

DATED

8 FEBRUARY 2024

THE DISTRICT COUNCIL OF FOLKESTONE AND HYTHE

AND

AMETHYST HORTICULTURE LIMITED

**TERMS AND CONDITIONS FOR THE SUPPLY OF
BEDDING PLANTS 2024-25**

This Contract is made the 8th day of February 2024

between

THE DISTRICT COUNCIL OF FOLKESTONE AND HYTHE of the Civic Centre, Castle Hill Avenue, Folkestone, Kent CT20 2QY (hereinafter "**the Council**") of the one part

and

AMETHYST HORTICULTURE LIMITED registered number 04464660 whose registered office is at Newington Nursery, London Road, Newington, Kent, England, ME9 7NY (hereinafter "**the Supplier**") of the other part

(hereinafter collectively "**the Parties**" and independently "**the Party**")

WHEREAS

A. The Council is a local authority as defined by section 270 of the Local Government Act 1972 and has a duty under section 3 of the Local Government Act 1999 to make arrangements to secure continuous improvements in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.

B. The Supplier acknowledges that the Council is subject to the Best Value duty (under the Local Government Act 1999 (as amended)) and that the Supplier shall throughout the Contract Period assist the Council in discharging its Best Value duty by actively promoting, supporting and assisting the Council in meeting its Best Value duty in respect of the Services.

C. By this Contract the Council seeks to procure the provision of specific services and/or supplies from the Supplier.

1 1 INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

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

Commencement Date: means 22 January 2024.

Commercially Sensitive Information: the information comprising the information of a commercially sensitive nature relating to the Supplier, its intellectual property rights or its business or which the Supplier has indicated

to the Council that, if disclosed by the Council, would cause the Supplier significant commercial disadvantage or material financial loss.

Conditions: these terms and conditions as amended from time to time in accordance with clause 16.12.

Contract: the contract between the Council and the Supplier for the supply of Services in accordance with these Conditions.

Contract Period: the period from the Commencement Date until expiry of the Contract in accordance with clause 2.1.

Council Materials: has the meaning set out in clause 4.3 (i).

Controller, Processor, Data Subject, Personal Data, Personal Data Breach: have the meanings given in Data Protection Legislation;

Data Protection Legislation: means 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;

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 without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

Domestic Law: the law of the United Kingdom or a part of the United Kingdom;

Environmental Information Regulations: the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

FOIA: the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Force Majeure Event: means any circumstance not within a party's reasonable control including, without limitation:

- a) war, civil war, conflict or terrorist attack arising within and affecting the United Kingdom;

- b) nuclear, chemical or biological contamination of the Provider's property arising from any of the events at (a) above;
- c) riot, flood or earthquake; or epidemic of pandemic.

GDPR: takes the meaning referred to in the definition of Data Protection Legislation;

Information: has the meaning given under section 84 of FOIA.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), 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.

Services: the services, including without limitation 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 Council and the Supplier and contained in Schedule 1 attached hereto.

1.2 **Construction.** In these Conditions, the following rules apply:

- a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- b) a references to a party includes its personal representatives, successors or permitted assigns;
- c) clause, Schedule and paragraph headings shall not affect the interpretation of this Contract;
- d) the Schedules form part of this Contract and shall have effect as if set out in full in the body of this Contract. Any reference to this Contract includes the Schedules;
- e) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;

- f) any obligation on a party not to do something includes an obligation not to allow that thing to be done;
- g) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- h) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- i) a reference to **writing** or **written** includes faxes and e-mails.

2 BASIS OF CONTRACT

- 2.1 This Contract is for the period from the Commencement Date for a period of twenty-one (21) months, extendable upon agreement in writing between the Parties, unless terminated earlier by either Party in accordance with clause 12 (Termination).
- 2.2 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.3 All of these conditions shall apply to the supply of services except where the application to one or the other is specified.

3 DATA PROCESSING

- 3.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This clause is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under the Data Protection Legislation.
- 3.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under this Agreement, will determine the status of each Party under the Data Protection Legislation. A Party may act as:
 - a) “Controller” (where the other Party acts as the “Processor”);
 - b) “Processor” (where the other Party acts as the “Controller”);

- c) “Joint Controller” (where both Parties are considered to jointly control the same Personal Data);
- d) “Independent Controller” of the Personal Data where the other Party is also “Controller” of the same Personal Data in its own right (but there is no element of joint control);

and the Parties shall set out in Schedule 3 (Data Processing) which scenario or scenarios are intended to apply under this Agreement and what the relevant Party is authorised to do as the Processor.

- 3.3 The Supplier shall indemnify the Council against any losses, damages, cost or expenses incurred by the Council arising from, or in connection with, any breach of the Supplier's obligations under this Clause 4.
- 3.4 Where the Supplier intends to engage a Sub-Contractor and intends for that Sub-Contractor to process any Personal Data relating to this Contract, it shall:
 - a) notify the Council in writing of the intended processing by the Sub-Contractor;
 - b) obtain prior written consent from the Council to the processing;
 - c) enter into a written agreement incorporating terms which are substantially similar to those set out in this Clause 4;
 - d) The provisions of this clause shall apply during the continuance of the Contract and indefinitely after its expiry or termination.

4 SUPPLY OF SERVICES

- 4.1 The Supplier shall from the Commencement Date and for the duration of this Contract provide the Services to the Council in accordance with the terms of the Contract.
- 4.2 The Supplier shall meet any performance dates for the Services specified by the Council.
- 4.3 In providing the Services, the Supplier shall:
 - a) co-operate with the Council in all matters relating to the Services, and comply with all instructions of the Council;
 - b) perform the Services with the due care, skill and diligence, in utmost good faith and 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 this Contract;
- d) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Council;
- 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 Council, will be free from defects in workmanship, installation and design;
- g) obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
- h) observe all health and safety rules and regulations and any other security requirements that apply at any of the Council's premises;
- i) hold all materials, equipment and tools, drawings, specifications and data supplied by the Council to the Supplier (**Council Materials**) in safe custody at its own risk, maintain the Council Materials in good condition until returned to the Council, and not dispose or use the Council Materials other than in accordance with the Council's written instructions or authorisation; and
- j) not do or omit to do anything which may cause the Council to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Council may rely or act on the Services.

5 COUNCIL REMEDIES

- 5.1 If the Supplier fails to deliver or perform the Services by the applicable date, the Council shall, without limiting its other rights or remedies, 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 which the Supplier attempts to make;

- c) to recover from the Supplier any costs incurred by the Council in obtaining substitute goods and/or services from a third party;
- d) where the Council has paid in advance for Services that have not been provided by the Supplier, to have such sums refunded by the Supplier; and
- e) to claim damages for any additional costs, loss or expenses incurred by the Council which are in any way attributable to the Supplier's failure to meet such dates.

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

5.3 The Council's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

6 COUNCIL'S OBLIGATIONS

6.1 The Council shall:

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

7 CHARGES AND PAYMENT

7.1 The charges for the Services shall, unless otherwise agreed upon in writing by the Council, be as set out in the Supplier's Tender (contained in Schedule 2) 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 Council, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

7.2 In consideration of the supply of Services by the Supplier, the Council shall pay the invoiced amounts for Services previously rendered to the satisfaction of the Council in accordance with this Contract within 30 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.

- 7.3 The Council shall accept and process for payment an electronic invoice submitted for payment by the Supplier where the invoice is undisputed and where it complies with the standard on electronic invoicing.
- 7.4 For the purposes of clause 7.3 an electronic invoice complies with the standard on electronic invoicing where it complies with the European standard and any of the syntaxes published in the UK version of Commission Implementing Decision (EU) 2017/1870 as it forms part of English law under the European Union (Withdrawal) Act 2018.
- 7.5 All amounts payable by the Council 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 Council, the Council shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 7.6 If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 2% per annum above National Westminster Bank PLC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments that the defaulting party disputes in good faith.
- 7.7 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 Council to inspect such records at all reasonable times on request.
- 7.8 The Council may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to the Council against any liability of the Council to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.

8 INTELLECTUAL PROPERTY RIGHTS

- 8.1 In respect of any goods that are transferred to the Council as part of the Services under this Contract, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the

Council, it will have full and unrestricted rights to sell and transfer all such items to the Council.

- 8.2 The Supplier assigns to the Council, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables.
- 8.3 The Supplier shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Deliverables, of the Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- 8.4 The Supplier shall, promptly at the Council's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Council may from time to time require for the purpose of securing for the Council the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Council in accordance with clause 8.2.
- 8.5 All Council Materials are the exclusive property of the Council.

9 INDEMNITY

- 9.1 The Supplier shall keep the Council indemnified 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 reasonable professional costs and expenses) suffered incurred by the Council as a result of or in connection with:
 - a) any claim made against the Council for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, receipt, use or supply of the Services, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and
 - b) any claim made against the Council by a third party arising out of or in connection with the supply of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.
- 9.2 This clause 9 shall survive termination of the Contract.

10 INSURANCE

- 10.1 During the term of the Contract, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on the Council's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

11 CONFIDENTIALITY

- 11.1 A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, officers, representatives, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

- 11.2 This clause 11 shall survive termination of the contract.

12 TERMINATION

- 12.1 Without affecting any other right or remedy available to it, either Party may terminate this Contract with immediate effect by giving one month's written notice to the other Party if:
- a) the Supplier commits a material breach of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 24 hours of receipt of notice in writing to do so;
 - b) the Supplier repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;

- c) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- d) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- f) the Supplier (being an individual) is the subject of a bankruptcy petition or order;
- g) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- h) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier (being a company);
- i) the holder of a floating charge over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;
- j) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
- k) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or

similar to any of the events mentioned in clause 12.1(c) to clause 12.1(j) (inclusive);

l) the Supplier suspends or ceases, or threatens to suspend, or cease, to carry on all or a substantial part of its business; or

m) the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

12.2 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.

12.3 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

13 CONSEQUENCES OF TERMINATION

13.1 On termination of the Contract for any reason, the Supplier shall immediately deliver to the Council all Deliverables whether or not then complete, and return all Council Materials. If the Supplier fails to do so, then the Council 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 this Contract.

14 FORCE MAJEURE

14.1 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 a delay or failure result from an event, circumstances or cause beyond its reasonable control (**Force Majeure Event**).

14.2 The Supplier shall use all reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of its obligations.

14.3 If a Force Majeure Event prevents, hinders or delays the Supplier's performance of its obligations for a continuous period of more than 5 Business Days, the Council may terminate the Contract immediately by giving written notice to the Supplier.

15 FREEDOM OF INFORMATION

15.1 The Supplier acknowledges that the Council is subject to the requirements of FOIA and the Environmental Information Regulations and shall assist and co-

operate with the Council (at the Supplier's expense) to enable the Council to comply with these Information disclosure requirements.

- 15.2 The Supplier shall and shall procure that its Sub-Contractors shall:
- a) transfer the Request for Information to the Council as soon as practicable after receipt and in any event within three days of receiving a Request for Information;
 - b) provide the Council with a copy of all Information belonging to the Council in its possession or power in the form that the Council requires within five Business Days (or such other period as the Council may specify) of the Council requesting that Information; and
 - c) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of FOIA or regulation 5 of the Environmental Information Regulations.
- 15.3 The Council shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:
- a) is exempt from disclosure in accordance with the provisions of FOIA or the Environmental Information Regulations;
 - b) is to be disclosed in response to a Request for Information.
- 15.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 15.5 The Supplier acknowledges that the Council may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of FOIA, November 2004), be obliged under FOIA or the Environmental Information Regulations to disclose Information:
- a) without consulting with the Supplier, or
 - b) following consultation with the Supplier and having taken its views into account

provided always that where clause b) applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

- 15.6 The Supplier shall ensure that all Information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.
- 15.7 The Supplier acknowledges that any lists or schedules provided by it outlining confidential information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with clause 15.5.

16 COMPLIANCE WITH ANTI-SLAVERY AND HUMAN TRAFFICKING LAWS

- 16.1 In performing its obligations under the agreement, the Supplier shall:
- a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015; and
 - b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;
 - c) include in contracts with its direct sub-contractors and suppliers provisions which are at least as onerous as those set out in this Clause 16.
 - d) notify the Council as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this agreement.
 - e) maintain a complete set of records to trace the supply chain of all Goods and Services provided to the Council in connection with this agreement; and permit the Council and its third party representatives to inspect the Supplier's premises, records, and to meet the Supplier's personnel to audit the Supplier's compliance with its obligations under this Clause 16.
- 16.2 The Supplier represents and warrants that it has not been convicted of any offence involving slavery and human trafficking; nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 16.3 The Council may terminate the agreement with immediate effect by giving written notice to the Supplier if the Supplier commits a breach of this Clause 16.

17 GENERAL

17.1 Assignment and other dealings.

- a) The Council may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- b) The Supplier may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Council.

17.2 **Health and Safety.** The Supplier acknowledges that it has been supplied with a copy of the Council's rules regarding health and safety. The Supplier agrees to comply with these rules, and any additional rules made known to the Supplier from time to time by the Council together with all applicable statutory rules and regulations regarding these matters. The Council will be responsible for procuring that its employees and agents also comply with these rules and regulations. Either party shall notify the other as soon as practicable of any health and safety hazards at the Council's Premises of which it becomes aware. The Supplier will draw these hazards to the attention of the Staff and will instruct those persons in connection with any necessary associated safety measures.

17.3 Notices.

- a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.
- b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 17.3(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
- c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

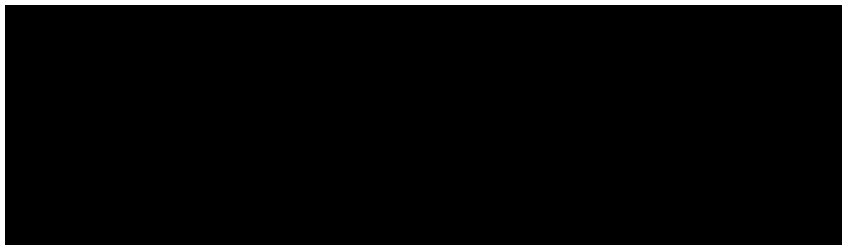
- 17.4 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 17.5 **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 17.6 **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, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 17.7 **Anti Discrimination.** The Supplier shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) in employment. The Supplier shall take all reasonable steps to secure the observance of clause 17.7 by all servants, employees or agents of the Supplier and all suppliers and sub-contractors employed in performance of this Contract.
- 17.8 **Audit.** The Supplier shall keep and maintain until six years after the Contract has been completed, or as long a period as may be agreed between the parties, full and accurate records of the Contract including:
- a) the Services provided under it;
 - b) all expenditure reimbursed by the Council;
 - c) all payments made by the Council.

The Supplier shall on request afford the Council or the Council's representatives such access to those records as may be required in connection with the Contract.

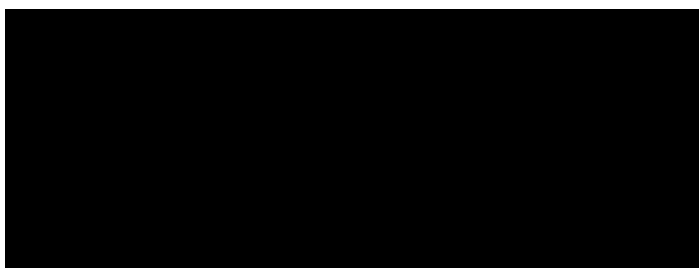
- 17.9 **Third party rights** This Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this agreement.
- 17.10 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Parties (or their representatives).
- 17.11 **Entire Agreement.** This 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. Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- 17.12 **Rights and remedies.** The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 17.13 **Governing law.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.
- 17.14 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

In witness whereof the Parties have executed this Contract on the day and year first above written

For and on behalf of **THE DISTRICT COUNCIL OF FOLKESTONE AND HYTHE**



For and on behalf of **AMETHYST HORTICULTURE LIMITED**



SCHEDULE 1

SERVICE SPECIFICATION

1. Folkestone & Hythe District Council (“the Council”) is seeking quotations for supply and delivery of its summer and winter bedding plants for the district over the next two years.
2. Supplier Nursery should be located within 50 minutes’ drive from the Council’s offices at the Civic Centre, Castle Hill Ave, Folkestone for ease of access by the Contract Officer or representative and ease of multiple deliveries across the district. Suppliers outside of this distance may be excluded from the competition at the Council’s discretion. Google Maps will be used to verify the estimated travel time to the supplier’s location.
3. The plant quality requirements are as specified in BS 3936-7:1989 and must meet the standards detailed (**see Appendix B**).
4. The bedding plants required are detailed in **Appendix C – Pricing Schedule**.
5. Plants should be delivered free from pest and disease. Biological methods of pest and disease control are to be used as far as is safe and practicable.
6. If substitution is necessary, for example due to crop failure or industry availability, the substitute plants must be agreed at the earliest opportunity with the Council’s representative to minimise disruption to the bedding schemes. Any excess in cost for agreed substitute will be covered by the supplier.
7. The planting schedules are indicative of the planting schemes the Council has planned based on the information and budget available at this point in time. We may adjust the plants or volumes required for any of the seasonal schemes to adapt to budget constraints.
8. The Council asks the supplier to make peat-free compost an available option in addition to standard substrate compost. The Contract Officer will confirm which, if any, plants are to be provided in peat-free compost at the beginning of each growing season. Otherwise, plants are to be provided in standard substrate compost.
9. Supplier shall be required to provide adequate customer service to ensure quality and consistency of the service and bedding plants provided, i.e. available to deal any enquiries and complaints during office hours, Monday – Friday.
10. Supplier shall be required to have the capacity meet the delivery schedule.
11. Delivery prices should be incorporated into the plant prices submitted on the pricing schedule.
12. Deliveries will be made to approximately 17 locations or as desired (as detailed in **Appendix D – 2023 Delivery Schedules**) as agreed with the Folkestone & Hythe District Council Contract Officer.

13. Copies of the 2023 delivery schedules for summer and winter are provided (see **Appendix D – Delivery Schedules**) for indicative purposes only. Delivery schedules for 2024 and 2025 will be agreed upon as described below.
14. Deliveries must be made on time as specified in the delivery schedules, which will be agreed 2 weeks before the first delivery of each season.
15. Delivery dates will be agreed following a visit to the Nursery by the Contract Officer or representative 2 weeks in advance of the anticipated delivery schedule. The visit will be made to inspect the quality and maturity of the plants and to decide which will be delivered early and which can be delivered in the second week of planting. The delivery dates are anticipated to be in May for summer bedding and the first two weeks of October for winter bedding and the delivery schedules may comprise of 2 to 3 deliveries per day.
16. If the supplier should cancel delivery due to unforeseen events (i.e. inclement weather conditions, vehicle breakdown etc), the supplier must inform the Council as soon as possible to advise of the reason and reschedule the delivery.
17. Supplier shall collect all empty pots and trays from the Council for re-use.

SCHEDULE 2

SUPPLIER'S TENDER

Invitation to Tender (ITT) Supplier Response Document



Supply of Summer and Winter Bedding Plants 2024-25 December 2023

CONTENTS

- Section 1 – Supplier details
- Section 2 – Technical and quality questions
- Section 3 – Pricing schedule
- Section 4 – Terms & conditions of contract
- Section 5 – Declarations

REQUIRED DOCUMENTS

Please also complete and provide:

- Appendix B – pricing schedule
- ITT sub-contractor information (if applicable)

APPENDICES

Please list any additional documents you have submitted with your tender:

- Covering Letter

SECTION 1 – SUITABILITY QUESTIONNAIRE

1.1 ORGANISATION DETAILS

This section is for information only, but must be completed in full.

The terms 'the organisation' and 'your organisation' used in this document mean your business, company, charity, partnership or any other type of organisation identified below.

Full name of the organisation submitting this tender	Amethyst Horticulture Ltd
Registered office address:	London Road. Newington. Kent ME9 7NY
Company registration or charity registration number	4464660
VAT registration number	798 0348 84
Name of immediate parent company	na
Name of ultimate parent company	na
Type of organisation: <ul style="list-style-type: none"> • public limited company (PLC) • limited company (LTD) • limited liability partnership (LLP) • other partnership • sole trader • third sector (charity) • other (please explain) 	please state which: Limited Company (LTD)
Are you a Small, Medium or Micro Enterprise (SME)?	Yes
Contact details for questions about this tender	
Name:	██████████
Phone:	██████████
Mobile:	██████████
Email:	██████@amethyst-horticulture.co.uk

Sole bidding organisation

You are a 'sole bidding organisation' if this tender is submitted for your company only. If you intend to use sub-contractors, consultants or other partner organisations to deliver the contract, you do not need to identify them in your response*. Your company will be entirely liable to Folkestone & Hythe District Council (F&HDC) for the delivery of the requirements of the contract.

*Exception: where sub-contractors will play a significant role in the delivery of the services (e.g. more than 50%) please refer to Section 1.1

Consortia, partnerships and joint ventures

If you are tendering for this contract on behalf of a group of companies (a consortium, partnership or joint venture) the following information must be provided:

- Full details of the consortium, partnership or joint venture and
- Information sought in this questionnaire in respect of each of the consortia, partnership or joint venture constituent members as part of a single response.

If you propose to create a separate corporate entity for this contract, you must provide details of the actual or proposed percentage shareholding of the constituent members within the consortium in a separate schedule (how much of the new organisation each member will own).

F&HDC reserves the right to require a successful consortium to form a single legal entity in accordance with Regulation 19(6) of the Public Contracts Regulations 2015.

If there is a change in the consortium, partnership or joint venture you must inform F&HDC immediately.

Special Purpose Vehicles (SPV)

You are a 'Special Purpose Vehicle' (SPV) if you have formed (or will form) a new legal entity for the purpose of bidding for this contract, with the intention that this organisation will be awarded the contract.

In addition the member organisation of the special purpose vehicle will be required to be jointly and severally liable to the Council for the delivery of the requirements of the contract, regardless of

- (a) the value of their contributions in respect of the contract sum, time, volume, quality or any other considerations, or
- (b) the future organisational or legal standing of the special purpose vehicle.

You must inform F&HDC of any withdrawal of members of the SPV during or subsequent to the ITT so that the implications of such a withdrawal may be assessed.

Invitation to Tender (ITT) - Supplier Response Document

Consortia and sub-contracting (please tick)	
a) Your organisation is bidding to deliver the contract itself	✓
b) Your organisation is bidding in the role of prime contractor and intends to use third parties to deliver some of the contract If more than 50% of the work will be completed by sub-contractors, please complete the sub-contractor information template provided.	
c) Bidding organisation is a consortium, joint venture or partnership	
d) Bidding organisation is a special purpose vehicle	
<p>If your answer is (c) or (d) please provide a separate document explaining which member of the group will be responsible for providing each part of the contract.</p>	

for non-UK organisations only	
<p>Is your organisation registered with the appropriate trade or professional register(s) in the EU member state where it is established?</p> <p>If yes, please provide details and any registration numbers.</p>	Yes / No
<p>Is it a legal requirement in the state where you are established for you to be licensed or a member of a particular organisation in order to provide the services in this procurement?</p> <p>If yes, please provide details of what is required and confirm that you have complied with this.</p>	Yes / No

1.2 GROUNDS FOR MANDATORY REJECTION

This Section is **PASS/FAIL**. If you answer 'yes' to any question in this section your tender will be rejected.

If you are unsure how to respond you should contact us for advice before completing this form.

If you are bidding as a consortium, partnership, joint venture or special purpose vehicle: your response must apply to all members.

<p>1.2.1 Details about the grounds for mandatory rejection are set out on online (go to gov.uk webpage).</p> <p>If your organisation or any other person who has powers of representation, decision or control in your organisation has been convicted anywhere in the world for any of the offenses below within the last 5 years, please mark which.</p>	<p>Answer</p>
<p>(a) Participation in a criminal organisation.</p>	<p>No</p>
<p>(b) Corruption.</p>	<p>No</p>
<p>(c) Fraud.</p>	<p>No</p>
<p>(d) Terrorist offences or offences linked to terrorist activities</p>	<p>No</p>
<p>(e) Money laundering or terrorist financing</p>	<p>No</p>
<p>(f) Child labour and other forms of trafficking in human beings</p>	<p>No</p>
<p>(g) Has your organisation been in breach of tax payment or social security contribution obligations?</p>	<p>No</p>
<p>1.2.2 If you answered "yes" to any of (a) to (f) above, please provide:</p> <ul style="list-style-type: none"> • Date of conviction; • which the conviction was for; • the reasons for conviction; and • Identity of who has been convicted <p>If the relevant documentation is available online, please provide:</p> <ul style="list-style-type: none"> • the web address; • issuing authority; and • reference of the documents 	
<p>Not applicable</p>	

1.2.3 If you answered "yes" to (g) above,

(a) provide details.

(b) confirm you have paid, or have entered into a binding arrangement to pay, the outstanding sum (and any accrued interest or fines).

Not applicable

1.3 GROUNDS FOR DISCRETIONARY REJECTION

This Section is **PASS/FAIL**. If you answer 'yes' to any question F&HDC is entitled to reject your tender but can choose to allow you to proceed further, after considering your circumstances.

If you answer 'yes' to any question, please set out (in 1.3.1) the full details of the relevant incident and any remedial action taken. F&HDC will consider your response before making a decision about whether or not to include your tender in its evaluations or to reject it.

If you are bidding as a consortium, partnership, joint venture or special purpose vehicle: your response must apply to all members.

1.3.1 Details about the grounds for discretionary rejection are set out on online (go to gov.uk webpage). Do any of the below apply or have applied to your organisation or any other person who has powers of representation, decision or control in your organisation within the last 3 years?	Answer
(a) Breach of environmental obligations?	No
(b) Breach of social obligations?	No
(c) Breach of labour law obligations?	No
(d) Bankruptcy or gone into liquidation or receivership? Or currently subject to proceedings for the appointment of a receiver, manager or administrator on behalf of a creditor?	No
(e) Committed an act of grave misconduct in the course of your business or profession? Or been convicted of a criminal offence relating to the conduct of your business or profession?	No
(f) been significantly or persistently deficient in the performance of a previous public contract, leading to early termination of the contract, damages, or other comparable sanctions	No

1.3.2 Conflict of interest	
(a) Is any officer, employee or consultant of your organisation an employee or ex-employee of F&HDC or in any way connected to an employee or ex-employee of F&HDC? Or Is any officer, employee or consultant of your organisation an elected member of the Authority or someone who has been an elected member?	No
(b) Is any officer, employee or consultant of your organisation involved in any other organisation that may be interested in bidding for F&HDC services under this tender process?	No
(c) Been involved in the preparation of this procurement process, design of services, or tender documents?	No
(d) Obtained or attempted to obtain confidential information, or entered into unlawful agreements with competitors whose to restrain or distort competition, or influenced or attempted to influence the evaluation panel or F&HDC in the process of preparing this tender?	No
(e) Aware of any other conflicts of interest in submitting this tender or which may occur in delivering the services?	No
1.3.3 If the answer to any of the criteria listed in 1.3.1 or 1.3.2 above is “yes”, please give details, including action has been taken to remedy the situation.	
Not applicable	

1.4 ECONOMIC & FINANCIAL STANDING

This Section is risk based **PASS/FAIL**.

You are not required to submit any financial documents at this time, but F&HDC reserves the right to request further information and or request a credit agency report.

If you are bidding as a consortium, partnership, joint venture or special purpose vehicle:
we will obtain this information for each member of the group. The threshold for turnover can be met entirely by one member or by a combination of members; it is not necessary for each member to individually meet the threshold.

1.4.1 Is your annual turnover (at the date of the last audited accounts) greater than £90,000 GBP?	Yes
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Invitation to Tender (ITT) - Supplier Response Document

1.4.2 If the audited accounts dated more than 6 months ago, has been any material change in the financial or trading conditions of your organisation?	Yes material change / No material change / Not applicable
1.4.3 If your organisation has been trading for fewer than 12 months, is your projected annual turnover greater than £90,000 GBP?	Not applicable
1.4.4 Please list which you are able to provide: A copy of your audited accounts for the last two years, Or financial statements for the most recent year, Or a statement of the cash flow forecast for the current year and a bank letter outlining the current cash and credit position.	✓
1.4.5 If you cannot provide one of the above, please explain why and list any other financial information you can provide.	

1.5 INSURANCE

This Section is **PASS/FAIL**. Your organisation will fail if it does not hold or is unwilling to obtain the minimum levels of insurance required.

You are not required to submit any evidence at this time. If you are successful, you will be asked to provide evidence in the form of copies of policies, letters of confirmation from insurers (or Brokers).

If you are bidding as a consortium, partnership, joint venture or special purpose vehicle: you must be adequately covered as a whole but may do so through any combination of policies of member organisations.

1.5.1 Is your Public Liability indemnity cover greater than £5 million GBP per incident?	Yes
1.5.2 Is your Employers Liability cover greater than £5 million GBP per incident (or the amount required by law)?	Yes

1.6 HEALTH & SAFETY

If you are bidding as a consortium, partnership, joint venture or special purpose vehicle: the lead member must ensure that this information is shared with all members. The lead member must confirm that all members understand and agree their obligations in this section.

Your organisation must:

- Ensure that its entire workforce and all sub-contractors will comply with all relevant health and safety legislation as well as any requirements or instructions from F&HDC.
- Have appointed a competent person with overall responsibility for health and safety that is duly authorised in the organisation.
- Have processes in place for the identification of training needs and delivery of training to its workforce appropriate to the work for which it is bidding.
- Have processes in place for the development of risk assessments and method statements relevant to the nature of the work for which it is bidding that will identify, manage and mitigate associated risks and hazards.

If your organisation has five or more employees

- have in place a written health and safety policy as required by Section 2(3) of the Health and Safety at Work etc Act 1974 and issue any codes of safe working practices to your workforce.

This policy must provide details of the competent person or persons that have been appointed on behalf of the organisation to undertake the measures needed to comply with the requirements and prohibitions of the Management of Health and Safety at Work Regulations 1999.

F&HDC may verify your compliance with the above requirements at any stage of the procurement process or during the life of the contract, by means of policy checking, validation of accreditations, site audits or any other method it deems appropriate.

Further information on employers' health and safety obligations can be found on the Health and Safety Executive website at [hse.gov.uk/simple-health-safety/index](https://www.hse.gov.uk/simple-health-safety/index).

Specific guidance on how to write a policy and risk assessment is available at [hse.gov.uk/simple-health-safety/write](https://www.hse.gov.uk/simple-health-safety/write).

Please confirm that you understand and agree to your obligations as described above	Yes
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1.7 EQUALITY & DIVERSITY

If you are bidding as a consortium, partnership, joint venture or special purpose vehicle: your response must apply to all members.

1.7.1 Does your organisation comply with its legal obligations under the Equality Act 2010, relating to the protected characteristics as follows?	Answer
Age	Yes
Disability	Yes
Gender reassignment	Yes
Marriage and civil partnership	Yes
Pregnancy and maternity	Yes
Race	Yes
Religion or belief	Yes
Sex	Yes
Sexual orientation	Yes

1.7.2 In the last three years has any finding of unlawful discrimination been made against your organisation by any court or industrial or employment tribunal? Or in comparable proceedings in any jurisdiction other than the UK?	No
1.7.3 In the last three years has any finding of unlawful discrimination been made against your organisation as a result of a formal investigation by the Equality and Human Rights Commission (EHRC) or any relevant statutory European Body?	No

<p>1.7.4 If the answer to either 1.8.2 or 1.8.3 was Yes, provide the following information:</p> <p>(a) If your organisation was required to take action, did the action taken satisfy the relevant organisation?</p> <p>(b) what action your organisation was required to take</p> <p>(c) what action your organisation took. If your organisation did not take the required action, explain why not.</p> <p>You may be excluded if you are unable to demonstrate to F&HDC's satisfaction that appropriate remedial action has been taken to prevent similar unlawful discrimination occurring in the future.</p>	
Not applicable	
<p>1.7.5 If you use sub-contractors, do you have processes in place to check whether any of the above apply to your sub-contractors?</p>	Not applicable

1.8 MODERN SLAVERY

<p>1.8.1 Section 54 of the Modern Slavery Act 2015 requires organisations with a turnover of £36 million or more to develop a slavery and human trafficking statement each year.</p> <p>Does this requirement apply to your organisation?</p> <p>Guidance about the Modern Slavery Act 2015 can be found online (go to gov.uk webpage)</p>	No
<p>1.8.2 If you have answered 'yes' to 1.8.1 are you compliant with the annual reporting requirements contained within Section 54 of the Act 2015?</p> <p>If yes, provide the web address where your report can be found</p> <p>If no, please explain.</p>	Not applicable

1.8.3 This question is for information only. Your tender will not be rejected if the answer is 'no'.

If you have answered 'no' to 1.8.1, do you have a modern slavery policy or measures in place to mitigate the risk of modern slavery in your organisation and in your supply chain?

This would include checks made on your staff and people who work for your organisation through subcontractors and agencies.

If yes, please provide details of the measures currently in place.

Yes [insert details] / No

1.8.4 This question is for information only. Your tender will not be rejected if the answer is 'no'.

Are all of your employees paid at the National Living Wage (NLW) or higher?

The current rate of NLW can be found online ([go to gov.uk webpage](https://www.gov.uk/national-living-wage))

Yes, we pay National Living Wage as a minimum to all our employees, including employees under 23 years of age.

1.9 WHISTLEBLOWING

1.9.1 Do you have a Whistleblowing policy in place; or do you agree to have in place or adopt F&HDC's Whistleblowing policy by contract award?

([go to F&HDC's policy page](#))

Yes

SECTION 2 – TECHNICAL AND QUALITY QUESTIONS

2.1 CAPABILITY

NOT USED.

2.2 GENERAL DATA PROTECTION

For the purposes of the Data Protection Legislation, F&HDC does not anticipate the contractor processing any data on our behalf. The contractor will be a data controller of information relating to F&HDC and its officers as clients of the contractor.

2.2.1 Do you have the resources, systems and procedures in place to ensure your organisation will comply with the General Data Protection Regulations and F&HDC's information management policies while performing the contracted services?

If **yes**, please provide details of the measures currently in place.

If **no**, please detail what measures will be in place before the contract starts.

We do not process data, our ICO registration number is ZA521472

2.3 SKILLS AND APPRENTICES

NOT USED.

2.4 CARBON REDUCTION

This question is for information only, but must be completed.

<p>2.4.1 Do you currently have a carbon reduction plan or other measures in place to avoid or minimise the carbon emissions produced by your organisation and in your supply chain?</p>	<p>No</p>
<p>2.4.2 Provide an estimated figure for your scope 1 (direct emissions), scope 2 (energy indirect) emissions for your organisation's previous financial year. Guidance on how to calculate this figure can be found online (go to "Small Business User Guide" on gov.uk website)</p>	
<p>This is not information that we have calculated, the question has not been asked before. We will now look into how to calculate this data ,with the help of the information in the above link.</p>	
<p>2.4.3 If you do not have a carbon reduction plan, does your organisation intend to evaluate its carbon emissions and implement carbon reduction initiatives within the next 12 months?</p>	<p>Yes</p>

2.5 HEADLINE QUESTIONS

This Section is discretionary PASS/FAIL. If you answer 'no' to this question the Council is entitled to exclude you from consideration but may decide, having considered all the relevant circumstances, to allow you to proceed further.

2.5.1 Please confirm whether the nursery in which the plants will be raised is located within 50 minutes' drive of Civic Centre, Castle Hill Avenue, Folkestone CT20 2QY as estimated by Google Maps.	Yes
2.5.2 This question is for information only. If the address of the nursery is different from the registered office in question 1.1.1, please confirm the address of the nursery.	Not applicable

2.6 WEIGHTED QUESTIONS

Q1. Quality (20%)

Part of the Council's [Corporate Plan](#) is "A thriving environment": We will ensure a clean, attractive and safe environment for residents, visitors and businesses.

Please describe how you will raise the plants to ensure quality.

Max. 750 words

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted text block containing multiple paragraphs of blacked-out content]

[Redacted text block]

Q2. Sustainability (20%)
One of the guiding principles for the [Corporate Plan](#) is "A greener Folkestone & Hythe":
Please describe how you will raise the plants sustainably.
Max. 750 words

[Redacted text block]

[Redacted text block]

Q3. Delivery (20%)
Please describe how you will manage deliveries to ensure they take place on time and how you will communicate and manage any delays or disruptions to delivery.
Max. 750 words

[Redacted text block]

[Redacted text block containing multiple paragraphs of blacked-out content]

SECTION 3 – PRICING SCHEDULE

- 3.1 Please complete **Appendix C – Price Schedule**.
- 3.2 The Council asks the supplier to make peat-free compost an available **option** in addition to standard substrate compost. Quotations will be evaluated on the standard substrate price only.
- 3.3 Prices/rates quoted are to be in £ Sterling strictly net and inclusive of **all costs** associated with the provision of the Goods/Services/Works to be provided to meet the Council's requirements set out at **Appendix A**.
- 3.4 Price(s) submitted must be **exclusive** of Value Added Tax. The percentage and amount of Value Added Tax shall, if chargeable, be shown on invoices in accordance with prevailing Customs and Excise Regulations.
- 3.5 Where estimated requirements are stated within this ITQ, these are intended for guidance only and are not guaranteed. Please submit your best commercial offer based on the information provided.
- 3.6 Unless otherwise stated, prices must be fixed (i.e. not subject to variation) for the period of the contract subject.
- 3.7 The Council reserves the right to adjust any arithmetical errors it finds in any quotation and shall inform the prospective supplier of the adjustments, but has no duty to suppliers to find such errors.

SECTION 4 – TERMS & CONDITIONS OF CONTRACT

This Section is **PASS/FAIL**. If you answer 'no' F&HDC is entitled to reject your tender but can choose to allow you to proceed further, after considering your circumstances.

If you answer 'no', please set out the full details in an additional appendix. F&HDC will consider your response before making a decision about whether or not to include your tender in its evaluations or to reject it.

<p>Please ensure you have read Appendix E and Section 7 of the Instructions document.</p> <p>Do you accept F&HDC's terms (or the terms as amended by F&HDC in any pre-tender clarifications)?</p>	<p>Yes</p>
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SECTION 5 – DECLARATIONS

TO: The District Council of Folkestone and Hythe (F&HDC)

PROVISION OF: Supply of Summer and Winter Bedding Plants 2024

REFERENCE: DN703608

On behalf of [Amethyst Horticulture Ltd], I offer to provide the supplies, services and/or works to F&HDC as specified in the tender documents, commencing and continuing for the period specified in those documents (including any option to extend).

The tender documents consist of:

- Invitation to Tender Instructions
- Specification
- Draft contract terms
- my organisation's completed Price Schedule
- this response document
- and any documents I have submitted with this response document (listed on the first page)

If this offer is accepted, we will execute such documents as maybe appropriate in order to create a binding contract between F&HDC and ourselves.

I agree with the Council in legally binding terms to comply with the provisions of confidentiality set out in the **Invitation to Tender Instructions**.

I understand F&HDC is not obliged to accept the tender with the lowest cost or any tender.

I accept that any costs incurred in preparing this tender are at my organisation's own cost and F&HDC will not provide any reimbursement of these costs for unsuccessful or successful tenders.

I declare that to the best of my knowledge the answers submitted and information contained in this document are correct and accurate.

I declare that, upon request and without delay I will provide the certificates or documentary evidence referred to in this document.

I understand that the authority may reject this submission in its entirety if there is a failure to answer all the relevant questions fully, or if false/misleading information or content is provided in any section.

I am aware of the consequences of serious misrepresentation.

I declare our tender has not been calculated by agreement or arrangement with any person other than F&HDC and that the pricing information for our tender has not been shared with any person before the Tender Return Date and not without the written consent of F&HDC.

Invitation to Tender (ITT) - Supplier Response Document

I declare no person at my organisation has canvassed or solicited any member, officer, employee or agent of F&HDC in connection with the award of the Contract and that no person will do so before F&HDC completes the evaluation process.

I warrant that I have all requisite authority to sign this tender and confirm that I have complied with all the requirements of the tender process described in the **Invitation to Tender Instructions** and this **Invitation to Tender supplier response document**.

Signature:	██████████
Name & job title:	██████████ Director
Dated:	17.12.2023
For and on behalf of:	Amethyst Horticulture Ltd



Procurement
Folkestone and Hythe District Council
Civic Centre,
Castle Hill Ave,
Folkestone
T20 2QY
17.12.2023

Dear Madam

Re Tender for the supply of seasonal bedding plants.

I have pleasure in submitting my response to the above

Amethyst have supplied seasonal bedding plants to Folkestone and Hythe for a number of years, I hope that we will be able to continue working with you.

In preparation for the proposed ban on peat use, we have decided to change our entire bedding production to peat free from 2024, I have therefore not given a price for peat based compost for the bedding plants.

We will continue to use peat reduced basket compost, whilst we are permitted for the floral displays, to date we have not found the peat free basket alternatives to sustain the displays as well through the season. The compost does not retain as much water. Once a quality alternative has been established we will then convert to peat free production in all areas.

I hope you will find our response comprehensive, however should you require any additional information please do not hesitate to contact us.

Yours sincerely

[Redacted signature]

[Redacted signature]

Amethyst Horticulture

**Folkestone & Hythe District Council
SUMMER BEDDING 2023**

Expected delivery; 1st week in June 2024 to various sites within FHDC

Price per plant/unit must include delivery and all associated costs.

Our entire bedding plant production will be in peat free from 2024

Plant	Quantity	Pot Size	£ per plant with Peat Free compost		£ per plant with standard compost	
				Subtotals		Subtotals
Cineraria	2135	9b				
Cosmos White	2930	9b				
Cosmos Mixed	2500	9b				
Geranium Horizon Mixed	32139	9b				
Geranium Horizon Orange	11155	9b				
Verbena bonariensis	1529	9b				
SUBTOTAL	52388					

Baskets/ troughs	Quantity	£ per unit with Peat Free compost		£ per unit with standard compost	
			Subtotals		Subtotals
Amberol up the pole half unit UTP-2P (Diameter 800mm Depth 270mm)	66				
Amberol Cup and Saucer Up-the-Pole Basket (Diameter 650mm Depth 300mm)	52				
Amethyst barrier basket (trough) (Dimensions (WxHxD) 1000x290x400mm)	50				
TOTAL	168				

Folkestone & Hythe District Council
Winter BEDDING 2024/25

Expected delivery; 1st week in October 2024 to various sites within FHDC

Price per plant/unit must include delivery and all associated costs.

Plant	Quantity	Pot Size	£ per plant with Peat Free compost	Subtotals	£ per plant with standard compost	Subtotals
Bellis Medici Mixed	4346	9b				
Myosotis Sylvia Blue	2380	9b				
Polyanthus mixed	47145	9b				
TOTAL	53871					

winter planting to include evergreen shrubs trailing Ivy , bulbs and bedding

Baskets/ troughs	Quantity (up to)	£ per unit with Peat Free compost	Subtotals	£ per unit with standard compost	Subtotals
Amethyst barrier basket (trough) (Dimensions (WxHxD) 1000x290x400mm)	45				
TOTAL	45				

**Folkestone & Hythe District Council
SUMMER BEDDING 2025**

Expected delivery; 1st week in June 2025 to various sites within FHDC

Price per plant/unit must include delivery and all associated costs.

Our production will be peat free

Plant	Quantity	Pot Size	£ per plant with Peat Free compost		£ per plant with standard compost	
				Subtotals		Subtotals
Ageratum Blue Horizon	8525	9b				
Cineraria	5980	9b				
Cleome Mix	500	9b				
Geranium Horizon Pink Passion	38424	9b				
Ricinus Red	120	9b				
Verben bonar	2030	9b				
TOTAL	55579					

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larger pot 1L at
ea

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recommend a
larger pot 1L at
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**Folkestone & Hythe District Council
SUMMER BEDDING 2025**

Expected delivery; 1st week in June 2025 to various sites within FHDC

Price per plant/unit must include delivery and all associated costs.

Baskets/ troughs	Quantity		£ per unit with Peat Free compost	Subtotals	£ per unit with standard compost	Subtotals
Amberol up the pole half unit UTP-2P (Diameter 800mm Depth 270mm)	66					
Amberol Cup and Saucer Up-the-Pole Basket (Diameter 650mm Depth 300mm)	52					
Amethyst barrier basket (trough) (Dimensions (WxHxD) 1000x290x400mm)	50					
TOTAL						

Folkestone & Hythe District Council
Winter BEDDING 2025/26

Expected delivery; 1st week in October 2025 to various sites within FHDC

Price per plant/unit must include delivery and all associated costs.

production will be peat free

Plant	Quantity	Pot Size	£ per plant with Peat Free compost		£ per plant with standard compost	
				Subtotals		Subtotals
Cineraria	5003	9b				
Polyanthus Spring Fever Mixed	48080	9b				
TOTAL	53083					

winter planting to include evergreen shrubs trailing Ivy , bulbs and bedding

Baskets/ troughs	Quantity (up to)	£ per unit with Peat Free compost		£ per unit with standard compost	
			Subtotals		Subtotals
Amethyst barrier basket (trough) (Dimensions (WxHxD) 1000x290x400mm)	45				
TOTAL					

SCHEDULE 3

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 Council at its absolute discretion.

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

██████████, The District Council of Folkestone and Hythe, Civic Centre, Castle Hill Avenue, Folkestone, Kent CT20 2QY.

data.protection@folkestone-hythe.gov.uk

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

██████████, Newington Nursery, London Road, Newington, Kent ME9 7NY

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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 Controller for each Category of Personal Data	<p>The Parties are Independent Controllers of Personal Data</p> <p>The Parties acknowledge that they are Independent Controllers for the purposes of the Data Protection Legislation in respect of:</p> <ul style="list-style-type: none">• Business contact details of Supplier Personnel,• Business contact details of any directors, officers, employees, agents, consultants and contractors of the Council (excluding the Supplier Personnel) engaged in the performance of the Council's duties under this Agreement).
Duration of the processing	For the duration of this Contract

Nature and purposes of the processing	<p>recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, erasure or destruction of data (whether or not by automated means)</p> <p>for enabling effective communication between the Parties</p>
Type of Personal Data	name, telephone number(s), email address(es)
Categories of Data Subject	Staff (including volunteers, agents, and temporary workers)
<p>Plan for return and destruction of the data once the processing is complete</p> <p>UNLESS requirement under law to preserve that type of data</p>	The data shall be retained by the Supplier for no more than twelve (12) months after the expiry of this Contract and destroyed no later than 31 October 2026.
Locations at which the Supplier and/or its Sub-contractors process Personal Data under this Agreement	At the supplier's premises only.
Protective Measures that the Supplier and, where applicable, its Sub-contractors have implemented to protect Personal Data processed under this Agreement against a breach of security (insofar as that breach of security relates to data) or a Personal Data Breach	refer to section 2.2 of Schedule 2 Supplier's tender