



## Terms and Conditions of Purchase

### The Borough Council of Newcastle-under-Lyme Standard Terms and Conditions - for the Supply of Goods and Services

#### 1. General

1.1 These terms and conditions shall apply to the Purchase Order:

- unless the Purchase Order refers to a specific contract in which case that specified contract shall apply in conjunction with these terms and conditions in the order of priority identified in the specified contract;
- subject only to any minor changes to these terms and conditions which are set out in the Purchase Order.

1.2 Any purchase by the Buyer is conditional upon acceptance of these terms and conditions by the Provider. If the Provider does not wish to accept these terms and conditions, then the Provider should not accept the Purchase Order, and should inform the Buyer immediately.

1.3 Delivery of Goods or provision of the Services by the Provider to the Buyer shall be deemed to be conclusive evidence of the Provider's acceptance of these Terms and Conditions.

1.4 This does not preclude the right of the Provider to make a counter-offer, and if such counter-offer is to be made, the document containing such counter-offer shall be headed with the words 'Counter-offer'. Failure to mark such offer as 'Counter-offer' will mean that the document shall be construed as an acceptance of the Purchase Order subject only to the Terms and Conditions and statute and common law.

1.5 The Provider must comply with every relevant legal requirement (including EU and UK Standards) relating to the manufacture, packaging and delivery of Goods.

#### 2. Definitions

'**Buyer**' means The Borough Council of Newcastle-under-Lyme, as identified on the Purchase Order.

'**Data Protection Legislation**' the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to privacy.

'**UK Data Protection Legislation**' any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation.

'**Data Processing Schedule**' means the details of the data processing by the Provider as detailed in the Purchase Order

'**Goods**' means all or any of the items set out in the Purchase Order which are to be supplied to the Buyer by the Provider.

'**Parties**' means the Buyer and the Provider.

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'**Provider**' means the person, firm or company named as such on the Purchase Order (or its successors in title).

'**Purchase Order**' means any Purchase Order placed by the Buyer under which the Provider agrees to supply Goods and/or Services to the Buyer.

'**Services**' means the Services to be performed by the Provider for the Buyer as described in the Purchase Order and anything created or produced as a result of the Services.

'**Specification**' means the requirements to which the Goods and/or Services supplied shall conform as detailed in the Purchase Order.

'**Working Day**' means the Buyer's usual working days, which exclude weekends, bank holidays, some other days published by the Buyer, or such other days as may be notified to the Provider by the Buyer.

### **3. Assignment and Sub-contracting**

**3.1** The Provider shall not assign, transfer, sublet or subcontract in whole or in part any of the Purchaser Order without the prior written consent of the Buyer.

### **4. Corruption and Whistleblowing**

**4.1** The Provider shall not do anything, or omit to do anything, which may be considered to be an inducement to any employee of the Buyer. Any such inducement shall be deemed to be a breach, which shall be considered incapable of remedy. The Provider shall report any request for an inducement to the Buyer under the Buyer's Whistleblowing Policy, which can be found on the Buyers' web-site: [Whistleblowing Policy](#)

### **5. Intellectual Property**

**5.1** Intellectual property and other rights in the Goods and/or Services shall vest in the party from whom the Goods and/or Services originate unless the Goods and/or Services are produced for the Buyer as bespoke. If the latter applies such rights shall vest in the Buyer upon their creation and the Provider shall do all such things and execute all such documents as the Buyer may require in order to perfect such vesting. The Provider shall ensure that it includes corresponding provisions in its contracts with its own sub-contractors and providers.

**5.2** In the event of any breach of any such intellectual property rights the Provider shall indemnify the Buyer, unless the Buyer is responsible for the breach in question.

### **6. Confidentiality**

**6.1** Subject to legislative requirements, any confidential information supplied by the Buyer to the Provider or vice versa (including the details of the Purchase Order), shall be kept confidential and shall only be used by the Provider for the performance of its obligations under the Purchase Order. Upon request, and in any event upon expiry or termination of the Purchase Order 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 Purchase Order.

### **7. Price Variation**

**7.1** The prices in the Purchase Order shall apply (without variation) for both the period and/or stated quantity of the Goods and/or Services, unless specifically otherwise agreed in writing by the Parties.

**8. Liability**

- 8.1** Neither party excludes or limits liability to the other for death or personal injury as a result of its negligence.
- 8.2** The Provider's liability for breach of confidentiality or infringement of intellectual property rights shall be unlimited unless otherwise agreed in writing by the Parties.
- 8.3** The liability of either party for direct loss of, or damage to, the tangible property of the other shall be limited to five million pounds per claim unless otherwise stated in the Purchase Order.
- 8.4** The Provider will ensure that it has insurance in place and shall maintain such insurance throughout the period covered by this contract to cover its liabilities under the Purchase Order, to include professional indemnity insurance for £2,000,000 (where Services are to be provided), public liability insurance for £5,000,000, and employer's liability insurance (where relevant) for £10,000,000 (unless otherwise agreed in writing between the Parties).
- 8.5** The provider shall indemnify the buyer against all actions, proceedings, costs, claims, demands and liabilities in respect of the Goods or Services provided by the provider.

**9. Documents**

- 9.1** All advice notes, invoices and packing notes issued by the Provider shall be clearly marked by the Provider with the Provider's name and address, the Purchase Order number, the item code, date of despatch, a description of the Goods and/or Services, the address of their intended destination and the due delivery date.

**10. Quality and Performance**

- 10.1** The Goods and/or Services shall conform with the Specification; be of sound design, materials and workmanship; be fit for the purpose for which they are procured by the Buyer and be capable of the required performance and where relevant must comply with samples previously approved by the Buyer.
- 10.2** The Provider warrants to the Buyer that in the case of Goods supplied, that the Goods will be of satisfactory quality (within the meaning of the Sale of Goods Act 1979 as amended) and fit for any purpose stated by the Provider or made known to the Buyer at the time the Purchase Order is placed; the Goods will be free from defects in design, material and workmanship; the Goods will correspond with any relevant specified sample and will comply with all statutory requirements and regulations relating to the sale of goods. The Provider warrants to the Buyer that, in the case of Services to be provided, that the Services shall conform to the specification and be capable of the required performance and further that all such Services purchased under the Purchase Order will be executed by the Provider in a timely, efficient and professional manner to the appropriate prevailing standards and to the reasonable satisfaction of the Buyer.

**11. Inspection and Testing**

- 11.1** Before dispatching the Goods or commencing provision of the Service the Provider shall, if appropriate and if previously agreed by the Parties, allow the Buyer to inspect and test the Goods and/or Services for compliance with the Specification and/or any other provisions of the Purchase Order. If in the Buyer's reasonable opinion, the Goods and/or Services do not comply with the Specification, the Buyer shall inform the Provider (in writing, unless this is impractical) either, of the Buyer's intention to reject the Goods, or the remedial steps which must be undertaken by the Provider to ensure compliance with the Specification.

**12. Delivery**

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**12.1** The Provider shall at the Providers own risk deliver the Goods and/or Services as instructed in the Purchase Order and obtain a receipt for them from an authorised officer of the Buyer. Any requirements as to the manner, quantities or special requirements for delivery, specified in the Purchase Order, shall also be complied with by the Buyer.

**12.2** The Buyer shall allow the Provider access to its premises as necessary for the delivery of the Goods and/or Services. The Buyer may refuse admission to the Provider's personnel or require such personnel to leave its premises at any time and shall not be obliged to give the Provider the reason(s) for its decision. The Provider shall be responsible for the off-loading of Goods on delivery. The Buyer shall not apply the provisions of this clause vexatiously.

**12.3** Whilst on the Buyer's premises, the Provider shall abide by the Buyer's rules and regulations relating to the premises.

**13. Extension of Time, Rescheduling or Cancellation**

**13.1** If, for any cause beyond the reasonable control of the Provider, delivery of the Goods, or performance of the Services, is delayed, then unless time is of the essence the time for delivery/performance may be rescheduled by the Buyer (acting reasonably). Delay for any other reason shall be at the sole discretion of the Buyer, in which case the Provider shall be responsible for any additional costs. The Buyer shall be entitled by notice in writing to the Provider to withdraw the Purchase Order, and may re-order with whosoever the Buyer pleases to complete the Purchase Order. Any increase in price paid by the Buyer due to this condition being exercised shall be borne by the Provider.

**13.2** Notification of any anticipated or actual delay must be immediately communicated to the Buyer by the Provider specifying the reasons for the delay.

**13.3** If in the reasonable opinion of the Buyer it is inappropriate to reschedule delivery of the Goods and/or performance of the Services then the Buyer may cancel the Purchase Order without incurring any liability for such cancellation.

**13.4** The Buyer may without notice cancel the Purchase Order immediately if the Provider becomes bankrupt, has a receiver appointed or goes into liquidation and the Buyer may complete the Purchase Order with whosoever the Buyer pleases, and any increase in price due to this condition being exercised shall rank with other claims of creditors of the Supplier. The Buyer may also cancel this Purchase Order and recover from the Provider the amount of any loss resulting from such cancellation if the Supplier is guilty of any offence under relevant Prevention of Corruption legislation.

**14. Risk and Title**

**14.1** Risk and title in the Goods and/or Services shall only pass to the Buyer upon acceptance of the Goods and/or Services when delivered to the place and address specified in the Purchase Order, unless otherwise agreed in writing by the Parties.

**14.2** The Buyer also reserves the right to take possession of all Goods to which it has title.

**15. Damage or Loss in Transit**

**15.1** Any Goods lost or damaged in transit shall be restored or replaced by the Provider at the Provider's expense and to the Buyer's satisfaction.

**15.2** Delivery shall not be deemed to have taken place until restoration has taken place to the satisfaction of the Buyer or replacement Goods have been accepted by the Buyer.

**15.3** Goods shall be deemed not to have been delivered by the Provider if a receipt from an authorised officer of the Buyer cannot be produced by the Provider.

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**16. Rejection**

- 16.1** Unless otherwise agreed in writing by the Parties, if, at any time within 3 months from the date of delivery, having regard to the nature of the Goods or Services, the Goods and/or Services fail to comply with the Purchase Order, the Buyer may, by notice to the Provider (which notice shall be confirmed in writing) reject the whole or any part of the Goods and/or Services. The Buyer may then (without prejudice to its other rights and remedies) accept replacement Goods and or re-performed Services from the Provider at the Provider's expense.
- 16.2** The Buyer's rights in these conditions supplement any warranty or guarantee offered by the Provider. The Buyer will have the right to require the Provider to remedy defects in the Goods or Services (by repair or replacement) if within twelve months of delivery the Goods or Services become defective because of poor design or workmanship, use of faulty materials or other relevant reason.
- 16.3** If any Goods rejected by the Buyer are not removed by the Provider within seven days from the date of the notice, the Buyer may remove the Goods at the Provider's cost. The Buyer may reject the Goods for any reason given in 15.1 above or any other valid grounds.
- 16.4** The Buyer shall not be liable for any damage to or deterioration of any rejected Goods whilst in its possession howsoever caused.

**17. Terms of Payment**

- 17.1** The Provider shall provide an invoice and delivery note quoting the **Purchase Order** number and giving details of the Goods delivered. The Purchase Order number must be quoted on the invoice failure to do so may result in late payment.
- 17.2** The Buyer agrees to pay the Provider either, the total price for the Goods and/or Services which is stated in the Purchase Order (or otherwise agreed in writing between the Parties) within 30 Working Days of the date of receipt of a valid and undisputed invoice, which (if the Provider determines that VAT is payable) must comply with the requirements of H.M. Revenue and Customs for VAT purposes.
- 17.3** All prices and rates which are stated in the Purchase Order are exclusive of VAT (unless otherwise stated in the Purchase Order).
- 17.4** If the Buyer shall have informed the Provider that an invoice is disputed by it, the issue shall (unless otherwise agreed by the Parties) be referred under the Dispute Resolution Procedure\*.
- 17.5** The Provider shall accept payment of monies due by electronic funds transfer through BACS or other electronic payment means, as good discharge of the Buyer's indebtedness under the Purchase Order.
- 17.6** If any undisputed monies are not paid by the due date, then the Provider or the Buyer (as applicable) may charge interest on such undisputed monies on a day to day basis from the date falling 30 Working Days from when payment fell due, (or such other date as may be agreed in writing between the Parties), to the date of payment (both dates inclusive) at the rate of two (2) per cent per annum over the base lending rate of the Bank of England from time to time. The Parties agree that this clause provides each of the Parties with a substantial remedy in respect of any late payment of sums due for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998).

**18. Set Off**

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**18.1** The Buyer shall be entitled to set off against any sums due to the Provider under the Purchase Order any sums which become payable by the Provider to the Buyer in relation to the Purchase Order or any other contract between the Parties.

**19. Compliance**

**19.1** The Provider and its personnel shall at all times comply with all applicable laws, including statutes, regulations or instruments (including any EU instruments) and bye-laws of local or other competent authorities.

**20. Entire Agreement**

**20.1** These terms and conditions and the Purchase Order shall (unless expressly agreed otherwise in writing by the Parties) comprise the entire terms and conditions of the contract in relation to the subject matter of the Purchase Order (subject to clause 1.1) and the Provider's terms and conditions of contracting are expressly excluded. The Purchase Order and these terms and conditions shall therefore take priority over any other arrangements, communications (whether verbal or written), or any other documents (including, but not limited to, other purchase orders, or other terms and conditions) except if the Purchase Order is displaced pursuant to an over-riding contract pertaining to the Goods and/or Services either, issued by, or referred to, by the Buyer.

**21. Contracts (Rights of Third Parties) Act 1999**

**21.1** The contract between the Parties which is referred to in clause 20.1 does not confer (and is not intended to confer) any rights on any third party, whether pursuant to the Contracts (Rights of Third Parties) Act 1999, or otherwise.

**22. No Agency**

**22.1** This contract does not either; create a partnership between the Buyer and the Provider, or make one of the Parties the agent of the other for any purpose.

**23. Publicity**

**23.1** The Provider shall not, without the prior written permission of the Buyer, advertise or disclose to any third party that it is providing Goods and/or Services to the Buyer.

**24. Governing Law**

**24.1** This contract shall be governed by English law and the Parties shall submit to the exclusive jurisdiction of the English courts.

**25. Dispute Resolution Procedure (DRP)**

**25.1** If any of the Provider's invoices are disputed by the Buyer, then unless otherwise agreed between the Parties, the Parties agree to refer the dispute in accordance with the Buyer's standard Disputes Resolution Procedure\*.

**26. Services performed in or on the Buyers Buildings/Premises**

**26.1 ASBESTOS** – the Buyer has adopted a policy of monitoring for asbestos on all of the Buyers premises. All Providers engaged by the Buyer to carry out work on or in those premises must read and confirm understanding of the asbestos report for the building by signing the asbestos register. If during the course of the work the Provider finds any material or substances which may contain asbestos, they shall immediately notify the officer supervising the contract who will obtain instructions from the Buyers proper officer in that regard to the

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contract. No more work shall then be undertaken until further instructions are received from the officer supervising the contract or their nominated deputy. Providers must ensure that their employees, their sub-contractors and their agents or any other persons engaged by the Providers are made aware of this condition.

- 26.2 HEALTH & SAFETY** – Prior to any work being undertaken on the buyer’s premises copies of risk assessments and method statements should be forwarded to the officer supervising the contract.

When visiting the buyers premises or prior to any works being carried out, all personnel should familiarise themselves with and adhere to the Site Safety Rules and where required undertake a site health and safety induction.

All equipment (where applicable) should be supplied with the relevant Health and Safety Information to enable the buyer to comply with Health and Safety Legislation and Regulations e.g. PUWER, COSHH, Noise and Vibration

**IMPORTANT** – before any work is carried out in the Buyers Civic Offices, a ‘Permit to Work’ must be obtained and issued through the officer supervising the Contract.

### **27. Hazardous or Noxious Goods**

- 27.1** Where Goods are supplied by the Provider to the Buyer which are of a hazardous or noxious nature such Goods or the container in which the Goods are stored or transported shall be clearly marked so as to show
- (a) the nature of the Goods;
  - (b) any hazards associated with the Goods;
  - (c) any precautions involved in handling the Goods;
  - (d) any measures to be taken in case of accident.

### **28. Equalities**

- 28.1** The Provider shall comply with current equality and human rights legislation in the same manner as the Buyer. Further information can be found on the Equality and Human Rights Commission web site: [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

### **29. DBS - Disclosure and Barring Service checks**

- 29.1** When reasonably required by the Buyer, the Provider agrees to comply with the Buyer’s standard requirements in respect of Disclosure and Barring Service (DBS) checks.

### **30. Safeguarding of Children and Vulnerable Adults**

- 30.1** In relation to the provision of Service the Provider shall adopt the Buyer’s policies and procedures\* (as amended from time to time during the Contract Period) for dealing with Safeguarding issues
- 30.2** The Provider shall notify the Buyer immediately in writing of all instances of suspected Safeguarding issues of which the Provider becomes aware.”

### **31. TUPE**

- 31.1** The Provider shall if so required comply with the Buyer’s standard obligations in respect of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”) (as amended), together with any relevant codes of practice and guidance issued under such regulations.

**32. Data Protection**

- 32.1** Both Parties will comply with all applicable requirements of the Data Protection Legislation. This clause 32 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. In this clause 32, **Applicable Laws** means (for so long as and to the extent that they apply to the Provider) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK. In this Agreement, the following words and expressions shall bear the respective meanings given in the Data Protection Legislation: "Personal Data", "Data Processor", "Data Controller", "Data Subject".
- 32.2** Insofar as the Provider processes any Personal Data on behalf of the Council, the Council will be the Data Controller and the Provider is the Data Processor. The Data Processing Schedule (where applicable) sets out the scope, nature and purpose of processing by the Provider, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 32.3** Without prejudice to the generality of clause 32.1, the Provider shall, in relation to any Personal Data processed in connection with the performance by the Provider of its obligations under this Agreement:
- (a)** process that Personal Data only on the written instructions of the Council unless the Provider is required by Applicable Laws to otherwise process that Personal Data. Where the Provider is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Provider shall promptly notify the Council of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Provider from so notifying the Council;
  - (b)** ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Council, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
  - (c)** ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
  - (d)** not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
    - (i)** the Council or the Provider has provided appropriate safeguards in relation to the transfer;
    - (ii)** the data subject has enforceable rights and effective legal remedies;
    - (iii)** the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
    - (iv)** the Provider complies with reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
  - (e)** assist the Council, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - (f)** notify the Council without undue delay on becoming aware of a Personal Data breach;
  - (g)** at the written direction of the Council, delete or return Personal Data and copies thereof to the Council on termination of the agreement unless required by Applicable Law to store the



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Personal Data; and

- (h)** maintain complete and accurate records and information to demonstrate its compliance with this clause 32 and allow for audits by the Council or the Council's designated auditor.
- 32.4** The Provider shall not disclose or permit the disclosure of any of that Personal Data to any third party unless specifically authorised in writing by the Council.
- 32.5** The Council may, at any time on not less than 30 days' notice, revise this clause 32 by replacing it with any applicable controller to processor standard clauses.
- 32.6** The Provider indemnifies the Council against any actions claims or losses incurred by the Council as a result of:

  - (a) the Provider's breach of the Data Protection Legislation or any provision of this Agreement relating to Personal Data; and
  - (b) any conduct of the Provider which causes the Council to breach the Data Protection Laws
- 32.7** The provisions of this clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

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*These amended conditions were issued by the Council in May 2018*

*\*A copy of the buyer's procedures can be supplied on request.*