

Terms and conditions for the supply of goods and services

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

Authorised Signatory: a person so designated by the Customer upon the Purchase Order or else nominated or substituted by written notice.

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Commencement Date: has the meaning given in Clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with Clause 16.8.

Contract: the contract between the Customer and the Supplier for the supply of Goods and/or Services in accordance with these Conditions.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010.

Controller: has the meaning given in the Data Protection Legislation.

Customer: Chorley Council, Town Hall, Market St, Chorley, PR7 1DP

Customer Materials: has the meaning set out in Clause 5.3(j).

Data Protection Legislation: shall mean all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority.

Data Subject: as defined in the Data Protection Legislation.

Deliverables: all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

Goods: the goods (or any part of them) set out in the Purchase Order.

Goods Specification: the specification, if any, for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and the Supplier.

Intellectual Property Rights: include patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Information: as defined in section 84 of the Freedom of Information Act 2000.

Law: the laws of England and Wales and any other laws or regulations, regulatory policies, guidelines or industry codes with which the Supplier must comply.

Mandatory Policies: the Customer's business policies and codes as may be attached or listed in Schedule 1 or set out in the Customer's website.

Ombudsman: the Local Government and Social Care Ombudsman.

Packaging: any type of packaging including without limitation bags, cases, cylinders, drums, pallets, tank wagons and any other containers.

Personal Data: as defined in the Data Protection Legislation.

Processor: as defined in the Data Protection Legislation.

Purchase Order: the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form, or in the Customer's written acceptance of the Supplier's quotation or overleaf, as the case may be.

Purchase Order Amendment: a new Purchase Order varying, amending or superseding an existing Purchase Order and so changing the Contract.

Services: the services, including any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification.

Service Specification: the description or specification for Services agreed in writing by the Customer and the Supplier.

Supplier: the person or firm named upon the Purchase Order from whom the Customer purchases the Goods and/or Services.

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

1.2 Interpretation:

(a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

(b) A reference to a party includes its personal representatives, successors and permitted assigns.

(c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

(d) Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

(e) A reference to writing or written includes email but not fax.

2. Basis of contract

2.1.1 The Purchase Order constitutes an offer by the Customer to purchase Goods and/or Services from the Supplier in accordance with these Conditions.

2.1.2 The Supplier repeats the information which it provided in the selection questionnaire or conditions of participation as applicable and within its tender and confirms and warrants the content, veracity and accuracy of such all information.

2.2 The Purchase Order shall be deemed to be accepted on the earlier of:

(a) the Supplier issuing written acceptance of the offer made by means of the Purchase Order; or

(b) any act by the Supplier consistent with fulfilling the Purchase Order and/or amounting to acceptance,

at which point and on which date the Contract shall come into existence (Commencement Date).

2.3 These Conditions apply to the Contract to the exclusion of any other terms or conditions that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.4 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified or arises by necessary implication.

2.5 Any variation or amendment will only be valid and enforceable if signed by the Authorised Signatory.

2.6 In the event of any conflict or inconsistency the order of precedence of documents forming this Contract shall be:

- Purchase Order Amendment
- Purchase Order
- these Conditions; and
- any Letter of Tender Acceptance with the preceding document taking priority over successor document(s) in this list.

2.7.1 The Customer shall have the right to send the Supplier a Purchase Order Amendment adding to, deleting or modifying the Goods and/or Services. If the Purchase Order Amendment causes a change to the price or delivery date then the Supplier shall promptly notify the Customer of such change, calculating the new price and delivery date at the same level of cost and profitability as the original price. The Supplier will allow the Customer a minimum of 10 Business Days to consider any new price and/or delivery date.

2.7.2 The Purchase Order Amendment shall only take effect if the Customer accepts in writing any new price and/or delivery date failing which the performance of the Contract will immediately resume as though the said Purchase Order Amendment had not been issued except the Customer may still exercise its right of cancellation in accordance with clause 12A.

2.8 No provision hereof shall prevent, prejudice or affect the Customer's rights, powers, duties and obligations in relation to the exercise of its functions as a local authority and nothing herein shall have the effect of fettering or limiting the Customer in that regard.

3. Supply of goods

3.1 The Supplier shall ensure that the Goods shall:

- (a) correspond with their description and any applicable Goods Specification;
- (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer, expressly or by implication, and in this respect the Customer relies upon the Supplier's skill and judgement;
- (c) where they are manufactured products, be free from defects in design, materials, manufacture and workmanship and remain so for 12 months after delivery;
- (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods;
- (e) satisfy any performance standards and meet their express or implied intended purpose; and
- (f) be brand new and not previously used, refurbished or recycled unless expressly permitted or required by the Purchase Order.

3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

3.3 The Customer may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.

3.4 If following such inspection or testing the Customer considers that the Goods do not comply or are unlikely to comply with the Supplier's undertakings at Clause 3.1, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

3.5 The Customer may conduct further inspections and tests after the Supplier has carried out its remedial actions.

4. Delivery of goods

4.1 The Supplier shall ensure that:

- (a) the Goods are properly packed, secured and despatched in such manner as to enable them to reach their destination in good condition;
- (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Purchase Order, the Purchase Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered;
- (c) it states clearly on the delivery note any requirement for the Customer to return any packaging material for the Goods to the Supplier. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier; and
- (d) a copy of the delivery note will on the same day be served upon the Customer at its address given above or at such other address as may be stated upon the Purchase Order.

4.2 The Supplier shall deliver the Goods:

- (a) on the date(s) and time(s) specified in the Purchase Order or, if no such date is specified, then within 14 days at the latest from the date of the Purchase Order and off-loaded at the Supplier's risk and as directed by the Customer's staff;
- (b) to the Customer's premises as above or such other location as is set out in the Purchase Order or as otherwise instructed in writing by the Customer before delivery (Delivery Location); and

(c) during the Customer's normal hours of business on a Business Day, or as instructed by the Customer.

4.3 Delivery of the Goods shall be completed upon the unloading of the Goods at the Delivery Location being achieved.

4.4 If the Supplier:

(a) delivers less than 95% of the quantity of Goods ordered, the Customer may at the sole reject the Goods; or

(b) delivers more than 105% of the quantity of Goods ordered, the Customer may at its sole discretion reject the Goods or the excess Goods;

(c) delivers the Goods to the wrong address the Customer may at its sole discretion reject the Goods, whether just that consignment or all of the Goods ordered,

and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and the Customer accepts the delivery, the Supplier shall make a pro rata adjustment to the price shown on the invoice for the Goods.

4.5 The Supplier shall not deliver the Goods in instalments without the Customer's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Customer to the remedies set out in Clause 6.1.

4.6 Title in the Goods shall pass to the Customer on completion of delivery or, if earlier, upon payment. Risk in the Goods shall pass to the Customer on satisfactory completion of delivery.

4.7 If for any reason the Customer is unable to accept delivery of the Goods at the time when the Goods are due and ready for delivery, the Supplier shall (if the Supplier storage facilities permit) store the Goods, safeguard them and take all reasonable steps to prevent their deterioration until their actual delivery and the Customer shall be responsible for any reasonable and properly incurred costs of the Supplier associated with such storage pursuant to this Clause 4.7.

4.8 Unless otherwise stated in the Purchase Order the Supplier may only deliver the Goods by separate instalments or perform the Services in stages if prior written approval is given by the Authorised Signatory. If the Customer does not agree, the Contract will be construed as a separate Contract in respect of each instalment or stage, and without prejudice to any other right or remedy, the Customer will have the right to:

4.8.1 treat all the Contracts for the total Purchase Order or Letter of Tender Acceptance (as appropriate) as repudiated if the Supplier fails to deliver or perform any instalment at any stage; and

4.8.2 reject any or all of the instalments for the total Purchase Order or Letter of Tender Acceptance (as appropriate) if the Customer is entitled to reject any one instalment.

4.9 The Customer will not be deemed to have accepted the Goods until it has had 14 days to inspect them following delivery. The Customer will also have the right to reject the Goods as though they had not been accepted for 14 days after any latent defect in the Goods becomes apparent.

5. Supply of services

5.1 The Supplier shall from the Commencement Date or such other date as set out in the Purchase Order and for the duration of the Contract supply the Services to the Customer in accordance with the terms of the Contract.

5.2 The Supplier shall meet any performance dates for the Services specified in the Purchase Order or that the Customer otherwise notifies to the Supplier and time shall be of the essence in relation to any of those performance dates.

5.3 In providing the Services, the Supplier shall:

(a) co-operate with the Customer in all matters relating to the Services, and comply with all instructions of the Customer;

(b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;

(c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;

(d) ensure that the Services will conform with all descriptions, standards and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose that the Customer expressly or impliedly makes known to the Supplier and shall satisfy any performance standards and meet any express or implied purpose;

(e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;

(f) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Customer, which will be free from defects in workmanship, manufacture, installation and design and will be brand new unless otherwise stated upon the Purchase Order;

(g) obtain and at all times maintain all licences, permissions, authorisations, consents and permits which may be required for the provision of the Services and to carry out the obligations under this Contract;

(h) comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply to the provision of the Services, and with the Mandatory Policies;

(i) observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises and shall comply with any regulations and/or codes of practice that the Customer may notify to the Supplier in writing;

(j) hold all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier (Customer Materials) in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not dispose or use the Customer Materials other than in accordance with the Customer's written instructions or authorisation;

(k) not do or omit to do anything which may cause the Customer to lose any licence, permission authorisation, consent or permit upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Customer may rely or act on the Services;

(l) comply with any additional obligations as set out in the Services Specification; and

(m) perform any other relevant duties and/or obligations set out upon the Purchase Order.

5A the customer's equipment and material

5A.1 All drawings, specification (including the Specifications), information ("Material") supplied by the Customer to the Supplier in connection with the Contract are confidential and, without the Customer's prior written consent, shall not at any time be published or disclosed or made use of except for the purpose of implementing the Contract.

5A.2 All jigs, tools, moulds, patterns and other equipment (the "Equipment") supplied to the Supplier or purchased by the Customer from the Supplier for the performance of the Contract shall be maintained in good condition by the Supplier and the Supplier shall indemnify the Customer against any and all loss thereof or damage thereto whilst the same are in the Supplier's possession or control. Any Materials and/or Equipment shall only be used for the purpose of manufacturing and supplying the Goods to or performing the Services for the Customer and shall remain the Customer's property at all times.

5A.3 All Packaging supplied by the Customer to the Supplier shall be maintained in good condition and shall remain the Customer's property at all times. At the Customer's request, the Supplier shall promptly return any Material, Equipment and/or Packaging to the Customer.

5B Inspection, testing and samples

5B.1 If the Customer so requires, the Supplier shall submit samples of the Goods for the Customer's approval before the bulk of the relevant Contract is delivered or before the bulk of the Services are performed (as the case may be). Such samples should be marked for identification by the Supplier and will be retained by the Customer until the Services are completed or the Goods have been delivered.

5B.2 The Customer shall be entitled to inspect and test the Goods during manufacture, processing or storage or check the progress of the Services. If the Customer exercises this right, the Supplier shall provide or shall procure the provision of all such facilities as may reasonably be required by the Customer therefor.

5B.3 If as a result of any inspection or test (pursuant to Condition 5B.2) the Customer's representative is of the reasonable opinion that the Goods and/or Services do not comply with the Contract or are unlikely on completion of manufacture or processing so to comply the Customer may inform the Supplier accordingly and the Supplier shall promptly take such steps as may be necessary to ensure such compliance.

6. Customer remedies

6.1 If the Supplier fails to deliver the Goods by the applicable date or to perform the Services by the applicable date, or both, or is otherwise in breach or default of any duty or obligation, the Customer shall, without limiting or affecting other rights or remedies available to it, have one or more of the following rights:

- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (b) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
- (c) to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods and/or services from a third party;
- (d) to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and/or Goods that it has not delivered; and/or
- (e) to claim damages for any additional costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to meet such dates.

6.2 If the Goods are not delivered by the applicable date or to the correct address or the Services are not performed by the applicable date, or both, the Customer may, at its option, claim or deduct 2.5% of the price of the Goods for each week's delay in delivery of the Goods and/or claim or deduct 2.5% of the price of the Services for each week's delay in performance of the Services by way of liquidated damages, up to a maximum of

25% of the total price of the Goods (in respect of late delivery of the Goods) and up to a maximum of 25% of the total price of the Services (in respect of late performance of the Services). If the Customer exercises its rights in respect of late delivery under this Clause 6.2 it shall not be entitled to any of the remedies set out in Clause 6.1 in respect of the late delivery of the Goods.

6.3 If the Supplier has delivered Goods that do not comply with the undertakings set out in Clause 3.1, then, without limiting or affecting other rights or remedies available to it, the Customer shall have one or more of the following rights, whether or not it has accepted the Goods:

(a) to terminate the Contract with immediate effect by giving written notice to the Supplier;

(b) to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;

(c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods with the Customer entitled to purchase elsewhere;

(d) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;

(e) to recover from the Supplier any expenditure incurred by the Customer including freight and handling and any other sums expended by the Customer or for which it becomes responsible and in obtaining substitute goods from a third party;

(f) to recover from the Supplier any expenditure incurred by the Customer in the implementation of a stock recovery, recall or market withdrawal of the Goods in any part of the world; and/or

(g) to claim damages for any additional costs, loss or expenses incurred by the Customer arising from the Supplier's failure to supply Goods in accordance with Clause 3.1.

6.3A If the Contract states that Goods are returnable, the Supplier must provide full packaging and return instructions prior to delivery; and the Goods must be marked clearly to show to whom they belong and the Customer shall not be liable for any Goods lost or damaged in transit.

6.4 If the Supplier has supplied Services that do not comply with the requirements of Clause 5.3(d) then, without limiting or affecting other rights or remedies available to it, the Customer shall have one or more of the following rights:

(a) to terminate the Contract with immediate effect by giving written notice to the Supplier;

- (b) to return the Deliverables to the Supplier at the Supplier's own risk and expense;
- (c) to require the Supplier to provide repeat performance of the Services, or to provide a full refund of the price paid for the Services (if paid) with the Customer entitled to purchase elsewhere;
- (d) to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
- (e) to recover from the Supplier any expenditure incurred by the Customer in obtaining substitute services or Deliverables from a third party; and/or
- (f) to claim damages for any additional costs, loss or expenses incurred by the Customer arising from the Supplier's failure to comply with Clause 5.3(d).

6.4A Without prejudice to any other remedies of the Customer, the Supplier shall promptly (at the Customer's option) repair or replace all Goods which are or become defective during the period of twelve months from the date of delivery where such defect occurs under proper usage and is due to faulty design, the Supplier's erroneous instructions as to use or erroneous data or inadequate or faulty materials or workmanship, or any breach by the Supplier of any provision of the Contract. Repairs and replacements shall themselves be subject to the ongoing obligations for a period of twelve months from the date of delivery, re-installation or passing of tests (if any) whichever is appropriate after repair or replacement. If any Services are found to have been performed defectively within twelve months of the date of their performance the Supplier shall forthwith upon notice thereof re-perform the same.

6.5 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

6.6 The Customer's rights and remedies under the Contract are in addition to, and not exclusive of, any rights and remedies implied by statute and/or common law.

7. Customer's obligations

7.1 The Customer shall:

- (a) provide the Supplier with reasonable access at reasonable times to the Customer's premises for the purpose of providing the Services; and
- (b) provide such necessary information for the provision of the Services as the Supplier may reasonably request.

8. Charges and payment

8.1 The price for the Goods:

(a) shall be the fixed price (subject to the issue of any Purchase Order Amendment) set out in the Purchase Order, or if no price is quoted, the price set out in the Supplier's published price list in force at the Commencement Date or otherwise a fair and reasonable price; and

(b) shall be inclusive of the costs of packing, Packaging, loading, unloading, shipping, insurance and carriage of the Goods, delivery, installation and commissioning (as applicable). No extra charges shall be effective unless agreed in writing and signed by the Customer.

8.2 The charges for the Services shall be set out in the Purchase Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Customer, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services. Charges shall not be varied or increased except with the prior written agreement of the Customer.

8.3 In respect of the Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Customer on completion of the Services. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including but not limited to the relevant Purchase Order number and be calculated in accordance with the Charges stated by the Contract.

8.4 In consideration of the supply of Goods and/or Services by the Supplier, the Customer shall unless otherwise stated upon the Purchase Order pay the invoiced amounts within 30 days of the date of a correctly rendered and computed invoice to a bank account nominated in writing by the Supplier. Both the Customer and the Supplier shall comply with the provisions of sections 68, 73 and 88 of the Procurement Act 2023 as applicable. Any delay resulting from a failure to comply with the requirements as to invoicing will be the sole responsibility of the Supplier.

8.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier (showing the amounts ex-VAT, the VAT element and the total sum), pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.

8.6 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Clause 8.6 will accrue each day at 4% a year above the Bank of England's base rate from

time to time, but at 4% a year for any period when that base rate is zero or below 0%. No interest shall accrue in respect of any periods during which the Supplier has not followed the correct invoicing criteria.

8.7 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow the Customer to inspect such records at all reasonable times on request.

8.8 The Customer may at any time, without notice to the Supplier, irrespective of the currency, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier, whether either liability is present or future, for debt or damages, liquidated or unliquidated, and whether or not either liability arises under the Contract to the extent permitted by law. If the liabilities to be set off are expressed in different currencies, the Customer may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Customer of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

9. Intellectual property rights

9.1 Other than for designs or other inventions specifically commissioned by the Customer all Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any Customer Materials) shall be owned by the Supplier and it is a requirement of the Contract that performance by the Supplier will not infringe any Intellectual Property Rights of any third party.

9.2 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free, perpetual, assignable, non-terminable and irrevocable licence to copy, maintain, modify and otherwise use the Deliverables (excluding Customer Materials) for the purpose of receiving and using the Services and the Deliverables, together with the right to the Customer to grant sub-licences, assign or otherwise transfer the rights thus granted in this Clause 9.

9.3 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and use any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer but which shall remain the property of the Customer.

9.4 All Customer Materials are and shall continue to be the exclusive property of the Customer.

9.5 At the termination of the Contract the Supplier shall at the request of the Customer immediately return to the Customer all materials, work or records held in relation to the Contract, including any back-up media.

10. Indemnity

10.1 The Supplier shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with:

(a) any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services (excluding the Customer Materials);

(b) any claim made against the Customer by a third party for death, personal injury or damage to or loss of property arising out of, or in connection with, defects in the Goods, as delivered, or the Deliverables;

(c) any claim made against the Customer by a third party arising out of or in connection with the supply of the Goods, as delivered, or the Services or by reason of any breach, default or neglect on the part of the Supplier; and

(d) the Supplier's breach of the Data Protection Legislation.

10.2 this Clause 10 shall survive termination of the Contract.

11. Insurance

During the term of the Contract and for a period of 6 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, cover for all drawings and specifications provided by the Supplier and all equipment provided or sold to the Customer by the Supplier, product liability insurance of £2 million, employer's liability insurance of £10 million and public liability insurance of £5 million to cover the liabilities that may arise under or in connection with the Contract, and shall, on the Customer's request, produce documentary evidence by way of broker's letter or certificate as to the cover being in force, with relevant details, and the receipt for the current year's premium having been paid in respect of each such insurance.

12. Confidentiality

12.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by Clause 12.2.

12.2 Each party may disclose the other party's confidential information:

(a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the

Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information must comply with this Clause 12; and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority or, in the case of the Customer, as required under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 ('FOI Legislation').

12.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

12A. Cancellation

12A.1 The Customer shall acting reasonably be entitled to cancel any Purchase Order or any Purchase Order Amendment or Letter of Tender Acceptance in whole or in part by giving to the Supplier a minimum of seven days' written notice prior to delivery or performance of the Goods and/or Services in which event the Customer's sole liability shall be to pay to the Supplier fair and reasonable compensation for work-in-progress at the time of cancellation but for the avoidance of doubt such compensation shall not include loss of anticipated profits, or any consequential or indirect loss.

13. Termination

13.1 Without affecting any other right or remedy available to it, the Customer may terminate the Contract:

(a) with immediate effect by giving written notice to the Supplier if:

(i) there is a change of Control of the Supplier which the Customer reasonably believes will have an adverse impact upon the performance of the Contract; or

(ii) the Supplier's financial position deteriorates to such an extent that in the Customer's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy;

(iii) the Supplier commits a breach of Clause 5.3(h); or

(iv) in the event that any of the matters specified in The Local Government (Exclusion of Non-Commercial Considerations) (England) Order 2022, or any other legislation having a similar purpose, as ceasing to be non-commercial matters for the purposes of section 17(5)(e) of the Local Government Act 1988 applies to the Supplier.

(b) for convenience by giving the Supplier one month's written notice.

13.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

(a) the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;

(b) the other party becomes insolvent, takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if an individual, dies or is subject to an order under the Mental Health Acts, or is subject to any bankruptcy proceedings or to any distress, execution or other levy upon assets or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or

(c) the Supplier suspends or ceases, or in the reasonable opinion of the Customer threatens to suspend to cease to carry on all or a substantial part of its business.

14. Consequences of termination

14.1 On termination of the Contract, the Supplier shall immediately deliver to the Customer all Deliverables whether or not then complete, and return all Customer Materials. If the Supplier fails to do so, then the Customer may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

14.2 Termination or expiry of the Contract shall not affect the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

14.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

14.A Damages

14A.1 Neither party excludes or limits liability to the other party for death or personal injury caused by its negligence or for any breach of any obligations implied by section 2 of the Supply of Goods and Services Act 1982 or for fraud or fraudulent misrepresentation.

14A.2 Subject always to clauses 14A.1, the aggregate liability of each of the parties to the other in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Contract, the supply or failure to supply the Goods and/or

Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to ten times the amount of the Price paid or payable to the Seller pursuant to the Contract.

15. Force majeure

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure results from events, circumstances or causes beyond its reasonable control and foreseeability which for the avoidance of doubt shall exclude any industrial dispute relating to the Supplier or any other failure in the Supplier's supply chain; the United Kingdom's exit from the European Union, conflict between Russia and Ukraine; and unrest in the Middle East including disruption to shipping routes via the Red Sea. If the period of delay or non-performance continues for 2 weeks, the party not affected may terminate the Contract by giving 5 days' written notice to the affected party. If the Contract is terminated under this Clause 15 neither party will thereby incur any liability to the other except that any rights and liabilities which accrued prior to termination will continue to exist.

16. General

16.1 Assignment and other dealings

(a) The Customer may at any time transfer, novate, assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights and obligations under the Contract.

(b) The Contract is personal to the Supplier who shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights, entitlements, duties or obligations under the Contract without the prior written consent of the Customer and notwithstanding any permitted sub-contracting the Supplier shall remain primarily responsible to the Customer.

(c) Such limitation upon assignment by the Supplier as is set out in sub-clause (b) hereof shall only be effective to the extent permitted by the provisions of the Business Contract Terms (Assignment of Receivables) Regulations 2018.

16.2 Notices

(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to the address, if any, specified in the Purchase Order.

(b) A notice or other communication shall be deemed to have been received: if delivered by hand at the time the notice is left at the proper address; if sent by pre-paid first-class

post or other next Business Day delivery service, at 10.00 am on the second Business Day after posting; if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this Clause 16.2(b), 'business hours' means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

(c) This Clause 16.2 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

16.3 Severability

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause 16.3 shall not affect the validity and enforceability of the rest of the Contract.

16.4 Waiver

A waiver of any right or remedy under the Contract or Law (where permitted) is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or Law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or Law shall prevent or restrict the further exercise of that or any other right or remedy.

16.5 No partnership or agency

Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party. The Supplier is not agent for any undisclosed principal.

16.6 Entire agreement

The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter, save as may be stated on the Purchase Order.

16.7 Third party rights

(a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

(b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

16.8 Variation

Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives.

16.9 Governing law

The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

16.10 Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

17. Public sector

17.1 The Supplier (and any subcontractor) shall not unlawfully discriminate either directly or indirectly within the meaning and scope of any law (whether on such grounds as age, race, colour, ethnic or national origin, gender, religion, disability, sexual orientation or otherwise in employment) including but not limited to the Equality Act 2010.

17.2 If the Supplier receives any request for Information pursuant to FOI Legislation (regardless of whether such request complies or does not comply with the strict requirements of FOI Legislation) it shall (1) make no response to such request other than a bare acknowledgement of receipt stating that the request has been passed to the Customer; (2) pass such request to the Customer within 2 Business Days of the request being made to the Supplier; (3) provide the Customer with a copy of all Information required to comply with any request for information and such Information shall be provided within 10 days of a request from the Customer (or such other period as the Customer shall specify) and in such form as the Customer may specify; and (4) take no further action in regard to such request save at the direction of the Customer.

17.3 The Supplier understands and acknowledges that the Customer may be obliged under FOI Legislation to disclose Information without consulting or obtaining consent from the Supplier and the Customer shall be responsible (in its sole and unfettered discretion) for so doing:

17.4 For the avoidance of doubt the Customer may disclose all information and documentation, in whatever form, as necessary to respond to that request for

information and the Supplier acknowledges that the provisions of this Clause and of the FOI Legislation shall override any obligation of confidentiality.

17.5 If the Customer at the Supplier's request seeks to rely upon a FOI Legislation exemption, the Supplier shall indemnify the Customer for any liability, costs, claims, loss, damage or expense including but not limited to responding to information notices or lodging appeals against a decision of the Information Commissioner.

17.6 The Customer shall not be liable for any loss, damage, harm or other detriment, however caused, arising from any disclosure made pursuant to a request for information and failure by the Supplier to comply with any of the provisions of this clause 17 shall be a default.

17.7 In connection with this or any other contract between the parties, the Supplier shall not give, provide, or offer to the Customer's staff and agents any loan, fee, reward, gift or any emolument or advantage whatsoever which is an offence under the Bribery Act 2010 and/or section 117(2) of the Local Government Act 1972. In the event of any breach of this clause 17.7, the Customer shall, without prejudice to its other rights, be at liberty forthwith to terminate this Contract and any other contract and to recover from the Supplier any loss or damage resulting from such termination.

18. Ombudsman's investigations

18.1 The Supplier shall make available any documentation or allow to be interviewed any of its staff and at all times assist the Ombudsman or his staff and shall co-operate with any enquiries that are requested by the Ombudsman or his staff in investigating any complaint.

18.2 Upon determination of any case by the Ombudsman in which the Supplier has been involved or been implicated the Customer shall forward copies of those determinations to the Supplier for its comments before reporting the details to the Ombudsman. Should the Ombudsman make recommendations in his report that compensation should be paid for maladministration and this either expressly or by implication has been due wholly or in part to the failure of the Supplier in not complying with the provisions of this Contract, the Customer may recover such compensation in full from the Supplier.

18.3 The Supplier shall comply with all recommendations made by the Ombudsman as to changes in methods or procedures for provision of Goods or delivery of the Services if requested to do so in writing by the Customer.

19. Data protection

Independent controllers

19.1 In circumstances where the parties are separate Controllers, they agree to ensure that they shall at all times comply with the provisions and obligations imposed by Data Protection Legislation in relation to the storing and processing of Personal Data and all Personal Data acquired by either party from the other shall be returned to the disclosing party on request. Both parties agree to be liable to each other in respect of any unauthorised disclosure or processing of Personal Data or breach of Data Protection Legislation to the extent it applies to this Contract.

Where the customer is the controller and the supplier is a processor

- Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 19 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor. Schedule 2 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject.
- Without prejudice to the generality of clause 2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this Contract.
- Without prejudice to the generality of clause 2, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this Contract:
- process that Personal Data only on the documented written instructions of the Customer which are set out in Schedule 2, unless the Supplier is required by Law to otherwise process that Personal Data. Where the Supplier is relying on Law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by Law unless the Law prohibits the Supplier from so notifying the Customer;
- ensure that it has in place appropriate technical and organisational measures (as defined in the Data Protection Legislation), reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss,

destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- not transfer any Personal Data outside of the UK unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
- the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
- the Data Subject has enforceable rights and effective remedies;
- the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- the Supplier complies with the reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- notify the Customer immediately if it receives:
- a request from a Data Subject to have access to that person's Personal Data;
- a request to rectify, block or erase any Personal Data;
- receives any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);
- assist the Customer in responding to any request from a Data Subject and in ensuring compliance with the Customer's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- notify the Customer without undue delay on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this Contract;
- at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination or expiry of the Contract unless required by Law to store the Personal Data;

- maintain complete and accurate records and information to demonstrate its compliance with this clause 19 and allow for audits by the Customer or the Customer's designated auditor and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.
- The Supplier shall indemnify the Customer against any losses, damages, cost or expenses incurred by the Customer arising from, or in connection with, any breach of the Supplier's obligations under this clause 19.
- Where the Supplier intends to engage a subcontractor pursuant to clause 16 and intends for that subcontractor to process any Personal Data relating to this Contract, it shall:
 - notify the Customer in writing of the intended processing by the subcontractor;
 - obtain prior written consent from the Customer to the processing;
 - enter into a written agreement incorporating terms which are substantially similar to those set out in this clause 19.
- Either party may, at any time on not less than 30 Business Days' written notice to the other party, revise this clause 19 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Contract).
- The provisions of this clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination.
- The parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Supplier amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's office.

The Mandatory Policies are:

- Local Code of Corporate Governance
- Counter fraud, bribery and corruption policy statement and strategy
- Information Sharing Policy
- Data Protection Policy
- Access to Information Policy

Schedule 2 – Data Processing

This Schedule shall be completed by the Controller, who may take account of the view of the Processor, however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.

The contact details of the Controller's Data Protection Officer are:
sarah.bullock@southribble.gov.uk

The contact details of the Processor's Data Protection Officer are:

The Processor shall comply with any further written instructions with respect to processing by the Controller.

Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Controller and Processor	
Subject matter of the processing	
Duration of the processing	
Nature and purposes of the processing	
Type of Personal Data being Processed.	
Categories of Data Subject	

Plan for return and destruction of the data once the processing is complete **unless** requirement under Law to preserve that type of data