

CYNGOR SIR CEREDIGION COUNTY COUNCIL
TERMS AND CONDITIONS OF PURCHASE (“Terms and Conditions”)

1. DEFINITIONS

1.1. In these Terms and Conditions the following words and expressions shall have the following meanings: the “Council” means Cyngor Sir Ceredigion County Council and shall include its duly authorised personnel, officers, employees and/or any such other duly authorised party; the “Delivery Address” means the address stated on the Official Order; the “Goods” means the goods and/or the work comprised in such goods which are specified in the Official Order including any additions thereto and any part or parts thereof; the “Material” means any specifications, instructions, plans, data, drawings, databases, patterns, models, designs or other material; the “Official Order” means an order placed on behalf of the Council detailing the quantity, description and specification of the Goods and/or Services including all other information relating to the order that appears overleaf; the “Contract Price” means the price for the Goods and/or Services as detailed in the Official Order; the “Contractor” means the firm company or person to whom the Official Order is addressed; the “Intellectual Property Rights” means the copyright in, design rights in or any other exclusive right to use the Material; the “Services” means the services specified in the Official Order including any additions thereto and any part or parts thereof.

2. BASIS OF PURCHASE

2.1. Acceptance of an Official Order constitutes acceptance of these Terms and Conditions which shall apply notwithstanding any condition to the contrary in the Contractor's conditions (irrespective of their date of communication to the Council) or established from any previous course of dealing (which so far as they are inconsistent with the Terms and Conditions are deemed to be waived) and the Contractor waives any right which the Contractor may otherwise obtain from such conditions or dealings.

2.2. It is the Contractor's responsibility to obtain confirmation in writing of any oral alterations to the Official Order or on the job oral instructions given by the Council.

3. PURPOSE FOR WHICH THE GOODS AND/OR SERVICE IS REQUIRED

3.1. The Goods and/or Services shall:-

3.1.1. be supplied strictly in accordance with the specification (and/or any sample previously provided to the Council) and shall conform to all relevant standards, conditions and as to the quantity, and description shown on the Official Order;

3.1.2. be fit for the purpose set out in the Official Order and be free from defects in design, material and workmanship;

3.1.3. comply in all respects with the provisions of any statutory requirement for the time being in force relating to the Goods and/or Services and their construction method of operation and safety as well as complying with any relevant British or European Standard specification or Code of Practice current at the date of the delivery of the Goods and/or performance of the Service and any specifications and or drawings supplied by the Council;

3.1.4. comply with the conditions and warranties implied by the Sale of Goods Act 1979, the Supply of Goods and Services Act 1982, related statutes/legislation and any statutory re-enactment(s) or modification(s) thereof (as amended) except where inconsistent with other terms contained herein when the latter shall apply;

3.1.5. be provided by the Contractor who shall have obtained all licences, permissions, or permits necessary for the performance of the Services and/or supply of the Goods; and

3.1.6. be provided in a professional and competent manner with reasonable skill, care and diligence in a good and workmanlike manner and in accordance with the Official Order by appropriately qualified and experienced personnel who shall be fully supervised at all times;

3.1.7. be supplied with adequate documentation and instructions in English as to use and storage and, where applicable, any expiration date of the contents;

3.1.8. where requested, have the benefit of any warranty, guarantee or similar right which the Contractor has against any third party manufacturer or supplier of any Goods or Services or any part thereof, assigned to the Council;

3.1.9. be supplied in accordance with all relevant health and safety legislation, codes of practice and any other appropriate standards, policies, procedures and documentation reasonably notified by the Council; and

3.1.10. if hazardous, be clearly marked by the Contractor as such with the international danger symbol with the name of the material in English. Such goods will also be packaged, labelled and carried in accordance with UK law or internationally accepted agreements.

3.2. Any Material supplied or made available by the Council to the Contractor, or specifically produced by the Contractor for the Council together with the Intellectual Property Rights in the Material, shall be the exclusive property of the Council. The Contractor shall not disclose to any third party or use any such Material except to the extent that it is or becomes public knowledge through no fault of the Contractor, or as required for the purpose of the Official Order.

3.3. Time shall be the essence in relation to the Contractor's obligations pursuant to these Terms and Conditions and the Official Order.

3.4. The Council relies on the skill and judgement of the Contractor in that it purports to be skilled in the supply of the Goods and/or Services and the execution of the Official Order.

3.5. Without prejudice to any other right of remedy of the Council, the Council shall have the power at any time to order in writing the proper re-execution (notwithstanding any previous inspection thereof or interim payment thereof) of any work which is not, in the opinion of the Council, in accordance with the Official Order.

3.6. The Contractor warrants that it has full capacity, authority and all necessary consents to enter into and to supply the Goods and/or Services.

4. CONTRACT PRICE AND TERMS OF PAYMENT

4.1. All prices quoted will be in British sterling (£). The Contract Price of the Goods and/or Services shall be stated in the Official Order and unless otherwise so stated shall be exclusive of any applicable value added tax and inclusive of all charges, including but not limited to, charges for packaging, packing, shipping, carriage, insurance, delivery and any duties imposts or levies other than value added tax.

4.2. No increase in the Contract Price may be made (whether on account of incidental expenses, increased material labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior written consent of the Council.

4.3. The Contractor shall be entitled to invoice the Council upon completion of delivery of the Goods or performance of the Services, as the case may be, and each invoice shall quote the number of the Official Order, full details of the Goods and/or Services delivered/performed and any other requirements notified by the Council. Where the parties have agreed delivery by instalments, unless otherwise agreed, the Contractor may invoice for each delivered instalment.

- 4.4. No payment will be made for the Goods and/or Services unless and until an invoice (or an agreed electronic equivalent) is supplied to the Council. If the Official Order specifies that the invoice is to go to an address other than the address to which the Goods are delivered or Services performed, no payment will be made until such invoice is received at the correct address.
- 4.5. Unless otherwise stated in the Official Order, the Council shall pay the Contract Price of the Goods and/or Services within 30 days of receipt by the Council of a proper and valid invoice or, if later, after acceptance of the Goods or Services in question by the Council. If any queries arise in relation to the Contractor's invoice, no payment will be made until such queries have been settled to the Council's reasonable satisfaction.
- 4.6. The Council shall be entitled to set off against the Contract Price any sums owed to the Council by the Contractor.
- 4.7. The Council shall not be responsible for the payment of any charges in relation to (i) goods and/or services supplied without an Official Order; (ii) any goods or services supplied in excess of the Goods and/or Services set out in the Official Order; or (iii) any variations to the Official Order, unless such variations had the prior written consent of the Council.

5. DELIVERY, TITLE AND RISK

- 5.1. Delivery of the Goods and/or performance of the Services by the Contractor shall take effect at the Delivery Address or to such other address as instructed by the Council in writing. Delivery of the goods shall be effected when they have been unloaded at the Delivery Address and such delivery has been accepted in writing by the Council.
- 5.2. Unless otherwise instructed to the contrary by the Council the Contractor shall deliver the Goods and/or complete the work comprised in the Goods or perform the Services by the date(s) and time(s) specified in the Official Order and if no time for delivery is expressly agreed then delivery shall be made within 14 days of the date of the Official Order.
- 5.3. Where there is likely to be any unreasonable delay in delivery of the Goods or performance of the Services (or any parts thereof), the Contractor shall immediately inform the Council of such delay and without prejudice to any other remedy right or action available, the Council shall be entitled to cancel the Official Order if the delay is, in its opinion, likely to jeopardise the purpose of the Official Order.
- 5.4. In the event of any strike, lockout, fire, explosion or accident or of any stoppage of the Contractor's business or work beyond its control which may prevent or hinder the use or delivery of any Goods and/or Services, the payment for such may be suspended or postponed at the Council's option until the circumstances preventing or hindering the use or delivery of such Goods and/or Services has ceased. If such prevention or hindrance continues for more than 20 days the Council shall be entitled to cancel the Official Order.
- 5.5. A delivery note must accompany all Goods quoting the Council's Official Order number and containing particulars of quantity, weight, special directions for storage, the expiry date of the contents where applicable, price and description of Goods.
- 5.6. The Contractor shall:-
 - 5.6.1. send to the Council on the day of despatch of each consignment such notes of despatch together with the invoice for such consignment as may be indicated on the Official Order;
 - 5.6.2. mark the full details (including without prejudice to the generality of the foregoing all necessary references) of the Official Order clearly on the consignment, package, packing notes, advice notes, invoices and all other correspondence relating to the Official Order despatched to the Council;

- 5.6.3. ensure that the Goods or any part thereof shall be properly and adequately packed to ensure no risk of damage to the Goods in transit and the packaging of the Goods shall bear the relevant Official Order number.
- 5.6.4. ensure that all packaging complies with all and any legislative or other requirements, including those pertaining to environmental and occupational health and safety standards. Unless otherwise agreed in writing, the Council shall not be under any liability whatsoever in respect of the return of the packaging of the Goods. The Contractor shall collect without charge any returnable containers (including pallets) within 21 days of delivery unless otherwise instructed by the Council. Empty containers not so removed may be returned by the Council at the Contractor's expense or otherwise disposed of at the Council's discretion.
- 5.7. The Contractor warrants that the Goods are supplied free of a retention of title clause imposed by either the Contractor or a third party. The title in the Goods shall pass to the Council upon delivery or upon the Council's payment or part payment for the Goods whichever shall occur first.
- 5.8. The Goods shall remain at the risk of the Contractor until such time as delivery is effected. If for any reason the Council is unable to accept delivery of the Goods at the time agreed the Contractor shall store and safeguard the said Goods at the Contractor's expense and take all reasonable steps to prevent damage or deterioration until delivery.
- 5.9. Unless otherwise agreed in writing by the Council, the Contractor shall provide at its own expense all staff, equipment, tools, appliances materials or items required for the provision of the Services and/or the delivery of the Goods.

6. REJECTIONS AND INSPECTION

- 6.1. The Council shall be entitled to inspect and/or test any Goods and/or Services. In the case of Goods or Services found to be defective or inferior in quality to or differing in form or material from the specification, or not complying with any term, whether expressed or implied of these Terms and Conditions (the "Defective Goods or Services"), the Council may, at its discretion:
 - 6.1.1. cancel the Official Order in accordance with clause 7.1;
 - 6.1.2. require the Contractor, as soon as reasonably practicably, either to repair or replace the Defective Goods or Services at the Delivery Address (at the Contractor's expense), or refund to the Council the Contract Price in respect of the Defective Goods or Services. Any repairs, replacements or refunds shall themselves be subject to these Terms and Conditions;
 - 6.1.3. purchase goods and services of the same or similar description to the Goods or Services elsewhere and recover from the Contractor the amount by which the cost of purchasing such other goods or services exceeds the amount that would have been payable to the Contractor in respect of the Goods and Services to be replaced, provided that the Council uses all reasonable endeavours to mitigate its losses in this respect.
- 6.2. Any Goods rejected by the Council under this clause 6, shall be removed by the Contractor at its own expense within 48 hours of the date the Contractor is notified of the rejection. If the Contractor fails to remove the Goods within the specified time, the Council may return the Goods at the Contractor's risk and expense and may charge the Contractor for the cost of storage from the date of rejection.

7. CANCELLATION

- 7.1. The Council shall without prejudice to any other right to terminate the Official Order be entitled to cancel the Official Order or terminate it in part at any time if:-
 - 7.1.1. the Goods supplied do not strictly comply with the description given in the Official Order or the specification/drawings the Council relied upon in entering into the Official Order; or

- 7.1.2. the material used in or the workmanship of the Goods does not reach the standard specified or does not pass such inspection as may be required by the Council its customers or its agent or by any Government Department or other statutory body concerned with the type of product comprised in the Goods or the materials or workmanship used in the production of the Goods; or
 - 7.1.3. the Goods or any part thereof and/or the Services have not been completed to the satisfaction of the Council in accordance with a timetable agreed between the parties in the Official Order; or
 - 7.1.4. the Contractor fails to deliver the Goods or Services in accordance with clause 5; or
 - 7.1.5. the circumstances described in clause 5.3 arise; or
 - 7.1.6. the Contractor is in breach of any of these Terms and Conditions.
- 7.2. Where the Council cancels or terminates an Official Order by virtue of clause 7.1 above, the Council shall be entitled to reimbursement in respect of the Contract Price (or any parts thereof) already paid together with all losses and/or expenses suffered as a direct result of the cancellation or termination (including all reasonable costs of the Council for time spent by its employees, agents or representatives in terminating the Official Order and making alternative arrangements for the provision of the Goods and/or Services to which the Official Order relates, including, but not limited to, any additional cost of purchasing alternative Goods or Services exceeding the amount which would have been payable to the Contractor but for the cancellation).
 - 7.3. At its sole discretion, the Council may cancel an Official Order at any time before all of the Goods are delivered or Services performed by giving the Contractor 48 hours written notice before delivery of the Goods or performance of Services. On the giving of such notice the Contractor shall cease to be bound to deliver/perform and the Council shall cease to be bound to receive delivery of any further Goods or performance of any further Services. The Council shall not be bound to pay that part of the price which relates to undelivered Goods or unperformed Services and shall not be liable for any loss or damage whatsoever arising from the cancellation.
 - 7.4. Notwithstanding its foregoing rights and any rights implied by law the Council shall be entitled to terminate the Official Order summarily by notice in writing if the Contractor goes into liquidation or has a receiver administrative receiver or administrator appointed or makes or offers any arrangement or composition with creditors generally or ceases to carry on its business or substantially the whole thereof or threatens to cease to carry on the same or if any petition or receiving order in bankruptcy shall be presented or made against the Contractor.
 - 7.5. The Contractor may not cancel the Official Order without the consent of the Council which if given shall be deemed to be on the express condition that the Contractor shall fully and effectively indemnify the Council against any and all losses damages claims and actions arising out of such cancellation unless otherwise agreed in writing.
 - 7.6. On cancellation or termination under this clause 7, the Contractor shall, within 7 days of a request to do so, return to the Council all documents and/or Material provided to the Contractor by the Council and ensure all documents and/or Material containing Intellectual Property Rights and/or information of a technical or confidential nature relating to the Goods and/or Services, are returned to the Council.
8. **WARRANTY FOR REPAIR OR REPLACEMENT**
 - 8.1. Subject to the rights of the Council in clause 6.1, the Contractor shall make good, by the supply of a replacement, defects which upon delivery and/or under proper use appear in the Goods or a part; or
 - 8.2. parts of the Goods which may develop during a twelve month period after the date of delivery of the Goods (the "warranty period"). This warranty period shall thereupon be renewed in respect of Goods or any portion thereof subject to re-design or rectification.

9. **9. INDEMNITY AND INSURANCE**

- 9.1. Without prejudice to any rights or remedies of the Council the Contractor shall indemnify and keep indemnified the Council from and against all loss, actions, costs (including legal expenses and disbursements on a solicitor own basis), claims, demands, proceedings, damages, expenses and liabilities of whatsoever nature and howsoever incurred by the Council arising as a result of the supply or use of the Goods and/or Services in respect of (i) any personal injury to or death of any person; (ii) in respect of any loss, destruction or damage to any land, building, vehicle, plant, equipment or other property of any kind whatsoever (whether or not in the ownership, occupation or possession of the Council) which shall have occurred, arisen out of or be connected with the Goods and/or Services and/or, the performance of the Official Order by the Contractor or any of its personnel, (iii) any advice given or any negligent act or omission or wilful misconduct of the Contractor or its personnel; (iv) any breach by the Contractor of any third party Intellectual Property Rights; and/or (v) any breach by the Contractor of any of its warranties or obligations under these Terms and Conditions; unless the same is caused wholly and directly as a result of any default, negligence or breach of statutory duty on the part of the Council.
- 9.2. The Contractor shall maintain insurance in a sum adequate to meet all reasonable claims that may result from the indemnity in clause 9.1 above and in any event such insurance cover shall be maintained at the monetary level (if any) laid down in statute. PLEASE NOTE: levels of indemnity may be reviewed for specific contracts and in some cases an increased level shall be required – any such increased level must be agreed in writing by both parties.

10. **CONFIDENTIALITY AND FREEDOM OF INFORMATION**

- 10.1. The Official Order and its contents shall be treated as confidential by the Contractor and shall not be disclosed by the Contractor its employees agents or sub-contractors to any third party without the Council's prior written consent.
- 10.2. The Contractor shall ensure that neither the name or logo of the Council shall be included in any published material without the prior written consent of the Council.
- 10.3. The Contractor acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIR") and the Contractor shall assist the Council in complying with its duties thereunder. Any requests received by the Contractor relating to the disclosure of information to which the Official Order relates shall be passed to the Council for response within 2 working days of receipt.
- 10.4. The Contractor acknowledges that the Council shall be entitled to determine in its sole discretion, whether any information is exempt from disclosure or should be disclosed under the FOIA or EIR and may disclose information with or without consulting the Contractor. In no event shall the Contractor respond to a request for information without the prior written consent of the Council.

11. **EMPLOYMENT**

- 11.1. In performing the Services, the Contractor shall operate as, and have the status of, an independent contractor and shall not operate as or have the status of agent, employee or representative of the Council.
- 11.2. The Contractor undertakes to comply with and to ensure that all its employees, agents, representatives and sub-contractors comply with all relevant legislation, regulations, codes of practice, guidance notes and other requirements of any relevant government or governmental agency together with any reasonable requirements of the Council in relation to security and background checks.
- 11.3. The Contractor shall at the reasonable request of the Council immediately (and without any compensation being payable to the Contractor) replace any of its personnel or other duly

authorised representative acting on behalf of the Contractor, with another employee or duly authorised representative of no less status, knowledge or experience and approved by the Council.

12. EQUALITY AND DIVERSITY

12.1. The Contractor shall not unlawfully discriminate either directly or indirectly, or harass or victimise, instruct, cause, induce or knowingly help unlawful acts, and any other conduct that is prohibited on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, gender reassignment, marriage and civil partnership, pregnancy and maternity, religion or belief, or age and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 (including any equivalent legislation in force in any jurisdiction in which any activities are carried out under or in connection with the Contract by the Contractor or any of its staff or Sub-contractors), or any statutory modification or re-enactment thereof.

13. ANTI CORRUPTION AND FRAUD

- 13.1. The Contractor warrants and undertakes that it shall at all times comply with the Bribery Act 2010.
- 13.2. The Contractor or anyone associated with the Contractor shall not offer or give, or agree to give, to any officers, staff or representatives of the Council or any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing or for having done or refrained from doing, any act in relation to the obtaining or execution of the Official Order or any other contract with the Council or any other public body, or for showing or refraining from showing favour or disfavour to any person in relation to the Official Order or any such order.
- 13.3. The Contractor shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by staff and the Contractor (including its shareholders, members and directors) in connection with the receipt of monies from the Council and shall notify the Council immediately if it has reason to suspect that any fraud has occurred or is likely to occur in relation to any contract with the Council.
- 13.4. Any breach of the conduct prohibited in clauses 13.1 to 13.3 (inclusive) shall be treated as a material default on the part of the Contractor and shall entitle the Council to terminate the Official Order with immediate effect. Upon termination under this clause 13, the Council shall be entitled to recover in full any and all losses sustained by the Council as a result of the breach (including all reasonable costs of the Council for time spent by its employees, agents or representatives in terminating the agreement and making alternative arrangements for the provision of the Goods and/or Services, including, but not limited to, any additional cost of purchasing alternative Goods or Services exceeds the amount which would have been payable to the Contractor but for the cancellation).

14. DATA PROTECTION

14.1. The Contractor shall comply in all respects with the provisions of the Data Protection Act 2018 ("DPA") and shall indemnify the Council against all actions, costs, expenses, claims, proceedings and demands which may be made or brought against the Council for breach of statutory duty under the DPA which arises from the use, disclosure or transfer of personal data by the Contractor and/or his servants and agents.

15. WELSH LANGUAGE

15.1. Where applicable in relation to the performance of the Contract, the Contractor shall adopt and shall use its best endeavours to comply with the requirements of the Welsh Language (Wales) Measure 2011 and shall further adhere to the principles set out in the Council's Welsh Language

Standards (or any subsequent policy or scheme in compliance with relevant legislation), a full copy of the Standards may be found on the Council's website.

16. DISPUTE RESOLUTION

16.1. In the event of a dispute between the Council and the Contractor arising in connection with these Terms and Conditions, the Council and the Contractor shall use all reasonable endeavours to resolve the matter on an amicable basis. If the Council and the Contractor fail to resolve such a dispute, the dispute shall be referred to a senior officer within the Council and the Contractor's business. The submission of either party to this clause shall not limit their right to commence any proceedings in any Court of competent jurisdiction in England and Wales.

17. COMPLIANCE WITH ANTI-SLAVERY AND HUMAN TRAFFICKING LAWS

- 17.1. In performing its obligations under the Contract, the Service Provider shall:
- 17.1.1. comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015; and
 - 17.1.2. have and maintain throughout the term of the Contract its own policies and procedures to ensure its compliance;
 - 17.1.3. not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and
 - 17.1.4. require that each of its direct subcontractors and suppliers shall comply with the anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015.

18. GENERAL

- 18.1. No waiver by the Council of any breach of the Terms and Conditions by the Contractor shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 18.2. The Contractor shall not without the prior written consent of the Council assign or sub-contract any of its obligations under the Official Order or these Terms and Conditions.
- 18.3. All communications regarding these Terms and Conditions and the Official Order are to be submitted in writing to the named person on the Official Order.
- 18.4. Nothing in the Terms and Conditions or Official Order shall create any rights for third parties under the Contracts (Rights of Third Parties) Act 1999.
- 18.5. The Terms and Conditions shall in all respects be governed by and interpreted in accordance with the laws of England and Wales and be subject to the exclusive jurisdiction of the courts of England and Wales.