

Purchase Order Standard Terms & Conditions

Interpretation

In these conditions:

- “Conditions” means the standard terms and conditions of purchase. Unless the context otherwise requires, this includes any special terms and conditions agreed in writing
- “Contract” means the contract for the purchase of the Goods and/or the supply of the Services
- “Council” means Gravesham Borough Council
- “Council’s Whistleblowing Policy” means the council’s policy in relation to whistleblowing in force from time to time.
- “Delivery Address” means the address on the Purchase Order
- “Goods” means the goods (including any instalment of the goods or any part of them) described in the Purchase Order
- “Price” means the price of the Goods and/or the charge for the Services
- “Provider” means the entity responsible for supplying the Goods and/or the Services stated on the Purchase Order
- “Purchase Order” means the council’s purchase order on the back of which are these Conditions
- “Specification” includes any plans, drawings, data or other information relating to the Goods and/or the Services
- “Works” means all records, reports, documents, papers, drawings, designs, transparencies, photos, graphics, logos, typographical arrangements, software, invention, idea, discovery, development, improvement or innovation and all other materials in whatever form. Including but not limited to, hard copy and electronic form, prepared by the Provider in the provision of the Goods and /or Services.
- Any reference in these Conditions to a statute or a provision of a statute shall be understood as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.
- The headings in these Conditions are for convenience only and shall affect their interpretation.

Basis of Purchase

- This Purchase Order constitutes an offer by the council to purchase the Goods and /or the Services subject to these Conditions.
- These Conditions shall apply to the Contract to the exclusion of any other terms and conditions which the Provider has sought to or subsequently seeks to impose on the Council.
- No variation to the Purchase Order or these Conditions shall be binding unless agreed in writing between the authorised representatives of the parties.

Specification

- The quantity, quality, and description of the Goods and/or the Services shall, subject as provided in these Conditions, be specified in the Purchase Order and/or in any applicable Specification supplied by the council to the Provider.
- The Provider shall follow all applicable regulations and/or other requirements concerning the manufacture, packaging, and delivery of the Goods and/or performance of the Services.
- The Provider shall not unreasonably refuse any request by the council to inspect and evaluate the Goods during manufacture, processing, or storage at the premises of the Provider (or any third party) prior to dispatch, The Provider shall provide the council with all facilities reasonably required for inspection and testing.
- If as a result of inspection or testing, the council is not satisfied that the Goods will comply in all respects with the Contract, the Provider shall take necessary steps to ensure compliance.

Price and Payment

- The Price of the Goods and/or the Services to be as stated in the Purchase Order and, unless stated otherwise, shall be inclusive of all charges for packaging, shipping, carriage, insurance, and delivery of the Goods to the Delivery Address, and any duties or levies other than Value Added Tax.
- No increase in the Price may be made (whether an account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the council in writing
- The council shall be entitled to any discount for prompt payment, bulk purchase or volume or purchase customarily granted by the Provider, regardless of whether it is not shown in its own terms and conditions of sale
- The Provider's official invoice should be sent promptly to the council after delivery of the Goods and/or the Services, as the case may be, to the address indicated on front of the Purchase Order, unless otherwise instructed and must show:
 - the council's Purchase Order number
 - an invoice number
 - a full description of the Goods and/or the Services
 - full detail of prices
 - any discount allowed
 - current VAT requirements; and
 - officer contact details where known.
- Unless otherwise stated or agreed in writing, the payment of the Price will be made within 30 days of receipt of a correct invoice. Upon confirmation by a council officer, that the Goods and/or the Services have been satisfactorily provided, unless the Provider's credit terms are less onerous on the council than this, in which case the Provider's credit terms will apply.
- The council shall be entitled to set-off against any invoice, any amount due from the Provider under this Purchase Order or under any other arrangement.
- Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly extra charge. All invoices containing Value Added Tax must conform to the requirements of HM Revenue and Customs.

Delivery

- The Goods shall be delivered to and/or the Services shall be performed at the Delivery Address on the date or within the period specified in the Purchase Order, in either case during the council's business hours.
- Where the date of delivery of the Goods and or/performance of the Services is to be specified after the placing of the Purchase Order, the Provider shall give the council reasonable notice of the specified date.
- A delivery note to specify the Purchase Order number shall accompany each delivery or consignment of the Goods, and must be clearly displayed.
- If the Goods are to be delivered and/or the Services are to be performed by instalments, the Contract will be treated as a single contract and will not be severable.
- The council shall be entitled to reject any Goods delivered which are not in accordance with the Contract and shall not be deemed to have accepted any Goods until the council has had reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.
- The Provider shall supply the council in good time with any instructions or other information required to enable the council to accept delivery of the Goods and/or performance of the Services.
- The Council shall not be required to return to the Provider any packaging or packaging materials for the Goods, whether the Goods are accepted by the council.
- If the Goods are not delivered and/or the Services are not performed on the due date then, without prejudice to any other remedy, the council shall be entitled to deduct from the Price or, if the council has already paid the Price, to claim from the Provider an amount equal to the additional costs incurred by the council because of the delay.
- Risk of damage to or loss of the Goods shall pass to the council upon acceptance to the council in accordance with the Contract.
- The property in the Goods shall pass to the council upon acceptance, unless payment for the Goods is made prior to delivery, where it shall pass to the council once payment has been made and the Goods have been appropriated to the Contract.

Quality Assurance

The Provider shall use a self-regulatory system of quality assurance and quality measures relating to the Contract. In addition to any quality requirements in the Specification which ensures that the Goods and/or Services are provided following the requirements of the Contract. The Provider shall check that information, data, or software supplied pursuant to the Contract is fit for the purpose for which the council intends to use it.

Warranties and Liability

The Provider warrants to the council that the Goods will:

- be of sound materials and first-class workmanship
- be equal in all respects to the samples, patterns, description, or specification provided or given by either party

- be fit for the purpose for which they are required is indicated in the Purchase Order or otherwise, either expressly or by implication
- be of satisfactory quality (within the meaning of the Sale of Goods Act 1979)
- be free from defects in design, material, and workmanship
- will comply with all statutory requirements and regulations relating to the sale of the Goods
- The Provider warrants to the council that the Services will be performed by appropriately trained and qualified personnel, with due care and diligence, and to the standards which would reasonably be expected from a skilled and experienced provider engaged in the provision of services like the Services under the same or similar circumstances

The Provider will indemnify the council in full against the following:

- all loss, liability, damages, costs, expenses (including legal expenses) or injury whatsoever and whenever arising caused to the council, or for which the council may be liable to third parties due to defective workmanship or unsound quality of the Goods and/or the Services supplied
- all claims in respect of death or injury, howsoever caused, to any of the employees, or those of the agent or sub-contractors, of the Provider, while in or about the council's sites, works or other places of business
- any consequential loss or damage sustained by the council for the which the council may be liable, because of the failure of the Provider to supply the materials or perform the work in accordance with the terms of this Purchase Order
- The Provider having given the above-mentioned indemnity shall accordingly maintain in force during the term of the Contract full and comprehensive insurance as appropriate in respect of the provision of the Goods and/or Services such insurance to be with reputable insurers acceptable to the council acting reasonably.

Without prejudice to any other remedy, if any of the Goods and/or Services are not supplied or performed in accordance with the Contract, then the Buyer shall be entitled:

- to require the Provider to repair the Goods or to supply replacement Goods and/or Services in compliance with the Contract within 7 days: or
- at the council's sole option and whether the council has previously required the Provider to repair the Goods or to supply any replacement Goods and/or Services, to treat the Contract as discharged by the Provider's breach and require repayment of any part of the Price which has been paid.

Termination

- The council shall be entitled to cancel the Contract in respect of all or part only of the Goods and/or Services by giving reasonable notice to the Provider at any time prior to delivery or performance. In this event, the council's sole liability shall be to pay the Provider the Price for the Goods/and or the Services in respect of which the council has exercised its rights of cancellation, less the Provider's net saving of cost arising from the cancellation.
- The council shall be entitled to end the Contract without liability to the Provider by giving notice to the Provider at any time if:

- the Provider makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
- an encumbrancer takes possession, or a receiver is appointed, of the property or assets of the Provider; or
- the Provider ceases, or threatens to cease to carry on business; or
- the Provider does anything improper to influence the council to give the Provider any contract or commits an offence under the Prevention of Corruption Acts 1889 to 1916 or Section 117 (2) Local Government Act 1972; or
- the council reasonably believes that any of the events mentioned above is about to occur in relation to the Provider and notifies the Provider immediately
- For the avoidance of doubt, where the council terminates the Contract in accordance with the provisions of Condition Termination - Line 2, the Provider shall compensate the council for any losses suffered because of this.

General

- This Purchase Order shall be governed by and construed by English Law and the Provider hereby irrevocably submits to the exclusive jurisdiction of the English courts.
- The Provider shall be prohibited from transferring, assigning or subletting, directly or indirectly, to any person or persons whatever, the whole or any portion of this Contract without the written permission of the council.
- Any notice needed or permitted to be given by either party to the other party under these Conditions shall be in writing addressed to that other party.
- No waiver by the council of any breach of the Contract by the Provider shall be considered as a waiver of any later breach of the same or any other provision.
- If any provision of these Conditions is held to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- The Provider shall use all reasonable efforts to assist the council to comply with such obligations as are imposed on the council by the Freedom of Information Act 2000 ("the 200 Act") and the Environmental Information Regulations 2004 ("the 2004 Regulations"). Including providing the council with reasonable assistance in complying with any request for information in connection with the Goods and/or Services served on the council under the 2000 Act or the 2004 Regulations. Processing information provided by the council in accordance with a record management system which complies with the Lord Chancellor's records management recommendations and code of conduct under section 46 of the 2000 Act.
- The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Contract.
- The Provider shall not, issue any press releases or make any public statements concerning the council, its employees, agents, councillors, the Goods and/or Services without the prior written consent of the council.
- The Provider shall ensure that its employees and agents are made aware of the council's Whistleblowing Policy and that the details of this policy are fully explained

to them, and the Provider shall provide the council with evidence of doing so upon request.

- The Provider shall use reasonable endeavours to ensure that its employees, agents, and subcontractors act in a way which is compatible with the Convention rights (Section 1 of the Human Rights Act 1998).
- The Provider shall not:
 - discriminate directly or indirectly, or by way of victimisation or harassment, against any person on grounds of colour, race, nationality, or ethnic or national origins contrary to any part of the Race Relations Act 1976 or otherwise contravene any part of that Act
 - discriminate directly or indirectly, or by way of victimisation or harassment, against any person on grounds of sex, sexual orientation, or religion or belief.
- Acceptance of this Purchase Order will be deemed to bind the Provider to these Conditions. No Goods and/or Services shall be supplied or performed by the Provider, its employees, agents, or representatives, except in accordance therewith.