

1. Definitions

- 1.1 'Purchase Order' – the official order document supplied by Us setting out details of the Council's requirements and the Purchase Order shall be incorporated into the Contract.
- 1.2 'Conditions' - the terms stated in the Contract.
- 1.3 'Contract' - The Contract shall mean the Conditions and the Purchase Order.
- 1.4 'Goods' - Any goods to be supplied by You as required by the Contract and detailed in the Purchase Order.
- 1.5 'Price' - the price We will pay You for providing the Services as set out in the Purchase Order.
- 1.6 'Services' - Any such services to be provided by You, as required by the Contract and detailed in the Purchase Order.
- 1.7 'Us' or 'Our' or 'We' – Cheshire West and Chester Borough Council.
- 1.8 'You' or 'Your' - The person, firm or company to whom the Purchase Order is addressed and who is responsible for providing the Services or supplying the Goods.

2. The contract

These Conditions govern the Contract between Us and You. No other Conditions will apply. **The supply of Goods and / or supply of Services in response to the Purchase Order shall expressly and irrevocably mean that You have agreed to supply to Us the Goods and/or Services and that You accept these Conditions and agree that no other terms apply to the Contract.**

3. The price and payment

- 3.1. The Price of the Goods or Services is fixed on the Purchase Order.
- 3.2. No variation in Price will apply unless agreed in writing by Our authorised representative prior to delivery of Goods or completion of Services.
- 3.3. Payment for Goods received or Services completed to Our satisfaction, will be made within 30 days of receipt of an itemised, correct and undisputed invoice.
- 3.4. Your invoice must quote the Purchase Order number and be addressed as set out on the Purchase Order.
- 3.5. We will not be responsible for delays in payment arising from failure to comply with these invoicing instructions.
- 3.6. We will usually pay by cheque or BACS and provide a remittance advice to inform You that payment has been made.
- 3.7. We will pay any VAT due.
- 3.8. Payment by Us will be without prejudice to any rights or remedies available to Us under the Contract, or otherwise.
- 3.9. We will be entitled to set off against any invoice any amount due from You to Us under this or any other arrangement.
- 3.10. We will consider and verify any invoices submitted by You in a timely fashion and any undue delay by Us in doing so will not be sufficient justification for failing to regard an invoice as valid and undisputed.

4. Time

Time of delivery of the Goods and commencement and completion of the Services is of the essence of the Contract.

5. Quality of goods

- 5.1. The Goods supplied under the Contract shall be to Our satisfaction and shall conform to the Purchase Order.
- 5.2. Specifically the Goods shall:
 - 5.2.1. be fit for any purpose made known to You expressly or by implication; and
 - 5.2.2. be of satisfactory quality; and
 - 5.2.3. be entirely safe and conform to all relevant British and European standards and / or legislation; and
 - 5.2.4. be new and
 - 5.2.5. comply with any samples, patterns, drawings, plans and specifications provided by Us or on behalf of Us.

6. Quality of services

- 6.1. The Services supplied under the Contract shall be to Our satisfaction and conform to the Purchase Order.
- 6.2. Specifically in relation to the Services the following shall apply:
 - 6.2.1. the Services shall be performed with due skill, care and diligence including industry best practice; and
 - 6.2.2. You shall ensure that sufficient resources are available to complete the Services successfully and to our satisfaction; and
 - 6.2.3. the Services shall be supplied by supervised, experienced, qualified, trained and competent staff and
 - 6.2.4. We rely on Your skill, judgement and experience.

7. Inspection, acceptance and rejection

- 7.1. We will inspect the Goods when they are delivered.
- 7.2. Provided that the Goods are of satisfactory quality in accordance with clause 5, We will accept the Goods upon payment of the invoice. Title and risk shall pass to Us on delivery of the Goods.

- 7.3. If the Goods are not of satisfactory quality in accordance with clause 5 then We can reject them and You at our request will supply replacement Goods. If We reject the Goods we will give You written notice. You shall collect the Goods within five working days from receiving Our notice to collect the Goods. We will not make payment for rejected Goods, or be responsible for costs incurred by You in removing rejected Goods and arranging for the supply of replacement Goods.
- 7.4. If You fail to comply with clause 7.3 We are entitled to treat the Contract as having been terminated pursuant to clause 13.1 below.

8. Labelling and packaging

You must ensure that all prices, quantities, units of measure and the Purchase Order number are on all transaction documentation and comply in all respects with the Purchase Order. All Goods must be clearly labelled and adequately packed.

9. Indemnity and insurance

- 9.1. You must indemnify Us against all losses, damage, injury or expense or loss of or damage to property or injury to or death of any person, however caused by:
- 9.1.1. the Goods not being fully in accordance with the Contract, or
- 9.1.2. any act by You, Your employees, agents or sub-contractors.
- 9.2. You shall fully indemnify Us against any expenses, losses, liabilities, damages, claims or costs whatsoever howsoever arising from any alleged or actual infringement of any intellectual property rights including papers, trademarks, copyrights, intellectual or any of the rights arising from the Contract.
- 9.3. You must maintain satisfactory insurance cover with a reputable insurer in respect of all liabilities, losses, damages, claims whatsoever howsoever arising from the Contract including death or personal injury, loss of or damage to property or any other loss (the 'Required Insurances')
- 9.4. The Required Insurances referred to above are:
- (a) Public liability insurance with a limit of indemnity of not less than ten million pounds (£10,000,000) in relation to any one claim or series of claims arising from the Contract;
- (b) Employers liability insurance with a limit of indemnity of not less than ten million pounds (£10,000,000) in relation to any one claim or series of claims arising from the Contract;
- (c) Professional Indemnity Insurance with a limit of indemnity of not less than one million pounds (£1,000,000) in relation to any one claim or series of claims arising from the Service provided that this insurance shall only be required where you have specifically been informed that such insurance is required and
- You shall produce evidence of such Required Insurances to Us on request.
- 9.5 We will not be liable for any loss, loss of profits, indirect loss or consequential loss whatsoever howsoever arising from the Contract.

10. Publicity

You will not publish or reproduce or arrange press releases or make public statements in connection with the Contract or make use of Our name in any publicity without Our prior written approval.

11. Freedom of information

The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 (the "Acts") gives a general right of public access to all types of recorded information held by Us, subject to certain exemptions, and places a number of obligations on Us with regard to the disclosure of information. We will allow public access to recorded information wherever possible and You will agree to Us making disclosures in accordance with the Acts. If We ask You for information, You will provide the information requested within five working days at your own expense. You agree that We shall have the absolute discretion to decide whether to release information pursuant to this clause or whether to apply an exemption to the information and Our decision shall be final.

12. Data protection

- 12.1 You shall (and You shall procure that any of Your employees or agents or contractors or sub-contractors providing the Services or supplying the Goods under the Contract) comply with any obligations under the Data Protection Act 1998 (as amended) (the "DPA") in addition to Your obligations under relevant applicable privacy laws and You shall (and You shall procure that any of Your employees or agents or contractors or sub-contractors providing the Services or supplying the Goods under the Contract) do no act or fail to do an act which places Us in breach of our obligations under the DPA as Data Controller. The terms Data Controller, Data Processor and Data Subject shall have the meanings as set out in the DPA.
- 12.2 You shall ensure that Your employees or agents or contractors or sub-contractors do not publish, disclose or divulge any Personal Data (as defined by the DPA) to any third party unless We instruct you to do so.

- 12.3 In respect of any Personal Data forming part of Our data provided to You in providing the Services or supplying the Goods, You shall process such Personal Data only (a) in accordance with the Contract and solely for the purposes of performing Your obligations under the Contract and (b) in accordance with any instructions that We issue from time to time and (c) to the extent, and in such a manner, as is necessary for the provision of the Services or supply of Goods or as required by law or any regulatory body.
- 12.4 For the avoidance of doubt, We shall be the Data Controller for all Personal Data processed under the Contract and You shall be the Data Processor.
- 12.5 Notwithstanding the general obligations in clause 12.1, 12.2 and 12.3, where You are processing Personal Data as a Data Processor for Us, You shall ensure that You have in place appropriate technical and contractual measures (the 'Measures') to ensure the security of the Personal Data and to guard against unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data as required under the Seventh Data Protection Principle in Schedule 1 to the DPAA, and you shall;
- (a) Provide Us with such information as We may reasonably require to satisfy ourselves that You are complying with any obligations under the DPA and/or the Contract;
 - (b) Allow Us or Our duly authorised agents at any time during normal business hours and on reasonable notice to inspect measures taken by You to comply with the DPA which may include inspecting the place where You carry out your business;
 - (c) Make such amendments to the Measures taken pursuant to clause 12.5 as are required by Us in order to secure compliance with the DPA;
 - (d) Notify Us of any breach of the security measures required to be put in place to pursuant to clause 12.5 within two working days of the breach occurring;
 - (e) Ensure You do not knowingly or negligently do or omit anything which places Us in breach of Our obligations under the DPA;
 - (f) Inform Us within two working days of any requests for personal information from a Data Subject under Section 7 of the Data Protection Act 1998 (the right of subject access). We as the Data Controller shall retain the responsibility to respond to such requests.
 - (g) Inform Us within two working of any requests for personal information from third parties. You shall not respond to such requests without Our express permission.
 - (h) If We so direct, You shall enter into a data processor agreement with Us in such form as We may require and in such circumstances, no Personal Data shall be processed by You until the data processor agreement shall have been signed by Us and You.
 - (i) Not transfer any personal information outside of the European Economic Area.

13. Termination

We may immediately terminate the Contract by written notice to You if:

- 13.1. You are in breach of any of the Conditions of the Contract; or
- 13.2. You become, or appear to become, insolvent or bankrupt or in any other way unable to meet Your commitments under this or any other Contract; or
- 13.3 For whatever reason, You are bringing, or may bring, bad publicity or disrepute upon Us; or
- 13.3. We placed the Purchase Order in error and if We inform you within seven days of the date on the Purchase Order.

14. Disputes and agreements

- 14.1. We shall try to resolve all disputes arising in connection with the Contract amicably. If this cannot be achieved within a reasonable period of time and not less than 10 working days from the date of the dispute arising, We shall each refer the dispute to senior members of staff.
- 14.2. If We cannot resolve the dispute within one month either party may exercise any remedy it may have pursuant to the Contract or statute or common law.

15. General terms

- 15.1. You will not give or offer to any of Our staff, employees or agents, any gift, bribe or inducement in relation to this or any other Contract between Us or engage in any activity which is or is likely to be an offence under the Bribery Act 2010..
- 15.2. All notices and communications will be made in writing by post to the addresses on the Purchase Order. Notice will be deemed to have reached the party to whom it is addressed on the second business day following date of sending. Notice by e mail shall not be valid notice pursuant to this Condition.
- 15.3. The headings to Conditions shall not affect their interpretation.
- 15.4. The Contract shall be governed by and construed in accordance with English Law and shall be subject to the jurisdiction of the courts of England and Wales.
- 15.5. A person who is not a party to the Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any Conditions or the Contract.

- 15.6. Neither You nor We will be in breach of the Contract for delay in performing, or failure to perform, any obligations under the Contract if such delay or failure results from events, circumstances or causes beyond either Your or Our reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non - performance continues for four (4) weeks the party affected may terminate the Contract by giving 14 days' written notice to the other.
- 15.7. Neither You nor We will assign, transfer or sub - contract the Contract without the prior written consent of the other such consent not to be unreasonably withheld.
- 15.8. You and We agree not to disclose to any third party any confidential information concerning the affairs, business, customers, clients, suppliers, know how, designs, trade secrets or any information belonging to or supplied by one of us to the other which would be regarded as confidential by a reasonable business person relating to the Contract except where that confidential information is generally available to the public (other than as a result of disclosure in breach of this clause 15.8) or as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.