

## Terms and Conditions of Purchase (Goods and Services)

### 1. Definitions in these Conditions:

- **Buyer** means the Elmhurst Foundation and its trading entity Combe Grove.
- **Contract** means the contract between the Buyer and the Contractor. This consists of these Terms and Conditions; the Purchase Order and any other relevant document.
- **Contractor** means the supplier of Goods or Services to the Buyer.
- **Goods** means the goods to be supplied by the Contractor to the Buyer as set out in the Purchase Order.
- **Intellectual Property Rights** means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- **Purchase Order** means the Buyer's purchase order and any supporting documents which specify the Goods or Services.
- **Services** means the services to be supplied by the Contractor to the Buyer as set out in the Purchase Order.

### 2. Law & basis of Contract

The Contract shall in all respects be construed in accordance with the laws of England and all disputes arising out of the Contract shall be subject to the exclusive jurisdiction of the English courts.

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

The Purchase Order shall be deemed to be accepted on the earlier of: (a) the Contractor issuing written acceptance of the Purchase Order; or (b) an act by the Contractor consistent with fulfilling the Purchase Order, at which point and on which date the Contract shall come into existence.

These Terms and Conditions apply to the Contract to the exclusion of any other terms that the Contractor seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

All of these Terms and Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

### 3. Conditions for the Supply of Goods

The Contractor shall ensure that the Goods shall:

- a) correspond with their description and any applicable specification relevant to the Goods;
- b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Contractor or made known to the Contractor by the Buyer, expressly or by implication, and in this respect the Buyer relies on the Contractor's skill and judgement;
- c) where they are manufactured products, be free from defects in design, materials and workmanship and remain so for 12 months after delivery (**Warranty Period**); and
- d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

The Contractor shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

The Contractor shall ensure that:

- a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
- b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- c) it states clearly on the delivery note any requirement for the Buyer to return any packaging material for the Goods to the Contractor. Any such packaging material shall only be returned to the Contractor at the cost of the Contractor.

The Contractor shall deliver the Goods:

- a) on the date specified in the Purchase Order or in accordance with the agreed lead times;
- b) to the location specified by the Buyer in the Purchase Order (Delivery Location); and
- c) on a weekday between the hours of 9am and 4pm unless otherwise agreed by the Buyer.

Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

The Contractor shall not deliver the Goods in instalments without the Buyer's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Contractor to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Buyer to the remedies set out in section 5 (Buyer remedies), below.

Title and risk in the Goods shall pass to the Buyer on completion of delivery.

#### **4. Conditions for the Supply of Services**

The Contractor shall from the date set out in the Purchase Order and for the duration of the Contract supply the Services to the Buyer in accordance with these Terms and Conditions.

The Contractor shall meet any performance dates for the Services specified in the Purchase Order or that the Buyer notifies to the Contractor.

In providing the Services, the Contractor shall:

- a) co-operate with the Buyer in all matters relating to the Services, and comply with all instructions of the Buyer;
- b) perform the Services with all reasonable skill, care and diligence and in accordance with all applicable legislative and statutory requirements;
- c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Contractor's obligations are fulfilled in accordance with the Contract;
- d) ensure that the Services will conform with all descriptions, standards and specifications agreed by the parties, and that the output of the Services, including any deliverables, shall be fit for any purpose that the Buyer expressly or impliedly makes known to the Contractor;
- e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- f) use the best quality goods, materials, standards and techniques, and ensure that any deliverables, and all goods and materials supplied and used in the Services or transferred to the Buyer, will be free from defects in workmanship, installation and design;
- g) obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
- h) hold all materials, equipment and tools, drawings, specifications and data supplied by the Buyer to the Contractor (Buyer Materials) in safe custody at its own risk, maintain the Buyer Materials in good condition until returned to the Buyer, and not dispose of or use the Buyer Materials other than in accordance with the Buyer's written instructions or authorisation; and

- i) not do or omit to do anything which may cause the Buyer to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Contractor acknowledges that the Buyer may rely or act on the Services.

Where applicable, Contractors must be registered with and observe at all times the requirements of their professional or regulatory body.

## **5. Buyer remedies**

If the Contractor: (a) fails to deliver the Goods by the applicable date or to perform the Services by the applicable date, or both; (b) delivers Goods that do not comply with the Conditions for the Supply of Goods set out above; or (c) has supplied Services which do not comply with the Conditions for the Supply of Services set out above, then the Buyer shall, without limiting or affecting other rights or remedies available to it, have any one or more of the following rights and remedies:

- a) to terminate the Contract with immediate effect by giving written notice to the Contractor;
- b) to reject the Goods (in whole or in part) whether or not title has passed and to return them and/or any deliverables to the Contractor at the Contractor's own risk and expense;
- c) to require the Contractor to repair or replace the rejected Goods and/or to provide repeat performance of the Services (as applicable) or to provide a full refund of the price paid for the rejected Goods or Services;
- d) to refuse to accept any subsequent delivery of the Goods and/or subsequent performance of the Services which the Contractor attempts to make;
- e) to recover from the Contractor any expenditure incurred by the Buyer in obtaining substitute goods and/or services or deliverables from a third party; and
- f) to claim damages for any additional costs, loss or expenses incurred by the Buyer arising from the Contractor's failure to supply Goods or perform Services in conformity with the Conditions for the Supply of Goods or the Conditions for the Supply of Services as the case may be.

## **6. Invoices and Payment**

The price for the Goods and/or Services shall be the price set out in the Purchase Order and shall be inclusive of all costs of packaging, insurance and carriage of the Goods and shall be the full and exclusive remuneration of the Contractor in respect of the performance of the Services. The Contractor shall not invoice the Buyer for any expenses incurred in the performance of the Services unless agreed in advance by the Buyer.

In respect of the Goods, the Contractor shall invoice the Buyer on or at any time after completion of delivery. In respect of Services, the Contractor shall invoice the Buyer on completion of the Services.

Unless separately agreed, the Buyer's payment terms are 60 days from receipt of a valid accurate invoice. The invoice must clearly show a valid Purchase Order number, along with any quotation or contract references. It must also show any VAT separately and include the Contractor's VAT registration number and payment details. The Buyer prefers to pay its suppliers via BACS. It is the Contractor's responsibility to present the invoice to time and in the correct format.

If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this section will accrue each date at 3% a year above the Bank of England's base rate from time to time, but at 3% a year for any period when the base rate is below 0%. Where a payment is disputed in good faith, interest is only payable after the dispute is resolved, on sums found or agreed to be due, from the due date until payment.

#### **7. Loss or Damage**

The Contractor shall, without delay and at its own expense, reinstate, replace or make good to the satisfaction of the Buyer, or (if the Buyer agrees) indemnify the Buyer for, any liabilities, costs, expenses, losses or damage (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered by the Buyer as a result of any act or omission of the Contractor in the performance of the Contract, except to the extent that such loss or damage is caused by the neglect or default of the Buyer. 'Loss or damage' includes: loss or damage to property; personal injury to or the sickness or death of any person; loss of profits or loss of use suffered as a result of any loss or damage.

#### **8. Intellectual Property Rights**

All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Buyer.

#### **9. Insurance**

The Contractor shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on the Buyer's request, produce both the insurance certificate

giving details of cover and the receipt for the current year's premium in respect of each insurance.

#### **10. Warranty and indemnity**

The Contractor shall as soon as reasonably practicable repair or replace all Goods which are or become defective during the Warranty Period or in accordance with the Sale of Goods Act 1979 (as amended). This includes but is not limited to the Contractor's erroneous instructions as to use or erroneous use of data or inadequate or faulty materials or workmanship or any other breach of the Contractor's warranties expressed or implied. Repairs and replacement shall themselves be subject to the same Warranty Period as the original Goods.

The Contractor shall indemnify the Buyer against all liabilities, costs, expenses, losses and damages (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) for which the Buyer may become liable as a result of any claim resulting from defect or deficiency in the Goods or Services.

#### **11. Data Protection**

In this section 11 the following terms have the following meanings:

- **Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures** each mean as defined in the Data Protection Legislation.
- **Data Protection Legislation** means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
- **UK GDPR** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

Both parties will comply with all applicable requirements of the Data Protection Legislation. This section 11 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

The parties acknowledge that for the purposes of the Data Protection Legislation, the Buyer is the Controller and the Contractor is the Processor.

The Buyer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Contractor for the duration and purposes of this Contract.

The Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under this Contract:

- a) process that Personal Data only on the documented written instructions of the Buyer unless the Contractor is required by law otherwise process that Personal Data. Where the Contractor is relying on the application of law as the basis for processing Personal Data, the Contractor shall promptly notify the Buyer of this before performing the processing required by law unless the law prohibits the Contractor from so notifying the Buyer;
- b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
- c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- d) not transfer any Personal Data outside of the UK unless the prior written consent of the Buyer has been obtained and the following conditions are fulfilled:
  - i. the Buyer or the Contractor has provided appropriate safeguards in relation to the transfer;
  - ii. the Data Subject has enforceable rights and effective legal remedies;
  - iii. the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - iv. the Contractor complies with reasonable instructions notified to it in advance by the Buyer with respect to the processing of the Personal Data;
- e) assist the Buyer, at the Buyer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- f) notify the Buyer without undue delay on becoming aware of a Personal Data Breach;
- g) at the written direction of the Buyer, delete or return Personal Data and copies thereof to the Buyer on termination of the Contract unless required by law to store the Personal Data; and
- h) maintain complete and accurate records and information to demonstrate its compliance with this section 11.

The Buyer does not consent to the Contractor appointing any third party processor of Personal Data under this Contract without prior approval. To the extent the Buyer

does provide such approval, it is subject to the Contractor entering with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this section 11. As between the Buyer and the Contractor, the Contractor shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this section 11.

## **12. Termination**

Without affecting any other right or remedy available to it, the Buyer may terminate the Contract:

- a) with immediate effect by giving written notice to the Supplier if:
  - i. there is a change of Control of the Supplier; or
  - ii. the Supplier commits a breach of applicable laws, statutes and regulations in force in England;
- b) for convenience by giving the Contractor 14 days' written notice.

Without affecting any other right or remedy available to it, the Buyer may terminate the Contract with immediate effect by giving written notice to the Contractor if:

- a) the Contractor commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- b) the Contractor takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
- c) the Contractor suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- d) the Contractor's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

Termination of the Contract shall not affect the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

## **13. Force majeure**

Neither party shall be liable for failure to perform its obligations under the Contract if such failure results from circumstances which could not have been contemplated



and which are beyond the party's reasonable control (force majeure). If a party is prevented from fulfilling its obligations under the Contract for more than 30 consecutive days, the other party may terminate the then unperformed portion of the Contract by notice in writing.

#### **14. Variation**

The Contract may only be varied following receipt of a written confirmation of the variation from the Buyer.

#### **15. Severance**

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this section the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

#### **16. Sub-Contracting and Assignment**

The Contractor shall not sub-contract or transfer, assign, charge, or otherwise dispose of the Contract or any part of it without the prior written consent of the Buyer.

Where the Contractor enters into a contract with a supplier or sub-contractor for the purpose of performing the Contract or any part of it, it shall cause a term to be included in such contract which requires payment to be made by the Contractor to the supplier or sub-contractor within a period not exceeding 30 days from receipt of a valid Invoice. The Contractor is responsible for clarifying and managing the VAT position.

#### **17. Third party rights**

The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

#### **18. Entire agreement**

The Contract constitutes the entire agreement between the parties. Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

#### **19. Health and Safety**

The Contractor shall ensure that any of its staff and or sub-contractors are made aware of and comply with the Buyer's health and safety and security procedures whilst on site.

## **20. Trading Practices**

The Contractor shall comply with all applicable laws, statutes and regulations in force in England. This includes but is not limited to GDPR, the Bribery Act and the Modern Slavery Act. We ask all who work with us to observe our stance on corporate social responsibility.

Each party hereby agrees to maintain confidentiality of all commercial aspects of the contract, or any other confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, for a period of 10 years from the contract signature date. Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

The Contractor undertakes to observe the Buyer's Information and Data Security policies and practices at all times and including through any sub-contractors it uses.

The Contractor undertakes to insure for all breaches, misuses or other damages occurred in the use of any of the Buyer's data including that resulting from the Contractor's individual employees and or sub-contractors.