

STANDARD TERMS & CONDITIONS FOR GOODS
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1. For the purpose of these Conditions of Contract the following meanings shall apply: -
 - a) "The Council's Officer" shall mean the Director for the time being of the Division of the Council for which the goods shall be required and shall as regards the taking of any action or the giving of any order, instruction or notice, by or on behalf of the Council include the Chief Executive for the time being of the Council.
 - b) The Contractor shall mean and include the company, body, person or persons and its or their successors, executors and administrators whose tender is accepted by the Council and in the case of joint Contractors shall be deemed to bind them jointly and severally.
 - c) The Contract Documents shall mean collectively the tender accepted by the Council and all documents annexed to or referred to in the form of Tender.
 - d) "The Council" shall mean the "Wirral Borough Council" and any statutory authority which may succeed to or replace the Council in the exercise of its statutory functions.
2. The Contractor shall supply and deliver the goods to the Council at the place or places specified in the Contract Documents or in any order given by the Council's Officer in such quantities and in such manner and at such time as the Council's Officer so orders in writing and shall be such quantity or type at the rates or prices respectively set out in the Contract Documents. All goods supplied in accordance with this agreement shall be delivered free of charges and at the Contractor's risk unless the Contract Documents provide otherwise.
3. The rates and prices set out in the Contract Documents are to be on a fixed price basis unless the Contract Documents provide otherwise. Unless otherwise agreed, no modification or variations will be allowed during the period of validity of the Agreement.
4. The whole of the goods supplied shall: -
 - a) Be fit for the purpose, that such goods are ordinarily used and for any particular purpose made known to the Contractor by the Council, of the standard specified and free from all defects in design, materials and workmanship; and
 - b) Conform as to quantity, quality and description with the particulars specified in the Council's Documents; and
 - c) be of satisfactory quality within the meaning of the Sale of Goods Act 1979 as amended.
 - d) Be equal in all respects to the samples, patterns or specifications provided by either the Contractor or the Council; and
 - e) Be capable of any standard of performance specified in the Contract Documents; and
 - f) Be of a design, construction and quality, which complies with all relevant requirements of any Statute, Regulation or Order in force when the goods are supplied

including, but not limited to, any obligation implied by Sections 12,13, and 14 of the Sale of Goods Act 1979 as amended.

5. Where goods are supplied by the supplier to the Council which are of hazardous, dangerous or noxious nature, such goods or receptacle or container in which the goods are stored or transported shall be clearly marked so as to show: -
 - a) The nature of the goods (if not apparent on inspection)
 - b) Any particular hazards associated with the goods
 - c) Any particular precaution involved in handling the goods
 - d) Any measures to be taken in case of accident (peculiar to the nature of the goods)
6. Where any appropriate specification or code of practice issued by the British Standards Institute or the Department of the Environment Euro standard or similar national standard of other EC member states, (provided that they meet the British equivalent) is current at the date when the goods are supplied, all goods and materials used or supplied and all workmanship shall not be less than that standard unless otherwise agreed in writing by the Council's Officer or specifically stated in the Contract Documents.
7. At the time of delivery, the Contractor must furnish the Council's Officers with an advice or delivery note containing particulars of the quantities, weights, prices and descriptions of all goods delivered at the time. Should any costs be incurred by the Council in consequence of the neglect of the Contractor in this respect, it shall be lawful for the Council to retain the amount of such costs from the amount of any monies due to the Contractor unless the Council shall exercise its right under Clause 12 or 13 hereof in which event the provision of Clause 12 and 13 shall apply to such a breach.
8. Property in the goods and risk shall only pass when the goods have been delivered to the Council at the specified delivery point, and an officer of the Council has accepted delivery. The Council shall not be deemed to have accepted any goods until it has had a reasonable time to inspect them following delivery or in the case of a latent defect in the goods until a reasonable time has elapsed after the latent defect has become apparent.
9. An invoice for the entire sum due to the Contractor for each delivery of goods under this Agreement shall be delivered or sent to the Council's Officer by the Contractor immediately after the dispatch of such goods. No payment will be made until the Council's Officer has certified that the goods have been supplied in accordance with the Contract, and the Contractor shall provide all such evidence as may be necessary to verify any disputed invoice to enable payment to be approved by the Council. The standard terms of payment will be 28 days from the date the invoice has been verified by the Council in a timely fashion and payment shall be made by the Council to the extent that the invoice is valid and undisputed unless otherwise agreed and subject to any statutory requirements to the contrary.
10. The Council may at any time upon reasonable notice conduct audits for the following purposes: -
 - (a) To verify the accuracy of any invoices or demands submitted by the contractor to the Council for payment.
 - (b) To review the contractor's compliance with its obligations under the contract.

- (c) To carry out the audit and certification of the Council's accounts.
 - (d) To review the effectiveness of the Council's arrangements for the management of the contract.
11. The contractor shall, on demand, provide the Council's auditors with all reasonable co-operation and assistance in relation to each audit including: -
- (a) All information requested by the Council's auditors within the permitted scope of the audit.
 - (b) Reasonable access to any sites controlled by the contractor and used by the contractor in the performance of the contract.
 - (c) Reasonable access to the employees of the contractor."
12. The Council's Officer shall be at liberty to reject any goods if the Contractor has not complied with all the provisions of Clauses 2,4,5,6 and 7 hereof. Rejected goods must be removed by and at the expense of the Contractor within two days after notice of the rejection has been given to him. If not so removed, the Council may cause such goods to be removed and charge the Contractor with the expenses incurred in such removal. Alternatively, the Council may require the Contractor to repair or replace the rejected goods at the Contractor's expense within 5 working days of being requested to do so.
13. If the Contractor does not deliver any goods at the time ordered by the Council, or if the Contractor does not repair or(as the case may be) deliver any goods in replacement of any goods under Clause 12 hereof within such time as is allowed by the Council's Officer, then the Council may terminate the Contract with immediate effect and/or shall be at liberty to purchase from any other person(s) goods in place of those not delivered or so rejected and any loss thereby sustained by the Council shall be recoverable from the Contractor by the Council.
14. In the event of any breach or non-performance of any of these conditions by the Contractor, the Council may, without prejudice to any other remedies which might lie to the Council, terminate the Agreement and purchase the required goods from any other person(s) and any loss thereby sustained by the Council shall be debt payable by the Contractor to the Council .For the avoidance of doubt the Council's rights and remedies under Clauses 12 and 13 are in addition to the rights and remedies available to it in respect of the statutory conditions relating to description ,quality ,fitness for purpose and correspondence with sample implied into the Contract by the Sale of Goods Act 1979 as amended.
15. If any monies shall become due to the Council from the Contractor by the operation of Clauses 12, 13, or 14 hereof, then they may be deducted from any monies due or to become due to the Contractor.
16. The Council shall be entitled to cancel the Agreement and to recover from the Contractor the amount of any loss resulting from such cancellation if the Contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any such act in relation to the obtaining or execution of this Agreement or any other Agreement with the Council, or for showing or forbearing to show disfavour to any person, in relation to the Agreement or any other Agreement with the Council, or if the like acts shall have been done by any person employed by the Contractor or acting on its behalf (whether with or without the knowledge of the Contractor) or if in relation to any Contract with the Council the Contractor or any person employed by it or acting on its behalf shall have committed any offence under the Prevention of

Corruption Acts 1889-1916, or shall have given any fee or reward the receipt of which is an offence under Section 117 (2) and (3) of the Local Government Act 1972, or shall have committed any offence under the Bribery Act 2010.

17. The Contractor shall not transfer or assign directly or indirectly or sub-contract or underlet to any company, body, person or persons whomsoever this Agreement or any part thereof without the written consent of the Council's Officer and in the event of the Council's Officer giving any such consent as aforesaid (which shall be in his absolute discretion), the Contractor shall be responsible for all work done by such sub-contractor or sub-contractors and for such work being carried out under the same conditions as if executed by the Contractor and shall be responsible for the observance of this contract hereof by such sub-contractor or sub-contractors.
18. Where the quantity specified in the Contract Documents is described as estimated, the Council may order a greater or lesser quantity of the said goods than that indicated, the quantities being mere estimates of the Council's requirements based on the past consumption; otherwise, the quantity is fixed.
19. Where the cost of the goods supplied includes a refundable deposit on a container or other packing for the goods, the Contractor shall collect the container or packing from the Council at his own cost when requested to do so by the Council's Officer.
20. The Council's Officer may at any time countermand any order given and in every such case the Contractor shall have no claim in respect of any goods required by such order unless the same be of the quality and description ordered and authorised by this Agreement and shall have been delivered at such place within the Metropolitan Borough of Wirral as may be stipulated by the Council's Officer in the order before the time of such countermand in accordance with these Conditions of Contract.
21. The Council does not accept any responsibility whether in contract, negligence, trust or in any other way whatsoever, to consider any tender, and does not bind itself to accept the lowest or any tender and reserves the right to accept the whole or part or parts of any tender. The Council shall not be responsible for any costs incurred by the Contractor in preparing the tender.
22. Canvassing Members of the Council is prohibited.
23. From time to time the Council may at its discretion order tests and/or analysis of any goods supplied by the Contractor and, if there is a deficiency in quantity, or quality, the costs incurred by the Council in carrying out such tests and/or analysis shall be paid by the Contractor.
24. Any notice, order or instruction to be served on or given or delivered to the Contractor under this Agreement shall be deemed duly served, given or delivered if and when the same shall be delivered at or sent through the post or by electronic mail to the usual or last known postal or electronic address of the Contractor or to the representative or Agent of the Contractor and shall be deemed to have been served by the Contractor on such day or days as the same should have been received in the ordinary course of the post. All communications, advice of delivery and invoices from the Contractor in reference to the carrying out of the Agreement shall be sent to the Council's Officer.
25. In the event of any claim being made or action brought against the Council by a third party for infringement of copyright, trademarks, rights in design, or patents in respect of the goods supplied to the Council under this Agreement, the Council shall immediately notify the Contractor to conduct all negotiations for the settlement of the same of any litigation that may arise. Subject to the notification stated above and provided that no such goods shall be used for any purpose other than for which the

Contractor supplied, the same Contractor shall indemnify the Council in respect of any such claim against all losses, liabilities and expenses whatsoever.

26. Nothing in this Agreement shall be taken to prevent or restrict in any way whatsoever the right of the Council to order any goods the same or similar to those within this Agreement from any other company, body, person or persons, or to manufacture or obtain the same itself.
27. The Contractor shall undertake all liability and shall fully indemnify the Council in respect of any claim made by any workman or person in the employ of the Contractor or any sub-contractor or by any other person or third party not in such employ under the provisions of any Statute or Common Law in respect of damage to property or the death of, or injury to any person whomsoever occurring due to any defect in the goods supplied under the Agreement (fair wear and tear after delivery by the Contractor to the Council being excepted) and the Contractor shall pay and discharge all costs, charges and expenses which may be payable in consequence of any such claim. The Council may recover any amount paid by them by action at law or may deduct the same from any monies due to the Contractor for the execution of the Agreement in any certificate of the amount payable to the Contractor in respect of the Agreement or any clause of these conditions or any submission or reference therein contained or any other matter or thing notwithstanding.
28. If the Contractor shall become bankrupt or insolvent or enter into liquidation, whether compulsory or voluntary (except liquidation for the purpose of reconstruction), or shall suffer execution for debt or shall enter into, make or execute any Deed of Arrangement as defined by the Deeds of Creditors for the settlement of debts or shall propose to carry on business under Inspectors on behalf of creditors or (being a body corporate) has an administrator or administrative receiver or a receiver under the Law of Property Act 1925 appointed or (being an individual) shall commit an act of bankruptcy, the Council may require the goods to be supplied and if this requisition is not satisfactorily complied with within 7 days from the date of the Council's notice to the effect, the Council may by notice in writing to the Contractor and without prejudice to any other rights of the Council, whether under this Agreement or otherwise, rescind the Contract whereupon this Agreement shall be at an end.
- 29a. The Council requires that all contractors for the supply of goods and services will uphold the principles of sustainable development and comply with all environmental legislation, to include but not be limited to the Environmental Protection Act 1990.
- 29b. The Council reserves the right to terminate any contract where a contractor is found to be in direct contravention of such principles and legislation.
- 29c. The Council maintains a list of prohibited environmentally damaging products which should not be used by contractors unless by prior agreement with the Council. Copies of the list of prohibited products are available upon request.

EQUALITY & NON-DISCRIMINATION

30. In discharging its obligations under this Contract, the Contractor shall comply with all applicable Acts of Parliament, Regulations, Orders, Directives, Statutory Guidance, Codes of Practice and Byelaws that are in force or may come into force during this Contract. Without prejudice to, or limitation of, its obligations under Clause 30, the Contractor shall comply with the following requirements in discharging its obligations under this Contract.
 - a) The Contractor will not discriminate directly or indirectly against any person on the grounds of gender, marriage, sexuality, religion and belief, colour, race, nationality,

national or ethnic origin, contrary to the Equality Act 2010 and any other relevant legal requirement applicable during this Contract.

b) The Contractor will not treat a person less favourably for a reason relating to that person's disability (as defined by the Equality Act 2010) nor fail to comply with a duty under that Act to make reasonable adjustments in relation to the disabled person.

c) The contractor will ensure that it complies with the Equality and Human Rights Commission Codes of Practice in Employment, on Sex Discrimination and Equal Pay and for the elimination of discrimination against disabled persons in the field of employment, together with any other relevant Codes of Practice in respect of Equality Issues.

d) The Contractor will notify the Council as soon as it becomes aware of any complaint or proceedings against the Contractor alleging unlawful discrimination or any investigation of the Contractor's performance of this agreement. In the event of any such complaint, proceedings or investigation the Contractor will co-operate fully and promptly with the body undertaking the investigation or bringing the proceedings, and will indemnify the Council against all costs, charges and expenses (including legal and administrative expenses and any compensation that the Council is required to pay) arising out of such investigation of proceedings.

e) The Contractor will provide to the Council such information as the Council may reasonably request in respect of the impact of equality issues on the operation of the contract, and vice-versa.

f) In the event that the Contractor subcontracts any of its obligations under this Contract it will impose obligations on its subcontractor that are substantially similar to those set out in this Clause.

g) The Council reserves the right to require the Contractor, by written request, to remove any person involved in the performance of the Contract where in the Council's reasonable opinion such person is acting contrary to the requirements of this Clause.

h) The Contractor will discharge its obligations under this Contract without infringing the human rights of any person, as defined by the Human Rights Act 1998.

31. The Supplier shall.

a) At all times provide the service in accordance with the council's commitment to equal access to services for all sections of the community.

b) Make sure that no section of the community is denied access or receive a poorer service on the grounds of race, gender or disability.

c) Establish adequate managerial and supervisory arrangements for staff to be made aware of and to comply with the council's service delivery objectives.

d) Ensure that sufficient, instructed and competent staff are available to provide services to all sections of the community including those who do not speak English.

e) If required, attend regular meetings with equal opportunities staff and local community groups to discuss the service and improvements to it.

f) Provide any information regarding the delivery of services to ensure the council meets its statutory obligations under the Equality Act 2010.

g) Support and co-operate with council initiatives aimed at improving services (and/ or access to services) to different groups in the community.

32. If a party fails to make any payment due to the other under the Contract by the due date for payment, then without limiting the other party's remedies under the Contract, the defaulting party shall pay interest on the overdue amount at the rate of 4% above the Council's bank base rate from time to time .Such interest shall accrue on a daily basis from the due date until the date of payment of the overdue amount provided that in relation to payments disputed in good faith ,interest is payable only after the dispute is resolved on the sums found to be due until payment.
33. Without affecting any other right or remedy available to it under the Contract, the Contractor or the Council may terminate the Contract with immediate effect by giving notice in writing to the other party if.
(a) the other party fails to pay any undisputed amount under the Contract on the due date for payment and remains in default not less than 28 days after being notified in writing by the non-defaulting party to make such payment.
(b) the other party commits a material breach of any other term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 28 days after being notified in writing by the non-defaulting party to do so.
- 34 Termination of the Contract shall not affect any rights ,remedies, obligations or liabilities of the parties that have accrued up to the date of termination including the right to claim damages in respect of any breach of the Contract which existed before the date of termination and shall entitle the terminating party to claim damages for any reasonably foreseeable losses that it incurs in consequence of such termination.