Dated 2020

(1) Bournemouth, Christchurch and Poole Council

and

(2) Supplier name

Agreement for the Supply of Refuse Collection Vehicles

SUPPLY OF GOODS AGREEMENT

CONTRACT DETAILS

DATE:

[Contract No:]	[CONTRACT NUMBER]
Customer:	Bournemouth, Christchurch and Poole Council ("**BCP**")
Customer's address:	Town Hall, Bourne Avenue, Bournemouth, BH2 6DY
Customer's representative:	Name: [NAME] Title: [TITLE] Email: [EMAIL] Telephone: [Telephone] Postal Address: As above
Supplier:	[COMPANY NAME] LIMITED (No. [NUMBER])
Supplier's address:	[ADDRESS]
Supplier's VAT number:	[NUMBER]
[Supplier's representative:]	Name: [NAME] Title: [TITLE] Email: [EMAIL] Telephone: [Telephone] Postal Address: [POSTAL ADDRESS]
Commencement Date:	2020
Delivery Location:	DELIVERY ADDRESS
Goods:	DESCRIPTION
Price:	[PRICE] **OR** the price for Goods set out in [Schedule 1]
[Specification:]	[TECHNICAL, DESIGN, PERFORMANCE, BUSINESS OR REGULATORY REQUIREMENTS]
Termination Date:	3 years from the Commencement Date
[Schedules:]	[Schedule 1: Price of the Goods] [Schedule 2: Mandatory Policies]

	[Schedule 3: Order form] [Schedule 4: Quality Standards] [DETAILS OF ADDITIONAL SCHEDULES]

1. This Agreement is made up of the following:

(a) This **Agreement Details**.

(b) The **Conditions**.

[(c) The Mandatory Policies.

[(d) The additional **Schedules** specified in this Agreement Details.

2. If there is any conflict or ambiguity between the terms of the documents listed in paragraph 1, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list.

This Agreement has been entered into on the date stated at the beginning of it.

Signed by NAME OF AUTHORISED SIGNATORY .....

for and on behalf of NAME OF BCP

Title .....

Signed by NAME OF AUTHORISED SIGNATORY .....

for and on behalf of NAME OF SUPPLIER

Title .....

CONDITIONS

1. Interpretation

1.1 Definitions:

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

Commencement Date: the date this Agreement commences, as set out in this Agreement Details.

Conditions: these terms and conditions set out in clause 1 to clause 14 (inclusive).

Contract: this Agreement between the Customer and the Supplier for the sale and purchase of the Goods in accordance with this Agreement, the Mandatory Policies, the additional Schedules and these Conditions.

Delivery Date: the date specified for delivery of an Order, in accordance with clause 3.2.

Delivery Location: the address for delivery of the Goods, as set out in this Agreement Details.

Goods: the goods (or any part of them) as set out in this Agreement Details.

Mandatory Policies: the Customer's mandatory policies for contracts set out in Schedule 2, as amended by notification to the Supplier from time to time.

Order: the Customer's order for the Goods submitted by the Customer in accordance with clause 3.

Price: the price for the Goods, as set out in this Agreement Details.

Specification: the specification for the Goods including any related plans and drawings that are agreed in writing by the Customer and the Supplier as set out in this Agreement Details.

VAT: value added tax or any equivalent tax chargeable in the UK.

1.2 Interpretation:

(a) a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted from time to time. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

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

(c) a reference to **writing** or **written** includes emails.

2. Commencement and term

This Agreement shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with its terms, until the Termination Date, when it shall terminate automatically without notice.

3. Orders and Pre-contractual Information

3.1 The Customer may submit Orders for Goods in the form set out in Schedule 3 at any time.

3.2 The Supplier shall use its best endeavours to supply Goods in accordance with the Orders, by the delivery date specified in the Order.

3.3 The Customer may amend or cancel an Order in whole or in part at any time before delivery by giving the Supplier written notice. The Customer shall pay the Supplier fair and reasonable compensation for any work in progress on the Goods at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.

3.4 The Supplier agrees and acknowledges that it has been provided with and understands all the information to assess the scope of the Customer's requirement for the supply of the Goods. Accordingly, the Supplier acknowledges and agrees that it may not at any time claim any extension of time, relief from its contractual obligations or charge for additional costs or time incurred on the basis that it was unaware of the scope and extent of the Customer's requirements or of any and an all of the matters included within the Invitation to Tender and the associated written response by the Supplier.

3.5 The Supplier represents, warrants and undertakes that all information that it has provided to the Customer is true, complete and accurate and acknowledges that the Customer is entering into this Agreement in reliance on that information.

4. The Goods

4.1 The Supplier shall ensure that the Goods:

(a) correspond with their description and any applicable Specification;

(b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgment;

(c) where they are manufactured products, be free from defects in design, material and workmanship and remain so for 12 months after delivery or as specified in Schedule 4 Quality Standards whichever is the longer period;

(d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods; and

(e) comply with Government Buying Standards (GBS) Minimum mandatory standards for transport 2017

4.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under this Agreement.

4.3 The Customer has the right to inspect and test the Goods at any time before delivery.

4.4 If following such inspection or testing the Customer considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 4.1, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

4.5 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under this Agreement, and the Customer shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

5. Delivery

5.1 The Supplier shall ensure that:

(a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;

(b) each delivery of Goods is accompanied by a delivery note which shows the order number, the type and quantity of Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the relevant Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

(c) if the Supplier requires the Customer to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.

5.2 The Supplier shall deliver the Goods specified in each Order:

(a) on or before its relevant Delivery Date;

(b) at the Delivery Location; and

(c) during the Customer's normal business hours, or as instructed by the Customer.

5.3 Delivery of Goods is completed on the completion of unloading of those Goods at the Delivery Location.

5.4 If the Supplier delivers more or less than the quantity of Goods ordered, and the Customer accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods. If the Supplier:

(a) delivers less than 75% of the quantity of Goods ordered, the Customer may reject the Goods;

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

5.5 If the Customer rejects any Goods, then they are returnable at the Supplier's risk and expense. If the Supplier fails to collect rejected Goods within a reasonable period after notification of the rejection, the Customer may charge the Supplier storage costs and sell or dispose of the rejected Goods. The Customer will account to the Supplier for the proceeds of sale (if any) after deducting the purchase price paid for the Goods, storage costs and its reasonable costs and expenses in connection with the sale.

5.6 The Supplier shall not deliver Orders in instalments without the Customer's prior written consent. Where it is agreed that Orders may be delivered by instalments, such instalments shall be invoiced separately. However, failure by the Supplier to deliver any one instalment on time or at all, or any defect in an instalment, shall entitle the Customer to the remedies set out in clause 6.

6. Customer remedies

6.1 If the Goods are not delivered by the relevant Delivery Date, or do not comply with the undertakings set out in: clause 4.1, then, without limiting any of its other rights or remedies, and whether or not it has accepted the Goods, the Customer may exercise any one or more of the following remedies:

(a) to terminate this Agreement;

(b) to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;

(c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);

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

(e) to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods from a third party; and

(f) to claim damages for any other costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to carry out its obligations under this Agreement.

6.2 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

6.3 The Customer's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.

7. Title and risk

Title and risk in the Goods shall pass to the Customer on completion of delivery.

8. Price and payment

8.1 The Customer shall pay for Goods in accordance with this clause 8.

8.2 The Price:

(a) excludes amounts in respect of VAT, which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and

(b) includes the costs of packaging, insurance and carriage of the Goods.

8.3 No extra charges shall be effective unless agreed in writing and signed by the Customer.

8.4 The Supplier may invoice the Customer for price of the Goods plus VAT at the prevailing rate (if applicable) on or at any time after the completion of delivery. The Supplier shall ensure that the invoice includes the date of the Order, the invoice number, this Agreement Number, the Customer's order number, the Supplier's VAT registration number, and any supporting documentation that the Customer may reasonably require.

8.5 The Customer shall pay correctly rendered invoices within 30 days of receipt of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier.

8.6 If a party fails to make any payment due to the other under this Agreement by the due date for payment, then the defaulting party shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 2% a year above the Bank of England's base rate from time to time, but at 1% a year for any period when that base rate is below 0%.

8.7 The Customer may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier.

9. Customer materials

The Supplier acknowledges that all materials, equipment and tools, drawings, Specifications, and data supplied by the Customer to the Supplier (**Customer Materials**) and all rights in the Customer Materials are and shall remain the exclusive property of the Customer. The Supplier shall keep the Customer Materials in safe custody at its own risk, maintain them in good condition until returned to the Customer, and not dispose or use the same other than in accordance with the Customer's written instructions or authorisation.

10. Indemnity

10.1 The Supplier shall keep the Customer 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 or incurred by the Customer as a result of or in connection with:

(a) any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the supply or use of the Goods, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;

(b) any claim made against the Customer by a third party for death, personal injury or damage to property arising out of or in connection with defects in Goods, to the extent that the defects in the Goods are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and

(c) any claim made against the Customer by a third party arising out of or in connection with the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Agreement by the Supplier, its employees, agents or subcontractors.

10.2 This clause 10 shall survive termination of this Agreement.

11. Insurance

During the term of this Agreement and for a period of 6 years thereafter, the Supplier shall maintain in force, with a reputable insurance company product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with this Agreement, and shall, on the Customer'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.

12. Compliance with relevant laws and policies

12.1 In performing its obligations under this Agreement, the Supplier shall:

(a) comply with all applicable laws, statutes, regulations and codes from time to time in force; and

(b) comply with the Mandatory Policies.

12.2 The Customer may immediately terminate this Agreement for any breach of clause 12 by the Supplier.

13. Termination

13.1 Without limiting its other rights or remedies, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:

(a) the other party commits a material breach of any term of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;

(b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

(c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

(d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under this Agreement has been placed in jeopardy.

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

13.3 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

14. General

14.1 Force majeure. Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for 1 month, the party not affected may terminate this Agreement by giving 30 days' written notice to the affected party.

14.2 Subcontracting. The Supplier may not subcontract any or all of its rights or obligations under this Agreement without the prior written consent of the Customer. If the Customer consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all acts and omissions of its subcontractors as if they were its own.

14.3 Confidentiality.

(a) Each party undertakes that it shall not at any time during this Agreement and for a period of 2 years after termination of this Agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group to which the other party belongs, except as permitted by clause 14.3(b). For the purposes of this clause, **group** means, in relation to a party, that party, any subsidiary or holding company from time to time of that party, and any subsidiary from time to time of a holding company of that party.

(b) Each party may disclose the other party's confidential information:

(i) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 14.3(b); and

(ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

(c) No party shall use any other party's confidential information for any purpose other than to perform its obligations under this Agreement.

14.4 Entire agreement. This Agreement 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.

14.5 Variation. No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

14.6 Waiver. No failure or delay by a party to exercise any right or remedy provided under this Agreement 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.

14.7 Severance. If any provision or part-provision of this Agreement 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 this Agreement.

14.8 Notices.

(a) Any notice or other communication given to a party under or in connection with this Agreement shall be in writing, addressed to that party at its registered office 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 or email.

(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 14.8(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the 2nd 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 email, 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.

14.9 Third party rights. No one other than a party to this Agreement and their permitted assignees shall have any right to enforce any of its terms.

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

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

Schedule 1 Price of the Goods

Schedule 2 Mandatory Policies

The Authority's Information Governance and Information Security standards outlined in the two policies 'Information Governance Policy' and 'Information Security Policy' that can be found by following this link: https://www.bcpcouncil.gov.uk/About-BCP-Council/Privacy/Privacy.aspx

If you do not have your own policies then the Authority's standards outlined in its Policy document 'Equality and Diversity Policy' that can be found by following this link: https://www.bcpcouncil.gov.uk/About-BCP-Council/Equality-and-Diversity/EIA-Docs/Equality-and-Diversity-Policy-EIA.pdf

Schedule 3 [Order form]

Schedule 4 [Quality Standards]