

## CONDITIONS OF PURCHASE

### 1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these Conditions.

**Authorised Person:** a person who has authority to execute/sign documents on behalf of the Council.

**Contract:** the Order and the Supplier's acceptance of said Order.

**Council:** the Mayor and Burgesses of the London Borough of Croydon

**Goods:** any goods or supplies agreed in the Contract to be bought by the Council from the Supplier (including any part or parts of them).

**Order:** the Council's purchase order for the Goods and/or Services signed by an Authorised Person and incorporating these Conditions and the contents of any documents expressly referred to in the Order and annexed thereto.

**Supplier:** the person, firm or company who accepts the Council's Order.

**Services:** any services or works to be provided by the Supplier to the Council under the Contract.

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

1.3 A reference to one gender includes a reference to the other gender.

1.4 Condition headings do not affect the interpretation of these Conditions.

### 2. APPLICATION OF TERMS

2.1 Subject to any variation under Condition 2.5, these Conditions together with any additional Conditions specified in the Order are the only Conditions upon which the Council is prepared to deal with the Supplier and they shall govern the Contract to the entire exclusion of all other terms or Conditions.

2.2 In the event of any ambiguity or conflict between these Conditions and the terms on any Order, the terms of the Order shall prevail.

2.3 Each Order for Goods and/or Services by the Council from the Supplier shall be deemed to be an offer by the Council to buy Goods and/or Services subject to these Conditions and no Order shall be accepted until the Supplier either expressly by giving notice of acceptance, or impliedly by fulfilling the Order, in whole or in part accepts the offer.

2.4 No terms or Conditions endorsed upon, delivered with or contained in the Supplier's quotation, acknowledgement or acceptance of order, specification or similar document shall form part of the Contract and the Supplier waives any right which it otherwise might have to rely on such terms and Conditions.

2.5 These Conditions apply to all the Council's purchases and any variation to these Conditions shall have no effect unless expressly agreed in writing and signed by a person who is authorised to sign on behalf of the Council.

### 3. QUALITY AND DEFECTS

3.1 The Goods and/or Services provided shall be of best quality, material, workmanship and design (if the Supplier is

responsible for the design element) and be without fault and conform in all respects with:

3.1.1 any sample(s) provided by the Supplier and accepted by the Council;

3.1.2 the Order and;

3.1.3 any drawings, descriptions, specifications and/or patterns supplied or advised by the Council to the Supplier.

3.2 The Supplier shall comply with and the Supplier warrants that the Goods and/or Services shall comply with all requirements of any applicable statute, regulations, standards, statutory rules or orders or other instruments having the force of law. In addition, the Supplier shall perform any Services in accordance with generally recognised commercial practices within their particular industry and shall ensure that where there is an appropriate British Standard or EEC equivalent in place at the date of this Order the quality of the Goods and/or Services shall not be less than this standard

3.3 The Council's rights under these Conditions are in addition to the statutory Conditions implied in favour of the Council by the Sale of Goods Act 1979 and/or the Supply of Goods and Services Act 1982 and any other statute.

3.4 At any time prior to or following delivery of the Goods and/or performance of Services to the Council, the Council shall have the right to inspect and test or witness the Supplier testing the Goods and/or Services.

3.5 If the results of such inspection or testing cause the Council to be of the opinion that the Goods and/or Services do not conform or are unlikely to conform with Condition 3.1, the provisions of Condition 13 shall apply without prejudice to any other rights which the Council may have.

3.6 Any such inspection or testing shall not diminish or otherwise affect the Seller's obligations under the Contract.

### 4. WARRANTIES

4.1 The Supplier warrants that:

4.1.1 it and all agents, consultants and employees which it may engage in relation to the Services:

4.1.1.1 shall observe all health and safety rules and regulations and ensure the completion of any necessary risk assessment, or plan or similar documents necessary and provide copies of said documents to the officer authorising the Order; and shall, whilst on the Council's premises, abide by such rules or procedures as the Council may from time to time specify; and

4.1.1.2 shall in no circumstances purport to be the agents, consultants and employees of the Council; and

4.1.1.3 shall in no circumstances purport to be authorised to enter into any contract or agreement on behalf of the Council or in any way bind the Council to the performance, variation, release or discharge of any obligation;

4.1.2 it shall observe and comply with all statutes, regulations, agreements, standards or any other instruments having the force of law in relation to the packing, labelling and carriage of hazardous materials; and

4.1.3 prior to delivery it shall provide the Council with all information which is reasonably available to it or in its possession, on any potential hazards known or believed to exist in the transport, handling or use of the Goods and/or Services.

### 5. INDEMNITY

5.1 The Supplier shall indemnify and keep indemnified the Council in full, against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded

against or incurred or paid by the Council as a result of or in connection with:

5.1.1 defective workmanship, quality or materials in the manufacture or supply of the Goods and/or Services;

5.1.2 an infringement or alleged infringement of any intellectual property rights caused by the use, manufacture or supply of the Goods and/or Services; and

5.1.3 any claim made against the Council in respect of any liability, loss, damage, injury or death, cost or expense sustained by the Council's or Supplier's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury or death, cost or expense was caused by, relates to or arises from the Goods and/or Services as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Contract by the Supplier; and

5.1.4 The provisions of this condition 5 shall survive termination of the Contract howsoever arising.

### 6. DELIVERY/PERFORMANCE

6.1 The Goods shall be delivered, to the place specified by the Council in the Order or to such other place of delivery as is agreed by the Council in writing prior to delivery of the Goods. The Supplier shall off-load the Goods at its own risk as directed by the Council. All carriers of the Goods shall be deemed to be agents of the Supplier and not of the Council.

6.2 The date and time (if requested) for delivery and/or the performance of Services shall be specified in the Order. Time for delivery and/or performance shall be of the essence.

6.3 The Supplier shall notify the Council as soon as reasonably practicable of any anticipated delays in the delivery and/or performance of the Goods and/or Services.

6.4 The Supplier shall ensure that each delivery of Goods is accompanied by a delivery note which includes (without limitation); the Order number, date of Order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered. This note shall become the property of the Council.

6.5 If the delivery note is signed on behalf of the Council this shall be evidence only of the number of packages received. It shall not be evidence that the correct quantity or number of Goods has been delivered or that the Goods are in good condition or of the correct quality.

6.6 Unless otherwise stipulated by the Council in the Order, deliveries shall only be accepted by the Council on a working day and during normal working hours.

6.7 If the Goods are delivered prior to the due date the Council reserves the right to:

6.7.1 Refuse to take delivery of the Order (or part thereof); or

6.7.2 Recover from the Supplier and expenditure reasonably incurred in storing and/or insuring the Goods until the due date for delivery.

6.8 If the Goods and/or Services are not delivered on the due date and/or if the Supplier has failed to meet any performance dates specified in the Contract, then, without prejudice to any other rights which it may have, the Council reserves the right to:

6.8.1 cancel the Contract in whole or in part;

6.8.2 refuse to accept any subsequent delivery of the Goods and/or performance of the Services which the Supplier attempts to make;

6.8.3 recover from the Supplier any expenditure reasonably incurred by the Council in obtaining the Goods and/or Services in substitution from another supplier; and

6.8.4 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 deliver the Goods and/or perform the Services on the due date.

6.9 Where the Council agrees in writing to accept delivery by instalments the Contract shall be construed as a single contract in respect of each instalment. Nevertheless failure by the Supplier to deliver any one instalment, on a date for delivery stated in the Contract, shall entitle the Council at its option to treat the whole Contract as repudiated.

6.10 If the Goods are delivered to the Council in excess of the quantities specified in the Order, the Council shall not be bound to pay for the excess and any excess shall be and shall remain at the Supplier's risk and shall be returnable at the Supplier's expense.

6.11 The Council shall not be deemed to have accepted the Goods until the expiry of 14 days following delivery. In the event that the Council discovers a latent defect in the Goods after the expiry of 14 days following delivery, the Council reserves the right to reject the Goods and/or Services as though they had not been accepted on giving notice thereof to the Supplier no later than 14 days, after such defect has come to the attention of the Council.

### 7. RISK/PROPERTY

7.1 The Goods shall remain at the risk of the Supplier until delivery to the Council is complete (including off-loading and stacking) when ownership and risk of the Goods shall pass to the Council. The passing of title and risk to the Council shall be without prejudice to the rights and remedies of the Council herein contained.

### 8. PRICE

8.1 The price of the Goods and/or Services shall be as stated in the Order and unless otherwise agreed in writing by the Council shall be exclusive of value added tax. All other charges (e.g. delivery) shall be listed separately but included in the price.

8.2 No variation in the price nor extra charges shall be accepted by the Council unless approved by an Authorised Person prior to delivery of the Goods and/or performance of the Services.

### 9. PAYMENT

9.1 The Supplier shall on or after delivery of Goods and/or the performance of Services submit, to the Council's Chief Officer or the department which originated the Order an invoice setting out the price payable by the Council in respect thereof with details of any VAT element thereon (a "Properly Submitted Invoice"). The Council shall pay any such invoice within 30 days of receipt but time for payment shall not be of the essence of the Contract.

9.2 Payment of an invoice by the Council shall not imply acceptance of the Goods and/or Services.

9.3 Without prejudice to any other right or remedy, the Council reserves the right to set off any amount owing at any time from the Supplier to the Council against any amount payable by the Council to the Supplier under the Contract.

### 10. CONFIDENTIALITY/INTELLECTUAL PROPERTY

10.1 The Supplier 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 Supplier by the Council or its agents and any other confidential information concerning the Council's business which the Supplier may obtain and the Supplier

	shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Supplier's obligations to the Council and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality no less onerous than those contained in these Conditions. Any confidential information in the Supplier's possession, at the date of completion or termination of the Contract, shall be returned to the Council at the Supplier's expense.	12.2.5	any distress, execution or other process is levied upon any of the assets of the Supplier; or	14.	<b>ASSIGNMENT</b>
10.2	The Supplier shall grant to the Council and the Council's customers a perpetual, royalty free, worldwide, non-exclusive licence to market, distribute, sell or otherwise use all intellectual property rights belonging or otherwise licensed to the Supplier incorporated in or required for the use of the Goods and/or Services.	12.2.6	the Supplier has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Supplier or notice of intention to appoint an administrator is given by the Supplier or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Supplier or for the granting of an administration order in respect of the Supplier, or any proceedings are commenced relating to the insolvency or possible insolvency of the Supplier; or	14.1	The Supplier shall not be entitled to assign or sub-contract or purport to assign or sub-contract the whole or any part of the Contract.
11.	<b>THE COUNCIL'S PROPERTY</b>			14.2	The Council may assign the Contract or any part of it to any person, firm or company.
11.1	Materials, equipment, tools, dies, moulds, copyright, design rights or any other forms of intellectual property rights in all drawings, specifications and data supplied by the Council to the Supplier or used by the Supplier specifically in the manufacture of the Goods and/or the performance of Services shall at all times be and remain the exclusive property of the Council but shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until returned to the Council at the Supplier's expense on completion of the Contract or termination and shall not be disposed of other than in accordance with the Council's written instructions, nor shall such items be used otherwise than as authorised by the Council in writing.	12.2.7	the Supplier ceases or threatens to cease to carry on its business; or	15.	<b>FORCE MAJEURE</b>
12.	<b>TERMINATION</b>			15.1	The Council reserves the right to defer the date of delivery or payment or to cancel the Contract or reduce the volume of the Goods ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Council including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.
12.1	The Council shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Supplier written notice whereupon all work on the Contract shall be discontinued and the Council shall pay to the Supplier fair and reasonable compensation in respect of work-in-progress at the time of termination (if any) but such compensation shall not include loss of anticipated profits or any consequential loss.	12.2.8	the financial position of the Supplier deteriorates to such an extent that in the opinion of the Council the capability of the Supplier adequately to fulfil its obligations under the Contract has been placed in jeopardy; or	16.	<b>GENERAL</b>
12.2	The Council shall have the right at any time by giving notice in writing to the Supplier to terminate the Contract forthwith if:	12.2.9	there is a change of control of the Supplier as defined in s574 of the Capital Allowances Act 2001.	16.1	Each right or remedy of the Council under the Contract is without prejudice to any other right or remedy of the Council whether under the Contract or not.
12.2.1	the Supplier commits a material breach of any of the terms and conditions of the Contract which breach cannot be remedied within 14 days of being notified in writing to the Supplier or	12.3	The termination of the Contract, however arising, shall be without prejudice to the rights and duties of the Council accrued prior to termination. The Conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.	16.2	If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
12.2.2	the Council and Supplier acknowledge and agree that a breach of Conditions 3.1, 3.2, 4, 6.1 to 6.4 inclusive and 10.1 shall constitute a material breach of a material term for the purposes of this condition.	13.	<b>REMEDIES</b>	16.3	Failure or delay by the Council in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
12.2.3	the Supplier repeatedly breaches any 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; or	13.1	Without prejudice to any other right or remedy which the Council may have, if any Goods and/or Services are not supplied in accordance with, or the Supplier fails to comply with, any of the terms of the Contract the Council shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods and/or Services have been accepted by the Council:	16.4	Any waiver by the Council of any breach of, or any default under, any provision of the Contract by the Supplier shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
12.2.4	the Council finds that the Supplier has offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or having done or foreborne to do any action in relating to the obtaining or execution of any Contract with the Council, or for showing or forbearing to show favour or disfavour to any person in relation any Contract with the Council, or if the like acts shall have been done by any person employed by the Supplier or acting on the Supplier's behalf (whether with or without the Suppliers knowledge), or if in relation to any Contract with the Supplier or any person before referred to 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 The Local Government Act 1972; or	13.1.1	to rescind the Order;	16.5	Any notice or other communication required to be given or sent to the Council or the Supplier pursuant to these Conditions shall be sent, by first class recorded delivery post, to the Council at the address on the Order and addressed to the Council's Chief Officer or the department which originated the Order and to the Supplier at the registered office address if the Supplier is a company and in all other circumstances to the Supplier's address as stated in the Order unless the Supplier notifies the Council, in writing, of any change of address.
		13.1.2	to reject the Goods and/or Services (in whole or in part) and (where applicable) return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Goods so returned shall be paid forthwith by the Supplier;	16.6	The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
		13.1.3	at the Council's option to give the Supplier the opportunity at the Supplier's expense either to remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;	16.7	The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.
		13.1.4	to refuse to accept any further deliveries of the Goods but without any liability to the Supplier;		
		13.1.5	to withhold payment of all or part of a Properly Submitted Invoice;		
		13.1.6	to carry out at the Supplier's expense any work necessary to make the Goods comply with the Contract; and		
		13.1.7	to claim such damages as may have been sustained in consequence of the Supplier's breach or breaches of the Contract.		