

Eastbourne Borough Council Terms and Conditions for the Supply of Goods and Services

1. DEFINITIONS AND INTERPRETATION

- 1.1. The definitions and rules of interpretation in this clause apply in these conditions;
- Contract:** means the contract between You and Us consisting of these conditions and (where applicable) the Quotation, the Purchase Order and the Specification;
- Goods:** means the goods described in the Specification, Purchase Order and/or Quotation;
- Intellectual Property Rights:** means patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, 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;
- Partner Council:** Lewes District Council of 6 High Street, Lewes, BN7 2AD;
- Price:** means the fee to be paid to You under the Contract;
- Purchase Order:** means the purchase order generated (where applicable) by Us for the Goods and/or Services;
- Quotation:** means Your offer (including the Price) to provide the Goods and/or Services to Us;
- Services:** the services described in the Specification, Purchase Order and/or Quotation;
- Specification:** means the document which sets out Our requirements in relation to the Goods and/or Services;
- We, Us, Our:** means Eastbourne Borough Council, as set out in the Purchase Order;
- You, Your:** means the person, company, form or partnership who has accepted Our Purchase Order for the Goods/Services, as identified in the Purchase Order.

2. APPLICATION OF TERMS AND CONDITIONS

- 2.1. These conditions are Our standard terms and conditions which will govern the Contract between You and Us to the entire exclusion of all other terms and conditions unless any other contract terms have been agreed between You and Us in writing.

3. Supply of Goods and/or Services

- 3.1 From the date of the Purchase Order (or such other date as may be set out in the Purchase Order), and for the duration of the Contract, You must provide the Goods and/or Services to Us in accordance with the terms of the Contract.
- 3.2 You must meet any performance dates for the Services and any delivery dates for the Goods set out in the Purchase Order and/or the Specification and time is of the essence in relation to any of those performance dates.
- 3.3 You must ensure that at all times You have and maintain all the licences, permissions, authorisations, consents and permits that You need to carry out Your obligations under the Contract.
- 3.4 In providing the Services, You must:
- (a) co-operate with Us in all matters relating to the Services, and comply with all Our reasonable instructions;
- (b) perform the Services with reasonable care, skill and diligence and in accordance with best practice in Your industry, profession or trade;
- (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that You fulfil Your obligations in accordance with the Contract;
- (d) ensure that the Services will conform with all descriptions, standards and specifications set out in the Specification;
- (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- (f) use good quality goods, materials, standards and techniques, and ensure that all goods and materials supplied and used in the Services or transferred to Us, will be free from defects in manufacture, installation and design;
- (g) obtain and at all times maintain all licences and consents which may be required for the provision of the Services;

- (h) comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply from time to time to the provision of the Services, and with the Mandatory Policies;
- (i) observe all health and safety rules and regulations and any other security requirements that apply at any of Our premises;
- (j) hold all materials, equipment and tools, drawings, specifications and data supplied by Us to You (**Customer Materials**) in safe custody at Your own risk, maintain the Customer Materials in good condition until returned to Us, and not dispose or use the Customer Materials other than in accordance with Our written instructions or authorisation;
- (k) not do or omit to do anything which may cause Us to lose any licence, authority, consent or permission on which We rely for the purposes of conducting Our business, and You acknowledge that We may rely or act on the Services; and
- (l) comply with any additional obligations as set out in the Specification.

- 3.5 In providing the Goods, You must ensure that the Goods:
- (a) correspond with their description and any applicable Specification;
- (b) are of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by You or made known to You by Us expressly or by implication, and in this respect, We rely on Your skill and judgement;
- (c) where they are manufactured products, are free from defects in design, material and manufacture and remain so for 12 months after delivery; and
- (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

- 3.6 We may inspect and test the Goods at any time before delivery. You remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing does not reduce or otherwise affect Your obligations under the Contract.

- 3.7 If following such inspection or testing We consider that the Goods do not conform or are unlikely to comply with Your commitments at clause 3.5, We may inform You and You must immediately take such remedial action as is necessary to ensure compliance.

- 3.8 We may conduct further inspections and tests after You have carried out Your remedial actions.

- 3.9 You warrant that title to the Goods is free from all encumbrances and that You have the right to sell the Goods.

4. PRICE

- 4.1 The Price of the Goods is stated in the Purchase Order and/or the Quotation and, unless otherwise so stated, it is 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 You may not vary the Price or require the payment of extra charges without Our prior written consent.

5. PAYMENT

- 5.1. You must invoice Us with the Price in pounds sterling (£) and You must 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 Us;
- 5.1.7. Your vendor/supplier number as set out in the Purchase Order issued by Us;
- 5.1.8. Your full business name and address; and
- 5.1.9. Our name and address.
- 5.2. You must submit all invoices electronically to: EBCinvoice@lewes-eastbourne.gov.uk.
- 5.3. Unless otherwise stated in the Purchase Order and/or the Quotation, We will pay the Price by BACS (unless otherwise agreed in writing) within 30 days of receipt by Us of a valid invoice, following successful delivery of the Goods and/or Services in accordance with the Purchase Order and/or Quotation.

- 5.4. We will advise You in writing of any discrepancy between the amount stated in the invoice and the amount properly due to You. You must reissue the invoice showing the correct amount within seven (7) days of such notification.
- 5.5. Without prejudice to any other right or remedy, We reserve the right to set-off against any sums We owe to You the amount of any debt owed to Us by You and any liabilities, damage, losses, costs, charges and expenses which We have incurred because of any breach by You of the Contract or any other contract with Us.

6. DELIVERY OF THE GOODS

- 6.1. The Goods must be delivered, carriage paid, to Our 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. You must deliver the Goods during normal business hours and You must off-load the Goods at Your own risk.
- 6.3. Where the date of delivery of the Goods is not specified by Us, You must give Us 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. We will be entitled to reject any Goods delivered which are not strictly in accordance with the Purchase Order and/or the Quotation and/or the Specification and the Contract; We will not be deemed to have accepted any Goods until We have had a reasonable time to inspect them following delivery or (where applicable) within a reasonable time after any latent defect in the Goods has become apparent.
- 6.7. If You require Us to return any packaging material to You, that fact must be clearly stated on any delivery note and any such packaging material will only be returned to You at Your own cost which must be paid in advance.
- 6.8. On dispatch of any consignment of Goods, You must send Us 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. You must, free of charge and within 5 working days either repair or replace (as We 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 Us provided that:
- 6.9.1. in the case of damage to the Goods in transit, We must within a reasonable period of delivery give You notice to that the Goods have been damaged; and
- 6.9.2. in the case of non-delivery of the Goods, We must (provided that We 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 You notice that the Goods have not been delivered.

7. RISK AND PROPERTY IN THE GOODS

- 7.1. The Goods will remain at Your risk until delivery to Us has been completed, We have accepted the Goods and payment has been made when ownership and title of the Goods will pass to the Us.
- 7.2. We may reject any Goods by written notice to You where they fail to meet the requirements specified in the Purchase Order and/or the Quotation and/or the Specification or any other written document. We must give such notice within a reasonable time after delivery of the Goods. If We reject any of the Goods pursuant to this clause We will be entitled (without prejudice to any other rights and remedies):
- 7.2.1. to have the Goods either repaired by You or (if We decide) replaced by You with Goods which comply in all respects with the requirements specified; or
- 7.2.2. to obtain a refund from You.
- 7.3. The guarantee period applicable to the Goods is 12 months from putting into service or 18 months from delivery, whichever is the

longer (subject to any longer written guarantee arrangements agreed in writing between the parties). If We, within such guarantee period or within 30 days thereafter, give You notice in writing of any defect in any of the Goods which has arisen during such guarantee period under the proper and normal use of the Goods, You must (without prejudice to any other rights and remedies which We may have) remedy such defects within 5 working days (whether by repair or replacement as We may decide) without cost to Us.

- 7.4. Where We reject or return any Goods, they will be returned to You at Your own risk and expense.

- 7.5. These conditions will apply to any repaired or replacement Goods that You supply to Us.

8. AUDIT AND CORRUPT GIFTS OR PAYMENTS

- 8.1. For 6 years following expiry of the Contract, You must keep and maintain records of the payments We have made to You.
- 8.2. You must allow Us or persons nominated by Us access to all management records and documents in Your possession in connection with the performance of the Contract, including all accounting records and financial information which You or Your auditors have in your respective possession, custody or control.
- 8.3. You must not offer or give, or agree to give, to any of Our officers or representatives 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 Us or for showing or refraining from showing favour or disfavour to any person in relation to this or any such contract. Your 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 and the Procurement Act 2023.

9. Intellectual property rights

- 9.1. You will own all Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any Customer Materials).
- 9.2. You grant to Us, or agree to procure the direct grant to Us of, a fully paid-up, worldwide, non-exclusive, royalty-free, perpetual and irrevocable licence to copy and modify the Intellectual Property Rights in the Services (excluding Customer Materials).

10. INDEMNITY AND INSURANCE

- 10.1. You must keep Us 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 Us as a result of or in connection with:
- 10.1.1. defective work, quality and/or materials evidenced in the Goods and/or Services;
- 10.1.2. 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
- 10.1.3. any claim made against Us in respect of any liability, loss, damage, injury, cost or expense sustained by Us, Our 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 Your direct or indirect breach or negligent performance or failure or delay in performance of the Contract.

- 10.2. You must hold appropriate insurance sufficient to cover the liabilities referred to above including professional indemnity insurance (where the provision of the Goods or Services involves You in giving Us professional advice), public liability insurance and Product Liability Insurance, in each case for a minimum of £1 million for each claim.

11. **CONFIDENTIALITY**

- 11.1. You must 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 You by Us or Our agents and any other confidential information concerning Our business or services which You may obtain or be made aware of, and You must restrict disclosure of such confidential material to such of Your employees or agents as need to know the same for the sole purpose of discharging Your obligations to Us and You must ensure that such employees or agents are subject to like obligations of confidentiality as bind You.

12. **COUNCIL PROPERTY**

- 12.1. 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 Us to You or not so supplied but used by You specifically in the manufacture or development of the Goods will at all times be and remain Our exclusive property but and You agree to hold it in safe custody at Your risk and to maintain and keep it in good condition until returned to Us and You must not dispose of it other than in accordance with Our written instructions, nor must such items be used otherwise than as authorised by Us in writing.

13. **TERMINATION**

- 13.1. We will be entitled to cancel the Purchase Order or terminate the Contract in respect of all or part only of the Goods or Services by giving notice to You three (3) days prior to delivery/supply, in which event We will not be liable for payment for Goods or Services not delivered, loss of anticipated profits or any consequential loss.
- 13.2. We will be entitled to terminate the Contract immediately without liability if:
- 13.2.1. You commit a material breach of any of the terms and conditions of the Contract;
- 13.2.2. You have a bankruptcy or insolvency order made against You or You make an arrangement with Your creditors or otherwise take the benefit of any statutory provision for the time being in force for the relief of insolvent debtors or (if You are a body corporate) You convene a meeting of creditors or enter into liquidation or have a receiver or an administrative receiver appointed or You are 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 Your winding up, or for the granting of an administration order, or any proceedings are commenced relating to Your insolvency or possible insolvency;
- 13.2.3. You cease or threaten to cease to carry on all or a substantial part of Your business;
- 13.2.4. We reasonably anticipate that any of the events mentioned above are about to occur;
- 13.2.5. in Our opinion You have abandoned the Contract; or
- 13.2.6. You, Your employees or anyone acting on Your behalf corruptly offers, gives or agrees to give to anyone any inducement or reward in respect of this or any other authority contract (even if You do not know this has been done), or commits an offence under the Bribery Act 2010, Section 117(2) of the Local Government Act 1972 or as listed in regulation 57(1) of the Public Contracts Regulation 2015 or the Procurement Act 2023, when in force.
- 13.3. The termination of the Contract, howsoever it occurs, does not affect the rights and duties of the parties that have come into existence before termination.

14. **SUBSTITUTE SUPPLIER**

- 14.1. We may engage a substitute supplier if:
- 14.1.1. You fail to deliver the Goods and/or Services within the timescales set out in the Purchase Order and/or the Specification; or
- 14.1.2. the Goods and/or Services fail to meet the requirements set out in the Specification or are not fit for purpose.

- 14.2. Where We engage a substitute supplier, We will notify You in respect of Your failure and raise a Purchase Order with a substitute supplier of Our choice to supply the Goods and/or Services.

- 14.3. Where We have notified You in accordance with clause 14.2, We may recover from You any costs, losses, damages and expenses incurred by Us because of Your failure, together with any costs and expenses incurred over and above the amount which We had originally agreed to pay to You for the supply of the relevant Goods and/or Services.

15. **SUSTAINABLE PROCUREMENT AND EQUALITY**

- 15.1. We are committed to purchasing sustainable products wherever possible and We will give appropriate weighting to sustainable products in the purchasing process.
- 15.2. To support Us in Our delivery of sustainable procurement, You must:
- 15.2.1. comply with all Our reasonable stipulations aimed at minimising product packaging directly provided to Us as part of the performance of the Services or the provision of the Goods;
- 15.2.2. manage electrical equipment and associated consumables at end of life to facilitate recovery, treatment, recycling and provide any information which We may reasonably require from time to time regarding the costs of such activity;
- 15.2.3. promptly provide all such information regarding the environmental impact of any products supplied or used under the Contract as may reasonably be required by Us to permit informed choices by end users.
- 15.3. You must 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 You must not unlawfully discriminate within the meaning and scope of the equality legislation in force from time to time, in particular the Equality Act 2010.

16. **GENERAL**

- 16.1. You acknowledge that We are subject to the Best Value duty imposed on Us by Part 1 of the Local Government Act 1999 and You must throughout the Contract assist Us in discharging the Best Value duty by actively promoting, supporting and assisting Us in meeting Our Best Value duty arising out of the Contract.
- 16.2. You acknowledge and accept that We are subject to legal duties which may require the release of Information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 or any other applicable legislation or codes governing access to information and that We may be under an obligation to provide information on request. Such information may include matters relating to, arising out of or under the Contract. You will assist Us to enable Us to comply with Our obligations under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 or other applicable legislation governing access to information. If We release information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, or any other applicable legislation, this will not be a breach of the terms of the Contract.
- 16.3. You acknowledge and accept that We have 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"). You must, give Us all reasonable assistance and support in meeting Our duty as a specified authority pursuant to the CTSA 2015 (and all regulations made thereunder) and You must have regard to the statutory guidance issued under section 29 of the CTSA 2015.
- 16.4. You and We must each comply with our respective obligations under the Data Protection Act 2018, the General Data Protection Regulations and other applicable statutory provisions or guidance in respect of data and records containing personal information.
- 16.5. You must not assign the Contract or any part of it or sub-contract any of Your obligations without Our prior written consent.
- 16.6. We reserve the right to defer the date of payment or to cancel the Contract or reduce the volume of Goods and/or Services ordered without liability if We are prevented from or delayed in the carrying

on the project or business for which the Goods and/or Services are required due to circumstances beyond Our reasonable control.

- 16.7. Any waiver by Us of any breach of or default under the Contract by You is not to be considered as a waiver of any subsequent breach or default of the Contract.
- 16.8. If We fail to enforce or delay enforcing or We only partially enforce any provision of the Contract this will not amount to a waiver of any of Our rights under the Contract.
- 16.9. If a competent authority holds that any provision of the Contract is 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 will continue in full force and effect.
- 16.10. The Contract is subject to English Law in all respects (including formation) and is to be construed and interpreted in accordance with English Law and will be subject to the jurisdiction of the Courts of England.
- 16.11. Except as set out in these conditions, no variation of the Contract, including the introduction of any additional terms and conditions, will be effective unless it is agreed in writing and signed by Us.
- 16.12. The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract except that, where We are procuring the Goods and/or Services on behalf of the Partner Council, the Partner Council has the right to enforce all the terms of the Contract. The rights of the parties to rescind or vary this agreement are not subject to the consent of any other person, including the Partner Council.
- 16.13. If there is any conflict or ambiguity between these terms and conditions and the Specification, the Purchase Order or the Quotation, the following order of priority shall apply: (a) these terms and conditions; (b) Specification; (c) Purchase Order and (d) Quotation, unless We notify You of a different order of priority.
- 16.14. The Contract supersedes all prior agreements of whatever nature 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 that You submit to Us.

17. **FORCE MAJEURE**

- 17.1. Neither party will be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure results from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for two weeks, the party not affected may terminate the Contract by giving seven (7) days' written notice to the affected party.