

Terms and Conditions for the Supply of Goods and Services – South Oxfordshire District Council

1. DEFINITIONS AND INTERPRETATION

- 1.1. The definitions and rules of interpretation in this clause apply in these conditions;
“**Contract**” means the contract between the Supplier and the Council consisting of these conditions and (where applicable) the Tender, the Purchase Order and the Specification;
“**Council**” means South Oxfordshire District Council of Abbey House, Abbey Close, Abingdon OX14 3JE;
“**Delivery of Goods**” means the unloading of the Goods or the receipt of the Goods by the Council at the location specified by it in the Purchase Order or if applicable the installation, assembling or making useable the Goods;
“**Goods**” means the goods described in the Purchase Order and/or the Tender;
“**Services**” means the services described in the Purchase Order and/or Tender;
“**Purchase Order**” means the purchase order generated (where applicable) by the Council for the Goods and/or Services;
“**Price**” means the fee to be paid under the Contract to the Supplier;
“**Specification**” means the requirements provided (where applicable) by the Council detailing the required specifications of the Goods and/or Services;
“**Supplier**” means the person, form of company or partnership or organisation who have accepted the Council’s Purchase Order for the provision of Goods and/or Services and is identified in the Purchase Order;
“**Tender**” means (where applicable) the Tender or Request for Quotation issued by the Council and the response given to the Council by the Supplier.

2. APPLICATION OF TERMS

- 2.1. These conditions are the Council’s standard terms and conditions which will govern the Contract between the Council and the Supplier to the entire exclusion of all other terms and conditions save, the Council’s Standard Terms and Conditions of Contract for Services below £75,000 and the Council’s Standard Terms and Conditions for the supply of Goods, which wherever they exist, shall take precedence over these terms and conditions), unless any other contract terms have been agreed between the parties in writing.

3. QUALITY AND DEFECTS

- 3.1. The Supplier warrants that (1) the Goods shall be of the best available design, of the best quality, material and workmanship and be without fault; (2) the Services shall be provided with all reasonable skill prudence and foresight in accordance with good industry practice and any target key performance or quality indicators specified by the Council; and both shall conform in all respects with the Purchase Order and/or Tender and/or the Specification supplied by the Council to the Supplier and all other warranties, conditions or terms relating to the fitness for purpose, quality or condition of the Goods and/or Services implied by statute or common law apply in relation to the Contract and may not be excluded.
- 3.2. The Supplier shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging and delivery of the Goods. The Council’s rights under these conditions are in addition and without prejudice to the Council’s rights under the Sale of Goods Act 1979 and any other applicable legislation (as amended).
- 3.3. The Supplier warrants that title to the Goods is free from all encumbrances and that the Supplier has the right to sell the same.
- 3.4. At any time prior to delivery of the Goods, the Council shall have the right to inspect and/or test the Goods.
- 3.5. If as a result of inspection and/or testing of the Goods, the Council is not satisfied that the Goods will comply in all respects with the Purchase Order and/or the Tender and/or the Specification, the Council may:
- 3.5.1. inform the Supplier of its opinion and the Supplier shall take such steps as are necessary to ensure compliance; or
- 3.5.2. cancel the Purchase Order and terminate the Contract at any time prior to the delivery of the Goods,
- in each case without penalty or other obligation to compensate the Supplier for losses it has and/or may incur.
- 3.6. The Goods shall be marked in accordance with the Council’s instructions and any applicable regulation or requirement of the carrier and properly packed and secured so as to reach their destination in an undamaged condition.

4. PRICE

- 4.1. The Price of the Goods and/or Services shall be as stated in the Purchase Order and/or the Tender and, unless otherwise so stated, shall be exclusive of any applicable Value Added Tax but inclusive of all other charges including but not limited to those relating to delivery and (where applicable) installation.
- 4.2. No variation to the Price or extra charges shall be made without the Council’s prior written consent.

5. PAYMENT

- 5.1. The Supplier shall invoice the Council with the Price in pounds sterling (£) and shall include:
- 5.1.1. an invoice date and invoice number;
- 5.1.2. the period to which the invoice relates;
- 5.1.3. details of the Goods and/or Services for which payment is claimed;
- 5.1.4. any VAT payable, with a breakdown showing the net figure, the VAT amount and the gross figure;
- 5.1.5. a VAT registration number if VAT registered;
- 5.1.6. a valid purchase order number as issued by the Council;
- 5.1.7. the Supplier’s vendor/supplier number as set out in the Purchase Order issued by the Council;
- 5.1.8. the Supplier’s full business name and address; and
- 5.1.9. the name and address of the Council.
- 5.2. The Supplier must submit all invoices electronically via the Council’s e-invoicing system.
- 5.3. In the event electronic submission is not possible the Supplier may, with prior written notice to the Council, submit invoices to: invoices@southoxon.gov.uk
- 5.4. Unless otherwise stated in the Purchase Order and/or the Request for Quote (‘RFQ’), the Council shall pay the Price by BACS (unless otherwise agreed in writing), within 30 days of

receipt by the Council of a valid invoice following successful delivery of the Goods and/or Services in accordance with the Purchase Order and/or RFQ.

- 5.5. The Council shall advise the Supplier in writing of any discrepancy between the amount stated in the invoice and the amount properly due to the Supplier. The Supplier shall reissue the invoice showing the correct amount within seven (7) days of such notification.
- 5.6. Without prejudice to any other right or remedy, the Council reserves the right to set-off against its indebtedness to the Supplier any debt owed to it by the Supplier and any liabilities, damages, losses, costs, charges and expenses which it has incurred as a consequence of any breach by the Supplier of the Contract or any other contract with the Council.
- ## 6. DELIVERY
- 6.1. The Goods shall be delivered, carriage paid, to the Council’s place of business as stated on the Purchase Order, or to such other place of delivery as is agreed between the parties in writing prior to delivery of the Goods.
- 6.2. The Supplier will deliver the Goods during normal business hours and the Supplier shall off-load the Goods at its own risk.
- 6.3. Where the date of delivery of the Goods is not specified by the Council, the Supplier shall give the Council reasonable notice of the specified date.
- 6.4. The time of delivery of the Goods is of the essence of the Contract.
- 6.5. A packing note quoting the number of the Purchase Order must accompany each delivery or consignment of the Goods and must be displayed prominently. Unless otherwise agreed, signed proof of delivery will be required.
- 6.6. The Council shall be entitled to reject any Goods delivered which are not strictly in accordance with the Purchase Order and/or the Tender and/or the Specification and the Contract; the Council shall not be deemed to have accepted any Goods until the Council has had a reasonable time to inspect them following delivery or (where applicable) within a reasonable time after installation or assembly of the Goods or any latent defect in the Goods has become apparent.
- 6.7. If the Supplier requires the Council to return any packaging material to them, that fact must be clearly stated on any delivery note and any such packaging material shall only be returned to the Supplier at the Supplier’s own cost which shall be payable in advance.
- 6.8. On dispatch of any consignment of Goods, the Supplier shall send the Council an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume.
- 6.9. The Supplier shall, free of charge and within 5 working days either repair or replace (as the Council shall elect) such of the Goods as may either be damaged in transit or have been placed in transit but have failed to be delivered to the Council provided that:
- 6.9.1. in the case of damage to the Goods in transit, the Council shall within a reasonable period of delivery give notice to the Supplier that the Goods have been damaged; and
- 6.9.2. in the case of non-delivery of the Goods, the council shall (provided that the Council have been advised of the dispatch of the Goods and their date of delivery) within a reasonable period of the notified date of delivery give notice to the Supplier that the Goods have not been delivered.
- 6.10. In the event that the Supplier does not comply with the provisions of clause 3.1 (2), the Council may serve the Supplier with a notice in writing setting out the details of the underperformance and the remedial measures the Supplier must take within a reasonable specified period of time. If the remedial measures are not taken by the Supplier, in the specified time to the satisfaction of the Council, the Council reserves the right to invoke the provisions of clause 12.

7. RISK AND PROPERTY

- 7.1. The Goods shall remain at the Supplier’s risk until delivery to the Council is complete, the Council has accepted the Goods in accordance with clause 6.6 and payment has been made when ownership and title of the Goods shall pass to the Council.
- 7.2. If the Council rejects any of the Goods pursuant to clause 6.6, the Council shall be entitled (without prejudice to any other rights and remedies):
- 7.2.1. to have the Goods either repaired by the Supplier or (if the Council shall elect) replaced by the Supplier with Goods which comply in all respects with the requirements specified; or
- 7.2.2. to obtain a refund from the Supplier.
- 7.3. The guarantee period applicable to the Goods shall be 12 months from putting into service or 18 months from delivery, whichever shall be the longer (subject to any longer written guarantee arrangements agreed in writing between the parties). If the Council shall within such guarantee period or within 30 days thereafter give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such guarantee period under the proper and normal use of the Goods, the Supplier shall (without prejudice to any other rights and remedies which the Council may have) remedy such defects within 5 working days (whether by repair or replacement as the Council shall elect) without cost to the Council.
- 7.4. Any Goods rejected or returned by the Council shall be returned to the Supplier at the Supplier’s own risk and expense.

8. AUDIT AND CORRUPT GIFTS OR PAYMENTS

- 8.1. The Supplier shall keep and maintain records of the payments made to them by the Council for 6 years following expiry of the Contract.
- 8.2. The Supplier shall not offer or give, or agree to give, to any officers or representatives of the Council any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other contract with the Council or for showing or refraining from showing favour or disfavour to any person in relation to this or any such contract. The Supplier’s attention is drawn to the criminal offences created by the Bribery Act 2010, section 117(2) of the Local Government Act 1972 and the offences listed in regulation 57(1) of the Public Contracts Regulations 2015.

9. INDEMNITY

Terms and Conditions for the Supply of Goods and Services – South Oxfordshire District Council

- 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/or Services; 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 and/or Services as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the Contract by the Supplier.
- 9.2. The Supplier shall hold appropriate insurance sufficient to cover the liabilities referred to above including Product Liability Insurance of a minimum of £2,000,000 (TWO MILLION POUNDS) for each single incident.
10. **CONFIDENTIALITY**
- 10.1. The Supplier shall keep in strict confidence all documents, information, technical and/or commercial know-how, specifications, inventions, processes and initiatives which are of a confidential nature and have been disclosed to the Supplier by the Council or the Council's agents and any other confidential information concerning the Council's business or services which the Supplier may obtain or be made aware of, and the Supplier shall restrict disclosure of such confidential material to such of the Supplier's employees or agents as need to know the same for the sole purpose of discharging the Suppliers obligations to the Council and shall ensure that such employees or agents are subject to like obligations of confidentiality as bind the Supplier.
11. **COUNCIL PROPERTY**
- 11.1. All property (including land and buildings), materials, equipment, tools, copyright, design rights or any other forms of intellectual property rights in all drawings, specifications and data supplied by the Council to the Supplier or not so supplied but used by the Supplier specifically in the manufacture or development of the Goods shall at all times be and remain the Council's exclusive property but shall be held by the Supplier in safe custody at the Supplier's risk and maintained and kept in good condition by the Supplier until returned to the Council and shall not be disposed of other than in accordance with the Council's written instructions, nor shall such items be used otherwise than as authorised by the Council in writing.
12. **TERMINATION**
- 12.1. The Council shall be entitled to cancel the Purchase Order or terminate the Contract in respect of all or part only of the Goods by giving notice to the Supplier 3 days prior to delivery, in which event the Council shall not be liable for payment for Goods not delivered, loss of anticipated profits or any consequential loss.
- 12.2. The Council shall be entitled to terminate the Contract immediately without liability if:
- 12.2.1. the Supplier commits a material breach of any of the terms and conditions of the Contract;
- 12.2.2. the Supplier has a bankruptcy order made against it or has made an arrangement with its creditors or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors or (being a body corporate) has convened a meeting of creditors or enters into liquidation or has a receiver or an administrative receiver appointed or is the subject of similar procedures under the law of any other state or a resolution is passed or a petition presented to any court for the Supplier's winding up, or for the granting of an administration order, or any proceedings are commenced relating to the Supplier's insolvency or possible insolvency;
- 12.2.3. the Supplier ceases or threatens to cease to carry on business;
- 12.2.4. the Council reasonably apprehends that any of the events mentioned above are about to occur;
- 12.2.5. in the Council's opinion the Supplier has abandoned the Contract; or
- 12.2.6. the Supplier, their employee or anyone acting on their behalf breaches clause 6.10 or 8.2 of these terms and conditions.
- 12.3. The termination of the Contract, howsoever arising, shall be without prejudice to the rights and duties of the parties accrued prior to termination.
13. **SUBSTITUTE SUPPLIER**
- 13.1. The Council may engage a substitute supplier if:
- 13.1.1. the Supplier fails to deliver the Goods or part of the Goods within the timescales set out in the Purchase Order and/or the Specification; or
- 13.1.2. the Goods or part of the Goods fail to meet the requirements set out in the Specification or are not fit for purpose.
- 13.2. Where the Council engages a substitute supplier, the Council must notify the Supplier in respect of the Supplier's failure and raise a Purchase Order with a substitute supplier of the Council's choice to supply the Goods or part of the Goods as applicable.
- 13.3. Where the Council has notified the Supplier in accordance with clause 13, the Council may recover from the Supplier any costs, losses, damages and expenses incurred by the Council because of the failure of the Supplier together with any costs and expenses incurred over and above the amount which the Council had originally agreed to pay to the Supplier for the supply of the Goods.
14. **SUSTAINABLE PROCUREMENT AND EQUALITY**
- 14.1. The Council is committed to purchasing sustainable products and services wherever possible and the Council will give appropriate weighting to sustainable Goods and Services in the purchasing process.
- 14.2. To support the Council in its delivery of sustainable procurement, the Supplier shall without prejudice:
- 14.2.1. 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 Services including but not limited to the provisions of this clause 14;
- 14.2.2. 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;
- 14.2.3. promptly provide all such information regarding the environmental impact of any Goods or Services supplied or used under the Contract as may reasonably be required by the Council to permit informed choices by end users.
- 14.3. The Supplier shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of the equality legislation in force from time to time, in particular the Equality Act 2010, the Human Rights Act 1998 and the Modern Slavery Act 2015.
- 14.4. The Supplier shall ensure that:
- 14.4.1. its operations comply with all applicable environmental laws from time to time ('Environmental Law'), including in relation to waste disposal, GHG emissions and the handling of hazardous and toxic materials;
- 14.4.2. the goods it manufactures (including the inputs and components that it incorporates into its goods) comply with Environmental Law;
- 14.4.3. it will only use packaging materials that comply with Environmental Law.
- 14.5. The Supplier shall, in performing its obligations under this agreement use all reasonable endeavours to limit its use of single use plastics and to minimise the release of GHG emissions, air pollutants and other substances damaging to health and the environment in providing the Services taking into account factors including the locations from which materials are sourced, transport of materials, work-related travel by it's personnel, emissions from Supplier offices and equipment.
15. **GENERAL**
- 15.1. 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 the Best Value duty by actively promoting, supporting and assisting the Council in meeting its Best Value duty arising out of the Contract
- 15.2. 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 2004 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 the 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.
- 15.3. The Supplier acknowledges that the Council has a duty under the Counter Terrorism and Security Act 2015 ("CTSA 2015") to have due regard to the requirement to prevent people from being drawn into terrorism ("Prevent Duty"). The Supplier shall, and shall procure that its representatives shall, give all reasonable assistance and support to the Supplier in meeting its duty as a specified authority pursuant to the CTSA 2015 (and all regulations made thereunder) and the Supplier shall have regard to the statutory guidance issued under section 29 of the CTSA 2015
- 15.4. The Supplier and the Council shall each comply with their respective obligations under the Data Protection Act 2018, the General Data Protection Regulations and other applicable statutory provisions or provision of any European directive in respect of data and records containing personal information. Where the Supplier or the Council process any personal data as part of the Specification, a separate data sharing or processing agreement (as appropriate) shall be drawn up and form a Schedule to these terms and conditions and the Contract shall incorporate the Schedule as part of these terms and conditions.
- 15.5. The Supplier shall allow persons nominated by the Council access to all management records and documents in the possession of the Supplier in connection with the performance of the Contract, including all accounting records and financial information in the possession, custody or control of the Supplier or the Suppliers' auditors
- 15.6. The Supplier shall not be entitled to assign the Contract or any part of it or sub-contract any of its obligations without the Council's prior written consent.
- 15.7. The Council reserves the right to defer the date of payment or to cancel the Contract or reduce the volume of Goods ordered without liability if the Council is prevented from or delayed in carrying out the project or business for which the Goods are required due to circumstances beyond the Council's reasonable control.
- 15.8. Any waiver by the Council of any breach of or default under the Contract by the Supplier shall not be considered as a waiver of any subsequent breach or default of the Contract.
- 15.9. 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.
- 15.10. If any provision of the 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.
- 15.11. The Contract shall be subject to English Law in all respects (including formation) and shall be construed and interpreted in accordance with English Law and shall be subject to the jurisdiction of the Courts of England
- 15.12. This document supersedes all prior agreements, save the Councils Standard Terms and Conditions of Contract as listed in clause 2.1 above and prevails over any other terms and conditions including but not limited to any standard conditions printed and/or contained on any invoice or quotation submitted by the Supplier.

Terms and Conditions for the Supply of Goods and Services – South Oxfordshire District Council

- 15.13. In performing its obligations under the Contract the Supplier shall:
- 15.13.1. comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force (Anti-Slavery Laws) including but not limited to the Modern Slavery Act 2015 and shall comply with and assist the Council in complying with any modern slavery policy the Council may implement from time to time.
 - 15.13.2. shall comply with and assist the Council in complying with any safeguarding policy the Council may implement from time to time
16. **FORCE MAJEURE**
- 16.1. If a Force Majeure event (as described in Clause 16.2) arises on or following the date of the Contract which directly causes the Supplier to be materially unable to comply with any of its obligations hereunder, the Supplier and the Council may agree such terms as are appropriate for the continued performance of the Contract. If no such terms are agreed within one month of the commencement of the said event, and such event is continuing or its consequence remains such that the Supplier is materially unable to comply with its obligations, the Parties hereby agree that the Contract shall thereupon terminate, subject to the provisions of Clause 12 (Termination). Failure by the Supplier to comply with its contractual obligations by reason of a Force Majeure event shall not constitute a breach of contract.
- 16.2. The events which are to be classified as Force Majeure events shall include each of the following:
- 16.2.1. war, civil war, civil commotion or riots, conflict or terrorist attack, threat of or preparation for war, armed conflict, imposition of sanctions, embargo or breaking off of diplomatic relations arising within and affecting the United Kingdom;
 - 16.2.2. nuclear, chemical or biological contamination or sonic boom;
 - 16.2.3. acts of God, flood, drought, earthquake or other natural disaster;
 - 16.2.4. any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
 - 16.2.5. any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party);
 - 16.2.6. interruption or failure of utility service;
 - 16.2.7. collapse of buildings, fire, explosion or accident;
 - 16.2.8. epidemic or pandemic
 - 16.2.9. pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds; or
 - 16.2.10. any circumstances beyond the reasonable control of either of the parties.
- 16.3. The Parties hereby agree that the definition of Force Majeure event shall not include the novel coronavirus Covid-19 pandemic, which is ongoing as of the date of the execution of the Contract.
17. **SOCIAL VALUE**
- 17.1. The Council is committed to delivering social value for its residents. This means having regard to:
- 17.1.1. economic, social and environmental wellbeing as set out in the Public Service (Social Value) Act 2012 (as amended or replaced) in relation to public services contracts ('Social Values'); and
 - 17.1.2. any other values or specific requirements set out in its social value policy from time to time ('Social Value Policy')
- 17.2. The Supplier shall comply with and assist the Authority in complying with delivering the Social Value Policy and Social Values.
18. **BREXIT**
- 18.1. 'Brexit' means the UK ceasing to be a member state of the European Union on 31 January 2020 and ceasing, on 31 December 2020, to be subject to the transition or implementation arrangements provided for by Part 4 of the withdrawal agreement between the UK and the European Union under Article 50(2) of the Treaty of the European Union which sets out the arrangements for the UK's withdrawal from the European Union