

GENERAL CONDITIONS OF PURCHASE FOR THE LONDON BOROUGH OF HOUNSLOW

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The Seller shall be deemed to have accepted all the terms and conditions of this contract to the exclusion of any other terms or conditions contained in any quotation, tender, acknowledgement, acceptance of order, delivery note, or any other document of the Seller unless agreed otherwise in writing by the Buyer.

1. Interpretation

In these Conditions

1.1 “Buyer” means the Mayor and Burgesses of the London Borough of Hounslow or their authorised representatives.

1.2 “Conditions” means these standard terms and conditions of sale but not any other special terms and conditions unless agreed in writing by the Buyer after dispatch to the Seller of the Order.

1.3 “Delivery” means the giving of control / physical delivery of Supplies by the Seller to the Buyer, or complete performance of those Supplies to by the Seller to the Buyer in accordance with the Conditions and the Order

1.4 “Delivery Address” means the address stated in the Order to which Supplies are to be delivered or where they are to be performed by the Seller.

1.5 “Order” means the order for Supplies prepared and submitted by the Buyer to the Seller or his authorised agent.

1.6 “Seller” means the provider of the Supplies to the Buyer.

1.7 “Specification” means the detailed statements and documents setting out the Supplies.

1.8 “Supplies” means the goods (including any instalment of the goods or any parts for them) or services which the Seller is to supply in accordance with these Conditions.

1.9 Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time

2. Basis of the Sale

2.1 The Order constitutes an offer by the Buyer to purchase the Supplies and/or acquire the Supplies subject to these Conditions.

2.2 Save for Clause 3.3, no variation to these Conditions shall be binding unless agreed in writing by the Buyer and any correspondence or documentation exchanged between the parties before this Order was placed shall be substituted by these Conditions.

3. Order

3.1 The quantity, quality and description of the Supplies shall be as specified in the Order or the Specification

3.2 The Seller shall comply with all applicable directives statutes regulations or bye-laws court tribunal arbitral orders or adjudication concerning the manufacture, packaging, packing, performance and delivery of the Supplies and their nature, quality, fitness for purpose and description. The Seller shall ensure that all Supplies are manufactured, stored, tested and packed in accordance with all applicable E.U. and British standards applicable to them.

3.3 Where the parties agree in writing to apply special terms to an Order such special terms will take precedence over these Conditions.

4. Price of the Supplies

4.1 The price of the Supplies shall be as stated in the Order and, shall be:

4.1.1 exclusive of any applicable value added tax (which shall be payable by the Buyer subject to the receipt of a VAT invoice);

4.1.2 inclusive of all charges for packaging, shipping, carriage, insurance and delivery of the Supplies to the Delivery Address and any duties (other than value added tax), unless otherwise agreed.

4.2 Any variation in the price must be approved by the Buyer in writing and in advance of the Delivery of the Goods and or Services.

5. Terms of Payment

5.1 The Buyer shall pay the price of the Supplies or Supplies (less any discount to which the Buyer is entitled) within 30 days net of the date of receipt of the Seller's proper and accurate invoice for those Supplies delivered to the Buyer. In no circumstances shall the time for payment be of the essence. In the event of late payment by the Buyer, it shall be liable to pay the Seller interest at the rate of 2% above base rate.

5.1.1 The Seller shall forward its invoice to the named person and to the address as set out in the relevant Order.

5.1.2 The Seller shall ensure that its invoice accurately details the Order number and description of the Supplies, the Buyer's instructing officer's name, the name of the Buyer's department and the Delivery Address to where the Supplies or were delivered and who signed for the Supplies on Delivery on the Buyer's behalf.

5.1.3 If, for the purpose of performing the contract, the Seller enters into a contract for the provision of Supplies to the Seller by a third party, the Seller shall include in that contract a term that requires the Seller to pay for those Supplies within thirty (30) working days of the Seller receiving a correct written invoice from that third party.

6. Delivery

6.1 The Seller shall Deliver to the Buyer those Supplies in accordance with these Conditions and the Order.

6.2 The Supplies shall be Delivered (carriage paid) to and the Delivery Address on the date or within the period stated in the Order, and in either case during the Buyer's usual business hours.

6.3 The Delivery shall be accompanied by the Seller's delivery note, as approved by the Buyer.

6.4 For the avoidance of doubt the delivery note shall only be evidence of Delivery and not as to quantity, description, satisfactory quality, fitness for purpose, correspondence with sample, acceptance of the Supplies or otherwise.

6.5 The Seller shall deliver the Supplies within the time for delivery specified by the Buyer within the Order or as agreed in writing between the Buyer and the Seller. Any time agreed between the parties for Delivery will be of the essence of the contract. In the absence of such specification or agreement the Seller shall deliver the Supplies within a reasonable period.

6.6 If the Seller fails to deliver the Supplies or (or any instalment thereof) for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, the Seller shall be accordingly liable to the Buyer and the Seller shall compensate the Buyer for such losses as the Buyer incurs including but not limited to the cost of replacing the Supplies which the Seller has failed to deliver.

6.7 The Buyer shall be entitled to reject any Supplies Delivered which are not in accordance with these Conditions and shall not be deemed to have accepted any Supplies until the Buyer has had a reasonable time and opportunity to inspect them following Delivery or if later within a reasonable time after any latent defect in the Supplies has become apparent and the Buyer has notified to the Seller in writing that he has accepted the Supplies as being in complete compliance with the requirements of the Buyer. Notwithstanding any such acceptance as aforesaid, the Buyer will remain entitled to reject the Supplies and to claim damages if, within 6 months of any such written notice, the Supplies are found not to be in complete compliance as aforesaid or in compliance with the warranties set out in Clause 8 hereto. The right to reject can be exercised for minor defects or slight breaches of this Contract.

6.8 The Buyer shall not be liable to the Seller for the return of any packaging or casing.

6.9 Supplies rejected pursuant to Clause 6.7 shall be collected by the Seller within 7 days of a written request from the Buyer. In the event that the rejected Supplies are not so collected then the Buyer may return the rejected Supplies to the Seller and the Seller shall pay to the Buyer the costs thereof pursuant to Clause 9.

6.10 Whilst the Seller and or its employees or agents are at the Delivery Address they shall be bound to comply with the Buyer's health and safety and security rules and instructions and complete any additional security clearance procedures required by the Buyer when working at the Buyer's premises.

7. Title Risk and Property

7.1 The Seller shall pass good title to the Buyer in the Supplies.

7.2 Title or property in the Supplies shall pass from the Seller to the Buyer on Delivery

7.3 Risk in the Supplies shall pass on acceptance of the Supplies and (if applicable) on rejection of the same by the Buyer. The Seller shall maintain insurance over the Supplies and on request from the Buyer to assign to the Buyer the benefits of such insurance.

8. Warranties and Liability

8.1 The Seller warrants and guarantees to the Buyer that the Supplies:

8.1.1 are the Seller's unencumbered property and are not subject to any mortgage, charge, hire-purchase agreement or other third party interest and that the Seller will on Delivery have full unrestricted right, power and authority to sell, transfer and deliver all the Supplies to the Buyer.

8.1.2 will be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Seller or made known to the Seller in writing at the time the Order is placed;

8.1.3 will be free from defects (patent or latent) in design, material and workmanship;

8.1.4 will correspond with any relevant specification of sample and description; and

8.1.5 will comply with all statutory requirements and regulations relating to the sale of the Supplies.

8.2 It is agreed that clause 8 will be deemed to be a condition of contract

8.3 The Seller's obligations under this clause 8 shall extend to any defect or non conformity arising or manifesting itself within 6 months from Delivery. The Buyer without thereby waiving any rights or remedies otherwise provided by law and/or elsewhere in this contract may require the Seller:

8.3.1 to make good or replace such Supplies at the Seller's risk and expense; or

8.3.2 to refund such portion of the price as is equitable under all the circumstances. Supplies repaired or replaced shall be subject to the provisions of this contract in the same manner as those originally delivered under this contract. If the Seller refuses or fails promptly to repair or replace the Supplies when requested under this provision, the Buyer may itself or through an agent or sub-contractor, or otherwise repair or replace any item himself and the Seller agrees to reimburse the Buyer for any loss or expenses incurred.

8.4 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Supplies, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:

8.4.1 Act of God, explosion, flood, tempest, fire or accident;

8.4.2 war or threat of war, sabotage, insurrection, terrorism, civil disturbance or requisition;

8.4.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

8.4.4 import or export regulations or embargoes;

8.5 The Seller warrants and guarantees that:

8.5.1 the Supplies will be performed with all due care, skill, diligence and attention and otherwise in accordance with best industry practice and relevant industry standards;

8.5.2 the Supplies shall be performed within the time periods agreed or if not agreed then within a reasonable time

8.5.3 the Seller's staff possess the necessary qualifications, competence and experience to carry out the Supplies in accordance with best industry practice.

8.5.4 the Supplies will not in any manner or way infringe or violate any intellectual property rights, trade secrets or proprietary information of any third parties;

8.5.5 the Supplies shall upon delivery conform in all material respects with the Specification

9. Indemnity and Consequential Loss

9.1 Without prejudice to any other provisions in this contract, or to such other rights as the Buyer may have under statute or at law, the Seller shall also be liable, in the event of any breach of contract, for all direct and indirect consequential loss following from the breach howsoever caused. The Seller also expressly acknowledges that he was aware at all times of such circumstances as might affect any loss suffered by the Buyer as a result of any breach.

9.2 The Seller shall indemnify the Buyer in full against all liability, loss, damages, costs, claims and expenses awarded against or incurred by the Buyer which arise, directly or indirectly, however caused from the Seller's breach of any of its obligations under this contract. Supplies.

9.3 Whenever under these Conditions any sum of money shall be recoverable from or payable by the Seller to the Buyer the same may be deducted from any sum then due or which at any time thereafter may become due to the Seller under these Conditions or any other agreement between the Seller and the Buyer.

10. Termination

10.1 The Buyer shall be entitled to cancel, without incurring costs or liability, the Order in respect of all or part only of the Supplies and/or Supplies by giving reasonable notice to the Seller at any time prior to delivery or performance. In the event the parties cannot agree a reasonable notice period, the minimum period of 14 days shall apply unless any Supplies to be supplied by the Seller are perishable in which case the Buyer shall be entitled to give immediate notice.

10.2 The Buyer may, without compensation to the Seller terminate the Contract at any time by written notice to the Seller if the Seller:

10.2.1 being an individual (or, where the Seller is a firm, any partner in that firm),

(i) becomes bankrupt, or

(ii) has a receiving order or administration order made against him, or

(iii) makes any composition or arrangement with or for the benefit of his creditors voluntary or otherwise, or

(iv) makes any conveyance or assignment for the benefit of his creditors or purports to do so, or

(v) any application is made against him under any bankruptcy act for sequestration of his estate, or

(vi) becomes insolvent

10.2.2 being a company,

(i) is the subject of a proposal for a voluntary arrangement or enters liquidation, or

(ii) has a petition for an administration order or a petition for a winding up order brought against it,

or

(iii) passes a resolution or is subject to an order for a winding up order, or

(iv) makes any composition, arrangement, conveyance or assignment for the benefit of its creditors or purports to do so, or

(v) has a receiver or any other person appointed in respect of its undertaking or of all or any of its property, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Buyer

(vi) becomes insolvent.

11 Intellectual Property Rights and Third Party Licences

11.1 All intellectual property rights generated under this contract in the supply of Supplies or Supplies by the Seller shall belong absolutely to the Buyer.

11.2 Insofar as the Supplies and/or Supplies supplied by the Seller require licence from a third party before a Buyer can utilise them the Seller shall procure and supply such licences for the Buyer at no additional cost

12. Confidentiality

12.1 All information relating but not restricted to the Buyer's technical, commercial, business or other affairs shall be deemed to be confidential and the Seller confirms that it shall not use such information or disclose it to any third party without the Buyer's express written permission. Such information shall remain confidential even after the termination of the contract for whatever reason.

13. Data and Data Protection

13.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Service Provider is the Processor. The only processing that the Service Provider is authorised to do is defined by the Authority and may not be determined by the Service Provider.

13.2 The Service Provider shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.

13.3 The Service Provider shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data

13.4 The Service Provider shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- (a) process that Personal Data only defined by the Authority, unless the Service Provider is required to do otherwise by Law. If it is so required the Service Provider shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Authority as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (c) ensure that:
 - (i) the Service Provider's Personnel do not process Personal Data except in accordance with this Agreement;
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Service Provider's Personnel who have access to the Personal Data and ensure that they:
 - a. are aware of and comply with the Service Provider's duties under this Clause;
 - b. are subject to appropriate confidentiality undertakings with the Service Provider or any Sub-Processor;
 - c. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Authority or as otherwise permitted by this Agreement; and
 - d. have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
 - (i) the Authority or the Service Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Authority;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Service Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and

(iv) the Service Provider complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;

(e) at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Agreement unless the Service Provider is required by Law to retain the Personal Data.

13.5 Subject to Clause 13.6, the Service Provider shall notify the Authority immediately if it:

(a) receives a Data Subject Access Request (or purported Data Subject Access Request);

(b) receives a request to rectify, block or erase any Personal Data;

(c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

(d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;

(e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

(f) becomes aware of a Data Loss Event.

13.6 The Service Provider's obligation to notify under Clause 13.5 shall include the provision of further information to the Authority in phases, as details become available.

13.7 Taking into account the nature of the processing, the Service Provider shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 13.5 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:

(a) the Authority with full details and copies of the complaint, communication or request;

(b) such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

(c) the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;

(d) assistance as requested by the Authority following any Data Loss Event;

(e) assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.

13.8 The Service Provider shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Service Provider employs fewer than 250 staff, unless:

(a) the Authority determines that the processing is not occasional;

(b) the Authority determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and

(c) the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

13.9 The Service Provider shall allow for audits of its Data Processing activity by the Authority or the Authority's designated auditor.

13.10 The Service Provider shall designate a Data Protection Officer if required by the Data Protection Legislation.

13.11 Before allowing any Sub-Processor to process any Personal Data related to this Agreement, the Service Provider must:

(a) notify the Authority in writing of the intended Sub-Processor and processing;

(b) obtain the written consent of the Authority;

(c) enter into a written agreement with the Sub-Processor which give effect to the terms set out in this Clause such that they apply to the Sub-Processor; and

(d) provide the Authority with such information regarding the Sub-Processor as the Authority may reasonably require.

13.12 The Service Provider shall remain fully liable for all acts or omissions of any Sub-Processor.

13.13 The Service Provider may, at any time on not less than 30 Working Days' notice, revise this Clause by replacing it with any applicable controller to processor standard Clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

13.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice to the Service Provider amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

14. Freedom of Information Act 2000

14.1 The Seller acknowledges that the Buyer is subject to the Freedom of Information Act 2000 ("the Act") and all subordinate legislation made under it, together with the Environmental Information Regulations 1992 (and any other provisions that replace these) and agrees to assist and co-operate with Buyer to enable the Buyer to comply with its obligations under such legislation including, without limitation, providing to the Buyer such information as the Buyer may reasonably request concerning the Contract.

14.2 The Seller acknowledges that the Buyer may be obliged under the legislation referred to in Condition 14.1 to disclose information without consulting or obtaining consent from the Seller.

14.3 This Condition 14 will survive the expiry or termination of this contract.

15 Contracts (Rights Of Third Parties) Act 1999

15.1 The Contracts (Rights Of Third Parties) Act 1999 shall not apply to the Order and no person other than the Seller and the Buyer may enforce these Conditions

16. Publicity

16.1 The parties shall not issue press releases or other forms of publicity concerning the supply of Supplies under this order without prior consultation with the other party.

17. Variation

17.1 No amendment or variation in the terms of the Contract will be valid unless previously agreed in writing by the Buyer and the Seller and no payment will be made for any unauthorised work.

18. Disputes

18.1 Any dispute between the Seller and the Buyer in respect of the Order may be referred by agreement between the parties to an independent expert arbitrator or mediator agreed between them. In the event that the parties are unable to agree to whom to refer the dispute either party or both may apply to the Chartered Institute of Arbitrators for a suitable nomination.

19 General

19.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business.

19.2 No waiver by the Seller of any breach of these Conditions by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

19.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

19.4 The Contract shall be governed by the laws of England, and the parties agree to submit to the exclusive jurisdiction of the English courts.

20. Assignment and Sub Contracting

20.1 The Seller shall not assign or transfer the whole or any part of this contract without the prior consent of the Buyer.

21. Insurance

21.1 The Seller shall effect and maintain an adequate level of insurance cover in respect of all risks that may be incurred by him in the performance of this contract and shall provide to the Buyer such satisfactory evidence required by the Buyer to confirm that the Seller has the relevant insurance policies in force.

22. Audit and Information

22.1 The Seller shall make available at any stage any document work or information relating to all or any part of this Agreement and provide access to the Buyer, its officers and/or its agents as is necessary to carry out any audit or other investigation of this Agreement for such purposes as required by the Buyer.