

## 1. Definitions

<b>Charges</b>	means the price for the Supplies and/or Services set out in the Purchase Order or equivalent written agreement
<b>Contract</b>	means the agreement between the Council and the Provider consisting of these Standard Terms and Conditions and Purchase Order (including any Specification) but excluding any terms and conditions of sale and/or supply of the Provider
<b>Contract Particulars</b>	means (if applicable) the particulars of the Contract as referred to in the Purchase Order
<b>Council</b>	means Staffordshire County Council of No. 2 Staffordshire Place, Tipping Street, Stafford ST16 2DH
<b>Data Protection Legislation</b>	means the Data Protection Act 2018, the EU Data Protection Directive 95/46/EC, the General Data Protection Regulations (GDPR) EU 2016/679, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner(as amended or re-enacted from time to time);
<b>Supplies</b>	means the Supplies, if any, to be supplied by the Provider and identified in the Purchase Order and/or the Specification
<b>Intellectual Property Rights</b>	means any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise
<b>Purchase Order</b>	means (if applicable) the purchase order used by the Council to place an order with the Provider for Supplies and/or Services or equivalent written agreement which shall make reference to the Contract Particulars and Specification
<b>Services</b>	means the services, if any, to be provided by the Provider as identified in the Purchase Order and/or Specification
<b>Specification</b>	means the specification (if any) appended to the Purchase Order or other equivalent written correspondence detailing the Council's requirements
<b>Provider</b>	means the person, firm or company with whom the Council enters into the Contract.
<b>Tax</b>	means Value Added Tax, customs duties and any other taxes or duties.

## 2. Supply of Supplies and/or Services

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

**2.2** In providing the Supplies and/or Services, the Provider 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 Supplies

**3.1** The Supplies 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 Supplies are ordinarily used and for any particular purpose made known to the Provider by the Council.

**3.2** The Supplies shall be delivered to the location(s), and at the times and dates specified in the Specification, Purchase Order and/or Contract Particulars or any other written instruction provided by the Council, and time of delivery shall be of the essence. If no times and dates are specified, the Supplies 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 Supplies by Provider at such place as the Council shall reasonably direct.

**3.3** Property and risk in the Supplies shall without prejudice to any other rights or remedies of the Council pass to the Council at the time of acceptance. The Supplies 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 Provider reject any of the Supplies which fail to meet the requirements specified herein, and shall be entitled (without prejudice to other rights and remedies) either to have the Supplies repaired or replaced (at the option of the Council) or to treat the Contract as discharged and seek damages from the Provider. The issue by the Council of a receipt note for the Supplies shall not constitute any acknowledgement of the condition or nature of those Supplies.

#### **4. Contracts for Services**

**4.1** The Provider shall provide the Services in accordance with the Council's requirements which are set out in the Contract Particulars, Purchase Order and/or the Specification which shall specify the start and end dates. 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 Provider shall perform the Services with all reasonable care, skill and diligence, and in accordance with good industry practice. The Provider warrants and represents that all persons engaged by the Provider 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 Provider that the Council considers any part of the Services to be inadequate, without prejudice to clause 4.5 below, the Provider 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 Provider shall reimburse the Council for all reasonable costs incurred by the Council which have arisen as a direct consequence of the Provider'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 Provider in respect to the Services, then the Council may, without prejudice to its other rights herein: make such deduction from the Charges as the Council shall reasonably determine in respect of such of the Services as the Provider has failed to provide and/or terminate the Contract in whole or in part in accordance with clause 18.

#### **5. Charges**

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

**5.2** The Council shall pay the Provider, in addition to the Charges, a sum equal to the Tax chargeable on the value of the Supplies 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 within 30 days of receipt and agreement of invoices for work completed to the satisfaction of the Council to a bank account of which details shall be provided by the Provider in writing.

**5.4** The Provider shall ensure that each invoice contains a Purchase Order number and any supporting information to avoid any delays in payment and issued by electronic email in PDF format to the Accounts Team at [apinvoices@staffordshire.gov.uk](mailto:apinvoices@staffordshire.gov.uk).

**5.5** Wherever under the Contract any sum of money is recoverable from or payable by the Provider, the Council may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Provider 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's base rate current on the date upon which such Charges first become overdue. The Provider 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 electronic email (the details of which shall be set out in the Particulars) or by hand to No. 2 Staffordshire Place, Staffordshire County Council, Tipping Street, Stafford ST16 2DH in respect of notices to the Council and the Provider's registered office in respect of notices to the Provider (unless otherwise agreed in writing between the parties during the Contract), and such notice or communication. If any notice is considered time critical receipt of the notice shall be confirmed by the sending party.

**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. Security**

The Provider 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 Provider 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 Provider or any sub-contractor, agent or servant of the Provider.

**10. Intellectual Property Rights**

**10.1** It shall be a condition of the Contract that the Supplies and/or Services will not infringe any Intellectual Property Rights of any third party and the Provider 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.

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

**11. Assignment and Sub-Contracting**

The Provider 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.

**12. 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.

**13. Variation**

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

**14. 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.

## **15. Indemnity and Insurance**

**15.1** 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 Supplies Act 1979 or Section 2 of the Supply of Supplies and Services Act 1982.

**15.2** The Provider 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 Provider, 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 Supplies and/or Services.

**15.3** The Provider shall procure and maintain the following minimum levels of insurance during the Contract period;

**15.3.1** £5,000,000 for public liability and where appropriate and relevant product liability insurance in respect of any one act or default. The 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.

**15.3.2** The minimum statutory cover for employer's liability insurance per claim or series of claims.

**15.3.3** If so required £2,000,000 for professional indemnity insurance per claim or series of claims.

**15.4** The Provider shall maintain professional indemnity and product liability insurance and any other appropriate and relevant insurance at the above levels for a period of ten years after the end of this Contract and shall notify the Council in writing immediately should such insurance cover cease.

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

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

**15.6.1** indirect or consequential loss or damage; and/or

**15.6.2** loss of profits, business, revenue, goodwill or anticipated savings.

## **16. 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 Provider's bankruptcy, or a bankruptcy order is made against the Provider, or the Provider makes any composition or arrangement with or for the benefit of creditors, or if the Provider 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 Provider 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.

## **17. 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 Provider.

## **18. Termination on Default**

The Council may terminate the Contract, or terminate the provision of any part of the Contract by written notice to the Provider with immediate effect if the Provider commits a Default and if: (a) the Provider has not remedied the Default within 30 days after issue of a

written notice specifying the Default and requesting it to be remedied within the specified time; or (b) the Default is not capable of remedy; or (c) the Default is a fundamental breach of the Contract.

#### **19. Consequences of Termination**

Where the Council terminates all or part of the Contract under clause 18, and makes other arrangements for the provision of Supplies and/or Services, the Council shall be entitled to recover from the Provider the cost of making those other arrangements and any additional expenditure incurred by the Council throughout the remainder of the contract period but not limited to such payment which would otherwise be payable to the Provider, and no further payments shall be payable by the Council to the Provider until the Council has established the final cost of making those other arrangements.

#### **20. 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.

#### **21. 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.

#### **22. Entire Agreement**

The Contract constitutes the entire agreement between the parties for the Supplies 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.

#### **23. Other Legislative Requirements**

**23.1** The Provider shall comply with the following legislation;

**23.1.1** safeguard the Council's funding in connection with this Contract against any fraudulent activity and not commit any offence under the Bribery Act 2010;

**23.1.2** the Modern Slavery Act 2015 and where applicable implement a due diligence procedure for its own Providers, subcontractors and other participants in its supply chain to ensure that no slavery or human trafficking in its supply chain;

**23.1.3** all current legislation relating to non-discrimination and equality in employment (including but not limited to the Equality Act 2010)

**23.1.4** the Counter-Terrorism and Security Act 2015 and have due regard for the Council's Prevent Duty 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 the Prevent Duty.

**23.2** If any breach is suspected or known, the Council may immediately terminate the Contract at no cost to the Council.

#### **24. Freedom of Information**

**24.1** The Provider shall ensure that it cooperates with the Council in relation to Freedom of Information requests made.

**24.2** The Provider must ensure that the information provided to the Council by the Provider in connection with or arising out of this Contract are accurate and complete in all material respects.

#### **25. Confidentiality**

The Provider 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.

## **26 Data Protection**

**26.1** The Provider shall comply with any notification requirements under the Data Protection Legislation and shall observe all of its obligations under the Data Protection Legislation which arise during the Contract period.

**26.2** The Provider acknowledges that they shall not hold or process any personal data unless such data applies for the performance of the Contract a process shall be agreed between the Provider and the Council as to how the personal data shall be managed.

**26.3** If a breach does occur by the Provider of its obligations under the Data Protection Legislation then the Council may terminate the Contract.

**26.4** If the Contract is terminated by the Council the Provider shall comply with the Council's requirements which may include:

**26.4.1** the delivery of the originals of such information, records and papers to the Council's offices in Stafford or such other address as specified by the Council, and/or;

**26.4.2** immediately destroy all original and copies of such information, records and papers.

## **27 Provider's other obligations**

**27.1** The Council makes the assumption that the Transfer of Undertakings and Protection of Employment Regulations 2006 (TUPE) and Disclosure and Barring Service (DBS) do not apply to its employees in connection with this Contract.

**27.2** If the Provider believes that any of its employees placed in the performance of the Contract which makes them subject to TUPE prior to the commencement of the Contract and/or that DBS applies then the Provider is required to notify the Council immediately.