

## TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS AND SERVICES

### 1 Definitions

1.1 In these Conditions (unless the context otherwise requires):

"Conditions"	means the terms and conditions contained herein;
"Contract"	means the contract between the HEI (Trinity Laban and/or Blackheath Halls) and the Seller for the sale and purchase of the Goods and/or Services as described in the Purchase Order. The Contract shall consist of the Purchase Order, these Terms and Conditions and any other documents (or parts thereof) specified in the Purchase Order.  Should there be any inconsistency between the documents that make up the Contract, they shall have precedence in the order herein listed;
"Correct Invoice"	means a detailed invoice quoting the HEI's purchase order number;
"Equipment"	means all equipment supplied to the Seller or ordered by the HEI from the Seller for the execution of the Contract;
"Goods"	means the goods (or any installment or part thereof) to be supplied pursuant to the Contract;
"Intellectual Property Rights"	means any patent, registered design, copyright, database right, design right, topography right, trade mark, service mark, application to register any of the aforementioned rights, trade secret, right in unpatented know-how, right of confidence and any other intellectual property right of any nature whatsoever in any part of the world;
"Material"	means all drawings, specifications and information supplied under the Contract;
"Moral Rights"	shall have the meaning ascribed by the Copyright, Designs and Patents 1988 Act (or any statutory amendment or re-enactment thereof) and all rights similar or corresponding thereto subsisting in any other country of the world from time to time;
"Normal Business Hours"	means the hours between 8am and 5pm, Monday to Friday excluding public holidays;
"Purchase Order"	means the order placed by the HEI for the purchase of the Goods and/or Services;
"Seller"	means the person, firm or company to whom the Purchase Order is addressed and who is to provide the Goods and/or Services;
"Services"	means the services (or any installment of part thereof) described in the Purchase Order to be undertaken by the Seller;
"Specifications"	means the technical or other requirements (if any) for the Goods and/or Services contained or referred to in the Purchase Order;
"HEI"	means Trinity Laban and / or Blackheath Halls and any of its servants, agents, successors and assigns, which is a registered

charity under Section 3 (5) (a) of the Charities Act 1993;

**"HEI's Premises"**

means the premises mentioned in the HEI's Purchase Order or other contractual document in respect of the Goods and/or Services or if not mentioned means the HEI's premises at King Charles Court, Old Royal Naval College, Greenwich, London, SE10 9JF;

- 1.2 In these Conditions (unless the context otherwise requires) words in the singular shall include the plural and vice versa, references to any gender shall include the others and references to legal persons shall include natural persons and vice versa.
- 1.3 The headings in these conditions are intended for reference only and shall not affect their construction.

**2 General**

- 2.1 These Conditions shall apply to the Contract to the exclusion of any other terms and conditions contained or referred to in any acknowledgment of the Purchase Order, form of Contract, letter, or other communication sent by the Seller to the HEI.
- 2.2 Unless acceptance occurs at an earlier date in time, dispatch of the Goods and/or performance of the Services by the Seller to the HEI shall be deemed to be conclusive evidence of acceptance of these terms.
- 2.3 Any concession made or leeway allowed by the HEI to the Seller shall not affect the strict rights of the HEI under the Contract.
- 2.4 If in any particular case any of the Clauses in this Contract shall be held to be invalid or shall not apply to the Contract the remaining Clauses shall continue in full force and effect.
- 2.5 No variation to the Purchase Order or to these Terms and Conditions shall be binding unless expressly agreed in writing by the HEI and signed on its behalf.
- 2.6 In the event of any inconsistency between these Terms and Conditions and any other document or form of communication between the Seller and the HEI these Terms and Conditions shall prevail unless expressly varied in writing and signed on the HEI's behalf.
- 2.7 No person who is not a party to this Agreement is entitled to enforce any of its terms, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

**3 Quality and Description**

Without prejudice to any other rights the HEI may have, the Seller warrants to the HEI that:

(a) the Goods will:

- i) conform as to quantity, quality and description with the particulars stated in the Contract;
- ii) be of sound materials and workmanship;
- iii) be equal in all respects to the Specifications (if any) and any samples or patterns provided by either party and accepted by the other;
- iv) be capable of any standard of performance specified in the Contract;
- v) comply with all statutory requirements and regulations relating to the manufacture and sale of the Goods at the time when the same

- are supplied;
- vi) if the purpose for which the Goods are required is indicated in the Contract either expressly or by implication, be fit for that purpose.
- (b) the Services will be performed by appropriately qualified and trained personnel with all due care and diligence and to the highest standard of quality prevailing in the industry at the time of performance.

#### **4 Progress and Inspection Testing**

- 4.1 The HEI shall be entitled to inspect the progress of the Services being performed and/or test the Goods during manufacture, processing and storage and the Seller shall at its own cost provide or shall procure the provision of all such facilities as may reasonably be required by the HEI for this purpose.
- 4.2 If as a result of any inspection or test under clause 4.1 the HEI's representative is of the reasonable opinion that the Goods and/or Services do not comply with the Contract, or are unlikely on completion of manufacture or processing or performance so to comply, he may inform the Seller accordingly and the Seller shall promptly take such reasonable steps as may be necessary to ensure such compliance.

#### **5 Delivery/ Forms**

- 5.1 A delivery note, clearly marked with the HEI's Order Number, the consignee and the description and quantity of the goods concerned, shall accompany each delivery of the goods.
- 5.2 The Goods shall be delivered and the Services performed by the Seller at the time, or within the period, specified in the Contract and time of delivery of the Goods and/or performance of the Services shall be of the essence of the Contract.
- 5.3 The Goods shall be delivered to, or the Services performed for, the HEI at the address set out in the Purchase Order or to such other destination as may be specified in the Contract, and in the manner specified in the Contract or as subsequently agreed in writing between the parties. Delivery shall take place during the HEI's Normal Business Hours or at such other time as may be agreed between the HEI and the Seller, and the Seller shall supply the HEI, in good time, with any instructions or other information required to enable the HEI to accept delivery of the Goods and/or allow the Seller to perform the Services.
- 5.4 The Goods shall be transported and off-loaded at the sole risk and expense of the Seller and shall remain at the Seller's risk until accepted by the HEI in accordance with the Purchase Order.
- 5.5 If the Goods are incorrectly delivered the Seller will be responsible for any additional expense incurred in delivering them to their correct destination and acceptance of the Goods will not take place until they are delivered to their correct destination as specified in the Purchase Order.
- 5.6 The Goods shall be properly packed and secured in such a manner so that they arrive at their destination in good condition under normal conditions of transport having regard to the nature of the Goods and the other circumstances of the case.
- 5.7 Unless otherwise agreed between the parties in writing before delivery, the HEI shall have no obligation to pay for or return packing cases, skids, drums or other articles used for packing the Goods whether or not re-usable.
- 5.8 Where the HEI has agreed to return packing cases, skids, drums or other articles used for packing the Goods it will return them empty in good order and condition (consigned "carriage paid" unless otherwise agreed) to the address notified by the

Seller and the HEI will advise the Seller of the date of dispatch. Where the goods are delivered by road vehicle any available empty packaging cases, skids, drums or other articles used for packing the Goods may be returned by the same vehicle.

- 5.9 Packing cases, skids, drums or other articles used for packing the Goods returned promptly in the manner stipulated in Clause 5.7 above will be subject to an allowance at the Seller's standard rate operating at the time of delivery to the HEI.
- 5.9 Unless otherwise agreed in writing the Goods are not to be delivered or the Services performed in installments but where it has been agreed that delivery of the Goods and/or performance of the Services shall be in installments the Contract shall be treated as a single Contract and not severable.

## **6 Loss or Damage in Transit**

- 6.1 The HEI shall advise the Seller and the Carrier (if any) in writing, otherwise than by a qualified signature on any Delivery Note, of any loss or damage within the following time limits:
  - 6.1.1 partial loss, damage, defects or non-delivery of any separate part of a consignment shall be advised within 7 days of the date of delivery of the consignment or part consignment;
  - 6.1.2 non-delivery of the whole consignment shall be advised within 21 days of receipt of notice of dispatch.
- 6.2 The Seller shall make good, free of charge to the HEI, any loss of or damage to or defect in the Goods where notice is given by the HEI in compliance with this condition.

## **7 Hazardous Goods**

- 7.1 The Seller will promptly inform the HEI in writing in English of any dangers and special instructions relating to the handling, storage, safe use, transportation or disposal of hazardous goods (including any new information concerning these matters which from time to time become available).

## **8 Performance of the Services**

- 8.1 The Services will be performed in accordance with the Purchase Order, including but not limited to any acceptance criteria or tests, provision of certificates, programme of installation or performance that may be required.
- 8.2 Where the Seller is to provide the Services at the HEI's site the HEI will ensure that the Seller has such reasonable access to the site as may be necessary for the Seller to perform the Services in accordance with the Contract.
- 8.3 The Seller whilst performing the Services at the HEI's site must:
  - 8.3.1 take reasonable care to ensure that the performance of the Services does not interfere with the business of the HEI, its employees or any other contractor employed on the site;
  - 8.3.2 comply with all statutory obligations, including but not limited to the Health and Safety at Work Act 1974 and any subsequent additions or amendments;
  - 8.3.3 comply with any policies and procedures required by the HEI and issued to the Seller prior to the performance of the Services;
  - 8.3.4 ensure that the Services are performed during the HEI's Normal Business Hours unless otherwise agreed in writing by the HEI;
  - 8.3.5 leave the site in a clean and tidy condition at the end of each day and on completion of the Services.

## **9 Storage/Destruction**

- 9.1 If for any reason the HEI is unable to accept delivery of the Goods at the time when

the Goods are due and ready for delivery the Seller shall, if his storage facilities permit, store and safeguard the Goods and take all reasonable steps to prevent their deterioration until they are actually delivered and the HEI shall be liable to the Seller for the reasonable cost (including insurance) of this.

- 9.2 If for any reason the Goods are stored in accordance with clause 9.1 the Seller may not dispose or otherwise destroy the Goods without giving reasonable advance written notice to the HEI.

## **10 HEI's Material and Equipment**

- 10.1 All Material supplied by the HEI to the Seller in connection with the Contract is confidential. The Seller and its officials, employees and agents shall not at any time disclose the Material to any third party without the HEI's prior written consent.
- 10.2 All Equipment shall be kept securely and maintained in good condition by the Seller and the Seller shall indemnify the HEI against all loss thereof or damage thereto whilst the same are in the Seller's possession or control.
- 10.3 The Material and the Equipment shall only be used for the purpose of manufacturing and supplying the Goods and/or Services to the HEI and shall remain the HEI's property at all times.
- 10.4 Where the Goods and/or Services are designed, created or otherwise developed by or for the Seller pursuant to the Contract, then all Intellectual Property Rights in the Goods and/or Services throughout the world shall belong to the HEI absolutely. The Seller hereby assigns the Intellectual Property Rights to the HEI with the intent that upon the making or creation of the Goods and/or Services the Intellectual Property Rights shall automatically vest in the HEI.
- 10.5 The Seller irrevocably undertakes that neither it nor any other person will assert against the HEI or any third party any Moral Rights in or relating to the Intellectual Property Rights and warrants that all such Moral Rights are irrevocably waived and extinguished.

## **11 Passing of Property**

- 11.1 Risk of damage to or loss of the Goods shall pass to the HEI on delivery to the HEI in accordance with the Contract.
- 11.2 The property in the Goods shall pass to the HEI on the date of notification by the Seller that the Goods are due and ready for delivery but without prejudice to:
- 11.2.1 any statute or rule of law allowing property to pass at an earlier time;
- 11.2.2 any right of rejection which may accrue to the HEI whether under these Terms and Conditions or otherwise.

## **12 Rejection**

- 12.1 Without prejudice to any other of its rights the HEI may by notice in writing to the Seller reject any or all of the Goods and/or Services if the Seller fails to comply with any of his obligations under the Contract.
- 12.2 The HEI shall not be deemed to have accepted any Goods and/or Services or any part thereof until the HEI has had a reasonable time to inspect them following delivery and/or performance, or if later, within a reasonable time after any latent defect in the Goods and/or Services has become apparent.
- 12.3 The HEI shall when giving notice of rejection specify the reason for such rejection and the Seller shall remove such Goods and/or Services at the Seller's risk and expense. In such case the Seller shall:
- 12.3.1 at the HEI's option:

- 12.3.1.1 replace such rejected Goods with Goods which are in all respects in accordance with the Contract; and/or
- 12.3.1.2 re-perform the defective Services where time permits; or
- 12.3.1.3 credit the HEI with the invoice price of the Goods and/or Services.

12.3.2 reimburse the HEI all freight and handling costs reasonably incurred by the HEI and/or for which it may be liable in respect of such Goods and/or Services.

### **13 Price and Payment**

- 13.1 The price of the Goods and/or the Services shall be the price stated in the Purchase Order and shall be inclusive of all charges for packaging, packing, carriage insurance and delivery of the Goods and/or Services to the HEI and any import taxes or duties or other duties, taxes, imports or levies incurred by the Seller.
- 13.2 Value Added Tax, where applicable, must be shown separately on all invoices.
- 13.3 Once the Goods and/or Services have been delivered in accordance with Clause 5 of the Contract the Seller shall send a Correct Invoice for the Goods and/or Services which shall identify the HEI's Purchase Order number, and the HEI shall pay such invoice if correctly rendered within 30 days of receipt.
- 13.4 The purchase order number must be included on the invoice. Where a purchase order has been raised and the Seller has not quoted the purchase order number on the purchase invoice, the invoice will be returned to the Seller and payment will be withheld.

### **14 Assignment and Sub-Contracting**

- 14.1 The Seller shall not without the HEI's prior written consent assign or transfer the Contract or any of its rights or obligations under it to any other person, firm, company or third party.
- 14.2 Sub-contracting any part of the Contract shall not relieve the Seller of any obligation or duty attributable to him under the Contract or these terms and conditions.

### **15 Statutory Requirements**

- 15.1 The Seller warrants that the design, construction and quality of all Goods to be supplied under the Contract and the quality of the Services will comply in all respects with all relevant requirements of any Statute, Statutory Rule or Order to other instrument having the force of law which may be in force in the United Kingdom at the time when the same are supplied.

### **16 Termination and Insolvency**

- 16.1 The HEI shall be entitled to terminate the Contract without liability to the Seller forthwith upon written notice to the Seller:
  - 16.1.1 if the Seller becomes bankrupt, insolvent, compounds with its creditors, has distress or execution levied upon its property, is wound up, goes into liquidation (except for the purposes of a *bona fide* reconstruction), shall have a receiver, administrative receiver, or administrator appointed of the whole or any part of its assets, or shall suffer the appointment of any similar person under the laws of its domicile; or
  - 16.1.2 if the Seller ceases or threatens to cease to carry on business; or
  - 16.1.3 if the Seller is in material breach of its obligations under the Contract and fails to remedy the breach (when capable of remedy) within 30 days of a notice

from the HEI specifying the breach.

- 16.2 The HEI may cancel any Purchase Order or part thereof by giving notice to the Seller at any time prior to delivery. In the event that the HEI exercises the rights of cancellation in accordance with this condition its sole liability to the Seller shall be to pay for the cost to the Seller of the work reasonably carried out by the Seller or, in relation to the Goods at the date of cancellation any liability reasonably incurred by the Seller to a third party at the date of termination in relation to the manufacture and supply of the Goods.
- 16.3 The exercise of any rights granted to the HEI under Clause 16 shall not prejudice or affect any right of action or remedy, which may have already accrued or may accrue thereafter to the HEI.

## **17 Warranty**

- 17.1 Without prejudice to any other remedies of the HEI, the Seller shall as soon as reasonably practicable, upon a request by the HEI:
- (a) replace or (at the HEI's option) repair all Goods which are or become defective during the period of 12 months (or such other period as may be agreed in writing between the seller and the HEI) from the date of acceptance where such defect occurs under proper usage and is due to faulty design, or inadequate or faulty materials or workmanship, the Seller's erroneous instructions as to use, erroneous data or any breach by the Seller of any provision of the Contract. Repairs and replacements shall themselves be subject to the foregoing obligations for a period of 12 months (or such other period as may be agreed in writing) from the date of acceptance, reinstallation or passing of tests (if any) whichever is appropriate after repair or replacement;
  - (b) re-perform any Services found to have been performed defectively within 12 months of the date of their performance.

## **18 Indemnity**

- 18.1 The Seller shall indemnify the HEI against all actions, suits, claims, demands, costs, charges, damages, losses and expenses suffered or incurred by the HEI to any third party due to, arising from, or in connection with:
- 18.1.1 the negligent or willful acts or omissions of the Seller, his servants, agents or contractors  
in supplying, delivering and installing the Goods and/or the performance of the Services;
  - 18.1.2 the breach of any provision of the Contract by the Seller;
  - 18.1.3 any defect in the workmanship, materials or design of the Goods or their packaging;
  - 18.1.4 any infringement or alleged infringement of any patent, copyright, registered design, design right, trade mark, trade name or other intellectual property right for or relating to the Goods and/or Services unless such infringement has occurred directly as a result of any specification supplied by the HEI;
  - 18.1.5 any claim against the HEI arising out of an incorrect description of the Goods and/or Services by the Seller.

## **19 Force majeure**

19.1 Neither party shall be liable to the other or deemed to be in breach of Contract by reason of any delay in performance or any failure to perform any of its obligations in relation to the Goods and/or the provision of the Services, if the delay or failure was beyond its reasonable control including (but not limited to) strikes, lock-outs, accidents, war, fire, reduction in or unavailability of power or breakdown of plant or machinery. If the cause of such suspension shall continue for more than 6 months either party shall have the right to terminate the Contract upon giving not less than 7 days' prior written notice to the other and the only liability of the HEI shall be to pay the Seller for the Services performed and/or the Goods received by the HEI prior to the date of such suspension.

## **20 Publicity**

20.1 The Seller shall not exploit publicity in any form in connection with the Contract or the HEI without the prior written permission of the HEI.

## **21 Recovery of Sums Due**

21.1 Whenever under the Contract any sum of money shall be recoverable from or payable by the Seller the same amount may be deducted from any sum then due or which may become due to the Seller under any contract the Seller may have with the HEI.

## **22 Confidentiality**

22.1 Except as expressly agreed (including where necessary the agreed provision of information to any third party), all communications between the HEI and the Seller which are marked "In Confidence" and in particular concern business transactions and financial arrangements of the HEI and the Seller or are otherwise understood by the parties to be made in confidence shall be kept confidential by the receiving party unless and until they come legitimately into the public domain or are required to be disclosed by law, regulation, or order of the English Courts.

## **23 Inducements to Purchase**

23.1 The Seller shall not offer to any Trinity Laban Employee or its representatives as a variation of the conditions of the contract or as an agreement collateral to it, any advantage other than a cash discount against the contract price.

23.2 If the seller shall have offered, given or agreed to give any person any gift or consideration of any kind as an inducement or reward towards the obtaining or execution of a contract, then the seller or contractor shall be deemed to have committed an offence under the Prevention of Corruption (Amendment) Acts 2001 and the HEI shall be entitled to terminate the contract and to recover from the seller or contractor the amount of any loss resulting from such termination.

## **24 Law of the Contract**

24.1 The Contract shall in all respects be governed by and construed in accordance with English law and shall be deemed to have been made in England and the parties agree to submit to the nonexclusive jurisdiction of the courts of England.

24.2 All disputes arising out of or in connection with this Contract shall be resolved by arbitration. A single arbitrator shall be appointed by agreement between the parties but where the parties fail to reach agreement within 7 days, by the President of the Law Society of England and Wales.