**Standard Terms and Conditions for the Supply of Goods or Services to Highcliffe School**

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**1. DEFINITIONS AND INTERPRETATION**

1.1 ‘Acceptance’ shall mean written acknowledgement from Highcliffe School that the Supplier has completed the required contractual obligations under the Order to the School’s entire satisfaction.

‘Conditions’ shall mean these conditions and any special conditions referred to in the Order.

‘School’ shall mean Highcliffeighcliffe School and such term shall include its duly authorised agents, successors and assigns.

‘Goods’ shall mean any goods to be supplied by the Supplier in accordance with the terms of the Order.

‘Order’ shall mean the School’s formal order documentation, duly authorised, incorporating these standard terms and conditions and any documents and special conditions referenced in such formal Order documentation.

‘Supplier’ shall mean the person, firm or company who is the named recipient of the Order and shall include the named recipient’s employees, authorised agents, successors, and permitted assigns.

‘Supply’ shall mean all activities that the Supplier is contractually obliged to complete in fulfilment of the Order.

1.2 In these terms except where the context otherwise requires:

(a) the terms and expressions set out in Condition 1.1 shall have the meanings ascribed therein;

(b) words importing the singular meaning include where the context so admits the plural meaning and vice versa; and words importing the masculine include the feminine and the neuter;

(c) reference to a Condition is a reference to the whole of that Condition unless stated otherwise;

(d) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

(e) references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees;

(f) headings are included in these Conditions for ease of reference only and shall not affect the interpretation or construction of these Conditions.

(g) the words ‘include’, ‘includes’ and ‘including’ are to be construed as if they were immediately followed by the words ‘without limitation’.

1.3 The contract between the parties shall be constituted by and comprise only the Order. No terms and conditions put forward at any time by the Supplier shall form any part of the Order. Any act made in response to the Order shall be taken as unconditional acceptance of this Condition and any additional terms accompanying the Supply shall be invalid. These Conditions may only be varied with the written agreement of the School.

1.4 If any of the Conditions become or are declared by a court of competent jurisdiction to be invalid or unenforceable such invalidity or unenforceability shall in no way impair or affect any other Conditions all of which shall remain in full force and effect.

**2. QUALITY STANDARDS**

The Supply shall be to the reasonable satisfaction of the School and shall without limitation conform with and fulfil in all respects:-

• the Order;

• any variation of the Order agreed in writing by the parties;

• the requirements of any relevant UK or EC statute, order, regulation, directives, standard, code of practice or bye-law from time to time in force which is relevant to the Supply;

• any recommendation or representation made by the Supplier;

• the professional standards which might reasonably be expected of the Supplier.

**3. ORDER PRICE AND INVOICING**

3.1 All pricing shall be firm (non-revisable) for the duration of the Supply. No invoices will be accepted or payments made in excess of the Order price without the School’s prior agreement and the issue of an official Order amendment. All prices shall include packaging and delivery to the nominated receiving address. All prices shall exclude VAT.

3.2 All invoices must state the relevant Order number clearly.

3.3 The School shall make payment, provided the Supply complies with the Order and subject to Condition 2, within 30 days after receipt of a valid invoice submitted after Acceptance.

3.4 If the Supplier’s invoice is or appears to be in error and has to be investigated, the date of receipt and consequently the date by which payment is due will be measured from the date on which such queries are satisfactorily resolved.

**4. DELIVERY AND TIME FOR PERFORMANCE**

4.1 Time shall be of the essence in performance of the Supply. The School must be notified and written consent obtained from the School for any change to the contractual completion date. The School is not bound to agree to any request for change in the contractual completion date. Any agreed change will be subject to a formal Order amendment to validate the change.

4.2 When applicable, access to School premises, facilities or storage by the Supplier shall comply with the reasonable requirements of the School and shall be at the Supplier’s risk.

4.3 Where the relevant circumstances apply, at the completion of the Supply the Supplier shall remove all materials from the School’s premises (unless otherwise instructed) and permanently reinstate any damaged areas or surfaces and leave the School’s premises in a clean condition.

**5. PROPERTY RISK AND ACCEPTANCE**

Without prejudice to any of the rights or remedies of the School (including those under Condition 7), property and risk in any Goods to be supplied pursuant to the Order shall pass to the School on delivery or, when the School notifies Acceptance in writing where the Goods are to be subject to testing and/or an Acceptance procedure, whichever shall be the later.

**6. DESPATCH OF GOODS AND DAMAGE IN TRANSIT**

The Supplier shall free of charge and as quickly as is reasonably possible either repair or replace (as the School shall elect) the whole or part of any Goods to be supplied pursuant to the Order which fail to arrive or arrive damaged.

**7. ACCEPTANCE**

7.1 The Supplier warrants for a minimum period of twelve months from Acceptance by the School that:

7.1.1 the Goods shall be free from defects in design, materials and workmanship and be fit and sufficient for all the purposes for which such Supply are ordinarily used and for any particular or special purpose made known to the Supplier by the School; and

7.1.2 the Goods shall conform in all respects with any sample approved by the School; and

7.1.3 the Goods shall conform with the requirements of all relevant enactments and with relevant European standards or equivalent; and

7.1.4 all obligations of the Supplier pursuant to the Order shall be performed and rendered by appropriately experienced, qualified and trained staff applying all due skill, care and diligence which are custom and practice in their trade.

7.2 The Supplier shall assist the School or its authorised agents (on a free-of-charge basis) to make any inspections or tests the School may reasonably require of the Supply at any time prior to Acceptance.

7.3 The School may suspend the Supply in whole or in part without paying compensation if the School is reasonably of the opinion that the Supplier is in breach of Condition 11.

7.4 The School may reject the Supply in whole or in part before Acceptance if it is not completely in accordance with the Order or becomes so during the warranty period (including without limitation any slight or minor variation) and in such circumstances may, without prejudice to other rights or remedies elect to either:-

• have the Supply repaired, re-done or replaced by the Supplier with a supply which complies in all respects with the requirements of the Order;

• require a full refund from the Supplier;

• make a reasonable deduction, from the Order total value, as deemed reasonable by the School;

• have the Goods repaired, re-done or replaced by another company or individual and charge the Supplier any cost and expense to the School which exceeds the Order price.

**8. LABELLING AND PACKAGING**

8.1 The contents of the Supply shall be clearly marked. All containers of hazardous goods (and all relevant documents) shall bear prominent and adequate warnings. Product Data Sheets required by the Control of Substances Hazardous to Health Regulations 1988 and the Chemicals (Hazard Information and Packaging) Regulations 1993 must be provided (in a form suitable for photocopying).

8.2 All packaging materials will be considered non-returnable.

8.3 The Supplier must comply with packaging legislation and the waste electrical and electronic equipment (WEEE) legislation, in so far as they place obligations upon the Supplier in the performance of its obligations under the Order.

**9. INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIALITY**

9.1 The Supply shall not infringe the intellectual property rights of any third party.

9.2 All rights (including without limitation title, proprietary rights, copyright) in any specifications, information, instructions, plans, drawings, patterns, models, designs or other material (“Intellectual Property”) furnished to or made available to the Supplier by the School or obtained by the Supplier in connection with the Order shall remain vested solely in the School and shall be kept confidential.

9.3 The Intellectual Property rights in any thing arising out of the Supply shall vest in the School.

9.4 The Supplier shall provide the School with a non-exclusive royalty-free licence to use, copy and adapt any documentation or publications delivered by the Supplier relating to the Supply.

9.5 The Supplier shall keep confidential and shall not during the period of the Supply and at any time thereafter, disclose to any third party (except with the written agreement of the School or by any requirement of law) any School information, data or process (“Confidential Information”) which may have come to the knowledge of the Supplier by reason of the Supply.

9.6 The provisions of this Condition 9 shall apply both during the Supply and after its completion or its termination.

**10. COMPLIANCE WITH LEGISLATION AND WHISTLE-BLOWING**

10.1 Human Rights Act and Discrimination

10.1.1 The Supplier will comply with the Equality Act 2010 (as amended and superseded from time to time) and any relevant codes of practice and best practice guidance issued by the Government and the appropriate agencies in the performance of its obligations under the Order.

10.1.2 In addition to Condition 10.1.1, the Supplier will in the performance of its obligations under the Order act as if the Supplier were a public authority for the purposes of the Human Rights Act 1998.

10.1.3 The Supplier shall comply with the School’s Equality and Diversity Policy (available from the School on request).

10.1.4 The Supplier will comply with the provisions in Condition 10 in the performance of its obligations under the Supply and shall take all reasonable steps to secure the observance of these provisions by its employees, agents and sub-contractors employed in the execution of the Supply.

10.2 Freedom of Information and Environmental Information

10.2.1 The Supplier shall be obliged to support the School's current and future obligations under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 (as amended and superseded from time to time).

10.2.2 The Supplier shall facilitate the School's compliance with the School's obligations under these provisions and comply (at its own cost) with any reasonable request from the School for that purpose. The Supplier shall support the obligation that the School may be required to provide information relating to the Order or the Supplier to a third party in order to comply with its obligations under these provisions.

10.3 Audit Requirements

10.3.1 The Supplier shall be obliged to support the School's current and future obligations under the Audit Commission Act 1998 and shall facilitate the obligations under these provisions and comply (at its own cost) with any reasonable request from the School for that purpose. If either the School’s internal or external auditors wish to investigate the Order, then the Supplier shall provide such information, access and co-operation as those persons may reasonably require.

10.4 Data Protection

10.4.1 Where applicable to the Order the Supplier shall comply with any notification requirements under the Data Protection Act 1998 (‘DPA’) (as amended and superseded from time to time) and both parties will comply with all obligations under the DPA which arise in connection with the Order.

10.5 The Supplier shall ensure it maintains effective whistle blowing policies whereby the Supplier’s employees may raise in confidence, without fear of victimisation discrimination or disadvantage, concerns about possible malpractice.

10.6 The provisions of this Condition 10 shall apply both during the Supply and after its completion or its termination.

10.7 The School may terminate the Order by written notice if the Supplier is in breach of any of the provisions of this Condition 10. No period of notice will be required but the notice will state the date on which it is to take effect.

**11. HEALTH AND SAFETY**

11.1 Without prejudice to the generality of Condition 2.1 the Supplier in making the Supply shall have full regard to safety of persons who may be affected in any way and shall comply with the requirements of the Health and Safety at Work etc Act 1974 and its subordinate regulatory framework, and of any other Acts pertaining to the health and safety of persons.

11.2 The Supplier shall operate a system of risk assessment, to comply with appropriate Health and Safety legislation. The Supplier shall provide copies of any risk assessments (or a summary of the said documents if they are unable to be released for any justifiable reason) as and when required by the School.

11.3 The Supplier shall conduct all necessary tests and examinations prior to delivery of the Supply to ensure that the Supply is designed, constructed and delivered so as to be safe and without risk to the health or safety of persons using them. The Supplier shall give the School adequate information about the use for which the Supply has been designed and has been tested and about any conditions necessary to ensure that when put to use the Supply will be safe and without risk to health.

11.4 Throughout the progress of any activity undertaken on School premises, the Supplier shall keep such working area in an orderly state and shall provide and maintain at its own cost all lights, guards, fencing and warning signs for the protection of the working area and for the safety and convenience of the public and others. The Supplier shall notify the School immediately in the event of any incident occurring in the performance of the Supply on the School's Premises where that incident causes any personal injury, or damage to property that could give rise to personal injury.

11.5 Each party shall promptly notify the other of any health and safety hazards which may arise in connection with the performance of the Supply including those that may exist or arise at the School's premises and that may affect the Supplier in the performance of the Supply.

11.6 While on the School's premises, the Supplier shall comply with any health and safety measures implemented by the School in respect of staff and other persons working on such premises.

**12. INDEMNITY AND INSURANCE**

12.1 The Supplier shall fully indemnify and keep the School fully indemnified against all actions, claims, costs, expenses and liabilities arising under statute or common law from:

a) injury to or the death of any person; and/or

b) the loss of or damage to any property including property belonging to the School; and/or

c) any other financial loss;

as a result of any act, omission, default or negligence by the Supplier or its employees or agents insofar as they arise from matters pertaining to the Supply (except and to the extent that such actions, claims, costs, expenses and liabilities may arise solely out of the act, omission, default or negligence of the School, its employees or agents).

12.2 Without prejudice to the Supplier’s liability detailed in 12.1 above, the Supplier shall effect and maintain appropriate insurance policies with a reputable insurer to cover the risks contemplated by the Order in such sum as is deemed prudent in all circumstances by the Supplier (but in any event with the minimum limits of indemnity specified below):

12.2.1 Public Liability Insurance - £10 million each and every incident;

12.2.2 Employer’s Liability Insurance – £10 million each and every incident;

12.2.3 Goods in transit Insurance in respect of any Goods subject to the Supply.

and shall at the request of the School produce the relevant policy or policies together with receipts or other evidence of payment of the latest premium due.

**13. TERMINATION**

13.1 The School may exercise the option to terminate the Order in whole or in part (and where applicable enter upon and expel the Supplier from any premises or site to which he has been given access) by written notice if any of the events specified in Condition 13.2 occur. No period of notice shall be required but the notice shall state the date on which it is to take effect.

13.2 The events referred to in Condition 13.1 are:

13.2.1 the Supplier has failed to provide the Supply within the time specified in the Order;

13.2.2 the Supplier has breached the Order in a way which the School reasonably regards as irremediable, which may include, without limitation, repeated and/or persistent remediable breaches of the Order;

13.2.3 the School has given the Supplier at least one month’s notice to remedy a breach of contract which can be remedied and the Supplier has failed to do so;

13.2.4 the Supplier has without reasonable cause failed to proceed diligently with or wholly suspends performance of any activity under the Order;

13.2.5 (if an organisation) the Supplier makes any arrangement with its creditors or is subject to winding up or dissolution, or has an administrator, administrative receiver, receiver or liquidator appointed;

13.2.6 (if an individual) the Supplier makes any arrangement with its creditors or is declared bankrupt or adjudged incapable of managing his or her affairs within the meaning of Part VII of the Mental Health Act 1983 or dies;

13.2.7 the Supplier or anyone acting on the Supplier’s behalf do any of the following things:

(a) offer, give or agree to give to anyone any inducement or reward in respect of this or any other School purchase order or contract (even if the Supplier does not know what has been done); or

(b) commit an offence under the Bribery Act 2010 or Section 117(2) of the Local Government Act 1972; or

(c) commit any fraud in connection with this or any other School purchase order or contract whether alone or in conjunction with School staff members, contractors, suppliers, or employees. Any Condition limiting the Supplier’s liability shall not apply to this Condition.

13.3 In the event of termination of the Order or rejection under Condition 7, the School may engage another contractor to provide the Supply and the Supplier shall be liable to pay the School as a debt any extra cost that the School incurs in so doing in excess of the total value of Order.

**14. ASSIGNMENT AND SUB-CONTRACTING**

14.1 The Supplier shall not assign, sub-contract or in any other way dispose of the benefit or burden of the whole or any part of the Order without the School’s prior written agreement. Assigning or sub-contracting any part of the Order shall not relieve the Supplier of any obligation or duty attributable to the Supplier under these Conditions.

14.2 The Supplier shall be responsible for the acts omissions defaults and negligence of its sub-contractors as though they are its own.

14.3 The School requires prior notice of any element of the Supply being sub-contracted. Where the School has consented to the placing of sub-contracts, copies of each sub-contract may be requested by the School and sent by the Supplier to the School within 10 working days of issue.

14.4 The Supplier shall not use the services of self-employed individuals without the School’s prior written agreement.

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

**15. PURCHASE OUTSIDE THE ORDER AND THIRD PARTIES**

15.1 The School shall have the right to employ a person or company other than the Supplier to make supplies of the same type as is contemplated by the Order if it shall, in its absolute discretion, think fit to do so.

15.2 Pursuant to the Contracts (Rights of Third Parties) Act 1999 the parties agree that a person who is not a party to the Supply may not enforce any of its terms.

**16. NO AGENCY / EMPLOYMENT / PARTNERSHIP**

Nothing in the Order shall be construed as creating a legal partnership or contract of employment or a relationship of principal and agent between the School and the Supplier and the Supplier shall not at any time or in any circumstances take any action so as to bind (or purport to bind) the School nor shall the Supplier hold itself out as having authority to bind the School and shall ensure that its employees and agents do not hold themselves out likewise.

**17. WAIVER**

17.1 The failure of either party to insist upon strict performance of any provision of these Conditions or the failure of either party to exercise any right or remedy shall not constitute a waiver of that right or remedy and shall not affect the obligations established by these Conditions.

17.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing in accordance with the provisions of Condition 18.

17.3 A waiver of any right or remedy arising from a breach of these Conditions shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of these Conditions.

**18. NOTICES**

18.1 A notice given by a party to a party under or in connection with these Conditions shall be in writing and delivered by hand or sent by pre-paid first class post or other next working day delivery service (providing proof of postage or proof of delivery), to the address given above for the party, or to such other address as is notified by a party from time to time.

18.2 Any notice or communication will be deemed to have been received:-

a) if delivered by hand: when left at the relevant address referred to in this Condition; or

b) if sent by pre-paid first-class post or other next working day delivery service or document exchange (DX): at 12 noon on the second working day after posting; or

c) if delivered by commercial courier: on the date and at the time that the courier's delivery receipt is signed;

d) if sent by facsimile: on confirmation of successful transmission to the address referred to in this Condition.

18.3 For the purpose of this Condition, “in writing” shall not include e-mail.

18.4 This Condition does not apply to the service of any proceedings or other documents in any legal action or other method of dispute resolution.

**19. VARIATION**

The terms of the Order may be varied by written agreement between the parties. In the event of a variation the price may also be varied. Such variation in the price shall be calculated and agreed in writing between the parties and shall be such amount as properly and fairly reflects the nature and extent of the variation in all the circumstances. Failing agreement the matter shall be determined by negotiation or mediation in accordance with the provisions of Condition 22.

**20. ENTIRE AGREEMENT**

20.1 This agreement and the documents annexed to it constitute the entire agreement and understanding of the parties and supersede any previous agreement between them relating to the subject matter of the Supply.

The Supplier acknowledges and agrees that in entering into the Supply, it does not rely on and will have no remedy in respect of any statement, representation, warranty, collateral agreement or other assurance (whether made negligently or innocently) of any person (whether party to this agreement or not) other than as expressly set out in the Order or the documents annexed to it.

Nothing in this Condition will, however, operate to limit or exclude any liability for fraud.

20.2 In the event of conflict between the Order provided by the School and the Supplier’s terms and conditions, the Order provided by the School shall take precedence over those provided by the Supplier whether provided before or after the date of the Order.

**22. FORCE MAJEURE**

21.1 Neither party shall be liable for breach of its obligations under these Conditions to the extent that any such breach is caused by any act of God, natural flood, fire (save where such fire is due to the negligence or fault of the party in default), lightning strike, earthquake, pandemic outbreak of an infectious illness, war, military operations, act of terrorism or riot, but nonetheless each party shall use all reasonable endeavours to perform its obligations under the Order.

21.2 Where an event specified in 21.1 occurs for more than thirty days the School shall notify the Supplier whether it requires the Supply to be recommenced, varied or cancelled (without further liability to either party). Where the Supply is recommenced the Order shall be subject to a formal Order Amendment to validate the extension of the time for completion or delivery of the Supply by the period.

**22. DISPUTE RESOLUTION**

22.1 A dispute relating to the provisions of these Conditions which cannot be resolved in the first instance between the parties’ representatives within a month shall be referred to the parties’ senior managers.

22.2 Nothing in this Condition shall prejudice the right of either party to apply to the court for interim relief to prevent the violation by the other party of any proprietary interest or any breach of that party’s obligations.

22.3 If any dispute cannot be resolved between the parties within a month of referral as set out in Condition 22.1 then at the instance of either party it will be referred to mediation in accordance with the Centre for Effective Dispute Resolution’s (“CEDR”) Model Mediation Procedure.

22.4 To initiate the mediation, either party may give notice in writing to the other requesting mediation in accordance with this Condition. The initiating party shall send a copy of such request to CEDR.

22.5 If there is any issue on the conduct of the mediation (including as to the nomination of the mediator) upon which the parties cannot agree within a reasonable time, CEDR will, at the request of either party, decide the issue.

22.6 If the dispute is not resolved within 90 days of the initiation of the mediation, or if either party will not participate in the mediation, either party may commence legal proceedings.

**23. AUTHORITY**

Nothing contained in these Conditions shall prejudice, override, modify or in any other way affect the rights, powers, duties and obligations of the School in the exercise of its statutory powers as a school authority.

**24. GOVERNING LAW**

These Conditions shall be governed by and construed in accordance with English law and the Supplier hereby irrevocably submits to the exclusive jurisdiction of the English courts.