

GENERAL TERMS OF PURCHASE FOR GOODS, MINOR WORKS AND SERVICES – Purchase Order from Brent Council

1. Application of these Terms These Terms, together with the contract documents and any provisions expressly incorporated in these Terms, shall constitute the contract between us and you for the contract requirement (as defined in clause 3 below) unless the parties have entered into a separate legally binding written agreement in connection with the relevant purchase order (**excluding any purported agreement based on your standard or pro-forma terms and conditions or similar unless duly signed by us and you**) for the contract requirement; in this case such written agreement shall apply in place of these Terms..

2. Formation of Contract

2.1 Our sending this purchase order to you is acceptance of your offer to perform a contract for the contract requirement, so a binding contract comes into effect when we issue this purchase order.

2.2 The contract documents consist of the purchase order, any document described in it, these Terms, our description of the contract requirement (if any), your offer to perform the contract requirement, and any order amendment.

3. Definitions

“**contract**” means the agreement between us and you for you to perform the contract requirement and for us to pay for it, as further described in these Terms. “**contract documents**” are described in clause 2.2.

“**contract requirement**” means the goods, services and/or works which you are required to perform or deliver as set out in the contract documents.

“**intellectual property rights**” means all manner of intellectual property rights including without limitation patents, trademarks, service marks, copyright, design rights and know-how.

“**order amendment**” means an amendment to a purchase order within the meaning of clause 4.4(ii) and includes any replacement purchase order issued by us.

“**parties**” means us and you.

“**price**” means the price stated in the purchase order, and if no price is stated then the price as referenced in the purchase order or calculated in accordance with the contract.

“**purchase order**” means the document originating from us (however provided or transmitted to you in any format including PDF format) described as such on its face and referring to these Terms whether or not these Terms are embedded within that document.

“**Sale of Goods Act 1979**” and “**Supply of Goods and Services Act 1982**” shall mean those named Acts (respectively) as amended by the Sale and Supply of Goods Act 1994 and as may have been or may be re-enacted or amended at any time.

“**Terms**” means these General Terms of Purchase for Goods, Minor Works and Services.

“**we**”, “**us**” and our “**our**” means the London Borough of Brent.

“**you**” or “**your**” means the person, partnership, business, or company so described in the purchase order (and for the avoidance of doubt where an incomplete or incorrect supplier name appears on the face of the purchase order then we are entitled to refer to any documentation issued by you or on your behalf to evidence your correct identity).

4. The Contract and Variations

4.1 You agree to perform the contract requirement and we agree to pay the price for it in accordance with the contract.

4.2 Subject to clauses 1 – 3, any inconsistency between the contract documents shall be resolved in the following order of precedence: the purchase order, these Terms, and any document incorporated by reference in the purchase order.

4.3 Should a court of competent jurisdiction determine that any of your standard or pro-forma terms and conditions be incorporated into the contract, they shall take precedence after the last-mentioned document in clause 4.2 above.

4.4 (i) This contract may be varied or amended only in writing as between the parties. (ii) We reserve the right to issue order amendments. Upon issue you will notify us as soon as possible of proposed changes (if any) to the price and/or any contractual delivery date (although such proposed change shall only be made where there is good reason for the change) and we will have 10 working days to consider and accept in writing such proposed change.

5. Required Standards and Rejection

5.1 Performance of the contract must (i) conform in all respects with this contract and with any specifications, drawings, performance standards, requirements or descriptions provided to or agreed with you in connection with the purchase order and with any samples supplied to and accepted by us; (ii) be of satisfactory quality and fit for any purpose made known by us to you expressly or by implication; (iii) comply with any applicable legislation or law; (iv) be new (unless otherwise agreed) and be free of defect and of sound materials, workmanship and design (unless we provided the design); and (v) as a minimum (without prejudice to any other requirement herein) conform with any current and appropriate British Standard Specification or British Standard Code of Practice issued by the British Standards Institution. or equivalent European Standard.

5.2 Notwithstanding sections 11, 15A, 30 or 35 of the Sale of Goods Act 1979, we are entitled within a reasonable time of delivery to reject the contract requirement (or any part thereof) if it does not conform with the requirements specified in clause 5.1 (and if, by the nature of the contract requirement or of any non-conformity, a non-conformity with clause 5.1 does not become apparent until a later time including after use, we may exercise our right to reject once the non-conformity has come to our attention) whether or not any payment has been made.

5.3 Without prejudice to the rights of termination, any part of the contract requirement rejected in accordance with clause 5.2 must be replaced or rectified as the case may be at your expense within a reasonable time if we request this. Unless promptly collected by you, rejected supplies will be returned to you at your risk and expense.

5.4 Acceptance by us that services or works have been completed shall not be evidence that we accept the quality of those services or works, nor that they conform with the contract.

5.5 You shall ensure that only suitably qualified and competent personnel are used to deliver the contract requirement, and shall also ensure that sufficient staff and personnel are engaged to ensure that the contract requirement is delivered at all times and in all respects in accordance with clause 5.1.

5.6 Where the contract requirement includes you purchasing goods, services or works on our behalf or letting contracts on our behalf you will ensure that you comply at all times with our Standing Orders and Financial Regulations (a copy is available from us upon request, made to the person named in the purchase order) in connection with the purchase or with the letting of the contract.

6. Timing of Performance

6.1 Timely provision of the contract requirement shall be of the essence, including compliance with agreed times or dates.

6.2 If you breach clause 6.1, we may by written notice cancel any undelivered balance of goods, services, or works and may return for full credit and at your expense any goods that in our reasonable opinion cannot be utilised as a result. We may make alternative arrangements for supply or completion and additional costs reasonably so incurred shall be at your expense. This shall not affect any of our other rights set out elsewhere in these Terms.

7. Delivery of goods (including those that will be incorporated into works)

7.1 Subject to clause 7.2, goods shall only be deemed to have been received once unloaded, delivered to the delivery location, and signed for by a staff member of ours wearing a valid Brent Council identity card with photograph.

7.2 Any signature on our behalf made on any delivery note or similar documentation is evidence only of the receipt of the delivery and is not evidence of quality, condition, quantity, or conformity with the contract.

7.3 Goods shall be properly packed, secured and despatched at your expense to arrive in good condition at the time(s) and/or place(s) specified in the contract during business hours unless otherwise specified. Unless explicitly

stated otherwise in writing, the delivery location as specified shall mean a location within a building that can be secured by means of a lockable entrance. We will not be responsible for goods unloaded onto a public highway, or other outside areas. Unless otherwise agreed, delivery shall include the off-loading, positioning, and installation of the goods and you shall provide at your cost any equipment, facilities, or fittings required for the delivery and installation of the goods.

7.4 If goods are delivered at the wrong time or place we may deduct from the price any resulting storage, transport or re-location costs.

8. Property and Risk; Insurance of Goods and Works

8.1 You will bear all risks of loss or damage to goods and works until ownership passes to us as per clause 8.2 and shall insure accordingly.

8.2 Without prejudice to any right of rejection under this contract, property in goods or works shall pass to us when the goods have been delivered and installed (if relevant) or works performed.

8.3 For the avoidance of doubt, despite any provision of this clause 8 you shall bear the risk (and insure accordingly) of (i) any goods in transit to the place of delivery, or (ii) any works until they are completed.

8.4 Where we reject goods under clause 7, ownership will pass back to you when you receive notice of our rejection. Accordingly you will bear the risk of the goods from that point.

9. Invoicing, Payment and Price

9.1 Unless the contract states otherwise we will pay you within thirty days (the “Payment Period”) of receipt of a valid VAT invoice (which must be sent to the address indicated on the purchase order quoting the purchase order number). Invoices may only be submitted in accordance with the contract. We can withhold payment against any invoice not submitted in accordance with these Terms and we are not responsible for delays in payment caused by failure to comply with invoicing instructions. The Payment Period will not commence until the contract requirement (or part thereof to which the relevant invoice relates) has been fully performed unless expressly agreed otherwise. For the avoidance of doubt, the last day of the Payment Period shall be the ‘relevant day’ for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998 and regulations made under that Act, unless your invoice contemplates a longer payment period.

9.2 The price shall include storage, packing, insurance, delivery, installation and commissioning (as applicable) unless the purchase order indicates otherwise. The price does not include VAT unless indicated otherwise.

9.3 Where you engage a sub-contractor (which must be in accordance with clause 20.3) then you shall ensure that a provision is included in the sub-contract requiring payment of all sums due from you to the sub-contractor to be made within a specified period not exceeding 30 days from the receipt of a valid invoice.

10. Warranty

Without prejudice to any of our other rights under the contract (including the right to terminate), you warrant that (i) you will promptly make good at your expense any defect in any goods, services, or works included in the contract requirement and discovered by us during the first 12 months of use or 18 months from acceptance whichever expires first; (ii) repairs/replacements are covered by the warranty for a period of 12 months from repair/replacement; and (iii) suitable spares will be available for repairs for at least 5 years from the date of delivery.

11. Indemnities & Insurance – Your attention is drawn to this clause

11.1 You will indemnify us against any and all claims, losses, demands, liabilities, costs and expenses whatsoever which we incur or will or may incur (except for those incurred as a direct result of our default or neglect) which (i) arise by reason of any of the following: (a) any breach by you of any provision of the contract or of any of your obligations under the Sale of Goods Act 1979 or the Supply of Goods and Services Act 1982 or any other similar legislation (such indemnity not to be prejudiced by our exercise of any right of cancellation); or (b) personal injury or death or loss or destruction of or damage to any property arising (or alleged to arise) from any defect or deficiency in any goods, works or services provided by or performed by you; or which (ii) arise in respect of personal injury to or death of your employees, sub-

contractors, representatives or agents while on our premises whether or not such persons are acting in the course of their employment.

11.2 Without limitation to the indemnities in clause 11.1, you will hold satisfactory insurance cover in accordance with all relevant industry practices and standards to insure against risks arising from matters covered by the indemnities in clause 11.1; and in connection with the performance of works or services you will hold and maintain appropriate insurance (including professional indemnity insurance where appropriate). You will also ensure that your sub-contractors hold appropriate insurance.

12. Intellectual Property

12.1 You warrant and represent that with respect to all intellectual property rights which you permit or facilitate us to access or use, that you either own those intellectual property rights or hold valid licences to them such that our use of or access to those intellectual property rights will not infringe the intellectual property rights or other rights of any third party. You hereby agree to indemnify us in respect of any actions, claims, costs, losses and demands made against or incurred by us as a result of our use of or access to those intellectual property rights or other rights save where the infringement is as a result of our supplied design.

12.2 Where we provide you with any use of or access to any of our intellectual property rights (including access to our crest and/or logos), such access and use is for the sole purpose of the performance of the contract, and no other licence, right of use or entitlement is granted or implied.

12.3 If the contract involves design and/or development work or the writing of a report or publication then (i) all rights (including intellectual property rights) in the results of that work ("Results") shall be our property and we will have the sole right to determine whether any letters patent, registered design, trademark and other protection shall be sought; (ii) you will promptly communicate to us all Results and shall if requested at our expense do all things necessary for us to obtain letters patent, registered designs and other protection for the Results and to assign the same to us; and (iii) you shall ensure that all technical information (including computer programs and programming information) arising out of the contract is held in strict confidence.

13. Recovery of Sums Due

Whenever any sums of money are recoverable from or payable by you to us, they may be deducted from any sums then due or which may become due to you under this contract or otherwise or under any other contract between the parties.

14. Cancellation and Termination

14.1 Without limiting any of our termination rights available at law, if you breach any provision of this contract we may give written notice of the breach and you shall have 28 days to rectify the breach, failing which we may give written notice terminating the contract with immediate effect.

14.2 If you become insolvent, bankrupt, make an arrangement with creditors, have an administrative receiver or administrator appointed or commence to be wound up (other than for the purposes of amalgamation or reconstruction) we may without prejudice to our other rights terminate the contract with immediate effect.

14.3 We may cancel the contract at any time by sending a notice of termination. Except where terminated pursuant to clause 14.1, 14.2 or 18.2, if you submit a termination claim, we will pay you the cost of commitments, liabilities or expenditure which in our reasonable opinion were due under the contract at the time of the cancellation. The total of all payments made or due to you under this contract including any termination payment shall not exceed the price. If a termination claim is not submitted within 6 months of notice of termination, we shall have no further liability under the contract.

15. Confidentiality

15.1 We and you agree to keep private and confidential, and not use or disclose save as provided in these Terms, any confidential information about the operations and/or business and/or service users of the other party which has come to its attention as result of or in connection with the contract.

15.2 The obligation in clause 15.1 shall not relate to any such information which (i) is in the public domain other than through the disclosing party's default;

or (ii) is required to be disclosed by law including for the avoidance of doubt pursuant to the Freedom of Information Act 2000 or the Audit Commission Act 1998; or (iii) was already in the possession of the disclosing party (without restrictions as to its use) on the date of receipt.

15.3 We will be entitled to use or disclose any confidential information about the content or operation of the contract and/or its performance, insofar as we may regard as reasonably necessary to the discharge of our functions.

15.4 Neither party shall make any public statement or issue any press release or publish any other public document relating to, connected with or arising out of the contract without obtaining the prior approval of the other party.

15.5 You will take all reasonable steps to ensure that your staff, agents and sub-contractors comply with the provisions of this clause as if they were parties to the contract.

16. Health & safety

16.1 Both parties will at all times (i) comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other legislation or laws pertaining to health and safety; and (ii) without limitation of the foregoing observe all legal requirements in relation to health, safety and the environment, and in particular to the marking of hazardous goods, services, or works, the provision of data sheets for hazardous materials, and all provisions relating to food.

16.2 Without limiting clause 16.1, whenever you attend our premises in the performance of the contract, you must comply with any health and safety measures implemented by us in respect of persons on the premises and shall notify us immediately in the event of any incident occurring in the performance of the contract on our premises which causes or may cause any personal injury.

17. Force Majeure

If either party is delayed or prevented from performing its obligations under this contract by circumstances beyond its reasonable control (including any form of Government intervention or breakdown of plant) such performance shall be suspended, and if it cannot be completed within a reasonable time after the time specified in the purchase order then the contract may be cancelled by either party. We will then pay you such sum as may be fair and reasonable in all the circumstances of the case in respect of work performed prior to cancellation, but only in respect of items for which we have received full benefit as contemplated in the contract.

18. Ethics & Corruption

18.1 You must not offer to any person any gift to persuade or reward them for (i) doing or not doing anything relating to the award of this or any other contract by us; or (ii) special treatment to you once this contract has been awarded; and you must not commit any offence under the Prevention of Corruption Acts 1889 to 1916, or be the means for the commission of an offence under section 117(2) of the Local Government Act 1972.

18.2 If you breach clause 18.1 we may terminate the Contract with immediate effect and recover from you any losses arising.

19. Right of Audit

19.1 You will at all reasonable times (including following contract termination) allow any auditors conducting an internal or external audit, inspection or an audit of Best Value Performance Plans for us:

(i) permission to interview your staff, agents or sub-contractors, and
(ii) permission to view or copy (and remove any copies of), any books, documents, records, information and data in your possession or control which relate to or are or have been used in connection with the performance of the contract requirement. This right includes access to data and information stored on a computer system and any other information reasonably requested.

19.2 You shall afford access for audit inspection of your documentation and systems as and when necessary.

20. Other Applicable Provisions

20.1 **Notices** – Any notice or communication required to be given to (i) us by you shall be sufficiently given if sent by prepaid first-class recorded delivery to us addressed to the person named on the purchase order, or to (ii) you by us

shall be sufficiently given if sent by the means in (i) above, addressed to the registered office or last known place of business.

20.2 **Employment and Agency** – (i) No employment relationship shall arise by virtue of this contract. (ii) You are not, and you shall ensure that your staff, agents or sub-contractors do not in any circumstances purport to be, any of the following: (a) our employee or agent; (b) authorised to enter into any agreement on our behalf unless expressly provided as part of the contract requirement; or (c) authorised to make, vary, or waive any of our rules, regulations or by-laws.

20.3 **Assignment and Sub-Contracting** - The contract shall not be assigned by you nor sub-let as a whole. You shall not sub-let any part of the contract without our written consent (not to be refused unreasonably). The restriction contained in this clause shall not apply to sub-contracts for materials or for minor details. You will remain responsible for any goods, services, or works supplied or performed by sub-contractors.

20.4 **Rights of Third Parties** - The Contracts (Rights of Third Parties) Act 1999 shall not apply to this contract and accordingly the parties do not intend that any third party should have any rights in respect of the contract by virtue of that Act.

20.5 **Severance** - In the event of any provision of the contract being or becoming legally ineffective or unenforceable either in its entirety or in part this shall be without prejudice to the validity of and shall not invalidate the remaining provisions of this contract which shall remain in full force and effect.

20.6 **Waiver** - A failure by either party to enforce any provision of the contract shall in no way affect the right at a later date to require complete performance of the contract; nor shall the waiver of the breach of any provision be taken or held to be a waiver of any subsequent breach of the provision or be a waiver of the provision itself.

20.7 **Law & Jurisdiction** - The contract shall be governed by and construed in accordance with the Laws of England and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

20.8 **Compliance with Statutory Requirements** – In performing the contract requirement you will comply with all relevant statutory requirements, particularly data protection legislation, and all legislation relation to discrimination in the fields of employment and service provision on grounds of age, race, religion, disability, gender, or sexual orientation.