BABERGH DISTRICT COUNCIL AND MID SUFFOLK DISTRICT COUNCIL
PURCHASE ORDERS TERMS AND CONDITIONS

Definitions

The Council means either Babergh District Council or Mid Suffolk District Council as notified on the Purchase Order.

1. Formation of Contract

1.1 These Terms and Conditions apply unless the Council specify that its Terms and Conditions for a given procurement, or those produced by one or more of the NEC or JCT suite of contracts, apply, or should the Council not specify which Terms and Conditions are to apply.

1.2 These Terms and Conditions apply to the Purchase Order to the exclusion of any terms that the Supplier seeks to impose or incorporate or which are implied by trade, custom, or course of practice or dealing.

1.2.1 Subject to the primacy of these conditions, no addition, amendment, variation, alteration or substitution of these Conditions, apart from the Conditions of a contract agreed between the Council and the Supplier that is relevant for the supply of the goods, services and/ or works the subject of this Purchase Order, will bind the Council or form part of any contract unless an officer authorised to sign on the Council's behalf expressly accepts each and every one of them in writing. Such amendments will only apply to this Purchase Order and will not be common to every Purchase Order.

1.3 Nothing in these Conditions will prejudice any condition or warranty expressed or implied or any legal remedy to which the Council may be entitled in relation to the works services and supplies which are the subject of this Order

2. Obligations of the Parties

2.1 Subject to the Conditions set out in this Order the Council engages the Supplier to provide the goods and/or services set out in the Purchase Order and each party undertakes so far as the Conditions fall to be observed and performed by that party to observe and perform them.

3. Goods and Services

3.1 All goods or services provided must comply with the relevant British Standard Institute standard (where applicable) or else be supplied, where not applicable or performed, to a standard which could reasonably be expected as acceptable to the Council.

4. Goods (including all materials)

4.1 The Supplier must cover the cost of carriage and postage and must deliver the goods to the location indicated on the Purchase Order as the "Delivery Address" or they may be rejected.

4.2 The Supplier must obtain a receipt for all delivered goods and provide a copy to the Council on request.

4.3 Where a Delivery Date and/or Delivery Time have been specified the Supplier must adhere to this. If a Delivery Date and/or Delivery Time has not been specified, the Delivery Date will be on the 14th day following the date of the order at 3.00pm /15:00 local time. If the 14th day falls on a day when the nominated place for delivery is closed or for any other reason, unavailable to accept delivery, the Delivery Date will be the next day that the appropriate delivery place is open or available for delivery unless an alternative delivery point is specified in writing by a Council Officer authorised to do so. If goods are not to be delivered elsewhere, the Council's offices are open from Monday to Friday 9.00am to 5.00pm/17:00. Consider that "unless otherwise stipulated, the deliveries shall only be accepted by the Council in normal business hours on normal business days"

4.4 The Supplier .shall ensure that the goods and materials conform precisely to the requirements of the Council and as specified in the Purchase Order and are free from defects, are as necessary and of the quality required by the Council and are fit for the purpose required by the Council

5. Passing of risk and ownership

5.1 Risk in the Goods will pass to the Council when the Goods are delivered as specified in this Contract or, in the case of Goods which require installation by the Supplier, when that installation process is complete.

5.2 Ownership of the Goods will pass to the Council on the earlier of:

5.2.1 full payment for such Goods; or

5.2.2 where the goods are consumables or are non-recoverable, at the point such Goods are taken into use. For the avoidance of doubt, where ownership passes in accordance with this Clause 5.2.2, then the full Contract Price for such Goods will be recoverable by the Supplier from the Council as a debt if there is non-payment of a valid undisputed invoice issued by the Supplier to the Council in relation to such Goods.

5.3 All tools, equipment and materials of the Supplier required in the performance of the Supplier's obligations under this Contract will be and remain at the sole risk of the Supplier, whether or not they are situated at a delivery location.

5.4 The Supplier must specify clearly on the delivery notice and invoice in the event an item of pallet or packaging is required to be returned, failing which, The Council will reuse or dispose of as such item it sees fit.

5.5 The Parties expressly acknowledge that the Council may reject goods supplied at any time up to acceptance of goods. Acceptance of goods is deemed not to have occurred until such time as final resting and inspection by the Council has taken place.

5.6 The Supplier must remove any delivered goods that do not match the description specified in the Purchase Order or that have been rejected from the Council's premises within 48 hours of delivery at the Supplier's expense. If the Supplier fails to do this the Council will arrange to return the goods to the Supplier at the Supplier's risk and expense. If the goods are identified at the time of attempted delivery as not matching the Order Description, the goods will be removed immediately from the premises at the Supplier's expense.

5.7 Upon rejection of any Goods by the Council, the Supplier shall immediately remove and replace the rejected Goods and replace, repair, re supply or re work the Goods as required by the Council in order to comply with the Purchase Order requirements at the Supplier's cost.

5.8 The Supplier will make good any loss damage to or defect in the goods not caused by the Council within 14 days of receiving written notice from the Council.

5.9 The Supplier must clearly mark hazardous goods with the international danger symbol and name of the material/substance in English. These goods must be packed, labelled and carried in accordance with current legislation and/or internationally accepted agreements, as reasonably appropriate. The Supplier must supply information in English regarding the handling storage and proper use of the hazardous goods. By agreement to these Conditions the Supplier indemnifies the Council against any loss, damage or injury caused to the Council its staff and agents if the Supplier fails to comply with these Conditions.

5.10 Any costs and expenses incurred by the Council as provided for in this clause shall, without prejudice to any other remedy available to the Council, be set off against any sums due to the Supplier.

6. Services (including works)

6.1 The Supplier shall perform the services with all proper skill and care and to the satisfaction of the Council and in accordance with the Council's directions and supplied to the standards, frequency and quality indicated in the Purchase Order and/or as required by the Council.

6.2 The Supplier will provide all labour, goods, tools and equipment necessary to perform the services.

6.3 The Supplier shall be solely responsible for the acts and omissions of its employees, agents, representatives and sub-contractors in fulfilling its obligations under the Purchase Order.

6.4 The Supplier acknowledges that the Council may inspect the Services throughout the period of the Contract/Purchase Order and, where in the reasonable opinion of the Council, may require the Supplier to re perform or otherwise rectify the Services at the Supplier's own cost and expense. Completion of the Services shall not have taken place until re inspection and/or approval by the Council of the Services.

6.5 Unless other stipulated, the Services shall only be provided to the Council in normal business hours on normal business days" unless otherwise agreed in writing

6.6 The Supplier must keep adequate and accurate records of the services provided including timings. The Supplier must submit these records to the Council at the end of each service period or at such other time which must be agreed in writing beforehand.

6.7 The Supplier must provide evidence of its tax status to the Council at the Council's request.

6.8 If the Supplier is working onsite at council premises it must keep the workplace clean and tidy and must remove any excess goods, material or waste regularly.

6.9 Unless otherwise agreed as part of the tender/quotation process, prices quoted by the Supplier are deemed to include the entire Supplier's travelling and subsistence expenses.

7. Price and Payment

7.1 The Contract Price will be calculated as set out in this Purchase Order and

7.1.1 will remain fixed during the Term and be non negotiable; and

7.1.2 unless otherwise agreed in writing by the Council shall be exclusive of VAT but inclusive of all other charges, cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the services and includes, without limitation:

(i) packaging, packing materials, addressing, labelling, loading, delivery to and unloading at the delivery location, all appropriate tax (excluding VAT) and duty, any installation costs and associated works, the costs of all associated documentation and information supplied or made accessible to the Council in any media, and any training in relation to the use, storage, handling or operation of the Goods;

(ii) any royalties, licence fees or similar expenses in respect of the making, use or exercise by the Supplier of any Intellectual Property Rights for the purposes of Performing this Contract, and any licence rights granted to the Council; and

(iii) costs and expenses in relation to supplies and materials used by the Supplier or any third party in the manufacture of the Goods, and any other costs incurred by the Supplier in association with the manufacture, supply or installation of the Goods.

7.2 Unless stated otherwise in the Purchase Order:

7.2.1 where the Purchase Order confirms that the payment profile for this Contract is 30 days in arrears, the Supplier will invoice the Council, within seven (7) days of the end of each calendar month. Invoices shall not be submitted until completion of the supply of Goods or Services supplied.

7.3 The Contract Price is exclusive of VAT, which, if properly chargeable, the Council will pay at the prevailing rate subject to receipt from the Supplier of a valid and accurate VAT invoice. Such VAT invoices will show the VAT calculations as a separate line item.

7.4 Where the Contract Price is or may become subject to any pricing requirements of any voluntary and/or statutory pricing regulation schemes, the Parties will comply with such requirements as required by Law from time to time and specifically as required by the statutory pricing regulation scheme (and any future regulation) or to the extent applicable to the Supplier from time to time as an industry member of a voluntary scheme, including any reductions in price by reason of the application of such schemes.

7.5 The Council will pay each undisputed invoice received in accordance with Clause 7.2.1 of these conditions within thirty (30) days of receipt of such invoice . However, the Council will use its reasonable endeavours to pay such undisputed invoices sooner in accordance with any applicable government prompt payment targets.

7.6 Where the Council raises a query with respect to an invoice the Parties will liaise with each other and agree a resolution to such query within thirty (30) days of the query being raised. If the Parties are unable to agree a resolution within thirty (30) days the query shall be referred to dispute resolution in accordance with Clause 11.

7.7 The Council may at any time without notice to the Supplier set off any liability of the Supplier to the Council against any liability of the Council to the Supplier whether either liability is present or future, liquidated or unliquidated and whether or not liability arises under the Purchase Order. Any exercise by the Council of its rights under this clause shall not shall not limit or affect any other rights or remedies available to it under this contract.

8. Cancellation on Account of Corruption

8.1 The Council has the right to treat any failure to comply with any part of this clause 8 as a material breach of this contract and will be entitled to terminate this Purchase Order forthwith and to recover from the Supplier the amount of any loss resulting from such cancellation of the Order if the Supplier:

8.1.1 has 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 forborne to do any action in relation to the obtaining or the execution of this Order or any other contract with the Council

8.1.2 or for showing or forbearing to show favour or disfavour to any person in relation to this Order or any other contract

8.1.3 or if the like acts have been done by any person employed by it or acting on its behalf (whether with or without the knowledge of the Supplier)

8.1.4 or if in relation to any contract with the Council the Supplier or any person employed by it acting on its behalf has been convicted of any offence under the Bribery Act 2010 (or any amendment of it) or has given or received any fee or reward the receipt of which is an offence under section 117(2) of the Local Government Act 1972.

9. Information Governance and Data Protection

9.1 The parties shall treat all Confidential Information received as confidential, safeguard it accordingly and not disclose it to any other person without the prior written consent of the disclosing party and not use or exploit the disclosing parties Confidential Information in any way except for the purposes anticipated under the Agreement.

9.2 The Contractor acknowledges that the Council is subject to the requirements of the Freedom of Information Act and the Environmental Information Regulations and shall assist and co-operate with the Council (at the Contractor's expense) to enable the Council to comply with these information disclosure requirements.

9.3 Both Parties shall comply with all applicable requirements of the Data Protection Legislation. This clause 9.3 is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Legislation.

9.4 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council are together the Controller and the Supplier is the Processor (where “Controller” and “Processor” have the meanings as defined in the Data Protection Legislation) unless otherwise specified. The only processing that the Processor is authorised to do is determined by the Controller as set in the Purchase Order. The scope and purpose of processing may not be determined by the Processor.

9.5 The Supplier shall be liable for and shall indemnify the Council against each and every action, proceeding, liability, cost, loss, expense (including reasonable legal fees and disbursements) and demands incurred by the Council which arise directly from a breach by the Supplier of its obligations under the Data Protection legislation, including without limitation those arising out of any breach of contract, negligence, fraud, wilful misconduct, breach of statutory duty or non compliance with any part of the Data Protection Legislation by the Supplier or its employees, servants, agents or sub contractors.

9.6 The Supplier shall (and shall procure that any of its Staff involved in the provision of the Agreement) comply with any notification requirements under the Data Protection Requirements and both parties will duly observe all their obligations under the Data Protection Requirements, which arise in connection with this Agreement.

9.7 Notwithstanding the general obligations in clause 9.1, where the Supplier is processing personal information as a processor for the Council (personal data and processor shall have the meanings as defined in the Data Protection Act 2018 and the General Data Protection Regulation (GDPR), the Supplier shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the personal data (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data), as required under the GDPR; and

9.7.1 provide the Council with such information as the Council may reasonably require to satisfy itself that the Contractor is complying with its obligations under the Data Protection Requirements;

9.7.2 promptly notify the Council of any breach of the security measures

9.7.3 ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under the Data Protection Requirements.

9.8 The provisions of this clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

10. Default by Supplier

10.1 If any part of the services or goods to be provided under this Order are

10.1.1 not duly provided by the Supplier at the time stated in Clauses 4 and 5 of this Order, subject to any extension of time granted by the Council or resulting from the operation of condition 12 hereof; or

10.1.2 In the opinion of the Officer of the Council for whose department they are required (whose decision as against the Supplier shall be final) not reasonably be of the quality and sort contracted for, then the Council may, without prejudice to any other remedy, by notice, reject the services and/or goods and itself or through another Supplier obtain the services or goods or make good the default, in which event the Supplier will pay to the Council or it shall be lawful for the Council to deduct from any such sum that is due or may become due to the Supplier whether under this Order or otherwise all costs, charges and expenses of providing such goods and/or services over and above the rate or price at which the goods and/or services were to have been provided under this Order.

10.2 If the Supplier is in breach of any notice served by the Council in accordance with clause 10.1 hereof it will be deemed a breach of this Contract and will be referable to the Dispute Resolution Procedure in Clause 11.

10.3 A failure to resolve such breach in accordance with such Dispute Resolution Procedure by the end of the escalation stage of such process shall entitle, but shall not compel, the Authority to terminate this Contract in accordance with Clause 12.9.

11 Dispute resolution

11.1 During any dispute, including a dispute as to the validity of this Contract which acceptance by the Supplier of the provisions of this Purchase Order creates, it is agreed that the Supplier will continue its performance of the provisions of the Contract (unless the Council requests in writing that the Supplier does not do so).

11.2 The Parties shall use their reasonable endeavours to resolve any dispute between them through negotiation or mediation. The commencement of any mediation shall not prevent the Parties commencing or continuing proceedings to the Dispute under clause 11.3

11.3 This contract and any dispute shall be governed by and construed in accordance with the laws of England and Wales and each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute.

12. Termination

12.1 This Contract shall terminate automatically on the Expiry Date unless it shall have been terminated earlier in accordance with the provisions of the Conditions of Contract. For the avoidance of doubt the Contractor shall not be entitled to any compensation on expiry

12.2 The Authority shall be entitled to extend the Term on one or more occasions by giving the Supplier written notice no less than three (3) months prior to the date on which this Contract would otherwise have expired, provided that the duration of this Contract shall be no longer than the total Term referred to on the front page of this contract (if applicable). Is this required?

12.3 Without limiting or affecting any other remedy available to it, the Council may terminate the contract:

12.4 With immediate effect by giving notice to the Supplier if:

12.5 There is a change in control of the Supplier, or

12.6 The supplier's financial position changes to such an extent that in the Council's opinion the Supplier's capability to adequately fulfil its obligations under the contract has been placed in jeopardy, or:

12.7 The Supplier commits a breach of clause 8.

12.8 For convenience by giving the Supplier 3 month's written notice, or;

12.9 If the Supplier commits a material breach of any term of the contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of (weeks) after being notified to do so, or;

12.4 The Supplier takes any step or action in connection with it entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring) being wound up (whether by order of the Court or voluntarily, unless for the purpose of a solvent restructuring) having a receiver appointed to any of its assets, or ceasing to carry on business, or:

13. Force Majeure

13.1 Neither Party to this contract will be liable for any failure or delay in performing its obligations where such failure or delay results from any cause that is beyond its reasonable control. In these circumstances, the affected party must notify the unaffected party as soon as reasonably practicable. If the period of delay or non performance continues for 30 calendar days or more, the Party not affected may terminate the contract by giving 14 days written notice to the affected Party.

13.2 Following such termination in accordance with Clause 13.1, neither Party shall have any liability to the other.

14. Insurance

14.1 During the term of this Contract The Supplier shall, at its own cost, effect and maintain with a reputable insurance company a policy or policies of insurance as a minimum the following levels of cover in relation to one claim or series of claims: for employer's liability, public liability, product liability (Goods only) and, unless otherwise specified by the Council, professional indemnity with a limit of indemnity of not less than five million pounds (£5,000,000) or in accordance with any legal requirement for the time being in force.

14.2 The Supplier shall give the Council on request copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate the required insurances are in place, together with receipts or other evidence or payment of the latest premiums due under those policies.

15. Status of Supplier

15.1 The Supplier will be responsible for the payment of any income tax, insurance contribution other pensions, taxes, revenues or duties arising as a result of the performance of the services or otherwise under this Contract. For the avoidance of doubt neither the Supplier nor any person engaged by it in the performance of the services will be an employee of the Council in performing the services. The Contractor shall not be or be deemed to be an agent of the Council and the Contractor shall not hold itself out as having authority or power to bind the Council in any way, other than expressly conferred by this Contract.

15.2 The Contractor shall be responsible or shall procure that any relevant Sub-Contractor is responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees and any other person who is or will be employed or engaged by the Contractor or any Sub-Contractor in connection with the provision of the Service, including without limitation all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise from and including the Service Transfer Date.

16. Equality and human rights

16.1 The Supplier acknowledges the importance of the reputation standing and responsibilities of the Council. The Supplier shall ensure that the Supplier and its personnel complies with all applicable laws and council policies to the fullest extent for the duration of this contract.

16.1 The Supplier shall have in place an equal opportunities policy. This policy must specify that the Supplier will not treat staff less favourably on the grounds of their colour, race, ethnic or national origin, nationality (including citizenship), marital status, sex, sexual orientation, religion or belief, age or because they have a disability. The policy must also specify that the Supplier will not tolerate behaviour, which is inconsistent with it, and detail the measures it will take if this occurs.

16.2 In the performance of the Service and in its dealings with service users, Council employees and members of the general public, the Supplier shall comply and shall ensure that its Representatives comply with the Human Rights Act 1998 and Equalities Act 2010, and all Laws relating to equal opportunities as if the upplier were a public body.

16.3 The Supplier shall undertake, or refrain from undertaking, such acts as the Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998 and applicable equality legislation.

16.4 The Supplier shall perform its obligations under the Agreement in accordance with:

16.4.1 all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);

16.4.2 the Council's equality and diversity policy as provided to the Contractor from time to time; and

16.4.3 any other requirements and instructions which the Council reasonably imposes in connection with any equality obligations imposed on the Council at any time under applicable equality Law; and

16.4.4 take all necessary steps, and inform the Council of the steps taken, to prevent unlawful discrimination designated as such any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

17. Compliance

17.1 The Council conducts itself in accordance with the principles and duties of Best Value contained in Section 3 (1) of the Local Government Act 1999 and encourages the Supplier to embrace similar principles.

18. Agency and Partnership

18.1 Nothing in this agreement is intended to or shall be deemed to establish any partnership or joint venture between the parties or constitute any party the agent of another party or authorise any party to make or enter into any commitments for or on behalf of any other party, and each party confirms it is acting on its own behalf and not for the benefit of any other person.

19. Third Party Rights

19.1 A person who is not a party to this agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this agreement.

20. Intellectual Property

20.1 For the avoidance of doubt, all copyright materials used or supplied in connection with the provision of the services shall remain the copyright of the party introducing the same and shall not be sold, distributed or otherwise used without the consent of the party who is the copyright holder.

20.2 In the absence of prior written agreement by the Council to the contrary, all intellectual property rights created by the Supplier or Supplier's personnel in the course of performing the Services or exclusively for the purpose of performing the Services shall vest in the Council on creation and the Supplier shall ensure that they and all related rights are assigned to the Council as its sole and exclusive property without further payment, and shall do or procure the doing of all such acts and things, and the signature of all documents, at the cost of the Council, as the Council may require in order fully and effectively to vest such rights in the Council.

21. Notice

21.1 Any notice given to a Party under or in connection with this contract shall be in writing or by email to the address specified in the Purchase Order and shall be by first class post or other next working day delivery and shall be deemed to have been received:

21.1.1 by electronic means, time of receipt or if this time falls outside working hours in the place of receipt, when working hours resume

21.1.2 by post on the second business day after posting in the case of first class mail

22. Compliance with Agreement

22.1 For the purposes of ensuring compliance with the Supplier's obligations under this agreement the Council shall have access to and the right to nominate an officer to monitor the services being carried out under this agreement.

23. Indemnity

23.1 The Supplier shall fully indemnify and keep indemnified the Council from all claims, loss, damages, expenses (including reasonable lawyer's fees and court costs), or liability (including infringement of a third party's intellectual property rights) for property damage, death or personal injury which may arise out of or in consequence of the performance of this agreement.

23.2 The indemnity under clause 23.1 shall apply except insofar as the liabilities, costs, expenses damages and losses incurred by the Council are directly caused (or directly arise from) the negligence or breach of this agreement by the Council or their representatives.

23.3 The Supplier shall indemnify and keep indemnified the Council against any claims arising from incorrect or inappropriate professional advice given by the Supplier during the period of this agreement and for a period of not less than 6 (six) years from its date of termination and the liability of the Supplier in respect of any one act or default shall not be less than £5,000,000.00 (five million pounds).

23.4 Nothing herein shall render the Supplier liable for or in respect of or to indemnify the Council against any compensation or damages with respect to damage which is the unavoidable result of the way in which this agreement is required to be performed.

24. Waiver

24.1 No failure or delay by a Party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or other right or remedy, nor shall it prevent or restrict the further exercise of that right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

25. Severability.

25.1 If any provision or part provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

25.2 If any provision or part provision of this agreement is deemed deleted under this clause 25, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.