

1. DEFINITIONS

- 1.1 'Conditions'- the terms stated in the Contract.
- 1.2 'Contract'- The Contract shall mean the Conditions and the Purchase Order.
- 1.3 'Price'- the price We will pay You for providing the Services as set out in the Purchase Order.
- 1.4 'Goods' - Any goods to be supplied by You as required by the Contract and detailed in the Purchase Order.
- 1.5 'Purchase Order' – the official order document supplied by Us setting out details of the Council's requirements and the Purchase Order shall be incorporated into the Contract.
- 1.6 'Services' - Any such services to be provided by You, as required by the Contract and detailed in the Purchase Order.
- 1.7 'Us' or 'Our' or 'We'– Cheshire West and Chester Borough Council.
- 1.8 'You' or 'Your' - The person, firm or company to whom the Purchase Order is addressed and who is responsible for providing the Services or supplying the Goods.

2. THE CONTRACT

These Conditions govern the Contract between Us and You. No other conditions will apply. **The supply of Goods and / or supply of Services in response to the Purchase Order shall expressly and irrevocably mean that You have agreed to supply to Us the Goods and/or Services and that You accept these Conditions and agree that no other terms apply to the Contract.**

3. THE PRICE AND PAYMENT

- 3.1. The Price of the Goods or Services is fixed on the Purchase Order.
- 3.2. No variation in Price will apply unless agreed in writing by Our authorised representative prior to delivery of Goods or completion of Services.
- 3.3. Payment for Goods received or Services completed to Our satisfaction, will be made within 30 days of receipt of an itemised, correct and undisputed VAT invoice.
- 3.4. Your invoice must quote the Purchase Order number and be addressed as set out on the Purchase Order.
- 3.5. We will not be responsible for delays in payment arising from failure to comply with these invoicing instructions.
- 3.6. We will usually pay by cheque or BACS and provide a remittance advice to inform You that payment has been made.
- 3.7. We will pay any VAT due.
- 3.8. Payment by Us will be without prejudice to any rights or remedies available to Us under the Contract, or otherwise.
- 3.9. We will be entitled to set off against any invoice any amount due from You to Us under this or any other arrangement.

- 3.10. We will consider and verify any invoices submitted by You in a timely fashion and any undue delay by Us in doing so will not be sufficient justification for failing to regard an invoice as valid and undisputed.

4. TIME

Time of delivery of the Goods and commencement and completion of the Services are of the essence of the Contract.

5. QUALITY OF GOODS

- 5.1. The Goods supplied under the Contract shall be to Our satisfaction and shall conform to the Purchase Order.
- 5.2. Specifically the Goods shall:
 - 5.2.1. be fit for any purpose made known to You expressly or by implication; and
 - 5.2.2. be of satisfactory quality within the meaning of the Sales of Goods Act 1979; and
 - 5.2.3. free from defects in design, material and workmanship and remain so 12 months after delivery; and
 - 5.2.4. be entirely safe and conform to all relevant British and European standards and / or legislation; and
 - 5.2.5. be new and
 - 5.2.6. comply with any samples, patterns, drawings, plans and specifications provided by Us or on behalf of Us.

6. QUALITY OF SERVICES

- 6.1. The Services supplied under the Contract shall be to Our satisfaction and conform to the Purchase Order.
- 6.2. Specifically in relation to the Services the following shall apply:
 - 6.2.1. the Services shall be performed with reasonable skill, care and diligence including industry best practice; and
 - 6.2.2. the Services should be performed in accordance with all applicable law and regulatory requirements and British and European standards;
 - 6.2.3. You shall ensure that sufficient resources are available to complete the Services successfully and to our satisfaction; and
 - 6.2.4. the Services shall be supplied by supervised, experienced, qualified, trained and competent staff and
 - 6.2.5. We rely on Your skill, judgement and experience.

7. INSPECTION, ACCEPTANCE AND REJECTION

- 7.1. We will inspect the Goods when they are delivered.
- 7.2. Provided that the Goods are of satisfactory quality in accordance with clause 5, We will accept the Goods upon payment of the invoice. Title and risk shall pass to Us on delivery of the Goods.
- 7.3. If the Goods are not of satisfactory quality in accordance with clause 5 then We can reject them and You, at our request, shall supply replacement Goods. If We reject the Goods we will give You written notice. You shall collect the Goods within 5 working days from receiving Our notice to collect the Goods. We will not make payment for rejected

Goods, or be responsible for costs incurred by You in removing rejected Goods and arranging for the supply of replacement Goods.

- 7.4. If You fail to comply with clause 7.3 We are entitled to treat the Contract as having been terminated pursuant to clause 12.1 below.

8. LABELLING AND PACKAGING

You must ensure that all prices, quantities, units of measure and the Purchase Order number are on all transaction documentation and comply in all respects with the Purchase Order. All Goods must be clearly labelled and adequately packed to survive transit without damage. We shall not be liable to pay for any pallets, packages or containers in which Goods are supplied.

9. INDEMNITY AND INSURANCE

- 9.1. You must indemnify Us against all losses, damage, injury or expense or loss of or damage to property or injury to or death of any person, however caused by:
- 9.1.1. the Goods not being fully in accordance with the Contract, or
- 9.1.2. any act by You, Your employees, agents or sub-contractors.
- 9.2. You shall fully indemnify Us against any expenses, losses, liabilities, damages, claims or costs whatsoever howsoever arising from any alleged or actual infringement of any intellectual property rights including papers, trademarks, copyrights, intellectual or any of the rights arising from the Contract.
- 9.3. You must maintain satisfactory insurance cover with a reputable insurer in respect of all liabilities, losses, damages, claims whatsoever howsoever arising from the Contract including death or personal injury, loss of or damage to property or any other loss (the 'Required Insurances')
- 9.4. The Required Insurances referred to above are:
- (a) Public liability insurance with a limit of indemnity of not less than ten million pounds (£10,000,000) in relation to any one claim or series of claims arising from the Contract;
 - (b) Employers liability insurance with a limit of indemnity of not less than ten million pounds (£10,000,000) in relation to any one claim or series of claims arising from the Contract;
 - (c) Professional Indemnity Insurance with a limit of indemnity of not less than one million pounds (£1,000,000) in relation to any one claim or series of claims arising from the Service provided that this insurance shall only be required where you have specifically been informed that such insurance is required and
- You shall produce evidence of such Required Insurances to Us on request.
- 9.5. We will not be liable for any loss, loss of profits, indirect loss or consequential loss whatsoever howsoever arising from the Contract.

10. PUBLICITY

You will not publish or reproduce or arrange press releases or make public statements in connection with the Contract or make use of Our name in any publicity without Our prior written approval.

11. FREEDOM OF INFORMATION

The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 (the "Acts") gives a general right of public access to all types of recorded information held by Us, subject to certain exemptions, and places a number of obligations on Us with regard to the disclosure of information. We will allow public access to recorded information wherever possible and You will agree to Us making disclosures in accordance with the Acts. If We ask You for information, You will provide the information requested within five working days at your own expense. You agree that We shall have the absolute discretion to decide whether to release information pursuant to this clause or whether to apply an exemption to the information and Our decision shall be final.

12. TERMINATION

- 12.1. We may immediately terminate the Contract by written notice to You if:
- 12.1.1. You are in breach of any of the Conditions of the Contract; or
- 12.1.2. You become, or appear to become, insolvent or bankrupt or in any other way unable to meet Your commitments under this or any other Contract; or
- 12.1.3. For whatever reason, You are bringing, or may bring, bad publicity or disrepute upon Us; or
- 12.1.4. We placed the Purchase Order in error and if We inform you within seven days of the date on the Purchase Order.

13. DISPUTES AND AGREEMENTS

- 13.1. We shall try to resolve all disputes arising in connection with the Contract amicably. If this cannot be achieved within a reasonable period of time and not less than 10 working days from the date of the dispute arising, We shall each refer the dispute to senior members of staff.
- 13.2. If We cannot resolve the dispute within one month either party may exercise any remedy it may have pursuant to the Contract or statute or common law.

14. MODERN SLAVERY

- 14.1. You warrant that neither you nor any of your officers or employees:
- (a) have been convicted of any offence involving slavery or human trafficking; or
 - (b) have, to the best of your knowledge, been the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery or human trafficking.

- 14.2. You shall take appropriate steps to ensure that there is no slavery or human trafficking in its supply chains and in connection with this you shall:
- (a) implement due diligence procedures for your sub-contractors;
 - (b) require all sub-contractors to warrant that, neither the sub-contractors nor any of the sub-contractor officers or employees:
 - (i) have been convicted of any offence involving slavery or human trafficking; or
 - (ii) have, to the best of the sub-contractor's knowledge, been the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking; and
 - (c) require all sub-contractors to include provisions having the same effect as this clause in all subcontracts (at any stage) of remoteness in the supply chain) relating to the contract.
- 15. GENERAL TERMS**
- 15.1. You will not give or offer to any of Our staff, employees or agents, any gift, bribe or inducement in relation to this or any other Contract between Us or engage in any activity which is or is likely to be an offence under the Bribery Act 2010.
- 15.2. All notices and communications will be made in writing by post or by email to the addresses on the Purchase Order. Notice sent by post will be deemed to have reached the party to whom it is addressed on the second business day following date of sending. Notice sent by by e mail shall be deemed delivered on the same day if sent before 5pm on a business day otherwise notice will be deemed delivered on the next business day.
- 15.3. The headings to Conditions shall not affect their interpretation.
- 15.4. The Contract shall be governed by and construed in accordance with English Law and shall be subject to the jurisdiction of the courts of England and Wales.
- 15.5. A person who is not a party to the Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any Conditions or the Contract.
- 15.6. Neither You nor We will be in breach of the Contract for delay in performing, or failure to perform, any obligations under the Contract if such delay or failure results from events, circumstances or causes beyond either Your or Our reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non - performance continues for four (4) weeks the party affected may terminate the Contract by giving 14 days' written notice to the other.
- 15.7. Neither You nor We will assign, transfer or sub - contract the Contract without the prior written consent of the other such consent not to be unreasonably withheld.
- 15.8. You and We agree not to disclose to any third party any confidential information concerning the affairs, business, customers, clients, suppliers, know how, designs, trade secrets or any information belonging to or supplied by one of us to the other which would be regarded as confidential by a reasonable business person relating to the Contract except where that confidential information is generally available to the public (other than as a result of disclosure in breach of this clause 15.8) or as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 15.9. Nothing contained in this Contract, and no action taken by the parties pursuant to this Contract, will be deemed to constitute a relationship between the parties of partnership, joint venture, principal and agent or employer and employee. Neither party has, nor may it represent that it has, any authority to act or make any commitments on the other party's behalf.
- 16. DATA PROTECTION**
- 16.1 You shall (and You shall procure that any of Your employees or agents or contractors or sub-contractors providing the Services or supplying the Goods under the Contract) comply with Our data protection requirements found in Appendix A.

Appendix A

GDPR

Data Controller:	has the meaning given under Data Protection Law;
Data Processor:	has the meaning given under Data Protection Law;
Data Protection Law:	all Law relating to the processing of personal data and privacy, including all applicable guidance and codes of practice issued by the Information Commissioner's Office or any replacement EU or UK data protection or related privacy Law in force in England and Wales;
Data Subject:	has the meaning given under Data Protection Law;
Personal Data:	personal data, as defined under Data Protection Law, concerning either residents or employees or workers of the Contractor or any Subcontractor and which is obtained or Processed in connection with the Works or this Contract;
Personal Data Breach	any event that results or may result in any unauthorised or unlawful access to, Processing, loss and/or destruction of Personal Data in breach of this Contract including any personal data breach (as defined under Data Protection Law);
Processing:	has the meaning given under Data Protection Law and " Process " and " Processed " shall be construed accordingly;
Protective Measures:	appropriate (having regard to nature of the Personal Data to be protected, the harm that might result from a Personal Data Breach, the state of technological development and the cost of implementation) technical and organisational measures including (where applicable): <ul style="list-style-type: none">• pseudonymising and encrypting Personal Data;• ensuring the confidentiality, integrity, availability and resilience of systems and services;• ensuring that the availability of and access to Personal Data can be restored promptly after an incident; and• regularly assessing and evaluating the effectiveness of such measures;

1. DATA PROTECTION

- 1.1 Each Party shall comply with Data Protection Law in connection with this Contract and shall Process Personal Data of which the other is Data Controller only in accordance with Data Protection Law and this Contract
- 1.2 Depending on the factual situation, the Council and the Contractor may each act as either Data Controller or Data Processor in relation to Personal Data under this Contract. The subject-matter, nature and purpose and the duration of Processing and the types of Personal Data and categories of Data Subject in relation to which Personal Data may be Processed under this Contract are set out in Schedule 1
- 1.3 Where either Party Processes Personal Data of which the other Party is the Data Controller the Processing Party shall:
- (a) do so only on written instructions from the Data Controller (the first such instructions being those set out in this Contract) as revised by the Data Controller from time to time (where applicable) in accordance with clause 1.5;
 - (b) notify the Data Controller immediately if it considers that any of the Data Controller's instructions infringe Data Protection Law;
 - (c) maintain appropriate Protective Measures to protect against a Personal Data Breach;
 - (d) ensure that all persons the Data Processor authorises to Process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
 - (e) provide the Data Controller with full assistance in complying with Data Protection Law and enabling Data Subjects to exercise their rights under Data Protection Law including maintaining appropriate organisational and technical measures to facilitate this;
 - (f) notify the Data Controller promptly following any Personal Data Breach and provide the Data Controller with such assistance as the Data Controller requests including with any notifications to the Information Commissioner's Office and affected Data Subjects;
 - (g) not transfer Personal Data outside of the EU without the prior written consent of the Data Controller;
 - (h) on request, provide the Data Controller promptly with all information that the Data Controller needs to show that both the Data Controller and Data Processor have complied with Data Protection Law in relation to this Contract; and
 - (j) at the written direction of the Data Controller, delete or return all Personal Data (and copies) to the Data Controller on following termination of this Contract unless the Data Processor is required by Law to retain it.
- 1.4 A Party that is a Data Controller may inspect and audit the other Party's facilities for Processing the Personal Data of which it is Data Controller to ensure they comply with this Contract and Data Protection Law.

- 1.5 A Party that is a Data Controller may revise their instructions to the Data Processor on the Processing of Personal Data at any time if this is necessary or desirable to comply with Data Protection Law. Such revision shall not entitle either Party to any additional payment, be a compensation event, lead to any paid or unpaid extension of time or be treated as a variation to this Contract. The Data Controller shall use reasonable endeavours to give the Data Processor as much notice of the revision as possible, consistent with their obligation to comply with Data Protection Law and protect against any Personal Data Breach.
- 1.6 The Contractor shall not allow a Subcontractor to Process any Personal Data of which the Council is Data Controller without the prior written consent of the Council. Where the Contractor wishes a Subcontractor to be able to do so, the Contractor shall provide the Council with such evidence as the Council requires in order to be satisfied that the proposed Subcontractor is capable of complying with the Contractor's obligations under this Contract and under Data Protection Law in relation to that Personal Data. [The appointment of a Subcontractor shall not relieve the Contractor from any of its obligations under this Contract and the Contractor shall be liable to the Council for the performance of the Subcontractor's obligations in relation to Personal Data under this Contract].
- 1.7 Where the Council allows a Subcontractor to Process Personal Data in accordance with clause 1.6, the Contractor shall:
- .1 include provisions substantially the same as those in this clause 1.7 in the subcontract with that Subcontractor; and
 - .2 provide in the subcontract that the Council may enforce such obligations directly against the Subcontractor under the Contracts (Rights of Third Parties) Act 1999.

Schedule 1

	Personal Data of which the Council is Data Controller	Personal Data of which the Contractor or a Subcontractor is Data Controller
Data Processor:	Contractor	Council
Categories of Data Subject:	Residents	Staff of the Contractor and any Subcontractors providing the Works.
Subject matter of Processing (including types of Personal Data that may be Processed):	Personal Data concerning Residents including names, addresses and contact details, Property access requirements and special requirements or vulnerabilities.	Personal Data comprising employment records of Staff of the Contractor or a Subcontractor
Nature and purpose of Processing:	Interrogation of the Personal Data for the purpose of carrying out the Works, including arranging appointments and access, ensuring the safety of both Residents and Staff carrying out the Works, monitoring Resident satisfaction and correcting any Personal Data found to be incorrect whilst carrying out the Works.	Disclosure of Personal Data concerning Staff to the Council: <ul style="list-style-type: none"> to identify which Staff are undertaking the Works and monitor and manage their performance of the Contract; and to prospective tenderers in connection with a potential TUPE transfer to the successful tenderer on completion of the Contract to ensure they understand their TUPE obligations and have priced for them.

Duration of Processing:	During the Contract Period and for 20 (twenty) Working Days after its end (within which it is to be returned or destroyed)	During the Contract Period and up to 4 (four) months after its end (whilst overseeing a TUPE transfer).
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