

# Short Form Standard Goods and Services Contract

## Schedule – General Terms and Conditions

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**Team:** Warwickshire Legal Services

**Protective Marking:** Public

## 1. Definitions

**"Charges"** means the price for the Goods and/or Services set out in the Contract Particulars and/or the Purchase Order

**"Contract"** means the agreement between the Council and the Supplier consisting of these General Terms and Conditions and related Contract Preliminaries (including any Specification) and/or Purchase Order but excluding any terms and conditions of sale and/or supply of the Supplier

**"Contract Particulars"** means (if applicable) the particulars of the Contract as set in the Contract Preliminaries

**"Council"** means Warwickshire County Council of Shire Hall, Warwick CV34 4RL

**"Data Protection Legislation"** means the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations, and secondary legislation (including the Data Protection Act 2018) and all applicable laws and regulations relating to processing of personal data and privacy

**"Default"** means any breach of the obligations of the Supplier under the Contract

**"Goods"** means the goods, if any, to be supplied by the Supplier and identified in the Contract Particulars, Purchase Order and/or the Specification

**"Intellectual Property Rights"** means any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise

**"Purchase Order"** means (if applicable) the purchase order used by the Authority to place an order with the Supplier for Goods and/or Services

**"Services"** means the services, if any, to be provided by the Supplier as identified in the Contract Particulars, Purchase Order and/or Specification

**"Specification"** means the specification (if any) appended to the Contract Preliminaries

**"Supplier"** means the person, firm or company with whom the Council enters into the Contract.

**"Supplier Participation Agreement"** means the agreement that the Council and the Supplier shall enter into or have entered into in respect of early payment terms (where applicable)

**"Tax"** means Value Added Tax, customs duties and any other taxes or duties.

## 2. Supply of Goods and/or Services

**2.1** The Supplier shall provide the Goods and/or Services on the terms and conditions set out in the Contract. Subject to the Supplier fulfilling its obligations under the Contract the Council shall pay the Supplier in accordance with the terms of the Contract.

**2.2** In providing the Goods and/or Services, the Supplier shall comply with and take into account all applicable laws, enactments, orders, regulations and other similar instruments, the requirements of any court with relevant jurisdiction and any local, national or supranational agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union.

## 3. Contracts for Goods

**3.1** The Goods shall be to the reasonable satisfaction of the Council, shall conform to any particulars specified in the Specification, Purchase Order and/or the Contract Particulars, shall be free from defects and be fit and sufficient for all the purposes for which such Goods are ordinarily used and for any particular purpose made known to the Supplier by the Council.

**3.2** The Goods shall be delivered to the location(s), and at the times and dates specified in the Specification, Purchase Order and/or Contract Particulars, and time of delivery shall be of the essence. If no times and dates are specified, the Goods shall be delivered promptly following the date of this Contract. Except where otherwise provided in the Specification, Purchase Order and/or Contract Particulars, delivery shall include the unloading, stacking or installation of the Goods by Supplier at such place as the Council shall reasonably direct.

**3.3** Property and risk in the Goods shall without prejudice to any other rights or remedies of the Council pass to the Council at the time of acceptance. The Goods shall be packed and marked in a proper manner and in accordance

with the Council's instructions, any statutory requirements and any requirements of carriers.

**3.4** The Council may by reasonable written notice to the Supplier reject any of the Goods which fail to meet the requirements specified herein, and shall be entitled (without prejudice to other rights and remedies) either to have the Goods repaired or replaced (at the option of the Council) or to treat the Contract as discharged and seek damages from the Supplier. The issue by the Council of a receipt note for the Goods shall not constitute any acknowledgement of the condition or nature of those Goods.

## 4. Contracts for Services

**4.1** The Supplier shall provide the Services for the period specified in the Contract Particulars, Purchase Order and/or the Specification in accordance with the Council's requirements as set out in the Contract Particulars, Purchase Order and/or the Specification. Timely provision of the Services shall be of the essence of the Contract, including in relation to commencing the provision of the Services.

**4.2** The Supplier shall perform the Services with all reasonable care, skill and diligence, and in accordance with good industry practice. The Supplier warrants and represents that all persons engaged by the Supplier for performance of the Services have the qualifications, skill and experience necessary for the proper performance of the Services.

**4.3** If the Council informs the Supplier that the Council considers any part of the Services to be inadequate, without prejudice to clause 4.5 below, the Supplier shall at its own expense re-schedule and perform the work correctly within such reasonable time as may be specified by the Council.

**4.4** Without prejudice to the Council's other rights and remedies, the Supplier shall reimburse the Council for all reasonable costs incurred by the Council which have arisen as a direct consequence of the Supplier's delay in the performance of the Contract.

**4.5** In the event that the Council is of the opinion that there has been a Default by the Supplier in respect to the Services, then the Council may, without prejudice to its other rights herein: (a) make such deduction from the Charges as the Council shall reasonably determine in respect of such of the Services as the Supplier has failed to provide; or (b) provide or procure the provision of part of the Services; or (c) terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Charges shall be made) and thereafter itself provide or procure a third party to provide such part of the Services; and/or (d) terminate, in accordance with clause 19.

**4.6** The Council may charge to the Supplier any cost reasonably incurred by the Council and any reasonable administration costs in respect of the provision of any part of the Services by the Council or by a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Services.

## 5. Charges

**5.1** In consideration of the satisfactory performance of the Supplier's obligations under the Contract by the Supplier, the Council shall pay the Charges.

**5.2** The Council shall pay the Supplier, in addition to the Charges, a sum equal to the Tax chargeable on the value of the Goods and/or Services provided in accordance with the Contract.

**5.3** Subject to 5.4, payment of invoices accepted by the Council will be made in cleared funds within 30 days of receipt and agreement of invoices, submitted in arrears, for work completed to the satisfaction of the Council.

**5.4** Where the Supplier has agreed to enter into, or has already entered into, a Supplier Participation Agreement, the Council shall pay the Supplier any sums due in accordance with the Supplier Participation Agreement.

**5.5** Wherever under the Contract any sum of money is recoverable from or payable by the Supplier, the Council may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under the Contract or under any other agreement or contract with the Council

## **6. Interest**

Interest shall be payable on the late payment of any undisputed Charges properly invoiced under this Contract at a rate per annum equivalent to 2% above the Bank of England base rate current on the date upon which such Charges first become overdue. The Supplier shall not suspend the supply of the Services if any payment is overdue.

## **7. Notices**

Any notice which is to be given by either party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail (confirmed in either case by letter), to Shire Hall, Warwick CV34 4RL in respect of notices to the Council and the Supplier's registered office in respect of notices to the Supplier (unless otherwise agreed in writing between the parties during the Contract), and such notice or communication shall be deemed to have been given 2 working days after the day on which the letter was posted, or four hours, in the case of electronic mail or facsimile transmission or sooner where the other party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

## **8. The Contracts (Rights of Third Parties) Act 1999**

No person who is not a party to the Contract shall have any right to enforce any term of the Contract, which expressly or by implication, confers a benefit on him without the prior agreement in writing of both parties.

## **9. Information sharing and confidentiality**

**9.1** When required to do so by the Council, the Supplier shall assist the Council at no additional charge in meeting its obligations under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 or any statutory modification or re-enactment thereof of any related guidelines or codes of practice.

**9.2** The Supplier shall comply in all respects with the Data Protection Legislation as amended and will indemnify the Council against all actions, costs, claims proceedings or demands that may be brought or made against the Council under the Act which arises from the improper use, disclosure or transfer of personal data by the Supplier.

**9.3** The Supplier shall keep confidential all information belonging to or provided by the Council in connection with this Contract and shall not further use or disclose it to any third party without the express consent of the Council or except to the extent permitted by law.

## **10. Security**

The Supplier shall comply with all reasonable security requirements of the Council while on the Council's premises, and shall procure that all of its employees, agents, servants and sub-contractors shall likewise comply with such requirements. The Council shall provide the Supplier upon request copies of its written security procedures. The Council reserves the right to refuse to admit to, or to withdraw permission to remain on, any of its premises, the Supplier or any sub-contractor, agent or servant of the Supplier.

## **11. Intellectual Property Rights**

**11.1** It shall be a condition of the Contract that the Goods and/or Services will not infringe any Intellectual Property Rights of any third party and the Supplier shall fully indemnify and keep indemnified 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.

**11.2** All Intellectual Property Rights in any specifications, instructions, plans, drawings, patents, patterns, models, designs or other material prepared by or for the Supplier for use, or intended use, in relation to the performance of the Contract shall belong to the Council

## **12. Assignment and Sub-Contracting**

The Supplier shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without prior written consent of the Council.

## **13. Waiver**

The failure to insist upon strict performance of any provision of the Contract or to exercise any right or remedy shall not constitute a waiver of that right or remedy, no waiver shall be effective unless it is expressly stated to be a waiver and

communicated to the other party in writing, and a waiver of any right or remedy shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

## **14. Variation**

The Contract shall not be varied or amended unless such variation or amendment is agreed in writing by the Council and the Supplier.

## **15. Severability**

If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

## **16. Remedies Cumulative**

Except as otherwise expressly provided by the Contract, all remedies available to either party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

## **17. Indemnity and Insurance**

**17.1** Neither party excludes or limits liability to the other party for death or personal injury caused by its negligence or for any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.

**17.2** The Supplier shall indemnify and keep indemnified the Council against injury (including death) to any persons or loss of or damage to any property which may arise out of the act default or negligence of the Supplier, any sub-contractor or their respective employees or agents, and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto arising from the provision of the Goods and/or Services.

**17.3** Without thereby limiting his responsibilities under clause

**17.2** the Supplier shall before execution of the Contract insure with a reputable insurance company against all loss of and damage to property and injury to persons (including death) arising out of or in the consequence of the Supplier's obligations under the Contract and against all actions claims demands costs and expenses in respect thereof.

**17.4** Such insurance in respect of clause 17.3 shall be for a minimum of £10,000,000 (ten million pounds) in respect of any one act or default and the said insurance policy or policies shall be extended for the purpose of the Contract by endorsement or otherwise so as effectually to indemnify the Council against all claims aforesaid and copies shall be produced to the Council together with the receipt or receipts for the premiums at such times as may be reasonably required by the Council.

**17.5** The Supplier shall at its own costs procure and maintain Employers Liability insurance with a minimum level of £10,000,000 per claim or series of claims.

**17.6** If so required the Supplier shall procure and maintain during the currency of the Contract a policy of professional indemnity insurance to cover its liability under the Contract in respect to the Services with a minimum level of indemnity of £5,000,000 per claim or series of claims. The Supplier shall maintain insurance at this level for a period of six years after the end of this Contract and shall notify the Council in writing immediately should such insurance cover cease.

**17.7** If so required the Supplier shall procure and maintain during the currency of this Contract a policy of product liability insurance to cover its liability under the Contract in respect of the Goods with a minimum level of indemnity of £10,000,000 per claim or series of claims. The Supplier shall maintain insurance at this level for a period of six years after the end of this Contract and shall notify the Council in writing immediately should such insurance cover cease.

**17.8** If so required the Supplier will procure and maintain during the currency of this Contract a policy of motor insurance to cover its liability arising out of the use of any vehicle in relation to the Contract and in respect of damage to property and injury to persons. With respect to damage to property there shall be a minimum policy limit of £5,000,000

per claim or series of claims arising from any one incident. With respect to injury to persons the level of cover shall be unlimited.

**17.9** If so required the Supplier shall furnish the Council with certificates of insurance together with the receipt or receipts for premiums evidencing that the relevant insurances are in force

**17.10** In no event shall either party be liable to the other for:

17.10.1 indirect or consequential loss or damage; and/or

17.10.2 loss of profits, business, revenue, goodwill or anticipated savings.

#### **18. Termination on bankruptcy or insolvency**

The Council may terminate the Contract by notice in writing with immediate effect where:- a petition is presented for the Supplier's bankruptcy, or a bankruptcy order is made against the Supplier, or the Supplier makes any composition or arrangement with or for the benefit of creditors, or if the Supplier passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for an administration order in relation to it, or any party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court makes a winding-up order, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or the Supplier is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or any similar event occurs under the law of any other jurisdiction within the United Kingdom.

#### **19. Termination on Default**

The Council may terminate the Contract, or terminate the provision of any part of the Contract by written notice to the Supplier with immediate effect if the Supplier commits a Default and if: (a) the Supplier has not remedied the Default within 30 days after issue of a written notice specifying the Default and requesting it to be remedied; or (b) the Default is not capable of remedy; or (c) the Default is a fundamental breach of the Contract.

#### **20. Consequences of Termination**

Where the Council terminates all or part of the Contract under clause 19, and makes other arrangements for the provision of Goods and/or Services, the Council shall be entitled to recover from the Supplier the cost of making those other arrangements and any additional expenditure incurred by the Council throughout the remainder of the contract period, and no further payments shall be payable by the Council to the Supplier until the Council has established the final cost of making those other arrangements.

#### **21. Force Majeure**

Neither party shall be liable to the other party for any delay in or failure to perform its obligations under the Contract (other than a payment of money) if such delay or failure results from an event beyond the reasonable control of such party. If such event of force majeure continues for a period of 90 days either party may terminate this Contract by notice in writing to the other party. The party suffering the event of force majeure shall take all reasonable steps to mitigate such delay or failure.

#### **22. Governing Law**

This Contract shall be governed by and interpreted in accordance with English law and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

#### **23. Entire Agreement**

The Contract constitutes the entire agreement between the parties for the Goods and/or Services. The Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.

#### **24. Anti-bribery and Corruption**

The Council may terminate the contract and recover from the Supplier the amount of any loss resulting from the termination if at any time it becomes known to the Council that the Supplier or any person employed by the Supplier or acting on his behalf whether with or without the knowledge of the Supplier has:

**24.1** Offered, given or agreed to give any inducement or

reward to any person or body in relation to the obtaining or execution of this Contract or any other contract with the Council;

**24.2** Favoured or discriminated against any person in relation to this Contract or any other contract with the Council

**24.3** Committed an offence in relation to any contract with the Council under section 117(3) Local Government Act 1972 or the Bribery Act 2010;

**24.4** Communicated to any person other than the Council the details of the Supplier's proposed tender (other than in confidence in order to obtain quotations necessary for the preparation of the Supplier's tender)

**24.5** entered into any agreement or arrangement with any person or body that he shall refrain from tendering or as to the amount of any proposed tender.

#### **25. Staff Vetting**

**25.1.** The Supplier shall ensure that in respect of any of its servants, employees, agents or subcontractors whom in performing Services for the Council under this Contract may come into contact with children or vulnerable adults:

25.1.1 all such individuals are subject to a valid standard disclosure check undertaken through the Disclosure and Barring Service (DBS); and

25.1.2 the level and validity of the checks under this clause 25.1 for each member of staff are monitored; and

25.1.3 no person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out the Services or who may otherwise present a risk to service users is employed by the Supplier and/or provides services on behalf of the Supplier.

**25.2.** The Supplier shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 25 have been met.

**25.3.** The Supplier shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to the children and/or vulnerable adults.

#### **26. Modern Slavery Act 2015**

The Supplier shall comply with the Modern Slavery Act 2015 and where applicable implement a due diligence procedure for its own suppliers, subcontractors and other participants in its supply chain to ensure that there is no slavery or human trafficking in its supply chain.

#### **27. Equality in Contracting**

**27.1** The Supplier shall comply with all current legislation relating to non-discrimination and equality in employment (including but not limited to the Equality Act 2010):

**27.2** Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Supplier being in contravention of any equalities legislation, the Supplier shall, free of charge:

**27.2.1** provide to the Council any information requested by it within the prescribed timescale;

**27.2.2** attend any meetings as required and permit any servants, employees, agents or sub-contractors to attend the same;

**27.2.3** promptly allow access to and investigation of any documents or data deemed to be relevant;

**27.2.4** allow any servants, employees, agents or sub-contractors to appear as witnesses in any ensuing proceedings; and

**27.2.5** cooperate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.

**27.3** Where any investigation is conducted or proceedings are brought under equalities legislation which arise directly or indirectly out of any act or omission of the Supplier, its servants, employees, agents or sub-contractors, and where there is a finding against the Supplier in such investigation or proceedings, the Supplier shall indemnify the Council with respect to all costs, charges and expenses (including legal and administrative expenses) arising out of or in connection

with any related loss the Council may suffer including the payment of costs, expenses or compensation to any third party.

**27.4** The Council may cancel this Contract and any other contracts entered into with the Supplier or discount the Supplier from any ongoing procurement process involving the Council if at any time the Supplier is found to be in contravention of any equalities legislation.

**27.5** The Supplier warrants that the information, representations and other information provided to the Council by the Supplier in connection with or arising out of this Contract are true and complete in all material respects.

**28. Counter-Terrorism**

The Supplier shall comply with the Counter-Terrorism and Security Act 2015 and have due regard for the Council's duties under section 26 of that Act in performing its obligations under this Contract, including (where appropriate) providing training to its personnel to ensure that they are aware of such duties. The Supplier shall raise any concerns regarding extremism or terrorism with the Council.

**29. Break**

Notwithstanding any other provision of this Contract, if specified in the Contract Particulars and/or Purchase Order, the Council may terminate this Contract after giving the specified notice to the Supplier.

**30. Transfer of Undertakings and Protection of Employment Regulations 2006**

**30.1** The attention of the Supplier is drawn to the Transfer of Undertaking (Protection of Employment) Regulations 2006. In some cases where services awarded to a contractor are subsequently awarded or assigned to a new contractor, such a transfer of work may constitute a 'service provision change' for the purposes of TUPE.

**30.2** TUPE provides that where there is a service provision change, the new employer takes over any employment liabilities and the responsibility for the contracts of employment of the employees, who then transfer on their previous terms and conditions of service.

**30.3** Where the Supplier may be a transferee for the purposes of TUPE, the Supplier should seek independent legal advice as to whether TUPE will be likely to apply to the Contract. In such cases, the Council will be neither the transferee or transferor for the purposes of TUPE, the application of TUPE is a matter for outgoing and incoming employers to clarify with their legal advisers.

**30.4** The Council and the Supplier acknowledge and agree that the return or transfer of all of the Service to the Council and/or to a successor supplier following termination of this Contract (including termination by effluxion of time on the Contract expiry date) may give rise to a transfer under TUPE.

**30.5** At any time during the period of 12 months preceding the Contract expiry date or at any other time after

the Council has given notice to terminate this Contract, the Supplier shall and in the case of Supplier's employees employed by a sub-contractor shall use reasonable endeavours to procure that such sub-contractor shall subject to any restrictions imposed by law including the DPA:-

**30.5.1** fully and accurately disclose to the Council within 10 Working Days of a written request from the Council a list of exit transferring employees together with the 'workforce information' and the Supplier's employees' terms and conditions which apply to the exit transferring employees ("all of which is collectively termed **"the Exit Information"**") and shall permit the Council to supply the Exit Information to any tenderer for the Service, and the Supplier:-

**30.5.1.1** warrants that the Exit Information provided under clause 30.5.1 shall be true, complete and accurate in all material respects; and

**30.5.1.2** shall supply the Exit Information in Microsoft Word or Excel format or other format approved by the Council.

**30.6** The Supplier shall co-operate in the orderly transfer of employment of the transferring employees if and to the extent reasonably requested by the Council, including without limitation complying with all reasonable instructions from the Council with regard to arrangements connected with the termination or partial termination of this Contract and taking all reasonable steps to mitigate any costs which the Council and/or any successor supplier and/or any sub-contractor may incur as a result of termination or partial termination of this Contract.

**30.7** During the 12 months preceding the Contract expiry date or at any other time after the Council has given notice to terminate the Contract the Supplier shall not and shall use reasonable endeavours to procure that any sub-contractor shall not materially amend or promise to amend the rates of remuneration of or hours to be worked by or otherwise materially vary the Supplier's employees terms and conditions (including such terms and conditions which apply to entitlement of membership of, contributions to, or pension accrual under, any statutory, occupational or personal pension scheme) of any of the Supplier's employees who are or will be engaged wholly or partially in providing the Services or materially increase the number of employees performing the Services and/or recruit any of the Supplier's employees for employment in connection with, or assign any additional employee to, the provision of the Services under the Contract; without the prior written agreement of the Council, not to be unreasonably withheld or delayed.

**31. Precedence of Contractual Documents**

Where this Contract consists of both a Purchase Order and Contract Preliminaries, in addition to these General Terms and Conditions, then in the event of any conflict or inconsistency between those documents, the Contract Preliminaries shall take precedence over the Purchase Order.