

## STANDARD AGREEMENT FOR PURCHASE ORDERS

This Agreement sets out TENDRING DISTRICT COUNCIL's standard terms and conditions for the supply of Goods and Services.

### DEFINITIONS AND INTERPRETATION

In these Terms and Conditions, the following definitions apply:

**Authority:** Tendring District Council of Town Hall, Station Road, Clacton-on-Sea, Essex CO15 1SE, <https://www.tendringdc.gov.uk/>

**Contract:** the contract between the Authority and the Supplier for the supply of Goods and/or Services in accordance with these Conditions.

**Data Protection Legislation:** all applicable law concerning the processing of Personal Data and privacy up to but excluding 25 May 2018, being the Data Protection Act 1998 and thereafter

(i) unless and until the GDPR is no longer applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then

(ii) any success for legislation to the GDPR or the Data Protection Act 1998.

**Deliverables:** all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, (including drafts).

**Force Majeure:** any circumstance not within a party's reasonable control including, without limitation:

- a) acts of God, flood, drought, earthquake or other natural disaster;
- b) epidemic or pandemic;
- c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- d) nuclear, chemical or biological contamination or sonic boom;
- e) any law or action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
- f) collapse of buildings, fire, explosion or accident; and
- g) any labour or trade dispute, strikes, industrial action or lockouts (excluding any labour or trade dispute, strike, industrial action or lockout confined to the Supplier's workforce or the workforce of any Subcontractor of the Supplier).

**Goods:** the goods (or any part of them) set out in the Purchase Order.

**Health and Safety Policy:** the health and safety policy of the Authority as provided to the Supplier on or before the order date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety.

**Intellectual Property Rights:** patents, utility models, rights to interventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Parties:** the Authority and the Supplier.

**Purchase Order:** the Authority's confirmation in writing for the supply of Goods and/or Services containing an order number to be quoted on all invoices for payment by the Authority.

**Request for Quotes:** the Authority's request for quotes to be provided in order to demonstrate best value for money in accordance with the Authority's Best Value Duty.

**Services:** the services to be delivered as described within the:

- a) Purchase Order; and
- b) Request for Quotes for values exceeding £10,000.00 but below £25,000.00; or
- c) Service Specification for values exceeding £25,000.00.

**Service Specification:** the description for Services as specified by the Authority.

**Supplier:** the person or firm from whom the Authority purchases the Goods and/or Services.

## **1. BASIS OF AGREEMENT**

- 1.1 All of these conditions shall apply to the supply of both Goods and Services.
- 1.2 These terms and conditions will be superseded by those stated in any referenced Framework Agreement or a Contract in writing signed by the Parties.
- 1.3 These conditions shall apply to the exclusion of all other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing, except as stated in 2.4 below.

## **2. SUPPLY OF GOODS**

- 2.1 The Supplier shall ensure that all Goods correspond with their description, 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 (within the meaning of the Sale of Goods Act 1979) and fit for any purpose made known to the Supplier by the Authority, expressly or by implication.
- 2.2 The Supplier will ensure that the Goods are delivered to the Authority's requested delivery address on or by any specified delivery date and time shall be of the essence.
- 2.3 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.
- 2.4 All representations, statements or warranties made or given by the Supplier and agents (including any of the Supplier brochures, catalogues and advertisements) relating to the quality and fitness for purpose of the Goods shall be deemed to be express conditions.
- 2.5 The Authority shall not be deemed to have accepted any part of the Goods until after the Authority has inspected the Goods. The Authority may reject Goods which are not in accordance with the description as set out in the Purchase Order until 21 days after the date of delivery. Unless within 28 days of receipt of notice of rejection the Supplier collects such Goods, the Authority may dispose of them as the Authority shall think fit.
- 2.6 Title and risk in the Goods shall pass on completion of delivery and (if applicable) on collection of the same by the Supplier.

2.7 If the Supplier:

1. delivers less than 95% of the quantity of Goods ordered, the Authority may reject the Goods; or
2. delivers more than 105% of the quantity of Goods ordered, the Authority may at its sole discretion reject the Goods or the excess Goods,

and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and the Authority accepts the delivery, the Supplier shall make a pro rata adjustment to the invoice for the Goods.

### 3. SUPPLY OF SERVICES

3.1 The Supplier shall provide the Services to the Authority from the Purchase Order date, and for the duration of the Agreement in accordance with the Services to be delivered as described within the:

- a) Purchase Order; and
- b) Request for Quotes for values exceeding £10,000.00 but below £25,000.00; or
- c) Service Specification for values exceeding £25,000.00 (as set out in the Authority's Contract for Services).

3.2 The Supplier shall meet any performance dates for the Services that the Authority notifies to the Supplier and time is of the essence in relation to any of those performance dates.

3.3 In providing the Services, the Supplier shall:

1. co-operate with the Authority in all matters relating to the Services, and comply with all instructions of the Authority;
2. perform the Services with the best care, skill and diligence in accordance with the best practice in the Supplier's industry, profession or trade;
3. use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled;
4. ensure that the Services and Deliverables will conform with all descriptions and specifications as set by the Authority's Request for Quotes or Service Specification and that the Deliverables shall be fit for any purpose that the Authority expressly or impliedly makes known to the Supplier;
5. provide all equipment, tools and vehicles and such other items as are required to provide the Services;
6. use the best quality Goods, materials, standards and techniques, and ensure that the Deliverables, and all Goods and materials used in the Services or transferred to the Authority, will be free from defects in workmanship, installation and design;
7. obtain and at all times maintain all licences and consents which may be required for the provision of the Services; and
8. not do or omit to do anything which may cause the Authority to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Authority may rely or act on the Services.

### 4. AUTHORITY REMEDIES

4.1 If the Supplier fails to deliver the Goods in accordance with clause 2 or in the sole judgement of the Authority, failed to provide satisfactory performance of the Services in accordance with clause 3, or fails perform the Services by the applicable date, the Authority shall, without limiting or affecting other rights or remedies available to it, have one or more of the following rights:

1. to terminate the Agreement at no loss to the Authority with immediate effect by giving written notice to the Supplier;
2. to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;

3. to recover from the Supplier any costs incurred by the Authority in obtaining substitute Goods and/or Services from a third party;
  4. to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and/or Goods that it has not delivered; and
  5. to claim damages for any additional costs, loss or expenses incurred by the Authority which are in any way attributable to the Supplier's failure to meet such dates and provide Services.
- 4.2 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 2.1, then, without limiting its other rights or remedies, the Authority shall have one or more of the following rights, whether or not it has accepted the Goods:
1. to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
  2. to terminate the Agreement with immediate effect by giving written notice to the Supplier;
  3. to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
  4. to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
  5. to recover from the Supplier any expenditure incurred by the Authority in obtaining substitute Goods from a third party; and
  6. to claim damages for any additional costs, loss or expenses incurred by the Authority arising from the Supplier's failure to supply Goods in accordance with clause 3.1.
- 4.3 These Conditions shall extend to any substituted or remedial Services and/or repaired or replacement Goods supplied by the Supplier.
- 4.4 The Authority's rights under this Agreement are in addition to its rights and remedies implied by statute and common law.
- 4.5 If the Supplier is found to have in the sole judgement of the Authority, 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 enter into liquidation either voluntarily or compulsorily, the Authority shall be entitled to terminate the Agreement with immediate effect by giving written notice to the Supplier.

## **5. AUTHORITY'S OBLIGATIONS**

The Authority shall:

1. provide the Supplier with reasonable access at reasonable times to the Authority's premises for the purpose of providing the Services; and
2. provide such information as the Supplier may reasonably request for the provision of the Services and the Authority considers reasonably necessary for the purpose of providing the Services.

## **6. CHARGES AND PAYMENT**

- 6.1 In consideration of the Supply of Goods and/or Services by the Supplier, the Authority shall pay the price set out in the Purchase Order within 30 days of the date of a corresponding rendered invoice.
- 6.2 The price for the Goods or Services shall be exclusive of VAT. VAT shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.
- 6.3 The Purchase Order number must be quoted on all invoices and delivery notes.

## **7. INDEMNITY**

7.1 The Supplier shall indemnify the Authority against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest; penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Authority arising out of or in connection with:

1. any claim made against the Authority for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the manufacture, supply or use of the Goods, or receipt, use or supply of the Services;
2. any claim made against the Authority by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods, as delivered;
3. any claim made against the Authority by a third party arising out of or in connection with the supply of the Goods as delivered, or the Services.

## **8. INSURANCE**

8.1 The Supplier shall at its own costs effect and maintain with a reputable insurance company a policy or policies providing as a minimum the following levels of cover:

1. public liability insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims;
2. employer's liability insurance with a limit of indemnity of not less than £5,000,000;
3. professional indemnity insurance with a limit of indemnity of not less than £5,000,000.

## **9. CONFIDENTIALITY**

9.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. The Supplier warrants that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by 9.2.

9.2 Each party may disclose the other party's confidential information:

1. to its representatives who need to know such confidential information for the purposes of performing the party's obligations provided that it informs such representatives of the confidential nature of the information before disclosure; and
2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

9.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Agreement.

## **10. FORCE MAJEURE**

Neither party shall be in breach of these terms and conditions nor liable for delay in performing, or failure to perform, any of its obligations under it if such a delay or failure results from events, circumstances or causes beyond its reasonable control.

## **11. FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REGULATIONS**

11.1 The Authority is subject to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and as such may be required to disclose information (including commercially sensitive information) without consulting or obtaining consent from the Supplier. The Authority shall be responsible for determining in its absolute discretion how to respond to such a request, including whether any commercially sensitive information and/or other information is exempt from disclosure.

- 11.2 The Supplier shall provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations and transfer all requests for information relating to this agreement as soon as practicable and in any event within 2 working days of receipt. The Supplier shall provide the Authority with a copy of all information belonging to the Authority requested in the request for information which is in its control in the form that the Authority requires within 5 working days.

## **12. COMPLIANCE**

- 12.1 The Supplier shall (and shall procure that the Supplier's personnel shall):

1. perform its obligations under this agreement (including those in relation to the Services) in accordance with:
  - all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
  - the Authority's equality and diversity policy as provided to the Supplier from time to time;
  - any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality law;
2. take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation); and
3. at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement. The Supplier shall also undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998.

- 12.2 The Supplier shall perform its obligations under this Agreement in accordance with all applicable Law regarding health and safety; and the Authority's Health and Safety Policy which can be found on Tendring District Council's website.

- 12.3 The Supplier warrants that it has not committed of any offence involving slavery or human trafficking; and been the subject of any investigation, inquiry or enforcement proceedings regarding any offence, or in connection with, slavery or human trafficking.

## **13 WAIVER**

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of that or any other right or remedy.

## **14 THIRD PARTIES**

The Supplier shall not claim any lien, attachment or other such right over or in connection with the Goods, and shall indemnify the Authority against any and all liens, attachments or other such rights asserted by persons who are, or who claim to be, sub-contractors, agents or assignees of the Supplier.

## **15 GOVERNING LAW**

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.