



BRACKNELL FOREST BOROUGH COUNCIL

STANDARD CONDITIONS OF CONTRACT: PURCHASE ORDERS

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STANDARD CONDITIONS OF CONTRACT: PURCHASE ORDERS

CONTENTS

| | | |
|----|---|----|
| 1 | Definitions..... | 3 |
| 2 | The Goods and/ or Services | 4 |
| 3 | Amendments to the Contract..... | 5 |
| 4 | Inspection of Premises and nature of Services | 5 |
| 5 | Contractor status..... | 5 |
| 6 | Manner of carrying out the Services..... | 6 |
| 7 | Delivery & Time of performance..... | 6 |
| 8 | Property and risk..... | 6 |
| 9 | Damage in transit..... | 6 |
| 10 | Inspection rejection acceptance and guarantee..... | 7 |
| 11 | Labelling and packaging | 7 |
| 12 | Patents and information..... | 8 |
| 13 | Payment Provisions..... | 8 |
| 14 | Access to Premises..... | 9 |
| 15 | Health and Safety..... | 9 |
| 16 | Indemnity Insurance | 10 |
| 17 | Equal Opportunities..... | 10 |
| 18 | Termination | 11 |
| 19 | Default..... | 12 |
| 20 | Recovery of sums due..... | 13 |
| 21 | Notices | 13 |
| 22 | Assignment and sub-contracting | 13 |
| 23 | Data Protection..... | 13 |
| 24 | Standards..... | 14 |
| 25 | Bribery and corruption | 14 |
| 26 | Human Rights..... | 15 |
| 27 | No rights of third parties | 15 |
| 28 | Waiver | 16 |
| 29 | Freedom of Information | 16 |
| 30 | Contractor's Property..... | 16 |
| 31 | Confidentiality..... | 16 |
| 32 | Dispute Resolution | 18 |
| 33 | Governing Law | 18 |
| | APPENDIX A - Data Protection Act 2018 and the General Data Protection Regulation..... | 19 |
| | SCHEDULE - Processing, Personal Data and Data Subjects..... | 23 |

STANDARD CONDITIONS OF CONTRACT: PURCHASE ORDERS

These conditions may only be varied with the written agreement of the Council. No terms or conditions put forward at any time by the Contractor shall form any part of the Contract.

1 Definitions

In these conditions:-

- “Appendix” means the Appendix appended to this contract including further definitions
- “Contract” means the Contract between the Council and the Contractor consisting of the Order, these conditions, the Specifications and any other documents or parts thereof specified in the Order
- “Contractor” means the person firm or company detailed in the Order to whom this contract is issued
- “Council” means Bracknell Forest Borough Council
- “Data Protection Laws” means all relevant data protection legislation applicable to England and Wales
- “DPA 18” means Data Protection Act 2018
- “GDPR” means UK General Data Protection Regulation EU (2016/679)
- “Goods” means any goods that are to be supplied by the Contractor detailed in the Order
- “Mediator” means the neutral person agreed and appointed by the parties to facilitate the resolution of a contractual dispute
- “Order” means the order placed by the Council with the Contractor that incorporates these terms and conditions – this will generally be in the form of a “purchase order” which may be further supplemented by emails or other documents issued by the Council which directly relate to the order
- “Personal Information” means ‘personal data’ and ‘special category data’ as defined in the GDPR and the DPA 18
- “Premises” means the location where the Services are to be performed or the Goods are to be delivered as specified in the Order
- “Price” means the price for the Services and/or Goods detailed on the Order
- “Prohibited Act” means the following which constitute Prohibited Acts:
- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity, or
 - (ii) reward that person for improper performance of a relevant function or activity;
 - (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;

STANDARD CONDITIONS OF CONTRACT: PURCHASE ORDERS

- (c) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to this Contract or any other contract with the Council; or
 - (iv) defrauding, attempting to defraud or conspiring to defraud the Council.

“Services” means the services (if any) to be provided as specified in the Order

“Specifications” means the technical and other specifications, plans, drawings, examples, patterns and any other document or material issued or agreed by the Council relating to the Goods and/ or Services as may be specified in the Order.

“Sub-Contract” means a contract between two or more suppliers, at any stage of remoteness from the Council in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract

As used in this Contract the masculine includes the feminine and the neuter and the singular includes the plural and vice versa.

A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument as contained in any subsequent re-enactment thereof.

A reference to any document shall be construed as a reference to the document as at the date of execution of this Contract.

Each party shall comply with any express obligation in this Contract to comply with any document, statute, enactment, order, regulation or other similar instrument that is referred to in this Contract.

Headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of this Contract.

In respect of all Goods and/ or Services to be supplied by the Contractor in accordance with the Specifications and Order the following conditions shall apply:-

2 The Goods and/ or Services

- 2.1 This Contract is for the supply of Goods and/ or Services by the Contractor to the Council in the manner specified and at any place specified in the Order.
- 2.2 The Goods/ Services to be provided shall be to the reasonable satisfaction of the Council and shall conform in all respects with the Specifications, with any particulars described in the Order or any agreed variations thereto confirmed in writing between the parties
- 2.3 The Goods/ Services shall conform in all respects with the requirements of any statutes orders regulations or bylaws from time to time in force
- 2.4 The Goods shall be suitable and sufficient for the purpose for which such Goods are ordinarily used and for any particular purpose made known to the Contractor

STANDARD CONDITIONS OF CONTRACT: PURCHASE ORDERS

by the Council. The Goods shall comply with any performance criteria or specification published by the Contractor and the Council relies on the skill and judgment of the Contractor in the supply of the Goods and the execution of the Order

- 2.5 The Contractor shall carry out the Services using the highest standard of skill and care which is ordinarily exercised by experienced and competent suppliers performing the services of a similar nature to the Services.
- 2.6 The Contractor shall provide to the satisfaction of the Council such appropriately qualified and experienced staff as shall be necessary for the proper execution of the Services and shall not remove or replace such persons without the prior written approval of the Council;
- 2.7 The Contractor shall ensure that all persons involved in delivering the Services are sufficiently instructed with regard to the Services as specified in the Contract;
- 2.8 The Contractor shall have due regard to the Council's policies or other matters which the Council has disclosed to the Contractor.
- 2.9 These conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate.
- 2.10 The Contractor warrants that its ability to perform fully its obligations under this Contract will not be affected by the United Kingdom ceasing to be a Member State of the European Union following Brexit and that the Contractor has put in place measures to ensure the uninterrupted provision of the Goods/Services under this Contract.

3 Amendments to the Contract

- 3.1 This Contract shall not be varied or amended unless such variation or amendment is agreed in writing by duly authorised representatives of the Council and the Contractor.

4 Inspection of Premises and nature of Services

- 4.1 The Contractor is deemed to have inspected the Premises before giving its quotation or tender so as to have understood the nature and extent of the Services to be carried out and satisfied itself in relation to all matters connected with the Services and Premises
- 4.2 The Council shall at the request of the Contractor grant such access as may be reasonable for this purpose

5 Contractor status

In carrying out the Services the Contractor shall be acting as principal and not as the agent of the Council. Accordingly:-

- 5.1 the Contractor shall not (and shall procure that his agents and servants do not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent of the Council; and

STANDARD CONDITIONS OF CONTRACT: PURCHASE ORDERS

- 5.2 nothing in this Contract shall impose any liability on the Council in respect of any liability incurred by the Contractor to any other person but this shall not be taken to exclude or limit any liability of the Council to the Contractor that may arise by virtue of either a breach of this Contract or any negligence on the part of the Council its staff or agents

6 Manner of carrying out the Services

- 6.1 The Contractor shall make no delivery of materials plant or other things nor commence any work on the Premises without obtaining the Council's prior written consent
- 6.2 Access to the Premises shall not be exclusive to the Contractor but only such as shall enable it to carry out the Services concurrently with the execution of work by others. The Contractor shall co-operate with such others as the Council may reasonably require
- 6.3 On completion of the Services the Contractor shall remove its plant equipment and unused materials and shall clear away from the Premises all rubbish arising out of the Services and leave the Premises in a neat and tidy condition

7 Delivery & Time of performance

- 7.1 The Goods shall be delivered to and/ or the Services shall be performed at the Premises named in the Order.
- 7.2 The Contractor shall deliver the Goods or begin performing the Services on the date stated in the Order and shall complete them by the date stated in the Order or continue to perform them for the period stated in the Order (whichever is applicable). Time of performance is of the essence in this Contract. The Council may by written notice require the Contractor to deliver the Goods or execute the Services in such order as the Council may decide. In the absence of such notice the Contractor shall submit any detailed programs of work and progress reports as the Council may from time to time require

8 Property and risk

- 8.1 The property in Goods shall pass to the Council upon delivery but without prejudice to the Council's right to reject them and all other rights the Council may have under the Contract in relation to those Goods. Risk of loss of, damage to or deterioration of the Goods shall be borne by the Contractor until the Goods have been accepted in accordance with the Contract and, if required by the Council, installed and/ or passed their acceptance tests, whichever is the later.

9 Damage in transit

- 9.1 On despatch of any consignment of the Goods the Contractor shall send to the Council at the address for delivery of the Goods an advice note specifying the means of transport a place and date of despatch the number of packages and their weight and volume. The Contractor shall free of charge and as quickly as possible either replace or repair (as the Council shall elect) any Goods as may either be damaged in transit or having been placed in transit fail to be delivered to the Council's Premises.

STANDARD CONDITIONS OF CONTRACT: PURCHASE ORDERS

10 Inspection rejection acceptance and guarantee

- 10.1 The Contractor shall permit the Council or its duly authorised officer to make any inspections or acceptance tests it may reasonably require either after delivery of the Goods to the Premises or at the Contractor's premises prior to delivery. In the latter case, the Contractor shall afford the Council all reasonable facilities and assistance free of charge at its premises. Acceptance of the Goods shall take place when the Council confirms its acceptance in writing following satisfactory completion of any inspections or acceptance tests. No failure to make complaint at the time of such inspection or test 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
- 10.2 The Council may by written notice to the Contractor reject any of the Goods which fail to meet the requirements specified in the Contract. Such notice shall be given within a reasonable time after delivery to the Council of the Goods concerned. If the Council shall reject any of the Goods pursuant to this condition the Council shall be entitled (without prejudice to its other rights and remedies) either:-
- 10.2.1 to have the Goods concerned either repaired by the Contractor or (as the Council shall elect) replaced by the Contractor with Goods which comply in all respects with the requirements specified herein; or
- 10.2.2 to obtain a refund from the Contractor in respect of the Goods concerned
- 10.3 The guarantee period applicable to the Goods shall be 12 months from putting into service or 12 months from acceptance in accordance with condition 10.1 whichever shall be the earlier (subject to any alternative guarantee arrangements agreed between the Council and the Contractor and detailed on the Order). If the Council shall within such guarantee period or within 30 days thereafter give notice in writing to the Contractor of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use the Contractor shall (without prejudice to any other rights and remedies which the Council may have) remedy such defects (whether by repair or replacement as the Council shall elect) without cost to the Council
- 10.4 Any Goods rejected or returned by the Council as described in condition 10.2 or 10.3 shall be returned to the Contractor at the Contractor's risk and expense
- 10.5 The Council shall have the power by notice to reject any Services which it does not consider to have been carried out in accordance with the Contract and the Contractor shall, without prejudice to the Council's other rights, promptly and at its own expense, remedy the deficiency identified in the Services as required by the Council.
- 10.6 If the Contractor fails to remedy the deficiency promptly in accordance with the Council's notice, the Council may remedy or cause to be remedied any deficiency at the Contractor's cost.

11 Labelling and packaging

- 11.1 The Goods shall be packed and marked in a proper manner and in accordance with the Council's instructions and any statutory requirements and any requirements of the carriers. In particular the Goods shall be marked with any Order number detailed on the Order the net gross and tare weights the name of the contents shall be clearly marked on each container and all containers of

STANDARD CONDITIONS OF CONTRACT: PURCHASE ORDERS

hazardous goods (and all documents relating thereto) shall bear prominent and adequate warnings. The Contractor shall indemnify the Council against all actions claims demands losses charges costs and expenses which the Council may suffer or incur as a result of or in connection with any breach of this condition

- 11.2 All packaging materials will be considered non-returnable and will be destroyed unless the Contractor's advice note states that such materials will be charged for unless returned. The Council accepts no liability in respect of the non-arrival at the Contractor's premises of empty packages returned by the Council unless the Contractor shall within 10 days of receiving notice from the Council that the packages have not been despatched notify the Council of such non-arrival

12 Patents and information

- 12.1 It shall be a condition of this Contract that, except to the extent that the Goods or Services incorporate designs furnished by the Council, the Goods or Services will not infringe any patent trademark registered design copyright or other right of the nature of industrial property of any third party and the Contractor shall indemnify the Council against all actions claims demands costs and expenses which the Council may suffer or incur as a result of or in connection with any breach of this condition
- 12.2 All rights (including ownership and copyright) in any specifications instructions plans drawings patents models designs reports or other materials:-
- 12.2.1 furnished to produced by or made available to the Contractor by the Council are hereby assigned to and shall vest in the Council absolutely
- 12.2.2 prepared by or for the Contractor for use, or intended use, in relation to the performance of this Contract are hereby assigned to and shall vest in the Council absolutely and the Contractor shall not and shall procure that his servants and agents shall not (except to the extent necessary for the implementation of this Contract) without prior written consent of the Council use or disclose any such specifications instructions plans drawings patents models designs reports or other materials as aforesaid or any other information (whether or not relevant to this Contract) which the Contractor may obtain pursuant to or by reason of the Contract except information which is in the public domain otherwise than by reason a breach of this provision, and in particular (but without prejudice to the generality of the foregoing) the Contractor shall not refer to the Council or the Contract in any advertisement without the Council's prior written consent
- 12.3 Upon the termination of the Contract the Contractor shall immediately return to the Council all material, work or records held, including any back up media.
- 12.4 The provisions of this condition 12 shall apply during the continuance of this Contract and after its termination howsoever arising.

13 Payment Provisions

- 13.1 Unless otherwise stated in the Order payment will be made within 30 days of the date of receipt and agreement of invoices which the Council has determined are valid and undisputed for work completed to the satisfaction of the Council. Where Goods are to be delivered unless otherwise stated in the Order payment of such

STANDARD CONDITIONS OF CONTRACT: PURCHASE ORDERS

invoices will be made following acceptance of the Goods in accordance with clause 10.1 hereof.

- 13.2 Where the Contractor submits invoices to the Council in accordance with condition 13.1 the Council will consider and verify such invoices in a timely fashion. In the event that the Council fails to comply with this undertaking and there is an undue delay in considering and verifying any invoice, the invoice will be regarded as valid and undisputed for the purposes of condition 13.1 after a reasonable time has passed.
- 13.3 If the Council fails to pay any amount payable by it under this Contract, the Contractor shall be entitled but not obliged to charge the Council interest on the overdue amount from the due date up to the date of actual payment at the rate of two percent above the base rate for the time being of Lloyds TSB Bank plc
- 13.4 Value Added Tax where applicable will be shown separately on all invoices as a net extra charge
- 13.5 No increase in the Price will be accepted by the Council unless agreed by the Council in writing before the execution of the Order and detailed therein
- 13.6 The Council may withhold all or part of any payment due hereunder if the Council is not for any reason satisfied with the Goods or Services to which the payment relates.

14 Access to Premises

- 14.1 Any access to Premises and any labour and equipment that may be provided by the Council in connection with delivery of Goods or provision of Services shall be provided without acceptance by the Council of any liability whatsoever and the Contractor shall indemnify the Council in respect of any actions claims demands charges losses 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 Contractor or any of his sub-contractors
- 14.2 Where any access to the Premises is necessary in connection with delivery or installation or the provision of Services the Contractor and its sub-contractors shall at all times comply with the reasonable security requirements of the Council

15 Health and Safety

- 15.1 The Contractor shall in performing the Contract adopt safe methods of work in order to protect the health and safety of its own employees the employees of the Council and of all other persons including members of the public and shall comply with the requirements of the Health & Safety at Work Act 1974, the Management of Health & Safety Regulations 1992, the Control of Substances Hazardous to Health (COSHH) Regulations 1988 and 1994 and the Road Traffic Act 1988, HSE guidance notes and approved Code of Practice and of any other Acts Regulations Orders pertaining to the health and safety of persons and shall have regard to the Council's health and safety policy

STANDARD CONDITIONS OF CONTRACT: PURCHASE ORDERS

- 15.2 The Contractor shall, prior to the commencement date of this Contract provide the Council on request with a written copy of its health and safety working procedures relating to the performance of the Contract.
- 15.3 The Contractor shall review its health and safety policy and safe working procedures as often as may be necessary and in the light of changing legislation or working practices and shall notify the Council in writing of any such revisions if required by the Council. The Council may require the Contractor to amend its health and safety policy and safe working procedures to comply with any change in legislation or working practices.
- 15.4 The Contractor shall advise the Council of the name address and telephone number of the person within its organisation responsible for health and safety and welfare matters.
- 15.5 The Contractor shall be responsible for ensuring compliance (and that of any sub-contractor) with aforementioned safety policies.

16 Indemnity Insurance

- 16.1 Without prejudice to any rights or remedies of the Council (including the Council's rights and indemnities pursuant to the Contract) the Contractor shall indemnify the Council against all actions claims demands losses charges costs and expenses which the Council may suffer or incur as a result of or in connection with any damage to property or in respect of any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any defect in the Goods or from the performance of the Contractor of the Services or the negligent or wrongful act or omission of the Contractor
- 16.2 The Contractor shall have in force and shall require any sub-contractor to have in force:-
- 16.2.1 employers liability insurance in accordance with any legal requirements for the time being in force; and
 - 16.2.2 public liability insurance for such sum and range of cover as the Contractor deems to be appropriate but covering at least all matters which are the subject of indemnities or compensation obligations under these conditions in the sum of not less than £5 million for any one incident and unlimited in total, unless otherwise agreed by the Council in writing and detailed in the Order.
- 16.3 The policy or policies of insurance referred to in condition 16.2 shall be shown to the Council whenever it requests together with satisfactory evidence of payment of premiums

17 Equal Opportunities

- 17.1 The Contractor shall ensure that its Terms and Conditions of Employment and its policies and procedures relating to employment comply with all current legislation other legal requirements and codes of practice published by all relevant recognised bodies including but not limited to:-
- (a) ACAS
 - (b) The Equalities and Human Rights Commission
 - (c) The Ministry for Housing, Communities and Local Government
 - (d) The Department for Business, Innovation and Skills

STANDARD CONDITIONS OF CONTRACT: PURCHASE ORDERS

and shall upon request furnish the Council with such evidence of compliance with the same as the Council shall specify and require

- 17.2 The Contractor shall not discriminate or permit any employee or agent of the Contractor to discriminate in any way against any person on the basis of race gender disability age religion belief or sexual orientation or in any other way prohibited by law and shall comply at all times at its own expense with any requirements made by the Council to be observed by contractors in its policies to promote equality and diversity.
- 17.3 The Contractor shall comply with the Council's policies made pursuant to the Equality Act 2010 and for the promotion of equality and diversity published from time to time and shall if required to do so produce evidence satisfactory to the Council that the performance of the contract is consistent with and in accordance with those policies
- 17.4 The Contractor shall be able to demonstrate that where appropriate (bearing in mind the nature of the Goods or Services to be provided) that those Goods or Services are accessible and delivered in a way that is appropriate to meet the needs of those people that the Goods or Services are intended to benefit
- 17.5 If required by the Council the Contractor shall prepare and monitor a plan to deliver fair and equal access to the Goods or Services to ensure delivery of the Goods or Services in accordance with condition 17.4 above and shall make this plan available to the Council upon request. The Contractor shall make such reasonable changes to his plan as may reasonably be required by the Council to ensure compliance with condition 17.4 above. Where relevant to the contract and as agreed between the contractor and the Council, the Contractor shall also be expected to monitor the representation within its workforce and provide the Council with a breakdown of job applicants and workforce on the basis of race gender disability age religion or belief
- 17.6 The Contractor shall ensure that its staff are properly trained in respect of the matters detailed in this clause to ensure compliance with the Contractor's duties relating to equality and diversity and fair access in the Contract

18 Termination

- 18.1 The Council may terminate the Contract by giving the Contractor at least 30 days prior written notice and such termination shall not affect the Council's obligation to pay for any Goods to be delivered or Services to be performed up to the date of termination. The Council shall indemnify the Contractor against any direct, verifiable and non-recoverable costs which the Contractor has reasonably and properly incurred in connection with the Contract to the extent to which they would represent an unavoidable loss by the Contractor by reason of the termination of the Contract under this condition 18.1.
- 18.2 The Contractor shall notify the Council in writing immediately upon the occurrence of any of the following events:-
 - 18.2.1 where the Contractor is an individual and if a petition is presented for the Contractor's bankruptcy or a criminal bankruptcy order is made against the Contractor or he makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the

STANDARD CONDITIONS OF CONTRACT: PURCHASE ORDERS

- benefit of creditors, or if an administrator is appointed to manage his affairs; or
- 18.2.2 where the Contractor is not an individual but is a firm or a number of persons acting together in any capacity if any event in (18.2.1) or (18.2.3) of this condition occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Contractor to be wound up as an unregistered company; or
- 18.2.3 where the Contractor is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or the Court makes an administration order or a winding up order, or the company makes a composition or arrangement with its creditors or an administrative receiver, receiver or manager is appointed by a creditor or by the Court, or possession is taken of any of its property under the terms of a charge
- 18.3 On the occurrence of any of the events described in condition 18.2 or if the Contractor shall have committed a material breach of this Contract and (if such breach is capable of remedy) shall have failed to remedy such breach within 30 days of being required by the Council in writing to do so, or where the Contractor is an individual if he shall die or be adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983 the Council shall be entitled to terminate this Contract by notice to the Contractor with immediate effect
- 18.4 In accordance with the provisions of the Public Contracts Regulations 2015 (PCR 2015), the Council may terminate this Contract by notice to the Contractor with immediate effect (and without liability to the Council) in the event that any one of the following grounds occur:-
- 18.4.1 The Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with Regulation 72(9) of PCR 2015;
- 18.4.2 The Contractor has, at the time of Contract award, been in one of the situations described in Regulation 57(1) of PCR 2015, including the additional provisions of Regulation 57(2), and should therefore have been excluded from the procurement procedure on mandatory exclusion grounds;
- 18.4.3 Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union.
- 18.5 Termination under this condition 18 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Council

19 Default

- 19.1 If the Contractor fails to deliver the Goods or Services or any portion thereof within the time specified in the Specifications, the Order or otherwise in accordance with the requirements of the Contract the Council shall be at liberty without prejudice to any other remedy for breach of contract and without prejudice to any further conditions detailed herein to terminate the Order either wholly or to the extent of such default and to purchase other Goods or Services as the case may be of the same or similar description to make good:-
- 19.1.1 such default; or

STANDARD CONDITIONS OF CONTRACT: PURCHASE ORDERS

19.1.2 in the event of the Order being wholly terminated the Goods or Services remaining to be delivered

19.2 If the amount by which the costs of purchasing such other goods or services exceeds the amount which would have been payable to the Contractor for them if they had been delivered in accordance with the Order the additional cost will be recoverable from the Contractor

20 Recovery of sums due

20.1 Wherever under this Contract any sum of money is recoverable from or payable by the Contractor that sum may be deducted from any sum then due or which at any later time may become due to the Contractor under this Contract or under any other agreement or contract with the Council

21 Notices

21.1 Any notice to be given under the Contract shall be in writing and may be served by personal delivery, first class recorded or e-mail to the address of the relevant party set out in the Contract, or such other address as that party may from time to time notify to the other party in accordance with this clause

21.2 Notices served as above shall be deemed served on the working day of delivery provided delivery is before 5.00pm on a working day. Otherwise delivery shall be deemed to occur on the next working day. An email shall be deemed delivered when sent unless an error message is received and remains subject to 21.3.

21.3 Notices under this condition 21 may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery.

22 Assignment and sub-contracting

22.1 The Contractor is prohibited from transferring or assigning directly or indirectly to any person or persons whatsoever any portion of the Contract without written permission given on behalf of the Council by its duly authorised representative. Sub-contracting is prohibited without the consent of the Council

22.2 The Contractor shall be responsible for the observance of this requirement by sub-contractors employed in the execution of the Contract

22.3 Where the Contractor enters into a Sub-Contract, the Contractor shall include in that Sub-Contract:

22.3.1 provisions having the same effect as conditions 13.1 and 13.2 of this Contract; and

22.3.2 a provision requiring the counterparty to that Sub-Contract having the same effect as conditions 13.1 and 13.2 of this Contract when awarding its own contracts in connection with this Contract

22.4 In the event that the Council permits the Contractor to Sub-Contract all or part of the provision of the Goods the Contractor shall remain and continue to remain liable for the Goods or Services provided by the sub-contractor

23 Data Protection

23.1 The Contractor shall (and shall procure that any of its Contractor's Personnel involved in the provision of the Order shall) comply with any notification

STANDARD CONDITIONS OF CONTRACT: PURCHASE ORDERS

requirements under the UK General Data Protection Regulation and Data Protection Act 2018 and shall duly observe all obligations under the data protection laws, which arise in connection with the Contract.

- 23.2 Notwithstanding the general obligation in condition 23.1, where the Contractor is processing Personal Information as a Data Processor for the Council, the Contractor shall ensure that it has in place appropriate technical and contractual measures to ensure the security of Personal Information (and to guard against unauthorised or unlawful processing of the Personal Information and against accidental loss or destruction of, or damage to, the Personal Information) in compliance with GDPR and Data Protection Act 2018, and
- 23.2.1 provide the Council with such information as the Council may reasonably require to satisfy itself that the Contractor is complying with its obligations under data protection laws;
 - 23.2.2 promptly notify the Council of any breach of the security measures required to be put in place pursuant to condition 23.2; and
 - 23.2.3 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 data protection laws.
 - 23.2.4 abide by the terms of the Appendix to this Contract including the Schedule.
- 23.3 The provisions of this condition shall apply during the continuance of the Contract and indefinitely after its expiry or termination.

24 Standards

- 24.1 In the event that the Services or the provision of the Goods require compliance with an appropriate British Standard then the Council will accept any equivalent European Standard. In the event that no such standards exist then the Goods shall be required to comply with best industry standards.

25 Bribery and corruption

- 25.1 The Contractor:
- (a) shall not, and shall procure that any person employed by it or who acts as an agent of the Contractor shall not in connection with this Contract commit a Prohibited Act;
 - (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Contract.
- 25.2 The Contractor shall:
- (a) if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
 - (b) The Contractor shall provide such supporting evidence of compliance as the Council may reasonably request.

STANDARD CONDITIONS OF CONTRACT: PURCHASE ORDERS

- 25.3 The Contractor shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any Contractor Party or Contractor Personnel from committing a Prohibited Act and shall enforce it where appropriate.
- 25.4 If any breach of Condition 25.1 is suspected or known, the Contractor must notify the Council immediately.
- 25.5 If the Contractor notifies the Council that it suspects or knows that there may be a breach of Condition 25.1, the Contractor must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation. This obligation shall continue for six years following the expiry or termination of this Contract.
- 25.6 The Council may terminate this Contract by written notice with immediate effect if the Contractor or any person acting on its behalf (in all cases whether or not acting with the Contractor's knowledge) breaches Condition 25.1
- 25.7 Any notice of termination under Condition 25.6 must specify:
- (a) the nature of the Prohibited Act;
 - (b) the identity of the party whom the Council believes has committed the Prohibited Act; and
 - (c) the date on which this Contract will terminate.
- 25.8 Any dispute relating to:
- (a) the interpretation of condition 25.1; or
 - (b) the amount or value of any gift, consideration or commission, shall be determined by the Council and its decision shall be final and conclusive.
- 25.9 Any termination under condition 25.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

26 Human Rights

- 26.1 The Contractor confirms that it will perform its obligations pursuant to the Contract in all respects in conformance with the Human Rights Act 1998
- 26.2 The Contractor hereby indemnifies the Council from and against all losses costs expenses liabilities damages and claims arising from the failure of the Contractor its servants or agents to duly perform his obligations pursuant to sub condition 26.1 above and arising further from any act or omission of the Contractor its servants or agents in respect of the non-performance of the said obligations
- 26.3 The Contractor ensures the compliance of any of its sub-contractors in the performance of the Contract with the provisions of this condition and shall indemnify the Council accordingly in respect of any breach of the same by the sub-contractor
- 26.4 The Contractor ensures the compliance of itself and of its sub-contractor(s) with their obligations under the Modern Slavery Act 2015 in their business and/or in their supply chains.

27 No rights of third parties

STANDARD CONDITIONS OF CONTRACT: PURCHASE ORDERS

- 27.1 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.

28 Waiver

- 28.1 The failure of either party to insist upon the strict performance of any provision of the Contract or the failure of either party to exercise any right or remedy to which it is entitled hereunder shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by the Contract
- 28.2 A waiver of any breach of contract shall not constitute a waiver of any such subsequent breaches
- 28.3 No waiver of any of the provisions of the Contract shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing

29 Freedom of Information

- 29.1 The Council is under a statutory duty which may require the release of information under the Freedom of Information Act 2000. 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 Contractor details of the information that the Council intends to disclose.

30 Contractor's Property

- 30.1 All property of the Contractor shall be at the sole risk of the Contractor while on the Premises and the Council shall not be liable for any loss or damage to such property unless this results from the wilful act of default of the Council.

31 Confidentiality

- 31.1 For the purposes of this condition "Confidential Information" means all information (whether commercial, financial, technical, personal or otherwise) relating to the disclosing party its employees, sub-contractors, servants or agents disclosed to or otherwise obtained by the recipient party under or in connection with the Contract and which is designated as being confidential or which is by its nature clearly confidential
- 31.2 Each party undertakes in respect of Confidential Information for which it is the recipient:-
- 31.2.1 to treat such information as confidential;
 - 31.2.2 not without the disclosing parties proper written consent to communicate or disclose any part of such information to any person except:-
 - 31.2.2.1. only to those employees agents sub-contractors and other suppliers on a need to know basis who are directly involved in the Contract
 - 31.2.2.2. the recipient's auditors, professional advisers and any other persons or bodies having a legal right or duty to have access to or knowledge of the Confidential Information in connection with the business of the recipient

STANDARD CONDITIONS OF CONTRACT: PURCHASE ORDERS

- 31.2.2.3. to ensure that all persons and bodies mentioned in sub condition 31.2.2.2 are made aware, prior to disclosure, of the confidential nature of the Confidential Information and that they owe a duty of confidence to the disclosing party and to use all reasonable endeavours to ensure that such persons and bodies comply with the provisions of this sub condition
 - 31.2.3 not to use or circulate such information within its own organisation except to the extent necessary for the purposes of the Contract
- 31.3 The obligations in this condition will not apply to the Confidential Information:-
 - 31.3.1 in the recipient's possession (with full right to disclose) before receiving it; or
 - 31.3.2 which is or becomes public knowledge other than by breach of this condition; or
 - 31.3.3 independently developed by the recipient without access to or use of the Confidential Information; or
 - 31.3.4 lawfully received from a third party (with full right to disclosure)
- 31.4 The Contractor shall indemnify the Council from and against all claims losses expenses damages and costs arising from the breach of this condition by the Contractor its employees, servants agents and sub-contractors
- 31.5 The Contractor acknowledges that, except for any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act ("the Act") the text of this Contract, and any Orders or Schedules to this Contract, is not Confidential Information. The Council shall be responsible for determining in its absolute discretion whether any part of the Contract or Orders or its Schedules is exempt from disclosure in accordance with the provisions of the Act.
- 31.6 Notwithstanding any other term of this Contract the Contractor hereby gives its consent for the Council to publish this Contract, the Orders and Schedules in their entirety, including from time to time agreed changes to the Contract, to the general public in whatever form the Council decides.
- 31.7 Notwithstanding early termination of the Contract for any reason this condition shall continue in force for a period of three years following the date of such early termination or the expiry date of the Contract.
- 31.8 No public or press announcements shall be made with regard to the subject matter of this Contract unless the text of such announcement is first approved and initialled by the Council. The Contractor shall not make or authorise the making of any press release or other public statement or disclosure concerning this contract or any transaction contemplated by it without the prior written consent of the Council.
- 31.9 The Contractor shall arrange that all members of its staff requiring to access the Council's ICT systems or otherwise requiring access to sensitive data by virtue of their duties under the Contract, sign the ICT Security & Operational Standards Required of Third Party Organisations (copies of the current version are available on request). A duly authorised officer of the Council, whose decision shall be final and conclusive, will determine which staff members are required to sign this document. Completed forms shall be returned to the Council's authorised officer

STANDARD CONDITIONS OF CONTRACT: PURCHASE ORDERS

prior to commencement of any work. No such access shall be granted to any individual who fails to sign this document.

32 Dispute Resolution

- 32.1 The parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each party.
- 32.2 If the dispute cannot be resolved by the parties within one month of being escalated as referred to in clause 32.1, the dispute may by agreement between the parties be referred to a neutral adviser or mediator (the "Mediator") chosen by agreement between the parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the parties in any further proceedings.
- 32.3 If the parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either party may exercise any remedy it has under applicable law.

33 Governing Law

- 33.1 These conditions shall be governed by and construed in accordance with the Law of England and Wales and the Contractor hereby irrevocably submits to the jurisdiction of the English Courts

STANDARD CONDITIONS OF CONTRACT: PURCHASE ORDERS

APPENDIX A - Data Protection Act 2018 and the UK General Data Protection Regulation

The definitions, clause and Schedule in this Appendix shall be incorporated into the Contract and if there is any conflict the Appendix shall prevail.

1 Definitions:

Data Protection Legislation:

- (i) the GDPR, and any applicable national implementing Laws as amended from time to time
- (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy;
- (iii) all applicable Law about the processing of personal data and privacy;

Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.

Data Processing: shall have the same meaning as set out in the DPA 2018.

Data Subject Access Request: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

Data Subjects: shall have the same meaning as set out in the DPA 2018.

DPA 2018: Data Protection Act 2018

GDPR: the General Data Protection Regulation (Regulation (EU) 2016/679)

Personal Data: shall have the same meaning as set out in the DPA 2018.

Protective Measures : appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

Sub-processor: any third Party appointed to process Personal Data on behalf of the Contractor related to this Contract.

2 Clause:

- 2.1 The parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Contractor is the Processor. Where required by the Order, the Contractor may also be the Controller. The only processing that the Contractor is authorised to do is listed in the attached Schedule and any

STANDARD CONDITIONS OF CONTRACT: PURCHASE ORDERS

instructions about Personal Data received from the Council and may not be determined by the Contractor.

- 2.2 The Contractor shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.
- 2.3 The Contractor shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 2.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
- (a) process that Personal Data only in accordance with the attached Schedule, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Council before processing the Personal Data unless prohibited by Law;
 - (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Council as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - (c) ensure that :
 - (i) the Contractor's personnel do not process Personal Data except in accordance with this Contract (and in particular the attached Schedule);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor's personnel who have access to the Personal Data and ensure that they:
 - 1. are aware of and comply with the Contractor's duties under this clause;
 - 2. are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
 - 3. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Council or as otherwise permitted by this Contract; and
 - 4. have undergone adequate training in the use, care, protection and handling of Personal Data; and
 - (d) not transfer Personal Data outside of the EU unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:

STANDARD CONDITIONS OF CONTRACT: PURCHASE ORDERS

- (i) the Council or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46) as determined by the Council;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Council in meeting its obligations); and
 - (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
 - (e) at the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of the Contract unless the Contractor is required by Law to retain the Personal Data.
- 2.5 Subject to clause 1.6, the Contractor shall notify the Council immediately if it:
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
 - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - (f) becomes aware of a Data Loss Event.
- 2.6 The Contractor's obligation to notify under clause 2.5 shall include the provision of further information to the Council in phases, as details become available.
- 2.7 Taking into account the nature of the processing, the Contractor shall provide the Council with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 2.5 (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:
- (a) the Council with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Council following any Data Loss Event;
 - (e) assistance as requested by the Council with respect to any request from the Information Commissioner's Office, or any consultation by the Council with the Information Commissioner's Office.
- 2.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
- (a) the Council determines that the processing is not occasional;

STANDARD CONDITIONS OF CONTRACT: PURCHASE ORDERS

- (b) the Council determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - (c) the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 2.9 The Contractor shall allow for audits of its Data Processing activity by the Council or the Council's designated auditor.
- 2.10 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- 2.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Contractor must:
 - (a) notify the Council in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Council;
 - (c) enter into a written Contract with the Sub-processor which gives effect to the terms set out in this clause 2 such that they apply to the Sub-processor; and
 - (d) provide the Council with such information regarding the Sub-processor as the Council may reasonably require.
- 2.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 2.13 The Council may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 2.14 The parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may on not less than 30 Working Days' notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 2.15 The liability limitation stated in this contract does not apply to the data protection liability set by the Information Commissioner or under the relevant data protection legislation.

STANDARD CONDITIONS OF CONTRACT: PURCHASE ORDERS

SCHEDULE - Processing, Personal Data and Data Subjects

1. The Contractor shall comply with any further written instructions of the Council with respect to Data Processing. The Council's Data Protection Officer is contactable by email <mailto:iso@bracknell-forest.gov.uk> or Time Square, Market Street, Bracknell RG12 1JD or 01344 352000.
2. Any such further instructions shall be incorporated into this Schedule.

| Description | Details |
|--|---|
| Subject matter of the processing | Personal information in respect of information provided and received and/or processed in respect of the Goods and/or Services |
| Duration of the processing | For the period of the Order. |
| Nature and purposes of the processing | <p>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation, or alternation, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</p> <p>The purpose of the processing means the statutory obligation in the provision of the service (Article 9(2)(h) of the GDPR (with a similar article in the Data Protection Act 2018)).</p> |
| Type of Personal Data | Personal data as required for the purposes of providing the Goods and/or Services |
| Categories of Data Subject | Employees of Bracknell Forest Borough Council including, but not limited to, external consultants and agency staff. Members of the Public including, but not limited to, residents of Bracknell Forest or those working or volunteering in Bracknell Forest. |
| Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data | <p>At the end of the contract, depending on the instructions from the Council, the Contractor must erase and/or return to the Council or to any person it may specify, all data, information, files, records, documents etc. (in whatever format they may be held) which the Council supplied to the Contractor for the purposes of this Contract, or which the Council produced or augmented by the Contractor in connection with the carrying out of its obligations under this Contract.</p> <p>Unless the Council authorises the Contractor to do so, or it is required by law to do so, it must not retain any copies of Personal Data of the individuals.</p> |