

# Terms and Conditions



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## **1. Definitions**

1.1: 'Conditions'- the terms stated in the Contract.

1.2: 'Contract'- The Contract shall mean the Conditions and the Purchase Order.

1.3: 'Documents' - means all records, reports, studies, documents, papers, correspondence, specifications and other materials whatsoever and any drafts of the aforementioned and in any media originated by or for You in providing the Services.

1.4: 'Goods' - any goods to be supplied by You as required by the Contract and detailed in the Purchase Order.

1.5: 'Intellectual Property' - any and all:

a) patents, trademarks, service marks, domain names, registered designs, utility models, applications for and the right to make applications for any such rights, inventions, know how, confidential information, unregistered trademarks and service marks, trade and business names, including rights in any get-up or trade dress, copyrights, (including rights in computer software or databases) unregistered design rights and other rights in designs and rights in databases;

(b) rights under licences, consents, orders, statutes or otherwise in respect of any rights of the nature specified in paragraph (a) above; and

(c) rights of the same or similar effect or nature as or to those in paragraphs (a) and (b) above and in each case in any jurisdiction.

1.6: 'Price'- the price We will pay You for providing the Services as set out in the Purchase Order.

1.7: 'Purchase Order' – the official order document supplied by Us setting out details of The Whitgift Foundation requirements and the Purchase Order shall be incorporated into the Contract.

'1.8: Services' - Any such services to be provided by You, as required by the Contract and detailed in the Purchase Order.

1.9: 'Us' or 'Our' or 'We' – The Whitgift Foundation

1.10: 'You' or 'Your' - The person, firm or company to whom the Purchase Order is addressed and who is responsible for providing the Services or supplying the Goods.

## **2. The contract**

These Conditions govern the Contract between Us and You. No other Conditions will apply. The supply of Goods and / or supply of Services in response to the Purchase Order shall

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expressly and irrevocably mean that You have agreed to supply to Us the Goods and/or Services and that You accept these Conditions and agree that no other terms apply to the Contract.

### **3. The price and payment**

3.1: The Price of the Goods or Services is fixed on the Purchase Order.

3.2: No variation in Price will apply unless agreed in writing by Our authorised representative prior to delivery of Goods or completion of Services.

3.3: Payment for Goods received or Services completed to Our satisfaction, will be made within 30 days of receipt of an itemised, correct and undisputed invoice that must include any related vat.

3.4: Your invoice shall quote the Purchase Order number and shall be addressed as set out on the Purchase Order.

3.5: We will not be responsible for delays in payment arising from failure to comply with these invoicing instructions.

3.6: We pay by BACS and provide a remittance advice to inform You that payment has been made.

3.7: Payment by Us will be without prejudice to any rights or remedies available to Us under the Contract, or otherwise.

3.8: We will be entitled to set off against any invoice any amount due from You to Us under this or any other arrangement.

3.9: We will consider and verify any invoices submitted by You in a timely fashion and any undue delay by Us in doing so will not be sufficient justification for failing to regard an invoice as valid and undisputed.

3.10: We agree that the Contract is not intended to create an employment relationship between the Us and You or Us and any officer or employee of the Contractor.

3.11: You agree to indemnify Us and keep Us indemnified in respect of any claims that may be made by the relevant authorities against Us in respect of income tax or National Insurance or similar contributions relating to the Services.

### **4. Time**

Time of delivery of the Goods and commencement and completion of the Services is of the essence of the Contract.

## **5. Quality of goods**

5.1: The Goods supplied under the Contract shall be to Our satisfaction and shall conform to the Purchase Order.

5.2: Specifically the Goods shall:

- 5.2.1: be fit for any purpose made known to You expressly or by implication; and
- 5.2.2: be of satisfactory quality; and
- 5.2.3: be entirely safe and conform to all relevant British and European standards and / or legislation; and
- 5.2.4: be new and
- 5.2.5: comply with any samples, patterns, drawings, plans and specifications provided by Us or on behalf of Us.

## **6. Quality of services**

6.1: The Services supplied under the Contract shall be to Our satisfaction and conform to the Purchase Order.

6.2: Specifically in relation to the Services the following shall apply:

- 6.2.1: the Services shall be performed with due skill, care and diligence including industry best practice; and
- 6.2.2: You shall ensure that sufficient resources are available to complete the Services successfully and to our satisfaction; and
- 6.2.3: the Services shall be supplied by supervised, experienced, qualified, trained and competent staff and
- 6.2.4: We rely on Your skill, judgement and experience.

## **7. Inspection, acceptance, and rejection**

7.1: We will inspect the Goods when they are delivered.

7.2: Provided that the Goods are of satisfactory quality in accordance with clause 5, title will pass to us upon payment of the invoice, risk will pass on delivery of the goods.

7.3: If the Goods are not of satisfactory quality in accordance with clause 5 then We can reject them and You at our request will supply replacement Goods. If We reject the Goods we will give You written notice. You shall collect the Goods within five working days from receiving Our notice to collect the Goods. We will not make payment for rejected Goods, or be responsible for costs incurred by You in removing rejected Goods and arranging for the supply of replacement Goods.

7.4: If You fail to comply with clause 7.3 We are entitled to treat the Contract as having been terminated pursuant to clause 12.1 below.

## **8. Labelling and packaging**

You must ensure that all prices, quantities, units of measure and the Purchase Order number are on all transaction documentation and comply in all respects with the Purchase Order. All Goods must be clearly labelled and adequately packed.

## **9. Indemnity and insurance**

9.1: You must indemnify Us against all losses, damage, injury or expense or loss of or damage to property or injury to or death of any person, however caused by:

- 9.1.1: the Goods not being fully in accordance with the Contract, or
- 9.1.2: any act by You, Your employees, agents or sub-contractors.

9.2: You shall fully indemnify Us against any expenses, losses, liabilities, damages, claims or costs whatsoever howsoever arising from any alleged or actual infringement of any intellectual property rights including papers, trademarks, copyrights, intellectual or any of the rights arising from the Contract.

9.3: You must maintain satisfactory insurance cover with a reputable insurer in respect of all liabilities, losses, damages, claims whatsoever howsoever arising from the Contract including death or personal injury, loss of or damage to property or any other loss.

You shall produce evidence of such Required Insurances to Us on request.

9.4: We will not be liable for any loss, loss of profits, indirect loss or consequential loss whatsoever howsoever arising from the Contract.

## **10. Publicity**

You will not publish or reproduce or arrange press releases or make public statements in connection with the Contract or make use of Our name in any publicity without Our prior written approval.

## **11. Data protection and Security**

11.1: You shall (and You shall procure that any of Your employees or agents or contractors or sub-contractors providing the Services or supplying the Goods under the Contract) comply with any obligations under the Data Protection Act 2018 ( as amended) (the “DPA”) in addition to Your obligations under relevant applicable privacy laws and You shall (and You shall procure that any of Your employees or agents or contractors or sub-contractors providing the Services or supplying the Goods under the Contract) as Data Processor do not act or fail to do an act which places Us in breach of our obligations under the DPA as Data

Controller. The terms Data Controller and Data Processor shall have the meanings as set out in the DPA.

11.2: You shall ensure that Your employees or agents or contractors or sub-contractors do not publish, disclose or divulge any Personal Data (as defined by the DPA) to any third party unless We instruct you to do so.

11.3: In respect of any Personal Data forming part of Our data provided to You in providing the Services or supplying the Goods, You shall process such Personal Data only (a) in accordance with the Contract and solely for the purposes of performing Your obligations under the Contract and (b) in accordance with any instructions that We issue from time to time and (c) to the extent, and in such a manner, as is necessary for the provision of the Services or supply of Goods or as required by law or any regulatory body.

11.4: If You are processing Personal Data on Our behalf we shall require You to enter into a data processing agreement and You shall not be permitted to process any Personal Data until You have done so.

11.5: You will comply with Our policies relating to the protection of Personal Data and ICT security if these policies are notified to You as being relevant to the Contract. We will provide with You will a copy of the relevant and up to date policies.

## **12. Termination**

We may immediately terminate the Contract by written notice to You if:

12.1: You are in breach of any of the Conditions of the Contract; or

12.2: You become, or appear to become, insolvent or bankrupt or have an application for administration issued against You or You have an administrator appointed or in any other way appear or are unable to meet Your commitments under this or any other Contract; or

12.3: For whatever reason, You are bringing, or may bring, bad publicity or disrepute upon Us; or

12.4: We placed the Purchase Order in error and if We inform you within seven days of the date on the Purchase Order.

12.5: We require security checks to be carried out in relation to any or all of Your staff and the results of all or some of the security checks are unsatisfactory.

## **13. Disputes and agreements**

13.1: We shall try to resolve all disputes arising in connection with the Contract amicably. If this cannot be achieved within a reasonable period of time and not less than one month from the date of the dispute arising, We shall refer the dispute to senior members of The Whitgift Foundation staff.

13.2: If We cannot resolve the dispute within one month either party may exercise any remedy it may have pursuant to the Contract or statute or common law.

13.3: Alternatively We may jointly agree to undergo alternative dispute resolution as agreed between Us.

#### **14. Status and Tax Liabilities**

14.1: This Contract is not intended to create an employment relationship between Us or any officer or a person employed by You.

14.2 You represent and warrant that the Services will be supplied and provided in a manner that does not fall within Chapter 10, Part 2 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA).

14.3 Save where clause 14.4 applies You agree that any and all personnel/resources provided to supply the Services under the Contract shall be provided:

- (i) via a company registered as an accredited member of the Freelancer & Contractor Services Association (FCSA), where such personnel/resources do not own any shares in such FCSA registered company, and as employees of the FCSA registered company with all payments made to such personnel/resource by the FCSA registered company in return for their services under this contract being paid subject to deduction of income tax and national insurance contributions in full via PAYE at the rates required by law; or
- (ii) by Your employees whose only remuneration from You is subject to deduction of income tax and national insurance contributions in full via PAYE at the rates required by law.

14.4 This clause 14.4 shall apply where, in relation to a person provided by You to supply the Services under this Contract You are an intermediary within the meaning of Sections 61M, 61O and 61P Chapter 10 ITEPA 2003:

- (i) You shall, no later than the date of the Contract, notify Us that this clause 14.4 applies in relation to one or more persons, and provide such details as We may require and
- (ii) Clause 14.3 (ii) shall not apply in relation to such persons and You shall provide all such persons under clause 14.3 (i) only.

14.5 You agree to indemnify Us and keep Us indemnified in respect of any claims that may be made by the relevant authorities against Us in respect of income tax or National Insurance or similar contributions relating to the Services including those relating to Our failure to provide a status determination statement to any person provided by You if either clause 14.3 and/or 14.4 has been breached.

## 15. Intellectual Property Rights

15.1 You shall during the Contract disclose full details in writing to Us of the conception, origination, making or development of any Intellectual Property by You in carrying out the Contract.

15.2 You, warrant and represent that all Intellectual Property conceived, originated, made or developed by You or your employees in carrying out the Services shall be vested in Us and We shall be the sole legal and beneficial owner of the entire right, title and interest in and to any such Intellectual Property without any third party claims, liens, charges or encumbrances of any kind. To the extent such Intellectual Property is not automatically vested in Us, You hereby assign such Intellectual Property to Us. You shall execute all such further documents as We may require formally to confirm the assignment of such Intellectual Property to Us pursuant to this Contract. 16.3 You hereby waive all Your moral rights in any works created or developed pursuant to this Contract.

15.3 You warrant and represent that You are free of any duties or obligations to third parties which might conflict with the terms of this Contract and that Our use or reproduction of any Documents produced by you in fulfilling the Contract do not infringe the Intellectual Property rights of any third party.

15.4 You hereby agree that all legal and beneficial interest in the Documents (including the media upon which they are recorded) and all Intellectual Property therein created by You or Your employees in performance of the Contract shall vest in Us and that You will not do anything to damage or endanger any Intellectual Property or Documents created pursuant to this Contract.

15.5 On completion of the Contract We may publish and or use unconditionally the Documents or any part thereof in print or electronically and shall freely use the Documents in Our business affairs.

15.6 You agree to indemnify Us against any and all liability loss damage costs and expenses (including legal fees) which We may incur or suffer as a result of any breach by You of the warranties and representations set out in clause 15.2 or 15.4 or in the event that any of the Intellectual Property assigned by the Supplier by this Clause 15 are found to be invalid or impaired in any way or in the event of any claim by any third party that the exercise of the rights assigned by this Clause 15 infringes the rights of such third party.

15.7 Except where it is necessary in connection with the provision of the Contract, You shall not, without the Our prior written consent, reproduce any of the Documents or other materials produced in performing the Contract or do any other act in respect of such Documents or other materials which is restricted by Our Intellectual Property rights therein.

15.8 You warrant and represent that You have required any persons who may perform the Contract in whole or in part to confirm that all and any Intellectual Property arising from its carrying out of the Contract shall be vested in Us and to sign any documents required to



confirm this and to waive all and any moral rights which it may have in any Documents or other materials produced pursuant to the Contract.

## **16. General terms**

16.1: You will not give or offer to any of Our staff, employees or agents, any gift, bribe or inducement in relation to this or any other Contract between Us or engage in any activity which is or is likely to be an offence under the Bribery Act 2010.

16.2: All notices and communications will be sent by email to the Purchase Order email address on the Purchase Order. Notice will be deemed to have reached the party to whom it is addressed on the second business day following date of sending. Notice by email shall not be valid notice pursuant to this Condition.

16.3: The headings to Conditions shall not affect their interpretation.

16.4: The Contract shall be governed by and construed in accordance with the laws of England and Wales and shall be subject to the jurisdiction of the courts of England and Wales.

16.5: A person who is not a party to the Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any Conditions or the Contract.

16.6: Neither You nor Us will be in breach of the Contract for delay in performing, or failure to perform, any obligations under the Contract if such delay or failure results from events, circumstances or causes beyond either Your or Our reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non - performance continues for four (4) weeks the party affected may terminate the Contract by giving 14 days' written notice to the other.

16.7: Neither You nor We will assign, transfer or sub - contract the Contract without the prior written consent of the other such consent not to be unreasonably withheld.

16.8: You and We agree not to disclose to any third party any confidential information concerning the affairs, business, customers, clients, suppliers, know how, designs, trade secrets or any information belonging to or supplied by one of us to the other which would be regarded as confidential by a reasonable business person relating to the Contract except where that confidential information is generally available to the public ( other than as a result of disclosure in breach of this clause 14.8) or as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.