

## West Yorkshire Colleges Consortium Limited Conditions of Purchase (2019 Edition)

### 1. Interpretation

1.1 In these Conditions the following words shall have the following meanings:

“Buyer”	West Yorkshire Colleges Consortium Limited, trading as West Yorkshire Consortium of Colleges, a company registered in England and Wales, Company registration number 04165288, whose place of business is at Park Lane Campus, Park Lane, Leeds, LS3 1AA.
“Conditions”	the standard terms and conditions of purchase set out in this document and (unless the context otherwise requires) any special terms and conditions agreed in writing between the Buyer and the Supplier.
“Contract”	the Order and the Supplier’s acceptance of the Order.
“Goods/Services”	any Goods/Services agreed in the Contract to be purchased by the Buyer from the Supplier (including any part or parts of the Goods/Services).
“Order”	the Buyer’s written instruction to supply the Goods/Services and/or perform the Services, incorporating these Conditions.
“Services”	any services agreed in the Contract to be purchased by the Buyer from the Supplier (including any part of the Services).
“Supplier”	the person, firm or company identified in the Order as the Supplier.

### 2. Application of Conditions

- 2.1 These Conditions shall govern the Contract to the exclusion of any terms or conditions endorsed upon, delivered with or contained in the Supplier’s quotation, acknowledgement or acceptance of order or similar document and the Supplier waives any right which it otherwise might have to rely on such terms or conditions.
- 2.2 These Conditions shall not apply where and to the extent that other terms and conditions agreed in writing by or on behalf of the Buyer and the Supplier apply in respect of the Goods/Services and/or the Services to be supplied.
- 2.3 These Conditions shall cancel and supersede any earlier version or edition of the Conditions of Purchase of the Buyer.

2.4 No variation to the Order or these Conditions shall be binding on the Buyer unless agreed in writing and signed by a duly authorised representative of the Buyer.

### **3. Orders**

3.1 The Order constitutes an offer by the Buyer to purchase the Goods and/or the Services in accordance with these Conditions.

3.2 The Order shall be deemed to be accepted on the earlier of the Supplier issuing a written acceptance of the Order or doing any act consistent with fulfilling the Order, at which point the Contract shall come into existence.

3.3 Only Orders placed on the Buyer's official Order and accepted by the Supplier within the time period (if any) stated on the Order shall be binding on the Buyer.

3.4 The Order number and date shall be given by the Supplier on all delivery advices and notes, invoices, correspondence and packaging relating to the Order. The Buyer reserves the right to withhold payment where such information is not given.

### **4. Quality and Defects**

4.1 The Goods/Services shall:

4.1.1 be of the quantity, quality and description specified in the Order;

4.1.2 be capable of any standard of performance specified in the Order;

4.1.3 conform with any sample, patterns or specification supplied or agreed to by the Buyer; and

4.1.4 comply with all statutory requirements and regulations relating to the Goods/Services;

4.2 The Goods/Services shall conform in all respects with the Order and any specification supplied or agreed to by the Buyer and will comply with all statutory requirements and regulations relating to the performance of the Goods/Services.

4.3 The Buyer's rights under these Conditions are in addition to statutory conditions or terms implied in favour of the Buyer.

4.4 The Supplier shall maintain and implement quality, specification control, testing and inspection procedures to enable the Supplier to consistently comply with its obligations under the Contract and, at the request of the Buyer, will supply the Buyer with full details of such procedures and the Supplier's test results and inspection reports.

4.5 At any time prior to the delivery of the Goods/Services, the Buyer shall have the right to inspect and test the Goods/Services and the procedures referred to in Condition 4.4. If the Buyer is of the opinion that the Goods/Services do not conform or are unlikely to conform with the Order or to any specification supplied or agreed to by the Buyer or that the procedures are insufficient or inappropriate to ensure consistent conformity with the Contract, the Buyer shall inform the Supplier and the Supplier shall immediately take such action as is necessary to ensure such conformity. Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods/Services and procedures and any such inspection or testing shall not diminish or otherwise affect the Supplier's obligations under the Contract.

4.6 The Supplier shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods/Services.

- 4.7 The Goods/Services shall be marked in accordance with the Buyer's instructions and properly packed and secured so as to reach their destination in an undamaged condition.
- 4.8 If any of the Goods or Services fail to comply with the provisions set out in this Condition 4 the Buyer shall be entitled to avail itself of any one or more of the remedies listed in Condition 15.

## **5. Indemnity and Insurance**

- 5.1 The Supplier shall keep the Buyer indemnified against all direct, indirect and consequential liability, loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with:
- 5.1.1 defective Goods or Services including, without limitation, defective workmanship, quality or materials;
  - 5.1.2 any infringement or alleged infringement of any intellectual property rights caused by the possession, use, manufacture or supply of the Goods/Services; and
  - 5.1.3 any claim made against the Buyer in respect of any liability, loss, damage, injury, cost or expense sustained by the Buyer's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods/Services or the performance of the Services.
- 5.2 The Supplier shall insure its liability under the Contract with a reputable insurance company for a sum of not less than five million pounds sterling (£5,000,000) and at the request of the Buyer shall produce to the Buyer full details of such insurance and evidence of its renewal.

## **6. Delivery and Performance**

- 6.1 The Goods/Services shall be delivered carriage paid, to the place of delivery specified by the Buyer. The Supplier shall off-load the Goods/Services as directed by the Buyer.
- 6.2 The date for delivery of the Goods/Services shall be specified in the Order, or if no such date is specified delivery shall take place within 28 days of the Order.
- 6.3 The date or dates for performance of the Services shall be as specified in the Order or such other date or dates agreed by the Buyer.
- 6.4 Time for delivery of the Goods/Services and performance of the Services shall be of the essence.
- 6.5 The Supplier shall invoice the Buyer upon, but separately from, despatch of the Goods/Services to the Buyer or completion of the Services. The Supplier must send its invoice to the address stated on the Order or to such other address as the Buyer might notify in writing.
- 6.6 Notwithstanding Condition 3.4, the Supplier shall ensure that each delivery of the Goods/Services is accompanied by a delivery note which shows, amongst other things, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.
- 6.7 Unless otherwise stipulated by the Buyer in the Order, deliveries of the Goods/Services shall be accepted by the Buyer only during normal business hours.
- 6.8 If the Goods are not delivered and/or performance of the Services is not completed on the due date then, without prejudice to any other rights which it may have, the Buyer reserves the right to:
- 6.8.1 cancel the Contract in whole or in part;

- 6.8.2 refuse to accept any subsequent delivery of the Goods and/or performance of the Services which the Supplier attempts to make;
  - 6.8.3 recover from the Supplier any expenditure reasonably incurred by the Buyer in obtaining the Goods or the Services in substitution from another the Supplier; and
  - 6.8.4 claim damages for any additional costs, losses or expenses incurred by the Buyer which are in any way attributable to the Supplier's failure to deliver the Goods, or complete performance of the Services on the due date.
- 6.9 The Buyer shall not be obliged to return to the Supplier any packaging or packing materials for the Goods/Services, whether or not any Goods/Services are accepted by the Buyer.
- 6.10 Where the Buyer agrees to accept delivery of the Goods/Services by instalments the Contract will be construed as a single contract in respect of each instalment. Nevertheless failure by the Supplier to deliver any one instalment shall entitle the Buyer at its option to treat the whole Contract as repudiated.
- 6.11 If the Goods/Services are delivered to the Buyer in excess of the quantities ordered, the Buyer shall not be bound to pay for the excess and any excess will be and will remain at the Supplier's risk and will be returnable at the Supplier's expense.
- 6.12 The Buyer shall be entitled to reject any Goods and/or to rectification of any Services which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods or Services until the Buyer has had a reasonable time to inspect them following delivery or performance or, if later, within a reasonable time after any defect in the Goods or Services has become apparent.
- 6.13 The Supplier shall give the Buyer prior written notice of:
- 6.13.1 any delivery of the Goods/Services or of items accompanying the Goods/Services posing a toxic or other hazard to the safety or health of persons or property and shall provide full details of such hazard and of all precautions which should be taken by the Buyer in respect of the delivery, storage, handling, installation and use of the Goods/Services or items and provide the Buyer with all information relating to the properties of the Goods/Services or items to enable the Buyer to comply with all relevant legislation relating to the Goods/Services or items and/or such hazards; and
  - 6.13.2 any delivery of Goods/Services which are perishable or of limited lifespan and of any circumstances which may adversely affect the lifespan of such Goods/Services.
- 6.14 If for any reason the Buyer is unable to accept delivery of the Goods at the time when they are due for delivery the Supplier shall, if its storage facilities permit, store the Goods in a secure manner until the Buyer is ready to accept delivery and the Buyer shall pay Supplier's reasonable charges for storage.
- 6.15 Where the Supplier performs the Services on the Buyer's premises, the Supplier shall, and shall procure that its personnel shall, comply with the Buyer's safety and security regulations and shall not, without the prior written consent of the Buyer, use any of the Buyer's facilities, tools, apparatus or equipment. Where such consent is given by the Buyer, the Supplier must satisfy itself as to the fitness and suitability of such facilities, tools, apparatus and equipment and shall assume all liability arising out of their use.

## **7. Risk and Ownership**

The Goods/Services shall remain at the risk of the Supplier until delivery to the Buyer is complete (including off-loading and stacking) at which point ownership of the Goods/Services shall pass to the Buyer.

## **8. Price**

- 8.1 The price of the Goods and/or Services shall be as stated in the Order and, unless otherwise agreed in writing by the Buyer, shall be exclusive of value added tax but inclusive of all other charges.
- 8.2 No variation in the price or extra charges will be accepted by the Buyer.
- 8.3 The Buyer shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Supplier.

## **9. Payment**

Unless otherwise agreed in writing, the Buyer shall pay the price of the Goods/Services and/or Services within thirty (30) days of receipt and agreement of the invoice, subject to acceptance of the Goods and/or Services by the Buyer.

## **10. Audit**

- 10.1 The Supplier shall keep and maintain until six years after the Contract has been completed, or as long a period as may be agreed between the parties, full and accurate records of the Contract including:
  - 10.1.1 the Goods and Services provided under the Contract;
  - 10.1.2 all expenditure reimbursed by the Buyer; and
  - 10.1.3 all payments made by the Buyer.
- 10.2 The Supplier shall on request afford the Buyer or the Buyer's representatives such access to those records as may be required in connection with the Contract.

## **11. Miscellaneous Legislation**

- 11.1 The Supplier shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or any other law, enactment, order or regulation relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) and shall take all reasonable steps to secure the observance of this clause 11.1 by all servants, employees or agents of the Supplier and all the Suppliers and sub-contractors employed in performance of the Contract.
- 11.2 The Supplier shall (and shall use its reasonable endeavours to procure that its staff shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of the Contract and the Supplier shall undertake, or refrain from undertaking, such acts as the Buyer requests so as to enable the Buyer to comply with its obligations under the Human Rights Act 1998.
- 11.3 The Supplier agrees to comply with any health, safety and safeguarding rules made known to the Supplier from time to time by the Buyer, together with all applicable statutory rules and regulations regarding these matters, and the Supplier agrees to notify the Buyer as soon as practicable of any health and safety hazards or safeguarding risks at the Buyer's premises of which it becomes aware
- 11.4 The Supplier shall comply at all times with the Data Protection Act 2018 and all other relevant legislation in relation to the processing of personal information and shall not perform its obligations under the Contract in such a way as to cause the Buyer to breach any of its obligations under such legislation.

- 11.5 The Supplier acknowledges that the Buyer is subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and the Supplier shall assist and cooperate with the Buyer (at the Supplier's expense) to enable the Buyer to comply with its obligations under such legislation.

## **12. Confidentiality**

The Supplier shall keep in strict confidence and shall use for the purpose only of performing the Order all technical or commercial know-how, specifications, inventions, processes or initiatives which have been disclosed to the Supplier by the Buyer or its agents, or which are created by the Supplier in performing the Order and any other confidential information concerning the Buyer's business or its products, the Suppliers and customers which the Supplier may obtain and the Supplier shall restrict disclosure of such confidential information to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Supplier's obligations to the Buyer and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality and non-use to those which bind the Supplier.

## **13. Buyer's Property**

- 13.1 Materials, equipment, tools, dies, moulds and copyright, design rights and all other intellectual property rights in drawings, specifications and data supplied by the Buyer to the Supplier shall be used by the Supplier only for the manufacture of the Goods/Services for supply to the Buyer or the performance of the Services for the Buyer. Such items shall remain the exclusive property of the Buyer but shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until returned to the Buyer and shall not be disposed of other than in accordance with the Buyer's written instructions, nor shall such items be used otherwise than as authorised by the Buyer in writing.
- 13.2 Any copyrights, design rights or other intellectual property rights created by the Supplier in performing the Order shall belong to the Buyer absolutely and shall be used for the purpose only of performing the Order and no other purpose without the prior written consent of the Buyer. At the Buyer's request and expense the Supplier shall sign such documents as the Buyer may require to perfect the Buyer's title to such intellectual property rights.

## **14. Termination of the Contract**

- 14.1 The Buyer shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Supplier written notice whereupon all work on the Contract shall be discontinued and the Buyer shall pay to the Supplier fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss.
- 14.2 The Buyer shall have the right at any time by giving written notice to the Supplier to terminate the Contract immediately if:
- 14.2.1 the Supplier commits a breach of any of the terms or conditions of the Contract;
  - 14.2.2 any distress, execution or other process is levied upon any of the assets of the Supplier;
  - 14.2.3 the Supplier has a bankruptcy order made against it or makes an arrangement or composition with its creditors or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors or (being a body corporate) convenes a meeting of creditors or enters into liquidation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Supplier or

notice of intention to appoint an administrator is given by the Supplier or its directors or by a qualifying floating charge holder, or a resolution is passed or a petition presented for the winding up of the Supplier or for the granting of an administration order in respect of the Supplier, or any proceedings are commenced relating to the insolvency or possible insolvency of the Supplier, or anything analogous to any of the foregoing events under the law of any jurisdiction occurs in relation to the Supplier or the Buyer apprehends that any of the foregoing is about to occur in relation to the Supplier;

14.2.4 the Supplier ceases or threatens to cease to carry on its business;

14.2.5 the financial position of the Supplier deteriorates to such an extent that in the opinion of the Buyer the capability of the Supplier adequately to fulfil its obligations under the Contract has been placed in jeopardy; or

14.2.6 the Supplier offers, gives or agrees to give any gift or consideration of any kind to any person as an inducement or reward for performing any action in relation to the Contract.

14.3 Termination of the Contract for any reason shall be without prejudice to rights of the Buyer accrued prior to termination. The Conditions which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

## **15. Remedies**

15.1 Without prejudice to any other right or remedy which the Buyer may have, if any Goods/Services are not supplied or Services are not performed in accordance with, or the Supplier fails to comply with, any of the terms of the Contract, the Buyer shall be entitled to any one or more of the following remedies at its discretion, whether or not any part of the Goods/Services or Services has been accepted by the Buyer:

15.1.1 to rescind the Order;

15.1.2 to reject the Goods/Services (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Goods/Services so returned shall be paid immediately by the Supplier;

15.1.3 to reject the Services (in whole or in part) on the basis that a full refund for the Services so rejected shall be paid immediately by the Supplier;

15.1.4 at the Buyer's option to allow the Supplier the opportunity at the Supplier's expense either to remedy any defect in the Goods/Services or the Services or to supply replacement Goods/Services and/or Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;

15.1.5 to refuse to accept any further deliveries of the Goods/Services or performance of the Services but without any liability to the Supplier;

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

15.1.7 to claim such damages as may have been sustained in consequence of the Supplier's breaches of the Contract.

## **16. Guarantee/Warranty**

Without prejudice to any other right of the Buyer, where under the terms of any warranty or guarantee given by the Buyer on the resale of the Goods or on the sale of any Goods in which the Goods are

comprised, the Buyer is responsible for or has agreed to the repair or replacement of the Goods, the Supplier shall, if requested by the Buyer, repair or replace the Goods (as directed by the Supplier) and reimburse or pay to the Buyer all transport and labour costs incurred by the Buyer in satisfying the claim under the warranty or guarantee given by the Buyer.

**17. Set Off**

The Buyer shall be entitled to apply any sum due from the Buyer to the Supplier in settlement of any sum due from the Supplier to the Buyer or to any other member of the Buyer's Group and, where there is any amount due from any other member of the Buyer's Group to the Supplier, the Buyer shall on behalf of the Supplier be entitled to give to such other member of the Buyer's Group a good receipt for any sum which such other member of the Buyer's Group may pay to the Buyer in settlement of any sum due from the Supplier to the Buyer.

**18. Force Majeure**

The Buyer reserves the right to defer the date of delivery of the Goods or performance of the Services or payment or to cancel the Contract or reduce the volume of the Goods or the extent of the Services ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Buyer including, without limitation, acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

**19. Anti-Corruption**

19.1 The Supplier shall:

19.1.1 comply with all laws relating to anti-bribery and anti-corruption and all policies of the Buyer relating thereto notified to the Supplier from time to time and shall not contravene any such law or policy;

19.1.2 have and enforce as appropriate its own policies and procedures to ensure compliance with Condition 19.1.1;

19.1.3 promptly notify the Buyer if any request or demand for financial or other advantage of any kind is received by the Supplier in connection with the performance of the Contract or if any foreign public official is appointed as an officer or employer of or acquires an interest in the Supplier; and

19.1.4 ensure that any person performing any aspect of the Contract complies with this Condition 19.1

**20. General**

20.1 The Supplier shall not be entitled to assign or sub-contract the Contract or any part of it without the prior written consent of the Buyer.

20.2 The Buyer may assign the Contract or any part of it to any person, firm, company or member of the Buyer's Group.

20.3 Nothing in the Contract entitles any third party to any benefit under, or to enforce the terms of, the Contract save that any member of the Buyer's Group may enforce the terms and benefit of the Contract.

- 20.4 The Supplier shall not use the Contract or the name of the Buyer in any advertising or promotion, and shall not otherwise use any name, logo or other intellectual property right of the Buyer or any member of the Buyers Group, without the Buyer's prior written consent.
- 20.5 Failure or delay by the Buyer in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 20.6 Any waiver by the Buyer of any breach of, or any default under, any provision of the Contract by the Supplier will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 20.7 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 20.8 The formation, existence, construction, performance, validity and all other aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.