

## **1. Interpretation**

### 1.1. In these Conditions:

"Conditions" means the standard terms and conditions of purchase set out in this document, and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the parties;

"Contract" means the contract for the purchase of the Goods and/or the supply of the Services;

"Council" means Tonbridge and Malling Borough Council;

"Council's Whistleblowing Policy" means the Council's policy in relation to whistleblowing in force from time to time.

"Delivery Address" means the address stated on the Purchase Order;

"Goods" means the goods (including any instalment of the goods or any part of them) described in the Purchase Order;

"Price" means the price of the Goods and/or the charge for the Services;

"Provider" means the entity who is responsible for providing the Goods and/or the Services as stated in the Purchase Order;

"Purchase Order" means the Council's purchase order on the back of which are these Conditions, or in relation to an electronic purchase order, the Council's purchase order to which these Conditions are annexed;

"Services" means the services (including any part of them) described in the Purchase Order;

"Specification" includes any plans, drawings, data or other information relating to the Goods and/or the Services.

"Works" means all records, reports, documents, papers, drawings, designs, transparencies, photos, graphics, logos, typographical arrangements, software, invention, idea, discovery, development, improvement or innovation and all other materials in whatever form, including but not limited to hard copy and electronic form, prepared by the Provider in the provision of the Goods and/or Services.

1.2. Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

1.3. The headings in these Conditions are for convenience only and shall not affect their interpretation.

## **2. Basis of Purchase**

2.1. This Purchase Order constitutes an offer by the Council to purchase the Goods and/or the Services subject to these Conditions.

2.2. These Conditions shall apply to the Contract to the exclusion of any other terms and conditions which the Provider has sought to or subsequently seeks to impose on the Council.

2.3. No variation to the Purchase Order or these Conditions shall be binding unless agreed in writing between the authorised representatives of the parties.

2.4. Notwithstanding any other term of this Purchase order, the Provider hereby gives its consent for the Council to publish this Purchase Order or any invoice generated in respect of the supply in its entirety and/or the information provided in it or any document referred to in it to the general public in whatever form the Council decides including any subsequent amendments which are made to it.

### **3. Specification**

3.1. The quantity, quality and description of the Goods and/or the Services shall, subject as provided in these Conditions, be specified in the Purchase Order and/or in any applicable Specification supplied by the Council to the Provider.

3.2. The Provider shall comply with all applicable regulations and/or other legal requirements concerning the manufacture, packaging, and delivery of the Goods and/or performance of the Services.

3.3. The Provider shall not unreasonably refuse any request by the Council to inspect and test the Goods during manufacture, processing, or storage at the premises of the Provider (or any third party) prior to dispatch, and the Provider shall provide the Council with all facilities reasonably required for inspection and testing.

3.4. If as a result of inspection or testing carried out in accordance with Condition 3.3, the Council is not satisfied that the Goods will comply in all respects with the Contract, the Provider shall take such steps as are necessary to ensure compliance.

### **4. Price and Payment**

4.1. The Price of the Goods and/or the Services shall be as stated in the Purchase Order and, unless stated otherwise, shall be inclusive of all charges for packaging, shipping, carriage, insurance and delivery of the Goods to the Delivery Address, and any duties or levies other than Value Added Tax.

4.2. No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Council in writing.

4.3. The Council shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Provider, whether or not shown in its own terms and conditions of sale.

4.4. The Provider's official invoice should be sent promptly to the Council after delivery of the Goods and/or the Services, as the case may be, to the address indicated on front of the Purchase Order, unless otherwise instructed and must show:

4.4.1. the Council's Purchase Order number;

4.4.2. an Invoice number;

4.4.3. a full description of the Good and/or the Works and/or the Services;

4.4.4. full details of prices;

4.4.5. any discount allowed;

4.4.6. current VAT requirements; and

4.4.7. Officer contact details where known.

4.5. The payment of the Price will be made within 30 days of receipt of a correct invoice after payment has become due which will occur upon confirmation by an officer of the

Council that the Goods and/or the Services have been provided to the Council's satisfaction, unless the Provider's credit terms are less onerous on the Council than this, in which case the Provider's credit terms will apply.

4.6.If the Council allows the Provider to sub-contract the supply hereunder all sub-contractors shall be paid promptly all monies due under the terms of its sub-contract and in any event within 30 days of the due date for payment by the Provider. All sub-contracts must contain a similar provision so that the sub-contractor is required to pay his own sub-contractors promptly and in any event within 30 days of the due date for payment.

4.7.The Council shall be entitled to set-off against any invoice, any amount due from the Provider under this Purchase Order or under any other contractual arrangement.

4.8.Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly extra charge. All invoices containing Value Added Tax must conform to the requirements of HM Revenue and Customs.

## **5.Delivery**

5.1.The Goods shall be delivered to and/or the Services shall be performed at the Delivery Address on the date or within the period specified in the Purchase Order, in either case during the Council's business hours.

5.2.Where the date of delivery of the Goods and/or performance of the Services is to be specified after the placing of the Purchase Order, the Provider shall give the Council reasonable notice of the specified date.

5.3.A delivery note which specifies the number of the Purchase Order shall accompany each delivery or consignment of the Goods, and must be displayed prominently.

5.4.If the Goods are to be delivered and/or the Services are to be performed by instalments, the Contract will be treated as a single contract and will not be severable.

5.5.The Council shall be entitled to reject any Goods delivered which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods until the Council has had reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.

5.6.The Provider shall supply the Council in good time with any instructions or other information required to enable the Council to accept delivery of the Goods and/or performance of the Services.

5.7.The Council shall not be required to return to the Provider any packaging or packaging materials for the Goods, whether or not the Goods are accepted by the Council.

5.8.If the Goods are not delivered and/or the Services are not performed on the due date then, without prejudice to any other remedy, the Council shall be entitled to deduct from the Price or, if the Council has already paid the Price, to claim from the Provider an amount equal to the additional costs incurred by the Council as a result of the delay.

5.9.Risk of damage to or loss of the Goods shall pass to the Council upon delivery to the Council in accordance with the Contract.

5.10.The property in the Goods shall pass to the Council upon delivery, unless payment for the Goods is made prior to delivery, where it shall pass to the Council once payment has been made and the Goods have been appropriated to the Contract.

## **6.Quality Assurance**

6.1. The Provider shall operate a self-regulatory system of quality assurance and quality measures relating to the Contract in addition to any quality requirements in the Specification which ensures that the Goods and/or Services are provided in accordance with the requirements of the Contract and as part of this requirement, the Provider shall check that information, data or software supplied pursuant to the Contract is fit for the purpose for which the Council intends to use it.

## **7. Warranties and Liability**

7.1. The Provider warrants to the Council that the Goods will:

7.1.1. be of sound materials and first class workmanship;

7.1.2. be equal in all respects to the samples, patterns, description or specification provided or given by either party;

7.1.3. if the purpose for which they are required is indicated in the Purchase Order or otherwise, either expressly or by implication, be fit for that purpose;

7.1.4. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979);

7.1.5. be free from defects in design, material and workmanship; and

7.1.6. comply with all statutory requirements and regulations relating to the sale of the Goods.

7.2. The Provider warrants to the Council that the Services will be performed by appropriately trained and qualified personnel, with due care and diligence, and to the standards which would reasonably be expected from a skilled and experienced provider engaged in the provision of services similar to the Services under the same or similar circumstances.

7.3. Subject to clause 7.4 below the Provider will indemnify the Council in full against the following:

7.4. all loss, liability, damages, costs, expenses (including legal expenses) or injury whatsoever and whenever arising caused to the Council, or for which the Council may be liable to third parties due to defective workmanship or unsound quality of the Goods and/or the Services supplied;

7.5. all claims in respect of death or injury, howsoever caused, to any of the employees, or those of the agent or sub-contractors, of the Provider, while in or about the Council's sites, works or other places of business;

7.6. any consequential loss or damage sustained by the Council for which the Council may be liable, as a result of the failure of the Provider to supply the materials or perform the work in accordance with the terms of this Purchase Order.

7.7. Nothing in these terms and conditions shall operate to limit or exclude either party's liability to the other for fraud or death or personal injury caused by the defaulting party's negligence or any of their employees or agents or for any other matter in respect of which liability cannot lawfully be limited or excluded.

7.8. The Provider having given the abovementioned indemnity shall accordingly maintain in force during the term of the Contract full and comprehensive insurance as appropriate in respect of the provision of the Goods and/or Services such insurance to be with reputable insurers acceptable to the Council acting reasonably.

7.9. Without prejudice to any other remedy, if any of the Goods and/or Services are not supplied or performed in accordance with the Contract, then the Buyer shall be entitled:

7.9.1. to require the Provider to repair the Goods or to supply replacement Goods and/or Services in compliance with the Contract within 7 days; or

7.9.2. at the Council's sole option and whether or not the Council has previously required the Provider to repair the Goods or to supply any replacement Goods and/or Services, to treat the Contract as discharged by the Provider's breach and require repayment of any part of the Price which has been paid.

## **8. Termination**

8.1. The Council shall be entitled to cancel the Contract in respect of all or part only of the Goods and/or the Services by giving notice to the Provider at any time prior to delivery or performance, in which event the Council's sole liability shall be to pay the Provider the Price for the Goods and/or the Services in respect of which the Council has exercised its rights of cancellation, less the Provider's net saving of cost arising from the cancellation.

8.2. The Council shall be entitled to terminate the Contract without liability to the Provider by giving notice to the Provider at any time if:

8.2.1. the Provider makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or

8.2.2. an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Provider; or

8.2.3. the Provider ceases, or threatens to cease to carry on business; or

8.2.4. the Provider does anything improper to influence the Council to give the Provider any contract or commits an offence under the Bribery Act 2010 or to improperly influence an officer under Section 117(2) of the Local Government Act 1972; or

8.2.5. the Council reasonably believes that any of the events mentioned above is about to occur in relation to Provider and notifies the Provider immediately.

8.3. For the avoidance of doubt, where the Council terminates the Contract in accordance with the provisions of Condition 8.2, the Provider shall compensate the Council for any losses suffered as a result of this.

## **9. General**

9.1. The Provider shall be prohibited from transferring, assigning or sub-letting, directly or indirectly, to any person or persons whatever, the whole or any portion of this Contract without the written permission of the Council.

9.2. Any notice required or permitted to be given by either party to the other party under these Conditions shall be in writing addressed to that other party.

9.3. No waiver by the Council of any breach of the Contract by the Provider shall be considered as a waiver of any subsequent breach of the same or any other provision.

9.4. If any provision of these Conditions is held 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.

9.5. The Provider shall use all reasonable efforts to assist the Council to comply with such obligations as are imposed on the Council by the Freedom of Information Act 2000 ("the 2000 Act") and the Environmental Information Regulations 2004 ("the 2004 Regulations") including providing the Council with reasonable assistance in complying with any request for information in connection with the Goods and/or Services served on the Council under the 2000 Act or the 2004 Regulations and processing information provided by the Council in accordance with a record management system which complies with the Lord Chancellor's records management recommendations and code of conduct under section 46 of the 2000 Act.

9.6. The Provider shall not issue any press release or make any public statement concerning the Council, its employees, agents, councillors, the Goods and/or Services without the prior written consent of the Council.

9.7. The Provider shall ensure that its employees and agents are made aware of the Council's Whistleblowing Policy and that the details of this policy are fully explained to them, and the Provider shall provide the Council with evidence of doing so upon request.

9.8. The Provider shall, and shall use reasonable endeavours to ensure that its employees, agents and subcontractors shall, at all times, act in a way which is compatible with the Convention Rights within the meaning of Section 1 of the Human Rights Act 1998.

9.9. The Provider agrees to comply with its social responsibilities as follows:

9.10. The Provider shall not discriminate directly or indirectly, or by way of victimisation or harassment, against any person with respect to opportunity for employment or conditions of employment on grounds of age, colour, race, nationality, or ethnic or national origins, disability, gender, sexual orientation, marital status (including civil partnership), pregnancy or maternity, gender re-assignment or religion or belief.

9.11. The Provider shall in all matters relating to the performance of this Agreement and any services provided hereunder comply with the provisions of the Employment Equality (Age) regulations 2006 and the Equality Act 2010 and any regulations made thereunder and any amendment or re-enactment thereof from time to time and shall in so doing seek to make the services as accessible as possible to all persons.

9.12. Acceptance of this Purchase Order will be deemed to bind the Provider to these Conditions and no Goods and/or Services shall be supplied or performed by the Provider, its employees, agents or representatives, except in accordance therewith.

9.13. These Conditions and the Purchase Order constitute the entire understanding between the parties relating to the subject matter of the Contract and, save as may be expressly referred to or referenced herein, supersede all prior representations, writings, negotiations or understandings with respect hereto, except in respect of any fraudulent misrepresentation made by either party.

9.14. Save for the Parties, no person shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the terms of this Purchase Order and/or these Conditions.

9.15. The Parties agree to submit to the jurisdiction of the English courts and agree that the Contract is to be governed and construed according to English law.