

## Terms and Conditions

### 1 DEFINITIONS AND INTERPRETATION

1.1 “**Authorised Officer**” means the Council’s officer set out in the Contract or where not so specified the contact name on the Order.

“**Completion Date**” means the completion date set out in the Contract or where not so specified the Delivery Date.

“**Contract**” means the agreement to which these Terms apply.

“**Contract Period**” means from the Start Date until the Completion Date

“**Contract Price**” the price set out in the Contract or where not so specified the price on the Order.

“**Council**” means Huntingdonshire District Council.

“**Delivery Date**” means the delivery date set out in the Contract or where not so specified the date required on the Order.

“**Goods**” means the items (if any) which are subject to the Contract.

“**Guarantee Period**” the guarantee period as set out in the Contract or where not so specified for a period of 12 months from the Delivery Date or Completion Date whichever is later.

“**Order**” means an order on the Council’s printed form or by telephone (quoting a Council Procurement card number) or in any standard electronic form that the Council may use from time to time.

“**Payment Date**” means the payment details set out in the Contract or where not so specified the Completion Date.

“**Services**” mean the jobs or tasks (if any) which are subject to the Contract.

“**Site**” means the site or sites set out in the Contract or where not so specified the delivery address on the Order.

“**Start Date**” means the start date set out in the Contract or where not so specified the date the Supplier received the Order.

“**Supplier**” means the person, firm or company with whom the Council makes the Contract.

“**Supply**” means the Goods and or Services as described in the Contract.

**“Terms”** means these contract terms.

1.2 The headings to the Terms shall not affect their interpretation. The singular includes the plural; one gender includes all others.

1.3 Any reference to statutory provisions shall include a reference to the statute or statutory provisions as from time to time amended, extended, modified or re-enacted.

## **2 OFFER AND ACCEPTANCE**

2.1 Subject to clause 2.2 below, the Contract shall comprise of these Terms, the Order (if any) and any specific terms, conditions and specifications set out in the Order or which are expressly agreed in writing in any other duly signed contractual documentation. Such specific terms, conditions and specifications may expressly exclude, vary or supplement any of these Terms. In the event of any conflict between such specific terms, conditions and specifications and these Terms the former shall prevail.

2.2 These terms shall prevail over the Suppliers terms and the Council shall not be bound by any standard terms provided by the supplier unless the Supplier specifically states in writing separately from such terms that it intends such terms to apply and the Council expressly acknowledges in writing that such terms will apply.

## **3 QUALITY AND DESCRIPTION**

3.1 The Supply shall be to the reasonable satisfaction of the Authorised Officer and shall without limitation conform with and fulfil in all respects:-

- the Contract;
- the requirements of any relevant UK or EC statute, order, regulation, directives, standard, code of practice or bye-law from time to time in force which is relevant to the Supply;
- any recommendation or representation made by the Supplier;
- be of sound materials and workmanship;
- be fit for purpose for which they are supplied under the Contract and
- be of high professional standards and carried out with all reasonable care and skill which might reasonably be expected within the relevant industry or sector.

3.2 Unless otherwise agreed in writing, neither performance nor functionality of any part of the Supply will be impeded by entry into the European monetary union.

3.3 Unless specifically agreed otherwise, all materials used and Goods are to be new.

## **4 THE CONTRACT PRICE AND INVOICING**

- 4.1 The Payment Date defines when the Contract Price is payable. The Council shall make payment within 30 days after receipt of a correct invoice submitted on or after a Payment Date provided the Supplier has notified in writing details of a valid bank account and provided the Supply complies with the Contract.
- 4.2 The Contract Price shall be net of Value Added Tax.
- 4.3 The Council shall be entitled to set off against any invoice any amount due from the Supplier under the Contract or under any other arrangement.
- 4.4 The Supplier shall provide an e-mail address designated for the purpose of e-commerce and register with the Council's e-commerce system provider and acknowledge purchase orders sent electronically. The Supplier will send invoices electronically using the e-commerce system and quote the Council's purchase order number on any other relevant correspondence.

## **5 DELIVERY AND TIME FOR PERFORMANCE**

- 5.1 Time shall be of the essence. The Authorised Officer must be notified and give prior written consent to any extension of time.
- 5.2 Access to Council premises, facilities or storage by the Supplier shall comply with the reasonable requirements of the Council and shall be at the Supplier's risk.
- 5.3 If either party is unable to make or accept the Supply, because of the following;
- strike, lockout by employees, war or civil commotion
  - cessation or serious interruption of land, sea or air communications or power supplies or
  - exceptionally adverse weather or fire

it shall immediately notify the other party and then the disabled party may decline to make or accept the Supply. The Council shall notify the Supplier within 30 days of the end of that period whether it requires the Supply to be recommenced, varied or cancelled (without further liability to either party). Where the Supply is recommenced the Contract shall be varied to extend the time for completion or delivery of the Supply by the period of disability.

- 5.4 At the completion of the Supply the Supplier shall remove all materials from the Site (unless otherwise instructed) and permanently reinstate any damaged areas or surfaces and leave the Site in a clean condition ready for occupation.

## **6 PROPERTY RISK AND ACCEPTANCE**

- 6.1 Without prejudice to any of the rights or remedies of the Council (including those under Clause 8), property in any Goods shall pass to the Council on actual delivery or where the Goods are to be subject to testing when the Authorised Officer notifies acceptance in writing.
- 6.2 The Council shall not be deemed to have accepted any part of the Goods until after the Council has actually inspected the Goods and ascertained they are in

accordance with the Contract. The Council may reject Goods which are not in accordance with the Contract within a reasonable time after such inspection.

## **7 DESPATCH OF GOODS AND DAMAGE IN TRANSIT**

7.1 The Supplier shall free of charge and as quickly as possible either repair or replace (as the Council shall elect) Goods which fail to arrive or arrive damaged.

## **8 INSPECTION AND REJECTION**

8.1 The Supplier shall assist the Council or his authorised representatives (free of charge) to make any inspections or tests the Council may reasonably require of the Supply at any time prior to acceptance.

8.2 The Council may suspend the Supply in whole or in part without paying compensation if the Authorised Officer is reasonably of the opinion that the Supplier is in breach of Clause 11.

8.3 The Council may reject the Supply in whole or in part before acceptance if it is not completely in accordance with the Contract or becomes so during any Guarantee Period (including without limitation any slight or minor variation) and in such circumstances may, without prejudice to other rights or remedies:-

- have the Supply repaired, re-done or replaced by the Supplier with a supply which complies in all respects with the requirements of the Contract
- require a refund from the Supplier
- make a reasonable deduction from the Contract Price determined by the Authorised Officer

## **9 LABELLING AND PACKAGING**

9.1 The Supplier shall ensure that all prices, quantities, units of measure and the Order number are quoted on all transaction documentation and comply in all respects with those stated in the Contract.

9.2 The contents shall be clearly marked. All containers of hazardous goods (and all relevant documents) shall bear prominent and adequate warnings. Product Data Sheets are required by the Control of Substances Hazardous to Health Regulations 1988 and the Chemicals (Hazard Information and Packaging) Regulations 1993 must be provided (in a form suitable for photocopying).

9.3 Wherever practicable all packaging materials should be recyclable and will be considered non-returnable except where otherwise agreed.

## **10 INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIALITY**

10.1 The Supply shall not infringe the intellectual property rights of any third party.

10.2 All rights (including without limitation ownership and copyright) in any specifications, information, instructions, plans, drawings, patterns, models,

designs or other material furnished to or made available to the Supplier by the Council or obtained by the Supplier in connection with the Contract shall remain vested solely in the Council and shall be kept confidential.

- 10.3 Where the Supplier has access to information about people, it shall ensure that in making the Supply, the provisions of the Data Protection Act 1998 are observed (and also Councils' data protection requirements as notified to the Supplier).
- 10.4 Except for any information which is exempt from disclosure in accordance with the Freedom of Information Act 2000 nothing from the Supplier shall be considered confidential.
- 10.5 Notwithstanding any other term of this Agreement, the Contractor hereby gives its consent to publish the agreement in its entirety.
- 10.6 The intellectual property rights (including without limitation copyright) in any thing arising out of the Supply shall vest in the Council
- 10.6 This clause shall apply both during the Contract and after its termination.

## **11 HEALTH AND SAFETY**

- 11.1 Without prejudice to the generality of Clause 3.1 the Supplier in making the Supply shall have full regard to safety of persons who may be affected in any way and shall comply with the requirements of the Health and Safety at Work Act etc 1974 and its subordinate regulatory framework, and of any other Acts pertaining to the health and safety of persons.
- 11.2 The Supplier shall conduct all necessary tests and examinations prior to delivery of the Supply to ensure that the Supply is designed, constructed and delivered so as to be safe and without risk to the health or safety of persons using them. The Supplier shall give the Council adequate information about the use for which the Supply has been designed and has been tested and about any conditions necessary to ensure that when put to use the Supply will be safe and without risk to health.
- 11.3 Throughout the progress of any Supply, the Supplier shall keep the Site in an orderly state and shall provide and maintain at its own costs all lights, guards, fencing and warning signs for the protection of the Supply and the safety and convenience of the public and others.

## **12 EQUITIES, OMBUDSMAN INVESTIGATIONS AND HUMAN RIGHTS**

- 12.1 The Supplier shall:
- not contravene the Human Rights Act 1999.
  - not unlawfully discriminate within the meaning and scope of the provisions of the Equalities Act 2010 or any statutory modification or re-enactment thereof relating to discrimination in the provision of services to the public or in employment.
  - comply with the Council's equal opportunities policies and take all reasonable steps to secure the observance of these provisions by all servants, employees or agents of the Supplier and all sub-contractors employed in the execution of

the Contract.

- report promptly to the Council any proceedings initiated on failure to comply with the provisions described in this Clause.

12.2 If either the Council's internal or external auditors or if the Commissioner for Local Administration (the Ombudsman) shall wish to investigate the Contract, then the Supplier shall provide such information, access and co-operation as those persons may reasonably require.

### **13 ENVIRONMENTAL REQUIREMENTS**

13.1 The Contractor shall perform its obligations under the Contract in accordance with the Council's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment

### **14 INDEMNITY AND INSURANCE**

14.1 Without prejudice to any rights or remedies of the Council (including those under Clause 8) the Supplier shall indemnify the Council against all matters of any kind arising in contract, tort, statute or otherwise directly or indirectly out of the wrongful act, default, breach of contract or negligence of the Supplier, its sub-contractors, employees or agents in the course of or in connection with the Contract. Without prejudice to the generality of the foregoing this indemnity shall extend to (and to not be limited) in respect of death or injury to persons, damage to property, prevention of corruption, the infringement of intellectual property rights, health and safety, race relations, data protection and Ombudsman investigations.

14.2 The Supplier shall effect, with a reputable company, public and employer's liability and other insurances necessary to cover the risks contemplated by the Contract and shall at the request of the Council produce the relevant policy or policies together with receipts or other evidence of payment of the latest premium due thereunder. Public liability cover of at least £5 million shall be obtained, unless agreed otherwise with the Authorised Officer. Where the Supply is a supply of consultancy services the Supplier shall maintain professional indemnity insurance during the Contract Period and for 6 years afterwards to cover its liability to the Council under the Contract.

### **15 PREVENTION OF CORRUPTION**

15.1 The Council may terminate the Contract and recover all its loss if the Supplier, its employees or anyone acting on the Supplier's behalf do any of the following things:

- offer, give or agree to give anyone any inducement or reward in respect of this or any other Council contract (even if the Supplier does not know what has been done); or
- commit an offence under the Bribery Act 2010 under Section 117(2) of the Local Government Act 1972; or

- commit any fraud in connection with this or any other Council contract whether alone or in conjunction with the Council's members or employees.

15.2 The Supplier shall inform the Council's Internal Audit Manager of any improper conduct by any of the Council's employees relating to the Contract or any other arrangement.

## **16 TERMINATION**

16.1 The Council may also by notice in writing terminate the Contract in whole or in part (and enter upon and expel the Supplier from any premises or site to which he has been given access) if any of the events specified in Clause 16.2 occur. No period of notice shall be required but the notice shall state the date on which it is to take effect.

16.2 The events referred to in Clause 16.1 are:-

- the Supplier has failed to make the Supply within the time specified in the Contract
- the Supplier has breached the Contract in a way which the Council reasonably regards as irremediable, which may include, without limitation, repeated and/or persistent remediable breaches of the Contract
- the Council has given the Supplier at least one month's notice to remedy a breach of contract which can be remedied and the Supplier has failed to do so
- the Supplier has without reasonable cause failed to proceed diligently with or wholly suspends performance of any Services
- the Supplier shall have a receiver appointed over all or 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
- the Supplier has been prosecuted or has enforcement action pending for serious breaches of any health and safety or environmental legislation or the Bribery Act 2010 or the equalities legislation detailed at Clause 12.1.

16.3 In the event of termination of the Contract or rejection under Clause 8, the Council may engage another supplier to make the Supply and the Supplier shall be liable to pay the Council as a debt any extra cost that the Council incurs in so doing in excess of the Contract Price.

16.4 Upon termination of this Contract for any reason whatsoever, the Supplier will return to the Council all materials, documents and other items belonging to the Council in its possession or control.

## **17 ASSIGNMENT AND SUB-CONTRACTING**

17.1 Except for sub-contracts for materials or in relation to minor details none of the work covered by the Contract shall be assigned or sub-contracted by the Supplier without the written consent of the Authorised Officer which shall not be

unreasonably withheld. No sub-contracting by the Supplier shall in any way relieve the Supplier of any of its responsibilities under the Contract.

17.2 The Council may at any time, without the Suppliers consent, assign any or all of its rights and obligations under the Contract to any other company or person upon giving notice to the Supplier. The Supplier shall at the request of the Council execute any novation or other agreement or documentation to give effect to such assignment.

17.3 The Supplier shall deliver the Supply directly to any third parties nominated by the Council for a Council purpose.

## **18 PURCHASE OUTSIDE THE CONTRACT AND THIRD PARTIES**

18.1 The Council shall have the right to employ a person other than the Supplier to make supplies of the same type as is contemplated by the Contract if it shall in its absolute discretion think fit to do so

18.2 The provision of the Contracts (Right of Third Parties) Act 1999 shall not apply to the Contract and are hereby expressly excluded.

## **19 SEVERANCE**

19.1 Any provision of the Contract which is or may be void or unenforceable shall to the extent of such invalidity be deemed to be severable and shall not affect any other provision of the Contract.

## **20 WAIVER**

20.1 No waiver or forbearance by the Council or the Supplier (whether express or implied) in enforcing any of its rights under the Contract shall prejudice its rights in the future.

## **21 NOTICES**

21.1 Any notice about the Contract may be sent by hand or by ordinary, registered or recorded delivery post or transmitted by facsimile transmission or other means of telecommunications resulting in the receipt of written communication in permanent form and if so sent or transmitted to the address of the party shown on the Contract or to such other address as the party has notified to the other, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would be first received by the address in normal business hours.

## **22 GOVERNING LAW**

22.1 The Contract shall be governed by and construed in accordance with English law and the Supplier hereby irrevocably submits to the exclusive jurisdiction of the English courts