

Cardinal Newman College

Conditions of Purchase

1. General

1.1 These terms and conditions apply in preference to and supersede any terms and conditions referred to, offered or relied on by the supplier whether in negotiation or at any stage in the dealings between the College and supplier with reference to the goods or services to which this contract relates. Without prejudice to the generality of the forgoing, the College will not be bound by any standard or printed terms furnished by the supplier in any of its documents, unless the supplier specifically states, in writing, separately from such terms that it intends such terms to apply and the College acknowledges such notification in writing.

1.2 Definitions

1.2.1 The term "College" shall mean Cardinal Newman College

1.2.2 The term "supplier" shall mean the person, firm or company to whom the purchase order or contract to supply is issued.

1.2.3 The term "purchase order" shall mean the purchase order or contract placed by Cardinal Newman College with the supplier for the supply & or installation of goods or services. No invoices shall be paid unless a valid purchase order number is quoted.

1.2.4 The term "goods" includes all goods or services to be supplied by the supplier under the purchase order or contract and includes any labels, instructions or handbooks relating to the goods.

1.2.5 The term "contract" shall mean the contract between Cardinal Newman College and the supplier consisting of the purchase order, these conditions of purchase, any other documents (or parts thereof) referred to in the purchase order and the Suppliers acceptance of said purchase order and only the terms and conditions as detailed herein.

1.2.6 The term "date for delivery" shall mean the date for delivery &/or installation as agreed in this contract and stipulated on the purchase order.

1.2.7 The term "contract price" shall mean the sum stated in the purchase order to be paid by Cardinal Newman College to the supplier in accordance with the agreed payment terms.

2. Variation, Waiver & Severance

2.1 Neither the College nor the supplier shall be bound by any variation, waiver of, or addition to these conditions except as agreed by both parties in writing and signed on their behalf. Any failure by the College to insist at any time upon the performance of any of the terms provisions or undertakings of the supplier contained in the contract or to exercise any rights thereunder shall not constitute or be construed as a waiver thereof or a relinquishment of the Colleges rights to require the future performance of any such

term, provision or undertaking but the obligation of the supplier with regard to the same shall continue in full force & effect.

2.2 If a provision of the Contract (or part of any provision) is found illegal, invalid or unenforceable, by a court or any other competent authority, the provision or part-provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

3. Specification, Description, Sample

3.1 The goods will be in conformity with the specifications, drawings, samples or other descriptions of the goods contained or referred to in this contract & provided by the College.

4. Quality

4.1 The goods will be of satisfactory quality and free from defects in material or workmanship as defined in the Sale of Goods Act 1979 and the Sale & Supply of Goods Act 1982 including all the aspects of quality as listed in s.14 (2) (B) of the said act.

4.2 At any time prior to delivery of the Goods to the College the College shall have the right to inspect and test the Goods at all times.

4.3 If the results of such inspection or testing cause the College to be of the opinion that the Goods do not conform or are unlikely to conform with the Contract or to any specifications and/or patterns supplied or advised by the College to the Supplier, the College shall inform the Supplier and the Supplier shall immediately take such action as is necessary to ensure conformity and in addition the College shall have the right to require and witness further testing and inspection.

4.4 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Supplier's obligations under the Contract.

4.5 The Supplier will perform the Services with all care and skill and in accordance with best practices and standards in the industry for similar services; and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the College.

4.6 The Services and Deliverables will conform with all descriptions and specifications as stipulated by the College; and the Services and Deliverables will be provided in accordance with all applicable legislation from time to time in force, and the Supplier will inform the College as soon as it becomes aware of any changes in that legislation.

4.7 Notwithstanding any inspection or testing, the Supplier shall remain fully responsible for the Services and any inspection or testing shall not diminish or otherwise affect the Supplier's obligations under the Contract.

5. Fitness for Purpose

5.1 If the purpose for which the goods are required is made known to the supplier expressly or by implication the goods shall be fit for that purpose.

6. Confidentiality

6.1 Any information disclosed by the College to the Supplier shall be confidential and the Supplier shall not disclose it to any person without the prior written authority of the College.

7. Patents & Intellectual Property

7.1 The supplier shall indemnify the College from and against all costs, claims, proceedings or demands in respect of any infringement of patent, registered design, trade mark, copyright or other intellectual property right arising out of the sale or use of any goods supplied under this contract, provided always that the supplier shall not be required to indemnify the College against such infringements where the goods are supplied to the particular design or specification of the College.

7.2 In respect of the Goods and any goods that are transferred to the College as part of the Services under this Contract, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the College, it will have full and unrestricted rights to sell and transfer all such items to the College.

7.3 The Supplier assigns to the College, with full title guarantee and free from all third party rights, all Intellectual Property in the products of the Services, including for the avoidance of doubt the Deliverables.

7.4 The Supplier shall obtain waivers of all moral rights in the products including for the avoidance of doubt the Deliverables, of the Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.

7.5 The Supplier shall, promptly at the College's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the College may from time to time require for the purpose of securing for the College the full benefit of the Contract, including all right, titled and interest in and to the Intellectual Property Rights assigned to the College in accordance with clause 6.

8. Price

8.1 The prices stated in this order are firm and include VAT as detailed. The price shall be inclusive of all packaging, shipping, carriage, insurance and delivery costs under this contract.

9. Delivery

9.1 The goods must be delivered carriage paid to such destination as the College may direct.

9.2 The Supplier shall ensure that the Goods are properly packed and secured in such a manner as to enable them to reach their destination in good condition.

9.3 The Supplier shall ensure that each delivery is accompanied by a delivery note which shows, among other things, any reference number, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.

9.4 Unless otherwise stipulated by the College, deliveries shall only be accepted by the College in normal business hours.

9.5 If the Supplier requires the College to return any packaging material to the Supplier that fact must be clearly stated on any delivery note delivered to the College and any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

9.6 Where the College agrees in writing to accept delivery by installments the Contract shall be construed as a single contract. Failure by the Supplier to deliver any one installment shall entitle the College at its option to treat the whole Contract as repudiated.

9.7 If the Goods are delivered to the College in excess of the quantities ordered the College shall not be bound to pay for the excess and any excess shall be and shall remain at the Supplier's risk and shall be returnable at the Supplier's expense.

9.8 For all Goods, chemicals, mixtures or other substances hazardous to health the Supplier shall:

9.8.1 ensure the College is fully informed of any risks or hazards known or believed to exist in exposure to, or the transport, storage, handling, or use of, the Goods;

9.8.2 comply with all current legislation and guidance under the Control of Substances Hazardous to Health (COSHH) and the Chemical (Hazard Information and Packaging for Supply) Regulations 2002; and

9.8.3 ensure an English version of the appropriate Material Safety Data Sheet (MSDS), relevant safety information and instructions for use accompanies such Goods during transportation, and that a copy of such documentation is presented to an Authorised Officer upon delivery onto College premises.

10. Payment

10.1 The College shall pay for goods as follows; 30 days following receipt of invoice once goods have been accepted by the College and the invoice is deemed valid and undisputed.

10.2 The Contract Price shall be fixed for the period between commencement of the Services to accepted delivery and conclusion of the Services, or for a period of 12 calendar months, whichever ends the later.

10.3 All pricing must include the full costs of providing the Services to be performed and the supply of any Goods at the locations detailed to the supplier under this Contract, and shall be inclusive of all royalties, license fees or similar expenses including but not limited to removal of packaging, any waste materials and handling equipment.

10.4 Where the College has provided a purchase order number, this number must be quoted on all invoices.

10.5 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing any Services in such form as the College shall approve. The Supplier shall allow the College to inspect such records at all reasonable times on request.

10.6 Without prejudice to any other right or remedy it may have, the College reserves the right to set off any amount owing at any time to it by the Supplier against any amount payable by the College to the Supplier.

10.7 Where a supplier to the College is required to subcontract any element of the contract to a third party, prior approval must be made by the College in writing. It shall be a condition of the contract that the supplier pays all valid and undisputed invoices from their sub-contractor(s) within 30 days of receipt.

11. Risk

11.1 The goods will be delivered at the supplier's risk.

12. Time

12.1 The time stipulated for delivery shall be of the essence. Should the supplier fail to complete the project on time, then the College reserves the right to terminate the contract and procure the goods elsewhere at the original suppliers' expense. Where no date is stated, then delivery will take place within 28 days of the contract award.

13. Property

13.1 The property in the goods shall pass to the College when the goods have been delivered to the College.

14. Force Majeure

14.1 Neither the supplier nor the College shall be liable to the other for any failure to fulfil its obligations under the contract if such a failure is caused by circumstances beyond its reasonable control.

14.2 For the purpose of the contract the term Force Majeure shall mean:

14.2.1 a). War & hostilities (whether war be declared or not) invasion, act of foreign enemies, mobilisation, requisition or embargo

14.2.2 b). Rebellion, revolution, insurrection, military or usurped power or civil war.

14.2.3 c). Riot, commotion or disorder except where solely restricted to employees of the supplier or its nominated sub Suppliers or sub suppliers.

14.2.4 d). Earthquake, flood, fire or other natural physical disaster except to the extent that any such disaster is caused by, or its effects contributed to by, the party claiming force majeure.

14.2.5 e). A general industrial dispute not limited to the employees of the supplier or the employees of any of its sub Suppliers or sub suppliers.

14.3 If either party considers that any circumstance of Force Majeure has occurred which may affect materially the performance of its obligations then he shall forthwith notify the other in writing to that effect giving full details of the circumstances giving rise to the Force Majeure event.

14.4 Neither party shall be considered to be in default of its obligations under the contract to the extent that it can establish that the performance of such obligations is prevented by any circumstance of Force Majeure which arises after the date of the contract and which was not foreseeable at the date of the contract.

14.7 If the performance of the obligations of either party under the contract is so prevented by circumstances of Force Majeure and shall continue to be prevented for a period less than 30 days, then during that period the contract shall be considered as suspended. Upon the ending of the Force Majeure event, the contractual obligations of the parties shall be reinstated with such reasonable modifications as to take account of the consequences of the Force Majeure event as may be agreed between the parties, or in default of such agreement, as may be determined by an independent arbitrator.

14.8 If performance of the obligations of either party under the contract is so prevented by the circumstances of Force Majeure and shall continue to be so prevented for a period in excess of 30 days, then the contract shall be terminated by mutual consent and, subject to the clauses detailed below, neither party shall be liable to the other as a result of such termination

14.9 If the contract is so terminated then subject to the transfer to the College of the benefit referred to in the sub clause below the College shall pay to the supplier such reasonable sum as may be agreed between the parties or in default of any agreement as may be determined by expert determination in respect of costs incurred and commitments already entered into by the supplier at the date of the Force Majeure notice, less the amount of any payments already made to the supplier at the date of the Force Majeure notice. If the amount of such advance payments made to the supplier exceeds the sum due to the supplier under this sub clause then the supplier shall repay the balance to the College.

14.10 The supplier shall transfer to the College the benefit of all work done by him or his sub Suppliers and sub suppliers in the performance of the contract up to the date of the Force Majeure notice, and if applicable it shall include the rights in any licensed and developed software and licensed firmware so far as the rights in the same have accrued to the College prior to the Force Majeure notice or will do so on payment under the sub clause above.

15. Rejection

15.1 If any of the goods, or the packages containing the same, do not comply with the order or with any term of this contract including quantity, quality or description, the College may reject those goods or any part of them at any time after delivery, irrespective of whether the College has accepted them. Any acceptance of such goods by the College shall be without prejudice to any rights that the College may have against the supplier. The College may return any rejected goods, carriage forward, to the supplier at the risk of the supplier including any associated return delivery & packaging charges.

16. College Remedies

16.1 Without prejudice to any other right or remedy which the College may have, if any Goods or Services are not supplied in accordance with, or the Supplier fails to comply with, any of the terms of the

Contract the College shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods or Services have been accepted by the College or whether or not any of the Services have been provided to the College:

16.1.1 to rescind the Contract (in whole or in part) with immediate effect by giving written notice to the Supplier;

16.1.2 to refuse to accept any subsequent performance of the Services and / or delivery of the Goods which the Supplier attempts to make;

16.1.3 to reject the Goods or Deliverables (in whole or in part), whether or not title has passed, and return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Goods or Deliverables so returned shall be paid forthwith by the Supplier;

16.1.4 at the College's option to require the Supplier, at the Supplier's expense either to remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;

16.1.5 at the College's option to require the Supplier, at the Supplier's expense to re-perform the Services as necessary to ensure that the terms of the Contract are fulfilled;

16.1.6 to refuse to accept any further deliveries of the Goods but without any liability to the Supplier;

16.1.7 to carry out at the Supplier's expense any work necessary to make the Goods or Services comply with the Contract; and

16.1.8 to claim damages for any additional costs, fees, fines, losses or expenses incurred by the College arising for the Supplier's failure to supply the Goods and / or Services in accordance with the terms of the Contract.

16.1.9 to immediately source an alternative provider to perform any part of the Supplier's entire obligation under the Contract and the Supplier shall not be paid sums due during these periods if the Supplier fails to deliver the Goods or Services at the stipulated time and place or the Contract is suspended or terminated.

17. Indemnity

17.1 The supplier shall indemnify the College against all claims, cost, expense, loss or damage whether direct or consequential, which the College may suffer howsoever arising from the supplier's breach of any of its obligations under this contract.

18. Non-Delivery

18.1 If the supplier does not deliver the goods or any part thereof within the time specified in the contract, the College may terminate the contract, purchase other goods of the same and similar description to make good such default, and recover from the supplier the amount by which the cost of

so purchasing other goods exceeds the price which would have been payable to the supplier in respect of the goods replaced by such purchase, without prejudice to any other remedy for breach of contract.

19. Assignment, Novation and Subcontracting

19.1 The supplier shall not assign, novate or transfer the whole or part of this contract or subcontract the production or supply of any goods to be supplied under this contract without the prior written consent of the College.

20. Defects Liability Period

20.1 The supplier shall without delay and without cost to the College repair or replace at the Colleges option any of the goods which are or become defective within a period of 18 months from delivery or 12 months from putting into service, whichever shall be the shorter, due to faulty workmanship or materials or faulty design, if the supplier is responsible for design, errors in instructions, labels or handbooks or any other breach by the supplier of his obligations under the contract or at law whether expressed or implied.

20.2 Any goods so replaced or repaired shall be subject to the same obligations for a further defects liability period of 12 months from their re-delivery after repair or replacement.

20.3 If the supplier shall fail to repair or replace such defective goods the College shall have the right to have the work of repair or replacement undertaken by others and to recover the costs of so doing from the supplier.

20.4 The supplier shall further be liable to the College for all direct damages sustained by the College arising out of the said defects in the goods up to a limit of liability stated in the purchase order or if no such limit is stated the contract price.

21. Direct & Consequential Damages

21.1 If either party fails to perform its obligations under the contract then that party shall be liable to the other for the damages arising directly and naturally in the ordinary course of events from the breach of the contract concerned.

22. Copyright

22.1 All copyrights to any matter shall remain the property of Cardinal Newman College. Should the contract be terminated or at the end of the contract term all copyright material will be passed to Cardinal Newman College at their request. This shall include all patents, design rights, trademark or other intellectual property rights.

23. Freedom of Information Act

23.1 For the purposes of this clause:

23.1.1 FOI Act Means the Freedom of Information Act 2000 and any subordinate legislation made under the Act or any code issued pursuant to sections 45 or 46 of that Act or any guidance issued by the Information Commissioner:

23.1.2 “Information” means all records and information of any sort obtained, created, collected or held by the College in relation to the agreement and:

23.1.3 “Information Request” means a request for information within the meaning of section 8 of the FOI Act.

23.2. The supplier acknowledges that the College is subject to the FOI Act and agrees to assist and co-operate with the College to enable the College to comply with its obligations under the FOI Act

23.3 The supplier acknowledges that the College may be obliged to comply with its obligations under the FOI Act without informing or consulting the supplier.

23.4 The College shall be responsible for determining whether and to what extent any of the exemption provisions in Part II of the FOI Act apply in relation to an information request. The supplier shall comply with any such determination by the College.

23.5 The supplier shall ensure that any sub-contract it enters into in relation to this contract contains a condition in similar terms to this condition 22 whereby the sub-Supplier acknowledges the Colleges responsibilities under the Act and agrees to co-operate with the College so that these responsibilities can be discharged.

24. 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.

25. 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.

26. United Kingdom Bribery Act 2010

In performing its obligations under this Agreement, the supplier shall comply with the College’s Anti-Bribery Policy and with the United Kingdom Bribery Act 2010.

The College Anti-Bribery Policy prohibits:

the offering, promising, or giving of any bribe, whether cash or other inducement;

the requesting, agreeing to receive or acceptance of any bribe, whether cash or other inducement ;

the offer, promise or giving of a financial or other advantage to a foreign public official; in order to obtain or retain business or an advantage in the conduct of business.

The supplier will permit audits by the College to ensure compliance with the United Kingdom Bribery Act 2010 and that adequate procedures are in place to prevent bribery.

27. United Kingdom Modern Slavery Act 2015

27.1 In performing its obligations under this Agreement, the supplier shall comply fully with the Modern Slavery Act 2015

27.2 The supplier in contracting with the College confirms that all parts of its business and supply chains where there is a risk of slavery and human trafficking taking place has been rigorously assessed, and that it will demonstrate to the College upon demand the steps it has taken to assess and manage that risk.

27.3 Where slavery or human trafficking or the risk of slavery or human trafficking is suspected or confirmed, the supplier must immediately cease using those elements of their supply chains where such activities are under review.

27.4 The supplier shall immediately notify the College of any such findings and at the sole discretion of the College, acknowledges that the College has the explicit right to immediately terminate the contract where any impact to the reputation of the College is proven.

28. Termination

28.1 Without prejudice to any other rights or remedies which the parties may have, the College may terminate the Contract without liability to the Supplier immediately on giving notice if:

28.1.1 the Supplier fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 working days after being notified in writing to make such payment; or

28.1.2 the Supplier commits a breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 working days of the Supplier being notified in writing of the breach; or

28.1.3 the Supplier repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract; or

28.1.4 the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

28.1.5 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier ; or

28.1.6 a floating charge holder over the assets of that Supplier has become entitled to appoint or has appointed an administrative receiver; or

28.1.7 a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier ; or

28.1.8 a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or

28.1.9 there is any infringement by the Supplier of any Health and Safety Regulation; or

28.1.10 the Supplier has offered, given, agreed to give, received or solicited to or from anyone a bribe, gift, consideration, inducement or reward for doing or not doing anything in relation to the Contract; or

28.1.11 there has been notice of discrimination of any kind received by the Supplier which has not been rectified in a reasonable time or, the Supplier has not complied with all current legislation relating to discrimination; or

28.1.12 any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 28.1.4 to clause 2.1.20 (inclusive); or

28.1.13 the Supplier suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or

28.1.14 there is a change of control of the Supplier (as defined in section 574 of the Capital Allowances Act 2001); or

28.1.15 the supplier fails to meet payment requirements to sub-contractors as detailed in clause 9.7

28.1.16 this Contract is terminated by virtue of a “declaration of ineffectiveness or as covered in 23.1.16 to 23.1.19 under the Public contracts Regulations 2015 (as amended).

28.1.17 this contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of the Public Contracts Regulations 2015

28.1.18 where the supplier has at the time of the award, been in one of the situations referred to in regulation 57(1), including as a result of the application of regulation 57(2) and should have been excluded from the procurement procedure of the Public Contracts Regulations 2015; or

28.1.19 the contract should not have been awarded to the supplier in view of a serious infringement in the obligations of the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of TFEU

28.1.20 where the supplier is proven to be in breach of the UK Modern Slavery Act or such breach is suspected by the College as outlined in clause 26.4

28.2 Where the Contract has been terminated under 23.1.16, the College shall make any payments due on a quantum meruit basis only and the College shall not be liable for any damages or compensation as a result of such a declaration.

28.3 In the event that a court makes a declaration of ineffectiveness or termination ensues by the application of clauses 23.1.16 to 23.1.19, the College shall promptly notify the Supplier. The parties agree that the provisions of Clauses 23.3.1 to 23.3.4 (inclusive) shall apply as from the date of receipt by the Supplier of said notification

28.3.1 The declaration of ineffectiveness shall not prejudice or affect any right, liability or remedy which has accrued or shall accrue to either party prior to or after such declaration of ineffectiveness.

28.3.2 As from the date of receipt by the Supplier of the notification of the declaration of ineffectiveness, the parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the College shall reasonably determine an appropriate cessation plan with the object of achieving:

(i) an orderly and efficient cessation of the Services and/or supply of Goods or (at the College's request) a transition of the Services to the College or such other entity as the College may specify; and

(ii) minimal disruption or inconvenience to the College

(iii) in accordance with the provisions of Clauses 23.3.1 to 23.3.4 (inclusive) and to give effect to the terms of the declaration of ineffectiveness.

28.3.3 Upon agreement, or determination by the College, of the cessation plan the parties will comply with their respective obligations under the cessation plan.

28.3.4 The College shall pay the Supplier's reasonable costs in assisting the College in preparing, agreeing and complying with the cessation plan. Such costs shall be based on any comparable costs or charges agreed as part of this Contract or as otherwise reasonably determined by the College. Provided that the College shall not be liable to the Supplier for any loss of profit, revenue, goodwill or loss of opportunity as a result of the early termination of this Contract.

28.4 On termination of the Contract for any reason, the Supplier shall immediately deliver to the College:

28.4.1 all In-put Material and all copies of information and data provided by the College to the Supplier for the purposes of the Contract. The Supplier shall certify to the College that it has not retained any copies of In-put Material or Supplier information or data, except for one copy which the Supplier may use for audit purposes only.

28.4.2 all specifications, programs (including source codes) and other documentation comprised in the Deliverables and existing at the date of such termination, whether or not then complete. All Intellectual Property Rights in such materials shall automatically pass to the College (to the extent that they have not already done so)

28.5 If the Supplier fails to fulfil its obligations under clause 26.4 then the College may enter the Supplier's premises and take possession of any items which should have been returned under it. Until they have been returned or repossessed, the Supplier shall be solely responsible for their safe keeping.

29.0 Data Protection

29.1 The Supplier shall process the Personal Data only to the extent, and in such a manner, as is necessary for the purposes specified in the Specification and in accordance with the College's instructions from time to time and shall not process the Personal Data for any other purpose. The Supplier will keep a record of any processing of Personal Data it carries out under the Contract.

29.2 The Supplier shall promptly comply with any request from the College requiring the Supplier to amend, transfer or delete the Personal Data.

29.3 The Supplier shall only collect any Personal Data in a form which is fully compliant with the Data Protection Act 1998 which will contain a data protection notice informing the data subject of the identity of the Data Controller, the identity of any data protection representative it may have appointed, the purposes or purposes for which their Personal Data will be processed and any other information which is necessary having regard to the specific circumstances in which the data is, or is to be, processed to enable processing in respect of the Data Subject to be fair.

29.4 If the Supplier receives any complaint, notice or communication which relates directly or indirectly to the processing of the Personal Data or to either party's compliance with the Data Protection Act 1998 and the data protection principles set out therein, it shall immediately notify the College and it shall provide the College with full co-operation and assistance in relation to any such complaint, notice or communication.

29.5 At the College's request, the Supplier shall provide to the College a copy of all Personal Data held by it in the format and on the media reasonably specified by the College.

29.6 The Supplier shall not transfer the Personal Data outside the European Economic Area without the prior written consent of the College.

29.7 The Supplier shall promptly inform the College if any Personal Data is lost or destroyed or becomes damaged, corrupted, or unusable. The Supplier will restore such Personal Data at its own expense.

29.8 The Supplier shall ensure that access to the Personal Data is limited to:

- (a) those employees who need access to the Personal Data to meet the Supplier's obligations under this Contract; and
- (b) in the case of any access by any employee, such part or parts of the Personal Data as is strictly necessary for performance of that employee's duties.

29.9 The Supplier shall ensure that all employees:

- (a) are informed of the confidential nature of the Personal Data;
- (b) have undertaken training in the laws relating to handling Personal Data; and
- (c) are aware both of the Supplier's duties and their personal duties and obligations under such laws and this Contract.

29.10 The Supplier shall take reasonable steps to ensure the reliability of any of the Supplier's employees who have access to the Personal Data.

29.11 The Supplier shall notify the College within 2 working days if it receives a request from a Data Subject for access to that person's Personal Data.

29.12 The Supplier shall provide the College with full co-operation and assistance in relation to any request made by a Data Subject to have access to that person's Personal Data.

29.13 The Supplier shall not disclose the Personal Data to any Data Subject or to a third party other than at the request of the College or as provided for in this Contract.

29.14 The College is entitled, on giving at least 2 days' notice to the Supplier, to inspect or appoint representatives to inspect all facilities, equipment, documents and electronic data relating to the processing of Personal Data by the Supplier.

29.15 The requirement to give notice set out in clause 27.14 will not apply if the College believes that the Supplier is in breach of any of its obligations under this Contract.

29.16 The Supplier warrants that:

- (a) it will process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments; and
- (b) it will take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure the College's compliance with the seventh data protection principle.

29.17 The Supplier shall notify the College immediately if it becomes aware of any unauthorised or unlawful processing, loss of, damage to or destruction of the Personal Data;

29.18 The Supplier agrees to indemnify and keep indemnified and defend at its own expense the College against all costs, claims, damages or expenses incurred by the College or for which the College may become liable due to any failure by the Supplier or its employees or agents to comply with any of its obligations under this clause 27.

29.19 The Supplier may not authorise any third party or sub-contractor to process the Personal Data.

30. TUPE

Re-tendering and Handover

30.1 Within twenty one (21) days of being so requested by the College, the Supplier shall provide and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the College to issue invitations to tender for the future provision of the Goods and Services.

30.2 Where, in the opinion of the College, TUPE is likely to apply to the Contract on its termination or expiration, the information to be provided by the Supplier under clause 37.1 shall include, as applicable, accurate information relating to the employees who would be transferred under the same terms of employment under TUPE, including in particular (but not limited to): -

(a) the number of employees who would be transferred, but with no obligation on the Supplier to specify their names; and

(b) in respect of each of those employees, their dates of birth, sex, salary, length of service, hours of work and rates, and any other factors affecting redundancy entitlement, any specific terms applicable to those employees individually and any outstanding claims arising from their employment; and

(c) the general terms and conditions applicable to those employees, including probationary periods, retirement age, periods of notice, current pay agreements and structures, special pay allowances, working hours, entitlement to annual leave, sick leave, maternity and special leave, injury benefit, redundancy rights, terms of mobility, any loan or leasing agreements, and any other relevant collective agreements, facility time arrangements and additional employment benefits.

30.3 The Supplier shall indemnify the College against any claim made against the College at any time by any person in respect of the liability incurred by the College arising from any deficiency or inaccuracy in information, which the Supplier is required to provide under clause 36.1.

30.4 The Supplier shall co-operate fully with the College during the handover arising from the completion or earlier termination of the agreement. This co-operation, during the setting up operations period of the replacement Supplier (if any), shall extend to allowing full access to, and providing copies of all documents, reports, summaries and other information necessary in order to achieve an effective transition.

31. TUPE

31.1 The Supplier shall indemnify and keep indemnified the College against any loss incurred by the College connected with or arising from any claim or proceedings by any trade union, elected employee representative or staff association made against the College in respect of any or all of the Supplier's staff or employees or any other employee of the Supplier or its sub-contractors and which arises from or is connected with any failure by the Supplier to comply with its legal obligations in relation thereto whether under Section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 or TUPE.

31.2 The Supplier shall indemnify and keep indemnified the College against any loss incurred by the College connected with or arising from the contract of employment or any policy applicable to, or any collective agreement in respect of any of the Supplier's staff or any other person at any time employed by (or engaged as a consultant by) the Supplier or its sub-contractors made against the College at any time for breach of such contract, policy or redundancy, pay, sex, race or disability discrimination, equal pay, unlawful deductions, loss of earnings, industrial or personal injury or otherwise relating to their employment by the Supplier and which results from any act, fault or omission of the Supplier or such

other person was employed by the Supplier, save to the extent that the liability arises from any wrongful act by the College or its employees.

31.3 The Supplier shall indemnify and keep indemnified the College against any loss incurred from any change or proposed change to the terms and conditions of employment of any or all of the Supplier's staff or any other employee of the Supplier or its sub-contractors where such change is or is proposed to be effected following the transfer of any such person pursuant to the agreement and in respect of any loss incurred by the College arising from the employment or proposed employment of any such person otherwise than on terms the same as those enjoyed by any such person immediately prior to such transfer.

31.4 Except with the proper written consent of the College, the Supplier shall not vary any terms and conditions of employment of any employee or any policy collective agreement applicable to any employee then assigned by the Supplier or its sub-contractors to the discharge of the Contract (provided always that this provision shall not affect the right of the Supplier to give effect to any pre-existing contractual obligation to any such employee) nor remove or replace any particular employee so assigned (unless requested by such employee or upon the resignation of such employee in which case the Supplier shall replace such person with another person of similar skills, qualifications and experience) after the College has served notice of the termination of the Contract or after the Supplier shall have otherwise become aware of the proposed termination or re-tendering of this agreement, any Contract or the provision by it of the Goods and Services.

32. General

32.1 Assignment, Novation and Subcontracting.

- (a) The College may at any time assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract.
- (b) The Supplier may not assign, novate, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract without the College's prior written consent.

32.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post, recorded delivery, commercial courier or fax.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 38.2(a); if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

33. Governing Law & Jurisdiction

The contract shall be deemed to have been made in England and the parties to the contract hereby submit to the jurisdiction of the English courts. English law shall be the applicable law of the contract.