

Standard Purchase Order Terms and Conditions

1 Interpretation

1.1 In these Conditions:

"Buyer"

means either the Local Government Association (LGA); Improvement and Development Agency for Local Government (IDeA); Local Government Management Board (LGMB); Local Government Association (Properties) Ltd (LGA(P)); or LGA Commercial Services Ltd (LGACS)

"Conditions"

means the standard terms and conditions of purchase set out in this document, and includes any special terms and conditions agreed in writing between the Parties;

"Confidential Information"

means information data and material of any nature which either Party may receive or obtain from each other or from any third party in connection with the operation of the Contract and which at the time of disclosure is marked or otherwise designated to show expressly or by necessary implication that it is imparted in confidence, and all information that is otherwise imparted in confidence, including information which (i) comprises Personnel Data or Sensitive Personal Data (as both terms are defined in the Data Protection Act 2018); (ii) the release of which is likely to prejudice the commercial interests of the Buyer or the Provider respectively; or (iii) which is a trade secret;

"Contract"

means the contract for the purchase of the Goods and/or the supply of the Works or Services by the Provider to the Buyer and is comprised of the Conditions herein and the Buyer's Specification and the Provider's offer that the Buyer has accepted and if required by the Buyer additional Special Conditions drawn up by the Buyer.

"Delivery Address"

means the address stated on the Purchase Order or if not so stated, any of the Buyer's offices as instructed by Buyer at any time during the term of the Contract;

"Equality Acts"

means the Equality Act 2006, the Equality Act 2010 and any statutory modification or reenactment thereof or any other law relating

to discrimination in employment or in the provision of goods, facilities and services;

"IPR"

means all present and future copyright, design right, database right and other intellectual property rights throughout the world for the whole term thereof including all extensions and renewals and the right to register any trade mark, patents and design rights in any part of the world;

Party/Parties

means individually or collectively as applicable either the Buyer and/or the Provider;

Pre-existing IPR

means any IPR (embedded in any work or materials arising from the provision of the Goods, Works or Services supplied under the Contract) vested in or licensed to the Provider by the third party owner of any IPR prior to or independently of performance by the Provider of its obligations under the Contract;

"Price"

means the price of the Goods, Works or Services;

"Provider"

means the supplier of the Goods, Works or Services as stated in the Purchase Order;

"Purchase Order"

means the Buyer's purchase order issued in relation to the Goods, Works or Services.

"Specification"

means the Buyer's requirements in relation to the Goods, Works or Services and the Providers offer in response to the requirements, including any plans, drawings, data or other information.

"Special Conditions"

means additional conditions that may be incorporated into the Contract as provided under clause 2.3 below.

"Staff"

means the Provider's employees, servants, sub-contractors or agents used to supply the Goods or perform the Works or Services.

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1.2 Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2 Basis of Purchase

2.1 On issue of a purchase order by the Buyer, in relation to the Goods, Works or Services, these purchase order terms and conditions shall automatically apply and shall be binding on the Provider, unless these purchase order terms and conditions are not applicable because the Provider has been notified of and issued with (by the Buyer) other standard terms and conditions of the Buyer, or has agreed in writing to alternative terms and conditions supplied by the Provider.

2.2 These Conditions shall apply to the Contract to the exclusion of any other terms and conditions which the Provider has sought to or subsequently seeks to impose on the Buyer. For the avoidance of doubt any terms and conditions of the Provider, including without limitation any terms and conditions printed on any invoices or other documents submitted by the Provider to the Buyer shall not be deemed incorporated into this Contract and shall be of no effect in relation to the provision of the Goods, Works or Services.

2.3 If the Buyer requires the Provider to comply with additional Special Conditions, such conditions shall be in writing, drawn up by the Buyer, and shall be deemed to be part of this Contract. Unless otherwise expressly stated by the Buyer any Special Conditions included in the Contract shall take precedence over the terms and conditions herein to the extent that there is any conflict between any of the terms herein and the provisions in the Special Conditions.

2.4 No variation to the Contract shall be binding unless agreed in writing between the authorised representatives of the Parties.

2.5 Any goods supplied by the Provider that do not correspond with the Buyer's Specification or otherwise do not comply with provisions of the Contract, may be returned by

the Buyer to the Provider at the Provider's expense.

2.6 The Provider shall properly perform the Works or Services with the standard of skill, care and diligence which a competent and suitably qualified person performing such works or services could reasonably be expected to exercise and in accordance with all relevant statutory requirements and industry best practice.

2.7 The Provider and its Staff shall only undertake processing of Personal Data (as defined under the Data Protection Act 2018 ["DPA"]) if instructed by the Buyer to act as "Data Processor" within the meaning of the "DPA" as part of the performance of the Provider's obligations under the Contract. As Data Processor, the Provider shall perform its obligations in accordance with and so as to enable the Buyer to comply with its obligations under the DPA as "Data Controller" (within the meaning of the DPA). The Provider shall take appropriate technical and organisational measures to ensure that the Personal Data is processed securely. The Provider shall submit its data processing facilities for audit by the Buyer and this may include supplying written particulars of the measures taken. The Provider will complete a Data Processing Schedule and a Data Protection Impact Assessment if required by the Buyer.

3 Specification

3.1 The Provider shall comply with all applicable regulations and/or other legal requirements concerning the manufacture, packaging, and delivery of the Goods and/or performance of the Works or Services.

3.2 The Provider shall comply with the reasonable instructions of the Buyer in connection with the provision of the Goods, Works or Services.

3.3 Timely provision of the Goods, Works or Services shall be of the essence of the Contract.

3.4 Without prejudice to the Buyer's rights to terminate this Contract the Provider shall, at the Buyer request, remedy any failure to comply with the Contract in accordance with the Buyer's reasonable instructions, at no additional cost to the Buyer.

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4 Price and Payment

4.1 The Price of the Goods, Works or Services shall be as offered by the Provider to the Buyer and shall be inclusive of all labour costs, equipment, materials, charges for packaging, shipping, carriage, insurance and delivery, and any duties or levies other than Value Added Tax, unless otherwise expressly stated and in the Provider's quoted prices as accepted by the Buyer.

4.2 No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Buyer in writing.

4.3 The Provider's official invoice should be sent to the Buyer within three months after delivery of the Goods, Works or the Services (unless otherwise expressly stated by the Buyer's) and must show:

- 4.3.1 the Buyer's Purchase Order number;
- 4.3.2 an Invoice number;
- 4.3.3 a description of the Good or Works or Services delivered;
- 4.3.4 full details of price;
- 4.3.5 any discount allowed;
- 4.3.6 VAT if applicable.

Failure by the Provider, to submit invoices to the Buyer within three months of delivery of the Goods or Services, as required in this clause 4 above, may result in the sums due under such invoices (referred to below as "Late Invoices"), not being recoverable from the Buyer by the Provider, if and to the extent that the Buyer, has incurred any loss as a direct consequence of the late submission of invoices by the Provider. Such loss may arise in circumstances (including but not limited to) where the Buyer has forfeited any right it has to recover the sums due in the Late Invoice(s) from a third party that has an arrangement with the Buyer entitling the Buyer to submit a claim ("a Claim") to that third party in order to be reimbursed for payments made by the Buyer to the Provider in consideration of the Goods or Services supplied by the Provider under this Contract and a precondition for reimbursement is that the Buyer submits the Claim within a specified time. If the Buyer under such arrangement loses the right to be reimbursed because it submits a Claim late and the reason for the late Claim is because the Provider has

submitted a Late Invoice to the Buyer, then the Buyer's inability to obtain reimbursement would be a loss to the Buyer which may be remedied in accordance with this clause 4.3, without prejudice to any other rights or remedies that the Buyer may have. If the Buyer has forfeited its right to recover from the above mentioned third party, sums specified in Late Invoice as a result of the Provider's submission of Late Invoice(s) to the Buyer, the Buyer may: (i) refuse to pay the sums due on the Late Invoice to the extent that the sum not paid by the Buyer cannot be claimed back by the Buyer from the third party under the arrangements between the Buyer and the third party referred to above in this condition, (ii) set off the sums the Buyer is unable to claim back from the third party (as a result of the Provider's late submission of any invoice) against any sums that may become payable from the Buyer to the Provider for the supply of the Goods and Services.

4.4 Unless otherwise agreed in writing by the Buyer, the payment of the Price will be made within 30 days of receipt of a correct invoice, if the Goods, Works or Services have been delivered in accordance with the Contract.

4.5 The Buyer shall be entitled to set-off against any invoice, any amount due from the Provider under this Purchase Order or under any other contractual arrangement with the Buyer.

4.6 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly extra charge. All invoices containing Value Added Tax must conform to the requirements of HM Revenue and Customs.

4.7 The Provider shall at the request of the Buyer provide all information necessary to support the invoiced amount including all relevant time sheets, details of expenses incurred and invoices paid.

4.8 The Provider shall be wholly responsible for all applicable taxes including income tax and national insurance and other similar contributions or taxes (together "Taxes") which may be payable out of, or as a result of the receipt of, any monies paid or payable by the Buyer under this Contract.

4.9. Where required, the buyer will apply the provisions of IR35 if it is determined that they apply. This will result in the supplier invoice

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having the required statutory deductions made from the final payment. The buyer's decision on whether IR35 applies will be final

4.9 No payment of or on account of the Contract Price shall constitute any admission by the Buyer as to the Provider's proper provision of the Goods, Works or Services.

5 Delivery

5.1 The Goods shall be delivered to and/or the Works or Services shall be performed within business hours at the Delivery Address on the date or within the period specified in the Specification or as otherwise specified or agreed by the Buyer in writing.

5.2 Where the date of delivery of the Goods and/or performance of the Services is to be specified after the placing of the Purchase Order, the Provider shall give the Buyer reasonable notice of the specified date.

5.3 A delivery note which specifies the number of the Purchase Order shall accompany each delivery or consignment of the Goods, and must be displayed prominently.

5.4 If the Goods are to be delivered and/or the Works or Services are to be performed by instalments, the Contract will be treated as a single contract and will not be severable.

5.5 The Buyer shall be entitled to reject any Goods delivered which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods until the Buyer has had reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.

5.6 The Provider shall supply the Buyer in good time with any instructions or other information required to enable the Buyer to accept delivery of the Goods and/or performance of the Works or Services.

5.7 The Buyer shall not be required to return to the Provider any packaging or packaging materials for the Goods, whether or not the Goods are accepted by the Buyer.

5.8 If the Goods are not delivered and/or the Works or Services are not performed on the due date then, without prejudice to any other remedy, the Buyer shall be entitled to deduct from the Price or, if the Buyer has already paid the Price, to claim from the Provider an amount equal to the additional costs incurred by the Buyer as a result of the delay.

5.9 Risk of damage to or loss of the Goods shall pass to the Buyer upon delivery to the Buyer in accordance with the Contract.

5.10 The property in the Goods shall pass to the Buyer upon delivery, unless payment for the Goods is made prior to delivery, where it shall pass to the Buyer once payment has been made and the Goods have been appropriated to the Contract.

5.11 Whilst on the Buyer's premises the Provider shall comply with the Buyer's rules and regulations relating to the Premises.

6 Quality Assurance

6.1 The Provider shall operate a self-regulatory system of quality assurance and quality measures relating to the Contract in addition to any quality requirements in the Specification which ensures that the Goods, Works or Services are provided in accordance with the requirements of the Contract and as part of this requirement, the Provider shall check that information, data or software supplied pursuant to the Contract is fit for the purpose for which the Buyer intends to use it.

7 Warranties and Liability

7.1 The Provider warrants to the Buyer that the Goods will be:

7.1.1 be of sound materials and first class workmanship;

7.1.2 be equal in all respects to the samples, patterns, description or specification provided or given by either Party;

7.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979);

7.1.4 be free from defects in design, material and workmanship; and

7.1.5 will comply with all statutory requirements and regulations relating to the sale of the Goods.

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7.2 The Provider warrants to the Buyer that the Services or Works will be performed by appropriately trained and qualified personnel, with due care and diligence, and to the standards which would reasonably be expected from a skilled and experienced provider engaged in the provision of services similar to the Services under the same or similar circumstances.

7.3 The Provider will indemnify the Buyer in full against the following:

7.3.1 all loss, liability, damages, costs, expenses (including legal expenses) or injury whatsoever and whenever arising caused to the Buyer, or for which the Buyer may be liable to third parties due to defective workmanship or unsound quality of the Goods, Works or the Services supplied;

7.3.2 all claims in respect of death or injury, howsoever caused, to any of the employees, or those of the agent or subcontractors, of the Provider, while in or about the Buyer's sites, works or other places of business;

7.3.3 any consequential loss or damage sustained by the Buyer for which the Buyer may be liable, as a result of the failure of the Provider to supply the materials or perform the Works or Services in accordance with the terms of the Contract.

7.4 Without prejudice to any other remedy, if any of the Goods, Works or Services are not supplied or performed in accordance with the Contract, then the Buyer shall be entitled:

7.4.1 to require the Provider to repair the Goods or to supply replacement Goods and/or remedy any failure to perform the Works or Services in compliance with the Contract within 7 days or such other period specified by the Buyer; or

7.4.2 at the Buyer's sole option and whether or not the Buyer has previously required the Provider to repair the Goods or to supply any replacement Goods and/or to remedy any failure to perform Services, to treat the Contract as discharged by the Provider's breach and require repayment of any part of the Price which has been paid.

8 Termination

8.1 The Buyer shall be entitled to terminate the Contract without liability to the Provider by

giving written notice to the Provider at any time if:

8.1.1 the Provider makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or

8.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Provider; or

8.1.3 the Provider dies, or ceases, or threatens to cease to carry on business; or

8.1.4 the Provider does anything improper to influence the Buyer to give the Provider any contract or commits an offence under the Prevention of Corruption Acts 1889 to 1916; or

8.1.5 the Buyer reasonably believes that any of the events mentioned above is about to occur in relation to Provider and notifies the Provider immediately.

8.2 For the avoidance of doubt, where the Buyer terminates the Contract in accordance with the provisions of Condition 8.1, the Provider shall compensate the Buyer for any losses suffered as a result of this.

8.3 The Buyer may terminate the Contract at any time on giving the Provider not less than one months' notice.

8.4 On the expiry or termination of this Contract (however arising), the Provider shall deliver up to the Buyer all documents, formulae, papers, drawings, software, data, specifications, reports, notes, programs, portfolios, equipment, materials of any sort, identity cards and keys which were furnished by the Buyer to the Provider, or which were prepared by or on behalf of the Provider for the Buyer in the course of providing Goods, Works or Services under this Contract.

9. Intellectual Property Rights

9.1 Subject to Pre-existing IPR, all IPR created by the Provider as a result of performing the Goods, Works or Services, ("Contract Generated IPR") shall be owned by the Buyer and the Provider shall enter into such documentation and perform such acts as the Buyer may request to properly vest such Contract Generated IPR in the Buyer. The

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Provider hereby assigns (by way of present assignment of future Contract Generated IPR) all Contract Generated IPR.

9.2 The Provider, hereby grants to the Buyer a perpetual, royalty-free, irrevocable, nonexclusive, assignable, global licence for use, sub-licence and/or commercial exploitation of any Pre-Existing IPR in the Goods, Works or and/or services, together with the ability to sub-licence the same.

9.3 The Provider agrees to indemnify and keep indemnified the Buyer against any costs, claims, proceedings, expenses and demands arising from the use, application, supply or delivery of any process article, matter or thing supplied under the Contract that would constitute or is alleged to constitute any infringement of any IPR including third party's IPR.

10. FOIA EIR Transparency **Confidentiality, Modern Slavery**

10.1 Subject to requirements by law, including, without limitation, under the Freedom of Information Act 2000 ("the FOIA") and the Environmental Information Regulations 2004 ("EIR"), any Confidential Information supplied by the Buyer to the Provider or vice versa shall be kept confidential and shall only be used by the Provider for the performance of its obligations under the Contract.

10.2 The Provider shall use all reasonable efforts to assist the Buyer to comply with such obligations as are imposed on the Buyer by the FOIA and the EIR including providing the Buyer with reasonable assistance in complying with any request for information (in connection with the Goods, Works or Services) served on the Buyer under the FOIA or the EIR.

10.3 Upon expiry or termination of the Contract for whatever reason, the Provider shall either, immediately destroy, or at the Buyer's written request, immediately return to the Buyer, any Confidential Information provided to it pursuant to the Contract.

10.4 To enable the Buyer to comply with transparency obligations that apply to the Buyer, notwithstanding any other term of this Contract, the Provider hereby gives his consent for the Buyer to publish the Contract

in the public domain in its entirety, including from time to time agreed changes to the Contract. The Buyer may prior to such publication, remove any content of the Contract that would satisfy the legal tests for exempt information under the FOIA and the DPA, which includes commercially sensitive information and information which is provided in confidence. For the purposes of this contract the Buyer shall be deemed to be bound by the Transparency code 2015 and the Supplier hereby consents to the publication by the Buyer of information relating to this contract including but not limited to the Supplier's name, contract value, duration and procurement process applied to the appointment and award of the Contract.

10.4 Anti-Slavery and Human Trafficking Laws and Policies

In performing its obligations under the contract, the Provider shall:

(a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations [and codes] from time to time in force including but not limited to the Modern Slavery Act 2015; and

(c) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; [and]

(d) include in its contracts with its subcontractors and suppliers anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause

11 General

11.1 The Provider shall be prohibited from transferring, assigning or sub-letting, directly or indirectly, to any person or persons whatever, the whole or any portion of this Contract without the written permission of the Buyer.

11.2 No waiver by the Buyer of any breach of the Contract by the Provider shall be

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considered as a waiver of any subsequent breach of the same or any other provision.

11.3 The Provider shall not give, nor offer to give anyone employed by the Buyer an inducement of any kind, or any gift that could be perceived by others to be a bribe. Any such action will constitute a breach which is considered incapable of remedy.

11.4 The Provider and its Staff involved in the supply of Goods or Works or Services under the Contract shall comply with the Buyer's policies relevant to the performance of the Provider's obligations under the Contract and which have been made known to the Provider. Such policies shall include without limitation the Buyer's health and safety and security policies that is effective at any time during the term of the Contract. The Provider warrants and undertakes that the staff engaged in performing the Contract shall have satisfactorily completed the Baseline Personnel Security Standard (BPSS) which requires verification of (i) identity (ii) employment history (iii) nationality and immigration status and (iv) unspent criminal convictions. If the Provider is a sole trader the Provider will co-operate with the Buyer in providing the verification information which the Buyer may require to ensure that the Provider meets the BPSS.

11.5 If any provision of these Conditions is held to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.

11.6 The Provider shall not issue any press release or make any public statement concerning the Buyer, its employees, agents, commissioners, of Goods, Work or Services without the prior written consent of the Buyer, nor shall the Provider without the prior written consent of the Buyer, advertise or disclose to third parties that it is providing Goods, Works or Services to the Buyer.

11.7 The Provider shall, and shall use reasonable endeavours to ensure that its Staff shall, at all times, act in a way which is compatible with the Convention Rights within the meaning of Section 1 of the Human Rights Act 1998 and shall comply with the Equality Acts.

11.8 Acceptance of this Purchase Order will be deemed to bind the Provider to these Conditions and no Goods, Works or Services shall be supplied or performed by the Provider, its employees, agents or representatives, except in accordance therewith.

11.9 These Contract constitute the entire understanding between the Parties relating to the subject matter of the Contract and, save as may be expressly referred to or referenced herein, supersede all prior representations, writings, negotiations or understandings with respect hereto, except in respect of any fraudulent misrepresentation made by either party.

11.10 Save for the Parties, no person shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the terms of this Purchase Order and/or these Conditions.

11.11 The Provider shall effect and maintain an adequate level of insurance cover in respect of all risks that may be incurred by them in the performance of this Contract.

11.12 Notices given under the Contract shall be given in writing and shall be served (i) by delivery to the receiving Party, effecting immediate service, (ii) by post, effecting service on the second following business day, (iii) by facsimile or email, effecting service either after four hours if within accepted working hours or on the following business day.

11.13 The Parties agree to submit to the jurisdiction of the English courts and agree that the Contract is to be governed and construed according to English law.

11.14 Nothing in this Contract shall be construed as creating a partnership, contract of employment or a relationship of principal and agent between the Buyer and the Provider

11.15 The following terms shall survive the termination or expiry of the Contract: Conditions 1, 7, 9,10, 11 and, without limitation to the foregoing, any other provision of the Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry.