

Canterbury City Council Purchase Orders for the provisions of Works

Terms and Conditions

1. Interpretation

1.1 In these Conditions:

"CDM Regulations"	Means the Construction (Design and Management) Regulations 2015;
"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 provisions of Works 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 Contractor in the provision of the Services.

- "Price" means the price of the provisions of the Works as set out in the Purchase Order;
- "Contractor" means the person or firm from which the Council engages for the provisions of the Works;
- "Purchase Order" means the Council's purchase order for the provisions of the Works;
- "Rectification Period" means a period of three months or such other period as agreed between the parties;
- "Services" means the services(including any part of them) described in the Purchase Order;
- "Statutory Requirements" means any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law which affects the Works or performance of any obligations under this Contract and any regulation or bye-law of any local authority or statutory undertaker which has any jurisdiction with regard to the works or with whose systems the works are, or are to be, connected.
- "Specification" includes any plans, drawings, data or other information relating to the council's requirements for the provision of the Works being the subject of this Purchase Order;
- "Works" means the works the Council requires to be provided by the

Contractor as set out in the Specification (if any) and/or
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 engagement of the Contractor for the provisions of the Works

2.1 The Purchase Order constitutes an offer by the Council for the provisions of the Works from the Contractor in accordance with these Conditions.

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

1. the Contractor issuing written acceptance of the Order; or
2. any act by the Contractor 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 Contractor 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 provisions of the Works as set out in the Purchase Order or Specification.

2.5 These Conditions apply to the provisions of the Works 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.

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

3. **Works**

3.1 The Contractor shall from the Commencement Date or the date set out in the Purchase Order and for the duration of this Contract provide the Works to the Council in accordance with the Specification and the terms of the Contract.

3.2 The Contractor shall meet any performance dates for the Works specified in the Purchase Order or notified to the Contractor by the Council.

3.3 When providing the Works, the Contractor shall:

- a) carry out and complete the Works in a proper and workmanlike manner and in compliance with the Specification and/or instructions provided in the Purchase Order and any Statutory Requirements and shall give all notices required by the Statutory Requirements;
- b) ensure that the works are commenced on and shall be completed by the respective dates stated in the Specification and/or Purchase Order or as otherwise agreed between the parties in writing;
- c) provide all equipment, tools and vehicles and such other items as are required to provide the provisions of the Works;
- d) use the best quality goods, materials, standards and techniques, and ensure that the Works, and all goods and materials used will be free from defects in workmanship, installation and design;
- e) immediately notify the Council of any divergence if he or his employees become aware of any divergence between the Statutory Requirements and the Specification and/or Purchase Order;

- f) pay any fees or charges (including any rates or taxes) legally demandable under any of the Statutory Requirements. Such fees and charges shall not be reimbursable to the Contractor by the Council unless otherwise agreed;
- g) certify the date when in his opinion the Works have reached practical completion;
- h) if any defects, shrinkages or other faults in the Works appear within the Rectification Period due to materials, goods or workmanship not in accordance with this Contract the Council shall not later than 14 days after the expiry of the Rectification Period notify the Contractor who shall make good such defects, shrinkages or other faults entirely at his own costs unless the Council instructs otherwise. If the Council instructs otherwise, an appropriate deduction may be made from the contract sum.
- i) obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
- j) undertake to the Council that in relation to the works and site the Contractor will duly comply with applicable CDM Regulations;
- k) observe all health and safety rules and regulations and any other security requirements that apply at any of the Council's premises;
- l) hold all materials, equipment and tools, drawings, specifications and data supplied by the Council to the Contractor (**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;
- m) 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 Contractor acknowledges that the Council may rely or act on the Services.

4. Price and payment

4.1. The Price is exclusive of VAT and in relation to any payment to the Contractor under this Contract, the Council shall in addition pay the amount of any VAT properly chargeable in respect of it, which shall be subject to the receipt of a VAT invoice by the Council.

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 Council in writing.

4.3. The Contractor's official invoice should be sent promptly to the Council following completion of the Works and the issuing of a completion certificate to the address indicated on front of the Purchase Order, unless otherwise instructed and must show:

4.3.1. the Council's Purchase Order number;

4.3.2. an Invoice number;

4.3.3. a full description of the Works;

4.3.4. current VAT requirements as set by H M Revenue and Customs; and

4.3.5. officer contact details where known.

4.4. In consideration of the provision of the Works by the Contractor, 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 Contractor.

4.5. If the Council fails to pay any amount properly due and payable by it under the Contract, the Contractor 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 PLC 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.

4.6. 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 Works have been provided to the Council's satisfaction.

4.7. The Council shall be entitled to set-off against any invoice, any amount due from the Contractor under this Purchase Order or under any other contractual arrangement.

5. **Council's remedies**

5.1. If the Contractor:

5.1.1. without reasonable cause wholly or substantially suspends the carrying out of the works;

or

5.1.2. fails to proceed regularly and diligently with the Works; or

5.1.3. fails to comply with any of the provisions in this Agreement

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 Contractor;
- b) to refuse to accept any subsequent performance of the Works which the Contractor attempts to make;
- c) to recover from the Contractor any costs incurred by the Council in obtaining a substitute contractor for the provisions of the Works;

- d) where the Council has paid in advance for the provisions of the Works that have not been provided by the Contractor to have such sums refunded by the Contractor; and
- e) to claim damages for any additional costs, loss or expenses incurred by the Council which are in any way attributable to the Contractor's failure to meet such dates.

5.2. If the Contractor has provided Works which do not comply with the undertakings set out in this Contract, then, without limiting its other rights or remedies, the Council shall have one or more of the following rights:

- a) terminate the Contract with immediate effect by giving written notice to the Contractor;
- b) require the Contractor to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
- c) refuse to accept any subsequent promise of provision of the Works which the Contractor may make;
- d) recover from the Contractor any expenditure incurred by the Council in obtaining a replacement contractor for the provision of the Works; and
- e) claim damages for any additional costs, loss or expenses incurred by the Council arising from the Contractor's failure to provide the Works in accordance with this Contract.

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

6. Indemnity

- 6.1. The Contractor shall be liable for and shall indemnify the Council against any expense, liability, loss, claim or proceedings whatsoever in respect of personal injury to or death of any person arising out of or in the course of or caused by the carrying out of the works, except to the extent that the same is due to any act or neglect of the Council, any Council employee or any statutory undertaker.
- 6.2. The Contractor shall be liable for and shall indemnify the Council against, any expense, liability, loss, claim or proceedings in respect of any loss, injury or damage whatsoever to any property real or personal (other than loss, injury or damage to the Works and/or site materials) in so far as such loss, injury or damage arises out of or in the course of or by reason of the carrying out of the Works and to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Contractor or any Contractor employee, agent or sub-contractor.
- 6.3. For the duration of the Contract, the Contractor shall maintain in force, with a reputable insurance company, such policies of insurance as are necessary to cover any liability of the Contractor 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 Contractor'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 6, all statutory required insurance(s) including:
- a) employer's 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 Contractors 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 completion of the Works or termination of the Contract whichever is the earlier;

6.4. Upon request, the Contractor will provide the Council with details of the policies of insurance (by way of insurer's certificate) effected in accordance with clause 6.2, so as to demonstrate that clause 6.3 is being complied with.

6.5. This clause 6 shall survive the end of this Contract either by completion of the Works or termination of the Contract.

7. Termination

7.1. The Council may terminate the Contract without liability to the Contractor by giving written notice to the Contractor at any time if:

- a) the Contractor 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 Contractor 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 Contractor 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 Contractor (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Contractor with one or more other companies or the solvent reconstruction of the Contractor;
- e) the Contractor (being an individual) is the subject of a bankruptcy petition order;
- f) a creditor or encumbrancer of the Contractor 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 Contractor (being a company);
- h) a floating charge holder over the assets of the Contractor (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 Contractor or a receiver is appointed over the assets of the Contractor;
- j) any event occurs, or proceeding is taken, with respect to the Contractor in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 7.1(b) to clause 7.1 (i) (inclusive);

- k) the Contractor suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business.

7.2. Without limiting its other rights or remedies, the Council may terminate the Contract with immediate effect by giving written notice to the Contractor in which case the Council shall pay the Contractor fair and reasonable compensation for any Work in process at the date of termination but such compensation shall not include loss of anticipated profits or any consequential loss.

8. **Prevention of Bribery and Corruption**

8.1. The Contractor warrants and undertakes to the Council that:

8.1.1. 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.

8.1.2. it will procure that any person who performs or has performed services for or on its behalf ('Associated Person') in connection with this Contract complies with this clause 8.

8.1.3. it will not enter into any agreement with any Associated Person in connection with this Contract, unless such agreement contains undertakings on the same terms as contained in this clause;

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

8.1.5. 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 8.1.1 – 8.1.4 and will provide any information reasonably requested by the Council in support of such compliance;

8.1.6. 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.

8.2. Where the Contractor or Contractor's employees, servants, sub-contractors, suppliers or agents or anyone acting on the Contractor'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 Contract and recover from the Contractor 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 Works and any additional expenditure incurred by the Council throughout the remainder of the period of the Contract;
- b) recover in full from the Contractor any other loss sustained by the Council in consequence of any breach of this clause, whether or not the Contract has been terminated.

9. **General**

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

9.2. The Contractor 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.

9.3. 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.

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

9.5. 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.

10. **Freedom of Information**

10.1. 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.

10.2. The Contractor shall assist and cooperate with the Council (at the Contractor’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.

10.3. The Contractor 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 Contractor, the Contractor’s tender and the terms of this Contract (excluding any commercially sensitive information).

10.4. The Contractor acknowledges that the Council 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 Contractor, or

- b) following consultation with the Contractor and having taken its views into account.

11. Data protection

The Contractor 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 2018 and the General Data Protection Regulations 2016. The Contractor 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 2018 and the General Data Protection Regulations 2016.

12. Press and Publicity

The Contractor shall not issue any press release or make any public statement concerning the Council, its employees, agents, councillors, the provisions of the Works without the prior written consent of the Council.

13. Safeguarding Vulnerable Adults and Children

13.1. The Contractor shall ensure that any of its staff who may have contact with children or vulnerable people during the performance of the Works shall have a clear and valid DBS check before being employed and throughout the period of the Contract.

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

14. Corporate Requirements

14.1. Human Rights

14.2. The Contractor shall comply with all obligations under the Human Rights Act 1998 as if he was a local authority.

14.3. The Contractor shall ensure that it has policies or codes of conduct in relation to:

14.3.1. equality and diversity policies;

14.3.2. sustainability;

14.3.3. information security rules;

14.3.4. whistleblowing and/or confidential reporting policies;

and shall take reasonable steps to ensure that its staff comply with them.

14.4. The Contractor 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.

14.5. The Contractor 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.

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

14.6.1. details of the finding; and

14.6.2. the steps the Contractor has taken to remedy the situation

15. **Record keeping**

15.1. The Contractor 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:

15.1.1. the Works provided under it

15.1.2. all expenditure reimbursed by the Council

15.1.3. all payments made by the Council

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

16. 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.

17. Notices

17.1. 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.

17.2. 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.

17.3. This clause 17.3 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.

18. 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.

19. 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.

20. 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.

21. Third parties

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

22. **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.

23. **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.

24. **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.