

## **SUPPLY OF GOODS**

### **GENERAL CONDITIONS OF CONTRACT**

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This Agreement is made this                      day of                      20[                      ]

BETWEEN:

**(1) EASTLEIGH BOROUGH COUNCIL** of Eastleigh House, Upper Market Street, Eastleigh, Hampshire, SO50 9YN ("the Council")

and

**2) [                      ]** of [                      ] OR [Company Number [                      ] and whose registered offices is at [                      ] ("the Supplier"),

## 1. DEFINITIONS

In the Conditions unless the context otherwise requires the following definitions shall apply.

**“Authority”** means Eastleigh Borough Council and where the context permits, reference to the Authority in these Terms and Conditions shall include reference to an employee of the Authority.

**“Goods”** means the goods described in the Purchase Order.

**“Order Number”** means the unique number that appears on the Purchase Order.

**“Parties”** means the Authority and the Supplier.

**“Price”** means the price for the goods given in the Purchase Order.

**“Purchase Order”** means an order for the purchase of goods served by the Authority on the Supplier which includes a description of the goods, the price and any terms applying to the purchase of the goods which are additional to these Terms and Conditions.

**“Supplier”** means the person, firm or company whose name appears as the addressee in the Purchase Order.

**“Terms and Conditions”** means these terms and conditions for the supply of goods.

## 2. GENERAL

2.1 These Terms and Conditions together with the relevant Purchase Order, any specifications and plans provided by the Authority and any specific guarantee arrangements applying to the Goods constitute the contract between the Parties for the supply of the Goods (“the Contract”).

2.2 In the event of any conflict between a clause in these Terms and Conditions and a term of the Purchase Order, the term of the Purchase Order shall prevail.

- 2.3 The Contract constitutes the entire agreement between the parties relating to the supply of Goods and replaces all previous negotiations, agreements, understandings and representations whether oral or in writing. However nothing in the Contract shall limit or exclude any liability for fraud.

### **3. THE SERVICES**

- 3.1 The Contractor shall provide the Goods in accordance with the Purchase Order.
- 3.2 The Goods shall:
- a. be to the reasonable satisfaction of the Authority;
  - b. be fit and sufficient for all purposes for which such Goods are generally used and for any specific purpose made known to the Supplier by the Authority;
  - c. be of the same quality and description as any sample provided;
  - d. comply with any requirements or specifications given on the Purchase Order.

### **4. DELIVERY**

- 4.1 The Supplier shall deliver the Goods to the address for delivery given in the Purchase Order.
- 4.2 Where the Supplier requires access to the Authority's premises in order to deliver the Goods:
- a) The Supplier shall agree delivery times with the Authority in advance (unless the Authority agrees otherwise);
  - b) The Supplier shall comply with any rules or security requirements applied by the Authority in relation to access to its premises.
- 4.3 Except where otherwise agreed by the Authority, delivery of the Goods shall include unloading the Goods at such place and in such manner as the Authority shall reasonably direct.
- 4.4 The Supplier shall deliver the Goods on or (where the Authority agrees) before the date or dates given in the Purchase Order. Unless the Purchase Order provides otherwise, the time of delivery is of the essence in this Contract and any failure to deliver the Goods by the date (or at the time) given in the Purchase Order shall entitle the Authority to give the Supplier notice terminating the Contract with immediate effect.

### **5. PROPERTY AND RISK**

- 5.1 Without prejudice to the Authority's other rights and remedies under this Contract, property and risk in the Goods shall pass to the Authority on acceptance of delivery.

### **6. DAMAGE TO GOODS IN TRANSIT**

- 6.1 Any consignment of Goods dispatched by the Supplier for delivery to the Authority shall be accompanied by a delivery note prepared by the Supplier marked with the order number from the Purchase Order. Where applicable, the delivery note shall also specify the means of transport, the place and date of delivery, the number packages, the content of the packages, the weight and volume of the packages and whether or not the packaging must be returned to the Supplier.
- 6.2 Where some or all of the Goods have been damaged in transit (or have failed to arrive at the Authority after dispatch by the Supplier) the Supplier shall either repair or replace the Goods in question (at the choice of the Authority) provided always that:
- a) in the case of damage in transit the Authority has informed the Supplier of the damage within 30 days of receiving the Goods;
  - b) In the case of non-delivery and where the Supplier has notified the Authority of the intended date of delivery, the Authority has informed the Supplier within 10 days of the notified delivery date that the Goods have not been received.

## **7. INSPECTION, REJECTION AND GUARANTEE**

- 7.1 The Supplier shall permit the Authority to inspect the Goods and shall provide all reasonable assistance to the Authority in undertaking an inspection.
- 7.2 The Authority shall not be taken to have waived any of its rights under this Contract (and in particular its right to reject the Goods) if it does not carry an inspection or if it approves the Goods following an inspection.
- 7.3. The Authority may, by written notice to the Supplier, reject any of the Goods which fail to meet the requirements of this Contract provided always that the Authority gives such notice within a reasonable time of receiving the Goods.
- 7.4 If the Authority rejects any of the Goods pursuant to this clause, it shall be entitled:
- a) to have the Goods concerned either repaired by the Supplier or (at the choice of the Authority) replaced by the Supplier with Goods which comply with this Contract; or
  - b) to obtain a refund of any payment it has made to the Supplier.
- 7.5 Subject to any alternative guarantee arrangements made between the Authority and the Supplier, the guarantee period applicable to the Goods shall be 12 months from the Authority putting the Goods into service or 18 months from delivery (whichever is shorter).
- 7.6 If, within the guarantee period or within 30 days thereafter, the Authority gives the Supplier written notice of any defect which arose within the guarantee period under proper and normal use of the Goods, the Supplier shall remedy such defect as

quickly as possible (whether by repair or replacement, as the Authority shall choose) without cost to the Authority.

- 7.7 Any Goods rejected or returned to the Supplier shall be returned at the Supplier's expense.

## **8. LABELLING AND PACKAGING**

- 8.1 The Goods shall be appropriately packaged and clearly labelled. The labelling and packaging shall comply with any reasonable requirements of the Authority of which the Supplier is aware and with any statutory requirements. In particular, if the packages contains any material which is hazardous, noxious or dangerous this shall be clearly indicated.
- 8.2 All packaging shall be considered non-returnable and shall be destroyed unless the Supplier indicates in the advice note accompanying the consignment of Goods that the packaging will be charged for unless it is returned. The Authority shall only accept liability for packaging that does not arrive at the Supplier's premises following dispatch by the Authority if the Supplier informs the Authority of its non-arrival within 10 days of receiving notification from the Authority that the packaging has been despatched.

## **9. INSTALLATION**

- 9.1 Where the Purchase Order requires the Supplier to install the Goods at the Authority's premises:
- a) the Supplier shall make no delivery of plant, materials or equipment and shall not commence any installation work without the prior consent of the Authority;
  - b) the Supplier shall carry out the installation work diligently and with reasonable skill and care;
  - c) the Supplier shall comply with the Authority's requirements relating to access to and use of its premises and shall co-ordinate its work with any other employee or contractor who is carrying out work for the Authority;
  - d) the Supplier shall keep the Authority's premises clean and tidy at all times and shall remove all plant and unused materials when the installation work is complete.
- 9.2 The Authority shall have the power at any time during any installation works to give notice to the Supplier requiring:
- a) the removal from its premises of any materials which are hazardous or noxious or not in accordance with the Contract;
  - b) the substitution of proper and suitable materials; and/or

c) the removal and re-execution of any installation work or any Goods which are not in accordance with the Contract

## **10. PAYMENT**

- 10.1 In consideration of the supply and delivery of the Goods by the Supplier the Authority shall pay the Supplier the price.
- 10.2 The Contractor shall submit an invoice for the Goods to the Authority's address for invoices given in the Purchase Order. The invoice shall contain the Order Number and a description of the Goods supplied and the Price.
- 10.3 Save where the Goods have not been delivered or are not in accordance with the Contract, the Authority shall pay the Supplier's invoice within 30 days of receiving it.
- 10.4 In addition to the Price, the Authority shall (where applicable) pay the Supplier's a sum equivalent to any Value Added Tax chargeable on the Goods supplied.
- 10.5 The Supplier shall implement any legislative requirement to account for goods and services in Euro instead of or as well as Sterling at no cost to the Authority. The Authority shall provide all reasonable assistance to facilitate any such requirement.

## **11. RECOVERY OF SUMS DUE**

- 11.1 If any sum is recoverable from or payable by the Supplier under the Contract, that sum may be deducted from any sum then due or which at a later date becomes due to the Supplier under the Contract or under any other agreement with the Authority.

## **12. INTELLECTUAL PROPERTY**

- 12.1 Save where the Goods are made up in accordance with a design supplied by the Authority, the Supplier warrants that none of the Goods shall infringe any patent, trade mark, registered design, copyright or other rights in industrial property of any third party.
- 12.2 The Supplier shall indemnify the Authority against all actions, demands, charges, expenses and costs (including legal costs on a solicitor and client basis) which the Authority may incur as a result of or in connection with any breach of clause 12.1.

## **13. HEALTH AND SAFETY**

- 13.1 The Supplier warrants and represents that:
- a) it has satisfied itself that all necessary examinations have been made prior to

delivery of the Goods to ensure that the Goods are designed and constructed so that they can be used without risk to health and safety and

b) that it has made available to the Authority adequate information about any conditions necessary to ensure the Goods can be used safely and without risk to health.

- 13.2 The Supplier shall indemnify the Authority against all actions, demands, charges, expenses and costs (including legal costs on a solicitor and client basis) which the Authority may incur as a result of or in connection with any breach of clause 14.1.
- 13.3 The Supplier shall notify the Authority of any health and safety hazards that may arise in connection with the performance of this Contract.
- 13.4 The Authority shall notify the Supplier of any health and safety hazards which may exist or arise at its premises and which may affect the Supplier. The Supplier shall draw these hazards to the attention of any of its employees, subcontractors or agents who may be affected by them and instruct such persons in connection with any necessary safety measures.

#### **14. CONFIDENTIALITY**

- 14.1 The Supplier undertakes to keep secret and not to disclose and to procure that its employees, subcontractors and agents keep secret and do not disclose any information of a confidential nature which it has obtained by reason of this Contract. Nothing in this clause applies to information which is already in the public domain or the possession of the Supplier other than by reason of breach of this clause.
- 14.2 The provisions of this Condition shall survive the termination of this Contract however that occurs.

#### **15. ENVIRONMENTAL MATTERS**

- 15.1 The Supplier confirms that:
  - a) the process used in the manufacture of the Goods relied on minimal use of ozone depleting substances, toxic chemicals and other pollutants including lead, methyl chloroform and formaldehyde;
  - b) that minimal dependence has been made on non-renewable natural resources such as non-sustainably produced hardwoods;
  - c) in the manufacture of the Goods and in the choice of any packaging for the Goods, it has given preference to Goods that have maximum recyclability or, where cost effective recycling is impracticable, maximum biodegradability.

#### **16. INDEMNITY AND INSURANCE**

- 16.1 Without prejudice to any rights or remedies of the Authority the Supplier shall indemnify the Authority against all actions, demands, losses, expenses and costs

(including legal costs on a solicitor and client basis) which the Authority may suffer or incur as a result of or in connection with any damage to property or any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any defect in the Goods or any negligence or breach of this Contract by the Supplier.

- 16.2 The Supplier warrants that it has in place with a reputable insurance company a policy or policies of insurance covering all the indemnities under this Contract. At the request of the Authority the Supplier shall produce the relevant policy of insurance together with evidence of payment of its latest premium.

## **17. CHANGE CONTROL**

- 17.1 There shall be no change to the amount of or description of the Goods or the Price unless the Authority has issued a new purchase order in substitution for the Purchase Order. These Terms and Conditions shall apply to any new purchase order and the new purchase order shall become the "Purchase Order" for the purpose of this Contract from the moment it is received by the Supplier.
- 17.2 This Contract may not be varied or amended unless the variation or amendment is in writing and agreed by both the Authority and the Supplier.

## **18. ASSIGNMENT OR SUB-CONTRACTING**

- 18.1 The Supplier shall not assign this Contract without the written consent of the Authority.
- 18.2 No sub-contracting of this Contract shall in any way relieve the Supplier of its obligations under the Contract.
- 18.3 Where the Supplier enters a sub-contract for the purpose of performing this Contract it shall ensure that the sub-contract has a term requiring the Supplier to pay the supplier or contractor within 30 days of receipt of a valid invoice.

## **19. RIGHTS OF THIRD PARTIES**

This Contract shall not create any rights which are enforceable by anyone other than the Parties.

## **20. TERMINATION**

- 20.1 Without prejudice to any other rights or remedies of the Authority under this Order the Authority shall have the right forthwith to terminate this Order by written notice to the Supplier or his trustee in bankruptcy or receiver or (if a company) its liquidator or administrator, if the Supplier shall have a receiver appointed over all or a substantial part of his or its assets or (if an individual) be declared bankrupt or (if a company) shall go into liquidation or have an administrator appointed to manage its affairs.

## **21. NOTICES**

- 21.1 Any notice or other communication given under or pursuant to this Contract must be given in writing and must be delivered in person or sent by post. Communications must be sent to the address for communications given in the Purchase Order (which may be altered at any time by the altering Party giving the other Party 15 days notice of a changed address). Communications to the Authority must be sent to its address given for the buyer contact on the Purchase Order and not its address for invoices.
- 21.2 A notice or communication shall be deemed to have been received 2 working days after posting in the case of first class delivery and 4 working days after posting in the case of second class delivery unless the receiving party proves otherwise.

## **22. GOVERNING LAW**

- 22.1 Unless the Purchase Order specifies otherwise, this Contract 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.

## **23. BRIBERY AND CORRUPTION**

The Authority may cancel the contract and recover from the Supplier the amount of any loss resulting from such cancellation:

- 23.1 If the Supplier shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the contract or any other contract, with the Authority or for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Authority or
- 23.2 If the like acts shall have been done by any person in the employ or on behalf of the Supplier (whether with or without the Supplier's knowledge, or
- 23.3 If in relation to any contract with the Authority the Supplier or any person in the employ of or acting on the Supplier's behalf shall have committed any offence under the Prevention of Corruption Acts, 1889 to 1916, or shall have given any fee or reward the receipt of which is an offence under Section 117 of the Local Government Act 1972.

## **24. DATA PROTECTION**

- 24.1 In this section, the following definitions shall apply –

“GDPR” means the General Data Protection Regulation ((EU) 2016/679) and the UK GDPR at such time it comes into force.

“DPA” means Data Protection Act 2018.

“Data Protection Legislation” means: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the UK GDPR when it enters into force; 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 No. 2426) as amended; any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

“Personal Data” means the personal data as defined by the Data Protection Legislation and as provided by or on behalf of the Authority.

“Personal Data Breach” a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Shared Personal Data.

- 24.2 With respect to the parties’ obligations under this Contract, the parties agree that the Authority is the data controller, and that the Supplier is the data processor for the purposes of the Data Protection Legislation
- 24.3 The following categories of Personal Data will be collected processed and used by the Supplier under this Agreement
- i) Personal Data
  - ii) categories of data subjects

The following data subject categories may be collected processed and used by the Supplier under this Agreement:

- i. complaints, enquirers or their representatives
- ii. customers
- iii. members of the public
- iv. persons contracted to provide a service (suppliers)
- v. professional advisers and consultants
- vi. service users and their representatives
- vii. staff, persons contracted to provide a service
- viii. traders and others subject to inspection
- ix. representatives of other organisations

24.4 The Supplier shall:

- a) comply at all times with provisions equivalent to the Data Protection Legislation and shall not perform its obligation under this Contract in such a way as to cause the Authority to breach any of its applicable obligations under the Data Protection Legislation;

- b) maintain up to date records of processing activities under its responsibility and make those records available to the Authority for inspection on request;
- c) process Personal Data only in accordance with the documented instructions from the Authority (which may be specific instructions or instructions of a general nature as set out in this Agreement or as otherwise notified by the Authority to the Supplier) and for no other purpose;
- d) process Personal Data only to the extent, and in such a manner, as is necessary for the provision of the Contract's obligations, or as is required by law or any regulatory body;
- e) implement appropriate technical and organisational measures to protect Personal Data against a Personal Data Breach. These measures shall be appropriate to the risk of harm which might result from any such breach of security having regard to the nature of Personal Data which is to be protected as shall be required by Article 32-36 GDPR;
- f) take reasonable steps to ensure the reliability of any personnel who have access to Personal Data;
- g) ensure that personnel without appropriate authority do not have access to Personal Data;
- h) obtain prior written consent from the Authority in order to transfer Personal Data to any subcontractors or affiliates for the provision of the Contract and oblige by way of contract or other legal authority any subcontractors or affiliates to comply with the same data protection obligations as those set out in these clauses;
- i) ensure that all personnel required to access Personal Data are informed of the confidential nature of Personal Data and comply with the obligations as set out in these clauses;
- j) ensure that all personnel receive an adequate level of training in data protection;
- k) notify the Authority within twenty four hours if it becomes aware of a breach or alleged breach of the Data Protection Legislation and;
- l) provide the Authority with full co-operation and assistance in relation to investigating breaches to include inspection of premises and security arrangements if requested.
- m) notify the Authority within five Working Days if it receives a request under Chapter 3 GDPR as applicable or a complaint relating to the Authority's obligations under the Data Protection Legislation either to the Information Commission Officer or otherwise.
- n) provide the Authority with full co-operation and assistance in relation to any complaint or request made under, Chapter 3 GDPR including by:

- i) providing the Authority with full details of the complaint or request or;
  - ii) providing the Authority with any information requested by the Authority within the timescales required by the Authority;
  
  - o) the Supplier shall, upon reasonable notice, allow officers of the Authority to have reasonable rights of access at all times to the Supplier's premises, staff and records for the purposes of monitoring the Supplier's compliance with the Data Protection Legislation including its security requirements.
- 24.5 No Personal Data supplied to the Supplier shall be transferred or processed outside the UK or the European Economic Area.
- 24.6 On termination of this Contract the Supplier shall return all Personal Data or destroy or dispose of it in a secure manner and in accordance with any specific instructions issued by the Authority in writing.
- 24.7 The Supplier agrees to indemnify the Authority against all losses claims damages liabilities costs and expenses (including reasonable legal costs) that the Authority may incur as a result of the Supplier's failure to comply with the Data Protection Legislation as required by these clauses.

## **25. MODERN SLAVERY**

In performing its obligations under the agreement, the Supplier shall:

- a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations [and codes] from time to time in force [including [but not limited to] the Modern Slavery Act 2015]; [and]
  
- b) comply with the Anti-slavery Policy **OR** have and maintain throughout the term of this agreement its own policies and procedures to ensure its compliance; [and]
  
- c) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; [and]
  
- d) include in its contracts with its [direct] subcontractors and suppliers anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause 23 **OR** ensure that each of its [direct] subcontractors and suppliers shall comply with the Anti- slavery policy and with all applicable anti-slavery and human trafficking laws, statutes, regulations [and codes] from time to time in force [including [but not limited to] the Modern Slavery Act 2015].

## 26. FREEDOM OF INFORMATION

### Definitions

**Commercially Sensitive Information:** the information listed in schedule [] comprising the information of a commercially sensitive nature relating to the Supplier, its intellectual property rights or its business or which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss.

**Confidential Information:** means all confidential information (however recorded or preserved) disclosed by a party or its Representatives to the other party and that party's Representatives in connection with this agreement, including but not limited to:

- a) any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, suppliers or plans of the disclosing party; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;
- b) any information developed by the parties in the course of carrying out this agreement;
- c) Personal Data;
- d) any Commercially Sensitive Information.

**Environmental Information Regulations:** the Environmental Information Regulations 2004 (*SI 2004/3391*) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

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

**Information:** has the meaning given under section 84 of FOIA.

**Representatives:** means, in relation to a party, its employees, officers, contractors, subcontractors, representatives and advisors.

**Request for Information:** a request for information or an apparent request under the FOIA or the Environmental Information Regulations.

**Clauses**

- 1.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
  - (b) transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
  - (c) provide the Authority with a copy of all Information belonging to the Authority requested in the Request For Information which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
  - (d) not respond directly to a Request for Information unless authorised in writing to do so by the Authority.
- 1.2 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

Signed for and on behalf of Eastleigh Borough Council:

.....  
Authorised Signatory

.....  
Authorised Signatory

Signed for and on behalf of the Supplier:

.....

Director

.....

Director

**SCHEDULE X**

**DELETE IF NOT USING FOR APPENDIX/SPECIFICATIONS**

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