

City Of York Council General Conditions Of Purchase For Goods And Services (“the Conditions”)

This document contains the terms and conditions for the conduct of the business of the Council. It is intended to be used in conjunction with the Purchase Order placed by the Council for the Goods and/or Services described in the Purchase Order. A variation to these Conditions may be set out in the Purchase Order and will take effect as if it were set out in these Conditions.

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1. **Definitions**

"Council" means the Council of the City of York, its designated agents and associated companies.

"Contract" means the agreement between the Council and the Supplier comprising the Purchase Order, the Specification (if any) and the Conditions.

"DPA 2018" means the Data Protection Act 2018.

"Data Protection Legislation" means:

- (a) the GDPR, the LED and any applicable national implementing Laws as amended from time to time;
- (b) the DPA 2018 to the extent that it relates to processing of Personal Data and privacy; and
- (c) all applicable Law about the processing of Personal Data and privacy;

"Insolvency Event" means each and any of the following in relation to the Supplier:

- (a) any action (corporate or otherwise), legal proceedings or other procedure or step is taken by any person in any jurisdiction in relation to or with a view to: (i) the winding up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Supplier (except that no right to terminate will arise in respect of any procedure commenced for the purpose of a solvent amalgamation or reconstruction); (ii) the appointment of a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator, nominee, supervisor or similar officer in respect of the Supplier or any of its assets; (iii) the enforcement of any security over any assets of the Supplier; or (iv) the expropriation, attachment, sequestration, distress or execution over or affecting any material asset of the Supplier;
- (b) the Supplier is unable to pay its debts as they fall due or is insolvent; or
- (c) the Supplier enters into a composition or arrangement with its creditors or any class of them;

"GDPR" means the General Data Protection Regulation (*Regulation (EU) 2016/679*).

"Law" means any applicable Act of Parliament, sub-ordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body of which the Supplier is bound to comply.

"LED" means the Law Enforcement Directive (*Directive (EU) 2016/680*).

"Personal Data" takes the meaning given in the GDPR and where used in this Contract refers to any such Personal Data processed by the Supplier on behalf of the Council under this Contract.

"The Price" means the price (exclusive of any applicable VAT) for the Goods and/or Services as specified in the Purchase Order which is inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods and/or Services and any duties, imports or levies payable to the Supplier by the Council under the Contract for the full and proper performance by the Supplier of its obligations under the Contract.

"Purchase Order" means the Council's Purchase Order for the Goods and/or Services referring to the Conditions on its face.

"Specification" means any document supplied by the Council setting out details of the Council's requirements.

"Supplier" means the person, firm or company to whom the Purchase Order is addressed.

"The Goods" means any such goods as are to be supplied by the Supplier as detailed in the Purchase Order or associated Specification.

"The Services" means any such services as to be provided by the Supplier, as detailed in the Purchase Order or associated Specification.

2. **The Contract**

- 2.1 The Purchase Order constitutes an offer by the Council to purchase the Goods and or acquire the Services in accordance with the Specification (if any) and subject to the Conditions.
- 2.2 The Purchase Order will lapse unless unconditionally accepted by the Supplier within seven days of its date either in writing, or by delivery of the Goods or any part of the Goods, or by commencement of supply of the Services to the appropriate contact named on the Purchase Order.
- 2.3 The Conditions govern the Contract between the Council and the Supplier. No other conditions, whether introduced before or after the date of the Purchase Order shall have any relevance to this Contract. Nothing in this agreement shall be deemed to constitute a partnership between the Parties nor constitute any Party as the agent of the other Party.

3. **The Price**

- 3.1 The price of the Goods and/or Services (the "Price") shall be as set out in the Purchase Order other than value added tax. Value added tax shall be payable in addition to the Price.
- 3.2 The Price shall be fixed.

4. **Delivery**

- 4.1 Goods shall be delivered to, and the Services shall be performed at the address for delivery, not later than the date specified on the Purchase Order. Where access is required the Supplier shall at all times comply with the reasonable requirements of the Council's premises manager.
- 4.2 Unless otherwise specified in the Purchase Order, where Goods are delivered by the Supplier the point of delivery shall be when the Goods are removed from the transporting vehicle at the Premises.
- 4.3 The Supplier shall indemnify the Council in respect of any actions, suits, claims, demands, losses, charges, costs and expenses which the Council may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Supplier or any of his sub-contractors.
- 4.4 A packing note quoting the number of the Purchase Order and a description of the Goods must accompany each delivery of Goods and must be displayed prominently. All containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.
- 4.5 The Council shall not be obliged to:
 - 4.5.1 return to the Supplier any packaging or packing materials for the Goods, whether or not any Goods are accepted by the Council; or
 - 4.5.2 accept or pay for any Goods delivered in excess of the quantity ordered.

5. **Quality of Goods**

- 5.1 The Goods shall be in accordance with the Purchase Order and the Specification (if any), new, and free from defects in design, workmanship and materials.
- 5.2 If the Goods are sold by description, the Goods will correspond with the description, notwithstanding (if it be the case) that the sale is also a sale by sample.

- 5.3 The Goods shall be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 5.4 The Goods shall be fit for any particular purpose which the Council has made known, expressly or by implication, to the Supplier and the Council shall be deemed to have relied on the Supplier's skill and judgment.
- 5.5 The Goods will comply with all Laws.

6. **Quality of Services**

- 6.1 The Services shall be supplied to the Council in accordance with and for the duration specified in the Purchase Order and the Specification (if any).
- 6.2 The Supplier shall carry out the Services:
 - 6.2.1 in a proper, skilful and workmanlike manner with reasonable care and skill and in accordance with industry best practice; and
 - 6.2.2 in accordance with the Contract and the reasonable instructions of the Council (including any Council Policies specified in the Purchase Order);
- 6.3 The Supplier shall at all times make available sufficient personnel and all other resources as are required for the successful and timely completion of the Services.
- 6.4 The Services shall at all times be supplied by appropriately supervised, experienced, qualified, trained and competent personnel.
- 6.5 The Council shall have the right to decide whether any person is to be admitted to or is to be removed from the Council's premises or is not to become involved in or is to be removed from involvement in the performance of the Contract. Any such decision shall be final and conclusive.

7. **Acceptance, Inspection and Rejection**

- 7.1 The Supplier shall permit the Council to inspect and test the Goods during manufacture, processing or storage at the premises of the Supplier or any third party before dispatch, and the Supplier shall provide the Council with all facilities reasonably required for such inspection and testing.
- 7.2 If, on inspection, the Goods or any part of them are found not to be in accordance with the Contract, the Council may, by notice reject the Goods or the relevant part of the Goods. No failure to make a complaint at the time of such inspection or tests and no approval given during or after such tests or inspections shall constitute a waiver by the Council of any rights or remedies in respect of the Goods and the Council reserves the right to reject the Goods in accordance with condition 7.3.
- 7.3 The Council may 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 a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.
- 7.4 If the Goods or any part of the Goods are rejected, in addition to any other right or remedy available to the Council, the Supplier shall remove them at the Supplier's own risk and expense within five working days of notification and shall, at the Council's sole discretion within seven working days, replace the Goods or refund the total value of the Goods (including delivery charges) to the Council.
- 7.5 For the avoidance of doubt the Council's signature on the Supplier's delivery note shall signify delivery and not that the Goods have been inspected and accepted.

8. **Compliance with Law**

In carrying out its obligations under the Contract the Supplier shall observe and perform all requirements made applicable to the supply of goods or services under the Contract by Law.

9. **Property and Risk**

9.1 Risk in the Goods shall, without prejudice to any of the rights or remedies of the Council under this Contract (including the Council's right to reject any Goods which are found not to be in accordance with the Contract), pass to the Council on delivery.

9.2 Title in the Goods shall, without prejudice to any of the rights or remedies of the Council under this Contract (including the Council's right to reject any Goods which are found not to be in accordance with the Contract), pass to the Council on delivery (or payment, if earlier).

9.3 If the Goods are rejected following inspection, title and risk shall revert to the supplier.

9.4 If payment is made before delivery:

(a) the Supplier shall forthwith appropriate the Goods to the Council by storing them separately from other similar goods belonging to the Supplier and by labelling them clearly as the property of the Council, and

(b) title in the Goods shall pass to the Council upon appropriation, but

(c) risk shall remain with the Supplier until delivery in accordance with condition 9.1

10. **Indemnity and Insurance**

10.1 The Supplier shall indemnify the Council against all losses, damage, injury or expense, and injury to or death of any person, howsoever caused by or arising from, either directly or indirectly;

(a) in the consequence of the supply, installation and/or commissioning of the Goods or the late or purported supply, installation and/or commission of the Goods or

(b) from the performance or non-performance by the Supplier of its obligations under the Contract;

(c) from any liability under the Consumer Protection Act 1987 in respect of the Goods;

(d) from any acts or omissions by the Supplier, the Supplier's employees, agents or subcontractors including but not limited to a breach of the provisions of the Contract.

10.2 The Supplier shall fully indemnify the Council against any expenses arising from any alleged or actual infringement of any proprietary right including but (not limited to) patents, trademarks, copyrights, intellectual or any of the rights arising from this Contract.

10.3 The Supplier shall maintain satisfactory insurance cover with a reputable insurer in respect of all liabilities, both statutory and contractual, arising from this Contract, to a minimum of £2m or such higher figure as the Council may specify. The Supplier shall produce evidence of such insurance and payment of the current premium to the Council on request.

10.4 The Council, its employees, agents or associated companies shall in no circumstances whatsoever be liable for:

10.4.1 any loss of profits, business, revenue, goodwill, or anticipated savings; or

10.4.2 indirect or consequential loss, howsoever arising from this Contract.

- 10.5 Neither Party excludes or limits liability to the other Party for:
- 10.5.1 death or personal injury caused by its negligence; or
 - 10.5.2 fraud or fraudulent misrepresentation; or
 - 10.5.3 any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982; or
 - 10.5.4 any other matter in respect of which, as a matter of Law, liability cannot be excluded or limited.

11. **Payment**

11.1 The Supplier shall invoice the Council for payment within 30 days after delivery of the Goods or completion of the Services unless otherwise agreed in writing. All invoices for the supply of Goods shall be accompanied by proof of delivery. The Council shall pay invoices within 30 days after the end of the month of receipt. Value added tax where applicable will be shown separately on all invoices as a net extra charge.

11.2 The Supplier's invoice must be addressed to City of York Council: West Offices, Station Rise, York YO16GA.

Or e-mailed to invoices@york.gov.uk in one the following formats:

- Adobe Acrobat (PDF Files)
- Microsoft Office Word/Excel (DOC OR DOCX, XLS OR XLSX files only)
- Text files (rich text only)
- Picture/image/scan (TIF/JPG). The Supplier shall ensure image resolution is at least 200 dots per inch.
- Web page (HMT/HTML)

Attachments in any other format will be automatically rejected by the Council. Including but not limited to Open Office (ODF and ODT files), Microsoft Works (WKS files), any Microsoft Office file extensions ending with 'm', password protected documents, zipped files, links to forms, attached emails, documents on Microsoft®, SkyDrive® and similar cloud based storage. The Council will not send notification of any rejected invoice.

11.3 Invoices must quote:

- City of York Council, West Offices, Station Rise, York YO16GA
- the Purchase Order Number
- the Date
- Invoice Ref No
- Invoice Date
- Total Net Price & VAT where applicable (broken down)
- Description of the Goods/Services supplied
- VAT registration No. (if applicable)

- Department that requires the Goods and/or Services

11.4 The Council shall not be responsible for any delays in payment arising from failure to comply with these invoicing instructions.

11.5 Payment by the Council shall be without prejudice to any rights or remedies available to it under this Contract, or otherwise, and shall not constitute any binding admission by the Council as to the suitability, quantity, quality or fitness for purpose of Goods received by the Council or satisfactory performance and completion of the Services by the Supplier.

11.6 The Supplier shall indemnify the Council on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Council at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Contract. Any amounts due under this condition 11.6 shall be paid by the Supplier to the Council not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Council.

12. **Recovery of Sums Due**

12.1 The Council may deduct from any sum due to the Supplier under this Contract, any amounts owed by the Supplier to the Council.

12.2 Any overpayment by the Council, whether of the Price or of VAT or otherwise, shall be a sum of money recoverable by the Council from the Supplier.

13. **Publicity**

The Supplier shall not publish or reproduce or arrange press releases or make public statements in connection with the Purchase Order or make use of the name of the Council in any publicity without the Council's prior written approval from the Commercial Procurement Hub who can be contacted at "procurement@york.gov.uk"

14. **Confidentiality**

The Supplier shall keep confidential all information relating to the Council, acquired while supplying the Goods or carrying out the Services for the Council.

15. **Termination**

15.1 The Council may immediately terminate this Contract by written notice Supplier if:

- (a) the Supplier is in breach of any of the provisions of this Contract; and, in the case of a breach capable of being remedied, has not remedied the breach within thirty days of notice to do so; or
- (b) an Insolvency Event occurs in relation to the Supplier;
- (c) the Supplier is an individual:
 - (i) if he shall be adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or ceases, or threatens to cease, to carry on business; or
 - (ii) if the Supplier dies; or
- (d) the Supplier is convicted of a criminal offence; or
- (e) for whatever reason, the Supplier is bringing, or may bring, bad publicity or disrepute upon the Council.

15.2 If the Contract is terminated:

- (a) neither Party shall have any further obligation to the other under the Contract.
- (b) the Supplier shall refund any payment made by the Council in respect of any part of the Contract which has not been performed, and
- (c) the Supplier shall return to the Council any items belonging to the Council in its possession (except for any copies required by the Supplier for statutory purposes).

15.3 Termination of this Contract shall not prejudice or affect:

- 15.3.1 the rights or liabilities of the Parties which have accrued on or before termination; and
- 15.3.2 the continuance in force of any conditions of the Contract which expressly or by their implication survive termination of this Contract.

16. **Waiver**

Failure on the part of the Council at any time to enforce any provision of this Contract shall not affect the Council's rights at a later date to require performance of the Contract nor shall a waiver of any breach be taken or held to be a waiver of any subsequent breach of any provision.

17. **Gifts and inducements**

The Supplier shall not give or offer to any of the Council's staff, employees or agents, any gift or inducement or otherwise commit any offence under the Bribery Act 2010 whatsoever in relation to this or any other Contract between the Council and the Supplier.

18. **Health and Safety**

The Supplier shall comply at all times with the requirements of the Health and Safety at Work etc. Act 1974 and all subsequent amendments thereto, the Council's Health and Safety Guidance Notes and any health and safety or related instructions which may be issued to the Supplier by the Council at any time.

19. **Assignment and Sub-contracting**

19.1 The Supplier shall not transfer or assign directly or indirectly to any person or persons whatsoever any portion of the Contract without written permission from the Commercial Procurement Hub. Requests should be e-mailed to "procurement@york.gov.uk".

19.2 No sub-contracting by the Supplier shall in any way relieve the Supplier of any of his responsibilities under the Contract.

20. **Notices**

All notices and communications required to be given under this Contract shall be made in writing and shall be regarded as properly served if sent by E-mail to the address on the front of the Purchase Order.

21. **Rights of Third Parties**

The Parties hereby declare that no term of the Contract is intended by the Parties to confer a benefit on any third party (as defined by the Contracts (Rights of Third Parties) Act 1999) nor is intended to be enforceable by any third party. The provisions of the said Act are hereby excluded.

22. Data Protection

- 22.1 The Supplier shall and shall ensure that its agents, employees and sub-contractors shall, in performing its obligations under this Contract, comply in all respects with the Data Protection Legislation and will indemnify the Council against all actions costs expenses claims proceedings and demands which may be brought or made against the Council for breach of statutory duty under the Data Protection Legislation which arises from the use disclosure or transfer of personal data by the Supplier and its agents, employees and/or sub-contractors.
- 22.2 The Supplier shall and shall ensure that its agents, employees and sub-contractors shall not do or permit anything to be done which might jeopardise or contravene the Council's compliance with the Data Protection Legislation.
- 22.3 The Supplier shall notify the Council immediately if it:
- 22.3.1 receives a Data Subject Access Request (as defined under the GDPR) or purported Data Subject Access Request; or
 - 22.3.2 becomes aware of a data security breach.
- 22.4 The Supplier shall allow for audits of its data processing activity and premises by the Council or the Council's designated auditor and authorised representatives and make available to the Council all information necessary to demonstrate compliance with its obligations under this Contract and the Data Protection Legislation.

23. Freedom of Information

The Council is under a statutory duty which may require the release of information under the Freedom of Information Act 2000 and or the Environmental Information Regulations 2004. Such information may include matters relating to or arising out of or under this Contract. The Council shall be entitled to disclose such information in the event that it receives a request to do so. In this event the Council shall inform the Contractor of the request and give the Supplier details of the information that the Council intends to disclose. The Council will not usually disclose information which is subject to an exemption under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 save where such disclosure is agreed by the Supplier or required by the Information Commissioner.

24. Spend Data

The Council may disclose any relevant term of this Contract in accordance with the local spending data guidelines published by the Local Government Authority and/or Local Public Data Panel as updated from time to time.

25. Discrimination

The Supplier, its agents, employees or sub-contractors shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief or age or any other basis as defined by the Equalities Act 2010 and the Human Rights Act 1998 or by the Council in writing from time to time.

26. Employment legislation

The Supplier shall comply with the provisions of all Acts of Parliament, statutory instruments and codes of practice relating to employment.

27. Dispute Resolution

If any dispute arises in connection with this Contract, the Parties will attempt to settle it with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator will be nominated by CEDR.

28. **Severability**

If any provision of these Conditions is held by any court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provision of these Conditions and the remainder of the provision in question shall not be affected.

29. **Variation**

Any variation to these Conditions (including any special terms and conditions agreed between the Parties) or to any Purchase Order shall be inapplicable unless agreed to in writing by the Council.

30. **Headings**

The headings to Conditions shall not affect their interpretation.

31. **Entire Agreement**

31.1 Subject to clause 31.2, this Contract and the documents referred to in it constitute the entire agreement and understanding of the Parties in respect of the subject matter of this Contract and supersedes any previous arrangement, understanding or agreement between them.

31.2 Where the Parties enter into a subsequent written agreement executed by both Parties that subsequent written agreement shall constitute the entire agreement and understanding between the Parties and shall supersede this Contract.

31.3 Each Party acknowledges that, in entering into this Contract, it has not relied on any statement, representation, assurance or warranty (whether made negligently or innocently) other than those expressly set out in this Contract or the documents referred to in it.

31.4 Each Party agrees that all liability for and remedies in respect of any representations are excluded except as expressly provided in this Contract.

32. **No Agency or Partnership**

32.1 Nothing contained in this Contract, and no action taken by the Parties pursuant to this Contract, will be deemed to constitute a relationship between the Parties of partnership, joint venture, principal and agent or employer and employee. Neither Party has, nor may it represent that it has, any authority to act or make any commitments on the other Party's behalf.

32.2 Nothing in this Contract in any way affects the right of the Council to exercise (or not to exercise) any of its statutory powers and/or its statutory functions.

33. **Governing Law**

This Contract shall be governed by and construed in accordance with English Law and the Council and the Supplier hereby irrevocably submit to the exclusive jurisdiction of the English Courts.