

Purchase Order Terms and Conditions

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1 Definitions & Interpretation

1.1 The following definitions and rules of interpretation apply in this contract:

Acceptance of Quotation: shall bear the meaning set out in Clause 2.4 below

CDM: the Construction (Design and Management) Regulations 2015

Conditions: these terms and conditions as amended from time to time in accordance with Clause 3 (Modification, Cancellation and Variation).

Contract: the agreement between the Council and the Supplier for the supply of Goods and/or Works and/or Services and/or Deliverables in accordance with these Conditions and the Contract Documents.

Contract Documents: these Conditions, together with any requests for quotations, statements of work, Purchase Orders, Specifications, and Special Conditions (or any of them) relating to the Contract and the Suppliers response but not any Supplier terms and conditions included or referred to therein



Council: North Somerset Council of Town Hall, Walliscote Grove Road, Weston-super-Mare, BS23 1UJ

Council's Materials: means all materials, equipment and tools, drawings, specifications, data and other items, whether tangible or intangible, supplied by the Council to the Supplier

Council Personnel: all of the Council's employees, agents, sub-Suppliers and sub-processors and third-party providers engaged by or working collaboratively with the Council in the performance of the Contract

Data Protection Legislation: means all applicable data protection legislation and privacy legislation in force from time to time in the UK including the UK General Data Protection Regulation, the Data Protection Act 2018 and any other directly applicable UK regulation relating to privacy together with all other legislation and regulatory requirements in force from time to time which relate to the use of Personal Data as defined by the Data Protection Act 2018 and the privacy of electronic communications

Deliverables: means all applications, programmes, digital media or other software, documents, products and materials, including drawings, maps, plans, diagrams, designs, pictures, data, specifications and reports (including drafts) developed by the Supplier or the Supplier's Personnel in any form and/or on the media required by the Contract.

Delivery Date: the date specified in the Purchase Order or the Contract Documents or, if no such date is specified, then within 5 working days of the date of the Purchase Order or such other date as the Council, acting reasonably, may determine.

Delivery Location: the address or addresses specified by the Council to which or at which the Goods, Services, Works or Deliverables are to be delivered, or as the case may be constructed, replaced, installed, maintained, adapted or removed.

Force Majeure Event: any cause affecting the performance by a Party of its obligations under this Contract arising from acts, omissions or non- events beyond its reasonable control including government restrictions, acts of terrorism, war, nuclear accident, earthquake, pandemic, flood or other event of similar magnitude that directly affects the ability of the Supplier to undertake full, proper and timely contractual performance.

Goods: the goods and materials, physical or digital, or any part of them required by the Supplier to fully and properly complete the Contract including the goods identified in the Purchase Order and/or the Contract Documents and/or as otherwise agreed in writing by the Parties.

Good Industry Practice: means that degree of skill, care, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced contractor (engaged in the delivery of works or outputs of the same type as the Services;

Insolvent: means balance sheet insolvency where the Supplier's liabilities exceed its assets or cash flow insolvency where the Supplier cannot pay its debts as they fall due

Insolvency Event: the Supplier threatens, suspends or takes any step or action in connection with its entering administration, provisional liquidation, bankruptcy or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), is wound up or is bankrupt (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), or has a receiver appointed to any of its assets or ceases to carry on all or a substantial part of its business

IR35: means the off-payroll working rules in the public sector: reforming the intermediaries' legislation

Law: means all or any law applicable within the United Kingdom (whether civil, criminal or administrative), common law, statute, statutory instrument, treaty, regulation, directive, by-law, circular, code, guidance note, order, notice, demand, decree, injunction, resolution, judgment or to the extent that the same is enforceable in England and Wales any requirement of any government, quasi-government, supranational, federal, state or local government, statutory or regulatory body, statutory undertaker, court, or any other person or body in any jurisdiction, (as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision);

Parties: the Council and the Supplier

Price: the price to be paid for the full and proper completion of a Purchase Order

Purchase Order: the Council's written order for the supply of Goods and/or Works and/or Services and/or Deliverables, or the Council's written acceptance of the Supplier's quotation, or otherwise.

Quotation: the Suppliers written offer to fulfil the Council's requirements

Services: all the services to be undertaken by the Supplier to fully and properly complete the Contract, whether or not specifically identified in the Supplier's Response, and including the services identified and any associated Deliverables, as set out in the Purchase Order and/or the Contract Documents and/or as otherwise agreed in writing by the Parties.

Special Conditions: any special term relating to the Contract set out in the Purchase Order and/or the Contract Documents and/or as otherwise agreed in writing by the Parties, for example requirements for collateral warranties.

Specification: any specification for the Goods, Works, Services or Deliverables.

Supplier: the person/s or organisation identified in the Purchase Order who shall be regarded as the prime contractor for the purposes of the Contract

Supplier's Personnel: all of the Supplier's employees, agents, contractors and sub-processors and third-party providers engaged by or working collaboratively with the Supplier in the performance of the Contract

Supplier's Response: The document/s provided by the Supplier that set out the Goods, Services, Works and Deliverables that the Supplier intends to provide or deliver to fulfil the Contract

Sustainable Sourcing and Delivery: means the processes that the Supplier shall seek to achieve and implement to ensure that all Goods, Services, Works and Deliverables achieve value for money on a whole life basis in terms of generating benefits not only to the Council but also to society and the economy, whilst minimising damage to the environment.

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006 and its amendment in 2014.

Works: all the works to be undertaken by the Supplier to fully and properly complete the Contract including the works identified and any associated Deliverables, to be provided by the Supplier as set out in the Purchase Order and/or the Contract Documents and/or as otherwise agreed in writing by the Parties.

working day: a day other than a Saturday, Sunday or public bank holiday in England & Wales

- 1.2 Unless the context otherwise requires or admits, the masculine gender includes the feminine and vice versa and the singular includes the plural and vice versa.
- 1.3 Clause headings shall not affect the interpretation of the Contract;
- 1.4 The Contract Documents form part of the Contract and shall have effect as if set out in full.
- 1.5 A reference to any Party shall include that Party's personal representatives, successors and permitted assigns.
- 1.6 A reference to writing or written includes email
- 1.7 Time shall be considered to be of the essence unless otherwise agreed in writing by the Council
- 1.8 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.
- 1.9 Nothing in these Conditions shall result in the Supplier having an exclusive right to provide Goods, Services, Deliverables or Works to the Council.

2 Application of Conditions and Basis of Contract

2.1 These Conditions:

- 2.1.1 Govern all Contracts for the supply of Goods and/or Services and/or Deliverables and/or Works where the Council has not set out or specifically identified alternative terms and conditions that are to apply; and

- 2.1.2 Exclude any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing and for the avoidance of doubt, no terms or conditions endorsed on, delivered with, or contained in the Supplier's Response including on the Quotation, sales conditions, confirmation of order, specification or other document shall form part of the Contract except to the extent that the Council expressly and specifically otherwise agrees in writing; and
- 2.1.3 Supersede any previously issued terms and conditions of purchase or supply excluding where the Council's requirements are sourced and secured in accordance with a specific procurement exercise or other process that is expressed to be governed by alternative terms and conditions or where Quotations have been sought on the basis of other Council issued or approved terms and conditions.
- 2.2 Nothing in these Conditions will prejudice any condition or warranty expressed or implied or any legal remedy to which the Council may be entitled in relation to the Goods and/or Services and/or Deliverables and/or Works which are the subject of this Order
- 2.3 In the event of conflict between any documents comprising the Contract the following order of precedence shall apply:
 - 2.3.1 Council issued specific Conditions;
 - 2.3.2 Council Specification or invitation for Quotation;
 - 2.3.3 Purchase Order terms;
 - 2.3.4 These Conditions;
 - 2.3.5 The Suppliers response but not any Supplier terms and conditions included or referred to therein.
- 2.4 Acceptance of a Quotation and the incorporation of these Conditions shall occur on the earlier of:
 - 2.4.1 the Council accepting a written Quotation in writing, (and any revisions to the same as the parties may mutually agree;
 - 2.4.2 the Supplier issuing written acceptance of the Purchase Order or Contract Documents and revisions to the same; or
 - 2.4.3 Full or partial performance of the Contract but only where the Council has previously indicated in writing a clear intention to enter into a Contract with the Supplier.
- 2.5 The Purchase Order shall be deemed to be automatically withdrawn where none of the events referred to in Clause 2.4 occurs within the time period set out in the purchase order

(usually 10 working days of the issue of a Purchase Order), or such other period as the Council may agree in writing.

- 2.6 The Parties each at their own expense shall, (unless expressly provided for on the Purchase Order) undertake all acts and execute all documents which are necessary to give full effect to the Contract.
- 2.7 Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party

3 Adequacy, Modification, Cancellation and Variation

- 3.1 The Supplier shall be deemed to be satisfied as to the requirements of the Contract and its ability to deliver the same at the Delivery Location and shall be under an obligation to promptly inform the Council of any particular circumstances relating to its performance, for example the application of IR35.
- 3.2 At any time prior to Acceptance of a Quotation and subject to mutually agreed modifications to the Price, the Council may require modifications to the original Quotation that shall be recorded in writing preferably by way of issuing revised Quotations and Purchase Orders that shall supersede and replace the original Quotation and Purchase Order.
- 3.3 A Contract may be cancelled in writing by the Council at any time before Acceptance of a Quotation.
- 3.4 Where Variations, after Acceptance of a Quotation are proposed, the Supplier shall supply a detailed statement estimating the effects of the varied requirement on any agreed program, the time implications on performance and impact on the Price
- 3.5 All such varied and/or additional requirements shall be recorded and mutually agreed in writing to have legal effect and shall be performed in accordance with the Contract. In the event that the Supplier unilaterally seeks to or varies the Contract or provides additional services that have not been agreed in writing with the Council, the Council shall not be liable for payment for such variation
- 3.6 Any additional charges due by reason of the variation shall be calculated by reference to the pricing set out in the original Quotation or as mutually agreed by the parties in writing.

3.7 The Supplier shall not be entitled to any additional remuneration where and to the extent such variation and/or additional services are necessitated, in whole or in part, by any negligence, omission or default by or on the Supplier's behalf or where omissions or mistakes were made in the Quotation.

4 Supply & Delivery of Goods

4.1 The Supplier shall ensure that the Goods:

4.1.1 satisfy the implied and express requirements of the Purchase Order and the Contracts Documents and in this regard the Council relies on the Supplier's skill and judgement;

4.1.2 are new and of the best available design, of the best quality, material and workmanship, are without fault and conform in all respects with the Purchase Order and/or the Specification supplied by the Council to the Supplier, the Law, (including that relating to the manufacture, labelling, packaging, storage, handling, delivery and use of the Goods), and all other warranties, conditions or terms relating to the fitness for purpose, quality or condition of the Goods implied by statute or common law apply in relation to the Contract;

4.1.3 have the benefit of manufacturer's warranty from the later of the date of delivery, installation or replacement for a minimum period of 12 months unless otherwise agreed in writing by the parties;

4.1.4 are free from all encumbrances.

4.2 The Council's rights under these conditions are in addition and without prejudice to the Council's rights under the Sale of Goods Act 1979, and where applicable the Consumer Rights Act 2015, and any other applicable legislation (as the same may be amended from time to time).

4.3 The Council shall have the right to inspect and/or test the Goods. If as a result of inspection and/or testing of the Goods, damage to Goods is discovered that cannot be replaced within the anticipated timescales of the Contract or the Council is not satisfied that the Goods will comply in all respects with the Purchase Order and/or the Specification, the Council may:

4.3.1 inform the Supplier of its opinion and the Supplier shall take such steps as are necessary to ensure compliance; or

4.3.2 cancel the Purchase Order and terminate the Contract;

in each case without penalty or other obligation to compensate the Supplier for losses it has and/or may occur.

- 4.4 The Supplier shall ensure that:
- 4.4.1 the Goods are marked in accordance with the Council's instructions and any applicable regulation or requirement of the carrier and are properly packed and secured in such manner as to enable them to reach their destination without damage;
 - 4.4.2 each delivery of the Goods is accompanied by a delivery note which identifies the Contract or the date of the Purchase Order and the Purchase Order number (if any), the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered;
 - 4.4.3 where specified in a Purchase Order, all packaging is removed from the Delivery Location by the Supplier and is correctly and safely disposed of by the Supplier.
 - 4.4.4 the Goods are delivered at the Supplier's risk on the Delivery Date, carriage paid to the Delivery Location during the Council's normal business hours, or as otherwise instructed by the Council. Time is of the essence in relation to the delivery of the Goods.
 - 4.4.5 where the date of delivery of the Goods is not specified by the Council, the Supplier shall give the Council reasonable notice of the specified date.
- 4.5 Delivery shall only be deemed to have taken place once the Supplier has unloaded the Goods that correspond with the goods expected by the Council, at the Delivery Location in the correct quantities and without damage and have been signed for by a duly authorised Council Officer. Signatures on delivery or consignment notes shall not signify Acceptance of the Goods.
- 4.6 The Supplier shall not deliver the Goods in instalments without the Council's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, the instalments shall be scheduled and may with the express written consent of the Council be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any damage or defect in any instalment shall entitle the Council to reject one or more deliveries.

- 4.7 Shortages or damage to the Goods or incorrect delivery shall be promptly reported to the Supplier and Acceptance of the Goods shall not be deemed to occur until such time as the shortages or damage are rectified to the satisfaction of the Council. Where Goods are incorrect, received damaged or there are shortfalls in delivery the Council shall promptly inform the Supplier in writing and delivery shall not be deemed to have occurred until such time as the Goods that correspond with the goods expected by the Council, in the correct quantities and without damage, are received. The Council shall not be responsible for any costs including return costs, storage and additional insurance expense incurred.
- 4.8 Risk in the Goods shall not pass on delivery.
- 4.9 Where the Contract comprises the delivery of Goods only and regardless of whether Goods are paid for in advance or not, Acceptance of the Goods and the transfer of Title takes place after both delivery as set out in Clause 4.5 above has occurred and payment in full has been made by the Council.
- 4.10 Where the supply of Goods forms part of a larger Contract and the Council has made any one or more payments against the Contract whether related specifically to the supply of the Goods or not, the Council shall have and be entitled to exercise a buyer's lien over the Goods that entitles the Council to retain the Goods pending payment of any debt or liability due from the Supplier to the Council.

5 Provision of Services & Works and Deliverables

- 5.1 The Supplier confirms that it:
- 5.1.1 has understood the nature and extent of the Services to be carried out and has satisfied itself that the Supplier can provide the Services. The Council shall, upon request grant access to Council premises as may be reasonable for this purpose;
 - 5.1.2 shall devote such time as is required in order to fulfil its duties under this Contract;
 - 5.1.3 shall comply with all reasonable and lawful directions given to it under the Council's authority;
 - 5.1.4 shall, when requested attend an inception meeting, (which may be held remotely) and prepare an implementation timetable with a period of no more than four weeks from the date of the inception meeting for review, revision and approval by the Council;
 - 5.1.5 shall attend such other meetings (which may either be remote or by attendance in person) as the Council may reasonably require;

- 5.1.6 shall prepare presentations, reports and monitoring information as the Council may reasonably require.
- 5.2 The Supplier shall ensure that any Services and/ or Works and/or deliverables provided under the Contract:
- 5.2.1 are undertaken by suitably vetted, appropriately trained and qualified Supplier Personnel and in sufficient numbers to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;
- 5.2.2 comply with the provisions of Safeguarding Vulnerable Groups Act 2006 or any successor legislation having similar effect and shall, where applicable, ensure that the Supplier's Personnel are subject to a valid disclosure checks (at the appropriate level) undertaken through the Disclosure and Barring Service and a check against the adults barred list or the children's barred list, and that disclosures indicate that the Supplier's Personnel are suitable to be involved in the delivery of the Contract.
- 5.2.3 are undertaken and completed with all proper diligence, skill and care and in a prompt and efficient manner to the satisfaction of the Council, in accordance with the Contract and Good Industry Practice;
- 5.2.4 are undertaken using materials which are new and of good quality and fit for the purpose that the Council expressly or impliedly made known to the Supplier and satisfy the requirements of Clause 4.1 (Supply & Delivery of Goods) above;
- 5.2.5 conform with all descriptions, requirements and specifications set out in the relevant Purchase Order and/or Contract Documents
- 5.2.6 are provided using its plant, tools, transport and equipment which shall be sufficient for the execution of the Services and/or Works and or Deliverables and shall include where relevant the provision and maintenance of lights, guards, fencing, temporary reinstatements and warning signs for the protection of the Works and the safety and convenience of the public and others.
- 5.2.7 shall be completed within the time specified in the Contract or that the Council otherwise notifies to the Supplier;
- 5.2.8 are carried out with full regard to all relevant health and safety Law, the health and safety of the Supplier's and Council's Personnel and members of the public and in compliance with CDM when appropriate.
- 5.3 The Council's inspection rights under this Contract extend to requiring samples of materials and reopening and excavation as required.

5.4 All Deliverables shall:

- 5.4.1 Be delivered on such media and in such format as the Council acting reasonably shall require; and
 - 5.4.2 Have the benefit of the rights set out in Clause 15 (Intellectual Property); and
 - 5.4.3 have the benefit of such licences/permissions and consents as may be required to authorise the use of the Deliverables by the Council for Council business.
- 5.5 The Supplier shall at all times act as prime contractor and be responsible for the acts and omissions of the Supplier's Personnel.
- 5.6 The Council reserves the right to require the Supplier to remove and replace any of the Supplier's Personnel from the provision of the Services or the Works or the Deliverables where any of the Supplier's Personnel are not suitably vetted or approved, fail to comply with the general duty of due care and diligence in the performance of the Contract or breach either the Contract or the Council's policy or requirements concerning attendance and behaviour at the Delivery Address.
- 5.7 The Supplier shall obtain and at all times maintain all the licenses and consents that may be required for the provision of the Goods, Services, Works or Deliverables.
- 5.8 The Supplier shall hold the Council's Materials in safe custody at its own risk, maintain the Council's Materials in good condition until returned to the Council, and not dispose or use the Council's Materials other than in accordance with the Council's written instructions or authorisation.

6 Sustainability and the Environment

6.1 Suppliers shall seek to:

- 6.1.1 Unless otherwise agreed by the Council in writing, deliver environmentally sustainable Goods and implement processes and procedures designed reduce the environmental impact associated with the delivery and performance of the Contract and waste emissions and shall seek to employ best practices for sustainability and the environment.
- 6.1.2 Use environmentally friendly packaging materials;
- 6.1.3 Develop and implement effective environmental management systems such as ISO14001; and
- 6.1.4 Provide suitable assurances concerning the economic, social, and environmental sustainability of their supply chain;

- 6.2 Where possible, practical and cost effective the Suppliers shall favour the use of Goods and products with a lower environmental impact and avoid products which contain substances harmful to the environment and seek to reduce negative and enhance positive sustainability outcomes.

7 Price, Charges & Payment

- 7.1 The Price shall be inclusive of all charges for packaging, shipping, carriage, insurance and delivery of the Goods to the Delivery Address, any duties or levies and subsistence costs to include reasonable travel costs and accommodation.
- 7.2 Value Added Tax shall, where applicable, be shown separately on all invoices. Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Council, the Council shall, on receipt of a valid VAT invoice from the Supplier, pay the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Works and/or Services and/or Deliverables at the same time as payment is due for the supply of the Goods and/or performance of Works and/or Services.
- 7.3 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 written consent of the Council.
- 7.4 The charges for the Goods, Works and/or Services and/or Deliverables shall be set out in the Contract and where used the Purchase Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Goods, Works and/or Services and/or Deliverables.
- 7.5 Where the Contract comprises the provision of Goods only, the Supplier shall invoice the Council on or at any time after the full and proper completion of delivery, unless otherwise agreed in writing.
- 7.6 In respect of Works and/or Services and/or Deliverables, the Supplier shall invoice the Council on completion of the Services or in accordance with a payment profile agreed in writing by both parties.
- 7.7 Where the Council has expressly agreed to pay for travel costs and subsistence these costs shall be claimed and capped at the rates reclaimable by Officers of the Council.
- 7.8 The Supplier shall ensure that the invoice includes the date of the Purchase Order, and the identity of the Contract, the invoice number, the Council's Purchase Order number, the Supplier's VAT registration number, and shall include such other supporting information required by the Council to verify the accuracy of the invoice.

- 7.9 The Council shall pay correctly rendered invoices within 30 working days of receipt of the invoice by BACs to a bank account nominated in writing by the Supplier.
- 7.10 Errors in invoicing shall be corrected within 5 working days of the Supplier identifying or being made aware of the error.
- 7.11 Any and all overpayments made by the Council, howsoever occurring, shall be refunded to the Council within 10 working days of the Supplier identifying or being made aware of the overpayment.
- 7.12 If, without justification, a Party fails to make any payment due under the Contract by the due date for payment, then that Party shall pay interest on the overdue sum until full payment of the overdue sum, whether before or after judgment.
Interest will accrue each day at 2% a year above the Bank of England's base rate from time to time, and where the base rate is below 0%, the rate of 2% a year shall apply.
- 7.13 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Works and/or Services and/or Deliverables.
- 7.14 The Council may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to the Council against any overpayment made by the Council to the Supplier or liability of the Council to the Supplier under the Contract or any or contract or arrangement.
- 7.15 The Supplier shall notify the Council promptly of any anticipated or actual change of control of the Supplier.
- 7.16 The Supplier shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of the Contract (and any documents referred to in it).

8 IR35

- 8.1 Where relevant, the Supplier shall provide the Council with sufficient information and documentation to enable the Council to independently consider and determine the application of IR35 and to undertake the HMRC Employment Status check prior to the execution of the Contract by the Council
- 8.2 In the event that IR35 is found to apply:
- 8.2.1 The Council shall promptly either deduct payments for tax and/or national insurance contributions at source together with any fine or penalty that may be payable:

- 8.2.2 The Council shall determine whether or not the Contract is to remain in full force and effect or be varied following consultation with the Supplier and shall have the unilateral right to terminate the Contract with immediate effect without any liability for loss of profit damages.
- 8.3 The Supplier hereby indemnifies the Council from and against any additional costs or expenses that the Council may incur by reason of the application of IR35
- 8.4 Where the IR35 position is unclear, the Council in its sole discretion, reserves the right to deduct national insurance and tax from payments that would otherwise be due to the Supplier.
- 8.5 Nothing in this Contract shall cause the Council to be liable to the Supplier for any financial sums or costs if it subsequently transpires that the Supplier has paid both corporation tax and income tax and national insurance payments to HMRC as the parties agree that the Supplier may apply to HMRC for a refund of overpayment of tax or national insurance payments

9 Remedies

- 9.1 The Supplier shall be liable for any delay or failure of performance of the Contract caused by it, including that caused by:
 - 9.1.1 The Supplier's failure to attend the performance or Delivery Location when made available by the Council;
 - 9.1.2 The Supplier's failure to physically prepare the Delivery Location/s as required or to obtain all relevant consents, permissions and licenses required for the full and proper performance of the Contract;
 - 9.1.3 The Supplier's failure to provide the Council, in good time, with adequate instructions concerning the environment in which the Goods or Deliverables are to be delivered or installed;
- 9.2 If the Supplier materially breaches any term of the Contract the Council shall, without limiting or affecting other rights or remedies available to it, be entitled to exercise any one or more of the following rights:
 - 9.2.1 to terminate the Contract with immediate effect by giving written notice to the Supplier, free of any Council liability for the Council's decision in accordance with Clause 10.2 (Termination);
 - 9.2.2 to extend the period for performance or allow a defined period to remedy the breach;
 - 9.2.3 to refuse to accept any subsequent performance of the Contract free of any Council liability for the Council's decision;

- 9.2.4 to claim damages to include any other costs, loss or expense incurred by the Council which are in any way attributable to the Supplier's failure to perform the Contract including the costs of re-procuring the requirement and Council officer time;
 - 9.2.5 to require a refund from the Supplier of sums paid in advance for non-performance or where the Supplier has not provided or has not fully and properly completed the Contract;
 - 9.2.6 to require the Supplier to make good any defect or snagging which occurs within a period of no more than 15 working days of delivery, installation or completion of the Contract as may be required by the Council or to exercise its rights under a manufacturer's warranty.
- 9.3 Where the Contract relates to the supply of Goods only and without limiting or affecting other rights or remedies available to it, the Council shall be additionally entitled to exercise one or more of the following rights:
- 9.3.1 to reject Goods (in whole or in part) whether or not title has passed and return them to the Supplier at the Supplier's own risk and expense and require a credit note or refund of the relevant amount;
 - 9.3.2 to require the Supplier to repair or replace the rejected Goods;
 - 9.3.3 to agree further agreed or revised timescales for delivery;
 - 9.3.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
 - 9.3.5 to claim damages to include any other costs, loss or expense incurred by the Council which are in any way attributable to the Supplier's failure to perform the Contract including the costs of re-procuring the requirement and Council officer time.
- 9.4 The Supplier shall remain responsible for the replacement or repair of Goods where latent defects are found to exist caused by manufacturer defect or because of faulty workmanship. Where replacement or repair is not possible the Supplier shall be obliged to refund the cost of the Goods to the Council.
- 9.5 These Conditions shall extend to any substituted or remedial Works and/or Services and/or Deliverables and/or repaired or replacement Goods supplied by the Supplier.
- 9.6 The Council's rights under the Contract are in addition to its rights and remedies implied by Law and common law.

10 Termination of the Contract

- 10.1 The Council may without liability for any loss of profit damages, cancel the Contract with immediate effect, in whole or in part and at no cost to the Council by giving the Supplier written notice effective immediately:
- 10.1.1 at any time before Acceptance of a Quotation (Clause 3.2); or
 - 10.1.2 Where the Council exercises its right to inspect and/or test the Goods prior to delivery and damage to Goods is discovered that cannot be replaced within the anticipated timescales of the Contract or to the satisfaction of the Council, acting reasonably or the Council is not satisfied that the Goods will comply in all respects with the Purchase Order and/or the Specification (Clause 4.3.2); or
 - 10.1.3 in the case of Services, Works or Deliverables prior to the commencement of mobilisation or performance; or
 - 10.1.4 Where the Supplier becomes Insolvent or an Insolvency Event occurs;
- 10.2 Without prejudice to the Councils remedies set out elsewhere in these Conditions including those set out in Clause 9 (Remedies), the Council shall, without limiting or affecting other rights or remedies available to it, be entitled to terminate the Contract with immediate effect by giving written notice to the Supplier where:
- 10.2.1 the breach is, in the sole discretion of the Council, irreparable. Examples of such an event include, without limitation, fundamental failures relating to the Goods, Services, Works or Deliverables, a material breach of the Bribery Act 2010, allegations of corruption, breaches of safeguarding rules, a fundamental breach of the Public Contracts Regulations 2015 (as the same may be amended from time to time) or other Law, failure to obtain necessary consents, permissions or approvals, the decision is called in in accordance with the Council's scrutiny function and a recommendation is made for the termination of the Contract or the Councils reputation and standing is called into question; or
 - 10.2.2 the Supplier commits a breach of any term of the Contract and such a breach is remediable and the Supplier has been required to remedy that breach within a defined period specified by the Council of no more than 20 working days of the Supplier being notified in writing of the breach and the Supplier has failed to remedy the breach to the reasonable satisfaction of the Council; or
 - 10.2.3 the Supplier becomes Insolvent or an Insolvency Event occurs; or

- 10.2.4 the Supplier's financial position deteriorates to such an extent that in the Council's reasonable opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- 10.2.5 In the event of a proposed or actual change of control of the Supplier that results in the Supplier no longer being able to fully and properly deliver the Contract, the Council shall be entitled to terminate the Contract without incurring any liability for loss of profit damages or other losses or expenses.
- 10.3 In the event of a Force Majeure Event occurring and subsisting for a period of more than 20 working days the Contract may be terminated in the manner permitted by Clause 12 (Force Majeure).
- 10.4 Termination or expiry of the Contract shall not affect the Parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 10.5 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

11 Data Protection

- 11.1 Each Party acknowledges its respective duties and obligations under the Data Protection Legislation and shall comply in all respects with the same. Where required by the Council the Supplier shall enter into the Council's approved Information Sharing Agreement with the Council.
- 11.2 The Supplier:
 - 11.2.1 may not process or transfer Council personal data outside the United Kingdom without the express written consent of the Council;
 - 11.2.2 shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation;
 - 11.2.3 provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include a systematic description of the envisaged processing operations and the purpose of the processing;
- 11.3 The Supplier shall notify the Council immediately if it:

- 11.3.1 Becomes aware of any breach or suspected breach of any technical and organisational security measures or unauthorised sharing of information including that caused by theft, loss or error;
 - 11.3.2 Receives a Data Subject Access Request (or purported Data Subject Access Request);
 - 11.3.3 Receives a request to rectify, block or erase any Personal Data;
 - 11.3.4 Receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 11.3.5 Receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
 - 11.3.6 Receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - 11.3.7 Becomes aware of a Data Loss Event.
- 11.4 The Supplier's obligation to notify under clause 11.3 above shall include the disclosure of further information to the Council, as details become available to enable the Council to respond to enquiries, requests for information or where a data breach is apprehended, to enable the parties to ascertain whether a data breach has occurred, whether the breach should be reported to the Information Commissioners Office, the steps required to protect Personal Data and lessons learned.
- 11.5 In the event that the Council Data is corrupted or lost by the Supplier, the Supplier shall at its own expense, enable the Council to restore or procure the restoration of the Council Data.
- 11.6 The Supplier shall, if requested, supply to the Council copies of its and its sub-contractors and/or agents Information Systems Security Policy and Change Management Procedures within ten working days of a written request for the same.
- 11.7 On termination of this Contract, the Supplier shall, as determined by the Council, delete or return Personal Data (and any copies of it) to the Council unless the Supplier is required by Law to retain the Personal Data.

12 Force Majeure

- 12.1 Neither party shall have any liability under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from a Force Majeure Event.

- 12.2 The party subject to the Force Majeure Event shall promptly notify the other party in writing when such event causes a delay or failure in performance and when it ceases to do so.
- 12.3 If the Force Majeure Event continues for a continuous period of more than 20 working days, the party not affected may at any time thereafter terminate the Contract with immediate effect by written notice to the other party.
- 12.4 In the event of termination under this Clause, the Council shall pay for all Services, Works and Deliverables that are fully and properly completed to the date of actual termination together with the cost of Goods that have been delivered and used by the Council. In no circumstances shall loss of profit damages or other loss or expense be payable by the Council.

13 Indemnity & Insurance

- 13.1 The Supplier shall keep the Council indemnified against all liabilities, costs, expenses, penalties, fines, 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 administrative and professional costs and expenses) suffered or incurred by the Council arising out of or in connection with:
 - 13.1.1 any claim made against the Council for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with the Contract;
 - 13.1.2 any claim made against the Council that is caused or contributed to by any act, omission or negligence on the part of the Supplier or the Supplier's Personnel for death, personal injury or damage to property arising out of, or in connection with the Contract;
 - 13.1.3 breaches of Law including without limitation Data Protection Legislation that are caused or contributed to by any act, omission or negligence on the part of the Supplier or the Supplier's Personnel including claims made by a data subject, the Information Commissioner's Office or any other interested party.
 - 13.1.4 any claim that the Contract infringes the Intellectual Property Rights of any third party IPR Claim

- 13.2 During the term of the Contract, the Supplier shall maintain in force, with a reputable insurance company, policies of insurance, appropriate to the Contract, that comply with prescribed levels of required insurance required by the Council or in the absence of the same, all relevant insurances appropriate to the Contract as determined by the Supplier, such insurance to be with reputable insurers acceptable to the Council acting reasonably.
- 13.3 The Supplier shall, at the Council's request, produce both the insurance certificate giving details of cover, (where possible) and the receipt for the current year's premium.
- 13.4 This Clause 13 shall survive termination of the Contract.

14 Dispute Resolution

- 14.1 The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.
- 14.2 The parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedure:
 - 14.2.1 Within a period no greater than 5 working days of service of the notice, the contract managers or commissioning officers of each of the parties shall meet to discuss the dispute and attempt to resolve it.
 - 14.2.2 If the dispute has not been resolved within five working days of the first meeting of the contract managers/commissioning officers, then the matter shall be referred to the Assistant Directors (or persons of equivalent seniority) of each of the parties. The Assistant Director's (or equivalent) shall meet within 10 working days to discuss the dispute and attempt to resolve it.
- 14.3 To the extent that the parties are unable or unwilling to resolve the said dispute or disagreement the parties may by mutual agreement attempt in good faith to resolve the dispute or disagreement through an alternative dispute resolution procedure as agreed by them using one the of the following options:
 - 14.3.1 an expert adviser if the dispute relates to professional issues;
 - 14.3.2 a mediation service if the dispute relates to the terms and conditions of the Contract.
- 14.4 Each party shall be responsible for its own costs in engaging in the dispute resolution procedure unless the arbitrator or mediator or expert determines otherwise

- 14.5 Either party may at its sole option, instead commence legal proceedings provided that such legal proceedings may not commence until the parties have completed the steps referred to in clauses 14.3 to 14.5 inclusive except that either party may at any time seek interim relief from the courts.

15 Intellectual Property Rights

- 15.1 Intellectual property rights in the Services, Works or Deliverables shall vest in the Council unless otherwise mutually agreed in writing and for this purpose the Supplier shall assign or grant to the Council a perpetual royalty free licences to use, copy, modify or reproduce or share any documents, reports and materials of any nature and on any media generated by the Supplier for purposes connected with the Contract or the business of the Council.
- 15.2 The Council will recognise the moral rights of the Supplier as the creator of the intellectual property

16 Anti-Bribery and Corruption Measures

- 16.1 The Supplier or the Supplier Personnel's direct involvement in any of the activities set out in Clause 16.1.1 to 16.1.5 inclusive, shall be deemed to be a material breach of the Contract that is not remediable and shall entitle the Council to immediately terminate the Contract by notice under clause 10.2.1 (Termination - irredeemable breach) regardless of whether or not the offending act has been performed with or without the knowledge of the Supplier. The activities are that the Supplier or the Supplier's Personnel have:
- 16.1.1 offered or given or agreed to give any person any gift or consideration of any kind as an inducement or reward for 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
- 16.1.2 shown favour or disfavour to any person in relation to the Contract or any other contract with the Council; or
- 16.1.3 committed any offence under the Prevention of Corruption Acts 1889 to 1916 or any amendment of them; or
- 16.1.4 given any fee or reward, receipt of which is an offence under sub-section (2) of Section 117 of the Local Government Act 1972: or
- 16.1.5 committed an offence under the Bribery Act 2010
- 16.2 Neither party shall make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.

17 General

- 17.1 The Supplier shall be prohibited from transferring, assigning or sub-letting, directly or indirectly, the whole or any portion of this Contract without the written permission of the Council.
- 17.2 Any notice required or permitted to be given by either party to the other party under these Conditions shall be in writing and may be communicated by read receipted email or by first class post and shall be deemed to be received on the second working day after sending or posting.
- 17.3 No waiver by the Council of any breach of the Contract by the Supplier or the Suppliers Personnel shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 17.4 The Supplier and the Supplier's Personnel shall, at all times, comply with all relevant Law including without limitation, the Modern Slavery Act 2015, the Human Rights Act 1998, the Race Relations Act 1976, TUPE and health & safety legislation.
- 17.5 The Supplier shall reasonably and promptly cooperate with the Council to enable it to comply with its obligations under the Freedom of Information Act 2000 ("the 2000 Act") and the Environmental Information Regulations 2004 ("the 2004 Regulations").
- 17.6 Save where disclosure is required by either the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 or as required to facilitate the performance of the Contract each party shall keep confidential all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the other party or its Personnel
- 17.7 The Supplier shall retain all records and documents relating to the Contract for a period of three years and shall at its own expense shall cooperate with any request from the Council for the disclosure of information or documents held by it on behalf of the Council as required for audit purposes or otherwise.
- 17.8 The Supplier shall not issue any press release or make any public statement concerning the Council, its employees, agents, councillors or the Contract without the prior written consent of the Council.

- 17.9 The Supplier hereby irrevocably consents to the Council publishing the details of payments made to the Supplier. Such details include but are not limited to the Supplier's full name (for the avoidance of doubt including, but not limited to, where the Supplier is a sole trader), the Supplier's company/charity registration number, the Contract identification number, the date of payment, the net amount paid to the Supplier, the transaction number and a description
- 17.10 The Supplier shall ensure that the Suppliers Personnel are made aware of the Council's Whistleblowing Policy and that the details of this policy are fully explained to them, and the Supplier shall provide the Council with evidence of doing so upon request.
- 17.11 These Conditions and the Contract 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.
- 17.12 The rights and remedies provided in these Conditions are cumulative and not exclusive of any rights and remedies provided by Law
- 17.13 Save for the Parties, no person shall have any right under the Contracts (Rights of Third Parties) Act 1999
- 17.14 The Contract is to be governed and construed by English Law and the Parties submit to the jurisdiction of the English courts