only of a Tender.

26 SPECIAL CONDITIONS

In addition to the foregoing General Conditions of Contract, the College may apply Special Conditions to meet its requirements as relating to any Contract for a particular commodity/service. The Special Conditions, which shall apply, are those hereto annexed (if any) and such Special Conditions shall be incorporated into the Contract.

27 FINANCIAL VETTING

(i) In accordance with the College's Financial Vetting Procedures, Tenderers may be required to submit, on request, financial information and/or Bank References relating to their Company. Any Company failing to provide this information shall automatically be excluded from any further consideration in the Award of Contract procedure.

(ii) In accordance with the terms of the Data Protection Act 1998 the College may make a search with a credit reference agency which shall keep a record of that search and shall share that information with other businesses. The College may also make enquiries about the principal Directors with a credit reference agency.

28 ARBITRATION

28.1 If any dispute or difference concerning the Contract shall arise between the College and the Contractor, then negotiations to resolve such dispute or difference shall be entered into between the College and the Contractor.

28.2 If the parties fail to reach agreement following such negotiations then either party may refer the dispute or difference to arbitration.

28.3 All arbitrations shall be undertaken in accordance with the Scottish Arbitration Code 1999 or any amendment thereto or replacement therefor ("the Code"), subject always to the provision of 28.5.

28.4 All arbitrations shall take place in Scotland and shall in all respects be governed by the Law of Scotland.

28.5 Notwithstanding the provisions of the Code, recourse to the Court of Session under Section 3 of the Administration of Justice (Scotland) Act 1972 shall be permitted.

28.6 If any matters arising out of or under this agreement are referred to arbitration, the parties shall continue to perform their obligations under this agreement throughout the period of arbitration.

29 LAW

The Contract shall be governed by and construed in accordance with the Law of Scotland and the Contractor hereby irrevocably submits to the jurisdiction of the Scottish courts. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the College to take proceedings against the Contractor in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.

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30 FREEDOM OF INFORMATION (SCOTLAND) ACT

The College is subject to the Freedom of Information (Scotland) Act 2002 and Contractors and Tenderers should be aware that any information they provide to the College could be requested. The College shall only treat and accept as confidential any information which could substantially prejudice the commercial interests of the Contractor/Tenderer or be regarded as a "Trade Secret" which the College/Scottish Information Commissioner considers requires to be withheld from disclosure. "Substantially Prejudice" means that any harm to the Contractors/Tenderers interests would be real, actual and imminent (i.e. potentially harmful to the Contractor's/Tenderer's interests within twelve months of any request for the information). Tenderers should highlight in their tender documentation the areas of that document which they consider to be intrinsically confidential or are considered as a "Trade Secret". The College shall not accept as confidential, information that does not have the necessary quality of confidence and does not meet the public interest test for disclosure.

Whilst the College shall accept information marked as confidential it can not guarantee that, if this information should be requested at any point, it shall be able to maintain the confidentiality of the information. Tenderers should ensure they are aware of the Freedom of Information (Scotland) Act, prior to submitting a tender.