

Purchase Order Terms & Conditions of Contract

For the provision of Supplies and Services where no specific terms and conditions of contract have been agreed between New Collaborative Learning Trust ('NCLT') and the Supplier.

1. Interpretation

1.1 Definitions

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 as amended from time to time in accordance with clause 16.7.
Contract:	the contract between the NCLT and the Supplier for the supply of Supplies and/or Services in accordance with these Conditions.
Deliverables:	all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).
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 and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
NCLT:	New Collaborative Learning Trust, Pontefract Road, Normanton Industrial Estate, Normanton, England, WF6 1RN (company number 09257194)
NCLT Materials:	has the meaning set out in clause 5.3(i).
Order:	NCLT's order for the supply of Supplies and/or Services, as set out in NCLT's purchase order form
Services:	the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification.
Service Specification:	the description or specification for Services agreed in writing by NCLT and the Supplier.
Supplier:	the person or firm from whom NCLT purchases the Supplies and/or Services.
Supplies:	the supplies (or any part of them) set out in the Order.
Supplies Specification:	any specification for the Supplies, including any related plans and drawings, that is agreed in writing by NCLT and the Supplier.

1.2 In these Conditions, the following rules apply:

- (a) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a references to a party includes its personal representatives, successors or permitted assigns;
- (c) 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;
- (d) 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
- (e) a reference to writing or written does includes e-mails.

2. Basis of Contract

2.1 The Order constitutes an offer by NCLT to purchase Supplies 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:

- (a) the Supplier issuing written acceptance of the Order; or
- (b) 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, or which are implied by trade, custom, practice, or course of dealing.
- 2.4 All of these Conditions shall apply to the supply of both Supplies and Services except where the application to one or the other is specified.

3. Provision of Supplies

- 3.1 The Supplier shall ensure that:
- (a) the Supplies shall correspond with their description and any applicable Supplies Specification;
 - (b) that the quality of the Supplies is satisfactory (within the meaning of the Consumer Rights Act 2015); fit for all the purposes for which supplies of that kind are usually supplied and all other standards expressly implied by legislation;
 - (c) where applicable, be free from defects in design, materials and workmanship and remain so for (12) months after delivery; and
 - (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling, and delivery of the Supplies.
- 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 Supplies.
- 3.3 NCLT shall have the right to inspect and test the Supplies at any time before delivery.
- 3.4 If following such inspection or testing NCLT considers that the Supplies do not conform or are unlikely to comply with the Supplier's undertakings at clause 3.1, NCLT shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 3.5 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Supplies and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and NCLT shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

4. Delivery of Supplies

- 4.1 The Supplier shall ensure that:
- (a) the Supplies are properly packed and secured in such manner as to enable them to reach their destination in good condition;
 - (b) each delivery of the Supplies is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Supplies (including the code number of the Supplies (where applicable)), special storage instructions (if any) and, if the Supplies are being delivered by instalments, the outstanding balance of Supplies remaining to be delivered; and
 - (c) if the Supplier requires NCLT to return any packaging material for the Supplies to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.
- 4.2 The Supplier shall deliver the Supplies:
- (a) on the date specified in the Order or, if no such date is specified, then within fourteen days of the date of the Order;
 - (b) to NCLT's premises stated in 1.1 or such other location as is set out in the Order or as instructed by NCLT before delivery (Delivery Location);
 - (c) during NCLT's normal hours of business on a Business Day, or as instructed by NCLT.
- 4.3 Delivery of the Supplies shall be completed on the completion of unloading of the Supplies at the Delivery Location.
- 4.4 If the Supplier:
- (a) delivers less than 95 per cent of the quantity of Supplies ordered, NCLT may reject the Supplies; or
 - (b) delivers more than 105 per cent of the quantity of Supplies ordered, NCLT may at its sole discretion reject the Supplies or the excess Supplies,
- and any rejected Supplies shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Supplies ordered, and NCLT accepts the delivery, a pro rata adjustment shall be made to the invoice for the Supplies.
- 4.5 The Supplier shall not deliver the Supplies in instalments without NCLT's prior written consent. Where it is agreed that the Supplies are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle NCLT to the remedies set out in clause 6.1.
- 4.6 Title and risk in the Supplies shall pass to NCLT on completion of delivery.

5. Provision of Services

- 5.1 The Supplier shall from the Commencement Date, or the date set out in the Order and for the duration of this Contract provide the Services to NCLT 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 NCLT.
- 5.3 In providing the Services, the Supplier shall:
- (a) co-operate with NCLT in all matters relating to the Services, and comply with all instructions of NCLT;

- (b) perform the Services in accordance with the provisions of the Consumer Rights Act 2015 with reasonable skill, care and diligence and in accordance with best practice in the Supplier's industry, profession or trade;
- (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;
- (d) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by NCLT;
- (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- (f) use the best quality supplies, materials, standards and techniques, and ensure that the Deliverables, and all supplies and materials supplied and used in the Services or transferred to NCLT, will be free from defects in workmanship, installation and design;
- (g) obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
- (h) observe all health and safety rules and regulations and any other security requirements that apply at any of NCLT's premises;
- (i) hold all materials, equipment and tools, drawings, specifications and data supplied by NCLT to the Supplier (NCLT Materials) in safe custody at its own risk, maintain NCLT Materials in good condition until returned to NCLT, and not dispose or use NCLT Materials other than in accordance with NCLT's written instructions or authorisation;
- (j) not do or omit to do anything which may cause NCLT to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that NCLT may rely or act on the Services; and

6. NCLT Remedies

- 6.1 If the Supplier fails to deliver the Supplies and/or perform the Services by the applicable date, NCLT shall, without limiting its other rights or remedies, have one or more of the following rights:
- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - (b) to refuse to accept any subsequent performance of the Services and/or delivery of the Supplies which the Supplier attempts to make;
 - (c) to recover from the Supplier any costs incurred by NCLT in obtaining substitute supplies and/or services from a third party;
 - (d) where NCLT has paid in advance for Services that have not been provided by the Supplier and/or Supplies which have not been delivered by the Supplier, to have such sums refunded by the Supplier; and
 - (e) to claim damages for any additional costs, loss or expenses incurred by NCLT which are in any way attributable to the Supplier's failure to meet such dates.
- 6.2 If the Supplier has delivered Supplies that do not comply with the undertakings set out in clause 3.1, then, without limiting its other rights or remedies, NCLT shall have one or more of the following rights, whether or not it has accepted the Supplies:
- (a) to reject the Supplies (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;
 - (b) to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - (c) to require the Supplier to repair or replace the rejected Supplies, or to provide a full refund of the price of the rejected Supplies (if paid);
 - (d) to refuse to accept any subsequent delivery of the Supplies which the Supplier attempts to make;
 - (e) to recover from the Supplier any expenditure incurred by NCLT in obtaining substitute supplies from a third party; and
 - (f) to claim damages for any additional costs, loss or expenses incurred by NCLT arising from the Supplier's failure to supply Supplies in accordance with clause 3.1.
- 6.3 These Conditions shall extend to any substituted or remedial services and/or repaired, or replacement Supplies supplied by the Supplier.
- 6.4 NCLT's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

7. NCLT's Obligations

- 7.1 NCLT shall:
- (a) provide the Supplier with reasonable access at reasonable times to NCLT's premises for the purpose of providing the Services; and
 - (b) provide such information as the Supplier may reasonably request for the provision of the Services and NCLT considers reasonably necessary for the purpose of providing the Services.

8. Payment

- 8.1 The price for the Supplies:

- (a) 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
 - (b) shall be inclusive of the costs of packaging, insurance and carriage of the Supplies, unless otherwise agreed in writing by NCLT. No extra charges shall be effective unless agreed in writing and signed by NCLT.
- 8.2 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. Unless otherwise agreed in writing by NCLT, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 8.3 In respect of Supplies, the Supplier shall invoice NCLT on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice NCLT on completion of the Services. Each invoice shall include such supporting information required by NCLT to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.
- 8.4 In consideration of the supply of Supplies and/or Services by the Supplier, NCLT shall pay the invoiced amounts on the 15th of the following month from the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.
- 8.5 All amounts payable by NCLT under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to NCLT, NCLT shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Supplies and/or Services at the same time as payment is due for the supply of the Supplies and/or Services.
- 8.6 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 four (4)% per annum above the Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments that the defaulting party disputes in good faith.
- 8.7 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow NCLT to inspect such records at all reasonable times on request.
- 8.8 NCLT may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to NCLT against any liability of NCLT to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.

9. Intellectual Property Rights

- 9.1 In respect of the Supplies and any supplies that are transferred to NCLT 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 NCLT, it will have full and unrestricted rights to sell and transfer all such items to NCLT.
- 9.2 The Supplier assigns to NCLT, 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.
- 9.3 The Supplier shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Deliverables, of the Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- 9.4 The Supplier shall, promptly at NCLT's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as NCLT may from time to time require for the purpose of securing for NCLT the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to NCLT in accordance with clause 9.2.
- 9.5 All NCLT Materials are the exclusive property of NCLT.

10. Indemnity

- 10.1 The Supplier shall keep NCLT 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 incurred by NCLT as a result of or in connection with:
 - (a) any claim made against NCLT 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 Supplies, 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;
 - (b) any claim made against NCLT by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Supplies, to the extent that the defects in the Supplies are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and
 - (c) any claim made against NCLT by a third party arising out of or in connection with the supply of the Supplies 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.
- 10.2 This clause 10 shall survive termination of the Contract.

11. Insurance

- 11.1 During the term of the Contract and for a period of six (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, and shall, on NCLT'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.

12. Confidentiality

- 12.1 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 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.
- 12.2 This clause 12 shall survive termination of the Contract.

13. Termination

- 13.1 Without limiting its other rights or remedies, NCLT may terminate the Contract:
- (a) in respect of the supply of Services, by giving the Supplier one (1) month's written notice; and
 - (b) in respect of the supply of Supplies, 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. NCLT shall pay the Supplier fair and reasonable compensation for any work in progress on the Supplies 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, the Supplier may terminate the Contract by giving NCLT one month's written notice.
- 13.3 In any of the circumstances in these Conditions in which a party may terminate the Contract, where both Supplies and Services are supplied, that party may terminate the Contract in respect of the Supplies, or in respect of the Services, and the Contract shall continue in respect of the remaining supply.
- 13.4 Without limiting its other rights or remedies, NCLT may terminate the Contract with immediate effect by giving written notice to the Supplier if:
- (a) the Supplier commits a material breach of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within fourteen (14) days of receipt of notice in writing to do so;
 - (b) the Supplier 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;
 - (c) the Supplier 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;
 - (d) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
 - (e) 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 Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
 - (f) the Supplier (being an individual) is the subject of a bankruptcy petition or order;
 - (g) a creditor or encumbrancer of the Supplier 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 fourteen(14) days;
 - (h) 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 the Supplier (being a company);
 - (i) the holder of a floating charge over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;

- (j) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
 - (k) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.4(c) to clause 13.4(j) (inclusive);
 - (l) the Supplier suspends or ceases, or threatens to suspend, or cease, to carry on all or a substantial part of its business; or
 - (m) the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 13.5 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.
- 13.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 14. Consequences of Termination**
- 14.1 On termination of the Contract for any reason, the Supplier shall immediately deliver to NCLT all Deliverables whether or not then complete and return all NCLT Materials. If the Supplier fails to do so, then NCLT may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
- 15. Force Majeure**
- 15.1 Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such a delay or failure result from an event, circumstances or cause beyond its reasonable control (Force Majeure Event).
- 15.2 The Supplier shall use all reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of its obligations.
- 15.3 If a Force Majeure Event prevents, hinders, or delays the Supplier's performance of its obligations for a continuous period of more than twenty (20) Business Days, NCLT may terminate the Contract immediately by giving written notice to the Supplier.
- 16. General**
- 16.1 Assignment and other dealings.
- (a) NCLT may at any time assign, transfer, mortgage, charge, subcontract, or deal in any other manner with all or any of its rights or obligations under the Contract.
 - (b) The Supplier may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of NCLT.
- 16.2 Notices.
- (a) 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 in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier.
 - (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 16.2(a); 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.
 - (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 16.3 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.
- 16.4 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. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 16.5 No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 16.6 Third parties. A person who is not a party to the Contract shall not have any rights to enforce its terms.

- 16.7 Variation. Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by NCLT.
- 16.8 Governing law. 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.
- 16.9 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).