

Winchester City Council

TERMS AND CONDITIONS FOR SUPPLY OF GOODS AND SERVICES

1. DEFINITIONS

“**Authority**” means Winchester City Council and where the context permits, reference to the Authority in these Terms and Conditions shall include reference to an employee of the Authority.

“**Authority’s Representative**” means the person appointed by the Authority to oversee the performance.

“**Goods**” means the goods (if any) described in the Purchase Order.

“**Contract**” means the contract between the Authority and the Supplier for the supply of the Goods and Services in accordance with these Terms and Conditions for the Price.

“**Order Number**” means the unique number that appears on the Purchase Order.

“**Parties**” means the Authority and the Supplier.

“**Premises**” means any land or building where the Services are to be performed specified in the Purchase Order.

“**Price**” means the price payable under the Contract for the Goods and Services, such price to be calculated on the basis set out in the Purchase Order or (in the absence of any details therein) on the Supplier’s published prices and rates less any specified discount.

“**Purchase Order**” means an order for the purchase of goods served by the Authority on the Supplier which includes a description of the goods, the price and any terms applying to the purchase of the goods which are additional to these Terms and Conditions.

“**Services**” means the services (if any) described in the Purchaser Order.

“**Supplier**” means the person, firm or company whose name appears as the addressee in the Purchase Order.

“**Terms and Conditions**” means these terms and conditions.

2. GENERAL

2.1 These Terms and Conditions together with the relevant Purchase Order, any specifications and plans provided by the Authority and any specific guarantee arrangements applying to the Goods constitute the contract between the Parties for the supply of the Goods (“the Contract”).

2.2 In the event of any conflict between a clause in these Terms and Conditions and a term of the Purchase Order, the term of the Purchase Order shall prevail.

2.3 The Contract constitutes the entire agreement between the parties relating to the supply of the Goods and Services and replaces all previous negotiations, agreements, understandings and

representations whether oral or in writing. However nothing in the Contract shall limit or exclude any liability for fraud.

2. THE GOODS

Where the Purchase Order includes the provision of Goods:

3.1 The Supplier shall supply the Goods and Services in accordance with the Purchase Order.

3.2 The Goods shall:

- a). be to the reasonable satisfaction of the Authority;
- b). be fit and sufficient for all purposes for which such Goods are generally used and for any specific purpose made known to the Supplier by the Authority;
- c). be of the same quality and description as any sample provided;
- d). comply with any requirements or specifications given on the Purchase Order.

Where the Purchase Order includes the provision of Services:

3.3 The Supplier shall perform the Services:

- a. with reasonable care and diligence;
- b. in accordance with industry best practice and using the best available techniques and standards;
- c. using staff that have appropriate skills, qualifications and experience;
- d. using the appropriate number of staff; and
- e. to the reasonable satisfaction of the Authority's Representative.

3.4 The Contractor shall provide all plant, equipment and materials necessary for the performance of the Services except as otherwise agreed with the Authority. All plant, equipment and materials shall be at the Contractor's risk. The Price shall include the costs of haulage of plant, equipment and material to the Authority's Premises and their removal after the Services are complete.

3.5 The Contractor shall not place or cause to be placed any orders with third parties or otherwise incur any liabilities to third parties in the name of the Authority without the prior written consent of the Authority's Representative.

3. DELIVERY AND PERFORMANCE

Where the Purchase Order includes the provision of Goods:

4.1 The Supplier shall deliver the Goods to the address for delivery given in the Purchase Order.

4.2 Where the Supplier requires access to the Authority's premises in order to deliver the Goods:

- a). the Supplier shall agree delivery times with the Authority in advance (unless the Authority agrees otherwise);
- b). the Supplier shall comply with any rules or security requirements applied by the Authority in relation to access to its premises.

4.3 Except where otherwise agreed by the Authority, delivery of the Goods shall include unloading the Goods at such place and in such manner as the Authority shall reasonably direct.

4.4 The Supplier shall deliver the Goods on or (where the Authority agrees) before the date or dates given in the Purchase Order. Unless the Purchase Order provides otherwise, the time of delivery is of the essence in this Contract and any failure to deliver the Goods by the date (or at the time) given in the Purchase Order shall entitle the Authority to give the Supplier notice terminating the Contract with immediate effect.

Where the Purchase Order includes the provision of Services:

4.5 The Contractor shall carry out the Services for the period and/or in accordance with the timescales set out in the Purchase Order. In the event that the Purchase Order does not specify any timescales, the Contractor shall comply with any reasonable timescales notified by the Authority.

4.6 The Authority may by written notice require the Contractor to execute the Services in such order as the Authority may reasonably decide. In the absence of such notice the Contractor shall submit such detailed programmes of work and progress reports as the Authority may from time to time require.

4.7 The Contractor shall notify the Authority immediately if it becomes aware of any event that it believes is likely to delay or impede the performance of the Services.

4.8 In the event that the Contractor fails to meet a date or dates set out in the Purchase Order it shall, on the request of the Authority, and without prejudice to the Authority's other rights and remedies, arrange to provide all such additional resources as are necessary to fulfill its obligations at no additional cost to the Authority.

4.9 The Authority may at any time reject the Services or anything delivered as part of the Services which in the reasonable view of the Authority does not comply with the Purchase Order or these Terms and Conditions in any material way.

4.10 If the Authority rejects all or part of the Services under Condition 4.9 above, it shall serve a notice on the Contractor stating the reasons for such rejection.

4.11 Following receipt of a notice of rejection of the Services, the Contractor shall have 5 (five) working days (or such other period as the Parties may agree in writing) during which the Contractor shall correct the faults which caused the notice of rejection to be issued.

4.12 If the Contractor fails to correct the faults which caused the notice of rejection to be issued to the reasonable satisfaction of the Authority within 5 (five) working days, the Authority shall be entitled to terminate this Contract or any part of the Services.

4.13 The Contractor shall remove and/or re-execute (at the choice of the Authority) any work that has been rejected by the Authority.

4.14 The Authority may require the immediate removal from its premises of anything delivered by the Contractor which, in the reasonable view of the Authority, is hazardous or noxious. The Contractor shall comply with any such request at its own expense.

4.15 The Contractor shall keep the Premises reasonably clean and tidy while the Services are being performed and shall leave them clean and tidy on completion.

4.16 The Contractor shall pay the costs of making good any damage to the Premises (and any fixtures and fittings of the Premises) done by its employees, agents or sub-contractors other than fair wear and tear.

4.17 The Contractor shall occupy the Premises as a licensee.

4. PROPERTY AND RISK

Without prejudice to the Authority's other rights and remedies under this Contract, property and risk in the Goods shall pass to the Authority on acceptance of delivery.

6. DAMAGE TO GOODS IN TRANSIT

6.1 Any consignment of Goods dispatched by the Supplier for delivery to the Authority shall be accompanied by a delivery note prepared by the Supplier marked with the order number from the Purchase Order. Where applicable, the delivery note shall also specify the means of transport, the place and date of delivery, the number of packages, the content of the packages, the weight and volume of the packages and whether or not the packaging must be returned to the Supplier.

6.2 Where some or all of the Goods have been damaged in transit (or have failed to arrive at the Authority after dispatch by the Supplier) the Supplier shall either repair or replace the Goods in question (at the choice of the Authority) provided always that:

- a). in the case of damage in transit the Authority has informed the Supplier of the damage within 30 days of receiving the Goods;
- b). in the case of non-delivery and where the Supplier has notified the Authority of the intended date of delivery, the Authority has informed the Supplier within 10 days of the notified delivery date that the Goods have not been received.

7. INSPECTION, REJECTION AND GUARANTEE

7.1 The Supplier shall permit the Authority to inspect the Goods and shall provide all reasonable assistance to the Authority in undertaking an inspection.

7.2 The Authority shall not be taken to have waived any of its rights under this Contract (and in particular its right to reject the Goods) if it does not carry an inspection or if it approves the Goods following an inspection.

7.3 The Authority may, by written notice to the Supplier, reject any of the Goods which fail to meet the requirements of this Contract provided always that the Authority gives such notice within a reasonable time of receiving the Goods.

7.4 If the Authority rejects any of the Goods pursuant to this clause, it shall be entitled:

- a). to have the Goods concerned either repaired by the Supplier or (at the choice of the Authority) replaced by the Supplier with Goods which comply with this Contract; or
- b). to obtain a refund of any payment it has made to the Supplier.

7.5 Subject to any alternative guarantee arrangements made between the Authority and the Supplier, the guarantee period applicable to the Goods shall be 12 months from the Authority putting the Goods into service or 18 months from delivery (whichever is shorter).

7.6 If, within the guarantee period or within 30 days thereafter, the Authority gives the Supplier written notice of any defect which arose within the guarantee period under proper and normal use of the Goods, the Supplier shall remedy such defect as quickly as possible (whether by repair or replacement, as the Authority shall choose) without cost to the Authority.

7.7 Any Goods rejected or returned to the Supplier shall be returned at the Supplier's expense.

8. LABELLING AND PACKAGING

8.1 The Goods shall be appropriately packaged and clearly labelled. The labelling and packaging shall comply with any reasonable requirements of the Authority of which the Supplier is aware and with any statutory requirements. In particular, if the packages contain any material which is hazardous, noxious or dangerous this shall be clearly indicated.

8.2 All packaging shall be considered non-returnable and shall be destroyed unless the Supplier indicates in the advice note accompanying the consignment of Goods that the packaging will be charged for unless it is returned. The Authority shall only accept liability for packaging that does not arrive at the Supplier's premises following dispatch by the Authority if the Supplier informs the Authority of its non-arrival within 10 days of receiving notification from the Authority that the packaging has been despatched.

9. INSTALLATION

9.1 Where the Purchase Order requires the Supplier to install the Goods at the Authority's premises:

- a). the Supplier shall make no delivery of plant, materials or equipment and shall not commence any installation work without the prior consent of the Authority;
- b) the Supplier shall carry out the installation work diligently and with reasonable skill and care;
- c) the Supplier shall comply with the Authority's requirements relating to access to and use of its premises and shall co-ordinate its work with any other employee or contractor who is carrying out work for the Authority;
- d) the Supplier shall keep the Authority's premises clean and tidy at all times and shall remove all plant and unused materials when the installation work is complete.

9.2 The Authority shall have the power at any time during any installation works to give notice to the Supplier requiring:

- a). the removal from its premises of any materials which are hazardous or noxious or not in accordance with the Contract;
- b). the substitution of proper and suitable materials; and/or
- c). the removal and re-execution of any installation work or any Goods which are not in accordance with the Contract.

10. PAYMENT

10.1 In consideration of the supply and delivery of the Goods and Services by the Supplier the Authority shall pay the Supplier the Price.

10.2 The Supplier shall submit an invoice for the Goods and Services to the Authority's address for invoices given in the Purchase Order. The invoice shall contain the Order Number given in the

Purchase Order, a full description of the Goods supplied and Services carried out and the Price (showing how the Price has been calculated).

10.3 Save where the Goods or Service have not been delivered or are not in accordance with the Contract, the Authority shall pay the Supplier's invoice within 30 days of receiving and agreeing it.

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10.4 In addition to the Price, the Authority shall (where applicable) pay the Supplier a sum equivalent to any Value Added Tax chargeable on the Goods and Services supplied.

10.5 The Supplier shall implement any legislative requirement to account for goods and services in Euro instead of or as well as Sterling at no cost to the Authority. The Authority shall provide all reasonable assistance to facilitate any such requirement.

11. RECOVERY OF SUMS DUE

If any sum is recoverable from or payable by the Supplier under the Contract, that sum may be deducted from any sum then due or which at a later date becomes due to the Supplier under the Contract or under any other agreement with the Authority.

12. INTELLECTUAL PROPERTY

12.1 Save where the Goods are made up in accordance with a design supplied by the Authority, the Supplier warrants that none of the Goods shall infringe any patent, trade mark, registered design, copyright or other rights in industrial property of any third party.

12.2 The Supplier shall indemnify the Authority against all actions, demands, charges, expenses and costs (including legal costs on a solicitor and client basis) which the Authority may incur as a result of or in connection with any breach of clause 12.1.

13. HEALTH AND SAFETY

13.1 The Supplier warrants and represents that:

- a). it has satisfied itself that all necessary examinations have been made prior to delivery of the Goods to ensure that the Goods are designed and constructed so that they can be used without risk to health and safety and
- b). that it has made available to the Authority adequate information about any conditions necessary to ensure the Goods can be used safely and without risk to health.

13.2 The Supplier shall indemnify the Authority against all actions, demands, charges, expenses and costs (including legal costs on a solicitor and client basis) which the Authority may incur as a result of or in connection with any breach of clause 13.1.

13.3 The Supplier shall notify the Authority of any health and safety hazards that may arise in connection with the performance of this Contract.

13.4 The Authority shall notify the Supplier of any health and safety hazards which may exist or arise at its premises and which may affect the Supplier. The Supplier shall draw these hazards to the attention of any of its employees, subcontractors or agents who may be affected by them and instruct such persons in connection with any necessary safety measures.

14. CONFIDENTIALITY

The Supplier undertakes to keep secret and not to disclose and to procure that its employees, sub-contractors and agents keep secret and do not disclose any information of a confidential nature which it has obtained by reason of this Contract. Nothing in this clause applies to information that is already in the public domain or the possession of the Supplier other than by reason of breach of this clause. The Authority may publish information in respect of payments made to suppliers in accordance with any government guidance or legislation.

15. ENVIRONMENTAL MATTERS

15.1 The Supplier confirms that:

- a) the process used in the manufacture of the Goods relied on minimal use of ozone depleting substances, toxic chemicals and other pollutants including lead, methyl chloroform and formaldehyde;
- b) that minimal dependence has been made on non-renewable natural resources such as non-sustainably produced hardwoods;
- c) in the manufacture of the Goods and in the choice of any packaging for the Goods, it has given preference to Goods that have maximum recyclability or, where cost effective recycling is impracticable, maximum biodegradability.

16. INDEMNITY AND INSURANCE

16.1 Without prejudice to any rights or remedies of the Authority the Supplier shall indemnify the Authority against all actions, demands, losses, expenses and costs (including legal costs on a solicitor and client basis) which the Authority may suffer or incur as a result of or in connection with any damage to property or any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any defect in the Goods or any negligence or breach of this Contract by the Supplier.

16.2 The Supplier warrants that it has in place with a reputable insurance company a policy or policies of insurance covering all the indemnities under this Contract. At the request of the Authority the Supplier shall produce the relevant policy of insurance together with evidence of payment of its latest premium.

17. CHANGE CONTROL

17.1 There shall be no change to the amount of or description of the Goods or Services or the Price unless the Authority has issued a variation order varying the Purchase Order, or a new purchase order in substitution for the Purchase Order. These Terms and Conditions shall apply to any variation or new purchase order and the new/varied purchase order shall become "the Purchase Order" for the purpose of this Contract from the moment it is received by the Supplier.

17.2 This Contract may not be varied or amended unless the variation or amendment is in writing and agreed by both the Authority and the Supplier.

18. ASSIGNMENT OR SUB-CONTRACTING

18.1 The Supplier shall not assign this Contract without the written consent of the Authority.

18.2 No sub-contracting of this Contract shall in any way relieve the Supplier of its obligations under the Contract.

18.3 Where the Supplier enters a sub-contract with a supplier or contractor for the purpose of performing this Contract it shall ensure that the sub-contract has a term requiring the Supplier to pay the supplier or contractor within 30 days of receipt of a valid invoice.

19. RIGHTS OF THIRD PARTIES

This Contract shall not create any rights which are enforceable by anyone other than the Parties.

20. TERMINATION

Without prejudice to any other rights or remedies of the Authority under this Order the Authority shall have the right forthwith to terminate this Order by written notice to the Supplier or his trustee in bankruptcy or receiver or (if a company) its liquidator or administrator, if the Supplier shall have a receiver appointed over all or a substantial part of his or its assets or (if an individual) be declared bankrupt or (if a company) shall go into liquidation or have an administrator appointed to manage its affairs.

21. NOTICES

21.1 Any notice or other communication given under or pursuant to this Contract must be given in writing and must be delivered in person or sent by post. Communications must be sent to the address for communications given in the Purchase Order (which may be altered at any time by the altering Party giving the other Party 15 days notice of a changed address). Communications to the Authority must be sent to its address given for the buyer contact on the Purchase Order and not its address for invoices.

21.2 A notice or communication shall be deemed to have been received 2 working days after posting in the case of first class delivery and 4 working days after posting in the case of second class delivery unless the receiving party proves otherwise.

22. GOVERNING LAW

Unless the Purchase Order specifies otherwise, this Contract shall be governed by and construed in accordance with the law of England and Wales and shall be subject to the exclusive jurisdiction of the courts of England and Wales.

23. BRIBERY AND CORRUPTION

The Authority may cancel the contract and recover from the Supplier the amount of any loss resulting from such cancellation:

23.1 If the Supplier shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for so doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the contract or any other contract, with the Authority or for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Authority; or

23.2 If the like acts shall have been done by any person in the employ or on behalf of the Supplier (whether with or without the Supplier's knowledge; or

23.3 If in relation to any contract with the Authority the Supplier or any person in the employ of or acting on the Supplier's behalf shall have committed any offence under the Bribery Act 2010, the Prevention of Corruption Acts, 1889 to 1916, or shall have given any fee or reward the receipt of which is an offence under Section 117 of the Local Government Act 1972.