

TERMS AND CONDITIONS OF PURCHASE / CONTRACT

1. Applicability of Conditions
 - 1.1. Unless otherwise stated on the Purchase Order these conditions shall for the basis of the contract between the Council and the Supplier. These conditions shall apply notwithstanding anything to the contrary contained in any standard terms of the Supplier or any document issued or sent by the Supplier. These conditions shall be subject to such special conditions as may be specified in writing by the Council and in the event of any inconsistency between these conditions and any such special conditions the latter shall prevail.
 - 1.2. Despatch or delivery of the Goods by the Supplier to the Council or commencement of the performance by the Supplier of the Service shall be deemed conclusive evidence of the Supplier's acceptance of these conditions as varied by any special conditions.
2. Price and Payment
 - 2.1. The price shall be as specified on the Purchase Order. If a price is not specified on the Purchase Order the price shall be determined in a manner set out on the front of this Order. The Price is exclusive of VAT which shall be payable by the Council at the rate prevailing at the date of this Order.
 - 2.2. Payment of the price and VAT shall be made by the Council within 30 days of receipt by the Council of a valid invoice.
 - 2.3. The Council may set off against any sums due to the Supplier whether in respect of this Order or otherwise any lawful set off or counterclaim to which the Council may at any time be entitled.
3. The Goods or Service
 - 3.1. The quantity and description of the Goods and the nature and extent of the Services shall be as set out on the Purchase Order.
4. Standards and Quality of Goods and Service
 - 4.1. The Supplier warrants that all Goods are of satisfactory quality and fit for purpose, comply with all applicable published standards and meet all applicable health and safety requirements.
 - 4.2. The Services shall be performed with reasonable care and skill by means of suitably qualified, trained, skilled, experienced and equipped personnel and the Supplier shall comply with all applicable requirements of health and safety legislation.
 - 4.3. Where the Services cover work at any Council premises the Supplier shall give reasonable notice to the Head or Manager of the establishment prior to commencing work and comply with any requirements of the Head or Manager in respect of minimising disruption to the establishment and ensuring the health and safety of persons using it.
5. Delivery of Goods and Performance of Service
 - 5.1. The Supplier shall, in accordance with such requirements as the Council shall specify, deliver the Goods to and unload the goods at the address on the front of this Order no later than the specified Delivery Date.
 - 5.2. All Goods must be properly packed and be clearly and legibly labelled and addressed. The Supplier upon receiving notice to that effect, from the Council shall repair or replace free of charge Goods damaged or lost in transit and delivery shall not be deemed to have taken place until replacement or repaired Goods have been delivered by the Supplier to the Council.
 - 5.3. Unless otherwise agreed in writing by the Council the Price includes all delivery charges and costs.
 - 5.4. The Supplier shall complete the performance of the Service no later than the Delivery Date on the Purchase Order.
 - 5.5. The Council shall not be deemed to have accepted any part of the Goods until after it has actually inspected the Goods. The Council may reject Goods which are not in accordance with this Order.
6. Cancellation and Termination
 - 6.1. The Council may cancel this Order at any time before the Goods are delivered on the giving of written notice. The Supplier shall promptly repay to the Council any sums paid in respect of the Price and the Council shall not be liable for any loss or damage whatsoever arising from such cancellations.
 - 6.2. The Council may terminate any contract for Services to which this Order relates on the giving of reasonable notice. The Council shall pay for work carried out prior to the date of termination but shall otherwise not be liable for any loss or damage whatsoever arising from such termination.
7. Indemnity and Insurance
 - 7.1. The Supplier shall indemnify the Council against all actions, claims, demands and proceedings (and all liability damages, costs, charges and expenses incurred in connection therewith) in respect of personal injury or loss of or damages to property caused by the Goods or arising out of the delivery of the Goods or the performance of the Services except to the extent that such injury or loss or damage is caused by the negligence of the Council, its Officers or agents.
 - 7.2. Unless otherwise specified on the Purchase Order, to the extent that the Services comprise the provision of professional or other advice or consultancy the Supplier shall then maintain professional indemnity insurance with a minimum indemnity of £5,000,000.
8. Ombudsman's Investigations
 - 8.1. If either the Council'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 require.
9. Fraud and Corruption
 - 9.1. The Council shall be entitled to cancel this or any other Order, if the Supplier is deemed to have offered or given to any person any gift or consideration as an inducement for being chosen as recipient of the Order, in accordance with the Local Government Act 1972, Section 117(2) or any re-enactment thereof.
 - 9.2. The Supplier shall inform the Council's Internal Audit Manager of any improper conduct by any of the Council's employees relating to the Contract or any other agreement.
 - 9.3. The Supplier shall ensure that its employees and agents are made aware of the Council's Whistleblowing Policy, the details of which can be found at www.bassetlaw.gov.uk
10. General
 - 10.1. The contract to which these conditions relate is not intended to confer any right on any third party.
 - 10.2. Notices shall be in writing and shall be sent by first-class pre-paid ordinary post to the address specified on the front of this Order and shall be deemed delivered 2 days after posting unless otherwise specified.
 - 10.3. No delays or forbearance by the Council in enforcing any right under these conditions shall operate as a waiver of that right or any other rights.
 - 10.4. To the extent that any provision of these conditions is held by any court or tribunal of competent jurisdiction to be illegal or enforceable the same shall be served and the rest of these conditions shall remain in enforceable.
 - 10.5. The contract to which this Order relates shall be governed by and interpreted in accordance with English law.

11. Data Protection/GDPR

- 11.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor unless otherwise specified. The only processing that the Processor is authorised to do is listed by the Controller and may not be determined by the Processor.
- 11.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 11.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 11.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- (a) process that Personal Data only in accordance with this agreement, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
 - (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - (c) ensure that :
 - (i) the Processor Personnel do not process Personal Data except in accordance with this Agreement;
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Processor's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
 - (d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
 - (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.
- 11.5 Subject to clause 11.6, the Processor shall notify the Controller immediately if it:
- (a) receives a Data Subject Request (or purported Data Subject Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - (f) becomes aware of a Data Loss Event.
- 11.6 The Processor's obligation to notify under clause 11.5 shall include the provision of further information to the Controller in phases, as details become available.
- 11.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- (a) the Controller with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Controller following any Data Loss Event;
 - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 11.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the processing is not occasional;
 - (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
 - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

- 11.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 11.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 11.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:
- (a) notify the Controller in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Controller;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 11.11 such that they apply to the Sub-processor; and
 - (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 11.12 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 11.13 The Controller may at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 11.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.