

TERMS AND CONDITIONS SUPPLY OF GOODS AND/OR SERVICES

KENT COUNTY COUNCIL

1 Interpretation

1.1 In these Terms:-

"Contract"	means the Order and the Supplier's acceptance of the Order;
"Goods"	means any goods (including any part or parts of them) described in the order to be bought by the Council from the Supplier;
"Order"	means the Council's purchase order which these Terms govern;
"Price"	means the price of the Goods and/or the Services;
"Services"	means the services (if any) described in the Order;
"Specification"	includes any plans, drawings, data, description or other information relating to the Goods and/or Services;
"Supplier"	means the person, firm or company who accepts the Council's Order;
"Terms"	means these terms and conditions of purchase between the Council and the Supplier;
"the Council"	means Kent County Council; and
"writing"	includes facsimile transmission and electronic communication and "written" shall be construed accordingly.

- 1.2 A reference to particular law is a reference to it as it is in force for the time being taking into account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

2 Application of Terms

- 2.1 Subject to any previously agreed contract under condition 2.3 or any variation under 2.4, these Terms are the only conditions which shall govern the Contract to the entire exclusion of all other terms and conditions.
- 2.2 Each Order by the Council to the Supplier shall be deemed to be an offer by the Council subject to these conditions and no Order shall be accepted until the Supplier either expressly by giving notice of acceptance, or impliedly by fulfilling the Order, in whole or in part accepts the offer.
- 2.3 Where this Order forms part of another purchasing arrangement and is subject to terms and conditions previously agreed in writing by the Council and the Supplier ("Main Contract") the terms of the Main Contract shall prevail.
- 2.4 No variation to the Order or these Terms shall be binding unless agreed in writing by the individual referred to within the Order.

3 Compliance with Order and Specification

- 3.1 The quantity, quality and description of the Goods and the Services shall be as specified in the Order and/or in any applicable Specification supplied by the Council to the Supplier.

- 3.2 Any part of the Specification provided by the Council to the Supplier, over which the Council has any intellectual property rights, shall be the exclusive property of the Council.
- 3.3 All rights in the work including any copyright therein and any right to apply for patents (hereinafter called 'the proprietary rights') shall vest in and become the property of the Council. However, if any work created outside the Contract ('other work') is utilised in the course of the production or performance of the work, then any proprietary rights in the other work shall remain the property of the Supplier or third party as appropriate.
- 3.4 The Supplier if requested, and at the expense of the Council, shall do all things necessary to enable the Council to obtain patents or similar protection as the Council may require.
- 3.5 The Supplier shall have the right to use any such data, reports, drawings, specifications, designs, inventions, plans, programs or other material with prior written agreement of the Council upon such terms as may be agreed.
- 3.6 The Council recognises that during the course of the work the Supplier may conceive or develop intellectual ideas, designs and know-how and the Supplier shall be free to use such expertise in the furtherance of his normal business.

4 Changes

- 4.1 The Council may at its reasonable discretion from time to time change any details specified in its Order by written instruction.

5 Price

- 5.1 The Price of the Goods and the Services shall be as stated in the Order and, unless otherwise so stated by the Council, shall be fixed, exclusive of any applicable VAT and inclusive of all charges (including packaging and delivery costs) to the Council's specified delivery address.
- 5.2 If the Price is not stated in the Order, the Price shall be the lowest price currently quoted or charged at the time of the Order by the Supplier for the Goods and/or the Services but shall be in no event higher than the price most recently charged to the Council by the Supplier for such Goods and/or Services.
- 5.3 No increase in the Price may be made without the prior written consent of the Council.

6 Delivery

- 6.1 The Goods shall be delivered (carriage paid) to, and the Services shall be performed at, the location(s) specified by the Council and on the date or within the period stated in the Order, in either case during the times specified in the Order or if no times are specified, during the Council's usual business hours and time shall be of the essence. All delivered Goods must be accompanied by a proper delivery note. For an invoice to be submitted, the Goods and Services must be received, and signed for, by an authorised employee of the Council. The Council reserves the right to amend any delivery instructions. Delivery shall be deemed to be made on receipt of the Goods and/or the Services by the Council in accordance with these Terms.

7 Acceptance

- 7.1 The Supplier shall supply the Council in good time with any instructions or other information required to enable the Council to accept delivery of the Goods and performance of the Services.
- 7.2 The Council shall be entitled to reject all or any part of the Goods delivered or Services performed which is not in accordance with the Order, any Specification and these Terms even if the defect is minor.
- 7.3 The Council shall not be deemed to have accepted any Goods and/or Services until the Council has had a reasonable time to inspect or test them following delivery.

8 Payment

- 8.1 The Council will make payment for the Goods and/or the Services set out in the Order within thirty (30) days of receipt of the invoice unless taking advantage of agreed discount for earlier settlement. Invoices must be submitted to the address detailed on the Order for the invoice to be valid.
- 8.2 It is an important condition that invoices are accurate, including the quoting of the correct official order number. Incorrect invoices will be returned unpaid for correction and resubmission. In such cases the payment terms will take effect not from the original date but from the date of receipt at the correct address of the correctly presented invoice.
- 8.3 Without prejudice to any other right or remedy, the Council reserves the right to set off any amount owing at any time from the Supplier to the Council against any amount payable by the Council to the Supplier.

9 Risk

- 9.1 The Goods shall remain at the risk of the Supplier until delivery to the Council is complete (including off-loading and stacking) and signed for.

10 Compliance with Law

- 10.1 The Supplier must comply with all applicable statutory requirements concerning the supply of Goods and/or the performance of the Services of this contract. The Supplier must meet all their legal responsibilities in compliance with all applicable law to this contract.

11 Warranties

- 11.1 The Supplier warrants to the Council that it is fully experienced, qualified, equipped, organised and financed to perform its obligations under these Terms, and warrants to the Council that the Goods:-
 - i) shall be as specified in the Order and/or in any Specification supplied by the Council to the Supplier;
 - ii) will correspond with any sample;
 - iii) will be of satisfactory quality and fit for any purpose held out by the Supplier;
 - iv) will be free from any defects in design, material and workmanship; and
 - v) will comply with all statutory requirements, regulations, bye-laws and EU directives relating to the supply of Goods.

- 11.2 The Supplier warrants to the Council that the Services:-
- i) will be performed by appropriately qualified and trained personnel, with due care and diligence and to such high standards of quality as it is reasonable for the Council to expect in all the circumstances; and
 - ii) will comply with all statutory requirements, regulations, bye-laws and EU directives relating to the performance of the Services.

12 Remedies on Default

- 12.1 Without prejudice to any other right or remedy of the Council, if any of the Goods are not supplied in accordance with, or the Supplier fails to comply with, any of these Terms, the Council shall be entitled to any one or more of the following remedies whether or not any part of the Goods have been accepted by the Council:-
- i) to rescind the Order; or
 - ii) to reject the Goods (in whole or in part) and return them to the Supplier on the basis that a full refund for the Goods so returned, including the cost of returning them, shall be paid upon return to the Supplier; or
 - iii) to give the Supplier the opportunity at their expense to remedy any defect in the Goods and/or Services or to supply replacement Goods and/or Services and carry out any other necessary work to ensure that the Order is fulfilled; or
 - iv) to refuse to accept any further deliveries of the Goods without liability to the Supplier; or
 - v) to carry out at the Supplier's expense any work necessary to make the Goods comply with the Order and/or Terms; or
 - vi) to claim damages in consequence of the Supplier's breach of the Contract.

13 Indemnity

- 13.1 The Supplier shall indemnify the Council in full against all liabilities, losses, damages, costs and expenses (including legal expenses) incurred directly by the Council as a result of or in connection with:-
- i) breach of any warranty given by the Supplier in relation to the Goods or the Services;
 - ii) any claim that the Goods or Services infringe any intellectual property rights;
 - iii) any claim made against the Council in respect of any liability, breach or alleged breach by the Council of any statutory provision, regulation or bye-laws or other rule of law arising from the acts or omissions of the Supplier or its employees, agents or sub-contractors;
 - iv) any act or omission of the Supplier or its employees, agents or sub-contractors in supplying, delivering and installing the Goods and in performing the Services.

14 Force Majeure

- 14.1 Neither the Supplier nor the Council shall be liable to the other by reason of any delay which is beyond that party's reasonable control which shall include (but not limited to) natural disasters, war or national emergency, riot, acts of or threat of acts of terrorism, civil commotion, fire, explosion, flood or storm, strikes, lockouts and any other industrial disputes.

15 Installation and work on site

- 15.1 The Supplier shall at all times whilst on the Council's premises or on site comply with and ensure that its employees, agents and sub-contractors comply with, all relevant legal requirements relating to the provision of Services, health and safety legislation and all safety and security regulations and rules from time to time in force and will be

deemed to have full knowledge of such regulations. Copies of such Council specific regulations will be supplied on request.

- 15.2 Where the Supplier is responsible for the installation of the Goods and/or providing other Services, such Services shall be carried out to the satisfaction of the Council's authorised representative. The Supplier shall clear away and remove from the Council's premises or sites all installation plant, service material, rubbish and temporary works and leave the premises or sites in a clean and workmanlike condition.

16 Insurance

- 16.1 The Supplier shall at all times maintain adequate insurance cover with a reputable insurer against its liability under these Terms and shall produce the policy and latest premium receipt to the Council on request.
- 16.2 The Supplier will provide all facilities, assistance and information reasonably required by the Council or its insurers for the purpose of bringing an action or claim arising out of the performance of these Terms.

17 Termination

- 17.1 The Council shall be entitled to cancel the Order in respect of all or part only of the Goods and/or the Services by giving notice to the Supplier at any time prior to delivery or performance without incurring any liability to the Supplier other than to pay for the Goods and/or Services already delivered or performed at the time of such notice.

18 Confidentiality

- 18.1 All information supplied to the Supplier by the Council at any time in connection with these Terms and any Specification shall be regarded as confidential and shall not without any prior written consent of the Council be published or disclosed to any third party or used by the Supplier except for the purpose of implementing the Order.
- 18.2 The provisions of 18.1 shall not apply to any information:-
- i) which is or becomes public knowledge (otherwise than by breach of these conditions); or
 - ii) which was in the possession of the receiving party, without restriction as to its disclosure, before receiving it from the disclosing party; or
 - iii) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure.

These confidentiality obligations shall continue in perpetuity.

- 18.3 The Supplier shall not advertise or announce the supply of the Goods and/or the Services without the Council's prior written consent.
- 18.4 The Council is subject to the requirements of the Code of Practice on Access to Government Information, the Freedom of Information Act, the General Data Protection Regulations (GDPR) and the Environmental Information Regulations and the Supplier must assist and cooperate with the Council (at the Supplier's expense) to enable the Council to comply with these requirements. Requests for information made directly to the Supplier must be forwarded to the Council as soon as practicable after receipt and in any event within two working days of receiving the request.

- 18.5 The Council shall be responsible for determining at its absolute discretion whether:
- i) information is exempt from disclosure under the Code of Practice on Access to Government Information; and/or
 - ii) information is to be disclosed in response to a Request for Information.
- 18.6 The Supplier acknowledges that the Council may be obliged under the Code of Practice on Access to Government Information, the FOIA, or the Environmental Information Regulations to disclose Information with or without having consulted with the Supplier.

19 The Council's Liability

- 19.1 The Council's liability under this Contract, whether in respect of breach of contract, tort (including negligence), breach of statutory duty or otherwise, shall in no event exceed the level of fees due under this Contract. Nothing in this Agreement shall be construed as restricting or excluding the Council's liability for fraud, personal injury or death or any other matter for which it is illegal to limit or exclude liability.

20 General

- 20.1 The Council may assign its rights, sub-contract, or transfer its rights and obligations without the consent of the Supplier. This Order is personal to the Supplier and the Supplier shall not assign, sub-contract, or transfer its rights and/or obligations without the prior written consent of the Council.
- 20.2 Any waiver by the Council of any breach is not a waiver of any subsequent breach.
- 20.3 Failure or delay by the Council in enforcing or partially enforcing any provision of these Terms is not a waiver of any of its rights under these Terms.
- 20.4 If any provision of these Terms is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and the remainder of the provision in question shall not be affected.
- 20.5 These Terms shall be governed by the laws of England and the parties submit to the exclusive jurisdiction of the English Courts.

GENERAL DATA PROTECTION REGULATION (GDPR)

1. New data protection legislation is due to come into force during 2018, which aims to protect the privacy of all EU citizens and prevent data breaches. It will apply to any public or private organisation processing personal data. Established key principles of data privacy remain relevant in the new Data Protection Legislation but there are also a number of changes that will affect commercial arrangements, both new and existing, with suppliers.
2. The Data Protection Legislation comprises: i) the General Data Protection Regulation (GDPR) which comes into force on 25 May 2018; and ii) the Data Protection Act (DPA) 2018 which is anticipated to come into force (subject to Parliamentary approval) on 6 May 2018 for law enforcement processing, and 25 May for GDPR.

3. STANDARD DEFINITIONS

Party: a Party to this Contract;

Law: means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Provider is bound to comply;

Provider Personnel: means all directors, officers, employees, agents, consultants and contractors of the Provider and/or of any Sub-Contractor engaged in the performance of its obligations under this Contract.

4. GDPR CLAUSE DEFINITIONS

Data Protection Legislation: (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer: take the meaning given in the GDPR;

Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by the Provider under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;

Data Subject Access Request: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

DPA 2018: Data Protection Act 2018;

GDPR: the General Data Protection Regulation (Regulation (EU) 2016/679);

LED: Law Enforcement Directive (Directive (EU) 2016/680);

Protective Measures: appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of 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 such measures adopted by it;

Sub-processor: any third Party appointed to process Personal Data on behalf of the Provider related to this Contract.

5. DATA PROTECTION

5.1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Provider is the Processor. The only processing that the Provider is authorised to do is listed in Schedule 20 Annex 1 by the Council and may not be determined by the Provider.

5.2. The Provider shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.

5.3. The Provider shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include:

5.3.1. a systematic description of the envisaged processing operations and the purpose of the processing;

5.3.2. an assessment of the necessity and proportionality of the processing operations in relation to the Services;

5.3.3. an assessment of the risks to the rights and freedoms of Data Subjects; and

5.3.4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

5.4. The Provider shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

5.4.1. process that Personal Data only in accordance with Schedule 20 Annex 1, unless the Provider is required to do otherwise by Law. If it is so required the Provider shall promptly notify the Council before processing the Personal Data unless prohibited by Law;

5.4.2. ensure that it has in place Protective Measures, which have been reviewed and approved by the Council as appropriate to protect against a Data Loss Event having taken account of the:

- (a) nature of the data to be protected;
- (b) harm that might result from a Data Loss Event;
- (c) state of technological development; and
- (d) cost of implementing any measures;

5.4.3. ensure that:

- (a) the Provider Personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 20 Annex 1);
- (b) it takes all reasonable steps to ensure the reliability and integrity of any Provider Personnel who have access to the Personal Data and ensure that they:
 - (i) are aware of and comply with the Providers duties under this Clause;
 - (ii) are subject to appropriate confidentiality undertakings with the Provider or any Sub-processor;
 - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Council or as otherwise permitted by this Contract; and
 - (iv) have undergone adequate training use, care, protection and handling of Personal Data; and

5.4.4. not transfer Personal Data outside of the EU unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:

- (a) the Council or the Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Council;
- (b) the Data Subject has enforceable rights and effective legal remedies;
- (c) the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Council in meeting its obligations);
- (d) the Provider complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;

5.4.5. at the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of the Contract unless the Provider is required by Law to retain the Personal Data.

5.5. Subject to Clause 5.6, the Provider shall notify the Council immediately if it:

- 5.5.1. receives a Data Subject Access Request (or purported Data Subject Access Request);
- 5.5.2. receives a request to rectify, block or erase any Personal Data;
- 5.5.3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- 5.5.4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
- 5.5.5. receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- 5.5.6. becomes aware of a Data Loss Event.

5.6. The Providers obligation to notify under Clause 5.5 shall include the provision of further information to the Council in phases, as details become available.

5.7. Taking into account the nature of the processing, the Provider shall provide the Council with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 1.5 (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:

- 5.7.1. the Council with full details and copies of the complaint, communication or request;
 - 5.7.2. such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - 5.7.3. the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 5.7.4. assistance as requested by the Council following any Data Loss Event;
 - 5.7.5. assistance as requested by the Council with respect to any request from the Information Commissioners Office or any consultation by the Council with the Information Commissioner's Office.
- 5.8. The Provider shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Provider employs fewer than 250 staff, unless:
- 5.8.1. the Council determines that the processing is not occasional;
 - 5.8.2. the Council determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - 5.8.3. the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 5.9. The Provider shall allow for audits of its Data Processing activity by the Council or the Councils designated auditor.
- 5.10. The Provider shall designate a data protection officer if required by the Data Protection Legislation.
- 5.11. Before allowing any Sub-processor to process any Personal Data related to this Contract, the Provider must:
- 5.11.1. notify the Council in writing of the intended Sub-processor and processing;
 - 5.11.2. obtain the written consent of the Council;
 - 5.11.3. enter into a written agreement with the Sub-processor which give effect to the terms set out in this Schedule 20 such that they apply to the Sub-processor; and
 - 5.11.4. provide the Council with such information regarding the Sub-processor as the Council may reasonably require.

- 5.12. The Provider shall remain fully liable for all acts or omissions of any Sub-processor.
- 5.13. The Provider may, at any time on not less than 30 Working Days' notice, revise this Clause 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 incorporated by attachment to this Contract).
- 5.14. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may on not less than 30 Working Days' Notice to the Provider amend this agreement to ensure that it complies with any Guidance issued by the Information Commissioner's Office.

GENERAL DATA PROTECTION REGULATION (GDPR)

ANNEX 1

Schedule of Processing, Personal Data and Data Subjects

Provider: [NOT APPLICABLE]

Contract: [NOT APPLICABLE]

1. The Processor shall comply with any further written instructions with respect to processing by the Controller.
2. Any such further instructions shall be incorporated into this Schedule.
3. Part A and/or Part B, as appropriate, describe the Data relationship(s) between the Parties. Only completed Part(s) apply and an uncompleted Part indicates that the Data relationship pertaining to that Part does not exist within the Contract. At least one Part must be completed and both Parts may be completed but the latter **must** apply to **different** Data within the Contract.

PART A

The Kent County Council Data Controller

[NOT APPLICABLE] Data Processor

Description	Details
Subject matter of the Processing	NOT APPLICABLE
Duration of the Processing	NOT APPLICABLE
Nature and purposes of the Processing	NOT APPLICABLE
Type of Personal Data	NOT APPLICABLE
Categories of Data Subject	NOT APPLICABLE
Plan for return and destruction of the Data once the Processing is complete UNLESS requirement under union or member state law to preserve that type of Data	NOT APPLICABLE

PART B

The Kent County Council

Data Processor

[NOT APPLICABLE

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Data Controller

Description	Details
Subject matter of the Processing	NOT APPLICABLE
Duration of the Processing	NOT APPLICABLE
Nature and purposes of the Processing	NOT APPLICABLE
Type of Personal Data	NOT APPLICABLE
Categories of Data Subject	NOT APPLICABLE
Plan for return and destruction of the Data once the Processing is complete UNLESS requirement under union or member state law to preserve that type of Data	NOT APPLICABLE