Terms and Conditions of Purchase by Castle School Education Trust

These Terms and Conditions of Purchase apply to the exclusion of any other terms that the Supplier seeks to impose or incorporate

1 **Interpretation**

1.1 Definitions. In these Conditions, the following definitions apply:

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Commencement Date: has the meaning set out in clause 2.2

Conditions: these terms and conditions.

Contract: the contract between the Customer and the Supplier for the supply of Goods and/or Services in accordance with these Conditions.

Controller: as defined under any Data Protection Law.

Customer: Castle School Education Trust, a charitable company limited by guarantee registered in England and Wales with company number 08397975 whose registered office is Mangotsfield School, Rodway Hill, Bristol. BS16 9LH.

Data Protection Law: a) the DPA 2018, the GDPR, the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003), any other applicable law concerning data protection, privacy or confidentiality and any subordinate or related legislation; (b) any replacement to, addition to, or amendment of, any of the foregoing; and (c) any other applicable laws concerning data protection, confidentiality or privacy which may come into force from time to time including any such applicable laws in any relevant jurisdiction. In this definition, "relevant jurisdiction" includes any jurisdiction in which Personal Data relating to this Contract are Processed**.**

Deliverables: all documents, products and materials developed by the Supplier as part of or in relation to the Services.

Delivery Location: has the meaning set out in clause 4.1.2.

DPA 2018: the Data Protection Act 2018.

GDPR: UK GDPR (General Data Protection Regulation).

Goods: the goods (or any part of them) set out in the Order.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered.

Order: the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form or in the Customer's written acceptance of the Supplier's quotation as the case may be (including any specification for the Goods or Services).

Personal Data: any information which falls within the definition of "personal data" under any Data Protection Law.

Processing, Processed and Process: as described in the GDPR.

Services: the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Order.`

Supplier: the person or firm from whom the Customer purchases the Goods and/or Services.

1.2 Interpretation. In these Conditions, the following rules apply:

1.2.1 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.2.2 a reference to a party includes its personal representatives, successors or permitted assigns;

1.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

1.2.4 any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

1.2.5 a reference to writing or written includes faxes and e-mails.

2 **Basis of contract**

2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services from the Supplier in accordance with these Conditions.

2.2 The Order shall be deemed to be accepted on the earlier of:

2.2.1 the Supplier issuing written acceptance of the Order; or

2.2.2 any act by the Supplier consistent with fulfilling the Order, at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate (including any terms or conditions which you purport to apply under any purchase order, confirmation order, specification, or other document), or which are implied by trade, custom, practice or course of dealing. These Conditions also supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the Order.

3 **Supply of Goods**

3.1 The Supplier shall ensure that the Goods shall:

3.1.1 correspond with their description and any applicable specification in the Order;

3.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer, expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgment;

3.1.3 where applicable, be free from defects in design, materials and workmanship; and

3.1.4 comply with all applicable statutory and regulatory requirements.

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

4 **Delivery of Goods**

4.1 The Supplier shall deliver the Goods:

4.1.1 on the date specified in the Order or, if no such date is specified, then within 30 days of the date of the Order;

4.1.2 to the Customer's premises as is set out in the Order or as instructed by the Customer before delivery (**Delivery Location**);

4.1.3 during the Customer's normal hours of business on a Business Day, or as instructed by the Customer (and the Supplier shall ensure that the Goods are signed for by a representative of the Customer on delivery).

4.2 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location. Title and risk in the Goods shall pass to the Customer on completion of delivery, provided that if the Goods are not signed for by a representative of the Customer on delivery then the risk in the Goods shall remain with the Supplier until the Customer has confirmed safe receipt of the Goods to the Supplier.

5 **Supply of Services**

5.1 The Supplier shall from the Commencement Date and for the duration of this Contract provide the Services to the Customer in accordance with the terms of the Contract.

5.2 The Supplier shall meet any performance dates for the Services specified in the Order or notified to the Supplier by the Customer.

5.3 In providing the Services, the Supplier shall:

5.3.1 co-operate with the Customer in all matters relating to the Services, and comply with all instructions of the Customer;

5.3.2 perform the Services with all reasonable skill, care and diligence in accordance with best practice in the Supplier's industry, profession or trade;

5.3.3 ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Order, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Customer;

5.3.4 obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;

5.3.5 observe all health and safety rules and regulations and any other security requirements, including safeguarding, child protection and other policies of the Customer, that the Customer notifies to the Supplier from time to time.

6 **Customer remedies**

6.1 If the Supplier fails to deliver the Goods and/or perform the Services by the applicable date, or if the Supplier has delivered Goods that do not comply with the undertakings set out in clause 3.1, the Customer shall, without limiting its other rights or remedies, have one or more of the following rights:

6.1.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;

6.1.2 to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;

6.1.3 to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods;

6.1.4 to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;

6.1.5 where the Customer has paid in advance for Services and/or Goods that have not been provided or delivered by the Supplier, to have such sums refunded; and

6.1.6 to claim damages for any additional costs, loss or expenses incurred by the Customer which attributable to the Supplier's failure.

6.2 The Customer's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

7 **Charges and payment**

7.1 The price for the Goods:

7.1.1 shall be the price set out in the Order, or if no price is quoted, the price set out in the Supplier's published price list in force at the Commencement Date; and

7.1.2 shall be inclusive of the costs of packaging, insurance and carriage of the Goods, unless otherwise agreed in writing by the Customer. No extra charges shall be effective unless agreed in writing by the Customer.

7.2 The charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. The amounts payable are exclusive of VAT, which shall be added to the prevailing rate.

7.3 The Supplier shall invoice the Customer on or at any time after completion of delivery (in respect of Goods) or completion of the Services. The Customer shall pay the invoiced amounts within 30 days of the date of a correctly rendered invoice.

7.4 If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 3% per annum above Barclays Bank's base rate from time to time. This clause 7 shall not apply to payments that the defaulting party disputes in good faith.

8 **Intellectual property rights**

8.1 In respect of the Goods and any goods that are transferred to the Customer as part of the Services under this Contract, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the Customer, it will have full and unrestricted rights to sell and transfer all such items to the Customer.

8.2 The Supplier assigns to the Customer, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables.

9 **Indemnity**

9.1 The Supplier shall keep the Customer indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Customer as a result of or in connection with:

9.1.1 any claim made against the Customer 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, or receipt, use or supply of the Services, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;

9.1.2 any claim made against the Customer 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 Supplier, its employees, agents or subcontractors; and

9.1.3 any claim made against the Customer by a third party arising out of or in connection with the supply of the Goods or the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.

9.2 This clause 9 shall survive termination of the Contract.

10 **Insurance**

10.1 During the term of the Contract and for a period of 6 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract.

11 **Confidentiality**

11.1 A party (receiving party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (disclosing party), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause 11 as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

11.2 This clause 11 shall survive termination of the Contract.

12 **Data protection**

12.1 The Supplier shall comply at all times with Data Protection Law and shall not do anything or perform its obligations under or in connection with the Contract in such a way as to cause the Customer to breach any of its obligations under Data Protection Law.

12.2 The parties may process names, job titles and business contact information including addresses, telephone numbers and email addresses for each other's employees and representatives in connection with the administration of the Contract.

12.3 Further information on how the Customer uses Personal Data, can be found in the Customer's privacy notice https://theplt.org.uk/policies/201819/PLTPrivacyNoticeSuppliers.pdf. The Supplier shall provide a copy of this notice to its Representatives.

12.4 Each party shall comply with Data Protection Law in connection with its Processing of Personal Data in connection with the Contract.

12.5 Subject to the other sub-clauses of this clause 12, each party shall, where Processing Personal Data as a Controller, be responsible for its own compliance with Data Protection Law.

12.6 Each party shall ensure that it has a lawful basis for supplying Personal Data to the other and that such sharing complies with Data Protection Law.

12.7 Any supplier who is handling, storing or accessing personal data of the Trust will be required to complete a Supplier Security Requirements form.

13 **Termination**

13.1 Without limiting its other rights or remedies, the Customer may terminate the Contract:

13.1.1 in respect of the supply of Services, by giving the Supplier one months' written notice; and

13.1.2 in respect of the supply of Goods, in whole or in part at any time before delivery with immediate effect by giving written notice to the Supplier, whereupon the Supplier shall discontinue all work on the Contract. The Customer shall pay the Supplier fair and reasonable compensation for any work in progress on the Goods at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.

13.2 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other if the other party:

13.2.1 commits a material breach of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 15 days of receipt of notice in writing to do so;

13.2.2 repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;

13.2.3 suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

13.2.4 being a company, a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party, or being an individual, is the subject of a bankruptcy petition or order;

13.2.5 a creditor or encumbrancer of it attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

13.2.6 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over it;

13.2.7 the holder of a floating charge over the assets of it has become entitled to appoint or has appointed an administrative receiver;

13.2.8 a person becomes entitled to appoint a receiver over its assets, or a receiver is appointed over its assets;

13.2.9 any event occurs, or proceeding is taken, with respect to it in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.2.3to clause 13.2.8(inclusive); or

13.2.10 it suspends or ceases, or threatens to suspend, or cease, to carry on all or a substantial part of its business.

13.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

14 **General**

14.1 Notices.

14.1.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.

14.1.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to above; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after successful transmission.

14.1.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

14.2 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

14.3 Waiver. A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

14.4 Third parties. A person who is not a party to the Contract shall not have any rights to enforce its terms.

14.5 Variation. Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties.

14.6 Governing law and Jurisdiction. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales, and the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with it.