



## HIGH PEAK BOROUGH COUNCIL & STAFFORDSHIRE MOORLANDS DISTRICT COUNCIL

### TERMS AND CONDITIONS: CONDITIONS OF PURCHASE for SUPPLIES, SERVICES and WORKS

By accepting an official Purchase Order from High Peak Borough Council and Staffordshire Moorlands District Council you agree to the following conditions:

#### 1: GENERAL CONDITIONS

##### 1 Definitions

- 1.1 'Buyer' means the person who buys or agrees to buy the goods from the Seller.
- 1.2 'Conditions' means these terms and conditions and any special terms and conditions agreed in writing by the Seller.
- 1.3 'Delivery date' means the date specified by the Seller when the goods are to be delivered.
- 1.4 'Goods' means the articles which the Buyer agrees to buy from the Seller
- 1.5 'Price' means the price for the goods excluding carriage, packing, insurance and VAT.
- 1.6 'Seller' means the recipient of this purchase order and person, firm, company or other organisation entitled to payment of the Price.

##### 2. Conditions of purchase

- 2.1 The Conditions shall apply to all contracts for the purchase of Goods by the Buyer from the Seller to the exclusion of all other terms and conditions including any terms or conditions which the Seller may purport to apply under any sales offer or similar document.
- 2.2 Despatch or delivery of the Goods by the Seller to the Buyer shall be deemed conclusive evidence of the Seller's acceptance of these Conditions.
- 2.3 Any variation of these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Buyer.

##### 3. The Price and payment

- 3.1 The Price shall be the price set out overleaf. The Price is exclusive of VAT which shall be due at the rate ruling on the date of the Seller's invoice.
- 3.2 Payment of the Price and VAT shall be due within 30 days of the date of the invoice.
- 3.3 The Buyer may set off against the Price (including any applicable VAT payable) amounts due from the Seller whether under the applicable contract of sale or otherwise.

##### 4. The Goods

- 4.1 The quantity and description of the Goods shall be as set out in the Seller's quotation.
- 4.2 The Seller shall ensure that all the Goods shall be manufactured, stored, tested and packed in accordance with all British Standards applicable to them and that all the Goods are of merchantable quality and fit for the purpose or fit for the purposes for which the Buyer intends to use such Goods.
- 4.3 The Seller shall comply with the specification and all applicable British Standards and legal requirements concerning the design, manufacture, processing, storage and testing of the Goods.
- 4.4 The Seller shall permit the buyer to inspect and test the Goods during their manufacture and processing.
- 4.5 If the Buyer is not reasonably satisfied that the goods or their manufacture or processing comply in all material respects with the contract the Seller without extra cost to the Buyer shall take all steps necessary to ensure due compliance.

##### 5. Warranties and liability

- 5.1 The Seller warrants that the Goods will at the time of delivery correspond to the description given by the Seller.

## **6. DELIVERY OF THE GOODS**

- 6.1 Delivery of the Goods shall be made to the Buyer's address on the Delivery Date. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
- 6.2.1 The Delivery Date is the essence of this contract.
- 6.2.2 If the Seller fails to deliver all of the Goods in accordance with the contract on the Delivery Date then without prejudice to the Buyer's rights for the breach of contract:
- 6.2.2.1 The Buyer may terminate the contract. In this event without prejudice to the Buyer's other remedies the Seller shall promptly collect any Goods which have been delivered.
- 6.2.2.2 Where delivery of a quantity of the goods which correspond to the contract which is less than the agreed quantity has been tendered and the Buyer has not exercised its right of termination under clause 6.2.2.1 the Buyer may accept the Goods which correspond to the contract and recover for the Seller's breach in respect of the failure to deliver the remainder of the Goods.
- 6.2.2.3 The Buyer may require the Seller promptly to deliver sufficient goods which correspond to the contract to comply with the quantity required.

The Buyer may exercise these rights by notice to the Seller.

## **7. Acceptance of the Goods**

- 7.1 The Buyer shall not be deemed to have accepted any part of the Goods until after the Buyer has (or the Buyer's sub-buyers have) actually inspected the Goods and ascertained that they are in accordance with the contract. The Buyer may reject Goods which are not in accordance with the contract until a reasonable time after such inspection.
- 7.2 The Buyer may by notice to the Seller prior to acceptance reject any Goods which are not in accordance with the contract. The Buyer may set off against any payment due to the Seller (whether under this contract or otherwise) the Price of such Goods. Unless within a reasonable time of receipt of notice of rejection the Seller collects such Goods the Buyer may dispose of them as the Buyer shall think fit (provided that if the Buyer sells such Goods the Buyer shall account to the Seller for the net proceeds of such sale).
- 7.2.1 The Seller agrees to permit the Buyer to return any of the Goods which are not in accordance with the contract at any time up to 6 months after delivery notwithstanding that the Goods may have already been accepted by the Buyer. The Buyer may set off against any payment due to the Seller (whether under this contract or otherwise) the Price of such Goods. Unless within a reasonable time of receipt of notice of rejection the Seller collects such Goods the Buyer may dispose of them as the Buyer shall think fit (provided that if the Buyer sells such Goods the Buyer shall account to the Seller for the net proceeds of such sale)

## **8. Title and Risk**

- 8.1 Title shall pass on delivery of the Goods.
- 8.2 Risk shall pass on the delivery of the Goods.

## **9. Remedies of Buyer**

- 9.1 The seller shall indemnify the Buyer against all claims by the customers of the Buyer and their sub-buyers arising out of any breach whatever by the Seller of this contract of sale due to want of merchantable quality of lack of fitness for purpose of the Goods or any of the Goods.
- 9.2.1 The Buyer shall inspect the Goods on delivery and shall within 3 days of delivery notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with description or sample. The Buyer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery and before any use is made of them. If the Buyer shall fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with the contract and free from any defect or damage which would be apparent on a reasonable examination of the Goods and the Buyer shall be deemed to have accepted the Goods.
- 9.2.2 The Buyer shall notify the Seller of any non-delivery of a whole consignment within 14 days of the date of dispatch (as stated on the invoice). Notwithstanding the receipt by the Seller of any such notice a clear signature on a carrier's delivery advice sheet shall be deemed to signify receipt of the quantity indicated on the advice sheet.
- 9.2.3 If the Goods are not in accordance with the contract for any reason the Buyer's sole remedy shall be limited to the Seller making good any shortage by replacing such Goods or, if the Seller shall elect, by refunding a proportionate part of the Price.
- 9.2.4 The Seller's liability to the Buyer, whether for any breach of contract or otherwise, shall not in any event exceed the Price and the Seller shall be under no liability for any direct loss and/or expense or indirect loss and/or expense suffered by the Buyer or liability to third parties incurred by the Buyer.

9.2.5 All warranties and conditions whether implied by statute or otherwise are excluded from this contract provided that nothing in this contract shall restrict or exclude liability for death or personal injury caused by the negligence of the Seller or affect the statutory rights of a buyer dealing as consumer.

## **10. SAFE GUARDING CONDITIONS**

10.1 To ensure that we each properly discharge our respective obligations in terms of safeguarding children and vulnerable adults and in consideration of the payment by us to you, you agree to comply with the following provisions.

### **10.2 Warranty**

You warrant and confirm that you will:

10.2.1 comply with all applicable laws legislation codes of practice and government guidance in the UK relevant to the safeguarding and protection of children and vulnerable adults and

10.2.2 make and continue to make all Reasonable Endeavours to identify and eliminate or minimise the risk of abuse exploitation harassment or other harm to service users suppliers and other beneficiaries.

**10.3** Reasonable endeavours may include (but shall not be limited to):

10.3.1 Having clear detailed policies and guidance.

10.3.2 Complying with all relevant sections of the Council's safeguarding policy.

10.3.3 Having appropriate recruitment practices and procedures and not engaging or employing anyone for the purposes of the delivery of this contract whose previous record or conduct known to the supplier (or reasonably ought to be known by a diligent supplier which undertakes the appropriate checks) indicates that they are unsuitable to perform the contracted services and/or where they represent an increased and unacceptable risk to the safeguarding of children and vulnerable adults.

10.3.4 Providing regular safeguarding training to staff members.

10.3.5 Having clear reporting lines and whistleblowing procedures.

10.3.6 Notifying the Council of any complaints concerns and incidents without undue delay and where, necessary, reporting such incidents to the Police County Council or other relevant authority.

10.3.7 Fully investigating and documenting all actual or potential risks to the safeguarding of children and vulnerable adults and take appropriate corrective action.

10.3.8 Maintaining detailed records of any allegations of risks to the safeguarding of children and vulnerable adults.

## **11.0 DATA PROTECTION CONDITIONS**

11.1 The law does not permit us to allow you to process personal data on our behalf unless we (the 'Controller') comply and can demonstrate that we comply with certain legally binding requirements. In order to ensure that we each properly discharge our respective obligations under the Data Protection **Act 2018 ('Act')** and **related data protection legislation** and in consideration of the payment by us to you, you agree to comply with the following provisions.

### **11.2 Warranty**

11.2.1 You warrant and confirm that you provide adequate protection for personal data. Further you warrant and confirm that if required to be registered in accordance with relevant data protection legislation that you have registered and are in good standing with the office of the Information Commissioner of the United Kingdom.

### **11.3 Confirmation**

11.3.1 To prevent unauthorised access maintain accuracy of our records and data to ensure proper use of information you confirm that you have put in place appropriate physical electronic and managerial procedures to protect secure and safeguard the personal data and information.

### **11.4 Undertakings**

You undertake to us that the following provisions and arrangements are in place:

11.4.1 You will act only in accordance with our instructions in relation to personal data and will not use the personal data for any purpose other than to provide the contracted services unless required by law to act without such instructions.

11.4.2 All people processing data are subject to a duty of confidence;

11.4.3 You have appropriate technical and organisational measures to ensure the security of processing and prevent the unlawful and unauthorised processing of personal data and the accidental loss destruction of and damage to personal data.

11.4.4 You control the physical security in relation to the information and personal data that is contained at your facilities and restrict access to the site buildings computer rooms office desk technology areas equipment and other facilities where unauthorised access by people could compromise our security.

11.4.5 All proprietary or confidential information including personal data is contained or stored on computer and any that is contained and stored on manual files are locked up and secure.

11.4.6 All employees of your organisation are briefed on the importance of personal data, security and confidentiality of information obtained under or pursuant to the Agreement or Services. All employees attend training programmes and are provided with updates or practical guidance under relevant data protection legislation

- 11.4.7 You will only engage a sub-processor with the controller's prior authorization and under a written contract;
- 11.4.8 You will take appropriate measures to help the controller respond to requests from individuals to exercise their rights;
- 11.4.9 You will promptly amend transfer or delete any personal data that you are processing for us if we require you to do so.
- 11.4.10 You will notify us immediately of all notices and communications you receive from any person which suggests non-compliance with the Act or breach of any related regulation or provision and you will not do anything or enter into any communication about it unless we expressly authorise you to do so.
- 11.4.11 You will assist the controller in meeting its obligations in relation to the security of processing the notification of personal data breaches and data protection impact assessments taking into account the nature of processing and the information available;
- 11.4.12 You will delete or return all personal data to the controller (at the controller's choice) at the end of the contract and the processor must also delete existing personal data unless the law requires its storage; and
- 11.4.13 You will submit to audits and inspections. You must also give the controller whatever information it needs to ensure they are both meeting their obligations under [Article 28 the GDPR](#).
- 11.4.14 You are taking and will to continue take all necessary reasonable steps to protect all information and all personal data obtained by or provided to you in connection with the Agreement and/or the Services.

## 12. Proper law of contract

This contract is subject to the law of England and Wales.