

**Standard Terms and Conditions for the
Supply of Goods and Services to Worcestershire County Council**

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions:

Business Day: means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

Buyer: means Worcestershire County Council or the school identified in the Purchase Order;

Buyer's Materials: all materials, equipment and tools, drawings, specifications and data supplied by the Buyer to the Supplier

Charges: means the charges payable by the Buyer for the supply of Goods and/or Services;

Conditions: means these terms and conditions as amended from time to time and in accordance with clause 13.4;

Contract: means the contract between the Buyer and the Supplier for the supply of Goods and/or Services in accordance with these Conditions (or any alternative terms and conditions that may apply, as per clause 2.1);

Deliverables: means all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Goods and/or Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts);

Delivery Date: means the date specified in the Purchase Order by when Goods shall be delivered to the Buyer;

Delivery Location: means the address for delivery of Goods as set out in the Purchase Order;

EIR: means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;

FOIA: means the Freedom of Information Act 2000 and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

Goods: means the goods (or any part of them) set out in the Purchase Order;

Intellectual Property Rights: means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

Policies: means the policies of the Buyer relating to (amongst other things) social media, use of information and communication systems, data and privacy protection, expenses, corporate and social responsibility, ethics and anti-bribery and any other such policies of which the Supplier are notified of by the Buyer;

Purchase Order: means any order placed by the Buyer for the supply of Goods and/or Services by the Supplier;

Request for Information: means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;

Services: means the services, including any Deliverables, to be provided by the Supplier under the Contract as set out in the Specification;

Specification: means the description or specification for the Goods and/or Services agreed in writing by the Buyer and the Supplier;

Supplier: means the entity from whom the Buyer purchases the Goods and/or Services

1.2. Interpretation:

1.2.1. A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.2.2. Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.2.3. A reference to writing or written excludes fax but not email.

2. BASIS OF CONTRACT

2.1. Unless the Purchase Order refers to an alternative contract (in which case the terms and conditions of that contract shall take precedence over the Conditions), these Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2. The Purchase Order constitutes an offer by the Buyer to purchase the Goods and/or Services (as applicable) in accordance with these Conditions.

2.3. Any purchase of Goods and/or Services by the Buyer is conditional upon acceptance of these Conditions by the Supplier. If the Supplier does not accept these Conditions, the Supplier should not accept the Order and should inform the Buyer immediately.

2.4. The Purchase Order shall be deemed to be accepted on the earlier of:

2.4.1. the Supplier issuing a written acceptance of the Purchase Order; and
2.4.2. the Supplier doing any act consistent with fulfilling the Purchase Order,
at which point the Contract shall come into existence.

2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.6 All of these Conditions shall apply to the supply of the Goods and/or Services except where the application to one or the other is specified.

3. **SUPPLY OF GOODS AND/OR SERVICES**

3.1. The Supplier shall from the date set in the Purchase Order and for the duration of the Contract provide the Goods and/or Services to the Buyer in accordance with the terms of the Contract.

3.2. In providing the Goods and/or Services, the Supplier shall:

3.2.1. co-operate with the Buyer in all matters relating to the Goods and/or Services, and comply with all instructions of the Buyer;

3.2.2. meet any performance dates specified in the Purchase Order;

3.2.3. perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;

3.2.4. use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;

3.2.5. ensure that the Goods, Services and Deliverables will conform with all descriptions and specifications set out in the Purchase Order and/or Specification (as applicable), and that the Goods and Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Buyer;

3.2.6. ensure that the Goods are of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Buyer expressly or by implication, and in this respect the Buyer relies on the Supplier's skill and judgement;

3.2.7. provide all equipment, tools and vehicles and such other items as are required to provide the Services;

3.2.8. use the best quality materials, standards and techniques, and ensure that the Deliverables, and all Goods and materials supplied will be free from defects in workmanship, installation and design;

3.2.9. obtain and at all times maintain all necessary licences, permissions, authorisations and consents;

3.2.10. comply with all applicable laws, statutes, regulations from time to time in force, and the Policies;

3.2.11. observe all health and safety rules and regulations and any other security requirements that apply at any of the Buyer's premises;

3.2.12. hold the Buyer Materials in safe custody at its own risk, maintain Buyer Materials in good condition until returned to the Buyer, and not dispose or use Buyer Materials other than in accordance with the Buyer's written instructions or authorisation;

3.2.13. not do or omit to do anything which may cause the Buyer to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business;

3.2.14. not deliver the Goods and/or perform the Services in instalments without the Buyer's prior written consent;

3.2.15. immediately notify the Buyer of any anticipated or actual delay in delivery of the Goods and/or provision of the Services; and,

3.2.16. comply with any additional obligations as set out in the Specification (where applicable).

4. **SUPPLY OF GOODS Delivery**

4.1. The Supplier shall deliver the Goods as instructed in the Purchase Order and obtain a delivery receipt from an authorised representative of the Buyer. Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Location.

4.2. The Buyer will allow the Supplier access to its premises as necessary for the delivery of the Goods. The Buyer may refuse admission to the Supplier, its personnel or any third-party delivering the Goods on the Supplier's behalf, or may request the Supplier, its personnel or any third-party delivering the Goods on the Supplier's behalf to leave the Buyer's premises and shall not be obliged to provide a reason for such refusal or such request. The Buyer will not apply the provision of this clause 4.2 vexatiously.

4.3. The Supplier shall bear the cost of carriage and/or postage in respect of delivery of the Goods.

Extension of time, rescheduling and cancellation

4.4. If, for any reason outside the reasonable control of the Supplier, delivery of the Goods is delayed, then, unless time is of the essence for delivery (as instructed in the Purchase Order), delivery may be rescheduled by the Buyer (such redelivery to be within a reasonable period of time). Rescheduled delivery for any other reason shall be at the sole discretion of the Buyer and the Supplier shall be responsible for any additional costs incurred by the Buyer as a result of the delay in delivery. If, in the reasonable opinion of the Buyer, it is inappropriate to reschedule delivery of the Goods, then the Buyer may cancel the Purchase Order without incurring any liability for such cancellation.

Risk and title

4.5. Risk and title in the Goods shall only pass to the Buyer upon acceptance of the Goods when delivered to the address specified in the Purchase Order, unless otherwise agreed in writing by the parties.

4.6. The Buyer reserves the right to take possession of all Goods to which it has title.

Goods damaged or lost in transit

- 4.7. Any Goods lost or damaged in transit shall be replaced or restored by the Supplier at the Supplier's expense and to the Buyer's satisfaction.
- 4.8. Delivery shall not be deemed to have taken place until Goods have been restored to the Buyer's satisfaction or replacement Goods have been accepted by the Buyer.

Rejection

- 4.9. Unless otherwise agreed in writing by the parties, if, at any time within 3 months from the date of delivery, having regard to the nature of the Goods, the Goods fail to conform with all descriptions and specifications set out in the Purchase Order and/or Specification (as applicable), then the Buyer may, by serving written notice on the Supplier, reject all or any part of the Goods. The Buyer may then (without prejudice to any of its other rights and/or remedies) accept replacement Goods from the Supplier at the Supplier's expense.
- 4.10. Payment or part payment for Goods specified in the Purchase Order shall not be taken to mean that the Buyer accepts that the Goods conform with all descriptions and specifications set out in the Purchase Order and/or Specification (as applicable). Such payment shall not prejudice the right of the Buyer to reject the Goods at a later date in accordance with clause 4.9.

5. SUPPLY OF SERVICES Performance

- 5.1. The Supplier shall perform the Services as instructed in the Purchase Order in a timely and efficient manner to the reasonable satisfaction of the Buyer.
- 5.2. The Buyer will allow the Supplier access to its premises as necessary for the performance of the Services. The Buyer may refuse admission to the Supplier, its personnel or any third-party performing the Services on the Supplier's behalf, or may request the Supplier, its personnel or any third-party performing the Services on the Supplier's behalf to leave the Buyer's premises and shall not be obliged to provide a reason for such refusal or such request. The Buyer will not apply the provision of this clause 5.2 vexatiously.

Extension of time, rescheduling or cancellation

- 5.3. If, for any reason outside the reasonable control of the Supplier, performance of the Services is delayed, then, unless time is of the essence for performance (as instructed in the Purchase Order), performance of the Services may be rescheduled by the Buyer (such rescheduling to be within a reasonable period of time). Rescheduled performance of the Services for any other reason shall be at the sole discretion of the Buyer and the Supplier shall be responsible for any additional costs incurred by the Buyer as a result of the delay in performance. If, in the reasonable opinion of the Buyer, it is inappropriate to reschedule performance of the Services, then the Buyer may cancel the Purchase Order without incurring any liability for such cancellation.
- 5.4. Upon becoming aware of any anticipated or actual delay in provision of the Services, the Supplier shall immediately notify the Buyer specifying the reasons for the delay.

Rejection

- 5.5. Unless otherwise agreed in writing by the parties, if, at any time within 3 months from the date of the provision of any part of the Services, having regard to the nature of the Services, the Services fail to conform with all descriptions and specifications set out in the Purchase Order and/or Specification (as applicable), then the Buyer may, by serving written notice on the Supplier, reject all or any part of the Services. The Buyer may then (without prejudice to any of its other rights and/or remedies) accept re-performance of the Services by the Supplier at the Supplier's expense.
- 5.6. Payment or part payment for Services specified in the Purchase Order shall not be taken to mean that the Buyer accepts that the Services conform with all descriptions and specifications set out in the Purchase Order and/or Specification (as applicable). Such payment shall not prejudice the right of the Buyer to reject the Services at a later date in accordance with clause 5.5.

6. BUYER REMEDIES

- 6.1. If the Supplier fails to perform the Services by the applicable date; or if the Goods are not delivered on the Delivery Date; or the Supplier does not comply with the undertakings set out in clause 3.2; the Buyer shall, without limiting its other rights or remedies, have one or more of the following rights:
 - 6.1.1. to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - 6.1.2. to reject the Goods (in whole or in part) and/or Services or refuse to accept any subsequent performance of the Services which the Supplier attempts to make, all at the Supplier's own risk and expense;
 - 6.1.3. to recover from the Supplier any costs incurred by the Buyer in obtaining substitute Goods or Services from a third party;
 - 6.1.4. where the Buyer has paid in advance for Goods and/or Services that have not been provided by the Supplier, to have such sums refunded by the Supplier; and
 - 6.1.5. to claim damages for any additional costs, loss or expenses incurred by the Buyer which are in any way attributable to the Supplier's failure to meet such dates and/or comply with the undertakings set out in clause 3.2.
- 6.2. The Buyer's remedies under this clause 6 shall extend to any substituted or remedial services provided by the Supplier.
- 6.3. The Buyer's rights and remedies under the Contract are in addition to its rights and remedies implied by statute and common law.

7. CHARGES AND PAYMENT

- 7.1. The Charges for the Goods and/or Services shall be set out in the Purchase Order and shall be the full and exclusive remuneration to the Supplier. Unless otherwise agreed in writing by the Buyer, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the Contract
- 7.2. The Supplier shall invoice the Buyer:
- 7.2.1. in respect of Services, on completion of the Services in accordance with clauses 3 and 4; or,
7.2.2. in respect of Goods, on or at any time after completion of delivery in accordance with clauses 3 and 5.
- 7.3. Each invoice shall include such supporting information required by the Buyer to verify the accuracy of the invoice, including, but not limited to, the relevant Purchase Order number.
- 7.4. The Buyer shall pay correctly rendered and undisputed invoices within thirty (30) days of receipt of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier. The Supplier shall accept payment by electronic funds transfer via BACS or other electronic payment means.
- 7.5. The Supplier shall accept notification of payment via email and shall notify the Buyer of the email address to which such notifications can be made.
- 7.6. All amounts payable by the Buyer under the Contract are exclusive of value added tax (VAT) (unless otherwise stated in the Purchase Order).
- 7.7. If any undisputed monies are not paid by the due date, then the Supplier or the Buyer (as applicable) may charge interest on such undisputed monies on a daily basis from the date falling thirty (30) days from when payment fell due (or such other date as may be agreed in writing between the parties) to the date when payment is made. Interest shall be calculated at the date of two (2) per cent per annum over the base lending rate of the Bank of England from time to time. The parties agree that this clause provides each of the parties with a sufficient remedy in respect of any late payment of sums due for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.
- 7.8. The provisions of clause 7.7 shall not apply when:
- 7.8.1. the Supplier has failed to notify the Buyer of the details of the bank account to which payment is to be sent;
7.8.2. the Supplier has not quoted the correct Purchase Order number when invoicing the Buyer; or
7.8.3. no Purchase Order exists as evidence of an agreement between the Buyer and the Supplier for the supply of Goods and/or Services.

8. SET OFF

- 8.1. The Buyer shall be entitled to set off against any sums due to the Supplier any sums which become payable by the Supplier to the Buyer in relation to the Contract, or any other contract between the parties, which, for the avoidance of any doubt, shall include cases where payment is due to the Buyer in respect of goods and/or services provided by the Buyer to the Supplier.

9. INDEMNITY

- 9.1. The Supplier shall keep the Buyer indemnified against all liabilities, costs, expenses, damages, and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Buyer as a result of or in connection with:
- 9.1.1. any claim brought against the Buyer for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the receipt, use or supply of the Goods and/or Services, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents, or subcontractors; and
9.1.2. any claim made against the Buyer by a third party arising out of, or in connection with, the supply of the Goods and/or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents, or subcontractors.
- 9.2. This clause 9 shall survive expiry or early termination of the Contract.

10. INSURANCE

- 10.1. Throughout the term of the Contract, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability and public liability insurance to cover the liabilities that may arise under or in connection with the Contract (the Buyer may also indicate to the Supplier a required prescribed level of required insurance) and shall, on the Buyer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

11. DATA PROTECTION

- 11.1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This **Error! Bookmark not defined.**11 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

12. TERMINATION

- 12.1. Without affecting any other right or remedy available to it, the Buyer may terminate this Agreement with immediate effect by giving written notice to the Supplier if the Supplier:

- 12.1.1. commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of fourteen (14) days after being notified in writing to do so;
 - 12.1.2. repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;
 - 12.1.3. becomes insolvent, goes into liquidation, or has a receiving or administration order made against it, compounds with its creditors, or carries on business under a receiver, trustee or manager for the benefit of its creditors, or if any act is done or event occurs which has a similar effect to any of these acts or events;
 - 12.1.4. suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial parts of its business;
 - 12.1.5. financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy; or
 - 12.1.6. undergoes a change of control (within the meaning of section 1124 of the Corporation Tax Act 2010).
- 12.2. Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 12.3. Any provision of the Contract that, expressly or by implication, is intended to come into or continue in force on or after termination shall remain in full force and effect.
- 13. CONFIDENTIALITY AND FREEDOM OF INFORMATION**
- 13.1. A party (the "**Receiving Party**") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (the "**Disclosing Party**"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business, its products and services which the Receiving Party may obtain. The Receiving Party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The Receiving Party may also disclose such of the Disclosing Party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.
- 13.2. The Supplier acknowledges that the Buyer is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- 13.2.1. provide all necessary assistance and cooperation as reasonably requested by the Buyer to enable the Buyer to comply with its obligations under the FOIA and EIRs;
 - 13.2.2. transfer to the Buyer all Requests for Information relating to the Contract that it receives as soon as practicable and in any event within two (2) Business Days of receipt; and
 - 13.2.3. not respond directly to a Request for Information unless authorised in writing to do so by the Buyer.
- 13.3. The Supplier acknowledges that the Buyer may be required under the FOIA and EIRs to disclose Information (including confidential information) without consulting or obtaining consent from the Supplier.
- 13.4. This clause 13 shall survive expiry or early termination of the Contract.
- 14. FORCE MAJEURE**
- 14.1. Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 4 weeks, the party not affected may terminate the Contract by giving 4 weeks written notice to the affected party.
- 15. GENERAL Assignment and other dealings**
- 15.1. The Buyer may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- 15.2. The Supplier may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Buyer.
- Entire agreement**
- 15.3. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations, and understandings between them, whether written or oral, relating to its subject matter.
- Variation**
- 15.4. No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- Waiver**
- 15.5. A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:
- 15.5.1. waive that or any other right of remedy; or
 - 15.5.2. prevent or restrict the further exercise of that or any other right or remedy.
- Severance**
- 15.6. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant

provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

Publicity

15.7. The Supplier shall not, without the prior written consent of the Buyer, advertise or disclose to any third party that it is providing Goods and/or Services to the Buyer.

Notices

15.8. Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in, and shall be delivered personally, or sent by pre-paid first-class post or other next working day delivery service, commercial courier, or email.

15.9 Any notice shall be deemed to have been received if; delivered by hand at the time the notice is left at the registered address or such other address as that party may have specified to the other party in; if sent by pre-paid first-class post or other next working day delivery service, at 9:00 am on the second Business Day after posting; or if sent by email, at the time of transmission.

15.9. The provisions of clause 13.8 and 13.9 shall not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

Contracts (Rights of Third Parties) Act 1999

15.10. No party other than a party to the Contract shall have any right to enforce any of its terms.

Governing law and jurisdiction

15.11. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation ("**Claim**") shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any Claim.