

Hertsmere Borough Council
Standard Terms and Conditions for the supply of Goods and /or Services
(Purchase Orders)

1. GENERAL

Except where condition 18 applies these terms and conditions apply to every order placed by Hertsmere Borough Council ("The Council") with any individual, firm or company ("The Supplier"). No terms or conditions in or attached to any catalogue, invoice or other sales literature or document or tender or dispatch/delivery advice note of the Supplier which are inconsistent with these terms and conditions or which purport to add to or vary them in any way shall have any effect unless expressly accepted by the Council in writing. In the absence of such acceptance the Supplier shall be deemed to have withdrawn or waived his terms or conditions and to contract solely on the basis of the Councils' terms and conditions, and acceptance of any goods and/or services shall not constitute or be deemed to constitute acceptance by the Council of the Supplier's terms and conditions. Upon dispatch of a purchase order by the Council the contract shall commence and the Supplier will be contractually bound.

2. PRICE

The price to be paid for the goods and/or services is set out in the purchase order. No variation of such price shall be effective unless agreed in writing between the Supplier and the Council.

3. CONFORMITY TO PURCHASE ORDER

The goods and/or services supplied or performed under the contract shall:

- conform as to the quantity, type, sort, quality and description;
- be fit for the purpose made known to the Supplier expressly or by implication and in this respect the Council shall rely on the Supplier's skill and judgement;
- be new (unless otherwise specified in the purchase order) and of sound materials and skilled and careful workmanship; and
- comply with any current legislation and standards specified and where no standard is specified comply with the relevant British Standards or equivalent.

If the goods and services do not comply the Council is entitled at its option either to return the goods at the risk of the Supplier and reject the goods and/or services and require the Supplier to re-perform the services or accept the whole or part of the goods and/or services supplied by the Supplier but without prejudice to any rights of the Council to claim compensation or damages for loss or damage suffered as a result of such failure to comply.

4. DELIVERY OF GOODS AND/OR PERFORMANCE OF SERVICES

- (1) All goods and/or services ordered by the Council shall be delivered or performed at the cost of the supplier.
- (2) Failure to deliver the goods or perform the services on the date specified on the purchase order shall entitle the Council to cancel the contract without notice.

5. INVOICES, PAYMENT AND SET OFF

- (1) Detailed priced invoices, which shall be valid VAT invoices, shall be sent by first class post to Hertsmere Borough Council at the address detailed in the purchase order. Invoices shall be sent immediately after delivery of goods is made or completion of the services and shall bear the Council's purchase order number.
- (2) Payment for goods and/or services provided shall be made at the time agreed by the parties.
- (3) The Council shall make payment within 30 days of receipt of a valid invoice from the Supplier.
- (4) The Council may set off against any sums due to the Supplier whether under this contract or otherwise any lawful set off or counterclaim to which the Council may at any time be entitled.

6. INDEMNITY AND INSURANCE

The Supplier shall hold and keep the Council fully indemnified from and against all actions, costs, claims, demands, and liability whatsoever in respect of any injury or damage to persons or property due to or arising out of the performance of the contract or any breach by the Supplier of these terms and conditions or any terms or obligations implied by law or any other relevant statutory provision as may be in force from time to time. The Supplier shall at all times have sufficient insurances in place and provide written evidence to the Council upon request.

7. FORCE MAJEURE

Notwithstanding anything contained in these terms and conditions neither the Council nor the Supplier shall be liable for any loss damage or expense suffered or incurred by the other party if by reason of fire accident wars strikes lockouts or any restriction or prohibition imposed by the Government or any duly authorised authority which could not reasonably have been prevented or avoided by the Council or the Supplier as the case may be, either

- (1) The Council is prevented from or delayed in accepting delivery of any goods and/or services or any part of the goods and/or services or in paying for the same or any part thereof at the due time or
- (2) The Supplier is prevented from or delayed in the supply of any goods and/or services ordered by the Council.

8. CONFIDENTIALITY

The Supplier shall treat all confidential information belonging to the Council as confidential and safeguard it accordingly: and shall not disclose any confidential information without the prior written consent of the Council.

9. WAIVER

No delay, neglect or forbearance on the part of either party in enforcing against the other party any term or condition of the contract shall either be or be deemed to be a waiver or in any way prejudice any right of that party under this contract.

10. AMENDMENT

This contract may not be varied except by an agreement in writing signed by the duly authorised representative of the parties.

11. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Unless the right of enforcement is expressly granted, it is not intended that a third party should have a right to enforce a provision of this contract pursuant to the Contracts (Rights of Third Parties) Act 1999. The parties may rescind or vary this contract without the consent of a third party to without the consent of a third party to whom an express right to enforce any of the terms has be provided.

12. TERMINATION

If at any time after the commencement of the contract the Supplier shall commit an act of bankruptcy or in the case of a Limited Company call a meeting of its creditors then the Council shall be entitled to treat the contract as repudiated and cancelled in respect of any goods and/or services not delivered in accordance with the terms of the contract. If the Supplier breaches any terms of this contract the Council may (if the breach is capable of remedy) give the Supplier notice of the breach and the Supplier shall remedy the breach within 7 days from receipt of the notice of the breach. If the Supplier fails to remedy the breach or if the breach is not capable of remedy the Council may terminate the contract with immediate effect.

13. SUB CONTRACTING AND ASSIGNMENT OF LIABILITY

The Supplier shall not sub – contract or assign or transfer this contract from the Council or the benefit of this contract to any third party except with the consent in writing of the Council.

14. ENFORCEABILITY

If any provision in this contract shall in whole or in part be held to any extent to be unlawful or unenforceable under any enactment or rule of law, the remainder of the provisions shall stand in full force and effect.

15. OBSEVANCE OF STATUTORY REQUIREMENTS

The Supplier shall comply with all statutes, orders, regulations or bye laws applicable to the performance of this contract, including health and safety, and shall indemnify the Council against any losses, claims or liabilities, expenses, proceedings or otherwise as a result of the Supplier's non – compliance with the same.

16. NOTICES

Any notification by either party to the other under the contract shall be in writing, delivered by first class post, by fax or e-mail to the other party at the address shown in the purchase order. All notices shall be deemed duly given on the date of posting or if sent by fax or e-mail immediately when the notice is transmitted.

17. PROPER LAW

This contract shall be subject to and construed in accordance with English Law and the parties submit to the jurisdiction of the English Courts.

**18. TERMS AND CONDITIONS SPECIFIED UNDER A TENDER OR QUOTATION
EXERCISE OR OTHER CONTRACT WILL OVERRIDE THESE TERMS AND CONDITIONS**

These terms and conditions will apply unless the Council specifies different terms and conditions in its tender quotation documentation or some other contract entered into by the parties. If the Council specifies different terms and conditions those terms and conditions will override these purchase order terms and conditions and will apply instead of these.