Purchase Order Terms and Conditions:

1. Definitions

1.1 "the Council". Merton Council.

1.2 "You/Your" the person supplying the Goods and/or Services.

1.3 "Conditions" the terms and conditions of sale or supply set out in this document, and any special terms and conditions agreed in writing by the Council.

1.4 "Delivery Date" the date specified by the Council when the Goods are to be delivered. This is either the date set out on the Order Form or the date contained in the Specification. If no date is specified the Delivery Date is a date of a reasonable period after the date of the Council's order and not more than 14 days in any event.

1.5 "Commencement Date": the date specified by the Council when the Services are to be first supplied. This is either the date set out on the Order Form or the date contained in the RFQ

1.6 "Goods": the articles set out on the Order Form.

1.7 "Services": the Services set out on the Order Form.

1.8 "Price": the price for the Goods and/or Services excluding Value Added Tax.

1.9 "Specification": any Specification for the Goods and/or Services supplied to You by the Council before, or at the same times as, You were sent the Order form.

1.10 "Quotation": any Quotation You have submitted to the Council for the supply of the Goods and/or the Services.

1.11 "Term": the period specified by the Council during which the Services are to be carried out. This is either the period set out on the Order Form or the period contained in the Specification. If no period is specified the Term is a reasonable period, subject to the Council being able to terminate the contract upon one month's notice.

1.12 "Order Form": the Council's Order Form for Goods and Services.

2. Applicable Conditions

2.1 These Conditions apply to all contracts for the purchase of Goods and/or Services by the Council from You, to the exclusion of any terms or conditions which you may seek to apply under any sales or service offer, order form or similar document.

2.2 Despatch or delivery of the Goods, or the commencement of the Services, will be deemed conclusive evidence of your acceptance of these Conditions.

2.3 Any variation of these Conditions will be inapplicable unless agreed in writing by the Council.

2.4 Condition 4 applies just to the purchase of Goods and Condition 5 just to the purchase of Services. The other Conditions apply to both.

3. The Price and Payment

3.1 The Price will be Your quoted price or the price set out on the Order Form. The Price is exclusive of Value Added Tax which will be due at the rate ruling on the date that payment is due.

3.2 Payment of the Price and Value Added Tax will be made within thirty days of receipt of a valid and undisputed invoice, which may only be issued upon receipt of the Goods by the Council and/or of completion of the Services or (if applicable) in the manner set out in the Specification. You must supply a Value Added Tax invoice.

3.3 The Council can set off against the Price (including any applicable Value Added Tax payable) amounts due from You, under this or any other contract

3.4 The Price is inclusive of all your obligations under this contract.

4. Goods

4.1 The quantity and description of the Goods will be as set out on the Order Form and (if applicable) in accordance with any details in the Specification and/or Quotation.

4.2 You must ensure that all the Goods are manufactured, stored, tested and packed in accordance with all applicable British Standards or equivalent and that all the Goods are of satisfactory quality, within the normal limits of professional/industrial quality, and fit for the Council's purposes. (The quality of goods includes their state and condition and the following (among others) are aspects of the quality of goods fitness for all the purposes for which goods of the kind in question are commonly supplied, appearance and finish, freedom from minor defects, safety and durability). The Council may at its absolute discretion, require samples of goods and materials for its evaluation and approval and may at any time inspect and reject goods on the basis of their quality.

4.3 You must deliver the Goods to the delivery address stated on the Order Form on the Delivery Date.

4.4 The risk and title in the Goods will pass to the Council on delivery.

4.5 The Delivery Date is the essence of this contract.

4.6 If You fail to deliver all of the Goods in accordance with the contract on the Delivery Date then without prejudice to the Council's rights for the breach of contract:

4.6.1 the Council may terminate the contract. In this event, without prejudice to the Council's other remedies, You must promptly collect any Goods which have been delivered within 2 Working Days, after which the Council may dispose of the Goods and recover from You the cost of any such disposal.

4.6.2 where delivery of a quantity of the Goods which correspond to the contract which is less than the agreed quantity has been tendered, and the Council has not exercised its rights of termination under Clause 4.6.1, the Council may accept the goods which correspond to the contract and recover any losses caused by Your breach in respect of the failure to deliver the remainder of the Goods.

4.6.3 the Council may require You promptly to deliver sufficient goods which correspond to the contract to comply with the quantity required.

The Council may exercise these rights by written notice to You.

4.7 You must, if the Council so requests, replace free of charge Goods damaged or lost in transit. Delivery of the Goods will not then be considered to take place until replacement Goods have been delivered. The Council may hold any damaged Goods at Your risk or may return them to You at your risk and expense.

4.8 You will permit the Council to return at Your expense, any of the Goods which are not in accordance with the contract at any time up to three months after delivery even if the Council has already accepted the Goods and refund the Price for the returned Goods within 10 Working Days of collection by You of the Goods, such collection must be within 5 Working Days of notification from the Council .

4.9 The Council may set off against any payments due to You under this or any other contract the Price of such Goods. Unless You collect such Goods in accordance with 4.8, the Council may dispose of them as it sees fit.

4.10 All representations, statements or warranties made or given by You or your employees and agents (whether orally or in writing or in any of your brochures, catalogues or advertisements) regarding the quality and fitness for purpose of the Goods will be considered to be express conditions of this contract.

4.11 You represent and warrant to the Council that the Goods are tested, examined and deemed safe and without risk to the health and safety of people and You shall indemnify the Council against all actions, claims, costs, losses demands, charges and expenses which the Council may suffer or incur as a result of or in connection with any breach of this clause.

5. Services

5.1 You will carry out the Services set out on the Order Form and (if applicable) in accordance with any details in the Specification and/or Quotation.

5.2 You must carry out the Services with all skill, care, diligence and to best professional standards and in compliance with the requirements of all relevant statutes and other regulations which may from time to time be in force. You acknowledge that the Council relies on the skill and judgement of You in the supply of the Service and the execution of the Contract.

5.3 You must carry out the Services, beginning on the Commencement Date for the Term.

5.4 Any articles or materials supplied as part of the Services must be in accordance with all applicable British Standards or equivalent and of satisfactory quality and fit for their intended purpose. (The quality of articles and materials includes the matters set out in Condition 4.2).

5.5 You must have Public Liability Insurance to the value of £ [INSERT] and provide evidence of this to the Council if so requested.

5.6 Insurance to cover professional services i.e. consultancy, requires professional indemnity in the sum set out in the Quick Quote or RFQ/Specification of each and every claim.

5.7 You must carry out the Services in accordance with the Council's reasonable directions.

5.8 The Council may end this contract immediately by giving notice to You if you fail to comply with any of your obligations. For the purpose of this contract all of your obligations will be considered to be conditions entitling the Council to terminate for breach.

5.9 You must ensure so far as it is possible that all persons employed by You in carrying out the Services are efficient, sober and honest and that at all times You shall act in good faith in the performance of this Contract and that You and all persons employed by You comply with all relevant legislation.

6. General

6.1 You must indemnify the Council against all claims made against it arising out of any breach by You of this contract.

6.2 If You consist of more than one person or body, your obligations will be joint and several.

6.3 The failure by the Council to enforce at any time or for any period any of the terms and conditions of this contract will not amount to a waiver of them or of the right at any time subsequently to enforce them.

6.4 The Council may by notice, terminate this contract immediately without compensation to You if:

6.4.1 You, or any of Your partners, are declared bankrupt.

6.4.2 You go into liquidation.

6.4.3 You have offered, or given or agreed to give to any person any gift or consideration as an inducement or reward for doing or not doing, or for having done or not done, anything in relation to obtaining this contract or any other contract with the Council, or in relation to matters arising under this or any other contract with the Council.

6.4.4 You, or any person employed by You, or acting on your behalf, has in relation to any contract with the Council:

6.4.4.1 committed an offence under the Prevention of Corruption Acts 1889 to 1916 (or any amendments to them); or

6.4.4.2 given any fee or reward, the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

The right of the Council to end the contract is without prejudice to any other rights it possesses.

6.5 You must not assign, sub-contract, licence or otherwise dispose of any part of your rights or obligations under this contract without the Council's written consent.

6.6 You must allow the Council's Director of Finance access to such of your records as he may reasonably require for audit purposes.

6.7. This contract will be governed by the Law of England and is subject to the excusive jurisdiction of the Courts of England and Wales.

6.8 If any condition or clause in this Contract is held to be illegal or unenforceable the validity or enforceability of the remainder of the Contract shall not be effected.

6.9 All notices under this Contract must be issued in writing.

6.10 You shall at all times comply with the Councils whistleblowing policy and save for issues with this contract which shall be raised with the contract manager, shall notify any concerns in respect of codes of conduct, financial irregularities, health and safety, failing services and allegations with the confidential hotline on 02085453365.

6.11 You shall act in accordance with the Bribery Act 2010; the Equalities Act and assist the Council in complying with their best value duties under The Local Government Act 1999.

6.12 You hereby warrant that the goods and services do not infringe any patent, trade mark, design, copyright or other intellectual property right and You shall indemnify the Council against all actions, suits, claims, demands, losses, charges, costs and expenses which the Council may suffer or incur as a result of or in connection with any breach of this clause. Ownership of IP and licences shall be in accordance with the Quick Quote or RFQ/Specification.

6.13 Neither party shall be liable for a failure to perform its obligations under the Contract if such failure results from circumstances beyond the party’s reasonable control. Such circumstance shall include but not be limited to Acts of God, Acts of war, fire, flood and terrorism, but shall include lock outs or industrial disputes and any acts, defaults or negligence of either party’s agents and sub-contractors or their agents, sub-contractors or employees.

6.14 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Contract and no person who is not a party to this Contract (other than a successor to the original parties) shall be entitled to that persons own right to enforce any provisions of this Contract pursuant to the provisions of the Act.

6.15 You are responsible for and shall provide compensation for any injury (including death) or damage occasioned to any person or property and make good to the satisfaction of the Council and make compensation for any injury or damage that occur in connection with this Contract and You shall indemnify and hold the Council harmless against any loss, cots, claims and expenses arising out of any breach of the provisions of this Contract by You.

6.16 You shall provide the Council or any prospective tenderer the requested employee information relating to Your workforce as defined in the Transfer of Undertakings (Protection of Employment) Regulations, within seven days of such requests being raised by the Council to You.

6.17 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (**Dispute**) then the parties shall follow the procedure set out in this clause:

6.17.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the [*insert employee title*] of the Council and [*insert employee title*] of the Supplier shall attempt in good faith to resolve the Dispute;

6.17.2 if the [*insert employee title*] of the Council and [*insert employee title*] of the Supplier are for any reason unable to resolve the Dispute within [30] days of service of the Dispute Notice, the Dispute shall be referred to the [*insert senior officer title*] of the Council and [*insert senior officer title*] of the Supplier who shall attempt in good faith to resolve it; and

6.17.3 if the [*insert senior officer title*] of the Council and [*insert senior officer title*] of the Supplier are for any reason unable to resolve the Dispute within [30] days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than [*insert number*] days after the date of the ADR notice.

6.17.4 If the Dispute is not resolved within [*insert number*] days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of [*insert number*] days, or the mediation terminates before the expiration of the said period of [*insert number*] days, the Dispute shall be finally resolved by the courts of England and Wales within the jurisdiction on England and Wales.

7. Termination

7.1 Contract shall be terminated in the event of either party serving written notice of a breach which is not remedied within 28 days or immediately if either party commits an irredeemable breach.

7.2 Termination of any Contract shall be without prejudice to the accrued rights and liabilities of the parties and shall not affect the coming into or continuance in force of any provision which is expressly or by implication to come into or to continue in force after such termination.

8. Freedom of Information Act

8.1 Notwithstanding anything to the contrary contained or implied in any documents or negotiations leading to the formation of this Contract:

8.1.1 the Council shall be entitled to publish and/or release any and all terms or conditions of this Contract, the contents of any documents and/or information relating to the formation of this Contract under the provisions of the Freedom of Information Act 2000 and/or Data Protection Act 1998 as it sees fit.

8.1.2 nothing contained in this Contract shall prevent the Council from disclosing and/or publishing under the provisions of the Data Protection Act 1998 and/or Freedom of Information Act 2000 any term or condition or information contained in or relating to the formation of this Contract.

8.1.3 You will:

8.1.3.1 co-operate with the Council and supply to it all necessary information and documentation required in connection with any request received by the Council under the Data Protection Act 1998 and/or Freedom of Information Act 2000

8.1.3.2 supply all such information and documentation at no cost to the Council and within seven days of receipt of any request.

8.1.3.3 You shall not publish or otherwise disclose any information contained in this Contract or in any negotiations leading to it without the Council's previous written consent unless You are bound to publish and/or disclose such information under the Data Protection Act 1998 and/or Freedom of Information Act 2000 and such information is not exempt from such disclosure and/or publication under the provisions of the Data Protection Act 1998 and 2018 and Freedom of Information Act 2000 together with full compliance with the provisions of the General Data Protection Regulations 2018.

8.1.3.4 comply with the requirements of the General Data Protection Regulations and where applicable shall comply with the data processing requirements set out below.

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| **Description** | **Details** |
| Subject matter of the  processing | *[This should be a high level, short description of what the*  *processing is about i.e. its subject matter]* |
| Duration of the  processing | *[Clearly set out the duration of the processing including*  *dates]* |
| Nature and purposes of  the processing | *[Please be as specific as possible, but make sure that you*  *cover all intended purposes.*  *The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.*  *The purpose might include: employment processing, statutory obligation, recruitment assessment etc]* |
| Type of Personal Data | *[Examples here include: name, address, date of birth, NI*  *number, telephone number, pay, images, biometric data etc]* |
| Categories of Data  Subject | *[Examples include: Staff (including volunteers, agents, and*  *temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]* |
| Plan for return and  destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of  data | *[Describe how long the data will be retained for, how it be*  *returned or destroyed]* |