

### PURCHASE ORDER CONDITIONS OF CONTRACT FOR THE SUPPLY OF GOODS AND/OR SERVICES

#### 1. DEFINITIONS

In these conditions defined terms have capital initials.

- 1.1 "Agreement" means this contract;
- 1.2 "Business Day" means any day other than a Saturday, Sunday or a public or bank holiday in England and Wales.
- 1.2 "Council" means the Council issuing and named on the Purchase Order.
- 1.3 "Council Representative" means the person issuing the Purchase Order on behalf of the Council or subsequently advised in writing by the Council.
- 1.4 "Clause" means the clause referred to under these Conditions of Contract for the Supply of Goods and/or Services.
- 1.5 "Data Protection Legislation" (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent ] to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
- 1.6 "Data Protection Impact Assessment" an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
- 1.7 Controller , Processor , Data Subject , Personal Data , Personal Data Breach , Data Protection Officer take the meaning given in the GDPR;
- 1.8 "Data Loss Event" any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;
- 1.9 "Data Subject Access Request" a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
- 1.10 "Defect" means a part of the Goods and/or services that are not in accordance with the Purchase Order.
- 1.11 "Delivery" is when the Supplier has done all of the work the Purchase Order requires it to do.
- 1.12 "Delivery Date" is the date stated in the Purchase Order for Delivery or, where the Purchase Order requires Delivery within a stated period, the date when the period has elapsed following the date of the Purchase Order.
- 1.13 "Delivery Address" means the place or places stated in the Purchase Order for provision of the Goods and/or Services.
- 1.14 "DPA 2018" Data Protection Act 2018;
- 1.15 "Force Majeure" means any unforeseeable circumstance preventing either Party from performing any or all of its obligations under this Purchase Order which arises from or is attributable to acts or events beyond the control of the Party so prevented including, without limitation, acts of war, civil war, strikes, lockouts (but for the

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avoidance of doubt excluding strikes, lockouts or other industrial disputes which have their origin within the employees of the Party so prevented or by any default on the part of the Party's suppliers or subcontractors) riot, civil commotion, compliance with any Applicable Law or governmental order, rule, regulation or direction that was not in force at the time the Purchase Order was placed, nuclear and radioactive explosion and contamination from any nuclear utility or nuclear weapon and the effects of which a Party could not have avoided and could not have been overcome by the use of reasonable diligence.

- 1.16 "GDPR" the General Data Protection Regulation (Regulation (EU) 2016/679);
- 1.17 "Goods and/or Services" means the Goods and/or Services including works described in the Purchase Order and 'Goods' or 'Services' shall be construed accordingly.
- 1.18 "Guarantee Period" means a period of eighteen months following Delivery or, in respect of work to remedy a Defect, eighteen months following the remedy or as stated in the Purchase Order or in any Council agreement under which the Purchase Order is issued.
- 1.19 "Intellectual Property Rights" means rights in any patent, copyright, registered or unregistered design, trademark and any application for any of the foregoing, any rights in respect of confidential information and any other intellectual property right.
- 1.20 "LED" Law Enforcement Directive (Directive (EU) 2016/680);
- 1.21 "Order Value" means the price of the Goods and/or Services as stated in the Purchase Order.
- 1.22 "Party" or "Parties" means the Council and/or the Supplier.
- 1.23 "Protective Measures" appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;
- 1.24 "Provider Personnel" all directors, officers, employees, agents, consultants and contractors of the Provider and/or of any Sub-Contractor engaged in the performance of its obligations under this Agreement;
- 1.25 "Provide the Goods and/or Services" or "Providing the Goods and/or Services" means to do the work necessary to discharge the Supplier's obligations under the Purchase Order.
- 1.26 "Purchase Order" means a contract made between the Council and the Supplier for the provision of Goods and/or Services stated in the 'Purchase Order' and includes the Purchase Order Conditions, the Specification and any documents to which they refer.
- 1.27 "Purchase Order Conditions" are these Conditions of Contract for the Supply of Goods and/or Services.
- 1.28 "Specification" means the drawings, patterns, specification, samples (if any) and the description of the Goods and/or Services contained or referred to in the Purchase Order.
- 1.29 "Sub-processor" any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement.
- 1.30 "Supplier" means the person, firm, Council or other organisation with whom the Purchase Order is made, including its subcontractors, suppliers or persons engaged to provide the Goods and/or Services.
- 1.31 The headings in these Purchase Order Conditions shall not affect the interpretation thereof.
- 1.32 Words in the singular also mean the plural and vice versa.

## **2. SUPPLIER'S OBLIGATIONS**

### **2.1. The Supplier shall:-**

- 2.1.1. Provide the Goods and/or Services in accordance with the requirements, dates and periods shown in the Purchase Order;
- 2.1.2. achieve Delivery of Goods and/or Services by the Delivery Date;
- 2.1.3. ensure that the quantity and description of the Goods and/or Services will be as set out in the Purchase Order;

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- 2.1.4. comply with the Council's written instructions and reasonable directions relating to the Goods and/or Services or otherwise to the Purchase Order;
  - 2.1.5. mark any consignment of Goods with the Supplier's name and address, the Purchase Order number and the Delivery Address shown in the Purchase Order and include a packing note with a description of the Goods and the weight, number or volume of the Goods;
  - 2.1.6. be deemed to have made all necessary enquiries and ascertained the technical, logistic and operational requirements for Providing the Goods and/or Services at the Delivery Address prior to Delivery;
  - 2.1.7. warrant that it has full clear and unencumbered title to all Goods provided under the Purchase Order;
  - 2.1.8. unless otherwise stated in the Purchase Order, submit any design it undertakes to the Council for acceptance, which will not be unreasonably delayed by the Council, prior to proceeding further with Providing the Goods and/or Services.
- 2.2. The Supplier acknowledges that precise conformity of the Goods and/or Services with the Purchase Order is of the essence of the contract and the Council will be entitled to reject the Goods and/or Services or terminate the Purchase Order if the Goods and/or Services are not in conformance with the Purchase Order.

### **3. HEALTH AND SAFETY**

- 3.1. Where the Purchase Order requires the Supplier to provide Services at the Delivery Address, the Supplier shall:-
- 3.1.1. ensure that a competent supervisor is in attendance for the duration of the Services;
  - 3.1.2. ensure that a safe system of work (including risk assessments and method statements) has been submitted to the Council Representative for agreement prior to the commencement of the Services;
  - 3.1.3. ensure that all operatives under its control are competent and have received a site-specific induction which include the Council's site rules and procedures;
  - 3.1.4. ensure suitable and sufficient welfare and first aid arrangements are in place prior to commencement of the Services;
  - 3.1.5. provide the Council Representative with emergency arrangements and contacts prior to commencement of the Services;
  - 3.1.6. report all incidents to the Council Representative in accordance with the relevant Council procedure, a copy of which will be provided on request;
  - 3.1.7. inform the Council Representative of any changes in method of working or changes in design which must be agreed with a revised safe system of work recorded and communicated accordingly.

### **4. CONFIDENTIALITY AND DATA PROTECTION**

- 4.1. The Supplier shall keep confidential and shall not disclose or reproduce any information or data (including without limitation personal data) processed, collected, obtained, created or developed by the Supplier for the Council or otherwise made available to the Supplier by the Council in connection with the Purchase Order or which otherwise becomes known to the Supplier through the Supplier's performance of the Purchase Order. The Supplier shall not mention the Council's name in connection with the Purchase Order or disclose the existence of the Purchase Order in any publicity material or other similar communication without prior written consent of the Council's Communications Department.
- 4.2. The Supplier is only permitted to use confidential information and data described in Clause 4.1 internally for the purpose of providing the Goods and/or Services and shall disclose it only to its employees, consultants or professional advisors who have a need to know the same for this purpose. The Supplier shall procure that any person receiving confidential information shall observe the provisions of this Clause 4.0 (Confidentiality).
- 4.3. The Supplier shall ensure it complies with the Data Protection Act 2018 and shall use appropriate technical and organisational measures to protect confidential information and data against unauthorised or unlawful processing and against accidental loss, destruction, damage, theft, use and/or disclosure. The Supplier shall indemnify the Council against all liabilities, claims, damages, costs, expenses or proceedings whatsoever incurred by the Council as a result of the Supplier breaching any provision of this Clause 4.

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- 4.4. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is determined by the Customer and may not be determined by the Contractor.
- 4.5. The Contractor shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- 4.6. The Contractor shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
  - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
  - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 4.7. The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- (a) process that Personal Data only in accordance with this clause 4 unless the Contractor is required to do otherwise by Law. If it is so required, the Contractor shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
  - (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:
    - (i) nature of the data to be protected;
    - (ii) harm that might result from a Data Loss Event;
    - (iii) state of technological development; and
    - (iv) cost of implementing any measures;
  - (c) ensure that :
    - (i) the Contractor Personnel do not process Personal Data except in accordance with this Agreement;
    - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
      - (A) are aware of and comply with the Contractor's duties under this clause;
      - (B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
      - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement; and
      - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
  - (d) not transfer Personal Data outside of the EU unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
    - (i) the Customer or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer;
    - (ii) the Data Subject has enforceable rights and effective legal remedies;
    - (iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations); and
    - (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
  - (e) at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data.
- 4.8 Subject to clause 4.6, the Contractor shall notify the Customer immediately if it:
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
  - (b) receives a request to rectify, block or erase any Personal Data;
  - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
  - (e) 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
- (f) becomes aware of a Data Loss Event.

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- 4.9 The Contractor's obligation to notify under clause 4.5 shall include the provision of further information to the Customer in phases, as details become available.
- 4.10 Taking into account the nature of the processing, the Contractor shall provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:
- (a) the Customer with full details and copies of the complaint, communication or request;
  - (b) such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - (c) the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
  - (d) assistance as requested by the Customer following any Data Loss Event;
  - (e) assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.
- 4.11 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
- (a) the Customer determines that the processing is not occasional;
  - (b) the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
  - (c) the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 4.12 The Contractor shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.
- 4.13 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- 4.14 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:
- (a) notify the Customer in writing of the intended Sub-processor and processing;
  - (b) obtain the written consent of the Customer;
  - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 1 such that they apply to the Sub-processor; and
  - (d) provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
- 4.15 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 4.16 The Customer may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 4.17 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

## 5. FREEDOM OF INFORMATION

- 5.1 The Contractor acknowledges that the Council is subject to the requirements of the Code of Practice on Government Information, FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable the Council to comply with its Information disclosure obligations.

## 6. PROTECTION OF PUBLIC FUNDS

- 6.1 The Contractor acknowledges that the Council is under a duty to protect the public funds it administers and that it may use information provided by the Contractor for the purpose of prevention and detection of fraud. The Council may be obliged to share this information with bodies responsible for auditing or administering public funds, for example, the National Fraud Initiative.

## 7. QUALITY AND MARKING

- 7.1. The Goods and/or Services shall be of satisfactory quality and fit for the purpose for which they are required and shall meet the quality, description and performance stated or referred to in the Purchase Order and shall be equal in all respects to submitted and accepted designs, samples and patterns.

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- 7.2. The Goods and/or Services shall comply with all applicable standards, regulations and other legal requirements and with the Specification.
- 7.3. The Supplier shall maintain and observe quality control and supplier quality assurance standards in accordance with the requirements of the Council, its customs, relevant EU Standards and statutory and regulatory bodies;
- 7.4. Goods shall be suitably and sufficiently marked and labelled with information and advice necessary to instruct and warn of any hazards to health and/or safety.
- 7.5. Services will be carried out with all reasonable skill, care and diligence, utilising appropriate equipment and materials and following good industry practice.

## **8. INTERPRETATION OF SPECIFICATIONS**

- 8.1. Any discrepancies or difference between the Parties as to the intent or meaning of anything within the Purchase Order shall be subject to the decision of the Council which shall be binding on both Parties.
- 8.2. The Supplier shall provide all labour, designs, patterns, implements, carriage and all minor details whether or not described in the Specification or shown on the drawings, but which may be necessary in order to provide the Goods and/or Services.

## **9. INTELLECTUAL PROPERTY**

- 9.1. The Supplier grants to the Council a non-exclusive, royalty-free, perpetual, irrevocable, world-wide licence (with the right to sub-license) to use, copy, modify, adapt and otherwise exploit the Supplier Intellectual Property Rights in order to use the Goods and/or Services or undertake other work at the Delivery Address.
- 9.2. The Supplier shall indemnify the Council against all actions, claims, damages, liabilities, losses, costs, expenses or proceedings arising from any infringement or alleged infringement of any Intellectual Property Right, by the use or possession of any part of the Goods and/or Services.

## **10. COMMUNICATION AND NOTICES**

- 10.1. Each instruction, submission, notification, reply and other communication which the Purchase Order requires is communicated in English and in a form, which can be read, copied and recorded.
- 10.2. Notices from the Supplier in relation to Clause 20.0 (Termination and Cancellation) and Clause 21.0 (Force Majeure) shall be sent by recorded delivery post, addressed to the Council, at the Council's registered address and a copy sent immediately to the Council Representative by either email or fax and followed up with a signed copy by first class post. Notices relating to other matters shall be sent to the Council Representative by first class post or email. Unless stated otherwise, notices from the Council to the Supplier shall be sent by first class post to the other Party's last known place of abode or principal place of business or registered office or by email. Notices posted by either Party shall be deemed to have been received three Business Days after the date of posting.

## **11. VARIATIONS**

- 11.1. The Council Representative may instruct written variations to the Purchase Order changing the Goods and/or Services, the Delivery Date and the Delivery Address giving reasonable notice to the Supplier where possible. The Supplier shall comply with such instructions.
- 11.2. The Order Value shall be amended by the value of variations. Variations shall be valued by the Council with reference to the Order Value and any prices within it or, if no suitable prices exist, at reasonable market rates or the Council may invite the Supplier to provide a quotation for the cost of the variation.
- 11.3. Should the Council prevent the Supplier from meeting the Delivery Date, by virtue of a variation or for any other cause, the Council shall make a suitable adjustment to the Delivery Date and notify the Supplier accordingly.
- 11.4. No variation to the Purchase Order shall have effect unless it has been agreed and confirmed in writing by the Council Representative.

## **12. PAYMENT**

- 12.1. Unless otherwise stated in the Purchase Order, the Supplier shall send to the Council, following Delivery, a detailed priced invoice for the Order Value, stating the Purchase Order number and item numbers.

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- 12.2. The Council shall pay the Order Value to the Supplier in the manner stated in the Purchase Order or if no manner is stated, following Delivery and against the Supplier's correctly submitted invoice. Unless otherwise stated in the Purchase Order, payment will be made within 30 days from the date of an undisputed invoice.
- 12.3. Payment by the Council to the Supplier will be made by Bank Automated Cleaning System (BACS) transfer
- 12.4. Interest on late payment may be claimed by the Supplier at the rate of 2% p.a. above the base lending rate of HSBC Bank plc, calculated on a daily basis and compounded annually.
- 12.5. Unless otherwise stated in the Purchase Order, the Order Value and any prices forming part of it are exclusive of Value Added Tax.

### **13. RECOVERY OF SUMS DUE AND SET OFF**

- 13.1. The Council may set off any sum of money or obligation due to the Supplier under this Purchase Order or any other order against any sum of money or obligation owed by the Supplier to the Council under this Purchase Order or any other order or other agreement between the Parties.
- 13.2. Where no sum of money or obligation is due to the Supplier under this Purchase Order or any other order the Council may invoice the Supplier for any sum of money or obligation owed by the Supplier to the Council under this Purchase Order or any other order or other agreement between the Parties.

### **14. INSPECTION AND TESTING**

- 14.1. The Supplier shall carefully inspect and test the Goods and/or Services for compliance with the Specification. The Supplier shall, if requested by the Council, give the Council reasonable notice of such tests and allow the Council to witness the tests. If requested, the Supplier shall supply the Council with certificates of inspections and tests.
- 14.2. The Council may inspect and test the Goods and/or Services during manufacture, processing, transit, storage or installation and the Supplier shall provide facilities as may reasonably be required by the Council.
- 14.3. Where site tests are required by the Specification they shall be carried out after installation and at least seven day's notice in writing shall be given to the Council Representative inviting a delegate of the Council to witness the tests. Where any site test is failed, any necessary adjustments shall be carried out by the Supplier and the tests shall be repeated in the presence of the Council delegate at a time agreed with the Council.
- 14.4. The Council may use other suppliers to carry out the necessary adjustments and/or modifications if the site tests are not repeated and passed in a reasonable time. The Council may recover the additional cost of using such other suppliers from the Supplier.
- 14.5. Upon request by the Council, the Supplier shall, at the Supplier's sole expense, grant the Council and/or any of the Council's nominated sub-contractors free and unrestricted access to the Supplier's premises and records as the Council may reasonably require without limitation for the purposes of inspection of storage, plant, equipment, transport, data, accounts and other records and assets relating to the Goods and/or Services for the purposes of verifying the Supplier's compliance or ability to comply with its obligations under the Purchase Order. Such records shall be maintained for a minimum of 6 (six) years following the performance of the obligation under the terms of the Purchase Order.

### **15. DELAY AND DAMAGES**

- 15.1. The Council may recover from the Supplier all additional cost, loss and expense reasonably incurred by the Council which is properly attributable to the Supplier's failure to meet the Delivery Date (save where Clause 15.3 applies) or its breach of the Purchase Order or arises from termination of the Purchase Order pursuant to Clause 20.3 including, without limitation, all additional costs incurred by the Council in obtaining the Goods and/or Services (or any part of them) in substitution from an alternative supplier.
- 15.2. Failure by the Supplier to provide the Goods and/or Services within the required time will constitute a breach of contract under Clause 20.1.1 of the Purchase Order Conditions.
- 15.3. Where liquidated damages for delay are stated in the Purchase Order to be applicable and an amount payable in respect of liquidated damages is included, in the event that the Supplier fails to meet the Delivery Date, the Supplier shall pay to the Council the liquidated damages at the rate stated in the Purchase Order for the period from the Delivery Date until Delivery.

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## **16. SUPPLIER'S RESPONSIBILITY FOR THE GOODS AND/OR SERVICES**

- 16.1. Until Delivery, risk in the Goods and/or Services shall rest with the Supplier.
- 16.2. Unless otherwise agreed in writing all tools, patterns, drawings, designs and other documents or equipment supplied by, or on behalf of, the Council shall be and remain the property of the Council and the Supplier shall be responsible for their safe custody and return upon request of the Council or immediately upon termination. They shall not be disposed of by the Supplier to any third party or used except for the purpose of Providing the Goods and/or Services.
- 16.3. Property in the Goods shall pass to the Council when they are delivered to the Delivery Address and the Goods are found by the Council to be in accordance with the Purchase Order.
- 16.4. In the Provision of Goods and/or Services the Parties do not intend on creating any relationship of employer and employee or otherwise between the Supplier personnel and the Council. The Supplier shall at all times remain responsible for effecting all statutory deductions, insurances and accruals in respect of the Suppliers' personnel.

## **17. DEFECTS**

- 17.1. Defects arising prior to the end of the Guarantee Period shall be remedied by the Supplier at the Supplier's cost in accordance with the Council's reasonable instructions, or if not instructed, as soon as reasonably practicable and in any event within one month of notification of Defect. The Council may elect whether the remedy is achieved by repair, replacement or rework.
- 17.2. Other than at the Council's discretion, defective Goods will only be returned to the Supplier once replacement Goods have been provided. Goods returned shall be sent carriage forward to the Supplier at the risk and cost of the Supplier. Repair or replacement Goods shall themselves be subject to the provisions of the Guarantee Period.
- 17.3. If the Supplier fails to remedy a Defect in accordance with this Clause 16, the Council may, having given written notice to the Supplier, assess the cost of having the Defect remedied by another supplier and recover the reasonable costs incurred from the Supplier.
- 17.4. The Parties may agree that a Defect will not be remedied in return for a reduction in the Order Value. A variation shall be made confirming the agreement and the reduction to the Order Value.

## **18. ASSIGNMENT**

- 18.1. The Council may assign or transfer the Purchase Order or any part of it at will.
- 18.2. The Supplier may not sub-contract, assign or transfer the Purchase Order or any part of it without the consent in writing of the Council. Such consent shall not relieve the Supplier from any liability or obligation under the Purchase Order. The Supplier acknowledges and agrees that the Council may reasonably withhold its consent to such a proposal if it, acting in good faith, considers that the Suppliers proposal to sub-contract, assign or transfer its obligations under this Purchase Order is to such number of sub-contractors, or to such a degree or in such a manner as might jeopardise the efficient or effective performance of the Suppliers obligations or delivery of the Goods and/or Services.

## **19. INDEMNITY AND INSURANCE**

- 19.1. Unless otherwise stated in the Purchase Order, the Supplier shall effect and maintain insurance for:
- 19.1.1. Public liability insurance in respect of loss of or damage to property, including property owned by the Council, (other than the Goods and/or Services) and for bodily injury to or death of a person (other than an employee of the Supplier) arising from or in connection with the provision of the Goods and/or Services. The minimum limit of indemnity shall be £5,000,000 for any one occurrence and unlimited as to the number of occurrences and the insurance shall be maintained until the end of the Guarantee Period.
- 19.1.2. Employer's liability insurance in respect of death of or bodily injury to employees of the Supplier arising out of and in the course of their employment in connection with the Purchase Order. The minimum level of indemnity shall be £5,000,000 for any one occurrence and unlimited as to the number of occurrences and the insurance shall be provided until the end of the Guarantee Period.
- 19.1.3. Professional indemnity insurance covering the liability of the Supplier in respect of the design and specification of the Goods and/or Services where liability on the part of the Supplier for design and specification of the Goods and/or Services applies under the Purchase Order. The minimum level of indemnity shall be £1,000,000 (aggregate limit) and shall be provided until 6 years after Delivery.

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- 19.2. The Supplier shall ensure that the interests of the Council are indemnified under the insurances to be affected and maintained by the Supplier under Clause 19.1 in the following manner:
- 19.2.1. Under the provisions of an indemnity to principal clause in respect of public liability and employer's liability insurance
- 19.2.2. As an additional insured in respect of property damage insurance
- 19.3. The insurances shall be affected with well- established insurance companies or underwriters of repute (i.e. with a Standard and Poor's rating of A- or above). When required by the Council, the Supplier shall supply to the Council documentary evidence that the Insurances required under Clause 18 have been taken out and are being maintained.
- 19.4. The Supplier shall be liable for and shall indemnify the Council against any expense, liability, loss, claim, damages, costs or proceedings arising under any statute or at common law in respect of personal injury to or the death of any person arising out of or caused by the Provision of the Goods and/or Service, except to the extent that the same is due to any negligence or default on the part of the Council or of any person for whom the Council is responsible (including other contractors and their servants or agents employed by the Council).
- 19.5. The Supplier shall be liable for, and shall indemnify the Council against, any expense, liability, loss, claim, damages, costs or proceedings in respect of any injury or damage to any property real or personal (including injury or damage to property of the Council) insofar as such injury or damage arises out of or is caused by the carrying out of the Provision of Goods and/or Services by the Supplier and to the extent that the same is due to any act, omission, negligence, breach of statutory duty or default of the Supplier, its servants or agents or any of the Supplier's sub-contractors or their servants or agents.
- 19.6. Nothing in any Council agreement or Purchase Order excludes or limits the liability of a Party for death or personal injury caused by its own negligence, for fraudulent misrepresentation by it, for fraud or for any matter for which it would be illegal for that Party to exclude or to attempt to exclude its liability.
- 19.7. The Supplier shall indemnify, and keep indemnified, the Council against any expense, liability, loss, claim, costs or proceedings the Council may suffer or incur as a result of any claims made against it in respect of TUPE, National Insurance contributions, income tax and other statutory charges arising out of any Supplier personnel being found or considered to be an employee of the Council.
- 19.8. Save in respect of the provisions of Clause 19.6, the Council's liability to the Supplier under or in connection with the Purchase Order, or any Council agreement with the Supplier under which the Purchase Order is made, howsoever arising including, without limitation, negligence, breach of contract or breach of statutory duty shall be limited to the Order Value.

## **20. TERMINATION AND CANCELLATION**

- 20.1. The Council may terminate the Purchase Order immediately in whole or in part, by giving written notice to the Supplier if the Supplier has failed, or in the opinion of the Council is likely to fail to:-
- 20.1.1. provide all or part of the Goods and/or Services or remedy a Defect (in whole or in part) upon being required to do so in writing by the Council; and/or
- 20.1.2. achieve Delivery by the Delivery Date; and/or
- 20.1.3. comply with an instruction of the Council relating to the Goods and/or Services or otherwise relating to the Purchase Order
- 20.2. Either Party shall be entitled to terminate this Purchase Order immediately by giving written notice to the other if:-
- 20.2.1. an encumbrancer takes possession, or a receiver is appointed over any of the property or assets of the other Party;
- 20.2.2. the other Party makes any composition or voluntary arrangement with its creditors or enters into administration or a moratorium comes into force in respect of the other party (within the meaning of the Insolvency Act 1986);
- 20.2.3. the other Party goes into liquidation (except for the purposes of an amalgamation, reconstruction or other reorganisation and so that the Council resulting from the reorganisation effectively agrees to be bound by or to assume the obligations imposed on the other party under this Purchase Order);

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- 20.2.4 an insolvency practitioner has been appointed by the other Party; or
- 20.2.5 the other Party ceases or threatens to cease to carry on business.
- 20.3 If the Council terminates the Purchase Order or cancels any part of it, under Sub-Clauses 20.1 and 20.2 above, the Council may recover from the Supplier the forecast additional cost to the Council of procuring the Goods and/or Services from an alternative supplier.
- 20.4 The Council may terminate the Purchase Order immediately by written notice or cancel any part of it for any other reason in which case, subject to Clause 21.7, the Council shall pay the Supplier his reasonable and substantiated costs incurred up to the date of termination or cancellation in order to provide the Goods and/or Services in whole or part as the case may be.
- 20.5 The conditions of contract that expressly or by implication have effect after termination of the Purchase Order including, without limitation, Clause 4 (Confidentiality), Clause 10 (Communication and Notices), Clause 13 (Recovery of Sums Due and Set Off), Clause 17 (Defects), Clause 18 (Assignment), Clause 19 (Indemnity and Insurance) and Clause 23 (Waiver) will continue to be enforceable notwithstanding termination.

## **21. FORCE MAJEURE**

- 21.1. Subject to Clause 21.4, neither Party shall be liable for any failure to perform, or delay in performing, an obligation (other than indemnity obligations) if and to the extent that the failure or delay is caused by Force Majeure.
- 21.2. Where the Supplier is unable to perform its obligations by reason of Force Majeure the Supplier shall immediately notify the Council Representative in writing of its wish to claim relief under Clause 21.1 and provide an estimate of its duration, details of the obligations which are affected by Force Majeure and the way in which and the extent to which the Party considers that the performance of its obligations is likely to be affected.
- 21.3. Where the Supplier is unable to provide the Goods and/or Services by reason of Force Majeure the Council shall assess the information provided under Clause 21.2 and either alter the Delivery Date accordingly or cancel any part of or terminate the Purchase Order.
- 21.4. For the period of the Force Majeure each Party shall:
- 21.4.1 take all reasonable steps available to minimise the effects of the Force Majeure on the performance of its obligations and to resume full performance of the Purchase Order without reasonably avoidable delay;
  - 21.4.2 permit, and use all reasonable efforts to facilitate, any efforts that the other Party may make to obtain alternative supplies or services;
  - 21.4.3 update the information provided in the notice under Clause 21.2 at least once a week throughout the period during which the performance of its obligations is affected.
- 21.5. For the avoidance of doubt, if the Supplier is relieved from performing any obligation affected by Force Majeure it shall not be entitled to payment for the performance of that obligation in respect of the period for which relief is obtained.
- 21.6. If the Party claiming relief under Clause 21.1 is prevented by the Force Majeure from wholly or substantially performing its obligations under the Purchase Order for a period of more than 1 month either Party may terminate the Purchase Order by written notice to the other Party.
- 21.7. Clause 20.4 does not apply if the Council terminates or cancels any part of the Purchase Order under Clause 21.3, Clause 21.6 or Clause 25 (Severance).

## **22. BONA FIDES OF WORKPEOPLE**

- 22.1. The Supplier shall, if required, provide accreditations and permits for the labour and staff it uses, with a form of authority acceptable to the Council for each person whom it requires to have access to the Council's property and shall keep a record of all forms provided. Forms and passes shall be surrendered as soon as access is no longer required.
- 22.2. The Council shall be entitled, at its discretion, to request that an individual under the control of the Supplier be removed from its property and, in the event of any such request the Supplier shall forthwith remove such individual and arrange for their replacement, if required, to provide the Goods and/or Services.

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- 22.3. The Supplier shall at all times ensure its business and supply chains meet their obligations under the Modern Slavery Act 2015 and shall demonstrate the steps it takes to monitor compliance at the request of the Council.

## **23. WAIVER**

- 23.1. No failure or delay by a Party to exercise any right or remedy provided under this Purchase Order or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

## **24. RIGHTS OF THIRD PARTIES**

- 24.1. Neither the Council nor Supplier confers or purports to confer on any Third Party any benefit or right to enforce any term of the Purchase Order under the Contracts (Rights of Third Parties) Act 1999.

## **25. SEVERANCE**

- 25.1. If a provision of the Purchase Order is held to be illegal, invalid or unenforceable, in whole or in part the provision will be severed from this Purchase Order and rendered ineffective and the Parties intend that the legality, validity and enforceability of the remainder of the Purchase Order shall not be affected.
- 25.2. In the case of any discrepancy or ambiguity or conflict between any of the documents forming the Purchase Order, the order of precedence shall follow:
- the Purchase Order
  - the Purchase Order Conditions
  - the Specification

## **25. ANTI-CORRUPTION**

- 25.1 The Council may terminate the Purchase Order forthwith by giving notice in writing to the Supplier and recover from the Supplier the amount of any loss resulting from such termination if the Supplier shall have 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 Purchase Order or any other contract with the Council or for showing or forbearing to show favour or disfavour to any person in relation to the Purchase Order or any other contract with the Council or if the like acts shall have been done by any person employed by the Supplier or acting on its behalf (whether with or without the knowledge of the Supplier) or if in relation to any contract with the Council the Supplier or any person employed by the Supplier or acting on its behalf shall have committed any offence under the Bribery Act 2010.
- 25.2 Any clause in the Purchase Order limiting the Supplier's liability does not apply to this Clause 25 (Anti-Corruption).

## **26. ENTIRE AGREEMENT**

- 26.1 The Purchase Order, and any Council agreement with the Supplier under which the Purchase Order is made, is the entire agreement between the Parties and supersedes all prior proposals, promises, agreements, arrangements, representation, misrepresentation, understandings and misunderstandings between the Parties and relating to its subject matter (whether oral or in writing). For the avoidance of doubt these Purchase Order Conditions shall prevail over the Supplier's terms and conditions which, whether or not notified to the Council on any invoice, other document or otherwise, shall not form part of the Purchase Order. The terms of the Purchase Order may only be varied in accordance with Clause 11 (Variations).
- 26.2 Each Party acknowledges that in entering into the Purchase Order it does not rely on any representation, warranty, collateral contract or other assurance of any person (whether a Party to the Purchase Order or not) that is not set out in the Purchase Order or the documents referred to in it. Subject to Clause 28.2, each Party waives all rights and remedies which, but for this Clause 26, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance. The only remedy available to any Party in respect of any representation, warranty, collateral contract or other assurance that is set out in this Purchase Order (or any document referred to in it) is for breach of contract under the terms of the Purchase Order. Nothing in the Purchase Order shall, however, limit or exclude any liability for fraud.

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## **27. DISPUTE RESOLUTION**

- 27.1 Any dispute arising out of or in respect of the Purchase Order may be referred in writing by either Party to a dispute resolution committee comprising the Council Representative and the Supplier Representative. Failing resolution of the dispute by the dispute resolution committee within a period of 10 (ten) Business Days of the reference to them the dispute may immediately be referred in writing by either Party for determination to the Council's procurement team and Supplier sales manager who shall seek to reach agreement of the dispute within 1 (one) calendar month.

## **28. LAW AND JURISDICTION**

- 28.1 Each party irrevocably submits to the exclusive jurisdiction of the English and Welsh Courts in relation to all matters arising out of or in connection with the Purchase Order which shall be governed by the laws of England and Wales.
- 28.2 For the avoidance of doubt, nothing in the Purchase Order shall relieve the Supplier and its sub-contractors and agents of their statutory or common law responsibilities or obligations in relation to the Goods and/or Services (or any part of it).

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