

Commercial One Best Way for Sheffield City Council

Standard Terms and Conditions - Supply of Goods and Services**1 Definitions**

"Contract" means the agreement between the Council and the Supplier for the supply of Goods and/or Services incorporating these Terms and Conditions (including any Contract Schedule/s) together with the Instructions for Tendering, Form of Tender, Price Schedule and Specification (if issued by the Council) and any other documents stated in the Contract Schedule and the Council's Purchase Order or letter of acceptance;

"Conditions" means the standard terms and conditions of purchase set out in this document, and include any special terms and conditions agreed in writing between the Parties;

"Confidential Information" means information data and material of any nature which either Party may receive or obtain from each other or from any third party in connection with the operation of the Contract and which at the time of disclosure is marked or otherwise designated to show expressly or by necessary implication that it is imparted in confidence, and all information that is otherwise imparted in confidence, including information which (i) comprises Personnel Data or Sensitive Personal Data (as both terms are defined in the Data Protection Act 1998); (ii) the release of which is likely to prejudice the commercial interests of the Council or the Supplier respectively; or (iii) which is a trade secret;

"Contract Schedule" means details of particular goods, works or services to be delivered;

"Council" means Sheffield City Council;

"Delivery Address" means the address stated on the Purchase Order or if not so stated, any of the Council offices as instructed by Council at any time during the term of the Contract;

"Equality Acts" means the Equality Act 2006, the Equality Act 2010 and any statutory modification or re-enactment thereof or any other law relating to discrimination in employment or in the provision of goods, facilities and services;

"Goods" and "Services" mean the goods or services as the case may be set out in the schedule overleaf, but excluding any goods or services in respect of which there is no price in the "Line Total" column.

"IPR" means all present and future copyright, design right, database right and other intellectual property rights throughout the world for the whole term thereof including all extensions and renewals and the right to register any trade mark, patents and design rights in any part of the world;

"Party/Parties" means individually or collectively as applicable either the Council and/or the Supplier;

"Pre-existing IPR" means any IPR (embedded in any work or materials arising from the provision of the Goods or Services supplied under the Contract) vested in or licensed to the Supplier by the third party owner of any IPR prior to or independently of performance by the Supplier of its obligations under the Contract;

"Price" means the price of the Goods, Works or Services;

"Purchase Order" means the Council's purchase order issued in relation to the Goods, Works or Services.

"Responsible Officer" means the Council officer named in the Contract Schedule or his or her nominee.

"Specification" means the Council's requirements in relation to the Goods, Works or Services and the Suppliers offer in response to the requirements, including any plans, drawings, data or other information.

"Special Conditions" means additional conditions that may be incorporated into the Contract as provided under clause 2.3 below.

"Staff" mean the Supplier's employees, servants, sub-contractors or agents used to supply the Goods or perform the Works or Services.

"Supplier" means the person supplying and/or providing the Goods and/or Services.

Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time. The headings in these Conditions are for convenience only and shall not affect their interpretation.

2 Basis of Purchase

2.1 On issue of a Purchase Order (Written or Verbal) by the Council, in relation to the Goods, Works or Services, these purchase order terms and conditions shall automatically apply and shall be binding on the Supplier, unless these purchase order terms and conditions are not applicable because the Supplier has been notified of and issued with (by the Council) other terms and conditions of the Council, or the Council has agreed in writing to alternative terms and conditions supplied by the Supplier.

2.2 These Conditions shall apply to the Contract to the exclusion of any other terms and conditions which the Supplier has sought to or subsequently seeks to impose on the Council. For the avoidance of doubt any terms and conditions of the Supplier, including without limitation any terms and conditions printed on any invoices or other documents submitted by the Supplier to the Council shall not be deemed incorporated into this Contract and shall be of no effect in relation to the provision of the Goods, Works or Services.

2.3 If the Council requires the Supplier to comply with additional Special Conditions, such conditions shall be in writing, drawn up by the Council, and shall be deemed to be part of this Contract. Unless otherwise expressly stated by the Council any Special

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Conditions included in the Contract shall take precedence over the terms and conditions herein to the extent that there is any conflict between any of the terms herein and the provisions in the Special Conditions.

- 2.4 No variation to the Contract shall be binding unless agreed in writing between the authorised representatives of the Parties.

3 Supply of Goods / Service

- 3.1 Any goods supplied by the Supplier that do not correspond with the Council's Specification or otherwise do not comply with provisions of the Contract, may be returned by the Council to the Supplier at the Supplier's expense.

- 3.2 The Supplier shall properly perform the Works or Services with the standard of skill, care and diligence which a competent and suitably qualified person performing such works or services could reasonably be expected to exercise and in accordance with all relevant statutory requirements and industry best practice.

- 3.3 The Supplier and its Staff shall only undertake processing of Personal Data (as defined under the Data Protection Act 1998 ["DPA"]) if instructed by the Council to act as "Data Processor" within the meaning of the "DPA" as part of the performance of the Supplier's obligations under the Contract. As Data Processor, the Supplier shall perform its obligations in accordance with and so as to enable the Council to comply with its obligations under the DPA as "Data Controller" (within the meaning of the DPA). The Supplier shall take appropriate technical and organisational measures to ensure that the Personal Data is processed securely. The Supplier shall submit its data processing facilities for audit by the Council and this may include supplying written particulars of the measures taken.

4 Specification

- 4.1 The Supplier shall comply with all applicable regulations and/or other legal requirements concerning the manufacture, packaging, and delivery of the Goods and/or performance of the Works or Services.

- 4.2 The prices tendered/quoted for any Goods include supply, delivery, installation, packaging and unloading, for which the Supplier will be responsible. The Supplier shall ensure that delivery notes are provided to the Council at the time of delivery.

- 4.3 All Goods must be properly packed and secured and delivered by the Supplier or dispatched for delivery to the place(s) and at the time and in the manner specified in this Contract and at the Supplier's risk and expense.

- 4.4 The Supplier shall comply with the reasonable instructions of the Council in connection with the provision of the Goods, Works or Services.

- 4.5 Timely provision of the Goods, Works or Services shall be of the essence of the Contract.

- 4.6 Without prejudice to the Council's rights to terminate this Contract the Supplier shall, at the Council's request, remedy any failure to comply with the Contract in accordance with the Council's reasonable instructions, at no additional cost to the Council.

5 Price and Payment

- 5.1 The Price of the Goods, Works or Services shall be as offered by the Supplier to the Council and shall be inclusive of all labour costs, equipment, materials, charges for packaging, shipping, carriage, insurance and delivery, and any duties or levies other than Value Added Tax, unless otherwise expressly stated and in the Supplier's quoted prices as accepted by the Council.

- 5.2 No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Council in writing.

- 5.3 The Supplier's official invoice should be sent to the Council within three months after delivery of the Goods, Works or the Services (unless otherwise expressly stated by the Council) and must show: (i) the Council's Purchase Order number; (ii) an Invoice number; (iii) a description of the Goods or Works or Services delivered; (iv) full details of price; (v) any discount allowed; (vi) VAT if applicable.

- 5.4 Unless agreed otherwise between us in writing the Council shall pay the Supplier 30 days after the date the Council register the Supplier's invoice. Invoices will not be registered by the Council for payment until satisfactory completion or delivery of the Goods / Services. VAT, where applicable, shall be shown separately on all invoices as a strictly net extra charge.

- 5.5 The Council shall not be held responsible for delays in payment caused by the Supplier's failure to comply with invoicing instructions.

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- 5.6 Failure by the Supplier, to submit invoices to the Council within three months of delivery of the Goods or Services, as required in clause 5.3 above, may result in the sums due under such invoices (referred to below as "Late Invoices"), not being recoverable from the Council by the Supplier, if and to the extent that the Council, has incurred any loss as a direct consequence of the late submission of invoices by the Supplier.** Such loss may arise in circumstances (including but not limited to) where the Council has forfeited any right it has to recover the sums due in the Late Invoice(s) from a third party that has an arrangement with the Council entitling the Council to submit a claim ("a Claim") to that third party in order to be reimbursed for payments made by the Council to the Supplier in consideration of the Goods or Services supplied by the Supplier under this Contract and a precondition for reimbursement is that the Council submits the Claim within a specified time. If the Council under such arrangement loses the right to be reimbursed because it submits a Claim late and the reason for the late Claim is because the Supplier has submitted a Late Invoice to the Council, then the Council's inability to obtain reimbursement would be a loss to the Council which may be remedied in accordance with this Contract, without prejudice to any other rights or remedies that the Council may have. If the Council has forfeited its right to recover from the above mentioned third party, sums specified in Late Invoice as a result of the Supplier's submission of Late Invoice(s) to the Council, the Council may: (i) refuse to pay the sums due on the Late Invoice to the extent that the sum not paid by the Council cannot be claimed back by the Council from the third party under the arrangements between the Council and the third party referred to above in this condition, (ii) set off the sums the Council is unable to claim back from the third party (as a result of the Supplier's late submission of any invoice) against any sums that may become payable from the Council to the Supplier for the supply of the Goods and Services.
- 5.7 The Council shall be entitled to set-off against any invoice, any amount due from the Supplier under this Purchase Order or under any other contractual arrangement with the Council.
- 5.8 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly extra charge. All invoices containing Value Added Tax must conform to the requirements of HM Revenue and Customs.
- 5.9 The Supplier shall at the request of the Council provide all information necessary to support the invoiced amount including all relevant time sheets, details of expenses incurred and invoices paid.
- 5.10 The Supplier shall be wholly responsible for all applicable taxes including income tax and national insurance and other similar contributions or taxes (together "Taxes") which may be payable out of, or as a result of the receipt of, any monies paid or payable by the Council under this Contract.
- 5.11 No payment of or on account of the Contract Price shall constitute any admission by the Council as to the Supplier's proper provision of the Goods, Works or Services.
- 6 Delivery**
- 6.1 The Goods shall be delivered to and/or the Works or Services shall be performed within business hours at the Delivery Address on the date or within the period specified in the Specification or as otherwise specified or agreed by the Council in writing.
- 6.2 Where the date of delivery of the Goods and/or performance of the Services is to be specified after the placing of the Purchase Order, the Supplier shall give the Council reasonable notice of the specified date.
- 6.3 A delivery note which specifies the number of the Purchase Order shall accompany each delivery or consignment of the Goods, and must be displayed prominently.
- 6.4 If the Goods are to be delivered and/or the Works or Services are to be performed by instalments, the Contract will be treated as a single contract and will not be severable.
- 6.5 The Council shall be entitled to reject any Goods delivered which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods until the Council has had reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.
- 6.6 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 and/or performance of the Works or Services.
- 6.7 The Council shall not be required to return to the Supplier any packaging or packaging materials for the Goods, whether or not the Goods are accepted by the Council.

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- 6.8 If the Goods are not delivered and/or the Works or Services are not performed on the due date then, without prejudice to any other remedy, the Council shall be entitled to deduct from the Price or, if the Council has already paid the Price, to claim from the Supplier an amount equal to the additional costs incurred by the Council as a result of the delay.
- 6.9 Risk of damage to or loss of the Goods shall pass to the Council upon delivery to the Council in accordance with the Contract.
- 6.10 The property in the Goods shall pass to the Council upon delivery, unless payment for the Goods is made prior to delivery, where it shall pass to the Council once payment has been made and the Goods have been appropriated to the Contract.
- 6.11 Whilst on the Council premises the Supplier shall comply with the Council rules and regulations relating to the Premises.

7 Quality Assurance

- 7.1 The Supplier shall operate a self-regulatory system of quality assurance and quality measures relating to the Contract in addition to any quality requirements in the Specification which ensures that the Goods, Works or Services are provided in accordance with the requirements of the Contract and as part of this requirement, the Supplier shall check that information, data or software supplied pursuant to the Contract is fit for the purpose for which the Council intends to use it.

8 Warranties and Liability

- 8.1 The Supplier warrants to the Council that the Goods will be: of sound materials and first class workmanship; equal in all respects to the samples, patterns, description or specification provided or given by either Party; of satisfactory quality (within the meaning of the Sale of Goods Act 1979); free from defects in design, material and workmanship; and will comply with all statutory requirements and regulations relating to the sale of the Goods.
- 8.2 The Supplier warrants to the Council that the Services or Works will be performed by appropriately trained and qualified personnel, with due care and diligence, and to the standards which would reasonably be expected from a skilled and experienced Supplier engaged in the provision of services similar to the Services under the same or similar circumstances.
- 8.3 The Supplier will indemnify the Council in full against the following:
 (i) all loss, liability, damages, costs, expenses (including legal expenses) or injury whatsoever and whenever arising caused to the Council, or for which the Council may be liable to third parties due to defective workmanship or unsound quality of the Goods, Works or the Services supplied; (ii) all claims in respect of death or injury, howsoever caused, to any of the employees, or those of the agent or subcontractors, of the Supplier, while in or about the Council's sites, works or other places of business; (iii) any consequential loss or damage sustained by the Council for which the Council may be liable, as a result of the failure of the Supplier to supply the materials or perform the Works or Services in accordance with the terms of the Contract.
- 8.4 Without prejudice to any other remedy, if any of the Goods, Works or Services are not supplied or performed in accordance with the Contract, then the Council shall be entitled:
 (i) to require the Supplier to repair the Goods or to supply replacement Goods and/or remedy any failure to perform the Works or Services in compliance with the Contract within 7 days or such other period specified by the Council; or
 (ii) at the Council's sole option and whether or not the Council has previously required the Supplier to repair the Goods or to supply any replacement Goods and/or to remedy any failure to perform Services, to treat the Contract as discharged by the Supplier's breach and require repayment of any part of the Price which has been paid.
- 8.5 Any person who is not a party to the Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

9 Termination

- 9.1 The Council shall be entitled to terminate the Contract without liability to the Supplier by giving written notice to the Supplier at any time if: (i) the Supplier makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or (ii) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Supplier; or (iii) the Supplier dies, or ceases, or threatens to cease to carry on business; or the Supplier does anything improper to influence the Council to give the Supplier any contract or commits an offence under the Prevention of Corruption Acts 1889 to 1916; or (iv) the Council reasonably believes that any of the events mentioned above is about to occur in relation to the Supplier and notifies the Supplier immediately.
- 9.2 Where the Council terminates the Contract in accordance with the provisions of Condition 8.1, the Supplier shall compensate the Council for any losses suffered as a result of this.

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- 9.3 The Council may terminate the Contract at any time on giving the Supplier not less than one month's notice.
- 9.4 On the expiry or termination of this Contract (however arising), the Supplier shall deliver up to the Council all documents, formulae, papers, drawings, software, data, specifications, reports, notes, programs, portfolios, equipment, materials of any sort, identity cards and keys which were furnished by the Council to the Supplier, or which were prepared by or on behalf of the Supplier for the Council in the course of providing Goods, Works or Services under this Contract.

10 Intellectual Property Rights

- 10.1 Subject to Pre-existing IPR, all IPR created by the Supplier as a result of performing the Goods, Works or Services, ("Contract Generated IPR") shall be owned by the Council and the Supplier shall enter into such documentation and perform such acts as the Council may request to properly vest such Contract Generated IPR in the Council. The Supplier hereby assigns (by way of present assignment of future Contract Generated IPR) all Contract Generated IPR.
- 10.2 The Supplier, hereby grants to the Council a perpetual, royalty-free, irrevocable, non-exclusive, assignable, global licence for use, sub-licence and/or commercial exploitation of any Pre-Existing IPR in the Goods, Works or and/or services, together with the ability to sub-licence the same.
- 10.3 The Supplier agrees to indemnify and keep indemnified the Council against any costs, claims, proceedings, expenses and demands arising from the use, application, supply or delivery of any process article, matter or thing supplied under the Contract that would constitute or is alleged to constitute any infringement of any IPR including third party's IPR.

11 Confidentiality

- 11.1 Subject to requirements by law, including, without limitation, under the Freedom of Information Act 2000 ("the FOIA") and the Environmental Information Regulations 2004 ("EIR") to which the Council are not bound but has a policy of complying with the spirit of the act and regulations and of this Condition 10, any Confidential Information supplied by the Council to the Supplier or vice versa shall be kept confidential and shall only be used by the Supplier for the performance of its obligations under the Contract.
- 11.2 The Supplier shall use all reasonable efforts to assist the Council to comply with such obligations as are imposed on the Council by the FOIA and the EIR including providing the Council with reasonable assistance in complying with any request for information (in connection with the Goods, Works or Services) served on the Council under the FOIA or the EIR.
- 11.3 Upon expiry or termination of the Contract for whatever reason, the Supplier shall either, immediately destroy, or at the Council's written request, immediately return to the Council, any Confidential Information provided to it pursuant to the Contract.
- 11.4 To enable the Council to comply with transparency obligations that apply to the Council, notwithstanding any other term of this Contract, the Supplier hereby gives their consent for the Council to publish the Contract in the public domain in its entirety, including from time to time agreed changes to the Contract. The Council may prior to such publication, remove any content of the Contract that would satisfy the legal tests for exempt information under the FOIA and the DPA, which includes commercially sensitive information and information which is provided in confidence. For the purposes of this contract the Council shall be deemed to be bound by the Transparency code 2015 and the Supplier hereby consents to the publication by the Council of information relating to this contract including but not limited to the Supplier's name, contract value, duration and procurement process applied to the appointment and award of the Contract.

12 General

- 12.1 The Supplier shall be prohibited from transferring, assigning or sub-letting, directly or indirectly, to any person or persons whatever, the whole or any portion of this Contract without the prior written permission of the Council.
- 12.2 No waiver by the Council of any breach of the Contract by the Supplier shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 12.3 The Supplier shall not give, nor offer to give anyone employed by the Council an inducement of any kind, or any gift that could be perceived by others to be a bribe. Any such action will constitute a breach which is considered incapable of remedy.
- 12.4 The Supplier and its Staff involved in the supply of Goods or Works or Services under the Contract shall comply with the Council policies relevant to the performance of the Supplier's obligations under the Contract and which have been made known to the Supplier.

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- 12.5 Such policies shall include without limitation the Council health and safety and security policies that are effective at any time during the term of the Contract. The Supplier warrants and undertakes that the staff engaged in performing the Contract shall have satisfactorily completed the Baseline Personnel Security Standard (BPSS) which requires verification of (i) identity (ii) employment history (iii) nationality and immigration status and (iv) unspent criminal convictions. If the Supplier is a sole trader the Supplier will co-operate with the Council in providing the verification information which the Council may require to ensure that the Supplier meets the BPSS.
- 12.6 If any provision of these Conditions is held to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 12.7 Neither the Supplier nor the Council shall be liable to the other for any failure to fulfil its obligations under the Contract if such a failure is caused by circumstances beyond its reasonable control provided that the party failing has (i) used its best endeavours to exert such control and (ii) has not itself caused the circumstances concerned.
- 12.8 The Supplier shall not issue any press release or make any public statement concerning the Council, its employees, agents, commissioners, of Goods, Work or Services without the prior written consent of the Council, nor shall the Supplier without the prior written consent of the Council, advertise or disclose to third parties that it is providing Goods, Works or Services to the Council.
- 12.9 The Supplier shall, and shall use reasonable endeavours to ensure that its Staff shall, at all times, act in a way which is compatible with the Convention Rights within the meaning of Section 1 of the Human Rights Act 1998 and shall comply with the Equality Acts.
- 12.10 Acceptance of this Purchase Order will be deemed to bind the Supplier to these Conditions and no Goods, Works or Services shall be supplied or performed by the Supplier, its employees, agents or representatives, except in accordance therewith.
- 12.11 This Contract constitutes the entire understanding between the Parties relating to the subject matter of the Contract and, save as may be expressly referred to or referenced herein, supersedes all prior representations, writings, negotiations or understandings with respect hereto, except in respect of any fraudulent misrepresentation made by either party.
- 12.13 The Supplier shall effect and maintain an adequate level of insurance cover in respect of all risks that may be incurred by them in the performance of this Contract.
- 12.15 Notices given under the Contract shall be given in writing and shall be served (i) by delivery to the receiving Party, effecting immediate service, (ii) by post, effecting service on the second following business day, (iii) by facsimile or email, effecting service either after four hours if within accepted working hours or on the following business day.
- 12.16 Both Parties agree to submit to the jurisdiction of the English courts and agree that the Contract is to be governed and construed by English law.
- 12.17 Nothing in this Contract shall be construed as creating any partnership, contract of employment or a relationship of principal and agent between the Council and the Supplier
- 12.18 The following shall survive the termination or expiry of this Contract; conditions 1, 7, 9, 10, 11 and without limitation to the foregoing, any provisions of the Contract which either implied or express are to be performed or observed notwithstanding termination or expiry of the contract.