

Conditions of Purchase Works Services & Supplies

1. Formation of Contract

- 1.1 No addition, alteration or substitution of these Conditions will bind London Borough of Bromley (LBB) or form part of any contract unless a person authorised to sign on LBB's behalf expressly accepts them in writing.
- 1.2 Nothing in these Conditions shall prejudice any condition or warranty expressed or implied, or any legal remedy to which LBB may be entitled, in relation to the work(s), service(s) and or supply(s) (work/service/supply) which are the subject of this order, by virtue of any statute or custom or any general law or local law or regulation.
- 1.3 The law of England shall govern the construction validity and performance of these conditions and this order.

2. Delivery

- 2.1 In regard to the performance of this order by the provider, time is of the essence. The work/service/supply shall be delivered on the date(s) and time(s) and at the place or places stated in this Order or its attachments. The delivery shall be accompanied by a delivery note or similar document approved by LBB which shall become the property of LBB. Unless otherwise stated delivery must take place on a working day and during normal working hours.

3. Specifications, Quality Tests, Rejection

- 3.1 The work/service/supply must conform in all respects with any drawings, specifications and other requirements or descriptions stated in this Order or its attachments. The work/service/supply must be free from defects and of sound materials, workmanship and (where the provider is responsible for this) design and shall be the same as relevant samples provided by or accepted by LBB. Where an appropriate British standard or EEC equivalent is current at the date of this order the quality of the work/service and/or supply shall not be less than that Standard.
- 3.2 All of the work/service/supply must be fit for purpose, of satisfactory quality and made in compliance with any relevant statutory provision. LBB shall be entitled to reject any work/service/supply which do not conform to contract if by the nature of the work/service/supply, any defects therein or any failure thereof to conform as aforesaid does not or would not become apparent (despite the carrying out of any examination and/or such tests) until after use, LBB may exercise its right to reject the same after it has reasonably been brought to LBB's attention. It is agreed that LBB

may exercise the aforesaid rights of rejection notwithstanding any provision contained in Section 11 or 35 of the Sale of Goods Act 1979.

- 3.3 Any work/service/supply rejected under Condition 3.2 must at LBB's request be replaced at the provider's expense. Alternatively LBB may elect to cancel this order as provided in condition 7 both in respect of the service/supply and of the whole of the undelivered balance (if any) of the work/service/supply covered by this order. All rejected supplies will be returned to the provider at the provider's expense.
- 3.4 LBB's signature, given on any delivery note or other documentation presented by the provider for signature in connection with delivery of any supply, is evidence only of packages etc. received. It is not evidence that the correct quantity or number of supply item has been delivered or that the supplies delivered are in good condition or of the correct quality.
- 3.5 The provider will ensure that in all respects the service/supply comply with all requirements of any statute, statutory rule or order, or other instrument having the force of law, which may be in force when the work/service/supply are delivered.
- 4. Property and Risk**
Property and risk in the service/supply shall pass to us when they are delivered in accordance with Condition 2. Such passing of property and risk shall be without prejudice to any right of rejection arising under these Conditions. In particular (but without prejudice to the generality of the foregoing) under Conditions 3.1 to 3.5 above.
- 5. Price and Payment**
5.1 LBB shall be entitled to withhold payment against any invoice which is not submitted in accordance with these Conditions or which covers or relates to any work/service/supply, which is not in accordance with these conditions.
5.2 LBB will make no payment until a priced invoice has been submitted to the LBB Chief Officer or the department, which originated this order, following delivery in accordance with these Conditions. Payment shall be due within 30 days of the receipt by LBB of a properly submitted invoice provided that any payment by LBB shall not imply acceptance of the work/service /supply.
5.3 Any variation in the price specified must be approved by LBB before delivery of the work/service/supply.
- 6. Indemnities, Third Party Liabilities**
6.1 The provider shall indemnify LBB against all loss actions, costs claims, demands, expenses and any liabilities whatsoever which LBB may incur either at common law or by statute in respect of personal injury to or death of any person or in respect of any loss or destruction of

or damage to property (other than as a result of LBB's default or neglect) which shall have occurred in connection with any work executed by the provider in connection with this order or shall be alleged to be attributable to some defect or deficiency in the work/service/supply.

- 6.2 Whilst any of the provider's personnel are on LBB premises they shall be required to abide by the safety rules and other relevant regulations laid down by LBB from time to time. This order is given on the condition that (without prejudice to the generality of Condition 6.1) the provider will indemnify LBB against all loss actions, costs claims, demands, expenses and any liabilities whatsoever LBB may incur either at common law or by statute in respect of personal injury to or death of any person while on LBB's premises whether or not such persons are (at the time when such personal injury or deaths are caused) acting in the course of their employment.
- 6.3 The provider will indemnify LBB against any and all loss actions, costs claims, demands, expenses and any liabilities whatsoever caused to LBB whether directly, or as a result of the action claim or demand of any third party, by reason of any breach by the supplier of these Conditions or of any terms or obligations on the providers part implied by the Sale of Goods Act 1979, by the Supply of Goods and Services Act 1982 or by any other statute or statutory provision relevant to this order or to the work/service/supply covered thereby. This indemnity shall not be prejudiced or waived by any exercise of LBB's rights under Condition 3.3.
- 6.4 Whenever any sum of money is recoverable from or payable by the provider to LBB as a result of the operation of any of these Conditions or any breach by the provider of same, such sum may be deducted by LBB from any sum then due or which at any time thereafter may become due to the provider under any other order or transaction placed or entered into by LBB with the provider.
- 7. Cancellation**
7.1 LBB reserve the right to cancel the whole or any part of this order or any consignment on the account thereof.
7.2. If the same is not completed in all respects in accordance with the instructions and specifications stated in the order and with these Conditions, in particular (but without prejudice to the generality of the foregoing) with Conditions 2, 3.1 and 3.5 compliance with which by the provider is of the essence;
7.3 The Bribery Act 2010 makes it an offence to offer, promise or give a bribe. It is also an offence to request, or agree to receive or accept a bribe. A "bribe" is a financial or other advantage offered or requested with the intention of inducing or rewarding improper performance of a relevant function or activity. It is a condition of this contract that the Contractor warrants and undertakes that it will comply with

the said Act and the Local Government Act 1972 S 117(2) and will ensure that all persons performing services on its behalf also comply. Any acts of bribery by Contractors or the giving of fees and undertakings in relation to this or any other contract with the Council will result in termination of any contractual arrangements with LBB and immediate debarment/ineligibility from tendering for LBB business and entitle LBB to recover in full from the Contractor any loss resulting from the termination including the cost reasonably incurred of making other arrangements for the provision of the [goods][services] or any other loss sustained by LBB in consequence of the breach of this clause whether or not the contract has been terminated;

7.4 If a Receiving Order is made against the provider or if the provider becomes bankrupt or insolvent or compound with or assign in favour of creditors or (being an incorporated company) shall resolve to wind up or be ordered to be wound up or carry on business under a Receiver.

7.5 In the event of LBB cancelling this order as to all or any work/service/ supply covered thereby LBB shall be entitled to purchase from a third party a like quantity of service/supply of similar description and quality, or a reasonable alternative thereto, bearing in mind LBB's need to take delivery of the work/service/supply by the date specified, and in that event the provider shall be liable to reimburse to LBB on demand all expenditure whatsoever incurred by LBB in connection with LBB's said cancellation, including any increase in the price of the work/service/supply.

8 Health and Safety Risks / Hazardous Work/Service/Supply

- 8.1 The provider shall be responsible for the observance of any duties and/or other requirements set out in any Health and Safety Legislation and ensure the completion of any necessary risk assessment, or plan or similar documents necessary. Copies of any such documentation shall be provided to the officer authorising this order
- 8.2 The provider shall observe the requirements of UK legislation and any relevant international agreements relating to the packing labelling and carriage of hazardous materials. All information held by or reasonably available to the provider regarding any potential hazards known or believed to exist in the transport handling or use of the supply supplied shall be promptly communicated to LBB prior to delivery.

9 Notices

- 9.1 Any notice or other communication required to be given or sent to LBB or to the provider under these Conditions shall be sufficiently given or sent by prepaid first class recorded delivery post to LBB addressed to the Directorate Department Address stated overleaf or to the provider at the

last known place of business or in the case of a company the registered office.

10 Assignment and Sub Contracting

10.1 The Provider shall not assign, sub-let or purport to assign or sub-let the whole or part of this Contract to any person whatsoever.

11 Agency

11.1 Neither the Provider nor any of his employees or sub-contractors are, and in no circumstances shall purport to be, the servants or agents of LBB.

11.2 Neither the Provider nor his employees or sub-contractors are, and in no circumstances shall purport to be, authorised to enter into any Contract or Agreement on behalf of LBB or in any way bind LBB to the performance variation release or discharge of any obligation.

11.3 Neither the Provider nor his employees have, and in no circumstances shall purport to possess, the power to make, vary, discharge or waive any bylaws or regulation of any kind.

12 Severance

12.1 If any provision of the Contract shall become or shall be declared by any Court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity or unenforceability shall in no way impair or affect any other provision of the Contract all of which shall remain in full force and effect.

13. Waiver

13.1 Failure by LBB at any time to enforce provisions of the Contract of any part thereof shall not be construed as a waiver of any such provision and shall not affect the validity of the Contract or any part or the right of LBB to enforce any provision in accordance with its terms.

14. Contracts (Rights Of Third Parties) Act 1999

14.1 For the purposes of the Contracts (Rights of Third Parties) Act 1999, this Contract is not intended to, and does not give any person who is not party to it any right to enforce any of its provisions.

15. Whistle Blowing Policy

15.1. The Contractor/consultant/supplier will adopt and promote the whistleblowing policy of the Council a copy of which will be supplied upon request, or which can be viewed on the Council's web site.

15.2. The Contractor/consultant/supplier will inform its staff, including agency staff and subcontractors, who may have a concern about wrongdoing at work during the provision of works/goods or services to the Council (ie activities that harm clients of the Council, colleagues working for the Council or the Council itself) that those concerns

should be reported to the named persons under the Council's whistleblowing policy.

15.3. The Contractor/consultant/supplier will comply with the Public Interest Disclosure Act 1988 and shall have a policy in place to encourage workers to raise concerns about wrongdoing within their organisation or business and to protect them from victimisation or discrimination.

15.4. For the purposes of this clause "wrongdoing" includes matters such as a criminal offence, a failure to comply with a legal obligation, miscarriage of justice, endangerment of the health or safety of an individual, damage to the environment or the deliberate concealment of information relating to such matters.

16 Personal Data Protection

16.1 Data Protection Legislation means:

- a) The Data Protection Act 1998;
- b) The Data Protection Bill 2017-19 (as enacted);
- c) The General Data Protection Regulation 2016/679 (GDPR);
- d) The Privacy and Electronic Communications (EC Directive) Regulations 2003;
- e) Any other data protection laws and regulations (including amended, supplemental or replacement laws and regulations) applicable in the United Kingdom;
- f) Codes of Conduct published by the Information Commissioner's Office (ICO).

16.2 Each party will comply with all applicable requirements of the Data Protection Legislation.

- a) LBB is the Data Controller and the Contractor is the Data Processor in relation to the Personal Data processing set out in paragraph 16.5;
- b) To the extent that LBB and the Contractor are joint Data Controllers in relation to the processing of any Personal Data they will in good faith agree and sign an Information Sharing Agreement or agree another arrangement which complies with Article 26 GDPR.

16.3 Without prejudice to the generality of paragraph 16.2 above, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under this Agreement the Contractor shall:

- a) process that Personal Data only on the written instructions of LBB and only insofar as is necessary for the performance of this Agreement unless the Contractor is otherwise required by law;
- b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, including:
 - (i) anonymising, pseudonymising and encrypting Personal Data where appropriate;

(ii) ensuring confidentiality, integrity, availability and resilience of its systems and processes;

(iii) ensuring that availability of and access to Personal Data can be restored in a timely manner after any technical or physical incident;

(iv) regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it.

c) ensure that all personnel who have access to and/or process Personal Data are legally obliged to keep the Personal Data confidential;

d) not disclose or transfer any Personal Data to any third party without the express written consent and instruction of LBB;

e) notify LBB within 24 hours of any request from a Data Subject and assist LBB in responding to any request from a Data Subject;

f) comply with the Data Protection Legislation with respect to security, Personal Data Breach notifications, data protection impact assessments and consultations with supervisory authorities or regulators;

g) co-operate with LBB in relation to any Data Protection Impact Assessment carried out by, at the direction of and/or in conjunction with LBB;

h) notify LBB within 24 hours on becoming aware of a Personal Data Breach of any kind and assist LBB in responding promptly including any notification to and communication with the affected Data Subject(s) and the ICO;

i) maintain complete and accurate records and information to demonstrate its compliance with this clause;

j) submit to audits and inspections by LBB and its authorised agents;

k) provide LBB with whatever information LBB reasonably needs to ensure that LBB and the Contractor are meeting their respective Data Protection Legislation obligations;

l) inform LBB immediately if the Contractor is asked to do anything which would infringe the Data Protection Legislation;

m) employ a Data Protection Officer where required and keep LBB informed from time to time of the identity of the currently appointed Data Protection Officer;

n) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of LBB has been obtained (which consent LBB may in its absolute discretion grant or refuse) and the following conditions are fulfilled:

(i) the Contractor has provided appropriate safeguards in relation to the transfer;

(ii) any Data Subject has enforceable legal rights and effective legal remedies;

(iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred;

(iv) the Contractor complies with all instructions notified to it in advance by LBB with respect to the processing of the Personal Data.

o) not appoint any Sub-Processor of Personal Data under this Agreement unless the prior

written consent of LBB has been obtained (which consent LBB may in its absolute discretion grant or refuse) and the following conditions are fulfilled:

(i) The Contractor notifies LBB of the identity of the Sub-Processor and confirms that the Contractor has entered into or (as the case may be) will enter into with the Sub-Processor a written agreement incorporating terms which are substantially similar to those set out in this clause;

(ii) The Sub-Processor has and at all times shall maintain sufficient commercial, technical and organisational capacity fully to discharge all its obligations under the said written agreement with the Contractor and under the Data Protection Legislation.

p) return all Personal Data and copies thereof to LBB, or delete the same as LBB may direct, on termination of this Agreement howsoever caused.

16.4 The Contractor shall indemnify LBB against all actions, claims, demands, proceedings, damages, liabilities, costs, charges and expenses whatsoever incurred by LBB or for which LBB may become liable due to any breach of this clause or of the Data Protection Legislation by the Contractor or by any Sub-Processor appointed by the Contractor.

16.5 For the purposes of this Agreement and the Data Protection Legislation:

a) The categories of Data Subjects is limited to those natural persons whose Personal Data it is necessary to process for the proper performance of this Agreement;

b) The type of Personal Data is limited to the type of Personal Data which it is necessary to process for the proper performance of this Agreement;

c) The subject matter of the processing of Personal Data is the provision of the specific Contractor works, services and/or goods under this Agreement;

d) The nature of the processing of Personal Data means any operation such as collection, recording, organisation, structuring, storage, adaptation, alteration, retrieval, consultation, alignment, combination or use, whether or not by automated means;

e) The purpose of the processing of Personal Data is limited to enabling the Contractor to perform its specific contractual obligations under this Agreement;

f) The duration of the processing of Personal Data is limited to the life of this Agreement, including any extension.