

# Winchester City Council

## TERMS AND CONDITIONS FOR SUPPLY OF GOODS AND SERVICES

### 1. DEFINITIONS

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

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

“Contract” means the contract between the Authority and the Provider for the supply of the Goods and/or Services in accordance with:

- (i) these Terms and Conditions;
- (ii) the relevant Purchase Order;
- (iii) any specification and plans provided by the Authority; and
- (iv) any specific guarantee arrangements.

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

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

“Parties” means the Authority and the Provider and the term “Party” shall mean either the Authority or the Provider.

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

“Price” means the price payable under the Contract for the Goods and/or Services as detailed in the Purchase Order or the Contract.

“Provider” means the person, firm, organisation or company whose name appears as the addressee in the Purchase Order (or its successor in title).

“Purchase Order” means an order for the purchase of Goods and/or Services served by the Authority on the Provider which includes a description of the Goods and/or Services, the Price and any terms applying to the purchase of the Goods and/or provision of Services which are additional to these Terms and Conditions.

“Services” means the services (if any) to be performed by the Provider for the Authority as described in the Purchaser Order.

“Service Users” means the users of the Services described in the Purchase Order.

“Terms and Conditions” means these terms and conditions.

## **2. GENERAL**

2.1 These Terms and Conditions shall prevail over any terms issued by the Provider.

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

2.3 The Contract constitutes the entire agreement between the Parties relating to the supply of Goods and/or Services and replaces all previous negotiations, agreements, understandings and representations whether oral or in writing. However nothing in the Contract shall limit or exclude any liability for fraud.

### **CONTRACTS FOR THE PURCHASE OF GOODS**

The provisions of clauses 3 to 12 shall only apply where the Purchase Order includes the supply of Goods.

## **3. QUALITY AND PERFORMANCE**

3.1 The Provider shall supply the Goods in accordance with the Purchase Order.

3.2 The Goods shall:

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

## **4. DELIVERY**

4.1 The Provider shall deliver the Goods to the Premises.

4.2 Where the Provider requires access to the Premises in order to deliver the Goods:

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

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

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

## **5. PROPERTY AND RISK**

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

## **6. DAMAGE TO GOODS IN TRANSIT**

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

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

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

## **7. INSPECTION, REJECTION AND GUARANTEE**

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

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

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

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

- a) to have the Goods concerned either repaired by the Provider at no cost to the Authority or (at the choice of the Authority) replaced by the Provider with

Goods which comply with the Contract; or

b) to obtain a refund in full of any payment it has made to the Provider.

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

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

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

## **8. LABELLING AND PACKAGING**

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

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

## **9. INSTALLATION**

9.1 Where the Purchase Order requires the Provider to install the Goods at the Premises:

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

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

- a) the removal from the Premises of any materials which are hazardous or noxious or not in accordance with the Contract;
- b) the substitution of proper and suitable materials; and/or
- c) the removal and re-execution of any installation work or any Goods which are not in accordance with the Contract at no cost to the Authority.

## **10. WARRANTY**

10.1 The Provider warrants and represents that:

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

10.2 The Provider shall indemnify the Authority against all actions, demands, charges, expenses and costs (including legal costs on a solicitor and client basis) which the Authority may incur as a result of or in connection with any breach of clause 10.1.

## **11. INTELLECTUAL PROPERTY**

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

11.2 The Provider shall indemnify the Authority against all actions, demands, charges, expenses and costs (including legal costs on a solicitor and client basis) which the Authority may incur as a result of or in connection with any breach of clause 11.1.

## **12. ENVIRONMENTAL MATTERS**

12.1 The Provider confirms that:

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

## **CONTRACTS FOR SERVICES**

The provisions of clauses 13 to 14 shall only apply where the Purchase Order includes the supply of Services.

### **13. QUALITY AND PERFORMANCE**

13.1 The Provider 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) using staff that have appropriate skills, qualifications and experience;
- d) using the appropriate number of staff; and
- e) to the reasonable satisfaction of the Authority's Representative.

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

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

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

13.5 The Provider shall occupy the Premises as a licensee only.

### **14. DELIVERY**

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

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

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

## **15. DELAYS, REJECTION AND CANCELLATION**

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

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

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

15.4 If the Authority rejects all or part of the Services under clause 15.3 above, it shall serve a notice on the Provider stating the reasons for such rejection.

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

15.6 If the Provider fails to correct the fault(s) which caused the notice of rejection to be issued to the reasonable satisfaction of the Authority within 5 (five) working days, the Authority shall be entitled to terminate the Contract in respect of all or any part of the Services.

15.7 The Provider shall remove and/or re-execute (at the choice of the Authority) any work that has been rejected by the Authority at no cost to the Authority unless otherwise agreed in writing by the Authority.

15.8 The Authority may require the immediate removal from its Premises of anything delivered by the Provider which, in the reasonable view of the Authority, is hazardous or noxious or not in accordance with the Contract and the substitution of proper and suitable materials. The Provider shall comply with any such request at its own expense.

15.9 In consideration of the supply and delivery of the Goods and/or Services by the Provider the Authority shall, save as set out in clause 15.3, pay the Provider the Price.

15.10 The Provider shall submit an invoice for the Goods and/or Services to the Authority's address for invoices given in the Purchase Order. The invoice shall contain the Order Number given in the Purchase Order, a full description of the Goods supplied and/or Services carried out and the Price (showing how the Price has been calculated).

15.11 Save where the Goods and/or Services have not been delivered or are not in accordance with the Contract, the Authority shall pay the Provider's invoice within 30 days of receiving and approving it.

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

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

## **16. RECOVERY OF SUMS DUE**

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

## **17. HEALTH AND SAFETY**

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

17.2 The Authority 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-providers or agents who may be affected by them and instruct such persons in connection with any necessary safety measures.

## **18. LIVING WAGE**

18.1 The Authority is a living wage foundation (Living Wage) accredited employer and the Provider is required to pay all its Personnel the Living Wage pay rates as a minimum requirement. The Provider agrees to submit a plan to the Authority prior to delivery of the Goods/commencement of the Services to demonstrate how it will implement the Living Wage Foundation rates of pay.

## **19. CONTRACT MANAGEMENT**

19.1 The Authority appoints an authorised officer as its representative for the purposes of management of any contract it enters into.

19.2 The Contract will be managed in accordance with the Authority's Contract Management Framework which is set out on the Authority's website according to the risk level of the contract for continuous improvement in delivery and efficiencies.

## **20. CONFIDENTIALITY**

The Provider undertakes to keep secret and not to disclose and to procure that its employees, sub-providers and agents keep secret and do not disclose any information of a confidential nature which it has obtained by reason of the Contract. Nothing in this clause applies to information that is already in the public domain or the possession of the Provider other than by reason of breach of this clause. The



Authority may publish information in respect of payments made to the Provider in accordance with any government guidance or legislation.

## **20. INDEMNITY AND INSURANCE**

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

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

## **21. CHANGE CONTROL**

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

21.2 The Contract may not be varied or amended unless the variation or amendment is in writing and agreed by both the Authority and the Provider.

## **22. ASSIGNMENT OR SUB-CONTRACTING**

22.1 The Provider shall not assign the Contract without the written consent of the Authority.

22.2 No sub-contracting of the Contract shall in any way relieve the Provider of its obligations under the Contract.

22.3 Where the Provider enters a sub-contract with a provider for the purpose of performing the Contract it shall notify the Authority of the name and contact details of the sub-contractor and ensure that the sub-contract has a term requiring the Provider to pay the sub-provider within 30 days of receipt of a valid invoice and the terms of and conditions of this Contract shall be incorporated into the sub-contract.

## **23. RIGHTS OF THIRD PARTIES**

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

## **24. TERMINATION**

24.1 Without prejudice to any other rights or remedies of the Authority under the Contract the Authority shall have the right forthwith to terminate the Contract by

written notice to the Provider or his trustee in bankruptcy or receiver or (if a company) its liquidator or administrator, if the Provider shall have a receiver appointed over all or a substantial part of his or its assets or (if an individual) be declared bankrupt or (if a company) shall go into liquidation or have an administrator appointed to manage its affairs or shall be struck off the register at Companies House.

24.2 Clause 24.1 above shall apply in relation to a partnership or limited partnership (as defined in the Partnership Act 1890 and the Limited Partnerships Act 1907 respectively) subject to the modifications referred to in the Insolvent Partnerships Order 1994 (SI 1994/2421) (as amended), and a limited liability partnership (as defined in the Limited Liability Partnerships Act 2000) subject to the modifications referred to in the Limited Liability Partnerships Regulations 2001 (SI 2001/1090) (as amended).

## **25. NOTICES**

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

25.2 A notice or communication shall be deemed to have been received 2 working days after posting in the case of first class delivery and 4 working days after posting in the case of second class.

## **26. GOVERNING LAW**

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

## **27. BRIBERY AND CORRUPTION**

The Authority may cancel the Contract and recover from the Provider the amount of any loss resulting from such cancellation if:

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

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

27.3 in relation to any contract with the Authority the Provider or any person in the employ of or acting on the Provider's behalf shall have committed any offence under

the Bribery Act 2010, the Prevention of Corruption Acts, 1889 to 1916, or shall have given any fee or reward the receipt of which is an offence under Section 117 of the Local Government Act 1972.

## **28. MODERN DAY SLAVERY**

The Provider undertakes, warrants and represents that:

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

28.2 neither the Provider nor any of its officers, employees, agents or sub-providers has

28.2.1 committed an offence under the Modern Slavery Act 2015 (a **MSA Offence**); or

28.2.2 been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or

28.2.3 become aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;

28.2.4 committed an MSA Offence and shall notify the Authority immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or sub-providers have breached or potentially breached any of the terms of the Modern Slavery Act 2015.

## **29. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS**

29.1 The Provider warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Provider in the delivery of the Goods/provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.

29.2 The Provider shall immediately notify the Authority of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 29 are complied with and the Provider shall provide evidence of DBS checks if requested at any time by the Authority

29.3 The Provider shall refer information about any person carrying out the Services to the Disclosure and Barring Service where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to the Service Users children or vulnerable adults

29.4 Both Parties will comply with all applicable requirements of the General Data Protection Regulation ((EU) 2016/679) and the Data Protection Act 2018 (the "Data Protection Legislation"). The Parties acknowledge that, for the purposes of the Data

Protection Legislation, the Provider is the Controller in respect of DBS Checks carried out on individuals. The Provider will ensure that it has all necessary appropriate consents and notices in place to obtain the DBS Checks and to enable lawful disclosure of the DBS certificates and any other relevant personal data to the Authority for the duration and purposes of this Contract.

29.5 The Parties acknowledge that the Provider is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006.

29.6 The Provider shall :

- (a)** ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service ("DBS Check"); and
- (b)** monitor the level and validity of the checks under this clause for each member of staff
- (c)** not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Service Users.