

NORTH WARWICKSHIRE BOROUGH COUNCIL

STANDARD CONTRACT TERMS AND CONDITIONS

1 DEFINITIONS AND INTERPRETATION

1.1 In these Standard Contract Terms and Conditions: -

"Authorised Officer" means the Council's officer set out in the Contract or where not so specified the contact name on the Order.

"Completion Date" means the completion date set out in the Contract or where not so specified the Delivery Date.

"Contract" means the agreement between the Council and the supplier consisting of these Terms and any tender, order or any document referred to therein.

"Contract Period" means from the Start Date until the Completion Date

"Contract Price" means the price set out in the Contract or where not so specified the price on the Order.

"Council" means North Warwickshire Borough Council.

"Delivery Date" means the delivery date set out in the Contract or where not so specified the date required on the Order.

"Goods" means the items (if any) which are subject to the Contract.

"Guarantee Period" means the guarantee period as set out in the Contract or where not so specified for a period of 12 months from the Delivery Date or Completion Date whichever is later.

"Order" means an order placed by the Council using an official order or under its standard Purchase Order terms and conditions.

"Payment Date" means the payment details or schedule set out in the Contract or where not so specified the Completion Date.

"Services" mean the jobs or tasks (if any) which are the subject of the Contract.

"Site" means the site or sites set out in the Contract or where not so specified the delivery address on the Order.

"Start Date" means the start date set out in the Contract or where not so specified the date the Supplier received the Order.

"Supplier" means the person, Firm or company with whom the Council makes the Contract.

"Supply" means the Goods, Services and or Works as described in the Contract.

1.2 The headings to the Terms shall not affect their interpretation. The singular includes the plural; one gender includes all others.

1.3 Any reference to statutory provisions shall include a reference to the statute or statutory provisions as from time to time amended, extended, modified or re-enacted.

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2 OFFER AND ACCEPTANCE

- 2.1 Subject to clause 2.2 below, the Contract shall comprise these Terms, the Order (if any) and any specific terms, conditions and specifications set out in the Order or which are expressly agreed in writing in any other duly signed contractual documentation. Such specific terms, conditions and specifications may expressly exclude, vary or supplement any of these Terms. In the event of any conflict between such specific terms, conditions and specifications and these Terms the former shall prevail.
- 2.2 These terms shall prevail over the Suppliers terms and the Council shall not be bound by any standard terms provided by the supplier unless the Supplier specifically states in writing separately from such terms that it intends such terms to apply and the Council expressly acknowledges in writing that such terms will apply.

3 QUALITY AND DESCRIPTION

- 3.1 The Supply shall be to the reasonable satisfaction of the Authorised Officer and shall without limitation conform with and fulfil in all respects: -
- the Contract;
 - the requirements of any relevant UK or EU statute, order, regulation, directives, standard, code of practice or bye-law from time to time in force which is relevant to the Supply;
 - any recommendation or representation made by the Supplier;
 - be free of defects and of sound materials and workmanship;
 - be fit for purpose for which they are supplied under the Contract and
 - be of high professional standards and carried out with all reasonable care and skill which might reasonably be expected within the relevant industry or sector.
- 3.2 Unless specifically agreed otherwise, all materials used and Goods are to be new.

4 DELIVERY AND TIME FOR PERFORMANCE

- 4.1 The Supplier shall provide the Goods, Services and/Works (The Supply) on the terms and conditions set out in the Contract.
- 4.2 The Authorised Officer must be notified and his prior written consent obtained to any extension of time.
- 4.3 Access to Council premises, facilities or storage by the Supplier shall comply with the reasonable requirements of the Council and shall be at the Supplier's risk.
- 4.4 If either party is unable to make or accept the Supply, because of the following;
- strike, lockout by employees, war or civil commotion

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- cessation or serious interruption of land, sea or air communications or power supplies or
- exceptionally adverse weather or fire
- Force majeure

4.4.1 It shall immediately notify the other party and then the disabled party may decline to make or accept the Supply. The Council shall notify the Supplier within 30 days of the end of that period whether it requires the Supply to be recommenced, varied or cancelled (without further liability to either party). Where the Supply is recommenced the Contract shall be varied to extend the time for completion or delivery of the Supply by the period of disability.

4.5 At the completion of the Supply the Supplier shall remove all materials from the Site (unless otherwise instructed) and permanently reinstate any damaged areas or surfaces and leave the Site in a clean condition ready for occupation.

5 PROPERTY RISK AND ACCEPTANCE

5.1 The Supplier shall free of charge and as quickly as possible either repair or replace (as the Council shall elect) Goods which fail to arrive or arrive damaged.

5.2 Without prejudice to any of the rights or remedies of the Council (including those under Clause 8 inspection), property in any Goods shall pass to the Council on actual delivery or where the Goods are to be subject to testing when the Authorised Officer notifies acceptance in writing.

5.3 The Council shall not be deemed to have accepted any part of the Goods until after the Council has actually inspected the Goods and ascertained they are in accordance with the Contract. The Council may reject Goods which are not in accordance with the Contract within a reasonable time after such inspection.

6 INSPECTION AND REJECTION

6.1 The Supplier shall assist the Council or his authorised representatives (free of charge) to make any inspections or tests the Council may reasonably require of the Supply at any time prior to acceptance

6.2 The Council may suspend the Supply in whole or in part without paying compensation if the Authorised Officer is reasonably of the opinion that the Supplier is in breach of Clause 10.

6.3 The Council may reject the Supply in whole or in part before acceptance if it is not completely in accordance with the Contract or becomes so during any Guarantee Period (including without limitation any slight or minor variation) and in such circumstances may, without prejudice to other rights or remedies:

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- have the Supply repaired, re-done or replaced by the Supplier with a Supply which complies in all respects with the requirements of the Contract
- require a refund from the Supplier

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- make a reasonable deduction from the Contract Price determined by the Authorised Officer.

7 PAYMENT AND INVOICING

- 7.1 The Payment Date defines when the Contract Price is payable. The Council shall make payment, subject to the Supplier fulfilling its obligations and provided the Supply complies with the Contract, within 30 days after receipt of a correct Supplier invoice submitted on or after a Payment Date.
- 7.2 Payments will not be made until the Authorised Officer has accepted the Supply as being in accordance with the Contract.
- 7.3 The Contract Price shall be net of Value Added Tax.
- 7.4 The Council shall be entitled to set off against any invoice any amount due from the Supplier under the Contract or under any other arrangement.

8 INTELLECTUAL PROPERTY RIGHTS

- 8.1 The Supply shall not infringe the intellectual property rights of any third party.
- 8.2 All rights (including without limitation ownership and copyright) in any specifications, information, instructions, plans, drawings, patterns, models, designs or other material furnished to or made available to the Supplier by the Council or obtained by the Supplier in connection with the Contract shall remain vested solely in the Council and shall be kept confidential.
- 8.3 The intellectual property rights (including without limitation copyright) in anything arising out of the Supply shall vest in the Council
- 8.4 At the termination of the Contract the Supplier shall, at the request of the Council, return all materials, works or records help in relation to the Supply.
- 8.5 This clause shall apply both during the Contract and after its termination.

9 INFORMATION SHARING, TRANSPARENCY & CONFIDENTIALITY

- 9.1 Where the Supplier has access to personal information, in any aspect of making the Supply, it shall ensure that the provisions of the Data Protection Act 1998 are observed.
- 9.2 The parties (Supplier and Council) acknowledge that except for the information which is exempt from disclosure, in accordance with the provisions of the Freedom of Information Act 2000 (FOIA), the content of this Contract is not Confidential Information. The Council shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure under FOIA or EIR.
- 9.3 Notwithstanding any other term of this Contract, the Supplier hereby gives consent for the Council to publish the Contract in its entirety, including from time to time agreed changes to the Contract, to the general public.
- 9.4 The Supplier shall keep confidential all information belonging to or provided by the Council, in connection with Contract or Supply, except where it has the permission of the Council or to the extent permitted by law.

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- 9.5 If either the Council's internal or external auditors or the Commissioner for Local Administration (the Ombudsman) shall wish to investigate the Contract, then the Supplier shall provide such information, access and co-operation as those persons may reasonably require.

10 HEALTH AND SAFETY

- 10.1 The Supplier shall comply with the requirements of the Health and Safety at Work Act 1974 and any other acts, orders, regulations, codes of practice and professional standards relating to health and safety, during the Supply, and have full regard to safety of persons who may be affected in the performance of its obligations under the Contract.
- 10.2 The Supplier shall conduct all necessary tests and examinations prior to delivery of the Supply to ensure that the Supply is designed, constructed and delivered so as to be safe and without risk to the health or safety of persons using them.
- 10.3 The Supplier and the Council will share information on existing or new health and safety hazards which may affect the performance of the Contract.

11 RACIAL DISCRIMINATION AND HUMAN RIGHTS

- 11.1 The Supplier shall not unlawfully discriminate either directly or indirectly by way of victimisation or harassment against any person contrary to legislation relating to any discrimination within the meaning and scope of the provisions of the Equality Act 2010, the Human Rights Act 1998 and other relevant or equivalent legislation, or any statutory modifications or re-enactments thereof relating to discrimination in the provision of services to the public or in employment.
- 11.2 The Supplier shall, to the extent relevant to the delivery of the Supply, comply with the Council's equal opportunities policies and all current legislation relating to non-discrimination and equality in employment.
- 11.3 The Supplier shall take all reasonable steps to secure the observance of these provisions by all servants, employees or agents of the Supplier and all sub-contractors, employees or agents of the Supplier and all sub-contractors employed in the execution of the Contract.

12 INDEMNITY AND INSURANCE

- 12.1 Without prejudice to any rights or remedies of the Council the Supplier shall indemnify and keep indemnified the Council against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of or in consequence of the Supply, or the late or purported supply, of the good, works or service, to the performance or non-performance by the Supplier, its sub-contractors, employees or agents in the course of or in connection with the Contract. Without prejudice to the generality of the foregoing this indemnity shall extend to (and not be limited) in respect of death or injury to persons, damage to property, financial loss arising from any advice given or omitted to be given by the Supplier, or any other loss which is directly or indirectly caused by any negligent act or omission of the Supplier.

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- 12.2 The Supplier shall effect and maintain, with a reputable company, a policy or policies of insurance providing an adequate level of cover in respect of all risks contemplated by the Contract and against all loss of or damage to property or injury to persons arising out of in the consequence of the Suppliers obligations under the Contract and against actions, claims, demands, costs and expenses in respect thereof.
- 12.3 Public liability cover of at least £5 million shall be obtained and maintained, unless agreed otherwise with the Authorised Officer.
- 12.4 If so required and where the Supply is a supply of consultancy services the Supplier shall hold and maintain professional indemnity insurance during the Contract Period and for 6 years afterwards to cover its liability to the Council under the Contract.

13 PREVENTION OF FRAUD and CORRUPTION

- 13.1 The Supplier shall comply and ensure the compliance by its Staff with the provisions of the Bribery Act 2010 and take all reasonable steps to prevent Fraud by its Staff.
- 13.2 The Council may terminate the Contract and recover all its loss if the Supplier, its employees or anyone acting on the Supplier's behalf, whether with or without the knowledge of the Supplier, do any of the following things:
- offer, give or agree to give anyone any inducement or reward in respect of this or any other Council contract; or
 - commit an offence under the Bribery Act 2010 or under Section 117(2) of the Local Government Act 1972; or
 - commit any fraud in connection with this or any other Council contract whether alone or in conjunction with the Council's members or employees.
 - where collusion has taken place between two (or more) tenderers in fixing or adjusting the bids submitted for the contract concerned
- 13.3 The Supplier shall inform the Council's Principal Auditor of any improper conduct by any of the Council's employees relating to the Contract or any other arrangement.

14 TERMINATION

- 14.1 The Council may by notice in writing terminate the Contract in whole or in part (and enter upon and expel the Supplier from any premises or site to which he has been given access) if any of the events specified in Clause 14.2 occur. No period of notice shall be required but the notice shall state the date on which it is to take effect.
- 14.2 The events referred to in Clause 14.1 are:-
- the Supplier has failed to make the Supply within the time specified in the Contract
 - the Supplier has breached the Contract in a way which the Council reasonably regards as irremediable, which may include, without limitation, repeated and/or persistent remediable breaches of the Contract

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- the Council has given the Supplier at least one month's notice to remedy a breach of contract which can be remedied and the Supplier has failed to do so
- the Supplier has without reasonable cause failed to proceed diligently with or wholly suspends performance of any Services or Supply
- the Supplier shall have a receiver appointed over all or substantial part of his or its assets or (if an individual) be declared bankrupt or (if a company) shall go into liquidation or have an administrator appointed to manage affairs or is unable to pay its debts within the meaning of the Insolvency Act 1986 or any similar event occurs under law or jurisdiction

14.3 In the event of termination of the Contract or rejection under Clause 6, the Council may engage another supplier to make the Supply and the Supplier shall be liable to pay the Council as a debt any extra cost that the Council incurs in so doing in excess of the Contract Price.

14.4 Upon termination of this Contract for any reason whatsoever, the Supplier will return to the Council all materials, documents, data and other items belonging to the Council then in its possession.

15 BREAK

15.1 The Council shall have the right to terminate the Contract or terminate a provision of any part of the Contract at any time by giving 3 months' written notice to the Supplier.

16 ASSIGNMENT AND SUB-CONTRACTING

16.1 Except for sub-contracts for materials or in relation to minor details none of the work covered by the Contract shall be assigned, transferred, novated or sub-contracted by the Supplier without the written consent of the Authorised Officer which shall not be unreasonably withheld. No sub-contracting by the Supplier shall in any way relieve the Supplier of any of its responsibilities under the Contract.

16.2 Where the Supplier enters into a contract with a supplier or sub-contractor for the purpose of performing the contract or any part of it, it shall cause a term to be included in such contract which requires payment to be made by the Supplier to the supplier or sub-contractor within a period not exceeding 30 days from the receipt of a valid payment as defined by the contract requirements.

16.3 The Council may at any time, without the Suppliers consent, assign any or all of its rights and obligations under the Contract to any other company or person upon giving notice to the Supplier. The Supplier shall at the request of the Council execute any novation or other agreement or documentation to give effect to such assignment.

16.4 The Supplier shall deliver the Supply directly to any third parties nominated by the Council for a Council purpose.

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17 PURCHASE OUTSIDE THE CONTRACT & THIRD PARTIES

- 17.1 The Council shall have the right to employ a person other than the Supplier to make supplies of the same type as is contemplated by the Contract if it shall in its absolute discretion think fit to do so.
- 17.2 Notwithstanding any other provision of this Agreement nothing in this Agreement confers or purports to confer any right to enforce any of its terms on any person who is not a party to it. The provisions of the Contracts (Right of Third Parties) Act 1999 shall not apply to the Contract and are hereby expressly excluded.
- 17.3 A person who is not a party to the contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on them, without the prior written agreement of both parties

18 SEVERANCE

- 18.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

19 WAIVER

- 19.1 No waiver or forbearance by the Council or the Supplier (whether express or implied) in enforcing any of its rights under the Contract shall prejudice its rights in the future.

20 NOTICES

- 20.1 Any notice about the Contract may be sent by hand, by post or transmitted by facsimile or email resulting in the receipt of written communication in permanent form and if so sent or transmitted to the address of the party shown on the Contract or to such other address as the party has notified to the other, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would be first received by the addressee in normal business hours.

21 GOVERNING LAW

- 21.1 The Contract shall be governed by and construed in accordance with English law and the Supplier hereby irrevocably submits to the exclusive jurisdiction of the English courts.

22 DISPUTE RESOLUTION

- 22.1 In the event of, dispute, the parties shall negotiate in good faith to reach a solution. If they do not reach a solution, within agreed escalation, within one month the parties shall refer the dispute to a, mutually agreed, independent procedure such as mediation or adjudication by a third party, ahead of progressing to legal action.