

Canterbury City Council Purchase Orders

Terms and Conditions

1. Interpretation

1.1 In these Conditions:

"Conditions"	means the standard terms and conditions of purchase set out in this document, and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the parties;
"Contract"	means the contract for the purchase of the Goods and/or the supply of the Services as set out in the Purchase Order and the Specification (if any);
"Council"	means Canterbury City Council;
"Council's Whistleblowing Policy"	means the Council's policy in relation to whistleblowing in force from time to time.
"DBS check"	A current valid Disclosure and Barring check from the Disclosure and Barring Service
"Delivery Address"	means the address stated on the Purchase Order
"Deliverables"	means all records, reports, documents, papers, drawings, designs, transparencies, photos, graphics, logos, typographical arrangements, software, invention, idea, discovery, development, improvement or innovation and all other materials in whatever form, including but not limited to hard copy and electronic form, prepared by the Provider in the provision of the Services.
"Goods"	the goods (or any part of them) including any Deliverables set out

in the Order and or the Goods Specification.

"Goods Specification"	any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Council and the Provider.
"Price"	means the price of the Goods and/or the charge for the Services set out in the Purchase Order;
"Provider"	means the person or firm from which the Council purchase the Goods and/or Services;
"Purchase Order"	means the Council's purchase order for the supply of goods or the delivery of services, as the case may be;
"Services"	means the services(including any part of them) described in the Purchase Order;
"Specification"	includes any plans, drawings, data or other information relating to the council's requirements for the provision or supply of the Goods and/or the Services being the subject of this Purchase Order.

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 The Purchase Order constitutes an offer by the Council to purchase Goods and/or Services from the Provider in accordance with these Conditions.

2.2 The Purchase Order shall be deemed to be accepted on the earlier of:

- (a) the Provider issuing written acceptance of the Order; or
- (b) any act by the Provider consistent with fulfilling the Purchase Order,

at which point and on which date the Contract shall come into existence (the **Commencement Date**).

2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Provider seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.4 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

2.5 These Conditions apply to anything ordered by the Council unless either: -

2.5.1 The Council has expressly agreed otherwise in writing, or

2.5.2 This Purchase Order is for something covered by an existing written contract.

2.3 No variation to the Purchase Order or these Conditions shall be binding unless agreed in writing between the authorised representatives of the parties.

3. Supply of Goods

3.1 The Provider shall ensure that the Goods shall:

(a) correspond with their description and any applicable Purchase Order and/or Goods Specification;

(b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Provider or made known to the Provider by the Council, expressly or by implication, and in this respect the Council relies on the Provider's skill and judgment;

(c) where applicable, be free from defects in design, materials and workmanship and remain so for twelve (12) months after delivery; and

(d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

3.2 The Provider shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

- 3.3 The Council shall have the right to inspect and test the Goods at any time before delivery.
- 3.4 If following such inspection or testing the Council considers that the Goods do not conform or are unlikely to comply with the Provider's undertakings at clause 3.1, the Council shall inform the Provider and the Provider shall immediately take such remedial action as is necessary to ensure compliance.
- 3.5 Notwithstanding any such inspection or testing, the Provider shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Provider's obligations under the Contract, and the Council shall have the right to conduct further inspections and tests after the Provider has carried out its remedial actions.

4. **Delivery Of Goods**

- 4.1 The Provider shall ensure that:
- (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
 - (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Purchase Order, the Purchase Order number, the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
 - (c) if the Provider requires the Council to return any packaging material for the Goods to the Provider, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Provider at the cost of the Provider.
- 4.2 The Provider acknowledges and agrees that time of delivery is of the essence and shall deliver the Goods:
- (a) on the date specified in the Purchase Order;

- (b) to the Council's premises or such other location as is set out in the Purchase Order or as instructed by the Council before delivery (Delivery Location);
- (c) during the Council's normal hours of business, or as instructed by the Council.

4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

4.4 If the Provider:

- (a) delivers less than ninety five (95) per cent of the quantity of Goods ordered, the Council may reject the Goods; or
- (b) delivers more than one hundred and five (105) per cent of the quantity of Goods ordered, the Council may at its sole discretion reject the Goods or the excess Goods,

and any rejected Goods shall be returnable at the Provider's risk and expense. If the Provider delivers more or less than the quantity of Goods ordered, and the Council accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.

4.5 The Provider shall not deliver the Goods in instalments without the Council's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Provider to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Council to the remedies set out in clause 6.

4.6 Title and risk in the Goods shall pass to the Council on completion of delivery.

5. Services

5.1 The Provider shall from the Commencement Date or the date set out in the Purchase Order and for the duration of this Contract provide the Services to the Council in accordance with the Service Specification if any and the terms of the Contract.

5.2 The Provider shall meet any performance dates for the Services specified in the Purchase Order or notified to the Provider by the Council.

5.3 In providing the Services, the Provider shall:

- (a) ensure that in providing the Services time of performance is of the essence;
- (b) co-operate with the Council in all matters relating to the Services, and comply with all instructions of the Council;
- (c) perform the Services with the best care, skill and diligence in accordance with best practice in the Provider's industry, profession or trade;
- (d) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Provider's obligations are fulfilled in accordance with this Contract;
- (e) ensure that the Services and Goods will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Provider by the Council;
- (f) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- (g) use the best quality goods, materials, standards and techniques, and ensure that the Goods, and all goods and materials supplied and used in the Services or transferred to the Council, will be free from defects in workmanship, installation and design;
- (h) obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
- (i) observe all health and safety rules and regulations and any other security requirements that apply at any of the Council's premises;
- (j) hold all materials, equipment and tools, drawings, specifications and data supplied by the Council to the Provider (**Council Materials**) in safe custody at its own risk, maintain the Council Materials in good condition until returned to the Council, and not dispose or use the Council Materials other than in accordance with the Council's written instructions or authorisation;

- (k) not do or omit to do anything which may cause the Council to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Provider acknowledges that the Council may rely or act on the Services.

6. Price and payment

- 6.1 The Price of the Goods and/or the Services shall be as stated in the Purchase Order and, unless stated otherwise, shall be inclusive of all charges for packaging, shipping, carriage, insurance and delivery of the Goods to the Delivery Address, and any duties or levies other than Value Added Tax.
- 6.2 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 Council in writing.
- 6.3 The Council shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Provider, whether or not shown in its own terms and conditions of sale.
- 6.4 The Provider's official invoice should be sent promptly to the Council after delivery of the Goods and/or the Services, as the case may be, to the address indicated on front of the Purchase Order, unless otherwise instructed and must show:
 - 6.4.1 the Council's Purchase Order number;
 - 6.4.2 an Invoice number;
 - 6.4.3 a full description of the Good and/or the Services;
 - 6.4.4 full details of prices;
 - 6.4.5 any discount allowed;
 - 6.4.6 current VAT requirements as set by H M Revenue and Customs; and
 - 6.4.7 officer contact details where known.
- 6.5 In consideration of the supply of Goods and/or Services by the Provider, the Council shall pay the invoiced amounts within thirty (30) days of the date of a correctly rendered invoice to a bank account nominated in writing by the Provider.

- 6.6 All amounts payable by the Council under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Provider to the Council, the Council shall, on receipt of a valid VAT invoice from the Provider, pay to the Provider such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.
- 6.7 If the Council fails to pay any amount properly due and payable by it under the Contract, the Provider shall have the right to charge interest on the overdue amount at the rate of two (2) per cent per annum above the base rate for the time being of the Nat West Bank accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment. This clause shall not apply to payments that the Council disputes in good faith.
- 6.8 Unless otherwise stated in the Purchase Order or agreed in writing, the payment of the Price will be made within 30 days of receipt of a correct invoice, and upon the confirmation by an officer of the Council that the Goods and/or the Services have been provided to the Council's satisfaction. 8.8 The Council 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.

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9. Council's remedies

9.1 If the Provider fails to deliver the Goods and/or perform the Services by the applicable date, the Council shall, without limiting its other rights or remedies, have one or more of the following rights:

- (a) to terminate the Contract with immediate effect by giving written notice to the Provider;
- (b) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Provider attempts to make;
- (c) to recover from the Provider any costs incurred by the Council in obtaining substitute goods and/or services from a third party;
- (d) where the Council has paid in advance for Services that have not been provided by the Provider and/or Goods which have not been delivered by the Provider, to have such sums refunded by the Provider; and
- (e) to claim damages for any additional costs, loss or expenses incurred by the Council which are in any way attributable to the Provider's failure to meet such dates.

9.2 If the Goods are not delivered by the applicable date, the council may, at its option, claim or deduct twenty five (25) per cent of the price of the Goods for each week's delay in delivery by way of liquidated damages, up to a maximum of seventy five (75) per cent of the total price of the Goods. If the Council exercises its rights under this clause 6.2 it shall not be entitled to any of the remedies set out in clause 6.1 in respect of the Goods' late delivery.

9.3 If the Provider has delivered Goods that do not comply with the undertakings set out in clause 3.1, then, without limiting its other rights or remedies, the Council shall have one or more of the following rights, whether or not it has accepted the Goods to:

- (a) reject the Goods (in whole or in part) whether or not title has passed and to return them to the Provider at the Provider's own risk and expense;

- (b) terminate the Contract with immediate effect by giving written notice to the Provider;
- (c) require the Provider to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
- (d) refuse to accept any subsequent delivery of the Goods which the Provider attempts to make;
- (e) recover from the Provider any expenditure incurred by the Council in obtaining substitute goods from a third party; and
- (f) claim damages for any additional costs, loss or expenses incurred by the Council arising from the Provider's failure to supply Goods in accordance with clause 3.1.

9.4 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Provider.

9.5 The Council's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

10. **Indemnity**

10.1 The Provider shall keep the Council indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Council as a result of or in connection with:

- (a) any claim made against the Council by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Provider, its employees, agents or sub-contractors;
- (b) any claim made against the Council by a third party arising out of, or in connection with, the supply of the Goods or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in

performance of the Contract by the Provider, its employees, agents or sub-contractors; and

- (c) any claim made against the Council for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services.

10.2 For the duration of the Contract, the Provider shall maintain in force, with a reputable insurance company, such policies of insurance as are necessary to cover any liability of the Provider in respect of loss of or damage to property and personal injury to, or death of, any person arising out of or in the course of or caused by the Provider's carrying out or failing to carry out its obligations under the Contract or for which it may become liable to the Council under clause 10, all statutory required insurance(s) including:

- (a) employers liability insurance shall be in the minimum sum of £5,000,000.00 in respect of one incident and the number of incidents covered shall be unlimited;
- (b) public liability insurance cover shall be in the minimum sum of £5,000,000.00 in respect of any one incident and the number of incidents covered shall be unlimited;
- (c) directors and officers liability, trustee's liability, professional indemnity or similar as appropriate to the Providers circumstances shall be in the minimum sum of £2,000,000.00 in respect of any one incident and the number of incidents covered shall be unlimited and such insurance shall be maintained for a 6 year period following the termination of the Contract;

10.3 Upon request, the Provider will provide the Council with details of the policies of insurance (by way of insurer's certificate) effected in accordance with clause 10.2, so as to demonstrate that clause 10.3 is being complied with.

10.4 This clause 10 shall survive termination of the Contract.

11. Termination

11.1 The Council may terminate the Contract without liability to the Provider by giving written notice to the Provider at any time if:

- (a) the Provider commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within seven (7) days of receipt of notice in writing of the breach;
- (b) the Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Provider (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Provider with one or more other companies or the solvent reconstruction of the Provider;
- (e) the Provider (being an individual) is the subject of a bankruptcy petition order;
- (f) a creditor or encumbrancer of the Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within fourteen (14) days;

- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Provider (being a company);
- (h) a floating charge holder over the assets of the Provider (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the Provider or a receiver is appointed over the assets of the Provider;
- (j) any event occurs, or proceeding is taken, with respect to the Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.1(b) to clause 12.1(i) (inclusive);
- (k) the Provider suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business; or
- (l) the Provider (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

11.2 Without limiting its other rights or remedies, the Council may terminate the Contract:

- (a) in respect of the supply of Services, by giving the Provider one (1) months' written notice; and
- (b) in respect of the supply of Goods, with immediate effect by giving written notice to the Provider, in which case the Council shall pay the Provider fair and reasonable compensation for any work in progress on any other Goods at the date of termination but such compensation shall not include loss of anticipated profits or any consequential loss.

11.3 In any of the circumstances in these Conditions in which the Council may terminate the Contract, where both Goods and Services are supplied, the Council may instead terminate part of the Contract in respect of the Goods, or in respect of the Services, and the Contract shall continue in respect of the remaining supply.

12. Prevention of Bribery and Corruption

12.1 The Provider warrants and undertakes to the Council that:

12.1.1 it will comply with applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and will not give any fee or reward the receipt of which is an offence under sub-section (2) of Section 117 of the Local Government Act 1972.

12.1.2 it will procure that any person who performs or has performed services for or on its behalf ('Associated Person') in connection with this Agreement complies with this Clause.

12.1.3 it will not enter into any agreement with any Associated Person in connection with this Agreement, unless such agreement contains undertakings on the same terms as contained in this Clause;

12.1.4 it has and will maintain in place effective accounting procedures and internal controls necessary to record all expenditure in connection with the Agreement;

12.1.5 from time to time, at the reasonable request of the Council it will confirm in writing that it has complied with its undertakings under Clauses 12.1.1 – 12.1.4 and will provide any information reasonably requested by the Council in support of such compliance;

12.1.6 it shall notify the Council as soon as practicable of any breach of any of the undertakings contained within this clause of which it becomes aware.

12.2 Where the Provider or Provider's employees, servants, sub-contractors, suppliers or agents or anyone acting on the Provider's behalf, engages in conduct prohibited by the Bribery Act 2010 or the Local Government Act 1972 section 117(2) in relation to this or any other contract with the Council, the Council has the right to:

- (a) terminate the Agreement and recover from the Provider the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the

provision of the Goods and Services and any additional expenditure incurred by the Council throughout the remainder of the period of the Contract

- (b) recover in full from the Provider any other loss sustained by the Council in consequence of any breach of this clause, whether or not the Contract has been terminated.

13. General

13.1 This Contract shall be governed by and construed in accordance with English law and the Provider hereby irrevocably submits to the exclusive jurisdiction of the English courts.

13.2 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 Council.

13.3 Any notice required or permitted to be given by either party to the other party under these Conditions shall be in writing addressed to that other party.

13.4 No waiver by the Council of any breach of the Contract by the Provider shall be considered as a waiver of any subsequent breach of the same or any other provision.

13.5 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.

14. Freedom of Information

14.1 The Council is subject to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 ("the Acts"). As part of the Council's duties under the Acts, it may be required to disclose information forming part of the Contract to anyone who makes a request. The Council has absolute discretion to apply or not to apply any exemptions under the Acts.

- 14.2 The Provider shall assist and cooperate with the Council (at the Provider's expense) to enable the Council to comply with the information disclosure requirements under the Acts and in so doing will comply with any timescale notified to it by the Council.
- 14.3 The Provider acknowledges that the Authority is committed to the Government's transparency agenda requiring the Authority to publish on-line items of spend over £500 (five hundred pounds), including actual payments made to the Provider, the Provider's tender and the terms of this Agreement (excluding any commercially sensitive information).
- 14.4 The Provider acknowledges that the Authority may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations to disclose Information:
- (a) without consulting with the Provider, or
 - (b) following consultation with the Provider and having taken its views into account.

15. Data protection

The Provider shall (and shall procure that any of its staff involved in the provision of the Services) comply with any requirements under the Data Protection Act 1998 up to and including 24th May 2018 and from 25th May 2018 onwards under the Data Protection Act 2018 and the General Data Protection Regulations 2016.

16. Press and Publicity

- 16.1 The Provider shall not issue any press release or make any public statement concerning the Council, its employees, agents, councillors, the Goods and/or Services without the prior written consent of the Council.

17. Safeguarding Vulnerable Adults and Children

- 17.1 The Provider shall ensure that any of its staff who may have contact with children or vulnerable people during the performance of the Services or through the provision of

Goods shall have a clear and valid DBS check before being employed and throughout the period of the Contract.

17.2 All staff engaged by the Provide in the performance of the Contract shall wear photographic identification with them at all times whilst on the Council's premises.

18. Corporate Requirements

18.1 Human Rights

18.2 The Provider shall comply with all obligations under the Human Rights Act 1998.

18.3 The Provider shall ensure that it has policies or codes of conduct in relation to:
equality and diversity policies;
sustainability;
information security rules;
whistleblowing and/or confidential reporting policies;
and shall take reasonable steps to ensure that its staff comply with them.

18.4 The Provider shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether age, race, gender, religion, disability, sexual orientation or otherwise) in employment.

18.5 The Provider shall comply with all relevant legislation relating to its staff however employed including (but not limited to) the compliance in law of the ability of the staff to work in the United Kingdom.

18.6 If the Provider has a finding against it relating to its obligations under the Equality Act 2010 it will provide the Council with:

18.6.1 details of the finding; and

18.6.2 the steps the Provider has taken to remedy the situation

19. Record keeping

19.1 The Provider shall keep and maintain until 6 years after the Contract has been completed or for as long a period as may be agreed between the parties, full and accurate records of the Contract including:

19.1.1 the Goods and/or Services provided under it

19.1.2 all expenditure reimbursed by the Council

19.1.3 all payments made by the Council

19.2 The Provider shall on request afford the Council or its representatives such access to those records as may be required in connection with the Contract.

20. **Entire understanding**

These Conditions and the Purchase Order together with the Specification if any 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.

21. **Notices**

- (a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
- (b) Any notice or communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.
- (c) This clause 21.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

22. **Waiver and cumulative remedies**

- (a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

23. **Severance**

- (a) If a court or any other competent authority finds that any provision (or part of any provision) of the Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

24. **No partnership**

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

25. **Third parties**

A person who is not a party to the Contract shall not have any rights under or in connection with it.

26. **Variation**

Any variation, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Council.

27. **Dispute Resolution**

In the event of a dispute between the parties concerning the Purchase Order and/or this Contract, the parties shall attempt to resolve it amongst themselves before resorting to other forms of dispute resolution.

28. **Governing law and jurisdiction**

The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.