



# ST STITHIANS COLLEGE

## General Conditions of Purchase

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## ST STITHIANS COLLEGE

### General Conditions of Purchase [the “Conditions”]

#### 1. DEFINITIONS

In this Contract, unless inconsistent with or otherwise expressly indicated by the context, the following terms will have the following meaning:	
<b>Contract</b>	means this Purchase Order and all incorporated appendices.
<b>Day or Business Day</b>	means any day other than a Saturday, Sunday or public holiday.
<b>Delivery Note</b>	means the document accompanying the delivery of the Goods to the College.
<b>Delivery Date</b>	means the date stipulated in the Purchase Order for the completion of delivery of the Goods to the College.
<b>Goods</b>	means all articles and products to be supplied, (including services to be rendered incidental to the supply), to the College as specified in the Purchase Order.
<b>The College</b>	means St Stithians College, an NPO registered in the Republic of South Africa with registration number NPO 119-838 & PBO 181113631.
<b>Parties</b>	means the College or the Service Provider, as the context requires.
<b>Purchase Order</b>	means a written authorisation in the form of an official order document, issued by the College to the Service Provider, specifying its requirements for the Goods and/or Services and the applicable general conditions of purchase.
<b>Price</b>	means the price of the Goods, excluding VAT (Value Added Tax) means the Price(s) for the Goods and/or fees for the Services (excluding VAT) as stipulated in the Purchase Order.
<b>Services</b>	means all activities to be carried out, including materials to be provided by the Service Provider in terms of this contract in the execution of the Services.
<b>Service Provider</b>	means the person, company, Service Provider, vendor with whom the College has contracted to fulfil the Purchase Order and includes its personnel, agents and subcontractors.
<b>Site / Premises</b>	means the site indicated in the Purchase Order where the Services will be performed and/or the Goods will be delivered; For the avoidance of doubt, the College is located at 40 Peter Place, Lyme Park, Sandton, 2091.
<b>Tax Invoice</b>	means a document to be provided as required by Section 20 of the Value Added Tax Act, Act No 89 of 1991 as amended.
<b>Tender</b>	means the Service Provider's priced offer, in the form of a quote or proposal, received by the College for executing the Purchase Order.
<b>Value Added Tax</b>	means the tax applicable in terms of the Value Added Tax Act, Act No 89 of 1991 as amended.
<b>Writing</b>	means any manuscript, typewritten or printed statement and shall include letters, facsimile and e-mail communications.

#### 2. INTERPRETATION

In this **Contract**, unless inconsistent with or otherwise expressly indicated by the context:

2.1 Unless inconsistent with the context, an expression which denotes:

- 2.1.1 any gender includes the other gender;
- 2.1.2 a natural person includes a juristic person and vice versa;
- 2.1.3 the singular includes the plural and vice versa.

2.2 If any number of days is prescribed in the Contract, same shall be reckoned exclusively of the first and inclusively of the last day unless the day falls on a day which is not a Business Day, in which case the last day shall be the immediately following Business Day.

2.3 Where figures are referred to in numerals and in words, if there is any conflict between the two the words shall prevail.

2.4 Where any term is defined within the context of any particular clause in this Contract, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the same meanings, for all purposes in terms of this Contract, notwithstanding that the term is not being defined in this interpretation clause.



### 3. BASIS OF CONTRACT

- 3.1 The Purchase Order shall be deemed to be accepted on the earlier of:
- 3.1.1 the Service Provider issuing written acceptance of the Purchase Order; or
  - 3.1.2 any act by the Service Provider consistent with fulfilling the Purchase Order;
- at which point and on which date the “Legal Contract” shall come into existence (“**Commencement Date**”).
- 3.2 Unless the College and the Service Provider enter into a separate written agreement, these Conditions of Purchase shall be binding on the Parties and shall apply to the exclusion of any conditions stipulated by the Service Provider in any document, proposal, quote, statement, delivery note, invoice or other commitment, whether written or oral, even if such terms have not been expressly rejected by the College.
- 3.3 Notwithstanding anything to the contrary, to the extent that the Service Provider has performed any act related to the delivery of Goods and/or the performance of Services prior to the date on which the Purchase Order was issued, such act shall be regulated by these Conditions.

### 4. PRICE

- 4.1 The Price for the Goods shall be the price set out in the Purchase Order, or if no price is quoted, the price set out in the Service Provider's published price list in force at the Commencement Date.
- The fee(s) for the Services shall be set out in the Purchase Order, and shall be the full and exclusive remuneration of the Service Provider in respect of the performance of the Services.
- 4.2 Unless otherwise agreed in writing by the College:
- 4.2.1 the Price(s) shall be fixed and not subject to escalation;
  - 4.2.2 the Price(s) shall be inclusive of all applicable Taxes;
  - 4.2.3 the Price(s) for the Services shall include every cost and expense of the Service provider, directly or indirectly incurred (including, but not limited to, travel and accommodation costs) in connection with the performance of the Services;
  - 4.2.4 the Price(s) for the Goods shall include all costs of packaging, insurance and carriage of the Goods, storage, demurrage, shipping and delivery charges (including, but not limited to, customs, duties, imposts and other tariffs).
- 4.3 No extra charges shall be effective unless agreed in writing by the College.

### 5. PURCHASE ORDER CHANGES

- 5.1 The College shall be entitled, at any time prior to the Delivery Date specified in the Purchase Order but not later than 3 (three) Business Days before that date, to suspend, vary and/or cancel any Purchase Order, without incurring any costs, by delivering a written notice to the Service Provider (“**Change Order**”).
- 5.2 Any additional expenses related to the execution of a Change Order, shall be confirmed and approved in writing by the College, prior to the Service Provider incurring such costs.

### 6. PACKAGING

- 6.1 The **Service Provider** shall ensure that the **Goods** are packaged as per the instructions in the **Purchase Order**.
- 6.2 In the event of no instructions being given in the **Purchase Order**, the **Service Provider** shall meet the packaging standards as is customary in the industry so as to ensure adequate protection of the **Goods** and to eliminate all damage.
- 6.3 Unless the Parties agree otherwise in writing, all packaging is deemed to be included in the Price(s) and shall become the property of the College upon delivery.
- 6.4 All packages shall be clearly marked, addressed and accompanied by a **Delivery Note** which shows the date of the Purchase Order, the Purchase Order number (if any), the type and quantity of the Goods, special storage instructions (if any) and, if the Goods are being delivered in instalments, the outstanding balance of Goods remaining to be delivered.

### 7. TRANSPORTATION AND DELIVERY

- 7.1 All Goods as specified in the Purchase Orders shall be delivered:
- 7.1.1 to the Site at the point of delivery as specified in the Purchase Order;



- 7.1.2 on the Delivery Date as specified in the Purchase Order;
- 7.1.3 if no such date is specified, then within 5 (five) Business Days of the date of the Purchase Order;
- 7.1.4 during the College's normal hours of business on a Business Day, or as instructed by the College.

- 7.2 The Service Provider shall not deliver the Goods in instalments without the College's prior written consent.
- 7.3 Unless otherwise set out in the Purchase Order, the Service Provider shall be responsible for transporting the Goods to the Site and all costs incurred in and pursuant to transportation of the Goods shall be borne and paid for by the Service Provider.
- 7.4 The Service Provider shall, where practicable, inform the College representative nominated in the Purchase Order at the earliest opportunity of any event or circumstance, which may delay or impact the fulfilment of the Purchase Order. In the event of timely notification of a delay to the due and proper fulfilment of the Purchase Order, the College shall in its sole discretion grant or refuse an extension of the Delivery Date.

## **8. ACCEPTANCE OF GOODS**

- 8.1 The Goods will be subject to inspection, testing and acceptance by the College (as the case may be) at any time and place, within a reasonable time before or after Delivery Date. If the inspection and testing is done by the College at the Service Provider's premises, the Service Provider shall provide all reasonable assistance and facilities (at no additional charge) to the College or its agent for the purposes of such inspection and testing.
- 8.2 If any Goods are (i) defective in quality, quantity, material, workmanship or design; (ii) damaged; (iii) not in conformity with the specifications or normal standards of quality for such Goods, then the College shall be entitled to:
  - 8.2.1 reject the Goods (in whole or in part), whether or not title has passed, and to return them to the Service Provider at the Service Provider's own risk and expense;
  - 8.2.2 terminate the Purchase Order with immediate effect by giving written notice to the Service Provider;
  - 8.2.3 require the Service Provider to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
  - 8.2.4 procure substitute goods from a third party at the expense of the Service Provider and to recover from the Service Provider any costs incurred by the College in obtaining substitute goods from the third party; and
  - 8.2.5 claim damages for any additional costs, loss or expenses incurred by the College arising from the Service Provider's failure to supply Goods in accordance with the specifications.
- 8.3 Acceptance of any delivery, or any payments made for Goods delivered, shall not deprive the College of the right to return any Goods which are in any way defective, unsuitable, damaged and/or not complying with specifications and shall not affect the warranties.
- 8.4 The College shall not accept any Goods in excess of the quantity as specified in the Purchase Order. Such Goods as may be in excess of the specified quantity in the Purchase Order shall be removed by the Service Provider from the College's premises, within seven (7) days, at the Service Provider's own cost and The College shall not be liable for any costs whatsoever related to the over delivery. Ownership and risk of loss or damage shall remain with the Service Provider for all such Goods supplied in excess of the specified Purchase Order quantity.

## **9. SUPPLY OF SERVICES**

- 9.1 The Service Provider shall:
  - 9.1.1 provide the Services to the College in accordance with the terms of the Contract, with effect from the date set out in the Purchase Order and for the duration set out in the Purchase Order;
  - 9.1.2 meet any performance dates for the Services specified in the Purchase Order;
  - 9.1.3 not sub-contract any part of the Contract without the express written consent of the College;
  - 9.1.4 provide all equipment, tools and vehicles and such other items as are required to provide the Services;
  - 9.1.5 use the best quality goods, materials, standards and techniques in the performance of the Services;
  - 9.1.6 perform the Services with the due care, skill and diligence in accordance with best practice in the Service Provider's industry, profession or trade;
  - 9.1.7 perform the Services in such a manner as not to disrupt or interfere with the normal Educational Operations of the College on Site, or cause any damage or harm to any person or their property;
  - 9.1.8 be responsible for examining the Site and its surroundings, as well as any other information relevant to the risks, contingencies and other circumstances having an effect on its obligations under the Purchase Order.
- 9.2 The College shall:
  - 9.2.1 provide the Service Provider with reasonable access at reasonable times to the Site for the purpose of providing the Services;



- 9.2.2 provide such information as the Service Provider may reasonably request for the provision of the Services and which the College considers reasonably necessary for the purpose of providing the Services.

## 10. INVOICING AND PAYMENT

- 10.1 Payment shall be made by means of an electronic transfer, 30 (thirty) days from date that an undisputed invoice for the Goods was received by the College.
- 10.2 The Service Provider shall, upon request by the College, provide the necessary documentary proof to substantiate the content of the invoice or portion thereof.
- 10.3 If a Purchase Order is subject to a 2.5% (two and a half percent) early settlement discount, such discount shall be applicable if payment is effected within the period stipulated, which period shall commence on the date of receipt of the invoice.
- 10.4 Any payment effected in terms of a **Purchase Order** shall be subject to **the College's** right to:
- 10.4.1 Refuse payment of an invoice, which the College are contesting in good faith;
- 10.4.2 Offset payments due under any order against damages or loss sustained by the College owing to the **Service Provider's** failure to perform in terms of the **Purchase Order**.
- 10.5 The **Service Provider** shall comply in all instances with the Value Added Tax Act, Act 89 of 1991, any amendments thereto or Acts passed in substitution thereof.
- 10.6 In no event shall the College be liable for payment of any interest or penalties on delayed payments to the Service Provider, regardless of such payments being disputed or undisputed.

## 11. APPLICABLE LAW AND LEGISLATION

- 11.1 This Contract shall be governed by and construed according to the laws of the Republic of South Africa. The Parties shall in respect of all matters arising in the fulfilment of the Contract comply at its own expense with laws, regulations, by-laws and requirements of local or other authorities that are applicable to this Contract.

## 12. ACCESS AND SECURITY

- 12.1 The admission of the **Service Provider** to the **College's** premises is subject to all applicable statutes and regulations.
- 12.2 The **Service Provider** and/or any of its employees, contractors, sub-contractors and associates undertake to abide by all the Safety Protocol and Access Rules applied by the **College**.

## 13. RISK AND TITLE

- 13.1 The **Service Provider** represents and warrants to **the College** that all Goods delivered are free and clear of any lien, claim, demand, security, interest, adverse claim, retention or any other encumbrance.
- 13.2 Risk and benefit in the Goods shall pass on Delivery.
- 13.3 Ownership of the Goods shall pass to the College once the Price has been paid in full.

## 14. WARRANTIES

- 14.1 Unless otherwise agreed in writing by the Parties, the **Service Provider** warrants that the Goods shall:
- 14.1.1 be supplied with no less than a one-year guarantee from the successful Delivery Date;
- 14.1.2 be free from defect in materials, workmanship, installation and design;
- 14.1.3 be fit for the purpose for which they are intended;
- 14.1.4 comply with all Applicable Laws and guidelines approved by any recognised industry body;
- 14.1.5 not endanger the health or safety of any person;
- 14.1.6 perform as described in the specifications (or the specifications of the manufacturer).
- 14.2 The Service Provider shall assign to the College any warranties which the Service Provider may have received from the manufacturer of the Goods or any materials, equipment or components used in the performance of the Services. If any warranty is not assignable, then the Service Provider shall assist the College in pursuing any warranty claim with the relevant manufacturer on the College's behalf.
- 14.3 If the **Goods** fail for any reason other than fair wear and tear within the guarantee period, the **Service Provider** shall, either replace, repair and/or remove such Goods at its own Cost, and issue a credit note to the College.



## **15. BREACH**

- 15.1 In the event that the Service Provider breaches any term, condition or warranty of the Contract and fails to remedy that breach within 5 (five) calendar days of the date of a written notice from the College to do so, then the College shall be entitled, without prejudice to any of its other rights in law:
- 15.1.1 to claim specific performance in terms of the Contract;
  - 15.1.2 to recover from the Service Provider any costs incurred by the College in obtaining substitute goods and/or services from a third party;
  - 15.1.3 where the College has paid in advance for Services that have not been completed by the Service Provider and/or Goods which have not been delivered by the Service Provider, to have such sums refunded by the Service Provider; and
  - 15.1.4 to claim damages for any additional costs, loss or expenses incurred by the College which are in any way attributable to the Service Provider's failure to meet such dates.
- 15.2 Either Party shall be entitled to terminate the Contract in the event of:
- 15.2.1 The death, sequestration or insolvency of the other Party;
  - 15.2.2 Any assignment to a Party's creditors;
  - 15.2.3 A Party committing any act of insolvency;
  - 15.2.4 A Party being placed under judicial management; or
  - 15.2.5 A Party commencing to be wound up for voluntary liquidation for the purpose of reconstruction;
  - 15.2.6 A Party is accused of committing fraud;
  - 15.2.7 There is a change of Control, without the prior written consent of other Party.
- 15.3 The termination in terms of clause 15.2 shall be without liability and take effect immediately upon the deemed receipt of such notice.

## **16. LIMITATION OF LIABILITY**

- 16.1 Neither the College nor the Service Provider shall be liable or responsible to each other for any indirect, consequential, incidental or contingent damages, including but not limited to such loss of profit or loss of production arising out of its performance or a breach of this Contract, excluding such losses suffered by a Party as a result of gross negligence, criminal conduct and wilful misconduct of the other Party, or its representatives.

## **17. INDEMNITY**

- 17.1 The Service Provider hereby indemnifies and undertakes to hold harmless the College and its associated companies, its customers, agents, representatives and employees from and against all liabilities, losses, claims and demands, from all or any liability for losses or claims arising out of the Service Provider's performance of its obligations in terms of this Contract.
- 17.2 This indemnity from the Service Provider will cover whatsoever nature or reason of any liability imposed or claimed to be imposed upon the College by third parties in respect of:
- 17.2.1 Damages arising from bodily injuries, sickness, disease infection or death;
  - 17.2.2 Damage to property or equipment.
- 17.3 The Service Provider shall make good at its own expense any damage caused by it.

## **18. INSURANCE**

- 18.1 During the term of the Contract and for a period of 1 (one) year thereafter, the Service Provider shall maintain in force, with a reputable insurance company, sufficient insurance to cover the Service Providers' liabilities that may arise under or in connection with the Contract, including but not limited to professional indemnity insurance, product liability insurance and public liability insurance, and shall, on the College's request, produce both the insurance certificate giving details of cover and proof of payment of the current year's premium in respect of each insurance.

## **19. FORCE MAJEURE**

- 19.1 Should either Party (hereinafter referred to as "the invoking Party") be prevented from fulfilling any of its obligations in terms of this Contract as a result of any unforeseen, unpreventable and uncontrolled act of God, war, fire, flood, legislation, sanctions, trade embargo, strikes, black-outs or other cause; then the invoking Party will forthwith give written notice thereof to the other Party.





- 19.2 Performance will be suspended from the date on which notice is given of Force Majeure until the date on which notice is given of termination of Force Majeure. The invoking Party will not be liable for any delay or failure in the performance of any obligation due to or resulting from the Force Majeure.
- 19.3 Should the event continue for a period extending beyond 28 (twenty-eight) Business Days, either Party will be entitled to terminate the Contract on terms to be agreed between the Parties in writing.

## 20. CONFIDENTIALITY

- 20.1 It is inevitable that certain sensitive information (whether of a financial nature or relating to individual details, commercial or other relevant matters) will be exchanged between the Parties in the context of this Contract. All information which is capable of being regarded as confidential will be treated by the Party receiving it, as strictly confidential and may not be disclosed to any third party without the prior Written authority of the Party which disclosed it, nor may it be used for any purposes other than those envisaged by this Contract.
- 20.2 The provisions of this clause shall survive the fulfilment, cancellation or termination of this Contract for any reason whatsoever and remain binding on the Service Provider in perpetuity.

## 21. MISCELLANEOUS PROVISIONS

- 21.1 Non-variation: No variation or alteration or waiver of any terms of this Contract, including this non-variation clause, shall be of any force or effect, unless recorded in writing and signed by the Parties.
- 21.2 Right to audit: The Service Provider must permit the College or its designated internal/external audit representative's reasonable access to the Service Provider's premises for the purpose of conducting audits of the Service Provider's records and/or processes necessary to verify the Service Provider's compliance with the Contract and these terms and conditions.
- 21.3 Whole Contract: This Contract constitutes the whole Contract between the Parties as to the subject matter hereof and no contracts, representations or warranties, other than those set out herein, are binding on the Parties.

Unless the College and the Service Provider enter into a separate written agreement, these Conditions of Purchase shall be binding on the Parties and shall apply to the exclusion of any conditions stipulated by the Service Provider in any document, proposal, quote, statement, delivery note, invoice or other commitment, whether written or oral, even if such terms have not been expressly rejected by the College.

Notwithstanding anything to the contrary, to the extent that the Service Provider has performed any act related to the delivery of Goods and/or the performance of Services prior to the date on which the Purchase Order was issued, such act shall be regulated by these Conditions.

- 21.4 Domicilium and Notices: Any legal process to be served on either Party may be served on it at the address specified for it in the Purchase Order and it chooses that address as its domicilium citandi et executandi for all purposes under this Contract.
- 21.5 Exclusivity: This Contract is non-exclusive. The Parties agree that the Purchase Order shall not limit the Service Provider's ability to supply Goods to, or obtain any work from, other customers and/or the College's right to use third party service providers for the supply of Services and/or Goods of identical or similar nature, set out in any Purchase Order.