



**Terms and Conditions of Contract for the Supply of Testing and Certification Services from Blackpool and The Fylde College – Fleetwood Test House**

This document specifies the Terms and Conditions of Contract. No other Terms and Conditions in any correspondence between the Parties shall apply to this Contract unless expressly agreed by the Parties and confirmed in writing.

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**1. Interpretation and Definitions**

a) In these Conditions:

“Articles on test” shall mean all articles accepted by the College for testing, included but not limited to PPE products, materials and components, drawings, specifications, software, data, and any other equipment and/or documentation on test by the College from the Client.

“Authorised Officer” shall mean any person(s) nominated by the College and notified to the Client on this contract

“College” shall mean **Blackpool and The Fylde College, Ashfield Road, Bispham, Blackpool, Lancashire, FY2 0HB – Fleetwood Test House (Fleetwood Testing Laboratory and Fleetwood Notified Body), Broadwater, Fleetwood, FY7 7NY.**

“Contract” shall mean the agreement made between The College and The Client, including all specifications, patterns, Client’s samples, plans, drawings, Technical files, Purchase Order and other documents, and the Contract shall comprise of these Conditions.

“Client” shall mean the Contracting party who undertakes to procure the Services of the College as detailed in the Specification or Purchase Order and as provided for in the Contract, meaning a person or persons, firm, Company or other legal entity who have placed the Purchase Order for services from the College .

“Contract Price” shall mean the price exclusive of Value Added Tax payable to the College by the Client under the Contract for the full and proper performance by the College of the Contract or part performance thereof.

“EC Certificate” shall mean the document issued by the College upon completion of the appropriate conformance testing procedure.

“Intellectual Property Rights” shall mean all patents, inventions, trademarks, trade names, logos, design rights, registered designs, copyright, software, database right, knowledge and trade secrets.

“Order” shall mean the Client’s Purchase Order or other official document specifying the Client’s requirements for the services to which this contract shall apply.

“Order Amendment” shall mean a variation to the original Purchase Order, adding to, deleting or modifying the original requirements.

“Premises” shall mean the site(s) or location(s) where the Services are to be performed as detailed in the Contract. For the avoidance of doubt, all services will be provided at approved premises of Blackpool and The Fylde College

“Programme” shall mean any programme or timetable agreed by the parties to the Contract which regulates or specifies the period or periods for the performance of the Services or any part of them, together with any activities ancillary to the performance of the Services or the preparation and submission of reports.

“Sale of Goods Act” shall mean the Sale of Goods 1979 as amended by the Sale and Supply of Goods Act 1994.

“Services” shall mean all work which the College is required to supply under the Contract and shall, where the context so admits, include any materials, goods on test to be supplied in accordance with the Supply of Goods and Services Act 1982.

“Specification” shall include, but not be limited to, any plans, drawings, data, photographs, information or samples which facilitate the design, structure or operation of the Services to be performed, and are relied upon in the performance of this Contract.

“Sub Client” shall mean any person, firm or company under contract to the College to perform work or provide professional services under contract to the College

“Supply of Goods 1982” shall mean the Supply of Goods and Services Act 1982 as amended by the Sale and Supply of Goods Act 1994.

- b) “He” and “His” are used for narrative purposes only and are not meant to favour or refer to a particular gender. As the context requires “he” and “his” may be used in a collective sense in relation to personnel of the Client.
- c) Use of the singular includes the plural and vice versa, according to context.
- d) Unless the context otherwise requires, reference in these Conditions to any enactment, order, Regulation or other similar instrument shall be construed as a reference to the enactment, order, Regulation or instrument as amended or re-enacted by any subsequent enactment, order, Regulation or instrument.
- e) The headings to these Conditions shall not affect their interpretation.

**2. Validity**

If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

**3. Variation of Contract Conditions**

The Services shall be supplied in accordance with these Conditions. Any conditions which the Client may seek to impose and which in any way add to, vary or contradict these Conditions shall be excluded and not form part of the Contract, unless each of such conditions has been specifically agreed to in writing by the College.

**4. Purchase Order**

- a) A Purchase Order communicated verbally, electronically or in writing by the Client constitutes an Offer on the part of the Client to acquire the Services subject to these Conditions which must be accepted either in writing by the College or by the actual execution of the Purchase Order.
- b) Acceptance of the Purchase Order will be deemed to bind the Client to these Conditions and the Services shall not be supplied or performed by the College, his employees, agents or representatives, except in accordance herewith. The Clients Conditions of Sale do not form any part of the Contract whatsoever.

- c) The Client is deemed to have understood the nature and extent of the Services and to have visited the Premises and shall make no claim founded on his failure to do so.
- 5. Purchase Order Amendment**
- a) The College shall have the right, before commencement of the Services to send the Client a Purchase Order Amendment adding to, deleting or modifying the scope of the Services required to ensure compliance with the approved testing procedures of the College in compliance with all current legislation.
- b) If the Purchase Order Amendment will cause a change to any Price or Service delivery date then the College will notify the Client without delay, calculating the new Price and Service delivery date at the same level of cost and profitability as the original Price. All prices quoted will be based upon current testing rates, duty and freight rates and are subject to change with no notice. The College will notify the client of any such changes and will give seven working days for the Client to consider and agree in writing any new Price and Service delivery date.
- c) The Purchase Order Amendment shall take effect when, but only if, the Client accepts in writing the new Price and Service delivery date within the time the College stipulates. If the Client fails to confirm the Purchase Order Amendment within the time the College stipulates then performance of the Contract shall immediately be terminated and any articles on loan returned to the Client.
- d) For the avoidance of doubt, any re-test of any previously tested equipment shall constitute a new purchase order for services and will be charged on the basis outlined in clause 5 (b)
- 6. Cancellation**
- a) The Client may not cancel the Purchase Order once accepted by the College
- b) If the College cancels the purchase order, then the Client will pay to the College the cost of any commitments, liabilities or expenditure which in the College's reasonable opinion were a consequence of this Contract at the time of cancellation. The total of all payments made or due to the College under this Contract, including any termination payment, shall not exceed the Contract Price.
- 7. Contract Price**
- a) The Contract Price shall be quoted in Sterling (GB Pounds) 'Net', that is, after Deduction of all agreed discounts. Value Added Tax, where applicable, will be shown as a separate charge.
- b) All pricing will include the full costs of providing the Services to be performed at the locations detailed in the Specification and/or Purchase Order under this Contract.
- c) Transportation of product samples between the Client and College premises shall be at the expense of the Client. The College reserves the right to refuse any deliveries of samples or products for testing where invoices from the College remain unpaid by the Client.
- d) Contract Prices are based upon current testing costs, foreign currency exchange rates (where applicable), duty & freight costs and are subject to amendment without notice.
- e) Any agreed variation in pricing shall be confirmed in writing in accordance with the requirements of clause 5 (b) & 5 (c)
- 8. Invoicing and Payment**
- a) Invoices will be submitted on completion of the Services that have been provided under this Contract or Purchase Order.
- b) To prevent delays in payment Purchase Orders will always quote the Client's Purchase Order number, along with a sufficient description of the Services provided.
- c) Value Added Tax (where applicable), shall be shown separately on all invoices as a strictly net extra charge.
- d) The Client will pay the College within 30 days of the invoice date in accordance with the agreed Contract rates or as modified from time to time as provided for in the Contract. Failure to pay an invoice within agreed terms will be potential cause for the revocation of any certificate issued as per the provisions of clause 16 (b)
- e) There will be no right of set off under this Contract
- f) These Payment Terms shall not be varied without the express written authority of an Authorised Officer of the College.
- 9. Notices and Correspondence**
- a) Any notice required to be given in writing under the Contract shall be sent by email, first class or Registered post, or delivered by hand to an agreed address of the party for which it is intended.

- b) Notices sent by email shall be deemed to have been given and received upon successful transmission to an agreed electronic / telephone line or email address.
- c) A correctly addressed envelope, posted 1st class, or sent by Recorded Delivery, shall be sufficient proof of the serving of a notice by post, and shall be assumed to have been received within forty-eight hours of posting.
- d) Any notice delivered by hand shall be deemed to have been delivered and received.

**10. College's Personnel**

- a) The College shall employ sufficient persons of good character, with the appropriate training, qualifications, levels of competence, skills and experience to ensure all requirements of this Contract are met at all times.
- b) The College warrants that all personnel deployed on these Services shall be properly managed and shall perform the Services under direct supervision where appropriate to ensure due care and diligence is taken at all times.

**11. Time of Performance**

Time shall not be of the essence for this Contract. Delivery estimates are made in good faith and are given once an official Purchase Order is received from the Client. The College will make every reasonable effort to fulfil these dates, but will not guarantee that any date indicated will be achieved.

**12. Testing, Inspection and Progress**

- a) All Services and any materials, components and Articles on test / samples associated with the supply of the Services shall be subject to any tests detailed in the Purchase Order, at the Client's expense.
- b) For operational reasons the College may issue a notice to the Client notifying him of amendments to any Service delivery schedules, or to particular Services or associated Articles on test and materials at specified times.

**13. Performance of the Services and Expectations**

- a) Unless expressly stated in this Contract the College shall provide all facilities, staff, materials, equipment, machinery and other items whatsoever required for the provision of Services under this Contract.
- b) The Services shall at all times be performed in accordance with the usual industry standards, and at a level of quality reasonably expected by the Client.

**14. Obligations of the Client**

- a) The Client shall:
- i. At all times comply with these conditions of contract.
  - ii. Abide by any decision given by the College pursuant to compliance with any UK legislation.
  - iii. Provide the College with details of any product that has previously been certified in accordance with UK legislation and the Client has previously marketed that product which has subsequently been modified and the Client is now seeking to re-issue as a new product.
  - iv. Provide all technical and product details to allow the College to ensure compliance with UK legislation

**15. Obligations of the EC Certificate Holder**

- a) The EC Certificate holder will:
- i. Notify any and all product changes to the College where such changes to the product affect the Client's compliance with UK legislation. For the avoidance of doubt, any change of sub-contractor within the manufacturing process shall be classified as a significant change which should be advised, as failure to do so could render a College issued EC Conformance certificate as invalid.
  - ii. Provide the College with all technical and quality system data as required for all products covered by the EC Certificate.
  - iii. Advise the College of any and all adverse events howsoever and wherever occurring in consideration of any product for which the College has issued an EC Conformance Certificate. Such notification to include any limitations, exclusions, suspensions, cessations, notices on or by the use of the product or any forthcoming, anticipated or imposition notice by any competent body.
  - iv. Allow access to all premises to the College where the College is assessing compliance with relevant UK legislation for products for which the College has issued EC Conformance Certification
  - v. Notify the College of any significant changes to the business of the Client
  - vi. Only display the CE mark in accordance with UK Legislation and only on products for which an EC Certificate has been issued.
  - vii. Not make any statements appertaining to any product for which an EC Certificate has been issued that in the opinion of the College may be misleading or factually incorrect.

- viii. Upon termination of all or any part of the EC Certificate as issued by the College, immediately stop fixing the CE mark to any and all products that were certified by the College and declared on the CE Certificate.
- ix. Upon termination of all or any part of the EC Certificate as issued by the College, immediately discontinue any reference or advertising or use on promotional materials etc

#### 16. Revocation of EC Certificates

- a) Should the certificate holder fail to comply with the terms of this contract, the College reserves the right to revoke any current certification issued, or to refuse to issue a certificate for products under testing and to inform all necessary competent bodies of the action taken by the College.
- b) The College reserves the right to revoke, refuse to issue or suspend a licence in the following circumstances:
  - i. Non payment of invoices issued by the College
  - ii. The circumstances detailed in clause 31
  - iii. Where apposite requirements of the EC Certificate in consideration of UK legislation is not being met by the Client or where a EC Certificate should not have been issued, or there has been a breach of condition subject to the purpose for which the EC Certificate was issued, the College may suspend or withdraw the certificate and notify all appropriate competent bodies accordingly. Where this is the case, the College shall grant to the Client a period of 28 days to make representations as to why the EC Certificate should not be withdrawn.
  - iv. Any decision under this clause shall be binding and not subject to the reviews detailed within clause 30

#### 17. Health and Safety

- b) The College warrants that in providing the Services, we will comply with all duties imposed by the Health & Safety at Work Act 1974, and with all other statutory regulations applicable to the Services and all sites of work, including College premises.
- c) The College shall ensure that all personnel have received sufficient training in all areas of Health and Safety relating to the delivery of this Contract, and that they carry out their duties in compliance with all such Regulations currently in force.
- d) The College has procedures in place for the reporting and investigation of injuries and accidents, which shall satisfy the requirements of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR).
- e) For all Articles on test, chemicals, mixtures or other substances hazardous to health the College shall:
  - I. ensure the Client is fully informed of any risks or hazards known or believed to exist in exposure to, or the transport, storage, handling, or use of, the Articles on test;
  - II. comply with all current legislation and guidance under the Control of Substances Hazardous to Health (COSHH) and the Chemical (Hazard Information and Packaging for Supply) Regulations 2002;
  - III. ensure an English version of the appropriate Material Safety Data Sheet (MSDS), relevant safety information and instructions for use accompanies such Articles on test during transportation, and that a copy of such documentation is verified by an Authorised Officer upon delivery onto College premises.

#### 18. Forms

A report shall accompany each complete performance of the Services or of any separable part or stage thereof. An invoice will be processed by the College for payment by the client. All reports, other relevant correspondence and invoices, shall be clearly marked with the Clients Order number, the consignee and the description and dates of the Services provided. A CE Certificate will only be issued upon full completion of the testing process.

#### 19. Property and Risk

- a) The Client warrants that it shall have title free from all claims, liens and encumbrances to all Articles on test and materials supplied under this Contract.
- b) The Client shall bear all risks of loss and damage to all materials, components and Articles on test during delivery to the College, and shall insure such items accordingly.

#### 20. Acceptance and Rejection of Articles on test under Service

- a) Articles on test shall not be deemed to have been accepted for testing where the College has had insufficient time or it has not been practical to unpack and fully test the Articles on test following delivery, regardless of any signature confirming receipt on any advice note or delivery note.
- b) Notwithstanding any provision contained within the contract or section 34 or section 35 of the Sale of Goods Act 1979, the College shall be entitled to reject the Articles on test in whole or in part within a reasonable time of delivery if they are defective,

unsafe, inferior in quality, material, or performance, or do not otherwise comply with any express or implied term of this Contract.

- c) The College's rights of rejection shall continue irrespective of whether the College has legally accepted the Articles on test.
- d) The Client must collect all rejected Articles on test within a reasonable time of rejection or the College shall return them to the Client at the Client's risk and expense.
- e) The Client shall be given a reasonable opportunity to replace the rejected Articles on test with new Articles for testing that conform to this Contract, after which time the College shall be entitled to cancel the Purchase Order. Cancellation of the Purchase Order under this condition shall not affect any other rights the College may have.

#### 21. Intellectual Property Rights

- a) All rights (including ownership and copyright) in any specifications, instructions, plans, drawings, patents, models, designs, or other materials furnished to or made available to the College by the Client are hereby assigned to and shall vest in the Client absolutely.
- b) All reports and other documents and materials and the copyright, intellectual property rights or similar protection therein arising out of the performance of the Services by the College are hereby assigned to the College absolutely.
- c) It shall be a condition of the Contract that, except to the extent that the Services or Articles on test incorporate designs furnished by the Client, the Client will not infringe any patent, trade mark, registered design, copyright or other right in the nature of industrial property of any third party, and the Client shall indemnify the College against all actions, claims, demands, costs and expenses which the College may suffer or incur as a result of or in connection with any breach of this Condition.
- d) In the event of any infringement of the Intellectual Property Rights of any third party by the Client during the performance of this Contract, the Client shall at his own cost procure for the College a licence to perform the Services and/or use the Articles on test, or shall provide to the College alternative Services and/or Articles on test which are non-infringing and which are reasonably acceptable to the College.
- e) The provisions of these Conditions shall apply during the continuance of the Contract and after its termination howsoever arising.

#### 22. Assignment and Sub Letting

- a) No part of this contract shall be sub-contracted, transferred or assigned to a third party without the express written agreement of the Client. Such agreement not to be unreasonably withheld.
- b) In the event of an emergency the College may arrange for temporary sub-letting in order to ensure services are maintained, but must notify the Client immediately of its actions.

#### 23. Default by Client

- a) If the Client fails to comply with any terms of the Contract, either in relation to provision of the Articles on test or otherwise, the College shall be entitled (whether or not the Articles on test or Services or any part thereof have been accepted by the College) to avail itself of any of the following remedies at the College's discretion:
  - I. rescind the Contract; or
  - II. give the Client the opportunity to supply replacement Articles on test or carry out remedial work in respect of the Services at the Client's expense so that they comply with the terms of the Contract; or
  - III. refuse to accept any further performance of delivery of the Articles on test or the Services without any liability to the College; or
  - IV. carry out at the Client's expense such work as may be necessary to satisfy the requirements of the Contract; or
  - V. claim such damages, costs and expenses as the College may have sustained in consequence of any breach of the terms of the Contract or failure by the Client to comply with any statutory or other legal obligations herein specified or implied by law.
- b) These rights shall be in addition to and without prejudice to any other rights the College may have.

#### 24. Data Protection

- a) The Client & the College shall take such appropriate technical and organisational measures as are necessary to comply with the seventh data protection principle as provided by Part 1 of the Data Protection Act 1998 to protect against unauthorised or unlawful processing of personal data (as defined in section 1(1) of the Data Protection Act 1998) and against accidental loss or destruction of, or damage to, personal data.
- b) The College shall ensure that all technical information (including computer

programs and programming information) arising out of or deriving from this Contract is held in strict confidence except for any such information which becomes public knowledge other than by breach of this Contract.

## 25. Freedom of Information

- a) The Client acknowledges that the College is subject to legal duties under the Freedom Of Information Act 2000 (FOI) and/or Environmental Information Regulations 2004 (EIR) which may require the release of information on request, including matters relating to, arising out of, or under, this Contract.
- b) The Client shall respond to any related request for assistance from the College, at its own cost within five (5) days.
- c) The College shall be entitled to disclose all Information to the extent that it is obliged to do so, within the required 20 days, in order to respond to that request in accordance with FOIA and/or EIR.
- d) Where the Client believes the information requested is Exempted Information or Confidential Information and should not be disclosed it shall inform the College, and unless agreed otherwise by the Client the College shall not disclose the information or confirm or deny that the information is held by the College.
- e) If the College is issued with guidance or an enforcement notice by the Information Commissioner it shall inform the Client of the details. The Client may request the College to appeal to the Information Tribunal against the guidance or enforcement notice and disclosure of the information.
- f) The College shall at all times be entitled to seek legal advice where appropriate, and the Client shall indemnify the College for all legal costs and expenses incurred in obtaining legal opinion or preventing the release of the information.

## 26. Audit Requirements

The Client shall keep and maintain all documentation relating to this Contract until ten years after the Contract has been completed and shall make such records available to the College and/or other Statutory / Competent Body if requested.

## 27. Liability and indemnity

- a) Without prejudice to his liability for breach of any of his obligations under the Contract the Client shall be liable for and shall indemnify the College against any liability, loss, damages, costs, expenses, legal costs and expenses, claims or proceedings whatsoever arising under any statute or at common law as a result of or in connection with:
  - I. any breach of any warranty given by the Client in relation to the Articles on test or, and/or
  - II. any claim of infringement of patent, copyright, design, trade mark or other intellectual property rights of any other person
  - III. any loss of or damage to property (whether real or personal), and/or
  - IV. any injury to any person, including injury resulting in death, and/or
  - V. any financial or economic loss,except insofar as such loss, damage or injury shall have been caused by negligence on the part of the College, its servants or agents.

It is also expressly agreed between the parties that:

- a) The College shall not be liable for any damage or injury occurring where such damage is due to a product or an application of a product which has either not been tested or examined and described in the testing examination report, or which differs from the College's description in the testing or examination report of the product or a potential application of the product for which a CE Certificate has been issued by the College.
- b) The College will not be liable for any loss or damage that may occur in connection with the Clients use of provided test data or results which lie outside of the scope of the task and purpose in connection with which the College opinion has been given.
- c) The College will not be liable for any damage or injury occurring where a product has not been tested by the College unless the client proves that the product is identical to a product previously tested and verified by the College for which a CE Certificate was issued. Where a product that is counterfeit or a copy of a certified product causes liability or damage, it is implicit that the College will not be liable for any loss or damage to any third party as that product would not have been certified by the College.
- d) The Client shall indemnify the College against all claims, cost, expense, loss or damage whether direct or consequential which the College may suffer howsoever arising from the Client's breach of any of its obligations under this contract.
- e) The College shall not be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or for any indirect or consequential loss arising under or in connection with the Contract (including any such indirect or consequential losses that may result from the deliberate personal repudiatory breach of the Contract by the College ); and
- f) the total liability of the College to the Client in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed an amount equal to the Fees payable to the College by the Client under this contract .
- g) This clause will survive the end of the Contract.

## 28. Insurance

- a) Without prejudice to his liability to indemnify the College the Client, and all Sub-Clients, shall affect and maintain at all times during the period of this Contract, at his own expense, and from a reputable organisation:

**Public Liability Insurance** in a sum not less than £10 million for each and every occurrence.

**Employer's Liability Insurance** in a sum not less than £10 million for each and every occurrence.

**Professional Indemnity Insurance** in a sum not less than £5 million for each and every occurrence.

- b) Any such insurance shall name the College as a Co-insured Party on all relevant policies, and must be endorsed by the Underwriters / Insurers to prevent any exercise or rights of subrogation against the College, its other Clients, and/or its employees.
- c) If the Client wishes to self-insure against such risks, details of these arrangements must have first been approved by the College in writing prior to the execution of the Contract.
- d) The Client shall provide sight of original documentation (including cover notes, policies, and premium receipts) and shall provide copies of this documentation to the College. The Client shall notify the College in the event of any change therein, including policy expiry and renewal. The details of such insurance shall be supplied to the College as and when required.
- e) If the Client defaults in insuring, the College may itself effect insurance and charge the cost together with an administrative charge of 5% to the Client.

## 29. Rights of Third Parties

Nothing in this Contract is intended to confer a benefit of any kind on any third party in relation to it, and in particular a person who is not a Party to the Contract may not enforce any of the terms nor object to any variation, and neither shall any person who is not a Party have any rights under the Contracts (Rights of Third Parties) Act 1999 in relation to this Contract. The client shall indemnify the College against all third party claims.

## 30. Dispute Resolution and Arbitration

- a) In the event of any dispute arising from or in connection with the Services or this Contract which cannot be settled by negotiations between the Client and the College within 28 days, either party may serve written notice on the other to request the matter is referred to arbitration, in which case each party shall jointly appoint a sole arbitrator within 28 days in accordance with the terms of the Arbitration Acts 1996.
- b) The seat of arbitration shall be England and the arbitrator's decision shall be final and binding on both parties. Costs shall be in the award of the arbitrator.

## 31. Termination

- a) Without prejudice to any other rights or remedies it may have, the College shall have the right at any time to terminate the Contract forthwith, in whole or in part, and to claim for all resulting losses and expenses if:

- b) Breach of Contract

The Client commits a breach of the Contract and, in the case of such a breach which is capable of remedy, fails to remedy the breach within 7 calendar days (or such longer period as the College may as its option agree in writing) of written notice from the College to do so.

- c) Statutory Health and Safety Regulations

There is any infringement by the Client of any Statutory Health and Safety Regulation.

- d) Insolvency

- I. The Client shall become insolvent or cease to trade or compound with its creditors; or
- II. a bankruptcy petition or order is presented or made against The Client or, where The Client is a partnership, against any such partner, or if a trustee in sequestration is appointed in respect of the assets of The Client or (where applicable) any such partner; or
- III. a receiver or an administration receiver is appointed in respect of any of The Client's assets; or
- IV. a petition for an administration order is presented or such an order is made in relation to The Client; or
- V. a resolution or petition or order to wind up The Client is passed or presented or made or a liquidator is appointed in respect of The Client (otherwise than for reconstruction or amalgamation).

- e) Corruption

- I. The Client has offered, given, agreed to give, received or solicited to or from anyone a bribe, gift, consideration, inducement or reward for doing or not doing anything in relation to the Contract, the delivery of the Service, or
- II. The Client has committed any offence under the Prevention of Corruption Acts 1889-1916, or the Bribery Act 2010
- III. The Client has given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

The College may terminate the Contract if notice has been given to the Client of a substantial or persistent breach of this clause providing that a reasonable period has been given during which the breach may have been rectified and the Client has failed to remedy the breach within the stated period.

The College shall not be liable for any loss to the Client including consequential loss.

### 32. Consequences of Termination

- a) On termination of this Contract for whatsoever reason, the College shall handover to the Client all articles on test and all other property of the Client which may then be in its possession or under its control once any outstanding invoices for the services provided have been settled by the Client.
- b) The College shall if the Client so requires deliver to the Client at the Client's expense any Articles on test which are in preparation and have not yet been tested.
- c) Termination shall not affect any remedies of either party which have accrued prior to the date of termination.

### 33. Force Majeure

- a) For the purpose of the contract the term Force Majeure shall mean:
  - I. War & hostilities (whether war be declared or not) invasion, act of foreign enemies, mobilisation, requisition or embargo
  - II. Rebellion, revolution, insurrection, military or usurped power or civil war.
  - III. Riot, commotion or disorder except where solely restricted to employees of the Client or its nominated sub Clients or sub Clients.
  - IV. Earthquake, flood, fire or other natural physical disaster except to the extent that any such disaster is caused by, or its effects contributed to by, the party claiming Force Majeure.
  - V. A general industrial dispute not limited to the employees of the Client or the employees of any of its sub Clients or sub Clients.
- b) If either party considers that any circumstance of Force Majeure has occurred which may affect materially the performance of its obligations then he shall forthwith notify the other in writing to that effect giving full details of the circumstances giving rise to the Force Majeure event.
- c) Neither party shall be considered to be in default of its obligations under the contract to the extent that it can establish that the performance of such obligations is prevented by any circumstance of Force Majeure which arises after the date of the contract and which was not foreseeable at the date of the contract.
- d) If the performance of the obligations of either party under the contract is so prevented by circumstances of Force Majeure and shall continue to be prevented for a period less than 30 days, then during that period the contract shall be considered as suspended.
- e) Upon the ending of the Force Majeure event, the contractual obligations of the parties shall be reinstated with such reasonable modifications as to take account of the consequences of the Force Majeure event as may be agreed between the parties, or in default of such agreement, as may be determined by an independent arbitrator.
- f) If performance of the obligations of either party under the contract is so prevented by the circumstances of Force Majeure and shall continue to be so prevented for a period in excess of 30 days, then the contract shall be terminated by mutual consent and, subject to the clauses detailed below; neither party shall be liable to the other as a result of such termination. The Client shall pay to the College the value of the services undertaken by the College up to and including the date of termination.

### 34. Waiver

Any failure or delay by the College to insist at any time upon the performance of any of the terms, provisions or undertakings of the Client contained in the Contract, or failure to exercise any rights under the Contract, shall not constitute or be construed as a waiver thereof or a relinquishment of the College's rights to require the future performance of any such term, provision or undertaking, but the obligation of the Client with regard to the same shall continue in full force and effect.

### 35. Law

- a) Nothing in these terms and conditions shall supersede or replace the requirement of compliance with UK legislation and where appropriate, EU Directives in force during the term of the contract together with legislation surviving the issuing of the EC Certificate.
- b) This Contract shall be enforced or construed according to the laws of England and Wales and both parties hereby submit to the exclusive jurisdiction of the courts of England and Wales for the enforcement of this Agreement or any arbitration award or decision arising here from.