



Purchase Order Terms and Conditions

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1. Definitions

“Business Day” is a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

“Council” means Cumbria County Council.

“Council’s Representative” means any person named on the Acceptance Letter as a key contact or any person who the Council notifies the Supplier is to be regarded as a key contact during the course of the Contract.

“Data Protection Legislation” means (i) means the Data Protection Act 2018, the General Data Protection Regulation ((EU) 2016/679), and all applicable laws and regulations relating to the processing of personal data and privacy including, where applicable, the guidance and codes of practice issued by the Information Commissioner.

“Delivery” means completion of delivery of an Order in accordance with clause 5.1 and 5.2 or clause 5.4 (a).

“Goods” means the Goods described in the Order.

“Intellectual Property Rights” means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world. **Intellectual Property Right** means any one of the Intellectual Property Rights.

“Key Contact” means any person named on the Order as a key contact or any person who the Supplier notifies to the Council is to be regarded as a key contact during the course of the Contract.

“**Order**” means the Council’s purchase order to which these Terms and Conditions are affixed which includes a description of the Goods and/or Services, the price or rate applicable to the Goods and/or Services and any particular terms applying to the Goods and/or Services which are additional to these Terms and Conditions.

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

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

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

“**Price**” means the price for the Goods and/or Services set out in the Order and includes all packaging insurance and carriage of the Goods.

“**Purchase Order Number**” means the purchase order number on the Order.

“**Supplier**” means the person, firm or company who is to supply the Goods and/or Services identified in the Order.

“**Services**” means the services described in the Order.

“**Terms and Conditions**” means these terms and conditions for the supply of Goods and/or Services.

2. General

2.1 These Terms and Conditions together with the Order and any other document or specification referred to in the Order constitute the contract between the Parties for the Goods and/or Services (“**the Contract**”).

2.2 For the avoidance of doubt if the Council has specified different terms and conditions in the Order those terms and conditions will override these Terms and Conditions and will apply instead of these Terms of these Terms and Conditions.

2.3 This Contract constitutes the entire agreement between the Parties relating to the Goods and/or Services and replaces all previous negotiations, agreements, understandings and representations whether oral or in writing.

2.4 All Goods and/or Services shall comply with the Council’s requirements and shall be supplied by the Supplier and purchased by the Council subject only to the terms and conditions set out in this Contract.

Any terms and conditions purported to be imposed by the Supplier shall not be binding on the Council under any circumstances. Where the Supplier appends terms and conditions, which differ to these terms and conditions, to any communication and/or invoice the Supplier acknowledges that the terms and conditions in this Contract shall prevail.

2.5 Nothing in this Contract shall have the effect of making the Supplier an agent, servant or employee of the Council.

2.6 The headings to these Terms and Conditions are for convenience only and will not affect construction or interpretation and reference to a clause shall be a reference to a clause of these Terms and Conditions unless explicitly stated otherwise.

2.7 Words denoting any one gender include all genders and vice versa and the singular includes the plural and vice versa.

2.8 References to persons include individuals, partnerships, bodies corporate and unincorporated associations.

2.9 References to statutes or statutory provision shall be construed to include references to those statutes or provisions as amended or re-enacted from time to time.

2.10 The words and phrases “other”, “including” and “in particular” shall not limit the generality of any preceding words.

Supply of goods

3. The order

3.1 For the avoidance of doubt this clause 3 applies to the supply of Goods only.

3.2 The Supplier shall supply any Goods ordered in accordance with the timescales set out in the Order. In the event that the Order does not specify any timescales, the Supplier shall comply with any reasonable timescales notified by the Council.

3.3 Each Order shall:

(a) Be given in writing or, if given orally, shall be confirmed in writing within 2 (two) Business Days;

(b) Specify the type and quantity of Goods ordered; and unless the Parties agree that the Council may specify the date and location after placing the Order, specify the date on which the Order is to be delivered (Delivery Date), and the delivery location (Delivery Location). If the Delivery Date and/or Delivery Location are to be specified after the placing of an Order, the Council shall give the Supplier reasonable advance notice of the relevant information.

3.4 The Supplier shall assign an Order Number to each Order received from the Council and notify such Order Numbers to the Council. Each Party shall use the relevant Order Number in all subsequent correspondence relating to the Order.

3.5 The Council may at any time prior to despatch of the Goods amend or cancel an Order by written notice to the Supplier. If the Council amends or cancels an Order, its liability to the Supplier shall be limited to payment to the Supplier of all costs reasonably incurred by the Supplier in fulfilling the Order up until the date of receipt of the notice of amendment or cancellation, except that where the amendment or cancellation results from the Supplier’s failure to comply with its obligations under this Contract the Council shall have no liability to the Supplier in respect of it.

3.6 The Supplier shall make Key Contacts available for the purposes of the Contract and shall not make any changes in the Key Contacts without the prior written notification of the Council.

4. Quality and packing

4.1 For the avoidance of doubt this clause 4 applies to the supply of Goods only.

4.2 The Supplier shall provide the Goods ordered by the Council.

4.3 The Goods supplied to the Council by the Supplier under this Contract shall:

- (a) Conform to the specification;
- (b) Be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Council;
- (c) Be free from defects in design, material and workmanship and remain so for 12 (twelve) months after Delivery; and
- (d) Comply with all applicable statutory and regulatory requirements.

4.4 The Supplier shall ensure that the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition.

4.5 The Supplier shall obtain and maintain in force for the Term all licences, permissions, authorisations, consents and permits needed to manufacture and supply the Goods in accordance with the terms of this Contract.

4.6 In the event that the Supplier fails to meet a date or dates set out in an Order the Supplier shall, on the request of the Council, and without prejudice to the Council's other rights and remedies, arrange to provide all such additional resources as are necessary to fulfil its obligations at no additional cost to the Council.

5. Delivery

5.1 For the avoidance of doubt this clause 5 applies to the supply of Goods only.

5.2 The Supplier shall deliver each Order to the Delivery Location on the Delivery Date. The Supplier shall not deliver an Order in advance of the Delivery Date without the prior written consent of the Council.

5.3 Delivery of an Order shall be complete on the completion of unloading of the Order at the Delivery Location.

5.4 If an Order is not delivered on the specified Delivery Date, then, without limiting any other right or remedy the Council may have, the Council may:

- (a) Agree to a later delivery and the Supplier shall provide all such additional resources as are necessary to fulfil its obligations at no additional cost to the Council;

- (b) Refuse to take any subsequent attempted delivery of the Order;

- (c) Terminate this Contract with immediate effect;

- (d) Obtain substitute Goods from another supplier and recover from the Supplier any costs and expenses reasonably incurred by the Council in obtaining such substitute goods; and

- (e) claim damages for any other costs, expenses or losses resulting from the Supplier's failure to deliver the Order on the Delivery Date, provided that the Supplier shall have no liability for any failure or delay in delivering an Order to the extent that such failure or delay is caused by the Council's failure to comply with its obligations under this Contract.

5.5 If the Council fails to accept delivery of an Order on the specified Delivery Date, then, except where such failure or delay is caused by the Supplier's failure to comply with its obligations under this Contract:

- (a) The Order shall be deemed to have been delivered at 9.00am on the Delivery Date; and

- (b) The Supplier shall store the Order until delivery takes place, and charge the Council for all related costs and expenses (including insurance).

5.6 Each Order shall be accompanied by a delivery note from the Supplier showing the Order Number, the Purchase Order Number, the date of the Order, the type and quantity of Goods included in the Order and, in the case of an Order being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

5.7 If the Supplier requires the Council to return any packaging materials to the Supplier, that fact must be clearly stated on the delivery note accompanying the relevant Order, and any such returns shall be at the Supplier's expense.

5.8 The Council may require the immediate removal from its premises of anything delivered by the Supplier which, in the reasonable view of the Council, is hazardous, not fit for purpose or noxious. The Supplier shall comply with any such request at its own expense.

5.9 The Supplier shall notify the Council immediately if it becomes aware of any event that it believes is likely to delay or impede the delivery of the Goods.

5.10 Where the Goods are delivered to Premises that are owned or occupied by the Council the Supplier shall comply and shall ensure that its staff, sub-contractors and agents comply with any rules or regulations applied by the Council in relation to security at its premises.

6. Acceptance and defective goods

6.1 For the avoidance of doubt this clause 6 applies to the supply of Goods only.

6.2 The Council shall not be deemed to have accepted any Goods until it has had a reasonable time to inspect them following Delivery, or, in the case of a latent defect in the Goods, until a reasonable time after the latent defect has become apparent.

6.3 If any Goods delivered to the Council do not comply with clause 4.3, or are otherwise not in conformity with the terms of this Contract, then, without limiting any other right or remedy that the Council may have, the Council may reject those Goods and:

- (a) Require the Supplier to repair or replace the rejected Goods at the Supplier's risk and expense within 5 (five) Business Days of being requested to do so; or
- (b) Require the Supplier to repay the price of the rejected Goods in full (whether or not the Council has previously required the Supplier to repair or replace the rejected Goods); and
- (c) Claim damages for any other costs, expenses or losses resulting from the Supplier's delivery of Goods that are not in conformity with the terms of this Contract.

6.4 The Council's rights and remedies under clause 4 are in addition to the rights and remedies available to it in respect of the statutory conditions relating to description, quality, fitness for purpose and correspondence with sample implied into this Contract by the Sale of Goods Act 1979.

6.5 The terms of this Contract shall apply to any repaired or replacement Goods supplied by the Supplier.

6.6 If the Supplier fails to promptly repair or replace rejected Goods in accordance with clause 6.3(a), the Council may, without affecting its rights under clause 6.3(c), obtain substitute Goods from a third party supplier, or have the rejected Goods repaired by a third party, and the Supplier shall reimburse the Council for the costs it incurs in doing so.

7. Title and risk

7.1 For the avoidance of doubt this clause 5 applies to the supply of Goods only.

7.2 The risk in Goods delivered to the Council shall pass to the Council on Delivery.

7.3 Title to the Goods ordered shall pass to the Council on Delivery unless the Goods have been paid in advance of Delivery in which case title shall pass to the Council on receipt of payment by the Supplier.

Provision of services

8. The services

8.1 For the avoidance of doubt this clause 8 applies to the provision of Services only.

8.2 The Supplier shall provide the Services set out in the Order.

8.3 The Supplier shall perform the Services:

- a) With reasonable skill, care and diligence;
- b) In accordance with industry best practice and using the best available techniques and standards;
- c) In accordance with all applicable laws;
- d) Using staff that have appropriate skills, qualifications and experience;
- e) Using the appropriate number of staff; and
- f) To the reasonable satisfaction of the Council.

8.4 The Supplier shall provide all equipment and materials necessary for the performance of the Services except as otherwise agreed in writing with the Council. All equipment and materials shall be at the Supplier's risk.

8.5 All equipment and materials provided by the Supplier shall be of a suitable quality and fit for the purpose for which they are provided.

8.6 The Supplier shall ensure that it holds and that all its employees hold all relevant licences permits and authorisations to allow the lawful performance of the Services.

8.7 The Supplier shall ensure that all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Services including without limitation any specific requirements set out in the Order ("Necessary Consents") are in place to provide the Services and the Council shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.

8.8 Where there is any conflict or inconsistency between the provisions of the Contract and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Supplier has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services.

9. Time of performance

9.1 For the avoidance of doubt this clause 9 applies to the provision of Services only.

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

9.3 The Supplier shall submit such programmes of work and progress reports as the Council may from time to time require.

9.4 The Supplier shall notify the Council immediately if it becomes aware of any event that it believes is likely to delay or impede the performance of the Services.

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

10. Rejection of services

10.1 For the avoidance of doubt this clause 10 applies to the provision of Services only.

10.2 The Council may at any time reject the Services or anything delivered as part of the Services which in the reasonable view of the Council does not comply with the Contract in any material way.

10.3 If the Council rejects all or part of the Services under clause 10.2 above, it shall serve a notice on the Supplier stating the reasons for such rejection.

10.4 Following receipt of a notice of rejection of the Services, the Supplier shall have 5 (five) Business Days (or such other period as the Parties may agree in writing) during which the Supplier shall address the faults or failings which caused the notice of rejection to be issued.

10.5 If the Supplier fails to correct the faults or failings which caused the notice of rejection to be issued to the reasonable satisfaction of the Council within 5 (five) Business Days, the Council shall be entitled to terminate this Contract or any part of the Services.

10.6 The Council may require the immediate removal from its premises of anything delivered by the Supplier which, in the reasonable view of the Council, is hazardous, not fit for purpose or noxious. The Supplier shall comply with any such request at its own expense.

11. Supplier's personnel

11.1 For the avoidance of doubt this clause 11 applies to the provision of Services only.

11.2 The Supplier shall make Key Contacts available for the purposes of the Services and shall not make any changes in the Key Contacts without the prior written approval of the Council.

11.3 If and when requested by the Council, the Supplier shall provide the Council with a list of the names of any person being used in the Services specifying, in each case, the capacities in which they are involved and giving such other particulars and evidence of identity and other supporting evidence as the Council may reasonably require.

11.4 The Supplier shall comply with any notice reasonably given by the Council stating that a person named in the notice is not to be involved any further in the provision of the Services. The Supplier shall replace any such person with someone of equivalent skills and qualifications.

11.5 The Council may terminate the Contract and recover from the Supplier the amount of any loss resulting from such termination if under this Contract (or any other contract the Supplier has):

(a) the Supplier fails, to ensure provision of equality of treatment for anyone who shares a Protected Characteristic as defined in the Equality Act 2010 (whether it is on such grounds as maternity, gender, transgender, marital status, ethnicity, disability, age, religion and belief and sexual orientation or otherwise) in the provision of services and in the employment of its staff and sub-contractors; and/or

(b) The Supplier unlawfully discriminates either directly or indirectly and does not comply with the obligations of the Equality Act 2010 and or any other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

12. Security and use of the Council's premises

12.1 For the avoidance of doubt this clause 12 applies to the provision of Services only.

12.2 Where the Services are being carried out at Premises that are owned or occupied by the Council the Supplier shall:

a) Comply and shall ensure that its staff, sub-contractors and agents comply with any rules or regulations applied by the Council in relation to security at its premises;

b) Comply with any notice given by the Council stating that a person named in the notice is to be removed from the Premises and/or not deployed any further in the provision of the Services. The Supplier shall ensure that the person is replaced by someone of at least equivalent skills and qualifications. The decision of the Council on whether someone may be admitted to its Premises is final. The Supplier shall bear the cost of complying with such a notice;

c) Keep the Premises reasonably clean and tidy while the Services are being performed and shall leave them clean and tidy on completion;

d) pay the costs of making good any damage to the Premises (including any fixtures and fittings of the Premises) done by its employees, agents or sub-contractors other than fair wear and tear;

e) Enter and/or occupy such Premises as a licensee; and

f) Co-operate with any other person, firm or company which is providing services to the Council at the same time as the Supplier.

13. Payment

Payment for goods

13.1 In consideration of the supply (in compliance with this Contract) of the Goods ordered the Council shall pay the Supplier the Price.

13.2 The Supplier shall submit an invoice to the Council for each Order on or at any time after Delivery. Each invoice shall quote the relevant Order Number(s), Purchase Order Number(s), the line item number from the Order, contain a description of the goods supplied, the quantity supplied, the price and be addressed to the Council's address for invoices given in the Order.

13.3 The Council shall pay the Supplier within 30 days of receipt and agreement of invoices, for good supplied to the satisfaction of the Council.

13.4 Where Value Added Tax (VAT) is lawfully due on the Goods, the Council shall on receipt of a valid VAT invoice pay the Supplier such amounts in respect of VAT as are chargeable on the supply of the Goods.

13.5 If a Party fails to make any payment due to the other under this Contract by the due date for payment (due date), then, without limiting the other party's remedies under the Contract, the defaulting party shall pay interest on the overdue amount at the rate of 4 % per annum above NatWest Bank's base rate from time to time. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments that the defaulting party disputes in good faith.

13.6 If the Council disputes any invoice or other statement of monies due, the Council shall notify the Supplier in writing. The Parties shall negotiate in good faith to attempt to resolve the dispute promptly. The Supplier shall provide all such evidence as may be reasonably necessary to verify the disputed invoice or request for payment. Where only part of an invoice is disputed, the undisputed amount shall be paid on the due date as set out in clause 13.3. The Supplier's obligations to supply the Goods shall not be affected by any payment dispute.

Payment for Services

13.7 In consideration for the carrying out the Services in compliance with this Contract by the Supplier the Council shall pay the Supplier the Price.

13.8 The Supplier shall submit monthly in arrears an invoice for the Services to the Council's address for invoices given in the Order. The invoice shall contain the Order Number and a description of the Services carried out and the proportion of the Price payable.

13.9 The Council shall pay the Supplier within 30 days of receipt and agreement of invoices, for work completed to the satisfaction of the Council.

13.10 In addition to the Price, the Council shall pay the Supplier where lawfully due a sum equivalent to any Value Added Tax chargeable in respect of the Services. Value Added Tax shall be shown as a separate item on the Provider's invoice.

13.11 For the avoidance of doubt this clause 13.11 applies where the Council is the Customer and the Supplier has agreed to be part of the Council's early payment reduction scheme (the Council's Premier Supply Service) and to the deductions set out in the attached Early Rebate Percentages Schedule.

13.11.1 For the provisions of this Clause "Invoiced Debt" means the gross amount that is invoiced by the Contractor (including all sums invoiced).

13.11.2 Notwithstanding clause 13.3, if the Supplier is a member of the Council's Premier Supply Service the Supplier acknowledges and agrees that if the Council pays an Invoiced Debt owed to the Supplier under or in connection with the Contract before the due date for payment of that Invoiced Debt, the Council shall be entitled to deduct and retain from that Invoiced Debt for its own benefit, such percentage of that Invoiced Debt that is calculated in accordance with the Early Payment Rebate Percentages Schedule. For the avoidance of doubt, the Council has no obligation pursuant to this clause 13.11 or otherwise to make early payment to the Contractor in respect of any Invoiced Debt.

14. 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 Council.

15. Audit

The Supplier shall keep and maintain until 6 (six) years after the Contract has been completed records to the satisfaction of the Council of all expenditures that are reimbursable by the Council. The Supplier shall on request afford the Council or any person reasonably specified by the Council such access to those records as may be required by the Council in connection with the Contract.

16. Freedom of information/data protection

16.1 The Supplier acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR) and shall assist and co-operate with the Council (at the Supplier's expense) to enable the Council to comply with information disclosure requirements under the FOIA or EIR.

16.2 The Council shall be responsible for determining at its absolute discretion whether any information in connection with this Contract is exempt from disclosure in accordance with the provisions of the FOIA or the EIR and/or is to be disclosed in response to a request for information.

16.3 Where Data Protection Legislation imposes an obligation on either party to include provisions in this Contract relating to personal data, those provisions shall be deemed to be included within this Contract.

16.4 Notwithstanding the general obligation in clause 16.3, the Supplier shall ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under the Data Protection Legislation.

17. Health and safety

Supply of goods

17.1 The Supplier shall notify the Council of any health and safety hazards which may arise in connection with the storage and or use of the Goods.

Provision of Services

17.2 The Supplier shall notify the Council of any health and safety hazards which may arise in connection with the performance of this Contract.

17.3 Where the Services are being carried out at land or premises owned or occupied by the Council, the Council shall notify the Provider of any health and safety hazards which may exist or arise at its premises and which may affect the Provider. The Provider shall draw these hazards to the attention of any of its employees, sub-contractors or agents who may be affected by them and instruct such persons in connection with any necessary safety measures.

18. Confidentiality

18.1 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 which is already in the public domain or the possession of the Supplier other than by reason of breach of this clause.

18.2 The provisions of this clause shall survive the termination of this Contract however that occurs.

19. Indemnity and insurance

19.1 Without prejudice to any rights or remedies of the Council the Supplier shall indemnify the Council against all actions, demands, liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Council arising out of or in connection with:

(a) 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 supply or use of the Goods and/or the provision of the Services;

(b) any claim made against the Council by a third party arising out of, or in connection with, the supply of the Goods and/or provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Contract by the Supplier, its employees, agents or subcontractors; and

(c) any claim made against the Council by a third party for death, personal injury or damage to property arising out of, or in connection with, defective Goods or any defect in the Services, to the extent that the defect in the Goods and/or the Services is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.

19.2 Nothing in this clause shall restrict or limit the Council's general obligation at law to mitigate a loss which it may suffer or incur as a result of a matter that may give rise to a claim under this indemnity.

19.3 The Supplier warrants that it has in place with a reputable insurance company a policy or policies of insurance covering all the liabilities and indemnities under this Contract.

19.4 The Supplier shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover as is reasonable (including without limitation any specific requirements set out in the Order) for production, supply and delivery of the Goods and/or provision of the Services. The cover shall be in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of the Contract, including death or personal injury, loss of or damage to property or any other loss.

19.5 The Supplier shall ensure that any subcontractors also maintain adequate insurance having regard to the obligations under this Contract which they are contracted to fulfil.

19.6 The Supplier shall:

(a) Do nothing to invalidate any insurance policy or to prejudice the Council's entitlement under it; and

(b) Notify the Council if any policy is (or will be) cancelled or its terms are (or will be) subject to any material change.

19.7 The Supplier shall give the Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the insurances are in place.

19.8 Where professional indemnity insurance is required the Supplier shall continue to maintain such insurance with a reputable insurer for a period of 6 (six) years following delivery of the Goods and/or completion of the Services.

19.9 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under this Contract.

19.10 Notwithstanding any other provision of this Contract neither Party limits or excludes its liability for fraud or fraudulent misrepresentation, death or personal injury caused by its negligence, or any other act or omission, liability for which may not be limited under any applicable law.

20. Variation

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

20.2 The price for any variation (if applicable) shall be the fair and reasonable price taking into account the market price available to the Council for similar goods. The Supplier shall supply the Council with all information necessary to allow the Council to ascertain whether the price is fair and reasonable.

20.3 These terms and conditions shall apply to any variation as if it were included in the original Order.

21. Assignment or sub-contracting

21.1 The Supplier shall not assign, transfer or novate the Contract or any part of the Contract.

21.2 The Supplier shall not sub-contract the Contract or any part of it without the prior written consent of the Council.

21.3 Sub-contracting of this Contract shall not in any way relieve the Supplier of its obligations under the Contract.

21.4 Where consent is given by the Council for sub-contracting the Supplier shall ensure that the sub-contractor has and maintains adequate insurance having regard to the obligations the sub-contractor is contracted to fulfil.

22. Rights of third parties

Unless explicitly stated in a clause of this Contract, this Contract shall not create any rights which are enforceable by anyone other than the Parties.

23. Termination

23.1 The Supplier shall notify the Council in writing immediately upon the occurrence of any of the following events:

- a) (where the Supplier is an individual) if a petition is presented for the Supplier's bankruptcy, or the Supplier makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage his affairs;
- b) (where the Supplier is a firm; or a number of persons acting together in any capacity) if any event in (a) or (c) of this clause occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Supplier to be wound up as an unregistered company; or

c) where the Supplier is a company, if the company passes a resolution for winding-up or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge.

23.2 The Council shall be entitled to terminate this Contract by notice to the Supplier with immediate effect if:

- a) Any of the events described in clause 23.1 occurs;
- b) The Supplier has committed a material breach of this Contract and (if such breach is capable of remedy) has failed to remedy such breach within 10 (ten) (Business Days of being required by the Council in writing to do so;
- c) the Supplier repeatedly breaches any of the terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract; or
- d) (Where the Supplier is an individual), if he shall die or be adjudged Incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983.

23.3 Notwithstanding clauses 23.1 and 23.2 the Council shall be entitled to terminate this Contract at any time by giving to the Supplier not less than 30 (thirty) days' notice to that effect.

23.4 The rights to terminate the Contract set out in this clause 23 are in addition to any other right to terminate set out elsewhere in this Contract.

23.5 Where this Contract provides for termination other than under clause 21 the exercise of such rights shall not be subject to the requirements of clause 23.

24. Consequences of termination

24.1 On the expiry of the term or if this Contract is terminated in whole or in part for any reason the Supplier shall co-operate fully with the Council to ensure an orderly migration of the Services to the Council or, at the Council's request, a replacement supplier.

24.2 On expiry or termination of this Contract the Supplier shall procure that all data and other material belonging to the Council (and all media of any nature containing information and data belonging to the Council or relating to the Goods and/or Services), shall be delivered to the Council forthwith.

24.3 On expiry or termination of this Contract the Supplier shall collect any equipment and or materials on the Council's premises placed there by the Supplier and the title of said equipment and or materials has not transferred to the Council.

24.4 Where the Contract is terminated due to Supplier default the Supplier shall be liable for any costs incurred by the Council in finding a substitute Supplier to supply the Goods and/or Services whether incurred before or after the termination of the Contract.

25. Notices

25.1 Any notice or other communication given under or pursuant to this Contract must be given in writing and must be sent by first class post and must be sent to the address for communications given in the Acceptance Letter (which may be altered at any time by the altering Party giving the other Party 15 (fifteen) days' notice of a changed address).

25.2 Communications to the Council must be sent to its address given for communications on the not its address for invoice and marked for the Council's Representative's attention.

25.3 A notice or communication shall be deemed to have been received 2 (two) Business Days after posting.

26. Governing law

This Contract shall be governed by and construed in accordance with the laws of England and Wales and shall be subject to the exclusive jurisdiction of the courts of England and Wales.

27. Bribery and corruption

27.1. The Council may terminate the Contract and recover from the Supplier the amount of any loss resulting from such termination:

- a) 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 Council or for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Council; or
- b) 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
- c) If in relation to any contract with the Council 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, or shall have given any fee or reward the receipt of which is an offence under Section 117 of the Local Government Act 1972.

28. Severance

28.1 If any provision of this Contract shall be found by any court or body or authority of competent jurisdiction to be invalid or unenforceable, that provision shall be severed from the remainder of the Contract which shall remain in full force and effect to the extent permitted by law.

28.2 If any provision of this Contract is found to be invalid or unenforceable but would be valid or enforceable if some part of the provision was deleted, the provision in question shall apply with any necessary modifications to make it valid.

29. Waiver

No forbearance or delay by either Party in enforcing its respective rights will prejudice or restrict the rights of that party and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach. In particular, but without limitation to the generality of the foregoing, any prior acceptance or approval communicated by the Council to the Supplier in respect of the Goods and/or Services or any omission on the part of the Council to communicate such prior acceptance or approval shall not relieve the Supplier of its obligations to deliver the Goods and/or Services in accordance with the provisions of this Contract.

30. Rights & remedies

Subject to the specific limitations set out in this Contract, no remedy conferred by any provision of this Contract is intended to be exclusive of any other remedy except as expressly provided for in this Contract and each and every remedy shall be cumulative and shall be in addition to every other remedy given thereunder or existing at law or in equity by statute or otherwise.

31. Survival

31.1 Any provision of this Contract which expressly or by implication is intended to come into or continue in force on or after termination of this Contract including clauses 15, 18, 19.1, 19.8, 19.10, 26 and 3 shall remain in full force and effect.

31.2 For the avoidance of doubt any explicit and or implicit requirements relating to the quality of the Goods and liability for the Goods shall remain in full force and effect after termination or expiry of this contract.

32. Equality and non-discrimination

32.1 The Council may terminate the Contract and recover from the Supplier the amount of any loss resulting from such termination if under this Contract (or any other contract the Supplier has):

- (a) the Supplier fails, to ensure provision of equality of treatment for anyone who shares a Protected Characteristic as defined in the Equality Act 2010 (whether it is on such grounds as maternity, gender, transgender, marital status, ethnicity, disability, age, religion and belief and sexual orientation or otherwise) in the provision of Goods and/or Services and in the employment of its staff and sub-contractors; and/or

(b) The Supplier unlawfully discriminates either directly or indirectly and does not comply with the obligations of the Equality Act 2010 and or any other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

33. Publicity

The Supplier shall not make any press announcements or publicise this Contract or its contents in any way or use the Council's name or brand in any promotion or marketing or announcement of orders, without the prior written consent of the Council

34. Intellectual property

34.1 For the avoidance of doubt this clause 34 applies to the provision of Services only.

34.2 The intellectual property rights (including the copyright) in any reports, documentation or materials produced as part of the Services are hereby assigned to and shall vest in the Council. This clause shall survive the termination of this Contract.

34.3 Save where the Services uses documents and materials supplied by the Council, the Supplier warrants that none of the documentation and materials used or created as part of the Services shall infringe any patent, trade mark, registered design, copyright or other rights in industrial property of any third party.

34.4 The Supplier shall indemnify the Council against all actions, demands, charges, expenses and costs (including legal costs on a solicitor and Council basis) which the Council may incur as a result of or in connection with any breach of clause 34.3.

35. Compliance with anti-slavery and human trafficking laws

In performing its obligations under this Contract, the Supplier shall at all times:

(a) comply with all slavery and human trafficking laws, applicable anti- statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015;

(b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity practice or conduct were carried out in the UK;

(c) include in contracts with its direct subcontractors and suppliers provisions which are at least as onerous as those set out in this clause 35.1;

(d) notify the Council as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Contract; and

(e) maintain a complete set of records to trace the supply chain of all Services and/Goods provided to the Council in connection with this Contract; and permit the Council and its third party representatives to inspect the Supplier's premises, records, and to meet the Supplier's personnel to audit the Supplier's compliance with its obligations under this clause 35.1.

35.2 The Supplier represents and warrants that at the date of this Contract it has not been convicted of any offence involving slavery and human trafficking. Nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

Translation Services

If you require this document in another format (e.g. CD, audio cassette, Braille or large type) or in another language, please telephone: 0300 303 2992.

আপনি যদি এই তথ্য আপনার নিজের ভাষায় পেতে চান তাহলে অনুগ্রহ করে 0300 303 2992 নম্বরে টেলিফোন করুন।

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