



STANDARD TERMS AND CONDITIONS **FOR PURCHASE ORDERS**

1. DEFINITIONS AND INTERPRETATIONS

Save where the context otherwise requires, the following expressions shall have the meanings hereby assigned to them.

1.1. "the Buyer" means the Council

1.2. "Confidential Information" means information, the disclosure of which would constitute an actionable breach of confidence, which has either been designated as confidential by either the Supplier or Council in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including commercially sensitive information, information which relates to the business, affairs, properties, assets, trading practices, goods and services, development, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either party and all personal data and special category personal data within the meaning of the Data Protection Act 2018

1.3. "the Council" means Castle Point Borough Council of Council Offices, Kiln Road, Thundersley, Benfleet, Essex SS7 1TF

1.4. "DPA" means the Data Protection Act 2018

1.5. "Data Controller", "Data Processor", "Data Subject", "Personal Data", "Personal Data Breach", "Data Subject Event," "Data Protection Officer" shall take the same meaning as in the GDPR

1.6. "Data Protection Legislation" (i) the GDPR, the Law Enforcement Directive (Directive (EU) 2016/680)) and any applicable national implementing Laws as amended from time to time (ii) the DPA 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

1.7. "Environmental Information Rights" means the Environmental Information Regulations 2004

1.8. "FOIA" means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation

1.9. "GDPR" means the General Data Protection Regulations 2016

1.10. "Information" has the meaning give under Section 84 of the Freedom of Information Act 2000

1.11. "Law" means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgement of a relevant court of law or directives or requirements with which the Processor is bound to comply

1.12. "the Parties" or "party" means the Supplier and/or the Council

1.13. "the Payment" means the consideration or price agreed between the Council and the Supplier for the goods or services supplied by the Supplier to the Council

1.14. "the Purchase Order" means the official order for goods or services placed with the Supplier

1.15. "Regulated Activity" shall have the same meaning as set out in Parts 1 and 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 in services relating to children and/or vulnerable adults

1.16. "Requests" for Information" shall have the meaning set out in the FOIA or any

apparent request for information under the FOIA, the Environmental Information Regulations or the Code of Practice on Access to Government Information (2nd Edition)

1.17 "the Supplier" means the person or company or body from whom the Council orders goods or services

2. SUPPLY OF GOODS OR SERVICES

- 2.1 The Supplier shall at all times ensure that all goods are manufactured, stored, tested and packed in accordance with all applicable EU and British Standards applicable to them. All goods are to be of satisfactory quality and fit for purpose and all services must be carried out with due diligence.
- 2.2. The Supplier warrants that the goods will, from the time of delivery, be free from defects or failures for a reasonable period for that type of goods.
- 2.3. All representations, statements or warranties made or given by the Supplier and agents (including any of the Supplier's brochures, catalogues and advertisements) relating to the quality and fitness for purposes of the goods shall be deemed to be express conditions.
- 2.4. The Council shall not be deemed to have accepted any part of the goods until after the Council has inspected the goods. The Council may reject goods which are not in accordance with the Purchase Order until 21 days after delivery. Unless within 28 days of receipt of notice of rejection the supplier collects such goods, the Council may dispose of them as the Council shall think fit.
- 2.5. Title to the goods shall pass on delivery of the goods and (if applicable) on collection of the goods by the Supplier
- 2.6. Risk shall pass on acceptance of the goods and (if applicable) on rejection of the goods by the Council
- 2.7. The Supplier warrants that none of the goods constitutes or involves an infringement of any existing intellectual property right and the Supplier hereby agrees to indemnify the Council against all charges, expenses, costs and damages arising from any claim that the use or sale of any of the goods so supplied constitutes or involves any such infringements.
- 2.8. If the Supplier is found to have in the sole judgement of the Council, failed to provide satisfactory performance of the requirements of the Purchase Order; or become bankrupt or made an arrangement or composition with its creditors or had a winding up petition made against it or had a liquidator or receiver appointed or entered into liquidation either voluntarily or compulsorily, the Council shall be entitled to terminate the Purchase Order.
- 2.9. No delay or failure in performance by either party shall constitute default or give rise to any claim for damages or loss of anticipated profits if such delay or failure is caused by force majeure.
- 2.10 The Supplier shall not claim any lien, attachment or other such right over or in connection with the goods, and shall indemnify the Council against any and all liens, attachments or other such rights asserted by person who are, or who claim to be, sub-contractors, agents or assignees of the Supplier.
- 2.11 The Supplier shall provide the Services safely and in a manner that is not, or is not

likely to be injurious to health or detrimental to the environment or the fabric of the Council's property or to its staff and shall carry out the Services in accordance with all health and safety legislation.

- 2.12 Any delivery date specified shall be of the essence
- 2.13 The Supplier shall provide the Services at all times in such a manner as shall promote and enhance the image and reputation of the Council.

3. PAYMENT

- 3.1 The Price for the goods or services shall be exclusive of VAT. VAT shall be due at the rate ruling on the date of the tax point.
- 3.2. Payment terms are net 30 days from receipt of a correct and valid invoice.
- 3.3. The Purchase Order number must be quoted on all invoices and delivery notes
- 3.4. When the Supplier provides goods or services that are subject to VAT – a tax invoice is required and payment will only be made on production of a tax invoice.

4. CONFIDENTIALITY

- 4.1. The parties:
 - 4.1.1. Shall treat all Confidential Information belonging to the other party as confidential and safeguard it accordingly; and
 - 4.1.2. Shall not disclose any Confidential Information belonging to the other party to any other person without the prior written consent of the other party, except to such persons and to such extent as may be necessary for the performance of the Purchase Order or except where disclosure is otherwise expressly permitted by the provisions of the Purchase Order
- 4.2. The Supplier shall not use any Confidential Information received otherwise than for the purposes of the Purchase Order
- 4.3 The provisions of Clauses 4.1. and 4.2. shall not apply to any Confidential Information received by one Party from the other:-
 - (a) which is or becomes public knowledge (otherwise than by breach of this Condition);
 - (b) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
 - (c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
 - (d) is independently developed without access to the Confidential Information; or
 - (e) which must be disclosed pursuant to a statutory, legal or parliamentary

obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, the Code of Practice on Access to Government Information (2nd Edition) or the Environmental Information Regulations

4.4. Nothing in this Condition shall prevent the Council:-

- (a) disclosing any Confidential Information obtained from the Supplier:-
 - i) to pay any other department, office or agency of the Crown;
 - ii) to any person engaged in providing any services to the Council for any purpose relating to or ancillary to the Purchase Order;
- (b) disclosing any Confidential Information for the purpose of:-
 - (i) the examination and certification of the Council's accounts; or
 - (ii) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources

4.5 Nothing in this Condition shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Purchase Order in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

4.6. In the event that the Supplier fails to comply with this Condition 4, the Council reserves the right to terminate the Purchase Order by notice in writing with immediate effect.

4.7. The provisions under this Condition 4 are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

5. FREEDOM OF INFORMATION

5.1. The Supplier acknowledges that the Council is subject to the requirements of the Code of Practice on Access to Government Information (2nd Edition), the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council (at the Supplier's expense) to enable the Council to comply with any Information disclosure requirements.

5.2. The Council shall be responsible for determining at its absolute discretion whether:-

- a) the Information is exempt from disclosure under the Code of Practice on Access to Government Information (2nd Edition), the FOIA and the Environmental Information Regulations;
- b) the Information is to be disclosed in response to a Request for

Information, and

in no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Council.

- 5.3. The Supplier acknowledges that the Council may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000, be obliged under the Code of Practice on Access to Government Information(2nd Edition), the FOIA, or the Environmental Information Regulations to disclose Information:-
- a) without consulting with the Supplier, or
 - b) following consultation with the Supplier and having taken its views into account.
- 5.4. The Supplier shall ensure that all information produced in the course of the Purchase Order or relating to the Purchase Order is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

6. DATA PROTECTION

- 6.1 Unless otherwise agreed the Parties, the Council is the Data Controller and the Supplier is the Data Processor for the purposes of the Data Protection Legislation.
- 6.2. The Supplier shall comply with its obligations under the Data Protection Legislation as Data Processor
- 6.3 The only personal data processing that the Supplier is authorised to do is as agreed with the Council in connection with this purchase order and may not be determined by the Supplier.
- 6.4 The Supplier shall ensure that it has in place such technical and organisational measures as are appropriate to protect against a Data Loss Event and to ensure the reliability and integrity of its personnel and ensure they have undergone adequate training where they have access to and process Personal Data in relation to the services set out in this purchase order.
- 6.5 The Supplier shall not transfer Personal Data outside of the EU other than with the consent of the Council
- 6.6 At the written request of the Council delete or return all Personal Data to the Council on termination of this Purchase Order
- 6.7 The Supplier shall notify the Council immediately if it received a Data Subject Request, a request to rectify, block or erase any Personal Data, receives any other request, complaint or communication relating to the Council's obligations under the Data Protection Legislation, receives any communication from the Information Commissioner in connection with Personal Data processed under the Purchase Order
- 6.8 The Supplier shall immediately notify the Council if it becomes aware of a Data Loss Event
- 6.9 The Supplier shall provide the Council with any assistance in relation to either party's

obligations under the Data Protection Legislation

- 6.10 Except where the Supplier employs fewer than 250 staff or where the Supplier is processing Personal Data which is likely to result in a risk to the rights and freedoms of Data Subjects or processes special categories of Personal Data the Supplier shall maintain complete and accurate records and information to demonstrate its compliance with GDPR
- 6.11 The Supplier shall not allow any sub-contractor to process any Personal Data related to the Purchase Order unless the Council has consented in writing and a written agreement with the sub-contractor giving effect to the terms and conditions in conditions 4 and 6 apply to the sub-contractor. The Supplier shall remain fully liable for all acts and omissions of its sub-contractors

7. BRIBERY AND CORRUPTION

- 7.1. The Council shall be entitled to cancel the Purchase Order and to recover from the Supplier the amount of any loss resulting from such cancellation if:
- 7.1.1. The Supplier or any person employed by the Supplier shall have offered or given or agreed to give to any person any gift or consideration of any kind as inducement or reward for doing or forbearing to do so or for having done or forborne to do any action in relation to the Purchase Order or any other contract with the Council or
- 7.1.2. In relation to any contract with the Council the Supplier or person employed by it or acting on its behalf shall
- 7.1.2.1. have committed any offence under the Prevention of Corruption Act 1889 to 1916 or
- 7.1.2.2. have given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972

8. SAFEGUARDING

- 8.1 The Supplier shall ensure that if carrying out Regulated Activities that ensure that all their personnel engaged in such activities under the Purchase Order are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service and not employee or use the services of any person who is barred from or whose previous conduct or records indicate that they would not be suitable to carry out the Services pursuant to the Purchase Order

9. COUNCIL'S WHISTLE BLOWING POLICY

- 9.1 The Supplier's attention is drawn to the Council's Whistle Blowing Policy which is intended to encourage and enable Council Staff as well as staff of suppliers and contractors or organisations providing goods and services to the Council to raise serious concerns within the Council.
- 9.2. The Whistle Blowing Policy provides a mechanism should the Supplier have concerns that the Council:
- 9.2.1. is or has acted unlawfully
- 9.2.2. is or has provided a service failing below established standards
- 9.2.3. committed an act of impropriety

9.2.4. put the health and safety of people at risk

10. GENERAL

- 10.1. Except as stated in 2.3 above these conditions shall apply to the exclusion of all other terms and conditions including any terms or conditions which the Supplier may purport to apply under any sale order, confirmation of order or similar document.
- 10.2. This Purchase Order shall be subject to English Law.
- 10.3. The Supplier shall comply with any law which prohibits discrimination in relation to employment on the grounds of age, colour, disability, ethnic or national origin or religion or sex.
- 10.4. Any disputes between the parties concerning the interpretation of these Terms and Conditions or the performance of the services or supply of goods pursuant to the Purchase Order shall be referred to an Arbitrator to be agreed upon by the parties or in default of such agreement to be nominated by the President for the time being of the Law Society and their decision shall be final and binding on the parties hereto.