



SOUTH DEVON COLLEGE STANDARD TERMS AND CONDITIONS FOR PURCHASE OF GOODS

PLEASE NOTE: If the Supplier has entered into a written and signed agreement with South Devon College in respect of the subject matter covered by a Purchase Order, that written agreement shall prevail over these terms and conditions set out below.

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

"Agreement" the agreement entered into between South Devon College and the Supplier to which these terms and conditions apply and incorporating the Purchase Order and any other documents specified as being part of the Agreement in the Purchase Order or these terms and conditions;

"Commencement Date" has the meaning set out in condition 2.3;

"Confidential Information" has the meaning set out in condition 13.1;

"Delivery Date" means the delivery date in respect of the Goods, as set out in the Purchase Order or, if no such date is specified, within 30 days of the date of the Purchase Order;

"Delivery Address" means the delivery address specified by South Devon College which may be one of South Devon College's outcentres;

"Dispute" has the meaning set out in condition 17.1;

"Dispute Notice" has the meaning set out in condition 17.1;

"Environmental Information Regulations" the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;

"FOIA" means the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

"Force Majeure" any cause preventing either party from performing any or all of its obligations under this Agreement which arises from or is attributable to circumstances beyond the reasonable control of the party so prevented (including, without limitation, to the extent that these are beyond such control, acts of God, nuclear accident, war or terrorist activity, riot, civil commotion, fire, flood or storm, but excluding shortage of Personnel or equipment or industrial action);

"Good Industry Practice" means: (a) using standards, practices, methods and procedures in the performance of the obligations and responsibilities of the Supplier under this Agreement, which are of a quality which could reasonably be expected of a highly skilled and experienced leading provider of equipment similar to the Goods; and (b) discharging the obligations and responsibilities of the Supplier under this Agreement with the degree of skill, care, diligence, prudence and foresight which would reasonably be expected of a highly skilled and experienced leading provider of equipment similar to the Goods;

"Goods" any goods to be supplied to South Devon College by the Supplier, as set out in the Purchase Order;

"Information" has the meaning given under section 84 of FOIA or the meaning given in Regulation 5 of the Environmental Information Regulations as the context requires;

"Intellectual Property Rights" all intellectual property rights (whether or not any of these rights are registered, and including applications and the right to apply for registration of any such rights),



including patents, supplementary protection certificates, petty patents, utility models, trade marks, database rights, rights in designs, copyrights (including rights in computer software) and topography rights and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world, for the full term of such rights, and any renewals or extensions of them;

"**Personnel**" means any employee, agent, adviser or permitted sub-contractor of the Supplier;

"**Purchase Order**" means South Devon College's authorised purchase order;

"**Purchase Price**" means the price to be paid for the Goods supplied under this Agreement, as set out in the Purchase Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date the Agreement came into existence. Unless otherwise stated, this price is stated to be exclusive of VAT;

"**Relevant Requirements**" has the meaning set out in condition 19.1.1;

"**Request for Information**" shall have the meaning set out in the FOIA or the Environmental Information Regulations, as relevant;

"**South Devon College**" means South Devon College of Vantage Point, Long Road, Paignton, Devon, TQ4 7EJ: The corporation was established under the Further and Higher Education Act 1992 for the purposes of conducting the business of South Devon College. The college is an exempt charity for the purposes of the Charities Act 1993 as amended by the Charities Act 2006 and 2011;

"**Supplier**" means the person, firm or company set out in the Purchase Order from whom South Devon College purchases the Goods;

"**VAT**" means value added tax and any similar sales, consumption or turnover tax;

"**Warranty Period**" has the meaning set out in condition 9.2.2; and

"**Working Days**" any day other than a Saturday, Sunday or a public holiday in England and Wales.

1.2 In this Agreement references to any statute, statutory provision, subordinate legislation, code or guideline ("**legislation**") shall, unless the context otherwise requires, be construed as a reference to such legislation as the same may from time to time be amended, consolidated, modified, extended, re-enacted, replaced, superseded or substituted.

1.3 A reference to "**writing**" or "**written**" does not include email.

1.4 Where the words "**including**", "**include**", "**in particular**" or any similar expression are used in this Agreement, they shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2 BASIS OF AGREEMENT

2.1 If there is a conflict or inconsistency between these terms and conditions and the Purchase Order, the Purchase Order shall prevail.

2.2 The terms and conditions of the Agreement are the only conditions upon which South Devon College is prepared to deal with the Supplier and they shall govern all orders and supply of Goods (as the case may be) to the entire exclusion of all other terms or conditions. No terms or conditions endorsed upon, delivered with or contained in the Supplier's quotation, acknowledgement or confirmation of order, specification or similar document will form part of this Agreement and the Supplier hereby waives irrevocably any right which it otherwise might have to rely on such terms and conditions.



- 2.3 The Agreement shall come into existence on the earlier of:
- 2.3.1 the date South Devon College sends a Purchase Order to the Supplier; or
 - 2.3.2 the date on which the Supplier commences the provision of the Goods, the "**Commencement Date**".

3 OBLIGATIONS

The Supplier agrees to sell and South Devon College agrees to purchase the Goods in accordance with this Agreement and in consideration for the Purchase Price.

4 DELIVERY

- 4.1 The Supplier shall deliver the Goods on the Delivery Date to the Delivery Address as specified in the Purchase Order or to such other place of delivery as specified by South Devon College in writing prior to delivery of the Goods. Time for delivery shall be of the essence.
- 4.2 South Devon College shall have the right to change its delivery instructions, including the Delivery Date, at any time by reasonable notice in writing to the Supplier prior to delivery.
- 4.3 The Supplier shall ensure that all Goods are packaged to adequately protect against damage and/or deterioration in transit. The Supplier shall, at its own expense, repair or replace (at South Devon College's option) Goods lost or damaged in transit, and delivery will not be deemed to have taken place until replacement or repaired items have been delivered to South Devon College's reasonable satisfaction.
- 4.4 The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note which sets out the details of the Purchase Order including the type and quantity of the Goods and any special storage instructions (where applicable). The Supplier shall also ensure that there are labels on any containers of hazardous goods which should bear prominent and adequate warnings and comply with any legal requirements.
- 4.5 Unless specifically agreed otherwise, the Supplier shall be responsible for arranging and paying for all costs of delivery of the Goods in accordance with condition 4.1. The Supplier shall be responsible for addressing the outer packaging of the Goods in accordance with the instructions of South Devon College. Where delivery costs are included, this will be detailed on the Purchase Order.
- 4.6 Unless otherwise stipulated by South Devon College, deliveries shall only be accepted by South Devon College during its normal business hours on Working Days, at the Delivery Address detailed on the Purchase Order.
- 4.7 If the Goods are not delivered on the Delivery Date then, without prejudice to any other rights which it may have, South Devon College reserves the right to:
 - 4.7.1 cancel any order for Goods in whole or in part;
 - 4.7.2 refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
 - 4.7.3 recover from the Supplier any expenditure reasonably incurred by South Devon College in obtaining goods in substitution for the Goods from another supplier; and
 - 4.7.4 claim damages for any additional costs, loss or expenses incurred by South Devon College which are in any way attributable to the Supplier's failure to deliver the



Goods on the Delivery Date.

- 4.8 In the event that South Devon College agrees in writing to accept delivery by instalments, this Agreement will be construed as applying to each instalment. Nevertheless, failure by the Supplier to deliver any one instalment shall entitle South Devon College at its option to treat the entire order as cancelled.
- 4.9 Signature on behalf of South Devon College of a delivery note or other document presented for signature on delivery of the Goods is not evidence that the correct quantity or number of Goods have been delivered or that they otherwise meet the requirements of this Agreement.
- 4.10 If the Goods are delivered to South Devon College in excess of the quantities ordered South Devon College shall not be bound to pay for the excess and any excess will be and will remain at the Supplier's risk and will be returnable at the Supplier's expense.

5 ACCEPTANCE AND REJECTION

- 5.1 If any Goods delivered to South Devon College are, in South Devon College's reasonable opinion defective or in any way do not comply with the terms of this Agreement, South Devon College shall have the right, exercisable by written notice to the Supplier within twenty (20) Working Days of receipt (provided such damage is readily apparent on receipt) or within twenty (20) Working Days after any latent defect becomes apparent, to:
- 5.1.1 reject the Goods and the Supplier shall promptly refund any Purchase Price paid by South Devon College; and/or
- 5.1.2 to require the Supplier (at the Supplier's risk and expense) to collect, replace, rework, modify and/or redeliver rejected Goods with Goods that (in South Devon College's reasonable opinion) comply with this Agreement.
- 5.2 The Supplier must collect all rejected Goods within a reasonable time of rejection or South Devon College shall return them to the Supplier at the Supplier's risk and expense.
- 5.3 These terms and conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

6 CANCELLATION

- 6.1 Without prejudice to its rights and remedies under this Agreement, South Devon College shall be entitled to cancel, without penalty or compensation, any order or delivery in whole or in part until the point at which the Goods which are the subject of such order or delivery have been received by South Devon College in accordance with this Agreement. Notice of such cancellation may be communicated to the Supplier orally, in writing (by hand, post or facsimile), by email or by any other means of communication that South Devon College in its reasonable discretion deems appropriate.
- 6.2 South Devon College shall be entitled to return any Goods, at its cost, to the Supplier at any time to the address specified by the Supplier and the Supplier shall refund any Purchase Price paid by South Devon College in respect of such Goods. If the Supplier submits a termination claim within three (3) months of the return of such Goods, then South Devon College shall pay the Supplier the cost of any commitments, liabilities or expenditure reasonably incurred by the Supplier which in South Devon College's reasonable opinion were a consequence of these terms and conditions and which shall not exceed the Purchase Price in respect of such Goods. South Devon College's right to return Goods pursuant to this condition 6.2 shall be without prejudice to any rights or remedies available to it under this Agreement or at law.



7 PRICE AND PAYMENT

- 7.1 The Supplier shall invoice South Devon College for payment of the Purchase Price upon or following delivery of such of the Goods to which the Purchase Price relates, in each case to South Devon College's reasonable satisfaction and in accordance with this Agreement. In the event that South Devon College agrees in writing to accept delivery by instalments, the Supplier shall provide a separate invoice for each instalment. All invoices shall contain details of the Goods, along with any other data which South Devon College shall reasonably require and notify to the Supplier. The invoice must be addressed to the header address indicated on the Purchase Order and must quote the full Purchase Order number. South Devon College shall not be held responsible for delays in payment caused by the Supplier's failure to comply with South Devon College's invoicing instructions.
- 7.2 Subject to condition 7.1, payment shall be made by South Devon College within thirty (30) days of the end of the month in which any undisputed invoice was received by South Devon College provided that, if in the opinion of South Devon College any invoice is incorrect, South Devon College shall notify the Supplier and payment shall not be due to the Supplier for the price set out in such invoice unless and until a correct invoice has been submitted to South Devon College and then payment shall be due within thirty (30) days (or such other period as agreed in writing between the parties) of the end of the month in which such corrected invoice was received.
- 7.3 South Devon College shall not be required to make any payment to the Supplier until the Goods have been provided to the reasonable satisfaction of South Devon College and in accordance with this Agreement. Any dispute in relation to an invoice for the Purchase Price shall be dealt with by the parties in accordance with condition 17.
- 7.4 If any undisputed sum is not paid by its due date, then the receiving party may charge interest on such undisputed sum on a day to day basis from the date payment fell due (or such other date as may be agreed in writing between the parties) to the actual date of payment (both dates inclusive) at the rate of two (2) per cent per annum over the base lending rate of Barclays Bank PLC. The parties acknowledge and agree that this condition provides them with a substantial remedy in respect of any late payment of sums due under this Agreement.
- 7.5 Unless otherwise expressed in the Agreement, the parties shall each bear their own costs and expenses incurred in respect of fulfilling its obligations under this Agreement.
- 7.6 South Devon College may retain or set off any sums owed to it by the Supplier which have fallen due and payable against any sums due to the Supplier under this Agreement or any other agreement pursuant to which the Supplier provides goods to South Devon College. Any exercise by South Devon College of its rights under this condition shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.
- 7.7 If the Supplier fails to issue an invoice for the Purchase Price which has been incurred within ninety (90) days of the end of the month in which such Purchase Price was incurred, then such Purchase Price shall cease to be payable.

8 RISK AND PROPERTY

- 8.1 The Supplier shall bear all risks of loss or damage to the Goods until they have been delivered and shall insure for such risks accordingly.
- 8.2 Ownership of the Goods shall pass to South Devon College:
- 8.2.1 when the Goods are delivered (but without prejudice to South Devon College's rights of rejection); or
 - 8.2.2 if South Devon College makes any advance or staged payment, at the time such



payment is made, in which case the Supplier shall as soon as reasonably possible mark the Goods as South Devon College's property.

9 WARRANTIES

9.1 Each party warrants, represents and undertakes that it has full capacity and authority to enter into and to perform this Agreement.

9.2 The Supplier warrants, represents and undertakes that the Goods shall:

9.2.1 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by South Devon College expressly or by implication, and in this respect South Devon College relies on the Supplier's skill and judgement;

9.2.2 where applicable, be free from defects in design, material and workmanship and remain so for 12 months from the date when the Goods were put into service or 18 months from the date of delivery whichever shall be shorter ("**Warranty Period**") (subject to any other guarantee arrangements agreed in writing between South Devon College and the Supplier);

9.2.3 be new (unless otherwise specified in the Purchase Order);

9.2.4 not contain any asbestos (unless otherwise specified in the Purchase Order);

9.2.5 comply with all regulations, regulatory, statutory, legal and other such requirements applicable to the Goods, including all legal requirements of the United Kingdom, European Union and relevant international agreements in relation to health, safety and environment, and in particular to the marking of hazardous Goods, the provision of data sheets for hazardous materials, and all provisions relating to food;

9.2.6 conform in all respects with their description in the Purchase Order (including any variation in accordance with condition 20.8) or any specification supplied or advised by South Devon College to the Supplier, or applied by the Supplier to the Goods and/or be consistent with any sample supplied to or inspected by South Devon College; and

9.2.7 have been subjected to all the necessary tests and examinations of the Goods to ensure that they are designed and constructed to be safe and without risk to the health and/or safety of the users of the Goods and the Supplier has provided South Devon College with adequate information about the use for which the Goods have been designed and tested for.

9.3 South Devon College's rights under this Agreement are in addition to the statutory conditions implied in favour of South Devon College by the Sale of Goods Act 1979, the Supply of Goods and Services Act 1982 and any other applicable statute in force from time to time.

9.4 Save as provided in this Agreement, no representations, warranties or conditions are given or assumed by South Devon College in respect of any information which is provided to the Supplier by South Devon College and all such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.

10 INDEMNITY AND INSURANCE

10.1 The Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover such heads of liability as may arise under or in connection with the Agreement (and whether a



claim is made in respect of such liability during or after termination of the Agreement), and shall, on South Devon College'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.

10.2 The Supplier shall keep South Devon College indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by South Devon College as a result or in connection with:

10.2.1 any claim made against South Devon College by a third party arising out of, or in connection with, the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Agreement by the Supplier, its employees, agents, or subcontractors;

10.2.2 any claim brought against South Devon College for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use or supply of the Goods;

10.2.3 damage to real or personal property, including to any South Devon College premises (including where necessary all costs of replacement or reinstatement) and any loss of use of any property caused by an act or omission of the Supplier or its Personnel;

10.2.4 death of or personal injury to any person caused by an act or omission of the Supplier or its Personnel;

10.2.5 the fraud or dishonesty, wilful default or wilful abandonment of its obligations by the Supplier or its Personnel; and

10.2.6 any breach by the Supplier of its obligations pursuant to conditions 9.2, 12 and 13.

10.3 If a claim is made, as referred to in condition 10.2.2, or the Supplier anticipates that such a claim might be made and that such a claim, if successful, would prevent South Devon College from receiving or using all or any part of the Goods and/or the performance of the Supplier's obligations under this Agreement (as applicable), the Supplier shall promptly, at its own cost and in agreement with South Devon College and without prejudice to any of South Devon College's rights or remedies either:

10.3.1 procure for South Devon College the right to continue using the item which is subject to such a claim; or

10.3.2 replace or modify the infringing item with a non-infringing substitute provided that:

10.3.2.1 the functionality and capability of the replaced item is equivalent to or greater than the functionality and capability of the original item;

10.3.2.2 the replaced or modified item does not have an adverse effect on or cause any material degradation to the Goods;

10.3.2.3 there is no additional cost to South Devon College; and

10.3.2.4 the terms of the Agreement shall apply to the replaced or modified Goods.

10.4 If the Supplier modifies or replaces an item pursuant to condition 10.3.2 or procures a licence in accordance with condition 10.3.1, but this has not avoided or resolved such claim, then South Devon College may terminate this Agreement by notice with immediate effect and, without prejudice to the indemnity set out in condition 10.2, the Supplier shall be liable for all



reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

10.5 If South Devon College wishes to assert its right to be indemnified in respect of any indemnity given under this Agreement, it shall:

10.5.1 allow the Supplier (at its request) to use its chosen advisors and to have the exclusive conduct of the proceedings, provided always that the Supplier shall not cause any unreasonable delay with regard to, and shall keep South Devon College notified of, the conduct of the same;

10.5.2 make no admission of liability or any other statement in respect of or settle the matter without first obtaining the Supplier's prior written consent (not to be unreasonably withheld or delayed); and

10.5.3 at the cost of the Supplier, promptly provide any assistance as the Supplier may reasonably request to dispute, resist, appeal, compromise, defend, remedy or mitigate the matter or enforce against a third party South Devon College's rights in relation to the matter.

10.6 South Devon College shall have the right but not the obligation to join in any proceedings conducted by the Supplier pursuant to condition 10.5.1 and be represented by its own legal advisors.

11 INTELLECTUAL PROPERTY

11.1 Save as otherwise expressly provided in this Agreement, neither the Supplier nor South Devon College shall receive any right, title or interest in or to the Intellectual Property Rights of the other party.

12 DATA PROTECTION

12.1 Each party undertakes that in performing its obligations hereunder it shall comply with the provisions of the Data Protection Act 1998.

12.2 To the extent that the supply of Goods involves the processing of any personal data in respect of which South Devon College is the data controller, the Supplier shall:

12.2.1 process such personal data only in accordance with South Devon College's written instructions and only as required to perform its obligations under this Agreement;

12.2.2 take technical and organisational measures which are consistent with best industry practice against unauthorised or unlawful processing of such personal data and against accidental loss or destruction of, or damage to, such personal data; and

12.2.3 at all times take reasonable steps to ensure the reliability of those of its employees who have access to the personal data held on behalf of South Devon College and shall use its best endeavours to ensure their compliance with the obligations set out in this condition.

12.3 In this condition 12 "**personal data**", "**data controller**" and "**data processor**" have the meanings given in the Data Protection Act 1998.

13 CONFIDENTIALITY AND FREEDOM OF INFORMATION

13.1 Subject to conditions 13.2, 13.4, and 13.5 both parties shall procure that all information disclosed by one to the other in accordance with the terms of this Agreement ("**Confidential Information**") shall be kept secret and confidential and shall not be used for any purposes



other than those required or permitted by this Agreement and shall not be disclosed to any third party except insofar as this may be required for the proper operation of this Agreement.

- 13.2 Either party shall promptly notify the other if any Confidential Information is required by law (including but without limitation pursuant to the FOIA and/or the Environmental Information Regulations) to be disclosed by it or any other person receiving it under or pursuant to this Agreement and shall co-operate with the other party regarding the manner of such disclosure (but without prejudice to any obligation to comply with any law). Any request received by either party under the FOIA or the Environmental Information Regulations will be complied with promptly and in a timely manner.
- 13.3 The obligations of confidentiality shall not apply to any information which:
- 13.3.1 is or becomes publicly known through no act or omission of the receiving party;
 - 13.3.2 was in the other party's lawful possession prior to the disclosure;
 - 13.3.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
 - 13.3.4 is independently developed by the receiving party, which independent development can be shown by written evidence; and/or
 - 13.3.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body (including but without limitation pursuant to FOIA and/or the Environmental Information Regulations) provided that the party subject to such requirement to disclose gives the other prompt written notice of the requirement, to the extent it is permitted to do so by law.
- 13.4 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement is not Confidential Information. South Devon College shall be responsible for determining in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.
- 13.5 Notwithstanding any other term of this Agreement, the Supplier hereby gives its consent for South Devon College to publish the Agreement in its entirety, including from time to time agreed changes to the Agreement, to the general public.
- 13.6 The Supplier shall not refer to South Devon College or the Purchase Order in any advertisement without South Devon College's prior written agreement.

14 LIMITS OF LIABILITY

- 14.1 Nothing in this condition 14 shall limit:
- 14.1.1 either party's liability for death or personal injury resulting from their negligence or for fraud;
 - 14.1.2 either party's liability under any indemnity given under this Agreement; or
 - 14.1.3 the Supplier's liability under clauses 12 and 13.
- 14.2 The aggregate liability of South Devon College in respect of any loss or damage suffered by the Supplier and arising out of or in connection with this Agreement, whether in contract, tort (including negligence) or for breach of statutory duty or in any other way, shall not exceed the



Purchase Price paid by South Devon College to the Supplier pursuant to this Agreement.

14.3 Subject to condition 14.1, neither party shall be liable, in contract, tort (including negligence) or for breach of statutory duty or in any other way for:

14.3.1 any loss arising from or in connection with loss of revenues, profits, contracts or business or failure to realise anticipated savings;

14.3.2 any loss of goodwill or reputation; or

14.3.3 any indirect or consequential losses,

suffered or incurred by the other arising out of or in connection with any matter under this Agreement.

14.4 The Supplier acknowledges and agrees that the limitations contained in this condition 14 are reasonable in all the circumstances and that it has taken independent legal advice.

15 TERMINATION

15.1 This Agreement shall commence on the Commencement Date and shall continue until all the Goods have been delivered by the Supplier and paid for by South Devon College or until terminated by either party in accordance with this condition 15.

15.2 South Devon College may terminate the whole or any part of this Agreement (without prejudice to its other rights and remedies) with immediate effect by written notice to the Supplier if the Supplier:

15.2.1 commits a material breach or persistently breaches any of its obligations under this Agreement and in the case of a remediable breach, fails to remedy it within thirty (30) days of the date of receipt of notice from the other specifying the breach and requiring it to be remedied;

15.2.2 becomes insolvent or unable to pay its debts (as defined in Section 123 of the Insolvency Act 1986), proposes a voluntary arrangement, has a receiver, administrator or manager appointed over the whole or any part of its business or assets, if any petition shall be presented, order shall be made or resolution passed for its winding up (except for the purposes of a bona fide amalgamation or reconstruction), bankruptcy or dissolution; and/or

15.2.3 if it shall otherwise propose or enter into any composition or arrangement with its creditors or any class of them, if it ceases to carry on business or if it claims the benefit of any statutory moratorium.

15.3 The following breaches shall be deemed to be irremediable material breaches for the purposes of condition 15.2.1:

15.3.1 the Supplier or any of its Personnel is guilty of any gross misconduct affecting the business of South Devon College;

15.3.2 the Supplier or any of its Personnel is convicted of any criminal offence (other than an offence under any road traffic legislation for which a fine or non-custodial penalty is imposed); or

15.3.3 the Supplier or any of its Personnel is guilty of any fraud or dishonesty or acts in any manner which, in the opinion of South Devon College brings, or is likely to bring, the Supplier or South Devon College into disrepute or is materially adverse to the interests of South Devon College.



15.4 In the event that South Devon College fails to pay the Supplier by the due date for payment of an undisputed invoice:

15.4.1 the Supplier shall notify South Devon College of such failure; and

15.4.2 if within sixty (60) days of service of notice under condition 15.4.1, South Devon College has failed to pay such invoice, the Supplier may, terminate that part of the Agreement in respect of which the invoice was due, with immediate effect by written notice.

16 CONSEQUENCES OF TERMINATION

16.1 On expiry or termination of this Agreement in its entirety:

16.1.1 each party shall deliver to the other party all documents and materials containing the other party's Confidential Information or Intellectual Property Rights or any other data or information disclosed or supplied by the other party under or in connection with this Agreement or, at the other party's written request and option, destroy them and provide evidence of their destruction to the other party;

16.1.2 the parties shall have no further obligations or rights under this Agreement, without prejudice to those which have accrued to either party prior to termination or expiry save that conditions 1, 2, 4 to 14 (inclusive) and 16 to 19 (inclusive) of these terms and conditions together with those other conditions the survival of which is necessary for the interpretation or enforcement of this Agreement or which by their nature can be reasonably interpreted as surviving the expiry or termination of this Agreement, shall continue to have effect after such expiry or termination; and

16.1.3 if any part of the Purchase Price has been paid by South Devon College in advance, the Supplier shall refund any part of such Purchase Price relating to the Goods to be delivered on or after the date of termination.

17 DISPUTE RESOLUTION

17.1 If any dispute arises out of or in connection with this Agreement (or its validity, construction, performance or enforceability) ("**Dispute**"), the senior representatives of the parties with authority to settle the Dispute shall, within five (5) Working Days of a written request from one party to the other ("**Dispute Notice**"), meet in good faith with a view to resolving the Dispute.

17.2 If the Dispute is not resolved at that meeting, the Procurement Officer (in the case of South Devon College) and the Chief Executive Officer or Managing Director (in the case of the Supplier) shall, within twenty (20) Working Days of the meeting of the senior representatives of the parties pursuant to condition 17.1, meet in good faith with a view to resolving the Dispute.

17.3 If the parties are unable to resolve a Dispute within thirty (30) Working Days of it first arising, the provisions of condition 20.13 shall apply.

17.4 For the avoidance of doubt, all negotiations will be undertaken without prejudice to the rights of the parties in future proceedings.

18 FORCE MAJEURE

18.1 Notwithstanding anything else contained in this Agreement neither party shall be liable to the other for any loss arising from any failure or delay in performing its obligations hereunder if such failure or delay is caused by Force Majeure.

18.2 Notwithstanding the foregoing in condition 18.1, this Agreement will remain in full force and



effect for the duration of the Force Majeure subject to condition 18.5 and the parties shall use all reasonable endeavours to perform or resume performance of such obligations hereunder for the duration of the Force Majeure.

- 18.3 If either party becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall promptly notify the other party of the reasons for the delay and the likely duration of the delay. The affected party shall use all reasonable efforts to mitigate the effects of the Force Majeure on the performance of its obligations hereunder.
- 18.4 Immediately after the end of the Force Majeure the affected party shall notify the other party in writing that the Force Majeure has ended and shall resume performance of its obligations under this Agreement.
- 18.5 If either party is prevented from performance of substantially all of its obligations by Force Majeure for a continuous period of more than three (3) months in total, the other party may terminate this Agreement immediately on service of written notice upon the party so prevented, in which case neither party shall have any liability to the other except that rights and liabilities which accrued prior to such termination shall continue to subsist.

19 THE BRIBERY ACT

- 19.1 The Supplier shall, and shall procure that any person associated with the Supplier shall:
- 19.1.1 comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("**Relevant Requirements**") and South Devon College's policies and procedures relating thereto as may be updated from time to time;
 - 19.1.2 have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate; and
 - 19.1.3 promptly report to South Devon College any request or demand for any undue financial or other advantage of any kind received or given by the Supplier and/or any persons associated with the Supplier in connection with the performance of this Agreement.
- 19.2 For the purpose of



- 20.4 The Supplier shall not offer or give or agree to give to South Devon College or any of their Personnel any gift or consideration of any kind as an inducement or reward for doing, having done or refrained from doing any act in relation to the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to this Agreement or any other agreement with South Devon College.
- 20.5 Any notice or other communication required to be given to a party under or in connection with this Agreement shall be in writing (which does not include by email) and shall be delivered to the other party personally or by prepaid first class post; registered post; recorded delivery; or commercial courier; or by facsimile transmission and sent to the address of the party shown on the Purchase Order, or to any other address as the party may have specified by notice.
- 20.6 The Supplier shall, and shall procure that its Personnel abide by the provisions of the Official Secrets Acts 1911 to 1989.
- 20.7 Nothing in the Agreement is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or bind, the other party in any way.
- 20.8 Any variation to the Agreement, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by South Devon College.
- 20.9 If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.
- 20.10 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 20.11 Any failure or delay by South Devon College in enforcing or partially enforcing any provision of the Agreement shall not be construed as a waiver of any rights under this Agreement.
- 20.12 This Agreement constitutes the entire agreement and understanding of the parties relating to the subject matter of this Agreement and supersedes any previous agreement or understanding between the parties in relation to such subject matter. In entering into the Agreement, the parties have not relied on any statement, representation, warranty, understanding, undertaking, promise or assurance (whether negligently or innocently made) of any person (whether party to the Agreement or not) other than as expressly set out in the Agreement. Each party irrevocably and unconditionally waives all claims, rights and remedies which but for this condition it might otherwise have had in relation to any of the foregoing.
- 20.13 The formation, existence, construction, performance, validity and all aspect of the Agreement shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.