

Central Sussex College Conditions of Contract for the Purchase of Goods

May 2000

1 Interpretation

- 1.1. In these conditions:-
 - 1.1.1 “The Contract” means the agreement concluded between the College and the Contractor, including all specifications, patterns, contractors samples, plans, drawings and other documents which are incorporated or referred to therein.
 - 1.1.2 “The Contractor” means the person who by the contract undertakes to supply the Goods to the College as provided for in the contract. Where the contractor is an individual or partnership, the expression shall include the personal representative of that individual or of the partners.
 - 1.1.3 “The College” means Central Sussex College.
 - 1.1.4 “The Goods” means all goods, material or articles which the contractor is required to supply under the contract.
 - 1.1.5 “ The Contract Price” means the price exclusive of value added tax payable to the contractor by the College under the contract for the full and proper performance by the contractor of its part of the contract.
 - 1.1.6 Unless the context otherwise requires, reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended or re-enacted by any subsequent enactment, order, regulation or instrument.
- 1.2 The headings to these conditions shall not affect their interpretation.
- 1.3 Any decision, act or thing which the College is required or authorised to take or do under the contract may be taken or done by any person authorised, ether generally or specially, by the College to take or do that decision, act or thing, provided that upon receipt of a written request the College shall inform the contractor of the name of any person so authorised.

2 Variation of Conditions

- 2.1 The Goods shall be supplied in accordance with these conditions. Any conditions which the contractor may seek to impose and which in any way add to, vary or contradict these conditions shall be excluded and not form part of the contract, unless each of such conditions has been specifically agreed to in writing by the College.
- 2.2 No later variation shall be binding unless it has been agreed in writing and signed by an authorised representative of the College.

3 Specification

The Goods shall be new (unless otherwise specified), of the qualities and kinds described and equal in all respects to the descriptions, specification, patterns and contractors samples which form part of the contract or are otherwise relevant for the purpose of the contract. Except in so far as may be otherwise indicated by such descriptions, specifications, patterns or contractors samples, the Goods shall be strictly in compliance with the latest relevant British Standard or equivalent European Community Standards where such exist.

4 Identification of Goods

All Goods which customarily bear any mark, tab, brand, label or other device indicating place of origin, inspection by any Government or other body or standard of quality must be delivered with all said marks, tabs, brands, labels or other devices intact.

5 Packaging

The Goods shall be securely packed in trade packages of a type normally used by the contractor for commercial deliveries of the same or similar goods either in retail or in bulk quantities within the United Kingdom.

- 2.1 The following details shall be shown on the outside of every package unless otherwise specified in the contract:

- Description of goods
- Quantity in package
- Any special directions for storage
- Expiry date of contents (where applicable)
- Batch number
- Name of manufacturer

6 Containers and Pallets

The contractor shall collect without charge any returnable containers (including pallets) within twenty-one days of the date of the relevant delivery note, unless otherwise instructed by the College. Empty containers not so removed may be returned by the College at the contractors expense or otherwise disposed of at the College's discretion. The contractor upon collection or return shall credit charged containers in full.

7 Forms

A delivery note shall accompany each delivery of the Goods. A bill shall be rendered on the contractors own invoice form to the College. All delivery notes and invoices

shall be clearly marked with the College's order number, the consignee and the description and quantity of the goods concerned and shall show separately any additional charge for containers or, where no charge is made, whether the containers are required to be returned, and shall be compatible in all respects with these conditions

8 Delivery

- 8.1 The Goods shall be delivered by the contractor carriage paid in such quantities, in such manner, at such times and to such places as the College may order in writing from time to time, being times and places within the quantities, period and localities specified in the contract.
- 8.2 The time of delivery shall be of the essence where delivery dates are expressly agreed.
- 8.3 Delivery shall be made within fourteen days of receipt of an order, if no time for delivery is expressly agreed.

9 Property and Risk

The property and risk in the Goods shall pass to the College when the Goods have been delivered to the College and unloaded.

10 Rejection of Goods

- 10.1 Without prejudice to the operation of condition 10.4 the Goods shall be inspected on behalf of the College within a reasonable time after delivery and may be rejected if found to be defective or inferior in quality to, or differing in form or material from, the requirements of the contract or if they do not comply with any term, express or implied, of the contract.
- 10.2 Without prejudice to the operation of condition 10.4 the College shall notify the contractor.
- 10.2.1 of the discovery of any defect within fourteen days of its discovery and shall give the contractor all reasonable opportunities to investigate such defect.
- 10.2.2 of any shortage or damage caused in transit and found on delivery within 14 days of delivery.
- 10.3 The whole of any consignment may be rejected if a reasonable sample of the Goods taken indiscriminately from that consignment is found not to conform in every material respect to the requirements of the contract.
- 10.4 The College's right of rejection shall continue irrespective of whether the College has in law accepted the Goods. In particular taking delivery, inspection, use or payment by the College of the Goods or part of them shall not constitute acceptance, waiver or approval and shall be without prejudice to any right or remedy which the College may have against the contractor, provided that the right of rejection shall cease within a reasonable time from the date on which the College discovers or might reasonably be expected to discover the latent defect or other relevant breach of contract.

- 10.5 Goods so rejected after delivery shall be removed by the contractor at its own expense within four days from the date of notification of rejection. If the contractor fails to remove them within such period, the College may return the rejected Goods at the contractors risk and expense and charge the contractor for the cost of storage from the date of rejection

11 Default by the Contractor

Without prejudice to any other right or remedy if the contractor does not deliver the Goods or any part of them within the times specified in the contract the College may:

- 2.2 terminate the contract and purchase other goods of the same or similar description to make good such default.
- 2.3 recover from the contractor the amount by which the cost of so purchasing other Goods exceeds the amount which would have been payable to the contractor in respect of the Goods replaced by such purchase.

12 Force Majeure

Neither party shall be liable to the other for any failure to perform its obligations under the contract where such performance is rendered impossible by circumstances beyond its control, but nothing in this condition shall limit the obligations of the contractor to use its best endeavours to fulfil its obligations under the contract.

13 Price and Payment

- 13.1 The contract price shall be "net", that is, after deduction of all agreed discounts. It shall include the cost of packing, packing materials, addressing, labelling, loading and delivery to the address(s) named in the contract or orders. The amount of any duty additional to the contract price and any early settlement discounts shall be shown separately.
- 13.2 The College shall pay the contract price to the Contractor, by BACS if the College so chooses within 30 days of the correct invoice date. The invoice must show our order number to which the invoice relates and sent to the Finance Office at the College. The College cannot be held responsible for delays in payment due to your failure to comply with this condition
- 13.3 Whenever under the contract any sums of money shall be recoverable from or payable by the contractor, the same may be deducted from any sum due, or which at any time thereafter may become due, to the contractor under the contract or under any other contract with the College.

14 Indemnity

Without prejudice to its liability for breach of any of its obligations under the contract the contractor shall be liable for and shall indemnify the College against any liability, loss, costs, expenses, claims or proceedings whatsoever arising under any statute or at common law in respect of:

- 14.1 any loss of or damage to property (whether real or personal)

- 14.2 any injury to any person, including injury resulting in death in consequence of or in any way arising out of any defect in the Goods or the delivery or unloading of the Goods by the contractor, its servants or agents except insofar as such loss, damage or injury shall have been caused by negligence on the part of the College, its servants or agents.

15 Insurance

- 15.1 The contractor shall insure against its liability under condition 14 in the minimum sum of £2 million in respect of any one incident.
- 15.2 The Contractor upon request shall produce to the College documentary evidence that the insurance is properly maintained.

16 Transfer and Sub-Contracting

Neither party shall assign the whole or any part of the contract. The Contractor shall not sub-contract the production or supply of any goods without the previous consent in writing of the College, such consent will not be unreasonably withheld.

17 Patents

- 17.1 The contract price shall include all royalties, licence fees or similar expenses in respect of the making, use or exercise by the Contractor of any invention or design for the purpose of performing the contract.
- 17.2 The Contractor shall indemnify the College against any costs, claims, proceedings, expenses and demands arising from the use, manufacture, supply, delivery or initially expected use of any process, article, matter or thing supplied under the contract, which would constitute any infringement of any right, patent, design, trademark or copyright.

18 Confidentiality

The Contractor, the College, their employees and agents at all times shall keep confidential and secret and shall not disclose to any person other than a person authorised by the College all information and other matters acquired by them in connection with the contract.

19 Inducements to Purchase

The contractor shall not offer to the College or its representative as a variation of the conditions of the contract or as agreement collateral to it any advantage other than a cash discount against the contract price.

- 19.1 The College shall be entitled to terminate the contract and to recover from the Contractor the amount of any loss resulting from such termination in the following circumstances:
- 19.2 If the Contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the contract or any other contract with the College or for showing forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the College

Or

19.3 If the like acts shall have been done by any person employed by it acting on its behalf

(Whether with or without the knowledge of the contractor)

Or

19.4 If in relation to the contract or any other contract with the College the Contractor or any person employed by it or acting on its behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or shall have given any fee or reward to any officer of the College which shall have been exacted or accepted by such officer under colour of his office or employment and is otherwise than such officers proper remuneration.

20 Insolvency

The College may at any time by notice in writing summarily terminate the contract without compensation to the contractor in any of the following events:

20.1 If the Contractor, being an individual, or, where the Contractor is a firm, any partner in that firm shall at any time become bankrupt, or shall have a receiving order, administration order or interim order made against him, or shall make any composition or scheme of arrangement for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or if in Scotland he shall become insolvent or bankrupt, or any application shall be made for sequestration of his estate, or a trust deed shall be granted by him for the benefit of his creditors ;

Or

20.2 if the Contractor being a company shall pass a resolution, or the Court shall make an order, that the company shall be wound up (except for the purpose of amalgamation or reconstruction), or if an administrative receiver on behalf of a creditor shall be appointed, or if the Court shall make an administrative order, or if circumstances shall arise which entitle the Court or a creditor to appoint an administrative receiver or which entitle the Court to make a winding up order or administrative order, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or accrue thereafter to the College.

21 Advertising

The Contractor shall not advertise or publicly announce that it is supplying goods or undertaking work for the College without the prior consent of the College, such consent shall not be unreasonably withheld.

22 Intellectual Property Rights

The Contractor agrees to assign to the College all right, title and interest in and to confidential information made, originated or developed during the course of or otherwise related to the services, together with any other intellectual property rights arising out of the provision of the services and to do everything necessary to effect such an assignment. Confidential information includes all designs, drawings, data, specifications and all other technical business and similar information relating to the services including all

readable or computer or other machine readable data or material and any material relating to or comprising software which may be part of the provision of the service.

- 22.1 Copyright and right in the nature of copyrights, in the material produced in the performance and during the currency of this contract, and in the materials submitted under the terms of this contract shall vest in the College. Such material shall not be reproduced or disseminated for any other purpose, by the contractor without written permission of the College.
- 22.2 The provision of this condition 22 shall apply during the continuance of this contract and after its termination howsoever arising.

23 Notices

Any notice given in relation to the contract shall be treated as properly given and effective on the date of posting.

24 Law

The parties accept and agree that the contract is to be governed and construed according to English Law.

