

## **Standard Terms and Conditions Goods and Services (Purchase Orders Only)**

### **1. GENERAL**

These terms and conditions apply to every order placed by Portsmouth City Council ('the Council') with any individual, firm or company ('the Supplier'). No terms or conditions in or attached to any catalogue, invoice or other sales literature or document or tender or dispatch / delivery advice note of the Supplier which are inconsistent with these terms and conditions or which purport to add to or vary them in any way shall have any effect unless expressly accepted by the Council in writing. In the absence of such acceptance, the Supplier shall be deemed to have withdrawn or waived his terms or conditions and to contract solely on the basis of the Council's, and acceptance of any goods and / or services shall not constitute or be deemed to constitute acceptance by the Council of the Supplier's terms or conditions. The contract shall commence and the Supplier will be contractually bound upon the despatch of a purchase order by the Council.

### **2. PRICE**

The price to be paid for the goods and / or service is set out in the purchase order is a fixed priced unless specifically indicated within the purchase order and shall be exclusive of VAT. No variation of such price shall be effective unless agreed in writing between the Supplier and the Council.

### **3. CONFIRMITY TO PURCHASE ORDER**

3.1 The goods and/or services supplied or performed under the contract shall:

- i. confirm as to the quantity, type, sort, quality and description;
- ii. be fit for the purpose made known to the Supplier expressly or by implication and in this respect the Council shall rely on the Supplier's skill and judgement;
- iii. be new (unless otherwise specified in the purchase order) and of sound materials and skilled and careful workmanship; and
- iv. comply with any current legislation and standards specified and where no standard is specified comply with the relevant British Standards or equivalent.

3.2 If the goods and / or services do not so comply the Council is entitled at its option either to return the goods at the risk of the Supplier and reject the goods and / or service and require the Supplier to re-perform the service or accept the whole or part of the goods and / or services supplied by the Supplier but without prejudice to any rights of the Council to claim compensation or damages for loss or damage suffered as a result of such failure to comply.

### **4. DELIVERY OF GOODS AND / OR PERFORMANCE OF SERVICES**

4.1 All goods and /or services ordered by the Council shall be delivered or performed at the cost of the Supplier.

4.2 Failure to deliver the goods or perform the services on the date specified on the purchase order shall entitle the Council to cancel the contract without notice.

4.3 All goods and / or services shall be delivered to the address specified in the purchase order.

- 4.4 Before despatching the goods or commencing the provision of the services, the Supplier shall allow the Council to inspect or test the goods and /or services for compliance with the specification / purchase order. If the goods / services do not comply with the Council's requirements, the Council shall notify the Supplier either of the Council's intention to reject the goods and / or services or, the remedial steps which must be taken by the Supplier.
- 4.5 Risk and title in the goods and / or services shall only pass to the Council on acceptance of the goods and / or services when delivered to the address in the purchase order. The Council also reserves the right to take possession of all goods to which it has title.
- 4.6 Any goods lost or damaged in transit shall be restored or replaced by the Supplier at the Supplier's expense to the Council's satisfaction.
- 4.7 If, at any time within 3 months from the date of delivery, the goods and / or services fail to comply with the purchase order, the Council may reject the whole or any part of the goods and /or services. The Council may accept replacement goods / services from the Supplier at the Supplier's expense.
- 4.8 The Supplier agrees to provide a 12 month warranty in respect of all goods supplied to the Council.

## **5. INTELLECTUAL PROPERTY**

- 5.1 The Council retains ownership of all intellectual property rights in all documents provided by the Council in connection with or arising out of the contract.
- 5.2 The Supplier grants to the Council a perpetual, royalty-free, irrevocable non-exclusive licence (with right to sub-licence) to use all intellectual property rights in the goods and / or services supplied to the extent that it is necessary to fulfil its obligations under the contract.
- 5.3 Intellectual property rights and other rights in the goods and services shall vest in the party from whom the goods and services originate unless the goods and / or services are produced for the Council as bespoke. If the latter, the rights shall vest in the Council upon their creation.
- 5.4 In the event of any breach of any such intellectual property rights the Supplier shall indemnify the Council, unless the Council is responsible for the breach in question.

## **6. INVOICES, PAYMENT AND SET OFF**

- 6.1 Detailed priced invoices, which shall be valid VAT invoices, shall be sent by post to the Council at the address detailed in the purchase order. If agreed by the Council, invoices may be sent electronically. Invoices shall be sent immediately after delivery of goods is made or completion of the service and shall bear the Council's purchase order number.
- 6.2 Payment for goods and / or services provided shall be made at the time agreed by the parties.
- 6.3 The Council shall make payment within 30 days of receipt of a valid invoice from the Supplier.
- 6.4 The Council may set off against any sums due to the Supplier whether under this contract or otherwise any lawful set off or counterclaim to which the Council may at any time be entitled.

## **7. INDEMNITY AND INSURANCE**

7.1 The Supplier agrees to indemnify and keep indemnified the Council from and against any loss, damage, damages, actions, claims, demands, proceedings, costs, charges, expenses or any other liability (whether criminal or civil) suffered or incurred by the Council resulting from its obligation under the contract.

7.2 The Supplier shall secure performance of the indemnities by entering policies of insurance in the sum of not less than £5,000,000 in respect of each claim without limit to the number of claims and shall make available copies of any insurance policies to the Council on request.

## **8. LIABILITIES**

Neither party shall exclude liability for death, personal injury or fraud.

## **9. FORCE MAJEURE**

9.1 Notwithstanding anything contained in these terms and conditions neither the Council nor the Supplier shall be liable for any loss damage or expense suffered or incurred by the other party if by reason of fire, accident, wars, strikes, lockouts or any restriction or prohibition imposed by the Government or any duly authorised authority which could not reasonably have been prevented or avoided by the Council or the Suppliers as the case may be, either;

(i) the Council is prevented from or delayed in accepting delivery of any goods and / or services or any part of the goods or services or in paying for the same or;

(ii) the Supplier is prevented from or delayed in the supply of any goods and / or service ordered by the Council.

## **10. CONFIDENTIALITY**

10.1 The Supplier shall treat all confidential information belonging to the Council as confidential and safeguard it accordingly; and shall not disclose any confidential information without the prior written consent of the Council.

## **11. INFORMATION LAWS**

11.1 The Supplier acknowledges that the Council is subject to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 ('the Information Laws') and where applicable, the Supplier shall provide all necessary assistance to enable the Council to comply with its obligations under the Information Laws.

## **12. PROTECTION AND SECURITY OF DATA<sup>1</sup>**

- 12.1.1 The Contractor shall review their compliance with the Freedom of Information Act 2000 the Data Protection Act 2018, the General Data Protection Regulation (GDPR), the Law Enforcement Directive (EU Directive 2016/680) and all applicable law about the processing of personal data and privacy ("**Data Protection Requirements**").
- 12.1.2 The parties acknowledge that it is not intended that any Personal Data shall be processed under this Contract or in the provision of the Services or Goods. Nonetheless, each party shall, at its own expense, ensure that it complies with and ensure that it reasonably assists the other party to comply with the Data Protection Requirements where relevant and applicable so far as they are respectively required to by the Data Protection Requirements. The parties also agree to take account of any guidance issued by the Information Commissioner's Office where relevant.
- 12.1.3 The parties shall notify each other immediately if it considers that any of the Data Protection Requirements have been infringed in relation to this Contract.
- 12.1.4 Should it be required that Personal Data is processed under this Contract or in the provision of the Services, the parties shall enter into a separate Data Processing Agreement, detailing the parties' respective obligations in accordance with the Data Protection Requirements.

## **13. WAIVER**

- 13.1 No delay, neglect or forbearance on the part of either party in enforcing against the other party any term or condition of the contract shall either be or be deemed to be a waiver or in any way prejudice any right or that party under this contract.

## **14. AMENDMENT**

- 14.1 This contract may not be varied except by an agreement in writing signed by the duly authorised representatives of the parties.

## **15. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 15.1 Unless the right of enforcement is expressly granted, it is not intended that a third party should have a right to enforce a provision of this contract pursuant to the Contracts (Rights of Third Parties) Act 1999. The parties may rescind or vary this contract without the consent of a third party to whom an express right to enforce any of its terms has been provided.

## **16. AGENCY**

- 16.1 This contract does not create a partnership between the Council and the Supplier or make one of the parties the agent of the other for any purpose.

---

<sup>1</sup> The data protection clause has been drafted on the basis that no 'personal data' will be exchanged between the parties. If personal data will be processed under the agreement, this clause will have to be amended and a separate data processing schedule prepared. The commissioner should liaise with the Council's Data Protection team in that regard.

## **17. PUBLICITY & TRANSPARENCY**

17.1 The Supplier shall not, without the prior written permission of the Council, advertise or disclose to any third party that it is providing the goods and / or services to the Council.

17.2 The parties acknowledge that, except for any information which may be exempt from disclosure in accordance with the relevant law, the Council may publish this contract in its entirety to the general public.

## **18. DISPUTE RESOLUTION**

18.1 The parties shall attempt in good faith to negotiate a settlement to any dispute arising out of or in connection with this agreement. In the event a settlement cannot be reached within a reasonable time or within one month of the dispute arising (whichever is the shorter period), the parties may exercise any remedy it has under applicable law.

## **19. TERMINATION**

19.1 If at any time after the commencement of the contract the Supplier shall commit an act of bankruptcy or in the case of a limited company call a meeting of its creditors then the Council shall be entitled to treat the contract as repudiated and cancelled in respect of any goods and / or services not delivered in accordance with the terms of the contract. If the Supplier breaches any terms of this contract the Council may (if the breach is capable of remedy) give the Supplier notice of the breach and the Supplier shall remedy the breach within 7 days from receipt of notice of the breach. If the Supplier fails to remedy the breach or if the breach is not capable of remedy the Council may terminate the contract with immediate effect.

## **20. SUB-CONTRACTING AND ASSIGNMENT**

The Supplier shall not sub-contract or assign or transfer this contract from the Council or the benefit of this contract to any third party except with the consent in writing of the Council.

## **21. ENTIRE AGREEMENT**

These terms and conditions and the purchase order shall comprise the entire terms and conditions of the contract in relation to the subject of the purchase order and the Supplier's terms and conditions shall be expressly excluded.

## **22. OBSERVANCE OF STATUTORY REQUIREMENTS**

The Supplier shall comply with the all statutes, orders, regulations or bye laws applicable to the performance of this contract, including health and safety and shall indemnify the Council against any losses, claims or liabilities, expenses, proceedings or otherwise as a result of the Supplier's non-compliance with the same.

## **23. NOTICES**

Any notification by either party to the other under the contract shall be in writing, delivered by first class post, by fax or email to the other party at the address shown in the purchase order. All notices shall be deemed duly given on the day of posting or if sent by fax or e-mail immediately when the notice is transmitted.

**24. JURISDICTION**

This contract shall be subject to and construed in accordance with English Law and the parties submit to the jurisdiction of the English Courts.

**25. TERMS AND CONDITIONS SPECIFIED**

These terms and conditions will apply unless the Council specifies different terms and conditions. If different terms and conditions are specified by the Council, those terms will override these purchase order