**Award Letter;**

**Date:**

**My ref:**

**Contact:**

[insert name]

[insert position]

North Somerset Council

The Town Hall

Weston-super-Mare

North Somerset

BS23 1UJ

**Direct dial:**

**Email:** xx.xx@n-somerset.gov.uk

Attn: [insert Supplier contact name]

By email to: [insert Supplier contact email address]

Dear [Sir or Madam],

**Award of contract for the supply of Recycling Receptacles**

Following your tender/ proposal for the supply of Recycling Receptacles to North Somerset Council we are pleased to award this contract to you. Accompanying this letter is a copy of the Contract and its Schedules, including the specification, pricing schedule and your bid. Please complete the Contract where indicated regarding [insert Supplier Name]’s details, then sign and return three (3) copies to the above address. The Council will then sign the Contract and return a copy to you.

Please confirm your acceptance of the award of this contract by signing and returning the enclosed copy of this letter to [insert name] at the above address within 7 days from the date of this letter. No other form of acknowledgement will be accepted. Please remember to quote the reference number above in any future communications relating to this contract.

For the purposes of the Agreement, the Customer and the Supplier agree as follows:

1. The Goods shall be Delivered in accordance with the following instructions:

**Delivery Address**

[insert delivery address, including telephone number of receiving individual]

**Date of Delivery**

[insert date of delivery]

1. The charges for the Goods shall be as set out in the Supplier’s quotation dated [insert date]].
2. The specification of the Goods to be Delivered is as set out in the Supplier’s quotation dated [insert date]].
3. The address for notices of the Parties are:

|  |  |
| --- | --- |
| **Customer** | **Supplier** |
| [insert name and address of Customer]  Attention: [insert title]  Email: [insert email address] | [insert name and address of Supplier]  Attention: [insert title]  Email: [insert email address] |

Yours faithfully,

|  |  |
| --- | --- |
| Signed for and on behalf of North Somerset Council | |
| Name: [insert name]  [insert job title] | Name: [insert name] [insert job title] |
| Signature: | Signature: |
| Date: | Date: |

We accept the terms set out in this letter and its [**Schedule/Schedules**], including the Conditions.

|  |  |
| --- | --- |
| Signed for and on behalf of [insert name of Supplier] | |
| Name: [insert name]  [insert job title] |  |
| Signature: | Date: |

**Contract:**

DATED 20

**NORTH SOMERSET COUNCIL**

**AND**

**[insert supplier]**

**CONTRACT**

For

Supply and Delivery of Recycling Receptacles

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This Agreement is dated

**PARTIES**

**(1) NORTH SOMERSET COUNCIL** of Town Hall, Weston-super-Mare BS23 1UJ (‘**Customer’)**

**(2)** [ **INSERT SUPPLIER’S NAME** ] [(registered company number]) whose registered office is at [ INSERT ADDRESS ] (**‘Supplier’**)

**BACKGROUND**

This contract (Contract) and its [Schedule / Schedules] set out the terms of the contract between North Somerset Council as the Customer and [***insert Supplier’s name***] as the Supplier for the supply and delivery of the Goods. The contract is for the supply and delivery of Recycling Receptacles. Please do not attach any Supplier terms and conditions to this Contract as they will not be accepted by the Customer and may delay the conclusion of the Agreement.

The Council, through a competitive process selected the Supplier to provide the Services and the Supplier is willing and able to provide the Services in accordance with the terms and conditions of this Agreement.

Interpretation

* 1. In these terms and conditions:

|  |  |  |
| --- | --- | --- |
| “Agreement” | means this contract between (i) the Customer and (ii) the Supplier constituted by the Supplier’s countersignature of the Contract and includes the Contract and its Schedules; | |
| “Award Letter” | means the letter from the Customer to the Supplier Confirming the award of this Contract; | |
| “Charges” | | means the charges for the Goods as specified in the pricing schedule attached as Schedule [insert number] to this contract; | |
| “Confidential Information” | | means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential; | |
| “Customer”  “Date of Delivery” | | means the person named as Customer in the Contract;  means that date by which the Goods must be Delivered to the Customer, as specified in the Contract. | |
| “Deliver” | | means hand over the Goods to the Customer at the address and on the date specified in the Award Letter, which shall include unloading and any other specific arrangements agreed in accordance with Clause 5. Delivered and Delivery shall be construed accordingly. |
| “DPA” | | means the Data Protection Act 1998; |
| “FOIA” | | means the Freedom of Information Act 2000; |
| “Goods” | | means the goods to be supplied by the Supplier to the Customer under the Agreement; |
| “Information” | | has the meaning given under section 84 of the FOIA; |
| “Party” | | the Supplier or the Customer (as appropriate) and “Parties” shall mean both of them; | |
| “Purchase Order Number” | | means the Customer’s unique number relating to the order for Goods to be supplied by the Supplier to the Customer in accordance with the terms of the Agreement; | |
| “Request for Information” | has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” shall apply); | |
| “Specification” | | means the specification for the Goods to be supplied by the Supplier to the Customer (including as to quantity, description and quality) as specified in the Contract; | |
| “Staff” | | means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier’s obligations under the Agreement; |
| “Supplier” | | means the person named as Supplier in the Award Letter; | |
| “VAT” | | means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and |
| “Working Day” | | means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London, and excluding any day that the Customer is not open for normal business. |

* 1. In these terms and conditions, unless the context otherwise requires:
     1. references to numbered clauses are references to the relevant clause in these terms and conditions;
     2. any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
     3. the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;
     4. any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
     5. the word ‘including’ shall be understood as meaning ‘including without limitation’.
     6. The Goods shall be delivered to [insert description of premises (including whether they are the Customer’s premises, or a third party’s premises and in each case the address)].
     7. The charges for the Goods shall be as set out in the Supplier’s quotation dated [insert date]].
     8. The specification of the Goods to be supplied is as set out in the Supplier’s quotation dated [insert date]].

Supply of Goods

* 1. In consideration of the Customer’s agreement to pay the Charges, the Supplier shall supply the Goods to the Customer subject to and in accordance with the terms and conditions of the Agreement.
  2. In supplying the Goods, the Supplier shall co-operate with the Customer in all matters relating to the supply of Goods and comply with all the Customer’s instructions.
  3. The Supplier shall supply the Goods in accordance with the Specification. The Supplier warrants, represents, undertakes and guarantees that the Goods supplied under the Agreement shall:
     1. be free from defects (manifest or latent), in materials and workmanship and remain so for 24 months after Delivery;
     2. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and comply with any applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods;
     3. conform with the specifications (including the Specification), drawings, descriptions given in quotations, estimates, brochures, sales, marketing and technical literature or material (in whatever format made available by the Supplier) supplied by, or on behalf of, the Supplier;
     4. be free from design defects;
     5. be 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 judgement. The Supplier acknowledges and agrees that the approval by the Customer of any designs provided by the Supplier shall not relieve the Supplier of any of its obligations under this sub-clause; and
     6. and the Supplier itself shall, comply with all applicable laws.

Charges, Payment and Recovery of Sums Due

* 1. The Charges for the Goods shall be as set out in the Suppliers quotation and shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Goods specified in the contract. The Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the supply of the Goods, including but not limited to the costs of packaging, insurance, delivery, unloading, stacking and carriage.
  2. All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Customer shall, following the receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Goods.
  3. Following Delivery of the Goods, the Supplier shall invoice the Customer as specified in the Agreement. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Goods supplied in the invoice period.
  4. All invoices must be sent, quoting a valid purchase order number (PO Number), to: accounts.payable@n-somerset.gov.uk. Within 10 working days of receipt of your countersigned copy of this letter, we will send you a unique PO Number. You must be in receipt of a valid PO Number before submitting an invoice.
  5. To avoid delay in payment, the invoice should be compliant and includes a valid PO Number, PO Number item number (if applicable) and the details (name and telephone number) of the Customer contact (i.e. Contract Manager). Non-compliant invoices will be sent back to the Supplier. If the Supplier has a query regarding an outstanding payment contact the Customer’s Accounts Payable section by email to accounts.payable@n-somerset.gov.uk.
  6. In consideration of the supply of the Goods by the Supplier, the Customer shall pay the Supplier the invoiced amounts no later than 30 calendar days after verifying that the invoice is valid and undisputed and includes a valid Purchase Order Number.
  7. If the Customer fails to consider and verify an invoice in a timely fashion the invoice shall be regarded as valid and undisputed for the purpose of paragraph 3.4 after 15 working days has passed.
  8. If there is a dispute between the Parties as to the amount invoiced, the Customer shall pay the undisputed amount. The Supplier shall not suspend the supply of the Goods unless the Supplier is entitled to terminate the Agreement for a failure to pay undisputed sums in accordance with clause 17.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 21.
  9. If a payment of an undisputed amount is not made by the Customer by the due date, then the Customer shall pay the Supplier interest at the interest at at specified in the Late Payment of Commercial Debts (Interest) Act 1998.
  10. Where the Supplier enters into a sub-contract, the Supplier shall include in that sub-contract:
      1. provisions having the same effects as clauses 3.3 to 3.9 of this Agreement; and
      2. a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions having the same effects as 3.3 to 3.10 of this Agreement.
      3. In this clause 3.10, “sub-contract” means a contract between two or more suppliers, at any stage of remoteness from the Customer in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.
  11. If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Customer from any sum then due, or which may come due, to the Supplier under the Agreement or under any other agreement or contract with the Customer. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part.

Cancellation

* 1. The Customer shall have the right to cancel the order for the Goods, or any part of the Goods, which have not yet been Delivered to the Customer. The cancellation shall be made in writing. Without prejudice to the generality of the foregoing, the Customer shall pay such Charges or that part of the Charges for Goods which have been Delivered to the Customer or, on the deemed date of service of the notice of cancellation, are already in transit and the costs of materials which the Supplier has purchased to fulfil the order for the Goods and which cannot be used for other orders or be returned to the supplier of those materials for a refund. For the avoidance of doubt the Customer shall not be liable for any loss of anticipated profits or any consequential loss.

Delivery

* 1. The Supplier shall Deliver the Goods to the Customer on or by the Date of Delivery. Unless otherwise agreed in writing by the Customer, Delivery shall be on the date and to the address specified in the Contract. Delivery of the Goods shall be completed once the completion of unloading the Goods from the transporting vehicle at the Delivery address has taken place and the Customer has signed for the Delivery.
  2. Any access to the Customer’s premises and any labour and equipment that may be provided by the Customer in connection with Delivery of the Goods shall be provided without acceptance by the Customer of any liability in respect of any actions, claims, costs and expenses incurred by third parties for any loss of damages to the extent that such loss or damage is not attributable to the negligence or other wrongful act of the Customer or its servant or agent.
  3. The Supplier shall indemnify the Customer in respect of any actions, suits, claims, demands, losses, charges, costs and expenses, which the Customer may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of Delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Supplier or any of his sub-Suppliers.
  4. Delivery of the Goods shall be accompanied by a delivery note which shows the Purchase Order Number and the type and quantity of the Goods and, in the case of part Delivery, the outstanding balance remaining to be Delivered.
  5. Unless otherwise stipulated by the Customer in the Contract, Deliveries shall only be accepted by the Customer on Working Days and during normal business hours.
  6. Where (i) the Supplier fails to Deliver the Goods or part of the Goods or (ii) the Goods or part of the Goods do not comply with the provisions of clause 2, then without limiting any of its other rights or remedies implied by statute or common law, the Customer shall be entitled:
     1. to terminate the Agreement;
     2. request the Supplier, free of charge, to deliver substitute Goods within the timescales specified by the Customer;
     3. to require the Supplier, free of charge, to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
     4. to reject the Goods (in whole or part) and return them to the Supplier at the Supplier’s own risk and expense and the Customer shall be entitled to a full refund on those Goods or part of Goods duly returned;
     5. to buy the same or similar Goods from another supplier and

to recover any expenses incurred in respect of buying the goods from another supplier which shall include but not be limited to administration costs, chargeable staff time and extra delivery costs.

Property and Guarantee of Title

6.1 Without prejudice to any other rights or remedies of the Customer, title and risk in the Goods shall pass to the Customer when Delivery of the Goods is complete (including off-loading and stacking)

* 1. The Supplier warrants that:
     1. it has full clear and unencumbered title to all the Goods;
     2. at the date of Delivery of any of the Goods it shall have full and unrestricted right, power and authority to sell, transfer and deliver all of the Goods to the Customer. On Delivery the Customer shall acquire a valid and unencumbered title to the Goods.

Staff

* 1. If the Customer reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Supplier:
     1. refuse admission to the relevant person(s) to the Customer’s premises;
     2. direct the Supplier to end the involvement in the provision of the Goods of the relevant person(s); and/or
     3. require that the Supplier replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Customer to the person removed is surrendered,

and the Supplier shall comply with any such notice.

* 1. The Supplier shall:
     1. if requested, provide the Customer with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Customer’s premises in connection with the Agreement; and
     2. ensure that all Staff comply with any rules, regulations and requirements reasonably specified by the Customer.

Assignment and Sub-Contracting

* 1. The Supplier shall not without the written consent of the Customer assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. The Customer may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.
  2. Where the Customer has consented to the placing of sub-contracts, the Supplier shall, at the request of the Customer, send copies of each sub-contract, to the Customer as soon as is reasonably practicable.
  3. The Customer may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Supplier provided that such assignment, novation or disposal shall not increase the burden of the Supplier’s obligations under the Agreement.

Not Used

Governance and Records

* 1. The Supplier shall:
     1. attend progress meetings with the Customer at the frequency and times specified by the Customer and shall ensure that its representatives are suitably qualified to attend such meetings; and
     2. submit progress reports to the Customer at the times and in the format specified by the Customer
  2. The Supplier shall keep and maintain until 7 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Goods supplied under it, and all payments made by the Customer. The Supplier shall on request afford the Customer or the Customer’s representatives such access to those records as may be reasonably requested by the Customer in connection with the Agreement.

Confidentiality, Transparency and Publicity

* 1. Subject to clause 11.2, each Party shall:
     1. treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and
     2. not use or exploit the disclosing Party’s Confidential Information in any way except for the purposes anticipated under the Agreement.
  2. Notwithstanding clause 11.1, a Party may disclose Confidential Information which it receives from the other Party:
     1. where disclosure is required by applicable law or by a court of competent jurisdiction;
     2. to its auditors or for the purposes of regulatory requirements;
     3. on a confidential basis, to its professional advisers;
     4. to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
     5. where the receiving Party is the Supplier, those Staff which have a need to know basis to enable performance of the Supplier’s obligations under the Agreement, the Supplier shall ensure that any Staff to whom it discloses Confidential Information pursuant to this clause 11.2.5 shall observe the Supplier’s confidentiality obligations under the Agreement; and
     6. where the receiving Party is the Customer:
        + 1. on a confidential basis to the employees, agents, consultants and contractors of the Customer;
          2. on a confidential basis to any other Local Authority or any company to which the Customer transfers or proposes to transfer all or any part of its business;
          3. to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
          4. in accordance with clause 12.2.

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this clause 11.

* 1. The Parties acknowledge that, except for any Information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Agreement is not Confidential Information and the Supplier hereby gives its consent for the Customer to publish the Agreement in its entirety to the general public (but with any Information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the Agreement agreed from time to time. The Customer may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.
  2. The Supplier shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Customer.

Freedom of Information

* 1. The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:
     1. provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;
     2. transfer to the Customer all Requests for Information relating to the Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
     3. provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within 5 Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and
     4. not respond directly to a Request for Information unless authorised in writing to do so by the Customer.
  2. The Supplier acknowledges that the Customer may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Supplier or the Goods (including commercially sensitive information) without consulting or obtaining consent from the Supplier. In these circumstances the Customer shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier’s attention after any such disclosure
  3. Notwithstanding any other provision in the Agreement, the Customer shall be responsible for determining in its absolute discretion whether any Information relating to the Supplier or the Goods is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.

Protection and Security of Data

* 1. The Supplier shall, and shall procure that all Staff shall, comply with any notification requirements under the DPA and both Parties shall duly observe all their obligations under the DPA which arise in connection with the Agreement.
  2. When handling Customer data, the Supplier shall ensure the security of the data is maintained in line with the security requirements of the Customer as notified to the Supplier from time to time.

Liability

* 1. The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by the Customer if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Agreement.
  2. Subject always to clause 14.3 and 14.4;
     1. except in the case of claims arising under clauses 9.2 and 20.3, in no event shall either Party be liable to the other Party for any:
        + 1. loss of profits;
          2. loss of business;
          3. loss of revenue;
          4. loss of or damage to goodwill;
          5. loss of savings (whether anticipated or otherwise); and/or
          6. any indirect, special or consequential loss or damage.
  3. Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:
     1. death or personal injury caused by its negligence or that of its Staff;
     2. fraud or fraudulent misrepresentation by it or that of its Staff;
     3. breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
     4. any other matter which, by law, may not be excluded or limited.
  4. The Supplier’s liability under the indemnity in clauses 10.2 and 19.3 shall be unlimited.

Insurance

* 1. The Supplier shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance to remain in place for a 7 year period following the termination of this Agreement and pay any resulting premiums, providing as a minimum the following levels of cover:
     1. Public Liability Insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims;
     2. Employer's Liability Insurance with a limit of indemnity of not less than £5,000,000; in relation to any one claim or series of claims;
     3. Product Liability Insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims;

(the “**Required Insurances**”) in respect of all risks which may be incurred by the Supplier, arising out of the Supplier’s performance of the Agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.

* 1. The Supplier acknowledges that in respect of the Required Insurances any excess or deductibles shall be the sole responsibility of the Supplier.
  2. The onus is on the Supplier to ensure that the Required Insurances are adequate at all times to cover eventualities pertaining to its business.
  3. The Supplier shall give the Customer, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
  4. The Supplier will deal speedily and efficiently with all insurance claims submitted to it by a third party, which claim shall be dealt with either by the Supplier’s Personnel or by referring the claim to its insurers.
  5. All money paid under any of the Required Insurances shall:
     1. On or before Termination Date be paid be paid to the Supplier and applied towards the liabilities in respect of which the money was received; or
     2. Following the Termination Date be paid to the Customer and applied towards satisfying any claim by a third party in respect of which the money was received.
  6. If, for whatever reason, the Supplier fails to give effect to and maintain the Required Insurances, the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.

The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under this Agreement.

Force Majeure

Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of the Party affected. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when the circumstances cease to cause a delay or failure. If such circumstances continue for a continuous period of more than two months, either Party may terminate the Agreement by written notice to the other Party.

Termination

* 1. The Customer may terminate the Agreement without default, in whole or in part before Delivery or after Delivery (where only part of Goods have been Delivered), by notice in writing to the Supplier to take effect on any date falling at least 10 Working Days later than the date of service of the relevant notice.
  2. Without prejudice to any other right or remedy it might have, the Customer may terminate the Agreement with default, in whole or in part before Delivery or after Delivery (where only part of Goods have been Delivered), by written notice to the Supplier, setting out the default of the Supplier’s default (a “Default Notice”), with immediate effect if the Supplier:
     1. (without prejudice to clause 17.2.5), is in material breach of any obligation under the Agreement which is not capable of remedy;
     2. repeatedly breaches any of the terms and conditions of the Agreement 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 and conditions of the Agreement;
     3. is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;
     4. undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;
     5. breaches the provisions of clauses 7.2, 11, 12, 13 and 19;
     6. becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier’s assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 17.2.6) in consequence of debt in any jurisdiction; or
     7. fails to comply with legal obligations in the fields of environmental, social or labour law.
  3. The Supplier shall notify the Customer as soon as practicable of any change of control as referred to in clause 17.2.4 or any potential such change of control.
  4. In addition to the Supplier’s statutory rights, the Supplier may terminate the Agreement by written notice to the Customer if the Customer has not paid any undisputed amounts within 90 days of them falling due.

Consequences of termination

* 1. Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under clauses 2.2, 2.3, 7, 9, 10.2, 11, 12, 13, 14, 18.2, 20.3, 21 and 22.7 and any other term or condition of the Agreement that either expressly or by implication has effect after termination.
  2. Upon termination or expiry of the Agreement, the Supplier shall:
     1. give all reasonable assistance to the Customer and any incoming supplier of Goods; and
     2. return all requested documents, information and data to the Customer as soon as reasonably practicable.
  3. Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the Termination Date.

Compliance

* 1. The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Customer’s premises and which may affect the Supplier in the performance of its obligations under the Agreement.
  2. The Supplier shall:
     1. comply with the reasonable requirements of the Customer's security arrangements;
     2. comply with all the Customer’s health and safety measures;
     3. notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Customer’s premises where that incident causes any personal injury or damage to property which could give rise to personal injury;
     4. perform its obligations under the Agreement in accordance with all applicable equality Law and the Customer’s equality and diversity policy as provided to the Supplier from time to time;
     5. take all reasonable steps to secure the observance of clause 19.2.4 by all Staff; and
     6. supply the Goods and any packaging in accordance with the Customer’s environmental policy as provided from time to time.
  3. The Goods shall be packed and marked in a proper manner and in accordance with any instructions specified in the Award Letter, any statutory requirements and any requirements of the carriers. All packaging materials shall be considered non-returnable. The Supplier shall indemnify the Customer against all actions, suits, claims, demands, losses, charges, costs and expenses which the Customer may suffer or incur as a result of, or in connection with, any breach of this clause 19.3.

Prevention of Fraud and Corruption

* 1. The Supplier shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.
  2. The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Agreement and shall notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
  3. If the Supplier or the Staff engages in conduct prohibited by clause 20.1 or commits fraud in relation to the Agreement or any other contract with the Customer, the Customer may:
     1. terminate the Agreement and recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Goods and any additional expenditure incurred by the Customer throughout the remainder of the Agreement; or
     2. recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of this clause.

Dispute Resolution

* 1. The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.
  2. If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 21.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the “Mediator”) chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
  3. If the Parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.

General

* 1. Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
  2. A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
  3. The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
  4. The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
  5. Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
  6. The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party’s behalf.
  7. Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
  8. If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

Notices

* 1. Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 23.3, e-mail to the address of the relevant Party set out in the Award Letter, or such other address as that Party may from time to time notify to the other Party in accordance with this clause.
  2. Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.
  3. Notices under clauses 16 (Force Majeure) and 17 (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 23.1.

Governing Law and Jurisdiction

* 1. The validity, construction and performance of the Agreement, and all contractual and non contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

## [Schedule 1]