

## Terms & Conditions of Purchase



The following constitutes the Council's standard terms and condition of purchase and apply to all purchase orders placed by the Council.

### 1) These Conditions

- a) Subject to clause 1.c below, unless otherwise agreed in writing, these conditions (the Conditions) and the Council's official purchase order shall override any conditions or terms stipulated or referred to by the Supplier in his order or through negotiations with Chelmsford City Council (the Council). The submission of a set of alternative conditions, sales contract or other conditions will not override the Conditions. Any written amendments must be agreed in writing by an authorised officer of the Council.
- b) The acceptance of an Official Order and/or delivery of goods/provision of services is deemed to be acceptance of the Conditions.
- c) For the avoidance of doubt where the Council enters into a formal written contract with the supplier for the supply of goods and or services, and where there is a conflict between the terms of that formal written contract and the Conditions, the terms of the formal written contract shall apply.

### 2) Prices

All prices given are for goods/services delivered to the designated delivery point stated on the Order and are fully inclusive of all charges and must express all taxes and charges separately.

### 3) Deliveries

- a) Delivery of goods must be made to the delivery point specified in the Official Order and shall be the responsibility of the Supplier until acceptance by the Council set out in Clause 4. Where assistance of any kind is required by the Supplier in offloading materials, this must be notified in writing to the Council in advance.
- b) Deliveries to the Civic Centre will only be accepted Monday to Friday during office hours (except Bank Holidays). Weekend deliveries to other sites must be agreed with that site in advance.

### 4) Acceptance of Goods

- a) An authorised officer of the Council will sign for a given number of packages delivered at a specific time. Such a signature cannot be taken to mean acceptance of the quality or quantity of the goods beyond the receipt of the designated number of boxes, even where the delivery note provided to the Council states that a signature signifies that goods have been received in a specific condition. Inferior or defective goods or goods in excess of Order will be rejected by the Council.
- b) Goods not accepted, for any reason, remain the property of the Supplier at all times. A note of rejection with reasons will be sent to the Supplier requesting that the rejected goods be removed. Where not action is taken by the Supplier within five working days, a reminder notice will be forwarded giving notice of a final date by which the goods must be removed. Following that date, the Council reserves the right to dispose of the goods as they see fit.

### 5) Services and Works

- a) Where this purchase order includes or is for the supply of services or works, these services will be performed:
  - i) with the best care, skill and diligence in accordance with the best practice in the Suppliers industry, profession or trade;
  - ii) by personnel who are suitably skilled and experienced to perform tasks assigned and in sufficient number to ensure that the Suppliers obligations are fulfilled in accordance with this Agreement;
  - iii) with equipment, tools and vehicles provided by the Supplier;
  - iv) ensuring any goods and materials used are of the best quality and suitable for the task;
  - v) ensuring all relevant licences and consents are in place;
  - vi) ensuring that the service and deliverables conform to the descriptions and specifications set out and agreed during the quotation process;
  - vii) meeting any performance dates specified in the Request for Quotation or subsequently notified, in writing, to the Supplier by the Council.

### 6) Payment

- a) Payment will be made on receipt of a fully itemised VAT invoice. That invoice must be submitted to the Council via email (ap.invoices@chelmsford.gov.uk). All invoices must clearly show an Official Order number. No payment will be made by the Council unless the Supplier is in receipt of an Official Order and can quote the order number when requested. If the order number is not quoted on the invoice it will result in a delay in payment or in your invoice being returned to you.
- b) In the event that there is any appreciable delay in completing the order, separate invoices must be rendered for each delivery.
- c) The Council is registered for VAT (VAT reg. no. 104186402) and tax invoices are required from all VAT registered suppliers.
- d) Payment will be made by BACS (transfers between bank accounts). Remittance advice will be sent by email. The Council will normally pay its suppliers in GBP sterling. Payments in other currencies will only be made via electronic bank transfer and must be agreed with the Council at the time of order.
- e) The Council reserves the right to set off from the payment in respect of this order any sums due from the supplier under this or any other contract or agreement between the supplier and the Council.
- f) Standard payment terms are 30 days from receipt of an accurate invoice as per clause 7.1. A shorter payment period of 10 days from receipt of invoice is applied to suppliers who register as a small or medium sized enterprise.

## **7) Insurance**

- a) The Supplier shall indemnify the Council against all claims or demands whatsoever arising from or incidental to the carrying out of any works, the supply of materials and/or the provision of services that are the subject of this order. The Supplier agrees to indemnify upon acceptance of this order.
- b) Evidence of the Supplier's insurance policies shall be forwarded to the Council on request, for the approval by the Council prior to the start of the works, the supply of materials, and/or the provision of material and/or the provision of services as appropriate.
- c) The minimum levels of insurance cover required are set out here:  
*Employers Liability: £5,000,000*  
*Public Liability: £5,000,000*  
*Professional Indemnity: £ - to be agreed if needed.*
- d) The Supplier will hold the required insurance from a reputable b+ rated insurance carrier.

## **8) Health & Safety**

Suppliers are reminded that they must comply with all appropriate requirements of the health and safety legislation.

## **9) Bribery & Conflict of Interest**

- a) The Supplier:
  - i) shall not, in connection with this Agreement commit a Prohibited Act;
  - ii) shall not give financial or other advantage to any person working for or engaged by the Council, or pursue an agreement to that effect, in connection with the execution of this Agreement;
  - iii) shall, if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by a relevant agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act.
- b) If any breach of this clause is suspected or known, the Supplier must notify the Council immediately. And must co-operate fully with any subsequent investigation, allowing the Council to audit books, electronic and financial records and any other relevant documentation.
- c) A breach of this clause may be considered material and result in termination of the Agreement under clause **21** of these terms.
- d) Any dispute relating to the interpretation of this clause or the amount or value of any gift, consideration or commission, shall be determined by the Council and its decision shall be final and conclusive. Any conflict of interest shall be immediately declared by the Supplier to the Council and the Council reserves the right to terminate the Agreement if the conflict of interest poses a material conflict to and with the performance of the Suppliers obligations under this Agreement.

## **10) Confidentiality**

A party (Receiving Party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to, or otherwise obtained by, the Receiving Party by the other party (Disclosing Party), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services

which the Receiving Party may obtain.

The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Agreement, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 10 shall survive the termination of the agreement.

#### **11) Data Protection**

Suppliers will strictly adhere to the provisions of all Data Protection Legislation, including the Data Protection Act 2018 and GDPR (General Data Protection Regulation). Suppliers are to ensure appropriate technical and organisational measures are in place to protect personal data and will provide the Council with copies of its internal policies, procedures and working practices on request.

Any breach of this legislation will be considered material. Suppliers are required to notify the Council of any data breaches relating to Council information without undue delay of becoming aware of the data breach.

#### **12) Freedom of Information**

- a) The Supplier acknowledges that the Council is subject to the requirements of the Code of Practice on Government Information, Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and shall assist the Council in complying with these obligations.
- b) The Supplier shall transfer to the Council all Requests for Information within 3 working days of receiving the request. In no event should the Supplier respond directly to the request unless expressly authorised to do so by the Council. The Supplier shall ensure that all information is retained for disclosure and shall permit inspection of these records following a written request from the Council.
- c) The Supplier will provide the requested information to the Council within 10 working days of receiving the request.
- d) The Council shall be responsible for determining whether any of the information is exempt from disclosure.
- e) The Supplier acknowledges that the Council may, acting in accordance with the regulations listed in clause 12a, be obliged to disclose information without consulting or obtaining consent from the Supplier.

#### **13) Safeguarding Children, Young People and Vulnerable Adults**

- a) The Supplier acknowledges that the Council has legal responsibilities regarding the safeguarding of children, young people and vulnerable adults under current legislation (including the Safeguarding of Vulnerable Groups Act 2006 ('SVGA')) and is also required to comply with various codes of practice and other guidelines (together the 'Safeguarding Obligation') and agrees to provide all assistance reasonably required by the Council to enable the Council to comply with the Safeguarding Obligation and shall not do any act that would cause the Council to be in breach of any provision set out in or referred to in the Safeguarding Obligation.
- b) The Supplier acknowledges that it may also have legal responsibilities regarding the safeguarding of children, young people and vulnerable adults and agrees to comply with those responsibilities. And the Supplier agrees that It will:
  - i) comply with the Council's 'Safeguarding Children, Young People and Vulnerable Adults Policy', which is updated from time to time and is available at [www.chelmsford.gov.uk/communities/safeguarding](http://www.chelmsford.gov.uk/communities/safeguarding) and shall ensure that at all times it is familiar with and complies with the reporting procedures for suspected abuse, as set out in the policy;
  - ii) ensure that adequate staff training is provided as appropriate;
  - iii) notify the Council immediately of any breach of or departure from the Safeguarding Obligation;
  - iv) ensure that all individuals engaged in a Regulated Activity under the SVGA will be subject to a valid enhanced disclosure check through the Disclosure and Barring Service; and monitor the level and validity of the checks under this clause for each member of staff; and
  - v) not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity under the SVGA or who may otherwise present a risk to service users and or children and/or vulnerable adults.
- c) The Supplier shall co-operate with any investigation or proceedings concerning alleged contravention of any anti-discrimination legislation in performing the contract and shall impose the same obligations on any sub-Supplier.

#### **14) Third Party Rights**

A person who is not party to this Agreement shall not have any rights under or in connection with it.

#### **15) Governing Law and Jurisdiction**

The Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non- contractual disputes or claims), shall be governed by, and construed in accordance with, English Law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

#### **16) Intellectual Property and Third-Party Claims**

- a) The Supplier shall own and retain ownership of all intellectual property rights in any originally created work subject to the granting of a license to the Council as detailed below.
- b) The Supplier shall automatically grant to the Council, a perpetual, royalty free, unrestricted and non - exclusive license to use all material, howsoever, created and developed during the provision of the Works, for such purpose and howsoever they desire.
- c) The Supplier shall indemnify and hold the Council harmless for any and all losses arising from any claims alleging infringement of intellectual property rights in any material provided by the Supplier that any third party may bring against the Council.
- d) The rights and obligations arising from this clause 16 shall survive the termination of this Agreement.

#### **17) Force Majeure**

a) Neither party shall be liable to the other for any delay or failure in performing its obligations under the Agreement to the extent that such delay or failure is caused by an event or circumstances that is beyond the reasonable control of that party, and by which its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable, provided that the Supplier shall use all reasonable endeavors to cure any such events or circumstances and resume performance under the Agreement including but not limited to any act of God, strike, fire, flood, storm, or other weather conditions, riot, civil commotion, malicious damage, disease pandemic or epidemic, act of government or local authority or state, breakdown of plant or machinery, or default of suppliers or subcontractors

b) If any events or circumstances prevent the Supplier from carrying out its obligations under the Agreement for a continuous period of more than 20 business days, the Council may terminate this contract immediately by given written notice to the Supplier.

#### **18) Notices**

Any notice which either Party is required to give to the other shall be given and confirmed in writing.

#### **19) Waiver**

Any failure by either Party to insist at any time upon the performance of any of the terms, provisions or undertakings under this Agreement or to exercise any of its rights under this Agreement shall not constitute or be construed as a waiver or relinquishment of that Party's rights to require the future performance of any such term provision or undertaking but the obligations of the other Party with regard to the same shall continue in full force and effect.

#### **20) Modern Slavery/ Human Trafficking Laws**

Suppliers must take appropriate action, as required by law, to reduce the risk of slavery, servitude, forced or compulsory labour in their own operations and that of their supply chains. Any breach of this legislation by the supplier, or a key supplier in their supply chain, will be considered a material breach of this Agreement.

#### **21) Termination**

- a) Without affecting any other right or remedy available to it, either party may terminate this Agreement by giving the other party 3 months written notice.
- b) Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:
  - i) the other party commits a material breach of any term of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;
  - ii) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;

- iii) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- iv) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under this Agreement has been placed in jeopardy.

## **22) Disputes**

- a) If either party has any issues concerns or complaints about the services or goods or any other matter in this Agreement, that party shall notify the other party and the authorised representatives of both parties shall seek to resolve the issue by a process of consultation. If the issue cannot be resolved within a reasonable period of time, the matter shall be escalated to the Director of Service of both parties who shall decide on appropriate course of action to take.
- b) If the Director of Service of either party are for any reason unable to resolve the concerns or complaints the Parties agree to enter into mediation in good faith to settle the dispute in accordance with the CEDR Mediation Procedure.