

## BOROUGH OF POOLE TERMS AND CONDITIONS FOR PURCHASE ORDERS

### 1. GENERAL

1.1 These terms and conditions shall apply in all cases except where the Purchase Order forms part of a Specific Contract in which case the terms and conditions of the Specific Contract shall prevail.

These terms and conditions or the terms and conditions of any Specific Contract including this Purchase Order shall prevail over any of the Supplier's standard terms and conditions.

### 2. DEFINITIONS

2.1 In these conditions unless the context otherwise requires the following expressions have the following meanings:

- "Specific Contract" means a separate contract that has already been awarded to the Supplier by the Council the scope of which covers the Goods, Services or Works to which this Purchase Order relates.
- "Supplier" means the person, firm, company or other trading entity supplying the Council and whose name appears on the Purchase Order;
- "Goods" means the products described in the Purchase Order;
- "Services" means the professional or other work described in the Purchase Order of whatever nature including design concepts, survey or consultants reports;
- "Works" means the works described in the Purchase Order;
- "Council" means the Council of the Borough and County of the Town of Poole;
- "Party" means either or both of the Supplier and the Council
- "Price" means the price of the Goods, Services or Works being provided by the Supplier excluding VAT, shipping and other charges specified in the Purchase Order;
- "Purchase Order" means the Council's authorised Purchase Order referring to these terms and conditions.

2.2 In this Purchase Order (including the recitals) unless the context otherwise requires: clause headings are for ease of reference only; references to clauses are to clauses and schedules in these conditions; the singular includes the plural and vice-versa and any of the genders includes the other; any reference to a person includes a company, corporation, partnership of unincorporated association; reference to a Party includes its successors in title, transferees and assignees; references to any statute includes any statutory modification, extension or re-enactment of it or any part of it for the time being in force and also includes all statutory instruments, codes of practice or guidance and regulations deriving validity from that statute.

### 3. VARIATIONS

3.1 Neither the Council nor the Supplier shall be bound by any variation or waiver of or addition to the Purchase Order or to these conditions unless that variation or addition shall have been agreed and evidenced in writing.

### 4. SPECIFICATION AND QUALITY OF THE GOODS, SERVICES OR WORKS

4.1 The quantity, quality and description of the Goods, Services or Works supplied by the Supplier shall comply in all respects with any quoted British Standards or equivalent EU standards or drawings, samples and patterns specified in the Purchase Order or any modifications thereof that may be agreed by the Council in writing.

4.2 The Goods, Services or Works shall be of the quantity or in the numbers specified in the Purchase Order, shall be of good quality material and workmanship, shall conform in every respect to any sample provided or given by either Party, shall be capable of any standard of performance specified in the Purchase Order, and where the purpose for which they are required is indicated in the Purchase Order either expressly or by implication the Goods, Services or Works shall be fit for that purpose.

### 5. DELIVERY OF THE GOODS, SERVICES OR WORKS

5.1 The Goods, Services or Works shall be properly packed and secured in such a manner as to reach their destination in good condition under normal conditions of transport and shall unless otherwise agreed be delivered by the Supplier to the Council or be dispatched by the Supplier for delivery to the Council at the address and time specified in the Purchase Order.

5.2 Delivery shall be free of charge to the Council and at the Supplier's risk unless otherwise agreed. Delivery to a carrier shall not be deemed to be Delivery of the Goods, Services or Works to the Council.

5.3 Every delivery of the Goods, Services or Works shall be accompanied or proceeded by a delivery or advice note addressed to the appropriate officer of the Council at the establishment named in the Purchase Order and that note shall state in full the Purchase Order number, name, quality, sort, rate, price, quantity and number of the Goods, Services or Works delivered therewith or to be delivered thereafter.

### 6. PASSING OF OWNERSHIP IN THE GOODS, SERVICES OR WORKS

6.1 The ownership in the Goods, Services or Works shall pass to the Council immediately on delivery but shall pass back to the Supplier if and as soon as the right of rejection under these conditions is exercised.

### 7. SUBSTITUTION

7.1 The Supplier shall not substitute any alternative Goods, Services or Works agreed to be supplied hereunder unless such substitution will not be in breach of condition 4 or adversely effect the requirements of the Council as specified in the Purchase Order and will not result in any increase in price and has the prior approval in writing from the Council.

### 8. DEFAULT BY SUPPLIER

8.1 If any of the Goods, Services or Works to be supplied by the Supplier to the Council under the Purchase Order shall in the opinion of the responsible officer of the Council for the use of whose department they are required (whose decision shall be conclusive as against the Supplier):

- a) not be duly delivered at the address and time (if any) specified subject to any extension of time granted by the Council; or
- b) not be of the quality or type specified; or
- c) not be of the quantity specified; or
- d) not be of the price specified; or
- e) be delivered without a delivery or advice note containing correct and sufficient particulars of the product name, quality, type, rate, price, quantity of such Goods, Services or Works then the Council may, without prejudice to any other remedy, by written notice served on the Supplier reject those Goods, Services or Works.

8.2 If the Goods, Services or Works are not removed or replaced with acceptable Goods, Services or Works by the Supplier within twenty-four hours after service of the notice under 8.1, the Council may return them to the Supplier at the expense of the Supplier and in every such case it shall be lawful for the Council to purchase at

such prices and on such terms and conditions as the Council thinks fit the same or similar goods, services or works and in that event the Supplier shall pay to the Council or it shall be lawful for the Council to deduct from any sum that is due or may become due to the Supplier under the Purchase Order or otherwise all costs charges and expenses of such additional supply or arising from such failure to perform the Purchase Order over and above the rate or price at which such goods, services or works are under the Purchase Order to be supplied and delivered.

8.3 If the Supplier without reasonable cause fails to proceed diligently with the Goods, Services or Works, or wholly suspends the carrying out of the Works before completion, or if default is made by the Supplier in complying with this condition, the Council may (in addition to any other remedy), enter upon the site of the Services or Works and expel the Supplier therefrom and may itself or through another supplier complete the Services or Works or make good the default in the supply of Goods in which event the Supplier shall pay to the Council or it shall be lawful for the Council to deduct from any sum that is due or may become due to the Supplier under the Purchase Order or otherwise all costs, charges and expenses over and above the rate or price at which such Services or Work were to have been carried out or Goods supplied under the Purchase Order.

### 9. POSTPONEMENT OR CANCELLATION OF DELIVERY OF GOODS, SERVICES OR WORKS

9.1 If for any unavoidable cause including:

- a) any strike or lock-out of employees or any working to rule by employees;
- b) civil commotion;
- c) cessation or material interruption of traffic by air, road, rail or sea;
- d) force majeure, or
- e) exceptionally adverse weather.

either Party shall be unable to continue to supply or to accept delivery as the case may be of all the Goods, Services or Works which at the commencement of such disability be bound to deliver or accept as the case may be any Goods, Services or Works and within one month after the termination of that period the Council shall determine and shall serve notice on the Supplier whether it requires the Goods, Services or Works not delivered to be cancelled or to be delivered. If it does so require the Purchase Order shall be performed in the same manner as if the time fixed for each delivery had been postponed by a period equal to the duration of the said period of disability.

### 10. INSPECTION OF GOODS, SERVICES, WORKS AND PREMISES

The Supplier shall without hindrance permit any authorised officer or agent of the Council to enter at any reasonable time without prior notice upon any land or premises or vehicles which are used for the preparation, distribution or storage of any of the Goods, Services or Works to be supplied under the Purchase Order for the following purposes:

10.1 to inspect all or any part of the said land premises or vehicles to ascertain whether they are suitable for the preparation, distribution or storage of the said Goods, Services or Works;

10.2 to check the quantity and/or quality of the Goods, Services or Works, their description and their country of origin for this purpose to take such samples as are deemed necessary and the Supplier shall afford all reasonable assistance to the officer or agent in carrying out such inspections (and this shall include the provision of samples where requested).

### 11. CANCELLATION ON ACCOUNT OF BRIBERY

11.1 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 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 foreborne to do any action in relation to the obtaining or the 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 him or acting on his 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 him or acting on his behalf shall have committed any Prohibited Act under the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

### 12. ASSIGNMENT AND SUB-CONTRACTING

12.1 Save as provided in sub-clause 12.2 below the Supplier shall not be entitled to transfer, assign or sub-contract any of its rights or obligations under this Purchase Order.

12.2 The Supplier shall be entitled (subject to prior written approval of the Council which shall not be unreasonably withheld or delayed) to engage the services of independent sub-contractors of its own to assist with its duties hereunder PROVIDED that the Supplier:

12.2.1 Shall not be relieved from any of its obligations hereunder by engaging any such sub-contractor;

12.2.2 Shall secure binding obligations from any such sub-contractor so as to ensure that the sub-contractor will comply with all the Supplier's obligations under this Purchase Order;

12.2.3 shall not require the Council to make any additional payments for any sub-contractor or agent appointed by the Supplier to assist in complying with its obligations under this Purchase Order including the supply of any collateral warranties required by the Council.

12.3 Where the Supplier enters into a sub-contract with a sub-contractor for the purpose of performing its obligations under the Purchase Order, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Supplier to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.

12.4 The Council shall be entitled (subject to the prior written approval of the Supplier which shall not be unreasonably withheld or delayed) to transfer, assign or otherwise dispose of in whole or in part its rights under this Purchase Order.

### 13. INDEMNIFICATION

13.1 The Council shall indemnify the Supplier against all claims, costs and expenses which the Supplier may incur and which arise directly from the Council's breach of any of its obligations under this Purchase Order.

13.2 The Supplier shall indemnify the Council against all reasonable damage, liability, costs, claims, actions and proceedings arising directly out of the performance, defective performance or otherwise of this Purchase Order by the Supplier, its employees servants or agents.

13.3 It is hereby agreed and declared for the avoidance of doubt that in the event of breach of this Purchase Order by the Supplier any claim by the Council in respect

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of such breach shall not be limited by the limits of the indemnity of the insurance policies of the Supplier.

### 14. LIMITATION OF LIABILITY OF THE SUPPLIER

14.1 Except in respect of death or personal injury due to negligence for which no limit applies, the entire liability of the Supplier to the Council in respect of any claim whatsoever or breach of this Purchase Order, whether or not arising out of negligence, shall be limited to £5,000,000 (FIVE MILLION POUNDS) for any one claim unless specifically stated to be otherwise in the Purchase Order.

14.2 Except in the event of a breach of conditions 11 or 20 the Supplier shall in no circumstances be liable to the Council for any indirect economical or financial loss of any kind which the Council sustains in consequence of any breach of agreement or tort committed by the Supplier.

### 15. LIABILITY OF THE COUNCIL AND LIMITATION OF LIABILITY

15.1 The Council shall be liable to the Supplier for any direct loss or damage to the Supplier's property which is caused by negligence or wilful tortuous act of the Council or its servant during the course of their employment but not in any other way whatsoever.

15.2 The Council shall in no circumstances be liable to the Supplier for any indirect economical or financial loss of any kind which he sustains (other than the non-payment of sums which are or ought to have been certified as due to the Supplier under the Purchase Order) in consequence of any breach of agreement or tort committed by the Council.

15.3 In the absence of fraud the Council does not warrant the accuracy of any representation or statement which may have been made or any information or advice which may have been given to the Supplier during the negotiations antecedent to this Purchase Order by the Council, its servants or agents, whether in relation to fact or law, and the Council shall not be liable to the Supplier for any loss or damage which the Supplier may sustain as a result of relying on any such representation, statement, information or advice, whether in contract, tort, under the Misrepresentation Act 1967 or otherwise, save insofar as the relevant statement, representation, information or advice was made or given fraudulently by the Council or its servants or agents acting in the course of their employment.

### 16. TERMINATION AND CANCELLATION

16.1 Either Party may terminate this Purchase Order by notice in writing with immediate effect to the other if:

- a) the other Party commits a material breach of this Purchase Order and, in the case of a breach capable of being remedied fails to remedy within 14 calendar days of being given notice in writing setting out the breach and indicating that failure to remedy the breach may result in termination of this Purchase Order;
- b) the other Party commits a material breach of this Purchase Order which cannot be remedied;
- c) the other Party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect;
- d) the other Party ceases to carry on its business or substantially the whole of its business; or
- e) the other Party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.

### 17. CONSEQUENCES OF TERMINATION

17.1 If the Supplier's engagement is terminated the Council shall:

17.1.1 cease to be under any obligation to make further payment until the costs, loss and/or damage resulting from arising out of the termination of the Supplier's employment shall have been calculated and provided such calculation shows a sum or sums due to the Supplier;

17.1.2 be entitled to employ and pay other persons to provide and complete provision of the supply or any part thereof;

17.1.3 be entitled to deduct from any sum or sums which would have been due from the Council to the Supplier under this Purchase Order or any other agreement or be entitled to recover the same from the Supplier as a debt any loss or damage to the Council resulting from or arising out of the termination of the Supplier's engagement. Such loss or damage shall include the reasonable costs to the Council of the time spent by its officers in terminating the Supplier's engagement and in making alternative arrangements for the provision of the supply or any part thereof;

17.1.4 when the total costs loss and/or damage resulting from or arising out of the termination of the Supplier's engagement have been calculated and deducted so far as practicable from any sum or sums which would have been to the Supplier be entitled to recover any balance shown as due to the Council as a debt or alternatively the Council shall pay to the Supplier any balance shown as due to the Supplier;

17.1.5 be entitled to terminate the Goods, Services or Works by notice in writing with immediate effect.

### 18. SEVERABILITY

18.1 If any provision of this Purchase Order is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions herein shall continue in full force and effect as if this Purchase Order had been agreed with the invalid, illegal or unenforceable provision eliminated.

### 19. WAIVER

19.1 The failure by either Party to enforce at any time or for any period any one or more of these Terms and Conditions shall not be a waiver of them or of the right at any time subsequently to enforce all the terms and conditions of this Purchase Order.

### 20. CONFIDENTIALITY AND DATA PROTECTION

20.1 The Supplier shall not use or divulge or communicate to any person (other than those whose province it is to know the same or with the authority of the Council) any confidential information which shall mean information concerning the staff, business, accounts, finance, or contractual arrangements or other dealings computer systems, substances of reports, products, recommendations, transactions or affairs of the Council which may come into the Supplier's knowledge.

20.2 The Supplier shall ensure that its employees, agents, and sub-contractors are aware of and comply with the confidentiality and non-disclosure provisions contained within this Clause and the Supplier shall indemnify the Council against any loss or damage whatsoever which the Council may sustain or incur as a result of any breach of confidence by any such persons.

20.3 The Supplier shall (and shall procure that its employees, agents, and sub-contractors shall) comply with any requirements under the Data Protection

Act 1998 and will duly observe all its obligations under the aforementioned Act which arise in connection with performance of this Purchase Order.

20.4 The provisions of this clause shall apply during the continuance of this Purchase Order and indefinitely after its expiry or termination.

### 21. ETHICAL STANDARDS

21.1 The Supplier must promote equality, treat others with respect and not do anything which compromises the impartiality of those who work for the Supplier.

21.2 The Supplier must not, without consent, disclose confidential information they have acquired and must not prevent others from gaining access to information to which they are entitled.

21.3 The Supplier, and any of the Supplier's employees or sub-contractors, must not conduct themselves in a manner, which could bring this Council into disrepute.

21.4 The Council may, by notice in writing to the Supplier explaining the reasons for its objection, object to any person proposed by the Supplier to deliver part of the Goods, Services or Works described in the Purchase Order. Upon receipt of such notice the Supplier shall immediately remove such persons from its team to provide or providing such Goods, Services or Works. Unless the Council subsequently withdraws such notice after a consultation with the Supplier, the Supplier shall ensure that such persons have no further involvement in the Purchase Order.

### 22. NOTICES

22.1 Unless otherwise communicated to the Party in writing any notice to be given by either Party to the other may be served by email, personal service or by post to the person named on the Purchase Order at the address of the other Party that is the registered office or main place of business of the Supplier or if the Council, Borough of Poole, Civic Centre, Poole, Dorset, BH15 2RU.

22.2 A notice sent by email shall be deemed to be received the same day. Notice given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by second class post shall be deemed to have been delivered in the ordinary course of post and if by first class post shall be deemed to have been delivered 48 hours after posting. A certificate of posting issued by the Post Office shall be proof of posting.

### 23. INSURANCE

23.1 The Supplier shall maintain a comprehensive policy of public liability and employer's liability insurance. In respect of its liability such insurance cover to be maintained and provide for a minimum of £5,000,000 (FIVE MILLION POUNDS). Cover in respect of death or personal injury due to negligence will be unlimited.

23.2 If appropriate and requested in writing, the Supplier may also be required to provide product liability insurance of at least £2,000,000 (TWO MILLION POUNDS) and for professional indemnity insurance of at least £1,000,000 (ONE MILLION POUNDS) cover for any one claim, and the Supplier shall provide the Council with certified copies of the relevant policies upon request.

### 24. INVOICES

24.1 Invoices shall be submitted either:

24.1.1 Electronically, direct to the Council's Purchase To Pay (P2P) system. This is preferred and will result in fastest payment.

24.1.2 By post to Payments Team, Civic Centre, Poole, Dorset, BH15 2RU.

24.2 The Supplier's invoice(s) shall detail:

24.2.1 The relevant Purchase Order number. Failure to do so will result in the invoice being returned and payment delayed.

24.2.2 Description(s) of Goods, Services or Works matching the details on the Purchase Order. Changes will delay payment.

24.2.3 Price(s) matching those on the Purchase Order. Changes will delay payment.

24.2.4 Shipping charges (where prior agreed) which must be itemised separately.

24.2.5 Other charges (where previously agreed) which must be itemised separately.

24.2.6 VAT (if the Supplier determines that VAT is payable) must comply with the requirements of H.M. Revenue and Customs for VAT purposes and must be itemised separately.

### 25. PAYMENTS

25.1 The Council shall pay the Price of the Goods and Services within 30 (thirty) days following receipt of a valid VAT invoice submitted in accordance with the Specification, or if not specified, monthly in arrears. If the Council is late in making any payments due (which for the avoidance of doubt shall not include any amounts which are withheld on the grounds of late delivery, sub-standard quality or effects) the Council shall pay interest on the amount of the late payment at the rate of 8% a year above the base rate for lending of The Bank of England from the final date for payment of that amount until the date on which the relevant payment is made.

25.2 The Supplier shall accept payment of monies due by electronic funds transfer through BACS. The Supplier shall notify the Council of the number, sort code and any other relevant details of the bank account to which the Council should make payment.

25.3 The Supplier shall accept notification of payment via email and shall notify the Council of the email address to which such notifications of payment shall be sent.

25.4 All payments shall be made in GBP unless otherwise stated.

### 26. DISPUTE RESOLUTION

26.1 If any dispute arises between the Parties from any aspect or term of the Purchase Order the aggrieved Party shall act reasonably to bring the issue to the attention of the other Party by notice in writing and whereupon the Parties shall use all reasonable endeavours to resolve the issue by negotiation. If the dispute is not resolved by negotiation within 28 days of the issue being raised by notice in writing the dispute may be referred to arbitration under the provisions of the Arbitration Act 1996 or if the Parties agree to an agreed form of alternative dispute resolution.

### 27. GOVERNING LAW AND JURISDICTION (PROPER LAW OF CONTRACTS)

27.1 This Purchase Order is subject to the law of England and Wales.