

# OXFORDSHIRE COUNTY COUNCIL

## STANDARD TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS BY THE COUNCIL

These terms and conditions apply to the purchase of all goods by the Oxfordshire County Council of County Hall, New Road, Oxford OX1 1ND (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.

### 1 Definitions and Interpretation

1.1 In these Conditions, except where the context otherwise requires, the following expressions have the following meanings:

"**Contract**" means these terms and conditions; and

"**Enactments**" means directives, statutes, regulations, orders, instruments, national and governmental codes of practice and best practice guidelines or other similar instruments as the same may be amended, replaced or re-enacted by any subsequent directive, statute, regulation, order, instrument, code or guidelines and references to any statute shall also include any secondary legislation made under it; and

"**Goods**" means the goods purchased by the Council from the Supplier; and

"**Staff**" means any person whether paid or unpaid engaged upon the provision of the Goods.

1.2 A reference to any act of Parliament, order, regulation, statutory instrument or similar, shall include a reference to any amendment or replacement of it. Reference to any act of Parliament shall also include any subsidiary legislation made under it.

1.3 Words in the masculine gender include the feminine gender and vice versa and words in the singular include the plural and vice versa.

1.4 Condition headings and notes are for ease of reference only and shall not be taken into account in construction of the Contract.

1.5 The Contract represents the entire understanding between the parties in relation to the subject matter of the Contract. If any of the Conditions become or are declared by a court of competent jurisdiction to be invalid or unenforceable such invalidity or unenforceability shall in no way impair or affect any other Conditions all of which shall remain in full force and effect.

1.6 The Contracts (Rights of Third Parties) Act 1999 shall not apply to the Contract.

### 2 Warranties and Representations

The Supplier warrants and represents that:

2.1 the Goods shall be free from defects in design, materials and workmanship 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; and
- 2.2 the Goods shall conform in all respects with any sample approved by the Council; and
  - 2.3 the Goods shall conform with the requirements of all relevant Enactments and with relevant European standards or equivalent; and
  - 2.4 all obligations of the Supplier pursuant to the Contract shall be performed and rendered by appropriately experienced, qualified and trained Staff with all due skill, care and diligence.

### 3 Delivery

- 3.1 The Goods shall be delivered on the agreed date.
- 3.2 Where the Goods are delivered by the Supplier, the point of delivery shall be when the Goods are removed from the transporting vehicle at the Council's premises. Where the Goods are collected by the Council, the point of delivery shall be when the Goods are loaded on the Council's vehicle.
- 3.3 Time of delivery shall be of the essence and failure to deliver all of the Goods within the time promised or specified shall enable the Council (at the Council's option) to release itself from any obligation to accept and pay for the Goods and/or cancel all or part of the Contract, in either case without prejudice to the Council's other rights and remedies.

### 4 Property and Risk

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 delivery.

### 5 Rejection of the Goods

- 5.1 The Council may reject any of the Goods which fail to conform to the approved sample or fail to meet the terms of the Contract. Such notice shall be given within a reasonable time after delivery to the Council of the Goods concerned. Any Goods rejected or returned by the Council shall be returned to the Supplier at the Supplier's risk and expense.
- 5.2 If the Council rejects any of the Goods, the Council shall be entitled (without prejudice to its other rights and remedies) either:
  - 5.2.1 promptly to have the Goods repaired by the Supplier or (as the Council shall elect) replaced by the Supplier with Goods which comply with the terms of the Contract and due delivery shall not be deemed to have taken place until such repair or replacement has occurred; or
  - 5.2.2 to treat the Contract as discharged by the Supplier's breach and require a refund from the Supplier in respect of the Goods concerned together with payment of any additional expenditure over and above the price reasonably incurred by the Council in obtaining other goods in replacement.

## 6 Guarantee

The Supplier guarantees the Goods for 18 months from delivery and will remedy any defects occurring within that guarantee period as quickly as possible at no cost to the Council.

## 7 Payment

- 7.1 The Council will pay the agreed amount to the Supplier within 28 days of receipt and agreement of an invoice.
- 7.2 The Council shall be entitled to deduct from any payment due any sums recoverable from or payable by the Supplier.

## 8 Variations

The Contract may only be varied by written agreement of the parties.

## 9 Information

- 9.1 The Supplier shall ensure that any information supplied by the Council is treated as confidential and not disclosed to any person other than the Council except as may be required by law.
- 9.2 The Supplier shall not without prior consultation with the Council seek any publicity or, without prior notification, make any announcement to the press or respond to press enquiries relating to the Goods and shall where reasonably practicable agree joint press releases with the Council.

## 10 Compliance with statute and other requirements

- 10.1 The Supplier shall comply with all relevant Enactments in its performance of the Contract.
- 10.2 The Supplier shall comply with the Data Protection Act 1998 and shall:
  - 10.2.1 act only on the instructions of the Council when processing personal data (as defined in that Act) received from the Council;
  - 10.2.2 take all appropriate security measures to protect against any unauthorised or unlawful processing or accidental loss or destruction of or damage to such personal data;
  - 10.2.3 provide the Council with all such information as the Council may reasonably require to satisfy itself that the Supplier is complying with these obligations;
  - 10.2.4 permit the Council to carry out an audit for these purposes at premises belonging to or under the control of the Supplier; and
  - 10.2.5 return to the Council all such information at the expiry or earlier termination of the Contract.
- 10.3 The Supplier acknowledges that in responding to requests received by the Council under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 the Council will be entitled to provide information relating to the Contract.

- 10.4 The Supplier shall not in relation to the employment of Staff for the purposes of providing the Goods unlawfully discriminate and the Supplier shall have due regard to the need to eliminate unlawful racial discrimination and to promote equality of opportunity and to provide good relations between different racial groups and shall where reasonably requested by the Council assess and monitor its policies and practices as to impact on the promotion of race equality and report on it to the Council.
- 10.5 The Supplier will ensure that it maintains effective whistle blowing policies whereby Staff may raise in confidence without fear of victimisation discrimination or disadvantage concerns about possible malpractice.
- 10.6 Whilst on Council premises the Supplier shall ensure that Staff comply with the Council's safety policies and any amendments to them notified to the Supplier and with the proper requirements of the Council's safety officers.

## 11 Indemnity and Insurance

- 11.1 The Supplier shall at all times maintain insurance cover with a reputable company to include:
- 11.1.1 public liability insurance in the minimum sum of £5,000,000 (five million pounds) per claim; and
  - 11.1.2 employers liability insurance in the sum of £10,000,000 (ten million pounds) per claim.
- 11.2 The Supplier shall supply to the Council annually and at any other time within 14 days of request evidence satisfactory to the Council that the Supplier has complied with this Condition.
- 11.3 The Supplier shall indemnify and keep indemnified the Council from and against any and all claims, demands, proceedings, actions, damages, costs, expenses, loss and liability arising from a Default, save to the extent that it arises from any default or negligence of the Council or its employees provided always, for the avoidance of doubt, that this does not extend to any loss of profits suffered by the Council. For the purposes of this Condition, "Default" means any breach of the Supplier's obligations under the Contract or any default, act, omission or negligence of the Supplier or Staff in connection with or in relation to the subject matter of the Contract.

## 12 Assignment and Sub-contracting

The Supplier shall not assign the Contract in whole or in part or sub-contract the provision of the Goods or any part of them.

## 13 Termination

- 13.1 The Council shall be entitled to terminate the Contract:
- 13.1.1 immediately by giving written notice to the Supplier if in the proper opinion of the Council there has been a material or persistent breach of the Contract on the part of the Supplier;

13.1.2 immediately if the Supplier or anyone acting on their behalf either offers, gives or agrees to give to anyone any inducement or reward or confers any other benefit in respect of this or any other Contract (even if the Supplier is unaware of any such action) or otherwise commits an offence under the Prevention of Corruption Acts 1889 to 1916 or section 117(2) of the Local Government Act 1972.

The Supplier shall be liable for all and any losses the Council suffers as a result of the termination of the Contract under this Condition.

13.2 The expiry or termination of the Contract for whatever cause shall not affect any provision of these Conditions capable of surviving and shall be without prejudice to the rights and remedies of one party against the other.

#### 14 Service of notices

14.1 Any demand, notice or other communication required to be given under the Contract shall be sufficiently served if served personally on the addressee, or if sent by pre-paid first class recorded delivery post or facsimile transmission to the registered office or last known address of the party to be served.

14.2 Any such communication shall be deemed to have been made 2 (two) working days from the date of posting (if by letter) and if by facsimile transmission on the date of such transmission except where transmission is made after 2pm when receipt shall be deemed to have occurred on the following working day.

#### 15 Waiver

15.1 Failure by the Council at any time to enforce the provisions of the Contract shall not be construed as a waiver of the right of the Council to enforce any provision in accordance with its terms.

15.2 The Council may waive any right or remedy arising from a breach of the Contract provided that any such waiver is confirmed in writing and signed on behalf of the Council.

#### 16 Dispute Resolution

If the parties are unable to resolve a dispute concerning the non-performance or inadequacy of performance of any of the Supplier's obligations in this Contract or as to sums due by one party to the other within one month the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution's (CEDRs) Model Mediation Procedure as follows:

16.1 To initiate the mediation, either party may give notice in writing to the other requesting mediation in accordance with this Condition. The initiating party shall send a copy of such request to CEDR.

16.2 If there is any issue on the conduct of the mediation (including as to the nomination of the mediator) upon which the parties cannot agree within a reasonable time, CEDR will, at the request of either party determine the issue.

16.3 If the dispute is not resolved within 90 days of the initiation of the mediation, or if either party will not participate in mediation either party may commence proceedings.

17 No Agency/Employment/Partnership

Nothing in this Contract shall be construed as creating a legal partnership or contract of employment or a relationship of principal and agent between the Council and the Supplier and the Supplier shall not at any time or in any circumstances take any action so as to bind (or purport to bind) the Council nor shall the Supplier hold itself out as having authority to bind the Council and shall ensure that its employees and agents do not hold themselves out likewise.

18 Acts of God etc

Neither the Supplier nor the Council shall be liable for breach of its obligations under the Contract to the extent that such breach is caused by any act of God, natural flood, fire (save where such fire is due to the negligence or fault of the Supplier) lightning or earthquake, war, military operations, act of terrorism or riot but nonetheless each party shall use all reasonable endeavours to perform its obligations under the Contract.

19 Law and Jurisdiction

The Contract shall be governed by and interpreted in accordance with English law and shall be subject to the jurisdiction of the courts of England and Wales.