

**GOSPORT BOROUGH COUNCIL**  
**TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES**

**1. DEFINITIONS**

“**Authority**” means the Gosport Borough Council and where the context permits, reference to the Authority in these Terms and Conditions shall include reference to an employee of the Authority.

“**Authority’s representative**” means any person named on the Purchase Order as key personnel or any person who the Authority notifies the Contractor is to be regarded as a key personnel during the course of the Services.

“**Price**” means the price or rate for the Services given in the Purchase Order.

“**Services**” means the services described in the Purchase Order.

“**Order Number**” means the unique number that appears on the Purchase Order.

“**Parties**” means the Authority and the Contractor.

“**Premises**” means any land or building where the Services are to be performed specified in the Purchase Order.

“**Purchase Order**” means an order for services served by the Authority on the Contractor which includes a description of the services, the Price applicable to the Services and any particular terms applying to the Services which are additional to these Terms and Conditions.

“**Contractor**” means the person, firm or company whose name appears as the addressee in the Purchase Order.

“**Terms and Conditions**” means these terms and conditions for the supply of Services.

**2. GENERAL**

2.1 These Terms and Conditions together with the relevant Purchase Order and any other document, plan or specification referred to in the Purchase Order constitute the contract between the Parties for the Services (“the Contract”).

2.2 In the event of any conflict between a clause in these Terms and Conditions and a term of the Purchase Order, the terms of the Purchase Order shall prevail.

2.3 The Contract constitutes the entire agreement between the parties relating to the Services and replaces all previous negotiations, agreements, understandings and representations whether oral or in writing. However nothing in the Contract shall limit or exclude any liability for fraud.

2.4 Nothing in this Contract shall have the effect of making the Contractor an agent, servant or employee of the Authority.

**3. THE SERVICES**

3.1 The Contractor shall provide the Services set out in the Purchase Order.

3.2 The Contractor shall perform the Services:

- a. with reasonable care and diligence;
- b. in accordance with industry best practice and using the best available techniques and standards;
- c. using staff who have appropriate skills, qualifications and experience;
- d. using the appropriate number of staff; and
- e. to the reasonable satisfaction of the Authority’s Representative.

3.3 The Contractor shall provide all plant, equipment and materials necessary for the performance of the Services except as otherwise agreed with the Authority. All plant, equipment and materials shall be at the Contractor’s risk. The Price shall include the costs of haulage of plant, equipment and material to the Authority’s Premises and their removal after the Services are complete.

3.4 The Contractor shall not place or cause to be placed any orders with third parties or otherwise incur any liabilities to third parties in the name of the Authority without the prior written consent of the Authority’s Representative.

**4. TIME OF PERFORMANCE**

4.1 The Contractor shall carry out the Services for the period and/or in accordance with the timescales set out in the Purchase Order. In the event that the Purchase Order does not specify any timescales, the Contractor shall comply with any reasonable timescales notified by the Authority.

4.2 The Authority may by written notice require the Contractor to execute the Services in such order as the Authority may reasonably decide. In the absence of such notice the Contractor shall submit such detailed programmes of work and progress reports as the Authority may from time to time require.

4.3 The Contractor shall notify the Authority immediately if it becomes aware of any event that it believes is likely to delay or impede the performance of the Services.

4.4 In the event that the Contractor fails to meet a date or dates set out in the Purchase Order it shall, on the request of the Authority, and without prejudice to the Authority's other rights and remedies, arrange to provide all such additional resources as are necessary to fulfil its obligations at no additional cost to the Authority.

## **5. REJECTION OF SERVICES**

5.1 The Authority may at any time reject the Services or anything delivered as part of the Services which in the reasonable view of the Authority does not comply with the Purchase Order or these Terms and Conditions in any material way.

5.2 If the Authority rejects all or part of the Services under Condition 5.1 above, it shall serve a notice on the Contractor stating the reasons for such rejection.

5.3 Following receipt of a notice of rejection of the Services, the Contractor shall have 5 (five) working days (or such other period as the Parties may agree in writing) during which the Contractor shall correct the faults which caused the notice of rejection to be issued.

5.4 If the Contractor fails to correct the faults which caused the notice of rejection to be issued to the reasonable satisfaction of the Authority within 5 (five) working days, the Authority shall be entitled to terminate this Contract or any part of the Services.

5.5 The Contractor shall remove and/or re-execute (at the choice of the Authority) any work that has been rejected by the Authority.

5.6 The Authority may require the immediate removal from its Premises of anything delivered by the Contractor which, in the reasonable view of the Authority, is hazardous or noxious. The Contractor shall comply with any such request at its own expense.

## **6. CONTRACTOR'S PERSONNEL**

6.1 The Contractor shall make dedicated staff named by the Contractor available for the purposes of the Services and shall not make any changes to the dedicated staff without the prior written approval of the Authority.

6.2 If and when requested by the Authority, the Contractor shall provide the Authority with a list of the names and addresses of any person being used to supply the Services specifying, in each case, the capacities in which they are involved and giving such other particulars and evidence of identity and other supporting evidence as the Authority may reasonably require.

6.3 The Contractor shall comply with any notice reasonably given by the Authority stating that a person named in the notice is not to be involved any further in the provision of the Services. The Contractor shall replace any such person with someone of equivalent skills and qualifications.

6.4 The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of any act of Parliament relating to discrimination in employment. The Contractor shall take all reasonable steps to secure the observance of these provisions by all servants, sub-contractors or agents of the Contractor.

## **7. SECURITY AND USE OF AUTHORITY'S PREMISES**

7.1 Where the Services are being carried out at Premises owned or occupied by the Authority:

a) the Contractor shall comply and shall ensure that its staff, sub-contractors and agents comply with any rules or regulations applied by the Authority in relation to security at its Premises;

b) the Contractor shall comply with any notice given by the Authority stating that a person named in the notice is to be removed from the Premises and/or not deployed any further in the provision of the Services. The Contractor shall ensure that the person is replaced by someone of at least equivalent skills and qualifications. The decision of the Authority on whether someone may be admitted to its Premises is final. The Contractor shall bear the cost of complying with such a notice.

c) The Contractor shall keep the Premises reasonably clean and tidy while the Services are being performed and shall leave them clean and tidy on completion.

- d) The Contractor shall pay the costs of making good any damage to the Premises (and any fixtures and fittings of the Premises) done by its employees, agents or sub-contractors other than fair wear and tear.
- e) The Contractor shall occupy the Premises as a licensee only.
- f) The Contractor shall co-operate with any other person, firm or company which is providing services to the Authority at the same time as the Contractor.

## **8. PAYMENT**

8.1 In consideration of the carrying out of the Services by the Contractor the Authority shall pay the Contractor the Price.

8.2 The Contractor shall submit an invoice for the Services to the Authority's address for invoices given in the Purchase Order. The invoice shall contain the Order Number and a description of the Services carried out and the Price payable.

8.4 The Authority shall pay the Contractor within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed to the satisfaction of the Authority.

8.5 In addition to the Price, the Authority shall pay the Contractor a sum equivalent to any Value Added Tax chargeable in respect of the Services. Value Added Tax shall be shown as a separate item on the Contractor's invoice.

8.6 The Contractor shall implement any legislative requirement to account for goods and services in Euro instead of or as well as Sterling at no cost to the Authority. The Authority shall provide all reasonable assistance to facilitate any such requirement.

## **9. RECOVERY OF SUMS DUE**

If any sum is recoverable from or payable by the Contractor under the Contract, that sum may be deducted from any sum then due or which at a later date becomes due to the Contractor under the Contract or under any other agreement with the Authority.

## **10. AUDIT**

The Contractor shall keep and maintain until two years after the Contract has been completed records to the satisfaction of the Authority of all expenditures that are reimbursable by the Authority. These records shall include records of the hours worked and costs incurred by the Contractor or any employees of the Contractor in connection with the Services. The Contractor shall on request afford the Authority or any person reasonably specified by the Authority such access to those records as may be required by the Authority in connection with the Contract.

## **11. INTELLECTUAL PROPERTY**

11.1 The intellectual property rights (including the copyright) in any reports, documentation or materials produced as part of the Services are hereby assigned to and shall vest in the Authority. This condition shall survive the termination of this Contract.

11.2 Save where the Services uses documentation and materials supplied by the Authority, the Contractor warrants that none of the documentation and materials used or created as part of the Services shall infringe any patent, trade mark, registered design, copyright or other rights in industrial property of any third party.

11.3 The Contractor shall indemnify the Authority against all actions, demands, charges, expenses and costs (including legal costs on a solicitor and Authority basis) which the Authority may incur as a result of or in connection with any breach of clause 11.2.

## **12. HEALTH AND SAFETY**

12.1 The Contractor shall notify the Authority of any health and safety hazards which may arise in connection with the performance of this Contract.

12.2 Where the Services are being carried out at land or premises owned or occupied by the Authority, the Authority shall notify the Contractor of any health and safety hazards which may exist or arise at its premises and which may affect the Contractor. The Contractor shall draw these hazards to the attention of any of its employees, subcontractors or agents who may be affected by them and instruct such persons in connection with any necessary safety measures.

## **13. CONFIDENTIALITY**

13.1 The Contractor undertakes to keep secret and not to disclose and to procure that its employees, sub-contractors and agents keep secret and do not disclose any information of a confidential nature which it has obtained by reason of this Contract. Nothing in this clause applies to information which is already in the public domain or the possession of the Contractor other than by reason of breach of this clause.

13.2 The provisions of this Condition shall survive the termination of this Contract however that occurs.

#### **14. INDEMNITY AND INSURANCE**

14.1 Without prejudice to any rights or remedies of the Authority the Contractor shall indemnify the Authority against all actions, demands, losses, expenses and costs (including legal costs on a solicitor and client basis) which the Authority may suffer or incur as a result of or in connection with any damage to property or any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any defect in the Services or any negligence or breach of this Contract by the Contractor.

14.2 The Contractor shall have in place with a reputable insurance company a policy or policies of insurance covering all the indemnities under this Contract. At the request of the Authority the Contractor shall produce the relevant policy of insurance together with evidence of payment of its latest premium.

#### **15. CHANGE CONTROL**

15.1 This Contract may not be varied or amended unless the variation or amendment is in writing and agreed by both the Authority and the Contractor.

15.2 The price for any variation (if applicable) shall be the fair and reasonable price taking into account the market price available to the Authority for similar services. The Contractor shall supply the Authority with all information necessary to allow the Authority to ascertain whether the price is fair and reasonable.

15.3 If any change is agreed to anything included on the Purchase Order the Authority reserves the right to issue a replacement Purchase Order. These terms and conditions shall apply to any replacement purchase order as if it were the original Purchase Order.

#### **16. ASSIGNMENT OR SUB-CONTRACTING**

16.1 The Contractor shall not assign or sub-contract any part of the Services without the written consent of the Authority.

16.2 No sub-contracting of this Contract shall in any way relieve the Contractor of its obligations under the Contract.

16.3 Where the Contractor enters a sub-contract for the purpose of performing this Contract it shall ensure that the sub-contract has a term requiring the Contractor to pay the sub-contractor within 30 days of receipt of a valid invoice.

#### **17. RIGHTS OF THIRD PARTIES**

This Contract shall not create any rights which are enforceable by anyone other than the Parties.

#### **18. TERMINATION**

18.1 The Contractor shall notify the Authority in writing immediately upon the occurrence of any of the following events:

a) (where the Contractor is an individual) if a petition is presented for the Contractor's bankruptcy or a criminal bankruptcy order is made against the Contractor, or the Contractor makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage his affairs;

b) (where the Contractor is a firm; or a number of persons acting together in any capacity) if any event in (a) or (c) of this Condition occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Contractor to be wound up as an unregistered company; or

c) where the Contractor is a company, if the company passes a resolution for winding-up or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge.

18.2 The Authority shall be entitled to terminate this Contract by notice to the Contractor with immediate effect if:

a) any of the events described in Condition 18.1 occurs;

b) the Contractor has committed a material breach of this Contract and (if such breach is capable of remedy) has failed to remedy such breach within thirty days of being required by the Authority in writing to do so; or

c) (where the Contractor is an individual), if he shall die or be adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983.

18.3 The Authority shall be entitled to terminate this Contract at any time by giving to the Contractor not less than thirty days' notice to that effect.

## **19. NOTICES**

19.1 Any notice or other communication given under or pursuant to this Contract must be given in writing and must be delivered in person or sent by post. Communications must be sent to the address for communications given in the Purchase Order (which may be altered at any time by the altering Party giving the other Party 15 days notice of a changed address). Communications to the Authority must be sent to the Authority's representative at the address given for the buyer contact on the Purchase Order and not its address for invoices.

19.2 A notice or communication shall be deemed to have been received 2 working days after posting in the case of first class delivery and 4 working days after posting in the case of second class delivery unless the receiving party proves otherwise.

## **20. GOVERNING LAW**

Unless the Purchase Order specifies otherwise, this Contract shall be governed by and construed in accordance with the law of England and Wales and shall be subject to the exclusive jurisdiction of the courts of England and Wales.

## **21. BRIBERY AND CORRUPTION**

The Authority may cancel the contract and recover from the Contractor the amount of any loss resulting from such cancellation:

21.1 If the Contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for so doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the contract or any other contract, with the Authority or for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Authority or

21.2 If the like acts shall have been done by any person in the employ or on behalf of the Contractor (whether with or without the Contractor's knowledge, or

21.3 If in relation to any contract with the Authority the Contractor or any person in the employ of or acting on the Contractor's behalf shall have committed any offence under the Prevention of Corruption Acts, 1889 to 1916, or shall have given any fee or reward the receipt of which is an offence under Section 117 of the Local Government Act 1972.