

Walsall Metropolitan Borough Council

Standard Terms for the Supply of Goods and Services

1. Definitions

'Best Value' means the Council's duty under section 3 of the Local Government Act 1999 to obtain 'Best Value' by ensuring continuous improvement in the way in which its functions are exercised.

'Conditions' means these Standard Terms and Conditions for the Supply of Goods and Services.

'Confidential Information' means any information (including this Contract and the relationship between the Parties) received from the disclosing Party for the purposes of providing or receiving the Goods and/or Services or otherwise relating in any way to the business, operations and activities of the disclosing Party that if disclosed is marked 'confidential' or is otherwise confirmed in writing as being confidential or is manifestly confidential.

'Contract' means these Conditions, the Specification, the Purchase Order and any documents expressly referred to by the Council in the Purchase Order as forming part of the Contract.

'Contract Period' means the duration of the Contract (including periods of extension agreed between the Parties).

'Controller' as defined in Article 4 of the GDPR.

'Council' means Walsall Metropolitan Borough Council, or a Council maintained school, or other Council organisation identified on the Purchase Order.

'Data Protection Legislation' means the GDPR, the Data Protection Act 2018 and all applicable statutes, regulations and directives relating to data protection.

'DBS' means the Disclosure and Barring Service.

'EIR' means the Environmental Information Regulations 2004.

'Employees' means employees employed by the Council or an Outgoing Supplier who transfer to the Supplier as a result of TUPE.

'FOIA' means the Freedom of Information Act 2000.

'Force Majeure' means an irresistible force or compulsion, or an overwhelming power, including any other similar circumstances which are beyond the reasonable control of either Party, provided that Force Majeure shall not include either any strike or labour dispute involving any person acting on behalf of the Parties or any failure to provide the Goods and/or Services by any of the Supplier's sub-contractors.

'GDPR' means the UK General Data Protection Regulation, Retained Regulation (Regulation (EU) 2016/679) and/or EU General Data Protection Regulation (Regulation (EU) 2016/679), as applicable.

'Goods' means all or any of the items which are to be supplied to the Council by the Supplier pursuant to the Contract.

'Joint Controller' as specified in Article 26 of the GDPR

'Outgoing Supplier' means any person, company, firm or other business entity who provides the Services or services of the same or similar nature to the Services prior to the Supplier commencing the provision of the Services under this Contract.

'Parties' means the Council and the Supplier.

'Party' means the Council or the Supplier.

'Personal Data' shall have the meaning prescribed within the GDPR.

'Processor' as defined in Article 4 of the GDPR.

'Purchase Order' means an official order placed by the Council with the Supplier for the supply of Goods and/or Services to the Council.

'Services' means the services to be performed by the Supplier for the Council pursuant to the Contract and anything created or produced as a result of such services.

'Specification' means the Council's requirements to which the Goods and/or Services supplied by the Supplier shall conform.

'Subsequent Transferring Employees' means any of the Supplier's employees who, immediately prior to the transfer of the Services to a Successor, is wholly or mainly engaged in the provision of the Services, which are to be undertaken by a Successor.

'Successor' means any person, company, firm or other business entity who provides the Services or services of the same or similar nature to the Services in immediate or subsequent succession to the Supplier upon the expiry or earlier termination of this Contract; whether that person is a replacement supplier or the Council.

'Supplier' means the person, firm, company or other organisation (or its successors in title) with whom the Council places any order pursuant to the Contract.

'TUPE' means the Transfer of Undertaking (Protection of Employment) Regulations 2006 as amended by The Collective Redundancies and Transfer of Undertakings (Protection of Employment)(Amendment) Regulations 2014.

'VAT' means Value Added Tax charged in accordance with the VAT Act 1994.

2. General

2.1 Unless a Purchase Order relates to a tender or quotation which specifies different terms and conditions issued by the Council (in which case those specified terms and conditions shall apply), these Conditions shall apply to every order for the supply of Goods and/or Services issued by the Council, subject only to any minor changes which are set out in any Purchase Order.

- 2.2 Any purchase by the Council is conditional upon acceptance of these Conditions by the Supplier. If the Supplier does not wish to accept these Conditions, then the Supplier should not accept an order placed by the Council and must immediately inform the Council of its decision.
- 2.3 References in these Conditions to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as subsequently amended or extended at any time during the Contract Period by any other enactment, re-enactment, modification, order, regulation or statutory instrument.
- 2.4 All references in these Conditions to any:
- 2.4.1 EU regulation, EU decision, EU tertiary legislation or provision of any EEA agreement which is to, or does, form part of domestic law by application of the European Union (Withdrawal) Act 2018 and European Union (Withdrawal Agreement) Act 2020 shall be read on or after the date the UK left the EU as a reference to EU References as they form part of domestic law and as modified by domestic law from time to time; and
- 2.4.2 EU institution or EU authority or other such EU body shall be read on and after the after the date the UK left the EU as a reference to the UK institution, authority or body to which its functions were transferred.

3. Entire Agreement

- 3.1 The Contract shall:
- 3.1.1 comprise the entire terms and conditions between the Parties in relation to the subject matter of the Purchase Order;
- 3.1.2 take priority over any other arrangements, communications (whether verbal or written), or any other documents (including, but not limited to, other purchase orders, or other terms and conditions) between the Parties.
- 3.2 The Supplier's terms and conditions of contracting are expressly excluded.
- 3.3 If any of the provisions of these Conditions (and the Contract) shall in whole or in part be held to be unlawful or unenforceable then the remainder of the provisions shall apply in full force and effect.

4. Assignment and Sub-contracting

The Supplier shall not assign, transfer, sublet or subcontract in whole or in part this Contract without the Council's prior written consent.

5. Intellectual Property

- 5.1 Unless otherwise agreed in writing, all intellectual property and other rights in the Goods and/or Services shall vest in the Council.
- 5.2 In the event of any infringement of any such intellectual property rights, the Supplier shall indemnify the Council for any loss, costs or damage, unless the Council is responsible for the breach in question.
- 5.3 The Supplier shall do all such things and execute all such documents as the Council may require in order to comply with this section and the Supplier shall ensure that it includes corresponding provisions in its contracts with its own sub-contractors and suppliers.

6. Price Variation

The prices in the Purchase Order shall apply (without variation) for both the Contract Period and/or for the stated quantity of the Goods and/or Services supplied, unless otherwise agreed in writing by the Parties.

7. Liability

- 7.1 Neither Party excludes or limits liability to the other for death or personal injury as a result of its negligence.
- 7.2 The Supplier's liability for corruption, or breach of confidentiality, or infringement of intellectual property rights shall be unlimited unless otherwise agreed in writing by the Parties.
- 7.3 The liability of either Party for direct loss of and/or damage to and/or the tangible property of the other shall be limited to five million pounds (£5,000,000.00) per claim unless otherwise stated in the Contract.
- 7.4 The Supplier will ensure that it has insurance in place at its own expense with an insurer authorised to transact such business in the UK and registered with the Financial Conduct Authority. Unless otherwise agreed in writing between the Parties, the Supplier shall maintain such insurance throughout the Contract Period and for a period of at least 6 years following termination of the Contract to cover its liabilities pursuant to the Contract for:
 - 7.4.1 public liability, of at least five million pounds (£5,000,000);
 - 7.4.2 employer's liability (where relevant), to meet the legal minimum requirement, which in the United Kingdom is currently five million pounds (£5,000,000);
 - 7.4.3 professional indemnity, of at least one million pounds (£1,000,000) (where Services are to be provided); and
 - 7.4.4 product liability of at least two million pounds (£2,000,000) (where any product is to be supplied).

8. Documents

All advice notes, invoices, order notes, receipts and packing notes issued by the Supplier shall be clearly marked by the Supplier with the Supplier's name and address, the Purchase Order number, the item code, date of despatch, a description of the Goods and/or Services, the address of their intended destination and the due delivery date.

9. Quality and Performance

9.1 The Goods and/or Services shall:

9.1.1 conform with the Specification;

9.1.2 be brand new (unless specified otherwise);

9.1.3 be of sound design, materials and workmanship;

9.1.4 comply with any current legislation and standards specified, or where no standard is specified, comply with the relevant British standards or equivalent;

9.1.5 be fit for the purpose for which they are procured by the Council; and

9.1.6 be capable of the required performance.

9.2 All Services performed under the Contract must be executed by the Supplier in a timely, efficient and professional manner to the reasonable satisfaction of the Council.

9.3 The time for delivery of Goods and/or performance of the Services is of the essence.

9.4 The Supplier shall, at the request of the Council, periodically attend review meetings with representatives of the Council, to discuss the Council's levels of satisfaction in respect of the Goods and/or Services and to agree any necessary action to either address areas of dissatisfaction.

10. DBS

When required by the Council, the Supplier will agree to the Council's requirements in respect of DBS clearance prior to performance of the Contract and shall ensure compliance with the Council's requirements in respect of DBS clearance throughout the Contract Period.

11. Best Value Duty

The Supplier shall, at no cost to the Council, provide all reasonable assistance and support; and otherwise work collaboratively with the Council, in order to facilitate the Council's compliance throughout the Contract Period to obtain 'Best Value'.

12. Inspection and Testing

Before dispatching the Goods and/or starting provision of the Services, the Supplier shall allow the Council to inspect and test the Goods and/or Services for compliance with the Specification and/or any other provisions of the Contract. If, in the Council's reasonable

opinion, the Goods and/or Services do not comply with the Specification, then the Council shall inform the Supplier either of the Council's intention to reject the Goods and/or allow the Supplier to start providing the Services, or of the remedial steps which must be undertaken by the Supplier to ensure compliance with the Specification.

13. Delivery

- 13.1 The Supplier shall deliver the Goods and/or Services as instructed in the Contract and shall obtain a receipt for them from an authorised officer of the Council.
- 13.2 The Council will allow the Supplier access to its premises as necessary for the delivery of the Goods and/or Services. The Council may refuse admission to the Supplier's personnel or require such personnel to leave its premises at any time and shall not be obliged to give the Supplier the reason(s) for its decision.
- 13.3 Whilst on the Council's premises, the Supplier shall abide by the Council's rules and regulations relating to its premises.

14. Extension of Time, Rescheduling, Cancellation and Force Majeure

- 14.1 If, for any cause beyond the reasonable control of the Supplier, delivery of the Goods and/or performance of the Services is delayed, then the Council may agree to re-scheduling of such delivery/performance. Delay for any other reason shall be at the Supplier's risk and the Supplier shall be responsible for any additional costs incurred by the Council as a result of that delay.
- 14.2 Notification of any anticipated or actual delay must be immediately communicated to the Council by the Supplier, specifying the reasons for the delay.
- 14.3 If, in the reasonable opinion of the Council, it is inappropriate to reschedule delivery of the Goods and/or performance of the Services, then the Council may cancel the Purchase Order without incurring any liability for such cancellation.
- 14.4 Neither Party shall be liable to the other or be deemed to be in breach of this Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Goods and/or Services, if the delay or failure is due to Force Majeure (subject to clause 14.5).
- 14.5 If either Party is prevented or delayed in performing any of its obligations pursuant to this Contract by Force Majeure, then it shall diligently take all reasonable steps and act in good faith at all times in order to avoid or minimise its failure caused by Force Majeure.

15. Risk and Title

- 15.1 Risk and title in Goods shall pass to the Council upon its acceptance of such Goods when delivered to the place and address specified in the Contract.
- 15.2 The Council reserves the right to take possession of all Goods to which it has title.

16. Damage or Loss in Transit

- 16.1 The Supplier shall restore or replace Goods lost or damaged in transit at its expense and to the Council's satisfaction.
- 16.2 Delivery shall not be deemed to have taken place until such restoration or replacement has occurred to the satisfaction of the Council or replacement Goods have been accepted by the Council.
- 16.3 The Supplier shall be deemed to have not delivered Goods or performed Services unless an authorised officer of the Council has issued a receipt confirming the delivery and/or performance.

17. Rejection

Unless otherwise agreed in writing by the Parties, if, at any time within 90 days from the date of any delivery of Goods or supply of Services, the Goods and/or Services fail to comply with the Contract, the Council may, by written notice to the Supplier, reject the whole or any part of the Goods and/or Services. The Council may then (without prejudice to its other rights and remedies) accept replacement Goods and or re-performed Services from the Supplier at the Supplier's expense.

18. Payment

- 18.1 The Council agrees to pay the Supplier either the total price for the Goods and/or Services which is stated in the Purchase Order (or otherwise agreed in writing between the Parties) within 30 days of the date of receipt of a valid and undisputed invoice, which (if the Supplier determines that VAT is payable) must comply with the requirements of HM Revenue & Customs for VAT purposes.
- 18.2 The Supplier shall submit its invoices to the Council's payment team at Paymentsteam@walsall.gov.uk (or such other address as the Council's authorised representative may instruct from time to time).
- 18.3 All prices and rates which are stated in the Purchase Order are exclusive of VAT (unless otherwise stated in the Purchase Order).
- 18.4 If the Council has informed the Supplier that an invoice is disputed by it, the issue will (unless otherwise agreed by the Parties) be referred in the first instance to a dispute resolution procedure pursuant to the Dispute Resolution Procedure of these Conditions.
- 18.5 If requested to do so by the Council, the Supplier shall accept payment of monies due by electronic funds transfer through BACS or other electronic payment means, as good discharge of the Council's indebtedness under the Purchase Order.
- 18.6 If any undisputed monies are not paid by the due date, then either Party (as applicable) may charge interest on such undisputed monies on a daily basis from the date falling 30 days from when payment fell due (or such other date as may be agreed in writing between the Parties), to the date of payment at the rate of 2% (two per cent) per annum over the base lending rate of the Bank of England from time to time. The Parties agree that this clause

provides each with a substantial remedy in respect of any late payment of sums due for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.

19. Set Off

The Council shall be entitled to set off against any sums due to the Supplier under the Contract any sums which become payable by the Supplier to the Council in relation to the Contract or any other contract or other arrangement between the Parties.

20. Confidentiality

- 20.1 Subject to legislative requirements, any Confidential Information supplied by the Council to the Supplier (including the existence and details of the Contract), shall be kept confidential and shall only be used by the Supplier for the performance of its obligations under the Contract.
- 20.2 Upon request - and in any event upon expiry or termination of the Contract for whatever reason - the Supplier shall either immediately destroy, or at the Council's written request, immediately return to the Council, any Confidential Information provided to it pursuant to the Contract.
- 20.3 The Supplier will act in accordance with the FOIA, the EIR and all relevant codes of practice (and any other applicable codes of practice notified to the Supplier from time to time) to the extent that they apply to the Supplier's performance of this Contract.
- 20.4 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA and/or EIR, the text of the Contract is not Confidential Information and the Council shall be responsible for determining in its absolute discretion whether any part of the Contract is exempt from disclosure in accordance with the provisions of the FOIA or EIR.
- 20.5 Notwithstanding any other term of this Contract, the Supplier consents to the Council publishing this Contract in its entirety, including any agreed changes to the Contract, to the general public in whatever form the Council decides.

21. Data Protection

- 21.1 The Supplier will comply with any requirements (which may include entering into a data processing and/or sharing agreement) or instructions from the Council in respect of the Council's obligations pursuant to the Data Protection Legislation, including, but not limited to:-
 - 21.1.1 not processing Personal Data outside the UK without the prior written consent of the Council; and
 - 21.1.2 the obligations of a Controller and/or Processor by ensuring and implementing all measures to ensure appropriate levels of security of Personal Data that is shared for the provision of the Services as required under the GDPR; and
 - 21.1.3 any reasonable instructions notified to it by the Council; and

- 21.1.4 any further and/or additional requirements of the Council (as Controller) and Supplier (as Processor or Joint Controller) pursuant to the GDPR, at the Supplier's expense, including satisfying the Council (as Controller) with sufficient guarantees that the Supplier has implemented all appropriate technical and organisational measures to meet the GDPR's requirements and protect data subjects' rights.
- 21.2 The Supplier shall indemnify the Council against all and any loss arising whatsoever from the Supplier's breach of the GDPR's requirements.
- 21.3 The Supplier shall allow the Council to monitor the Supplier's compliance with its obligations in relation to Personal Data, from time to time, in such manner and to such extent as the Council deems appropriate.
- 21.4 The Supplier shall notify the Council without undue delay after becoming aware of a Personal Data breach.
- 21.5 The Supplier shall fully cooperate with the Council in relation to a Personal Data breach and use its best endeavours to provide any information required by the Council about any such Personal Data breach.
- 21.6 The Supplier shall use its best endeavours to assist the Council in complying with Articles 33 and 34 of the GDPR.
- 21.7 The Parties agree and confirm that the decision about whether any exemption applies to a request for disclosure of recorded information in relation to this Contract is a decision solely for the Council.
- 21.8 Where the Council is managing a freedom of information request, the Supplier shall cooperate with the Council and shall respond within 5 days of any request by it for assistance in determining how to respond to a request for disclosure.

22. Compliance

The Supplier shall at all times comply with all applicable laws, including statutes, regulations and bye-laws of local or other competent authorities.

23. Corruption

- 23.1 The Supplier shall not do anything, or omit to do anything, which may be considered to be an inducement to the Council. Any such inducement shall be deemed to be a breach, which shall be considered incapable of remedy and the Supplier shall immediately report any such inducement to the Council's Head of Procurement (or other Council officer of equivalent standing).
- 23.2 The Council may also serve notice on the Supplier at any time during the Contract Period to terminate this Contract (and recover all its loss) if the Supplier (or anyone acting on its behalf) does any of the following:
- 23.2.1 directly or indirectly offers, promises or gives any person working for or engaged by the Council a financial or other advantage to:

- (i) induce that person to perform improperly a relevant function or activity;
- (ii) reward that person for improper performance of a relevant function or activity.

23.2.2 directly or indirectly requests, agrees to receive or accepts any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;

23.2.3 commits any offence:

- (i) under the Fraud Act 2006 or the Bribery Act 2010;
- (ii) under legislation creating any offences concerning fraudulent acts;
- (iii) at common law concerning fraudulent acts relating to this Contract or any other contract between the Parties.

23.2.4 defrauds, or attempts to defraud, or conspires to defraud, the Council.

23.3 Any clause in the Contract which purports to limit the Supplier's liability shall not apply to this clause.

24. Equality and Human Rights

24.1 The Supplier shall comply with its obligations within the Equality Act 2010 in so far as they relate to the Goods and/or Services.

24.2 The Supplier shall at all times during the performance of its obligations under the Contract ensure that it does not infringe or restrict or inhibit in any way any person's human rights.

24.3 The Supplier shall indemnify and keep indemnified the Council against any claims brought under the Human Rights Act 1998 or the Equalities Act 2010 as a result of the Supplier's actions or omissions (or the actions or omissions of any employee, sub-contractor, agent or any other organisation or person acting on the Supplier's behalf).

25. Civil Contingencies

The Supplier shall prepare and implement a robust and viable business continuity plan within the requirements of the Civil Contingencies Act 2004 to ensure continuation of the supply of Goods and/or provision of Services throughout the Contract Period.

26. Termination

26.1 Unless otherwise terminated, this Contract shall terminate automatically upon the expiry of the agreed Contract Period, or upon the Supplier completing delivery of all Goods and/or performing all Services.

26.2 Notwithstanding the Parties' rights to otherwise terminate the Contract, either Party may also terminate the Contract upon giving 30 days' written notice to the other at any time.

26.3 On the expiry or termination of the Contract for any reason, the Supplier shall;

26.3.1 promptly return all Council property, including software and data in the Supplier's custody, possession or control to the Council (or any person designated by the Council in writing); or

26.3.2 if directed by the Council in writing, dispose of all Council property, including software and data in the Supplier's custody, possession or control.

27. Notices

Any notice given pursuant to this Contract by one Party to the other must be in writing and in English, signed by or on behalf of the Party giving it and served to the address set out set in the Purchase Order (or such other address as afterwards notified in writing by that Party to the other Party) by:

27.1 personal delivery, or

27.2 sending it by first class mail or registered post (or registered airmail in the case of an address for service outside the United Kingdom); or

27.3 email (if agreed by the Parties).

28. TUPE and Pensions

28.1 It is the responsibility of the Supplier to consider whether or not TUPE applies to the provisions of any Services under this Contract and to ensure that it complies with its obligations under TUPE.

28.2 If TUPE applies at the commencement and/or termination of this Contract, the Supplier shall comply with all its obligations under TUPE, co-operate as reasonably practical with the Council, any Outgoing Supplier or a Successor in ensuring that information required by or in accordance with TUPE is provided and shall indemnify the Council in full (for its benefit and that of any Successor) against all costs, expenses, damages and losses (whether direct or indirect) including any interest, penalties, and legal and other professional fees and expenses awarded against or incurred by the Council or a Successor arising out of or connected with any:

28.2.1 act or omission (including any alleged act or omission) of the Supplier in respect of any Employee or any Subsequent Transferring Employee; or

28.2.2 breach by the Supplier of its obligations under TUPE; or

28.2.3 claim or allegation by an Employee or any other employee of the Council or of an Outgoing Supplier or any Subsequent Transferring Employee that there has or will be a substantial change in such Employee's working conditions to his or her detriment within regulation 4(9) TUPE.

28.3 If TUPE applies at the commencement of this Contract the Supplier shall:

28.3.1 assume liability in respect of pension provisions and entitlements of any transferring Employee;

28.3.2 make such pension provisions in respect of any transferring Employee as complies with any relevant obligations in law (including - but not limited to - sections 257 and 258 of the Pensions Act 2004 and the regulations under these sections, namely the Transfer of Employment (Pension Protection) Regulations 2005);

28.3.3 provide a broadly comparable pension scheme for any transferring Employee;

28.3.4 comply with and ensure that any sub-contractor complies with The Best Value Authorities Staff Transfers (Pensions) Direction 2007.

28.4 For the avoidance of doubt, the Supplier confirms that the Council will be permitted to disclose any information required by or in accordance with TUPE that the Supplier has disclosed to the Council in summary and/or anonymised form (as appropriate) to any person who has been invited to tender for the provision of the Services (or similar services) and to any future provider of the Services.

29. Dispute Resolution Procedure

If there is any dispute between the Parties in relation to the contract or the Goods or Services, the Parties agree to refer to any reasonable dispute resolution procedure as required by the Council before referring the dispute to the jurisdiction of the courts.

30. Contracts (Rights of Third Parties) Act 1999

This Contract does not confer (and is not intended to confer) any rights on any third party, whether pursuant to the Contracts (Rights of Third Parties) Act 1999, or otherwise.

31. No Agency

This Contract does not either create a partnership between the Council and the Supplier, or make one of the Parties the agent of the other for any purpose.

32. Governing Law and Jurisdiction

This Contract shall be governed by English law and the Parties shall submit to the exclusive jurisdiction of the English courts.

33. National Fraud Initiative

The Supplier acknowledges and shall respect that the Council is required to protect any public funds that it administers (for which its National Fraud Initiative Fair Processing Notice is at: [Walsall Council Privacy Statement](#)) and as such the Council may, in order to prevent and detect fraud and for other lawful purposes, be required to share information with other Council services and with other bodies responsible for auditing and administering public funds; and participate in data matching exercises.

September 2022