

MVDC Standard Terms & Conditions for Purchase Orders

1. DEFINITIONS

Authorised Person: a person who has authority to execute/sign documents on behalf of the Council.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 16.3.

Contract: the contract between the Council and the Supplier for the sale and purchase of the Goods and/or Services in accordance with these Conditions.

Data Controller: has the meaning given to that term in the Data Protection Law in force from time to time.

Data Processor: has the meaning given to that term in the Data Protection Law in force from time to time.

Data Protection Law: all applicable data protection and privacy legislation in force from time to time in the UK including but not limited to the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended or any applicable domestic legislation in force as a result of a no-deal Brexit.

Goods: the goods (or any part of them) set out in the Order.

Order: the Council's order for the Goods and/or Services, as set out in the Council's purchase order form or in the Council's written acceptance of the Supplier's quotation, as the case may be and incorporating these Conditions and the contents of any document referred to in the purchase order form.

Personal Data: has the meaning given to that term in the Data Protection Law in force from time to time.

Specification: any specification for the Goods, including any related plans and drawings, agreed in writing by the Council and the Supplier.

Services: any services or works to be provided by the Supplier to the Council under the Contract.

Supplier: the person or firm from whom the Council purchases the Goods.

2. BASIS OF CONTRACT

- 2.1 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 Any purchase of Goods and/or Services by the Council is conditional upon acceptance of these terms and conditions by the Supplier. If the Supplier does not wish to accept these terms and conditions, then the Supplier should not accept the Order, and should inform the Council immediately.
- 2.3 The Contract constitutes the entire agreement between the parties. No terms or conditions endorsed upon, delivered with or contained in the Supplier's quotation, acknowledgment or acceptance of order, specification or similar document shall form part of the Contract and the Supplier waives any right which it otherwise might have to rely on such terms and conditions.

3. GOODS AND/OR SERVICE STANDARDS

3.1 The Supplier shall ensure that the Goods shall:

- 3.1.1 correspond with their description and any applicable Specification;
- 3.1.2 be 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 Council expressly or by implication, and in this respect the Council relies on the Supplier's skill and judgement;
- 3.1.3 be free from defects in design, material and workmanship and remain so for 12 months after delivery;
- 3.1.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

3.2 The Supplier shall ensure that the Services are provided to the Council:

- 3.2.1 in a timely, efficient and professional manner, meeting any specified performance dates specified in the Order and/or Specification;;
- 3.2.2 with reasonable skill and care;
- 3.2.3 in accordance with the best practice prevailing in that profession, trade and/or industry from time to time;.

3.3 The Supplier shall ensure that:

- 3.3.1 at all times it has and maintains all the licences, permissions, authorisations,

consents and permits that it needs to carry out its obligations under the Contract;
and

- 3.3.2 it complies with all applicable health and safety, anti-discrimination, anti-slavery and equality and human rights legislation and any policies notified to it by the Council, including its health and safety policy whilst at Council premises.

4. DELIVERY

4.1 The Supplier shall ensure that:

4.1.1 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Council and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

4.1.2 if the Supplier requires the Council to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. The Council shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.

4.2 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree.

5. TITLE AND RISK

Title and risk in the Goods shall pass to the Council on completion of delivery.

6. PRICE AND PAYMENT

6.1 The price of the Goods and/or Services shall be the price set out in the Order and unless otherwise agreed in writing by the Council:

6.1.1 excludes amounts in respect of value added tax (**VAT**), which the Council shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and

6.1.2 includes the costs of packaging, insurance and carriage of the Goods.

6.2 No change to the price or extra charges shall be effective unless agreed in writing by an Authorised Person prior to delivery of the Goods and/or performance of the Services.

- 6.3 The Supplier may invoice the Council for price of the Goods plus VAT at the prevailing rate (if applicable) on or at any time after the completion of delivery and/or performance of the Services. The Supplier shall ensure that the invoice includes the date of the Order, the invoice number, the Council's order number, the Supplier's VAT registration number, and any supporting documents that the Council may reasonably require.
- 6.4 The Council shall consider and verify that invoice in a timely fashion and shall pay correctly rendered invoices within 30 days of receipt of the invoice. The obligations set out in this clause shall be replicated throughout the Supplier's supply chain, where that supply-chain is wholly or substantially performing or contributing to the performance of the whole or any part of this Contract.
- 6.5 If a party fails to make any undisputed payment due to the other under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 6.6 The Council may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to the Council against any liability of the Council to the Supplier.

7. INSURANCE

The Supplier will ensure that it has insurance in place and shall maintain such insurance throughout the period covered by this Contract to cover its liabilities under the Order. Unless otherwise agreed in writing by the parties, the insurance shall include professional indemnity insurance for £2,000,000 (where Service are to be provided) which must be in force for the duration of the Contract, public liability insurance for £10,000,000 and employer's liability insurance (where relevant) for £5,000,000 (unless otherwise agreed in writing between the parties).

8. LIABILITY

- 8.1 Neither party excludes or limits liability to the other for death or personal injury as a result of its negligence.
- 8.2 The Supplier's liability for breach of confidentiality or infringement of intellectual property rights shall be unlimited unless otherwise agreed in writing by the parties.
- 8.3 The liability of either party for direct loss of, or damage to, the tangible property of the other shall be limited to five million pounds per claim unless otherwise stated in the Order.

9. INDEMNITY

- 9.1 The Supplier shall keep the Council indemnified in full against all direct, indirect

and/or consequential losses (all of which include, without limitation, project delays, loss of business, depletion of goodwill and like loss), other liabilities, damages, injury, costs and expenses (including legal and other professional fees and expenses) incurred and/or paid by the Council as a result of or in connection with:

- 9.1.1 defective workmanship, quality and/or materials evidenced in the Goods;
- 9.1.2 any infringement or alleged infringement of any intellectual property rights caused by the use, manufacture and/or supply of the Goods; and
- 9.1.3 any claim made against the Council in respect of any liability, loss, damage, injury, cost or expense sustained by the Council, its employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods as a consequence of direct or indirect breach or negligent performance or failure or delay in performance of the Contract by the Supplier.

10. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

10.1 The Supplier 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 Supplier by the Council or its agents and any other confidential information concerning the Council's business which the Supplier may obtain and the Supplier shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purposes of discharging the Supplier's obligations to the Council. Any confidential information in the Supplier's possession at the date of completion or termination of the Contract shall be returned to the Council at the Supplier's expense.

10.2 The Supplier shall grant to the Council and the Council's customers a perpetual, royalty free, worldwide, non-exclusive licence to market, distribute, sell or otherwise use all intellectual property rights belonging to or otherwise licensed to the Supplier incorporated in or required for the use of the Goods and/or Services.

11. INFORMATION RIGHTS

11.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 (**Information Legislation**), the content of the Contract is not confidential information and the Supplier hereby gives its consent for the Council to publish this Contract in its entirety to the general public (but with any information that is exempt from disclosure redacted) including any changes to the Contract agreed from time to time. The Council may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with Information Legislation.

11.2 The Supplier recognises that the Council is subject to legal duties which may require the release of Information under the Freedom of Information Act 2000 or the Environmental Information Regulation 2002 or any other applicable legislation or codes governing access to information and that the Council may be under an obligation to provide information on request. Such information may include matters relating to, arising out of or under this Contract. The Supplier will assist the Council to enable the Council to comply with its obligations under the Freedom of Information Act 2000 or other applicable legislation governing access to information.

11.3 Both parties will comply with all applicable requirements of Data Protection Law. This clause is in addition to, and does not relieve, remove or replace, a party's obligations under Data Protection Law. The Supplier shall (and shall procure that any of the Supplier's Personnel involved in the provision of the Contract shall) comply with any notification requirements under Data Protection Law and both parties shall duly observe all their obligations under Data Protection Law, which arise in connection with this Contract.

11.4 Notwithstanding the general obligation in Condition 11.3 where the Supplier is processing Personal Data as a Data Processor for the Council, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this Contract:

- (a) process that Personal Data only on the written instructions of the Council unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier to process Personal Data (**Applicable Laws**). Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Supplier shall promptly notify the Council of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Council;
- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Council, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its 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 technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

- (d) not transfer any Personal Data outside of the European Economic Area or, in the event of a no-deal Brexit, outside of the UK, unless there is an adequacy decision of the European Commission in place or the transfer is otherwise compliant, unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
 - (i) the Council or the Supplier has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) the Supplier complies with reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
- (e) assist the Council in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Law with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Council without undue delay on becoming aware of a Personal Data breach;
- (g) at the written direction of the Council, delete or return Personal Data and copies thereof to the Council on termination of the Contract unless required by Applicable Law to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this Condition 11.4 and allow for audits by the Council or the Council's designated auditor.

11.5 The Council does not consent to the Supplier appointing any third party processor of Personal Data under this Contract.

11.6 Notwithstanding the general obligation in Condition 11.3, if the Supplier is the Data Controller in relation to any of the Services, including but not limited to, any public consultation or public engagement exercise involving the processing of Personal Data, the Supplier shall be responsible for ensuring that it may lawfully share such Personal Data with the Council, and that the Council may in turn lawfully process such Personal Data provided to it by the Supplier in connection with, and/or for the purposes of the Project and the Council may require the Supplier to enter into a formal data sharing agreement in this regard.

11.7 The provisions of this Condition shall apply during the continuance of the agreement and indefinitely after its expiry or termination.

12. PREVENTION OF FRAUD AND CORRUPTION

12.1 The Supplier shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or for showing or refraining from showing favour or disfavour to any person in relation to the Contract.

12.2 The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by its staff and the Supplier (including its shareholders, members and directors) in connection with the Contract and shall notify the Council immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

12.3 If the Supplier or the Staff engages in conduct prohibited by this clause 12 or commits fraud in relation to the Contract or any other contract with the Council the Council may:

12.3.1 terminate the Contract and recover from the Supplier the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the supply of the Services and any additional expenditure incurred by the Council throughout the remainder of the Contract; or

12.3.2 recover in full from the Supplier any other loss sustained by the Council in consequence of any breach of this clause 12.

13. BEST VALUE

13.1 The Supplier shall without prejudice: comply with all reasonable stipulations of the Council aimed at minimising product packaging directly provided to the Council as part of the performance of the Contract; manage electrical equipment and associated consumables at end of life to facilitate recovery, treatment, recycling and provide any information which the Council may reasonably require from time to time regarding the costs of such activity; and promptly provide all such information regarding the environmental impact of any products supplied or used under the Contract as may reasonably be required by the Council.

13.2 The Supplier acknowledges that the Council is subject to the Best Value duty imposed on the Council by Part 1 of the Local Government Act 1999 and the Supplier shall throughout the Contract assist the Council in discharging its Best Value duty.

14. TERMINATION

14.1 The Council may cancel the Order or terminate the Contract in whole or in part at any time before delivery with immediate effect by giving the Supplier written notice,

whereupon the Supplier shall discontinue all work on the Contract. The Council shall pay the Supplier fair and reasonable compensation for any work in progress on the Goods and/or Services at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.

14.2 Without limiting its other rights or remedies, the Council may terminate the Contract with immediate effect by giving written notice to the Supplier if:

14.2.1 the Supplier commits a material breach of any term of the Contract;

14.2.2 the Supplier's financial position deteriorates to such an extent that in the Council's reasonable opinion, the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy;

14.2.3 the Supplier takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business.

14.3 On termination of the Contract for any reason, the Supplier shall immediately deliver to the Council all Deliverables whether or not then complete, and return all Customer Materials. If the Supplier fails to do so, then the Council may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract

14.4 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. 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.

15. **FORCE MAJEURE**

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure results from an event, circumstance or cause beyond its reasonable control. If the period of delay or non-performance continues for two months, the party not affected may terminate the Contract by giving written notice to the affected party.

16. **GENERAL**

16.1 **Subcontracting.** The Supplier may not assign the Contract or subcontract any or all of its rights or obligations under the Contract without the prior written consent of the Council. If the Council consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all the acts and omissions of its subcontractors

as if they were its own.

- 16.2 Entire agreement.** 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.
- 16.3 Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Council.
- 16.4 No agency.** This Contract does not create a partnership between the Council and the Supplier, or make one of the Parties the agent of the other for any purpose.
- 16.5 Waiver.** Failure or delay by the Council in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of the Council rights under the Contract. Any waiver by the Council of any breach or default under the Contract by the Supplier shall not be considered as a waiver of any subsequent breach or default of the Contract
- 16.6 Severance.** If any provision or part-provision of this Contract is held by any competent authority to be invalid, void, voidable, unenforceable or unreasonable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall continue in full force and effect.
- 16.7 Notices.** Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier.
- 16.8 Third party rights.** No one other than a party to the Contract shall have any right to enforce any of its terms.
- 16.9 Governing law and Jurisdiction.** 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, shall be governed by, and construed in accordance with the law of England and Wales and shall be subject to the exclusive jurisdiction of the courts of England and Wales.

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