

PURCHASE ORDER CONDITIONS

Babergh District Council, Corks Lane, Hadleigh, Suffolk IP7 6SJ ("the Council")
[insert name and address of contractor] ("the Contractor")

1. Formation of Contract

1.1 No addition, alteration or substitution of these Conditions will bind the Council or form part of any contract unless an officer authorised to sign on the Council's behalf expressly accepts them in writing.

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

1.3 The law of England and Wales shall govern the construction validity and performance of these Conditions and this Order.

2. Obligations of the Parties

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

3. Goods and Services (including all materials and works)

All goods or services provided must comply with the highest British Standard Institute standard unless either (a) the Council agrees a lower standard; or (b) the Contractor informs the Council that there is no such relevant standard. In both cases, the Council must agree in writing in advance.

4. Goods (including all materials)

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

4.2 The Contractor must obtain a receipt for all delivered goods and provide a copy to the Council on request. The Council is not obliged to pay for any goods until it has received proof of delivery.

4.3 Where a Delivery Date and/or Delivery Time has been specified the Contractor must adhere to this. If a Delivery Date and/or Delivery Time has not been specified, the Delivery Date will be on the 14th day following the date of the order at 3.00pm /15:00. If the 14th day falls on a day when our offices are closed, the Delivery Date will be the next day that our offices are open. Our offices are open from Monday to Friday 9.00am to 5.00pm/17:00.

4.4 All property relating to the goods and materials in respect of this Order will pass to the Council upon delivery. However, if payment or part payment is made in relation to this order before delivery, then all property will pass to the Council at the time of the payment.

4.5 The Contractor must specify clearly on the delivery notice and invoice if, for example if it needs a pallet or packaging to be returned to it. The Council will reuse or dispose of it as it sees fit otherwise.

4.6 The Contractor must remove any delivered goods that do not match the description specified in the Order from the Council's premises within 48 hours of delivery at the Contractor's expense. If the Contractor fails to do this the Council will arrange to return the goods to the Contractor at its expense. If the goods are identified at the time of attempted delivery as not matching the Order Description, the goods will be removed immediately from the premises at the Contractor's expense

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

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

5. Services (including works)

5.1 The Contractor shall provide:-

5.1.1 the services with all proper skill and care and to the satisfaction of the Council; and

5.1.2 materials as necessary or required in the provision of the services which are reasonably fit for the purpose for which they will be used and of good quality.

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

5.3 The Contractor must provide its services during the Council's normal working hours unless the Council has agreed otherwise in writing.

5.4 The Contractor must make good at its expense any defect(s) which exist or appear within 12 months from the date that it completed the services.

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

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

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

5.8 Unless otherwise agreed, prices quoted by the Contractor are deemed to include all the Contractor's travelling and subsistence expenses.

6. Price and Payment

6.1 The Contractor shall send an invoice, which shall be electronic in the case of an order placed by electronic means to procurement@babergh.gov.uk, or for orders placed otherwise, to the postal address given at the head of this Order.

6.2 The Contractor's invoice shall quote the Order Number and shall be sent within 7 days of final performance of the services/provision of the goods.

6.3 Payment will only be made to the Contractor named on the Order.

6.4 Payment will normally be made by cheque to the Contractor before the expiration 30 days of a correct invoice being received by the Council. If there are any queries regarding details on the invoice or compliance with the terms of this Order, payment shall not be paid until such queries have been resolved.

6.5 Any variation in price, quality or quantity to that stated in this Order must be approved by the Council before goods are despatched or services are provided otherwise payment will not be made.

6.6 Prices quoted by the Contractor are deemed to include all packing and delivery charges unless the Contractor has specified otherwise in writing before accepting the Order.

6.7 Payment or part payment for goods specified in this Order does not mean that the Council has accepted that the supplied goods are of the description, quality and quantity ordered. Such payment will not prejudice the Council's right to reject the goods at a later date.

7. Cancellation on Account of Corruption

The Council shall be entitled to cancel this Order and to recover from the Contractor the amount of any loss resulting from such cancellation of the Order if the Contractor shall have offered or given or agreed to give any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or the execution of this Order or any other contract with the Council or for showing or forbearing to show favour or disfavour to any person in relation to this Order or any other contract or if the like acts shall have been done by any person

employed by it or acting on its behalf (whether with or without the knowledge of the Contractor) or if in relation to any contract with the Council the Contractor or any person employed by it acting on its behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or any amendment of them or shall have given any fee or reward the receipt of which is an offence under section 117(2) of the Local Government Act 1972.

8. Default by Contractor

8.1 If any part of the services or goods to be provided under this Order shall

8.1.1 not be duly provided by the Contractor at the time stated on the first page of this Order, subject to any extension of time granted by the Council or resulting from the operation of condition 11 hereof; or

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

9. Termination

9.1 This Order shall be terminable by either party without notice in the event of a any gross irremediable or repudiatory breach of contract by the other party.

9.2 Without prejudice to Conditions 7, 8, 10,11 and 26 in the event of early termination of this agreement

9.2.1 by the Contractor, the Contractor shall pay all costs incurred and falling due for payment after the date of termination which arises from commitments reasonably and necessarily incurred by the Council prior to the date of termination

9.2.2 by the Council, the Council's liability to the Contractor shall be limited to a sum being 50% (fifty per cent) of the Order Total specified on page 1 of this Order.

10. Insolvency of Contractor

10.1 If the Contractor makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into

liquidation (otherwise than for the purposes of amalgamation or reconstruction of a solvent company) or

10.2 An encumbrancer takes possession, or a receiver is appointed of any of the property or assets of the Contractor; or the Contractor ceases, or threatens to cease to carry on business; or the Council reasonably apprehends that any of the events mentioned above is about to occur in relation to the Contractor and notifies the Contractor accordingly,

then without prejudice to any other right or remedy available to the Council the Council shall be entitled to cancel the Order forthwith by notice in writing to the Contractor or to the receiver or liquidator or to any person to whom this agreement may become vested, without any liability to the Contractor.

11. Force Majeure

Neither party hereto shall be held in breach of its obligations hereunder (except in relation to any obligation to make payments) nor liable to the other if due to any cause beyond its control including any strike, lock-out of employees, trade dispute, civil commotion, cessation or material interruption of traffic, act of God or exceptionally adverse weather, either party to this agreement is liable to continue to supply or accept the services which at the commencement of such disability the party was bound to deliver or accept as the case may be, it shall notify the other as soon as reasonably practical and within one month after the termination of commence of the said disability, the Council shall determine and serve notice on the Contractor whether it requires the goods and/or services to be cancelled or delivered. In the event that the Council does require the Services to be delivered, the obligations formed under this Order shall be performed in the same manner as if the time fixed for delivery of the goods and/or services had been postponed by a period equal to the duration of the said period of disability.

12. Insurance

The Contractor shall prior to the commencement of the delivery of the goods and/or services and during the continuance of this Order maintain a policy or policies of insurance with a reputable insurance company or underwriters covering the liability of the Contractor under this Order and shall supply copies of the policy or policies, all associated documents and the receipt of the current premium to the Council on request.

13. No Assignment or Sub-contracting

The Contractor shall not assign or sub-contract any of its rights or duties under the agreement without the consent in writing of the Council.

14. Set-Off

Where the Contractor has incurred any liability to the Council, whether under this Order or otherwise and whether any such liability is liquidated or un-liquidated the Council may set off the amount of such liability against any sum that would otherwise be due to the Contractor under this Order.

15. Status of Contractor

The Contractor will be responsible for the payment of any income tax, insurance contribution other taxes, revenues or duties arising as a result of the performance of the services or otherwise under this Agreement. For the avoidance of doubt neither the Contractor nor any person engaged by it in the performance of the services will be an employee of the Council in performing the services.

17. Compliance with Law

17.1 The Contractor declares that any goods or materials supplied and used by the Contractor in the execution of the services comply in all respects with all relevant requirements of any statute, statutory rule or order or other instrument having the force of laws or British European or international specification which may be in force at the time of performance of this Order.

17.2 The Council conducts itself in accordance with the principles and duties of Best Value contained in the Local Government Act 1999 and encourages the Contractor to embrace similar principles.

18. Agency, Partnership

This agreement shall not constitute or imply a partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this agreement.

19. Third Party Rights

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

20. Intellectual Property

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

21.2 Intellectual property rights in any works, methods or revision thereof created by virtue of this agreement shall vest in the Council unless otherwise agreed in writing and the Contractor shall ensure that they and all related rights are assigned to the Council as its sole and

exclusive property without further payment, and shall do or procure the doing of all such acts and things, and the signature of all documents, at the cost of the Council, as the Council may require in order fully and effectively to vest such rights in the Council.

21. Notice

22.1 Any notice or notification required under the terms of this agreement shall be given in writing to the address of the other party specified in this agreement or to another address as either party may substitute by written notice to the other by fax, electronic means or post and shall be deemed to be received as specified

22.1.1 by fax on receipt of a relay or answerback confirmation

22.1.2 by electronic means on receipt of a reply or advice of reading

22.1.3 by post on the first business day after posting in the case of first class mail and on the third business day after posting in the case of second class mail

22. Compliance with Agreement

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

23. Equal Opportunities

The Contractor shall at all times during continuance of its obligations pursuant to this agreement observe and promote anti-discriminatory policy and practice.

24. Indemnity

25.1 The Contractor shall fully indemnify, defend and hold the Council harmless from claims, loss, damages, expense (including reasonable lawyer's fees and court costs), or liability (including infringement of a third party's intellectual property rights) for property damage, death or personal injury which may arise out of or in consequence of the performance of this agreement.

25.2 the Contractor's liability to indemnify the Council as aforesaid shall be reduced proportionately to the extent that the act or neglect of the Council, its servants or agents may have contributed to the said loss and:

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

25. Waiver

Either party may release or compromise the liability of the other under this agreement or grant to the other time or other indulgence without affecting the other party's liability.

26. Professional Indemnity

27.1 The Contractor shall indemnify and keep indemnified the Council against any claims arising from incorrect or inappropriate professional advice given by the Contractor during the period of this agreement and for a period of not less than 6 (six) years from its date of termination and;

27.2 the liability of the Contractor in respect of any one act or default shall not be less than £2 million pounds.

27. Proper Laws and Jurisdiction

28.1 This agreement shall be governed by English law in every particular including formation and interpretation and shall be deemed to have been made in England.

28.2 The invalidity, illegality of any term or condition of this agreement shall not affect the validity, legality or enforceability of an other term or condition of this agreement.