



**Affinity**  
Learning Partnership

Where everyone belongs,  
progresses and thrives.

# **The Affinity Learning Partnership Standard Terms and Conditions for the Purchase of Goods and Services**

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## 1. Basis of Contract

### 1.1 These terms and conditions shall apply to the Purchase Order:

- (a) unless the Purchase Order refers to a specific contract in which case that specified contract shall apply in conjunction with these terms and conditions in the order of priority identified in the specified contract;
- (b) subject only to any minor changes to these terms and conditions which are set out in the Purchase Order.

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

### 1.3 The Purchase Order shall be deemed to be accepted on the earlier of:

- (a) the Provider issuing a written acceptance of the Purchase Order; and
- (b) the Provider doing any act consistent with fulfilling the Purchase Order,  
at which point the Contract shall come into existence.

### 1.4 Any purchase by the Buyer is conditional upon acceptance of these terms and conditions by the Provider. If the Provider does not wish to accept these terms and conditions, then the Provider should not accept the Purchase Order, and should inform the Buyer immediately.

## 2. Definitions

**'Buyer'** means The De Ferrers Trust or any other organisation identified on the Purchase Order.

**'Goods'** means all or any of the items set out in the Purchase Order which are to be supplied to the Buyer by the Provider.

**'Parties'** means the Buyer and the Provider.

**'Provider'** means the person, firm or company named as such on the Purchase Order (or its successors in title).

**'Purchase Order'** means any Purchase Order placed by the Buyer under which the Provider agrees to supply Goods and/or Services to the Buyer.

**'Services'** means the Services to be performed by the Provider for the Buyer as described in the Purchase Order and anything created or produced as a result of the Services.

**'Specification'** means the requirements to which the Goods and/or Services supplied shall conform as detailed in the Purchase Order.

**'Working Day'** \* means the Buyer's usual working days, which exclude weekends, bank holidays, some other days published by the Buyer, or such other days as may be notified to the Provider by the Buyer.

## 3. Assignment and Sub-contracting

### 3.1 The Provider shall not assign, transfer, sublet or subcontract in whole or in part any of the Purchaser Order without the prior written consent of the Buyer.

- 3.2** If the Buyer consents to any subcontracting by the Provider, the Provider shall remain responsible for all the acts and omissions of its subcontractors as if they were its own.

#### **4. Quality and Performance**

- 4.1** The Provider shall ensure that the Goods and/or Services shall:

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

- 4.2** All Services performed under the Purchase Order must be executed by the Provider in a timely, efficient and professional manner to the appropriate prevailing standards and to the reasonable satisfaction of the Buyer.

- 4.3** The Provider 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 Purchase Order.

- 4.4** The Buyer may inspect and test the Goods at any time before delivery. The Provider shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Provider's obligations under the Purchase Order.

- 4.5** If following such inspection or testing the Buyer considers that the Goods do not conform or are unlikely to comply with the Provider's undertakings at clause 4.1, the Buyer shall inform the Provider and the Provider shall immediately take such remedial action as is necessary to ensure compliance.

- 4.6** The Buyer may conduct further inspections and tests after the Provider has carried out its remedial actions.

#### **5. Delivery**

- 5.1** The Provider shall ensure that:

- (e) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
- (f) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number, 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

- (g) if the Provider requires the Buyer to return any packaging material to the Buyer, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Provider at the cost of the Provider.

**5.2** The Provider shall deliver the Goods:

- (a) on the Delivery Date;
- (b) at the Delivery Location; and
- (c) during Business Hours, or as instructed by the Buyer.

**5.3** The Buyer will allow the Provider access to its premises as necessary for the delivery of the Goods and/or Services. The Buyer may refuse admission to the Provider's personnel or require such personnel to leave its premises at any time and shall not be obliged to give the Provider the reason(s) for its decision. The Buyer will not apply the provisions of this clause vexatiously.

**5.4** Whilst on the Buyer's premises, the Provider shall abide by the Buyer's rules and regulations relating to the premises.

**5.5** If the Provider:

- (a) delivers less than the quantity of Goods ordered, the Buyer may reject the Goods; or
- (b) delivers more than the quantity of Goods ordered, the Buyer may at its discretion reject the Goods or the excess Goods and any rejected Goods shall be returnable at the Provider's risk and expense.

If the Provider delivers more or less than the quantity of Goods ordered, and the Buyer accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.

**5.6** The Provider shall not deliver the Goods in instalments without the Buyer's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Provider 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 clause 6.

**6. Buyer Remedies**

**6.1** If the Goods are not delivered on the Delivery Date, or the Goods and/or Services do not comply with the undertakings set out in clause 4.1, then, without limiting any of its other rights or remedies, and whether or not it has accepted the Goods, the Buyer may exercise any one or more of the following rights and remedies:

- (a) to terminate the Purchase Order;
- (b) to reject the Goods (in whole or in part) and return them to the Provider at the Provider's own risk and expense;
- (c) to require the Provider to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
- (d) to refuse to accept any subsequent delivery of the Goods which the Provider attempts to make;

- (e) to recover from the Provider any costs incurred by the Buyer in obtaining substitute goods from a third party; and
- (f) to claim damages for any other costs, loss or expenses incurred by the Buyer which are in any way attributable to the Provider 's failure to carry out its obligations under the Purchase Order.

**6.2** The Buyer's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.

## **7. Intellectual Property**

**7.1** Intellectual property and other rights in the Goods and/or Services shall vest in the party from whom the Goods and/or Services originate unless the Goods and/or Services are produced for the Buyer as bespoke. If the latter applies such rights shall vest in the Buyer upon their creation and the Provider shall do all such things and execute all such documents as the Buyer may require in order to perfect such vesting. The Provider shall ensure that it includes corresponding provisions in its contracts with its own sub-contractors and providers.

**7.2** In the event of any breach of any such intellectual property rights the Provider shall indemnify the Buyer, unless the Buyer is responsible for the breach in question.

## **8. Confidentiality**

**8.1** Each party undertakes that it shall not disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or providers of the other party (including the details of the Purchase Order), except as permitted by clause 6.2.

**8.2** Each party may disclose the other party's confidential information

- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Purchase Order. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with clause 6; and

- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

**8.3** 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 Purchase Order.

**8.4** Upon request, and in any event upon expiry or termination of the Purchase Order for whatever reason, the Provider shall either, immediately destroy, or at the Buyer's written request, immediately return to the Buyer, any confidential information provided to it pursuant to the Purchase Order.

## **9. Indemnity**

**9.1** The Provider shall indemnify the Buyer against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs and all other professional costs and expenses) suffered or incurred by the Buyer as a result of or in connection with:

- (a) any claim made against the Buyer for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the manufacture, supply or use of the Goods, to the extent that the claim is attributable to the acts or omissions of the Provider, its employees, agents or subcontractors;
- (b) any claim made against the Buyer by a third party for death, personal injury or damage to property arising out of or in connection with defects in Goods, to the extent that the defects in the Goods are attributable to the acts or omissions of the Provider, its employees, agents or subcontractors; and
- (c) any claim made against the Buyer 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 Contract by the Provider, its employees, agents or subcontractors.

**9.4** The clause 9 survives termination.

## **10. Insurance**

- 10.1** The Provider will ensure that it has insurance in place and shall maintain such insurance throughout the period covered by this contract to cover its liabilities under the Purchase Order, to include professional indemnity insurance for £2,000,000 (where Services are to be provided) which must be in force for the duration of the contract, public liability insurance for £2,000,000, and employer's liability insurance (where relevant) for £5,000,000 (unless otherwise agreed in writing between the Parties).
- 10.2** The Provider 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.

## **11. Documents**

- 11.1** All advice notes, invoices and packing notes issued by the Provider shall be clearly marked by the Provider with the Provider's name and address, the Purchase Order number, the item code, date of dispatch, a description of the Goods and/or Services, the address of their intended destination and the due delivery date.

## **12. Health & Safety**

- 12.1** The Principal or his nominated representative must be given advance warning of the date and time of any work to be undertaken on site.
- 12.2** In accordance with the Management of Health and Safety at Work Regulations 1992, the contractor shall make a suitable and sufficient assessment of the risks to the health and safety of persons arising out of or in connection with the work. He shall inform the Principal or his nominated representative of such risks and agree the necessary precautions to protect premises occupants and visitors before work commences. Any local site rules must be obeyed.
- 12.3** Work on site shall comply with the requirements of the Health and Safety at Work Act 1974 and any relevant specific statutory requirements or approved codes of practice.

- 12.4** Before commencing any works at The De Ferrers Trust properties the contractor must consult and sign the on site asbestos register (RSM) to confirm that no asbestos containing materials will be disturbed. Should this be in any doubt, or no on site register is available, work should not proceed until appropriate approval has been sought from the person who placed the order.
- 12.5** During the course of undertaking any works, the contractor must not compromise the fire compartments within the premises. If the works require the compartments structures to be affected then the contractor must seek instruction on the suitable methods to be employed from the person placing the order.
- 12.6** Failure to comply with the above procedures could lead to removal from The De Ferrers Trust's contractor list.

### **13. Force Majeure**

- 13.1** Neither party shall be in breach of the Purchase Order or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 4 weeks the party not affected may terminate the Purchase Order by giving 7 days written notice to the affected party.

### **14. Risk and Title**

- 14.1** Risk and title in the Goods and/or Services shall only pass to the Buyer upon acceptance of the Goods and/or Services when delivered to the place and address specified in the Purchase Order, unless otherwise agreed in writing by the Parties.
- 14.2** The Buyer also reserves the right to take possession of all Goods to which it has title.

### **15. Damage or Loss in Transit**

- 15.1** Any Goods lost or damaged in transit shall be restored or replaced by the Provider at the Provider's expense and to the Buyer's satisfaction.
- 15.2** Delivery shall not be deemed to have taken place until restoration has taken place to the satisfaction of the Buyer or replacement Goods have been accepted by the Buyer.
- 15.3** Goods shall be deemed not to have been delivered by the Provider if a receipt from an authorised officer of the Buyer cannot be produced by the Provider.  
Provider's expense.

### **16. Price Variation**

- 16.1** The prices in the Purchase Order shall apply (without variation) for both the period and/or stated quantity of the Goods and/or Services, unless specifically otherwise agreed in writing by the Parties.

### **17. Terms of Payment**

- 17.1** The Buyer agrees to pay the Provider either, the total price for the Goods and/or Services which is stated in the Purchase Order (or otherwise agreed in writing between the Parties) within 30 days of the date of receipt of a valid and undisputed invoice, which (if the Provider determines that VAT is payable) must comply with the requirements of H.M. Revenue and Customs for VAT purposes.



**17.2** All prices and rates which are stated in the Purchase Order are exclusive of VAT (unless otherwise stated in the Purchase Order).

**17.3** If requested to do so by the Buyer, the Provider shall accept payment of monies due by electronic funds transfer through BACS Ltd or other electronic payment means, as good discharge of the Buyer's indebtedness under the Purchase Order.

**17.4** If any undisputed monies are not paid by the due date, then the Provider or the Buyer (as applicable) may charge interest on such undisputed monies on a day to day basis from the date falling 30 days from when payment fell due, (or such other date as may be agreed in writing between the Parties), to the date of payment (both dates inclusive) at the rate of two 2 per cent per annum over the base lending rate of the Bank of England from time to time. The Parties agree that this clause provides each of the Parties with a substantial remedy in respect of any late payment of sums due for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998).

**17.5** 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, 30 working days after the dispute is resolved.

## **18. Set Off**

**18.1** The Buyer shall be entitled to set off against any sums due to the Provider under the Purchase Order any sums which become payable by the Provider to the Buyer in relation to the Purchase Order or any other contract between the Parties.

## **19. Compliance**

**19.1** The Provider and its personnel shall at all times comply with all applicable laws, including statutes, regulations and bye-laws of local or other competent authorities.

## **20. Corruption and Whistleblowing**

**20.1** The Provider shall not do anything, or omit to do anything, which may be considered to be an inducement to any employee of the Buyer. Any such inducement shall be deemed to be a breach, which shall be considered incapable of remedy. The Provider shall report any request for an inducement to the Buyer under the Buyer's Whistleblowing Policy\*.

## **21. Termination**

**21.1** The Buyer may terminate the Purchase Order in whole or in part at any time before delivery of the Goods and/or commencement of the Services with immediate effect by giving the Provider written notice, whereupon the Provider shall discontinue all work on the Purchase Order.

**21.2** Without limiting its other rights or remedies, the Buyer may terminate the Purchase Order with immediate effect by giving written notice to the Provider if:

- (a) the Provider commits a material breach of any term of the Purchase Order and (if such a breach is remediable) fails to remedy that breach within 14 days of the Provider being notified in writing to do so;
- (b) the Provider 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 Provider takes any step or action in connection with the Provider being made bankrupt, entering any composition or arrangement with its creditors, having a receiver appointed to any of its assets, or ceasing to carry on business;
- (d) the Provider suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (e) the Provider's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Purchase Order is in jeopardy.

**21.3** On termination or expiry of the Purchase Order, the Provider shall immediately return all Buyer Materials. If the Provider fails to do so, then the Buyer may enter the Provider's premises and take possession of them. Until they have been returned or delivered, the Provider shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Purchase Order.

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

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

## **22. Entire Agreement**

**22.1** These terms and conditions and the Purchase Order shall (unless expressly agreed otherwise in writing by the Parties) comprise out the entire terms and conditions of the contract in relation to the subject matter of the Purchase Order (subject to clause 1.1) and the Provider's terms and conditions of contracting are expressly excluded. The Purchaser Order and these terms and conditions shall therefore take priority over any other arrangements, communications (whether verbal or written), or any other documents (including, but not limited to, other purchase orders, or other terms and conditions) except if the Purchase Order is displaced pursuant to an over-riding contract pertaining to the Goods and/or Services either, issued by, or referred to, by the Buyer.

## **23. Variation**

**23.1** Except as set out in these Conditions, no variation of the Purchase Order, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Buyer.

## **24. Waiver**

**24.1** A waiver of any right or remedy is only effective if given in writing to the other party.

**24.2** A delay or failure to exercise any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

## **25. Severance**

- 25.1** If any provision or part-provision of the Purchase Order 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 Purchase Order. If any provision of the Purchase Order is deemed deleted under clause 24, 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.

## **26. Notices**

- 26.1** Any notice given to a party under or in connection with the Purchase Order shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by email to the following addresses:

- (i) Provider [ADDRESS]

- (ii) Buyer [ADDRESS]

- 26.2** Any notice shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post at 9.00 am on the second Business Day after posting; or
- (c) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

## **27. Contracts (Rights of Third Parties) Act 1999**

- 27.1** The contract between the Parties which is referred to in clause 19.1 does not confer (and is not intended to confer) any rights on any third party, whether pursuant to the Contracts (Rights of Third Parties) Act 1999, or otherwise.

## **28. No Agency**

- 28.1** This contract does not create a partnership between the Buyer and the Provider, or make one of the Parties the agent of the other for any purpose.

## **29. Publicity**

- 29.1** The Provider shall not, without the prior written permission of the Buyer, advertise or disclose to any third party that it is providing Goods and/or Services to the Buyer.

## **30. Governing Law**

- 30.1** This contract shall be governed by English law and the Parties shall submit to the exclusive jurisdiction of the English courts.

## **31. CRB**

**31.1** When reasonably required by the Buyer, the Provider agrees to comply with the Buyer's standard requirements in respect of Criminal Records Bureau ("CRB") clearance\*.

**\*Note:** Information about the Buyer's standard Working Days and the Buyer's standard policies and requirements (as applicable) in relation to CRB clearance and Whistleblowing are available on request