

SWALE BOROUGH COUNCIL

TERMS AND CONDITIONS SUPPLY OF GOODS SHORT FORM

1 Interpretation

1.1 In these Terms:-

| | |
|-----------------|---|
| “Contract” | means the Purchase Order and the Supplier’s acceptance of the Purchase Order; |
| “Goods” | means any goods (including any part or parts of them) described in the order to be bought by the Council from the Supplier; |
| “Order” | means the Council’s purchase order which these Terms govern; |
| “Price” | means the price of the Goods; |
| “Specification” | includes any plans, drawings, data, description or other information relating to the Goods; |
| “Supplier” | means the person, firm or company who accepts the Council’s Order; |
| “Terms” | means these terms and conditions of purchase between the Council and the Supplier; |
| “the Council” | means Swale Borough Council; and |
| “writing” | includes facsimile transmission and electronic communication and “written” shall be construed accordingly. |

1.2 A reference to particular law is a reference to it as it is in force for the time being taking into account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

2 Application of Terms

2.1 Subject to any previously agreed contract under condition 2.3 or any variation under 2.4, these Terms are the only conditions which shall govern the Contract to the entire exclusion of all other terms and conditions.

2.2 Each Order by the Council to the Supplier shall be deemed to be an offer by the Council subject to these conditions and no Order shall be accepted until the Supplier either expressly by giving notice of acceptance, or impliedly by fulfilling the Order, in whole or in part accepts the offer.

2.3 Where this Order forms part of another purchasing arrangement and is subject to terms and conditions previously agreed in writing by the Council and the Supplier (“Main Contract”) the terms of the Main Contract shall prevail.

2.4 No variation to the Order or these Terms shall be binding unless agreed in writing by the individual referred to within the Order.

3 Compliance with Order and Specification

3.1 The quantity, quality and description of the Goods shall be as specified in the Order and/or in any applicable Specification supplied by the Council to the Supplier.

3.2 Any part of the Specification provided by the Council to the Supplier, over which the Council has any intellectual property rights, shall be the exclusive property of the Council.

3.3 All rights in the work including any copyright therein and any right to apply for patents (hereinafter called 'the proprietary rights') shall vest in and become the property of the Council. However, if any work created outside the Contract ('other work') is utilised in the course of the production or performance of the work, then any proprietary rights in the other work shall remain the property of the Supplier or third party as appropriate.

3.4 The Supplier if requested, and at the expense of the Council, shall do all things necessary to enable the Council to obtain patents or similar protection as the Council may require.

3.5 The Supplier shall have the right to use any such data, reports, drawings, specifications, designs, inventions, plans, programs or other material with prior written agreement of the Council upon such terms as may be agreed.

3.6 The Council recognises that during the course of the work the Supplier may conceive or develop intellectual ideas, designs and know-how and the Supplier shall be free to use such expertise in the furtherance of his normal business.

3.7 Key Performance Indicators (KPIs)

[to be agreed in writing by the parties if applicable]

4 Changes

4.1 The Council may at its reasonable discretion from time to time change any details specified in its Order by written instruction.

5 Price

5.1 The Price of the Goods shall be as stated in the Order and, unless otherwise so stated by the Council, shall be fixed, exclusive of any applicable VAT and inclusive of all charges (including packaging and delivery costs) to the Council's specified delivery address.

5.2 If the Price is not stated in the Order, the Price shall be the lowest price currently quoted or charged at the time of the Order by the Supplier for the Goods but shall be in no event higher than the price most recently charged to the Council by the Supplier for such Goods.

5.3 No increase in the Price may be made without the prior written consent of the Council.

6 Delivery

- 6.1 The Goods shall be delivered (carriage paid) to the location(s) specified by the Council and on the date or within the period stated in the Order, in either case during the times specified in the Order or if no times are specified, during the Council's usual business hours and time shall be of the essence. All delivered Goods must be accompanied by a proper delivery note. For an invoice to be submitted, the Goods must be received, and signed for, by an authorised employee of the Council. The Council reserves the right to amend any delivery instructions. Delivery shall be deemed to be made on receipt of the Goods by the Council in accordance with these Terms.

7 Acceptance

- 7.1 The Supplier shall supply the Council in good time with any instructions or other information required to enable the Council to accept delivery of the Goods.
- 7.2 The Council shall be entitled to reject all or any part of the Goods delivered which is not in accordance with the Order, any Specification and these Terms even if the defect is minor.
- 7.3 The Council shall not be deemed to have accepted any Goods until the Council has had a reasonable time to inspect or test them following delivery.

8 Payment

- 8.1 The Council will make payment for the Goods set out in the Order within thirty (30) days of receipt of the invoice unless taking advantage of agreed discount for earlier settlement. Invoices must be submitted to the address detailed on the Order for the invoice to be valid.
- 8.2 It is an important condition that invoices are accurate, including the quoting of the correct official order number. Incorrect invoices will be returned unpaid for correction and resubmission. In such cases the payment terms will take effect not from the original date but from the date of receipt at the correct address of the correctly presented invoice.
- 8.2A The Council is the end user for the purposes of section 55A of the VAT Act 1994 reverse charge for building and construction services. The Supplier should issue a normal VAT invoice, with VAT charged at the appropriate rate. The Council will not account for the reverse charge.
- 8.3 Without prejudice to any other right or remedy, the Council reserves the right to set off any amount owing at any time from the Supplier to the Council against any amount payable by the Council to the Supplier.
- 8.4 The Council shall accept and process for payment an electronic invoice submitted for payment by the Supplier where the invoice is undisputed and where it complies with the standard on electronic invoicing.

8.5 For the purposes of clause 8.4, an electronic invoice complies with the standard on electronic invoicing where it complies with the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.

9 Risk

9.1 The Goods shall remain at the risk of the Supplier until delivery to the Council is complete (including off-loading and stacking) and signed for.

10 Compliance with Law

10.1 The Supplier shall comply with all applicable statutory requirements concerning the supply of Goods.

11 Warranties

11.1 The Supplier warrants to the Council that it is fully experienced, qualified, equipped, organised and financed to perform its obligations under these Terms, and warrants to the Council that the Goods:-

- i) shall be as specified in the Order and/or in any Specification supplied by the Council to the Supplier;
- ii) will correspond with any sample;
- iii) will be of satisfactory quality and fit for any purpose held out by the Supplier;
- iv) will be free from any defects in design, material and workmanship; and
- v) will comply with all statutory requirements, regulations and bye-laws relating to the supply of Goods.

12 Remedies on Default

12.1 Without prejudice to any other right or remedy of the Council, if any of the Goods are not supplied in accordance with, or the Supplier fails to comply with, any of these Terms, the Council shall be entitled to any one or more of the following remedies whether or not any part of the Goods have been accepted by the Council:-

- i) to rescind the Order; or
- ii) to reject the Goods (in whole or in part) and return them to the Supplier on the basis that a full refund for the Goods so returned, including the cost of returning them, shall be paid upon return to the Supplier; or
- iii) to give the Supplier the opportunity at their expense to remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the Order is fulfilled; or
- iv) to refuse to accept any further deliveries of the Goods without liability to the Supplier; or
- v) to carry out at the Supplier's expense any work necessary to make the Goods comply with the Order and/or Terms; or
- vi) to claim damages in consequence of the Supplier's breach of the Contract.

13 Indemnity

13.1 The Supplier shall indemnify the Council in full against all liabilities, losses, damages, costs and expenses (including legal expenses) incurred directly by the Council as a result of or in connection with:-

- i) breach of any warranty given by the Supplier in relation to the Goods;
- ii) any claim that the Goods infringe any intellectual property rights;
- iii) any claim made against the Council in respect of any liability, breach or alleged breach by the Council of any statutory provision, regulation or bye-laws or other

- rule of law arising from the acts or omissions of the Supplier or its employees, agents or sub-contractors;
- iv) any act or omission of the Supplier or its employees, agents or sub-contractors in supplying, delivering and installing the Goods.

14 Force Majeure

- 14.1 Neither the Supplier nor the Council shall be liable to the other by reason of any delay which is beyond that party's reasonable control which shall include (but not limited to) natural disasters, war or national emergency, riot, acts of or threat of acts of terrorism, civil commotion, fire, explosion, flood or storm, strikes, lockouts and any other industrial disputes.

15 Installation and work on site

- 15.1 The Supplier shall at all times whilst on the Council's premises or on site comply with and ensure that its employees, agents and sub-contractors comply with, all relevant legal requirements relating to health and safety legislation and all safety and security regulations and rules from time to time in force and will be deemed to have full knowledge of such regulations. Copies of such Council specific regulations will be supplied on request.
- 15.2 Where the Supplier is responsible for the installation of the Goods, such installation shall be carried out to the satisfaction of the Council's authorised representative. The Supplier shall clear away and remove from the Council's premises or sites all installation plant, service material, rubbish and temporary works and leave the premises or sites in a clean and workmanlike condition.

16 Insurance

- 16.1 The Supplier shall at all times maintain adequate insurance cover with a reputable insurer against its liability under these Terms and shall produce the policy and latest premium receipt to the Council on request.
- 16.2 The Supplier will provide all facilities, assistance and information reasonably required by the Council or its insurers for the purpose of bringing an action or claim arising out of the performance of these Terms.

17 Termination

- 17.1 The Council shall be entitled to cancel the Order in respect of all or part only of the Goods by giving notice to the Supplier at any time prior to delivery or performance without incurring any liability to the Supplier other than to pay for the Goods already delivered or performed at the time of such notice.

18 Confidentiality

- 18.1 All information supplied to the Supplier by the Council at any time in connection with these Terms and any Specification shall be regarded as confidential and shall not without any prior written consent of the Council be published or disclosed to any third party or used by the Supplier except for the purpose of implementing the Order.
- 18.2 The provisions of 18.1 shall not apply to any information:-
 - i) which is or becomes public knowledge (otherwise than by breach of these conditions); or

- ii) which was in the possession of the receiving party, without restriction as to its disclosure, before receiving it from the disclosing party; or
- iii) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure.

These confidentiality obligations shall continue in perpetuity.

- 18.3 The Supplier shall not advertise or announce the supply of the Goods without the Council's prior written consent.
- 18.4 The Council is subject to the requirements of the Code of Practice on Access to Government Information, the Freedom of Information Act, the Data Protection Act and the Environmental Information Regulations and the Supplier shall assist and cooperate with the Council (at the Contractor's expense) to enable the Council to comply with these requirements. Requests for information made directly to the Supplier must be forwarded to the Council as soon as practicable after receipt and in any event within two working days of receiving the request.
- 18.5 The Council shall be responsible for determining at its absolute discretion whether:
- i) information is exempt from disclosure under the Code of Practice on Access to Government Information; and/or
 - ii) information is to be disclosed in response to a Request for Information.
- 18.6 The Supplier acknowledges that the Council may be obliged under the Code of Practice on Access to Government Information, the FOIA, or the Environmental Information Regulations to disclose Information with or without having consulted with the Supplier.

19 The Council's Liability

- 19.1 The Council's liability under this Contract, whether in respect of breach of contract, tort (including negligence), breach of statutory duty or otherwise, shall in no event exceed the level of fees due under this Contract. Nothing in this Agreement shall be construed as restricting or excluding the Council's liability for fraud, personal injury or death or any other matter for which it is illegal to limit or exclude liability.

20 General

- 20.1 The Council may assign its rights, sub-contract, or transfer its rights and obligations without the consent of the Supplier. This Order is personal to the Supplier and the Supplier shall not assign, sub-contract, or transfer its rights and/or obligations without the prior written consent of the Council.
- 20.2 Any waiver by the Council of any breach is not a waiver of any subsequent breach.
- 20.3 Failure or delay by the Council in enforcing or partially enforcing any provision of these Terms is not a waiver of any of its rights under these Terms.
- 20.4 If any provision of these Terms is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and the remainder of the provision in question shall not be affected.
- 20.5 These Terms shall be governed by the laws of England and the parties submit to the exclusive jurisdiction of the English Courts.

20.6 Brexit means a change in the United Kingdom's membership of the European Union (including but not limited to where the United Kingdom leaves the European Union pursuant to Article 50 of the Treaty of Lisbon or enters into a transitional arrangement). The Supplier shall be entitled to an extension of time where delay to the supply is proven to be caused by the effects of Brexit as defined in the following circumstances:

20.6.1 delay caused by a delay to the delivery or importation or unavailability of goods and / or materials into the United Kingdom (regardless of which countries comprise the UK at such date) caused by Brexit.

The Parties agree that any increase in costs caused by the imposition of, or any change to, customs duties, tariffs, levies or changes of fees, caused by Brexit, shall be shared equally.