

## **PURCHASE ORDER CONDITIONS**

### **Standard Terms for the Supply of Goods, Services and Works to:**

**These terms and conditions apply to the purchase of all goods and services by South Derbyshire District Council (the "Council") from suppliers where there is no written contract in place between the Council and the supplier (the "Supplier") which has been signed by both parties.**

This Contract shall be constituted by and comprise only the Contract Documents; **no terms or conditions put forward by the Supplier (including terms relating to hire, lease or loan) shall form part of the Contract unless signed by both parties.** In the event of conflict, the Order, Terms and Purchaser Specification prevails. Any supply made in response to this Purchase Order ("PO" shall be taken as conclusive acceptance of this term and any inconsistent or additional terms accompanying the supply shall be deleted and ignored.

#### **1. Formation of Contract**

- 1.1 No addition, alteration or substitution of these Conditions will bind the Council or form part of any contract unless an officer authorised to sign on the Council's behalf expressly accepts them in writing with this PO.
- 1.2 Nothing in these Conditions shall prejudice any condition or warranty expressed or implied or any legal remedy to which the Council may be entitled in relation to the works services and supplies, which are the subject of this PO.
- 1.3 The law of England and Wales shall govern the construction validity and performance of these Conditions and this PO.

#### **2. Obligations of the Parties**

- 2.1 Subject to the Conditions set out in this PO the Council engages the Supplier to provide the goods and/or services set out in the Order Description and each party undertakes so far as the Conditions fall to be observed and performed by that party to observe and perform them.

#### **3. Goods and Services (including all materials and works)**

- 3.1 All goods or services provided must comply with the highest British Standard Institute standard unless either (a) the Council agrees a lower standard; or (b) the Supplier informs the Council that there is no such relevant standard. In both cases, the Council must agree in writing in advance.

#### **4. Goods (including all materials)**

- 4.1 The Supplier must cover the cost of carriage and postage and must deliver the goods to the location indicated on the PO as the "Delivery Address" or they may be rejected.
- 4.2 The Supplier must obtain a receipt for all delivered goods and provide a copy to the Council on request. The Council is not obliged to pay for any goods until it has received proof of delivery.
- 4.3 Where a Delivery Date and/or Delivery Time has been specified the Supplier must adhere to this. If a Delivery Date and/or Delivery Time has not been specified, the Delivery Date will be on the 14th day following the date of the order at 3.00pm /15:00. If the 14th day falls on a day when our offices are closed, the Delivery Date will be the next day that our offices are open. Our offices are open Monday, Tuesday and Thursday 9.00am to 5.00pm/17:00, Wednesday 9:30am-5:00pm/17:00 and Friday 9:00am-4:30/16:30.

- 4.4 All property relating to the goods and materials in respect of this PO will pass to the Council upon delivery. However, if payment or part payment is made in relation to this order before delivery, then all property will pass to the Council at the time of the payment.
- 4.5 The Supplier must specify clearly on the delivery notice and invoice if, for example if it needs a pallet or packaging to be returned to it. The Council will reuse or dispose of it as it sees fit otherwise.
- 4.6 The Supplier must remove any delivered goods that do not match the description specified in the PO from the Council's premises within 48 hours of delivery at the Supplier's expense. If the Supplier fails to do this, the Council will arrange to return the goods to the Supplier at its expense. If the goods are identified at the time of attempted delivery as not matching the Order Description, the goods will be removed immediately from the premises at the Supplier's expense.
- 4.7 The Supplier must make good any loss damage to or defect in the goods not caused by the Council within 14 days of receiving written notice from the Council.
- 4.8 The Supplier must clearly mark hazardous goods with the international danger symbol and name of the material/substance in English. These goods must be packed, labelled and carried in accordance with current legislation or internationally accepted agreements. The Supplier must supply information in English regarding the handling storage and proper use of the hazardous goods. By agreement to these Conditions the Supplier indemnifies the Council against any loss, damage or injury caused to the Council its staff and agents if the Supplier fails to comply with these Conditions.

## **5. Services (including works)**

- 5.1 T The Supplier shall provide:-
- 5.1.1 the services with all proper skill and care and to the satisfaction of the Council; and
- 5.1.2 materials as necessary or required in the provision of the services which are fit for the purpose for which they will be used and of good quality.
- 5.2 The Supplier will provide all labour, goods tools and equipment necessary to perform the services.
- 5.3 The Supplier must provide its services during the Council's normal working hours unless the Council has agreed otherwise in writing.
- 5.4 The Supplier must make good at its expense any defect(s), which exist or appear within 12 months from the date that it completed the services.
- 5.5 The Supplier must keep adequate and accurate records of the services provided including timings. The Supplier must submit these records to the Council at the end of each service period or at such other time, which must be agreed in writing beforehand.
- 5.6 The Supplier must provide evidence of its tax status to the Council at the Council's request.
- 5.7 If the Supplier is working onsite at council premises it must keep the workplace clean and tidy and must remove any excess goods material or waste regularly. Attention is drawn to the Health and Safety Requirements outlined in section 22 with regards to this requirement..
- 5.8 Unless otherwise agreed, prices quoted by the Supplier are deemed to include all the Supplier's travelling and subsistence expenses.

## **6. Price and Payment**

- 6.1 The Supplier shall send an invoice which shall be electronic in the case of an order placed by electronic means to [procurement@south-derbys.gov.uk](mailto:procurement@south-derbys.gov.uk), or for orders placed otherwise, to the postal address given at the head of this Order for the attention of Accounts Payable.

- 6.2 The Supplier's invoice shall quote the Purchase Order Number and shall be sent within 7 days of final delivery of the services/provision of the goods.
- 6.3 Payment will only be made to the Supplier named on the PO.
- 6.4 Payment will normally be made by BACS to the Supplier before the expiration 30 days of a correct invoice being received by the Council. If there are any queries regarding details on the invoice or compliance with the terms of this PO, payment shall not be paid until such queries have been resolved. This draws attention to the policy that no purchase order be accepted without an official purchase order.
- 6.5 Any variation in price, quality or quantity to that stated in this PO must be approved by the Council before goods are despatched or services are provided otherwise payment will not be made.
- 6.6 Prices quoted by the Supplier are deemed to include all packing and delivery charges unless the Supplier has specified otherwise in writing before accepting the PO.
- 6.7 Payment or part payment for goods specified in this PO does not mean that the Council has accepted that the supplied goods are of the description, quality and quantity ordered. Such payment will not prejudice the Council's right to reject the goods at a later date.

## **7. Cancellation on Account of Corruption**

- 7.1 The Council shall be entitled to cancel this PO and to recover from the Supplier the amount of any loss resulting from such cancellation of the Order if the Supplier shall have offered, or given, or agreed to give, any person, any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or the execution of this Order or any other contract with the Council or for showing or forbearing to show favour or disfavour to any person in relation to this Order or any other contract or if the like acts shall have been done by any person employed by it or acting on its behalf (whether with or without the knowledge of the Supplier) or if in relation to any contract with the Council the Supplier or any person employed by it acting on its behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or any amendment of them or shall have given any fee or reward the receipt of which is an offence under section 117(2) of the Local Government Act 1972.

## **8. Default by Supplier**

- 8.1 If any part of the services or goods to be provided under this Order shall
  - 8.1.1 not be duly provided by the Supplier at the time stated on the first page of this Order, subject to any extension of time granted by the Council or resulting from the operation of condition 11 hereof; or
  - 8.1.2 in the opinion of the officer of the Council for whose department they are required (whose decision as against the Supplier shall be final) not reasonably be of the quality and sort contracted for, then the Council may, without prejudice to any other remedy, by notice, reject the services and/or goods and itself or through another Supplier obtain the services or goods or make good the default, in which event the Supplier shall pay to the Council or it shall be lawful for the Council to deduct from any such sum that is due or may become due to the Supplier whether under this Order or otherwise all costs, charges and expenses of providing such goods and/or services over and above the rate or price at which the goods and/or services were to have been provided under this Order.

## **9. Termination**

- 9.1 This Order shall be terminable by either party without notice in the event of any gross irremediable or repudiatory breach of contract by the other party.

- 9.2 Without prejudice to Conditions 7, 8, 10,11 and 26 in the event of early termination of this agreement
- 9.2.1 by the Supplier, the Supplier shall pay all costs incurred and falling due for payment after the date of termination which arises from commitments reasonably and necessarily incurred by the Council prior to the date of termination
- 9.2.2 by the Council, the Council's liability to the Supplier shall be limited to a sum being 50% (fifty per cent) of the Order Total specified on page 1 of this Order.

## **10. Insolvency of Supplier**

- 10.1 If the Supplier makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction of a solvent company) or
- 10.2 An encumbrancer takes possession, or a receiver is appointed of any of the property or assets of the Supplier; or the Supplier ceases, or threatens to cease to carry on business; or the Council reasonably apprehends that any of the events mentioned above is about to occur in relation to the Supplier and notifies the Supplier accordingly, then without prejudice to any other right or remedy available to the Council the Council shall be entitled to cancel the Order forthwith by notice in writing to the Supplier or to the receiver or liquidator or to any person to whom this agreement may become vested, without any liability to the Supplier.

## **11. Force Majeure**

- 11.1 Neither party hereto shall be held in breach of its obligations hereunder (except in relation to any obligation to make payments) nor liable to the other if due to any cause beyond its control including any earthquake, storm, hurricane (or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalisation, government sanction, blockage, embargo, lockout or interruption or failure of electricity or telephone service event which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party and specifically excludes:

(a) any industrial action occurring within the Supplier's or any sub-Contractor's organisation; or

(b) the failure by any sub-Contractor to perform its obligations under any sub-contract.

Either party to this agreement is liable to continue to supply or accept the services which at the commencement of such disability the party was bound to deliver or accept as the case may be, it shall notify the other as soon as reasonably practical and within one month after the termination of commence of the said disability, the Council shall determine and serve notice on the Supplier whether it requires the goods and/or services to be cancelled or delivered. In the event that the Council does require the Services to be delivered, the obligations formed under this PO shall be performed in the same manner as if the time fixed for delivery of the goods and/or services had been postponed by a period equal to the duration of the said period of disability.

## **12. Insurance**

- 12.1 The Supplier shall prior to the commencement of the delivery of the goods and/or services and during the continuance of this Order maintain a policy or policies of insurance with a reputable insurance company or underwriters covering the liability of the Supplier under this Order and shall supply copies of the policy or policies, all associated documents and the receipt of the current premium to the Council on request.
- 13. No Assignment or Sub-contracting**
- 13.1 The Supplier shall not assign or sub-contract any of its rights or duties under the agreement without the consent in writing of the Council.
- 14. Set-Off**
- 14.1 Where the Supplier has incurred any liability to the Council, whether under this Order or otherwise and whether any such liability is liquidated or un-liquidated the Council may set off the amount of such liability against any sum that would otherwise be due to the Supplier under this Order.
- 15. Status of Supplier**
- 15.1 The Supplier will be responsible for the payment of any income tax, insurance contribution other taxes, revenues or duties arising as a result of the performance of the services or otherwise under this Agreement. For the avoidance of doubt neither the Supplier nor any person engaged by it in the performance of the services will be an employee of the Council in performing the services.
- 16. Compliance with Law**
- 16.1 The Supplier declares that any goods or materials supplied and used by the Supplier in the execution of the services comply in all respects with all relevant requirements of any statute, statutory rule or order or other instrument having the force of laws or British European or international specification which may be in force at the time of performance of this Order.
- 16.2 The Council conducts itself in accordance with the principles and duties of Best Value contained in the Local Government Act 1999 and encourages the Supplier to embrace similar principles.
- 17. Agency, Partnership**
- 17.1 This agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this agreement.
- 18. Third Party Rights**
- 18.1 A person who is not a party to this agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this agreement.
- 19. Intellectual Property**
- 19.1 For the avoidance of doubt, all copyright materials used or supplied in connection with the provision of the services shall remain the copyright of the party introducing the same and shall not be sold, distributed or otherwise used without the consent of the party who is the copyright holder
- 19.2 Intellectual property rights in any works, methods or revision thereof created by virtue of this agreement shall vest in the Council unless otherwise agreed in writing and the Supplier shall ensure that they and all related rights are assigned to the Council as its sole

and exclusive property without further payment, and shall do or procure the doing of all such acts and things, and the signature of all documents, at the cost of the Council, as the Council may require in order fully and effectively to vest such rights in the Council.

## **20. Notice**

- 20.1 Any notice or notification required under the terms of this agreement shall be given in writing to the address of the other party specified in this agreement or to another address as either party may substitute by written notice to the other by fax, electronic means or post and shall be deemed to be received as specified
  - 20.1.1 by fax on receipt of a relay or answerback confirmation
  - 20.1.2 by electronic means on receipt of a reply or advice of reading
  - 20.1.3 by post on the first business day after posting in the case of first class mail and on the third business day after posting in the case of second class mail

## **21. Compliance with Agreement**

- 21.1 For the purposes of ensuring compliance with the Supplier's obligations under this agreement the Council shall have access to and the right to nominate an officer to monitor the services being carried out under this agreement.

## **22. Health & Safety**

- 22.1 The Supplier in making the Supply shall have full regard for the safety of persons who may be affected in any way and shall comply with the requirements of the Health and Safety at Work Act 1974 and its subordinate regulatory framework, and of any other Acts pertaining to the health and safety of persons.
- 22.2 The Supplier shall conduct all necessary tests and examinations prior to delivery of the Supply to ensure that the Supply is designed, constructed and delivered so as to be safe and without risk to the health or safety of persons using them. The Supplier shall give the Purchaser adequate information about the use for which the Supply has been designed and has been tested and about any conditions necessary to ensure that when put to use the Supply will be safe and without risk to health.
- 22.3 Throughout the progress of any Works, the Supplier shall keep the Site in an orderly state and shall provide and maintain at its own cost all lights, guards, fencing and warning signs and any other systems required for the protection of the Works and the safety and convenience of the public and others.
- 22.4 There is a statutory duty on the Purchaser under the Civil Contingencies Act 2004 to maintain plans to ensure that it can continue to exercise all its functions in the event of an emergency so far as is reasonably practicable.
- 22.5 The Purchaser requires a demonstration of robust contingency plans by appropriate means by the Supplier. The Supplier must satisfy the officer commissioning the Service that it has a Business Continuity Planning Policy with tested contingency arrangements in place. Depending on the importance and scale of the Services to be provided the Purchaser reserves the right to request detailed evidence of the Supplier's Contingency plans such as sight of the Supplier's Business Continuity Plan, the supplier's attendance at any contingency exercise or to conduct an audit of the Supplier's contingency arrangements (examples of what an effective Business Continuity Plan should include can be provided on request).

## **23. Equal Opportunities, Ombudsman Investigations and Human Rights Safeguarding**

- 23.1 The Supplier shall not unlawfully discriminate within the meaning and scope of the provisions of Race Relations Act 1976, Sex Discrimination Act 1975, and the Disability

- Discrimination Act 1995 or any statutory modification or re-enactment thereof relating to discrimination in the provision of services to the public or in employment or contravene the Human Rights Act 1998. The Supplier shall to the extent relevant to delivery of the Supply comply with the Purchaser's equal opportunities policies, which are available at <http://www.south-derbys.gov.uk>. The Supplier shall take all reasonable steps to secure the observance of these provisions by all employees or agents of the Supplier and all sub-Suppliers employed in the execution of the Contract.
- 23.2 If either the Purchaser's internal or external auditors or if the Commissioner for Local Administration (the Ombudsman) shall wish to investigate the Contract, then the Supplier shall provide such information, access and co-operation as those persons may reasonably require.
- 23.3 The Supplier in making the Supply will be fully compliant with the statutory duty of the Purchaser (Section 11 of the 2004 Children Act) to safeguard and promote the welfare of children, young people and vulnerable adults when on District Council premises where these groups may be present. The Supplier will ensure that all of their staff understand the duty placed on them to safeguard and promote the welfare of these vulnerable groups. Furthermore, the Supplier will ensure that all their staff understand that children and vulnerable adults may perceive workers on site as people who are trustworthy. These workers, therefore, have a duty to conduct themselves in a way, which will not breach this trust. The Supplier will ensure that their workers are appointed in line with the Purchaser's safe recruitment processes. The Supplier will provide proof of registration with the Criminal Records Bureau and will comply strictly with the Purchaser's Disclosure Policy (available at <http://www.south-derbys.gov.uk/jobs/>) and associated procedures, including those for risk assessment.
- 23.4 The Supplier will undertake CRB Disclosures for all staff where applicable and records will be kept as evidence that such checks have been undertaken. No contract will be awarded until proof of registration with the Criminal Records Bureau has been obtained. The Supplier is liable for any costs incurred. The Purchaser reserves the right to require the Supplier to produce evidence that a worker has been subject to an enhanced CRB Disclosures check when necessary.
- 23.5 All Staff supplied will carry photographic identification with them at all times. The Purchaser reserves the right to monitor rigorously the conduct of contract staff during the course of their work with it. The maltreatment, neglect or abuse of a child, young person or vulnerable adult by a contract worker may lead to a warning being issued to the Supplier, or in cases of serious negligence by the Supplier, a cancellation of the contract.
- 24. Indemnity**
- 24.1 The Supplier shall fully indemnify, defend and hold the Council harmless from claims, loss, damages, expense (including reasonable lawyer's fees and court costs), or liability (including infringement of a third party's intellectual property rights) for property damage, death or personal injury which may arise out of or in consequence of the performance of this agreement.
- 24.2 The Supplier's liability to indemnify the Council as aforesaid shall be reduced proportionately to the extent that the act or neglect of the Council, or agents may have contributed to the said loss and:
- 24.3 Nothing herein shall render the Supplier liable for or in respect of or to indemnify the Council against any compensation or damages with respect to damage which is the unavoidable result of the way in which this agreement is required to be performed.

**25. Waiver**

25.1 Either party may release or compromise the liability of the other under this agreement or grant to the other time or other indulgence without affecting the other party's liability.

**26. Professional Indemnity**

26.1 The Supplier shall indemnify and keep indemnified the Council against;

26.1.1 Any claims arising from incorrect or inappropriate professional advice given by the Supplier during the period of this agreement and for a period of not less than 6 (six) years from its date of termination and

26.1.2 The liability of the Supplier in respect of any one act or default shall not be less than £2 million pounds.

**27 Freedom of Information and Transparency**

27.1 The Supplier acknowledges that the Council has obligations relating to the disclosure of information pursuant to the Freedom of information Act 2000.

27.2 The Supplier shall use its best endeavours to assist the Council in discharging its obligations under the Freedom of Information Act 2000 arising from any request for information which the Council receives in connection with this Contract, the Supply, Services or Works.

27.3 The Supplier acknowledges that the Council has obligations relating to the disclosure of information to report all spend over £500, as required under the Government's Transparency Initiative, effective from January 2011.

**28. Proper Laws and Jurisdiction**

28.1 This agreement shall be governed by English law in every particular including formation and interpretation and shall be deemed to have been made in England.

28.2 The invalidity, illegality of any term or condition of this agreement shall not affect the validity, legality or enforceability of another term or condition of this agreement.