

Lancaster & Morecambe College

Conditions of Purchase

1. General

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

1.2 The term “purchaser” shall mean Lancaster & Morecambe College.
The term “supplier” shall mean the person, firm or company to whom the purchase order or contract to supply is issued.
The term “purchase order” shall mean the purchase order or contract placed by Lancaster & Morecambe College with the supplier for the supply & or installation of goods or services.
The term “goods” includes all goods or services to be supplied by the supplier under the purchase order or contract and includes any labels, instructions or handbooks relating to the goods.
The term “contract” shall mean the contract between Lancaster & Morecambe College and the supplier consisting of the purchase order, these conditions of purchase, any other documents (or parts thereof) referred to in the purchase order and the Suppliers acceptance of said purchase order and only the terms and conditions as detailed herein.
The term “date for delivery” shall mean the date for delivery & installation as agreed in this contract and stipulated on the purchase order.
The term “contract price” shall mean the sum stated in the purchase order to be paid by Lancaster & Morecambe College to the supplier in accordance with the agreed payment terms.

2. Variation or waiver

2.1 Neither the purchaser nor the supplier shall be bound by any variation, waiver of, or addition to these conditions except as agreed by both parties in writing and signed on their behalf. Any failure by the purchaser to insist at any time upon the performance of any of the terms provisions or undertakings of the supplier contained in the contract or to exercise any rights thereunder shall not constitute or be construed as a waiver thereof or a relinquishment of the purchasers rights to require the future performance of any such term, provision or undertaking but the obligation of the supplier with regard to the same shall continue in full force & effect.

3. Specification, Description, Sample

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

4. Quality

- 4.1 The goods will be of satisfactory quality and free from defects in material or workmanship as defined in the Sale & Supply of Goods Act 1984 including all the aspects of quality as listed in s.14 (2) (B) of the said act

5. Fitness for Purpose

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

6. Patents

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

7. Price

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

8. Delivery

- 8.1 The goods must be delivered carriage paid to such destination as the purchaser may direct.

9. Payment

- 9.1 The purchaser shall pay for goods as follows:

30 days after the end of the month in which the invoice is received once goods have been accepted by the Purchaser.

10. Risk

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

11. Time

- 11.1 The time stipulated for delivery shall be of the essence. Should the supplier fail to complete the project on time, then the purchaser reserves the right to terminate the contract and procure the goods elsewhere at the original suppliers' expense.

12. Property

- 12.1 The property in the goods shall pass to the purchaser when the goods have been delivered to the purchaser.

13. Force Majeure

- 13.1** Neither the supplier nor the purchaser shall be liable to the other for any failure to fulfil its obligations under the contract if such a failure is caused by circumstances beyond its reasonable control.
- 13.2** For the purpose of the contract the term Force Majeure shall mean:
- War & hostilities (whether war be declared or not) invasion, act of foreign enemies, mobilisation, requisition or embargo
 - Rebellion, revolution, insurrection, military or usurped power or civil war.
 - Riot, commotion or disorder except where solely restricted to employees of the supplier or its nominated sub contractors or sub suppliers.
 - Earthquake, flood, fire or other natural physical disaster except to the extent that any such disaster is caused by, or its effects contributed to by, the party claiming force majeure.
 - A general industrial dispute not limited to the employees of the supplier or the employees of any of its sub contractors or sub suppliers.
- 13.3** If either party considers that any circumstance of Force Majeure has occurred which may affect materially the performance of its obligations then he shall forthwith notify the other in writing to that effect giving full details of the circumstances giving rise to the Force Majeure event.
- 13.6** Neither party shall be considered to be in default of its obligations under the contract to the extent that it can establish that the performance of such obligations is prevented by any circumstance of Force Majeure which arises after the date of the contract and which was not foreseeable at the date of the contract.
- 13.7** If the performance of the obligations of either party under the contract is so prevented by circumstances of Force Majeure and shall continue to be prevented for a period less than 30 days, then during that period the contract shall be considered as suspended. Upon the ending of the Force Majeure event, the contractual obligations of the parties shall be reinstated with such reasonable modifications as to take account of the consequences of the Force Majeure event as may be agreed between the parties, or in default of such agreement, as may be determined by an independent arbitrator.
- 13.8** If performance of the obligations of either party under the contract is so prevented by the circumstances of Force Majeure and shall continue to be so prevented for a period in excess of 30 days, then the contract shall be terminated by mutual consent and, subject to the clauses detailed below, neither party shall be liable to the other as a result of such termination
- 13.9** If the contract is so terminated then subject to the transfer to the purchaser of the benefit referred to in the sub clause below the purchaser shall pay to the supplier such reasonable sum as may be agreed between the parties or in default of any agreement as may be determined by expert determination in respect of costs incurred and commitments already entered into by the supplier at the date of the Force Majeure notice, less the amount of any payments already made to the supplier at the date of the Force Majeure notice. If the amount of such advance payments made to the supplier exceeds the sum due to the supplier under this sub clause then the supplier shall repay the balance to the purchaser.

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

14. Rejection

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

15. Indemnity

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

16. Non-Delivery

16.1 If the supplier does not deliver the goods or any part thereof within the time specified in the contract, the purchaser may terminate the contract, purchase other goods of the same and similar description to make good such default, and recover from the supplier the amount by which the cost of so purchasing other goods exceeds the price which would have been payable to the supplier in respect of the goods replaced by such purchase, without prejudice to any other remedy for breach of contract.

17. Assignment and Subcontracting

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

18. Defects Liability Period

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

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

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

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

19. Direct & Consequential Damages

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

20. Insolvency & Bankruptcy

20.1 If the supplier becomes insolvent or bankrupt (or being a company) makes an arrangement with its creditors or has an administrative receiver or administrator appointed or commences to be wound up (other than for the purposes of amalgamation or reconstruction) the purchaser may without prejudice to its rights, terminate the contract forthwith by notice to the supplier or to any person in whom the contract may have become vested.

21. Copyright

21.1 All copyrights to any matter shall remain the property of Lancaster & Morecambe College. Should the contract be terminated or at the end of the contract term all copyright material will be passed to Lancaster & Morecambe College at their request. This shall include all patents, design rights, trade mark or other intellectual property rights.

22. Freedom of Information Act

22.1 For the purposes of this clause:

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

22.1.2 "Information" means all records and information of any sort obtained, created, collected or held by the purchaser in relation to the agreement and:

22.1.3 "Information Request" means a request for information within the meaning of section 8 of the FOI Act.

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

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

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

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

23. Rights of Third Parties

It is not intended that the Contract, either expressly or by implication, shall confer any benefit on any person who is not a party to the Contract and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply.

24. Entire Agreement

The Contract constitutes the entire agreement and understanding between the parties and supersedes all prior written and oral representations, agreements or understandings between them relating to the subject matter of the Contract provided that neither party excludes liability for fraudulent misrepresentations upon which the other party has relied.

25. Law

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