

Nottinghamshire County Council Standard Terms and Conditions

1. **DEFINITION**
 - 1.1 The term **'Council'** means Nottinghamshire County Council and ancillary establishments of the County Council on whose behalf the order is placed.
 - 1.2 The term **'Supplier'** shall mean the person, firm or company to whom the Purchase Order is issued.
 - 1.3 The word **'Goods'** means the Goods, Services or Works specified in the Purchase Order and all parts or components of them as specified in the Purchase Order.
 - 1.4 The term **'Contract'** shall mean the contract between the Council and the Supplier, consisting of the **Purchase Order** placed subject to these conditions and any other documents and conditions specified in the Purchase Order. No attendant conditions submitted or referred to by the Supplier when tendering or acknowledging receipt of any order will form part of the contract unless otherwise agreed to in writing by the Council.
 - 1.5 The term **'Legal Obligations'** means any present or future statute, statutory instrument or by law, or any present or future regulation, order, direction, code of practice or requirement of any statutory, public, local or other competent authority, or court of competent jurisdiction, in so far as it relates the Goods to be supplied or to its use irrespective of the person on whom the obligation is imposed.
 - 1.6 The singular includes the plural and vice versa and any reference to one gender, either stated or implied, includes a reference to the other gender.
2. **EXISTENCE OF CONTRACT**
 - 2.1 Acceptance of this Contract will be deemed to bind the Supplier to the terms and conditions contained therein. No Goods shall be provided except in accordance with the Contract. In the event of and only to the extent of any conflict between the body of the Contract, the Purchase Order and those of the Supplier's terms and conditions the body of the Contract shall prevail over the Purchase Order which shall prevail over the Supplier's terms and conditions.
 - 2.2 The Contract constitutes the entire agreement between the parties relating to the subject matter of the Purchase Order. The Contract supersedes all prior negotiations, representations and undertakings, whether written or oral.
3. **TERMS OF PAYMENT**
 - 3.1 In consideration of the performance of the Supplier's obligations under the Contract by the Supplier to the satisfaction of the Council, it shall pay the undisputed sums due to the Supplier in cleared funds within 30 days of receipt and agreement of a valid invoice, submitted monthly in arrears.
 - 3.2 [Tax where applicable, shall be shown separately on valid Tax invoices as a strictly net charge.]
 - 3.3 The Council may reduce payment in respect of any Goods which the Supplier has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the Council.
4. **DELIVERY**
 - 4.1 The Goods shall be delivered at such times, at such places and in such a manner as is specified in the Purchase Order.
 - 4.2 Time of delivery shall be of the essence, unless the Purchase Order specifically provides otherwise, and failure to deliver within the specified time shall entitle the Council, at its discretion, and without prejudice to other rights, to treat such failure as a fundamental breach of Contract.
 - 4.3 All Goods are to be delivered free of charge unless specified otherwise in the Purchase Order.
 - 4.4 The Council shall not accept any additional charge, other than specified on the Purchase Order, for packaging, casks, packing cases, or pallets of any description whatsoever, and unless otherwise provided in the Purchase Order, the Council will not be obliged to return any such items.
 - 4.5 All Goods must be delivered to the delivery point/s specified in the Purchase Order. If Goods are incorrectly delivered, the Supplier will be responsible for any additional expense incurred in arranging delivery of Goods to the correct destination/s.
 - 4.6 All Goods supplied must meet the governing specification(s) as to quantity, quality, quantity, quality, standard or description as stipulated in the Purchase Order.
5. **PASSING OF TITLE AND RISK**

Title and risk in the Goods passes on the date specified in the Purchase Order and if none is specified on the physical delivery of the Goods in accordance with the Purchase Order.
6. **TERMINATION / REJECTION**
 - 6.1 If the Supplier defaults in any of its obligations under the Contract, becomes insolvent, has a receiver appointed of its business or is compulsorily or voluntarily wound up or the Council believes that any such events may occur, the Council shall be entitled, at its absolute discretion and without prejudice to any other remedy, suspend the performance of or terminate the Contract and in the event of termination to keep or take possession of any Goods belonging to the Council.
 - 6.2 If any Goods do not conform to the Contract on any grounds at all (including without limitation by reason of quantity, quality or being unfit for the purpose for which they are required) the Council shall be entitled, at its discretion and without prejudice to any other remedy, exercise any one or more of the following rights:-
 - Reject the Goods in whole or part
 - Permit the Supplier to replace, repair or reinstate the Goods so that they conform to the Contract and Carry out or will have carried out at the Supplier's expense such work as is necessary to conform the Goods to the Contract.
 - 6.3 Rejected Goods shall be removed by, and at the expense of the Supplier within seven days after the Council has notified the Supplier of the rejection. If not so removed, the Council may return or dispose of the rejected goods at the Supplier's risk and expense.
 - 6.4 If the Council terminates the Contract the Supplier shall return to the Council all payments made and if the Council rejects any Goods the Supplier shall return all payment already made for the rejected Goods. Where on termination the Council elects to keep or take any Goods it shall account to the Supplier for them as a reasonable proportion of their price or value to the Council, but otherwise no compensation shall be payable to the Supplier on termination or rejection.
7. **ACCEPTANCE**

Acceptance of the Goods shall take place when the Council confirms acceptance in accordance with the Purchase Order, and if none are specified but without prejudice to any other remedies, when the Council takes the Goods into use, fails to exercise its right of rejection or where a reasonable amount of time has elapsed since delivery of the Goods in accordance with Condition 4.
8. **AMENDMENTS AND VARIATION**
 - 8.1 No amendment or variation to the body of the Contract shall be valid unless agreed in writing between the Council and the Supplier.
 - 8.2 No variation in the Purchase Order will be accepted unless agreed in writing between the Council and the Supplier.
 - 8.3 Any agreed variation/s to the Purchase Order are bound by these same terms and conditions of Contract, so far as applicable, as though the said variations were stated in the original Purchase Order.
9. **LOSS OR DAMAGE IN TRANSIT**
 - 9.1 The Council will endeavour to comply with any conditions of the Supplier relating to notification of damage, or loss in transit, or non-delivery of goods, but the Council shall not be deemed to have accepted the Goods as being in good condition and in accordance with the Purchase Order by reason of their failure to comply with such conditions.
 - 9.2 The Council shall not be deemed to have accepted Goods as being delivered in full, in good condition and/or in accordance with the Purchase Order by reason only that a signature has been given on behalf of the Council on a delivery note or other form of receipt.
 - 9.3 The Council will be entitled to inspect Goods and will retain the right to reject Goods if they are defective or in breach of the Contract. The Council will provide written notification to the Supplier of any damage, shortage or discrepancy within a period of 28 days from receipt of Goods.
10. **INSPECTION**

The Council's representatives shall have the right to inspect Goods at the Supplier's and/or sub-contractor's premises at all reasonable times, upon completion of Goods, and/or after delivery, or as otherwise provided in the Contract. When the Council exercises its right of inspection it may reject Goods that do not comply with the terms of the Purchase Order as a whole or part consignment. Risk in such rejected Goods shall pass to the Supplier immediately upon written notification of such rejection. The Supplier will pass on this liability to its sub-contractors. Any inspection, checking, approval or acceptance given on behalf of the Council shall not relieve the Supplier or its sub-contractor from any obligation under the Contract.
11. **COUNCIL'S RIGHTS IN SPECIFICATIONS, PLANS, PROCESS INFORMATION ETC**
 - 11.1 Any specifications, plans, drawings, process information, patterns or designs supplied by the Council to the Supplier in connection with the Purchase Order shall remain the property of the Council and any information derived there from or otherwise communicated to the Supplier in connection with the Purchase Order shall be kept secret and shall not, without the written consent of the Council, be published or disclosed to any third party, or made use of by the Supplier except for the purpose of implementing the Purchase Order.
 - 11.2 Any specifications, plans, drawings, process information, patterns or designs supplied by the Council must be returned to the Council on fulfilment of the Contract.
12. **FREE-ISSUE MATERIALS**

Where the Council for the purposes of the Purchase Order issues materials 'free of charge' to the Supplier such material shall be and remain the property of the Council. The Supplier shall maintain all such materials in good order and condition subject, in the case of tooling, patterns and the like, to fair wear and tear. The Supplier shall use such materials solely in connection with the Purchase Order. Any surplus materials shall be disposed of at the Council's discretion. Waste of such materials arising from bad workmanship or negligence of the Supplier shall be made good at the Supplier's expense. Without prejudice to any other rights of the Council, the Supplier shall deliver such materials, whether processed or not, to the Council on demand.
13. **EUROPEAN & BRITISH STANDARDS**

All Goods, materials and work must comply with relevant British and European Directives, Regulations, Standards and Codes of Practice, or other equivalent standards, that are in force at the date of Contract.
14. **HAZARDOUS GOODS**
 - 14.1 Hazardous Goods must be suitably packed and marked by the Supplier with International Danger Symbols, the United Nations (UN) number and display the name and description of the materials in English. Transport and other documents must include a declaration of the hazard and the name of the materials in English. Hazardous Goods must be accompanied by emergency information, in English, in the form of written instructions, labels or markings. The Supplier shall observe the requirements of UK and international agreements relating to the packing, labelling and carriage of hazardous goods.
 - 14.2 All information held by, or reasonably available to the Supplier regarding any potential hazards known or believed to exist in the transport, handling or use of the hazardous Goods supplied shall be promptly communicated to the Council.
15. **NO WAIVER**

The failure by the Council to enforce any of these terms and conditions of Contract does not in any way release, exonerate or affect the liability of the Supplier, or act as a waiver of these terms and conditions and the right of the Council at any time to enforce each and every term and condition.
16. **WARRANTY**
 - 16.1 The Supplier shall, at its own expense, make good any defects which, under the proper use, appear in Goods during a period beginning on their delivery and ending 12 months after their delivery, or for any other defects period stipulated in the warranty or by the Council in the Purchase Order.
 - 16.2 Should the Council reject any goods supplied under warranty and the Contractor be unable to supply acceptable replacements within the time fixed by the Council, or should the Contractor fail to provide the Goods or any part thereof, or fail to comply with any reasonable order given to him in writing by the Council in connection with such default, or contravene any provisions of the Purchase Order, the Council may immediately give notice in writing to the Contractor to make good such failure or contravention.
 - 16.3 Should the Contractor fail to comply with the notice within seven days of its receipt then the Council, without prejudice to any other rights it may have, shall obtain goods in lieu and the Seller shall make good any excess costs incurred by the Council in doing so.
17. **LOSS AND INDEMNITY**
 - 17.1 The Supplier shall indemnify and keep indemnified the Council against all loss, damage or injury to the Council, any claim in respect of loss, damage or injury made against the Council by third parties and any costs and expenses arising in connection with them which result from the Supplier's failure to comply with the Contract (whether negligent or otherwise) and in particular resulting from any defect in the Goods or their materials, construction, workmanship or design (to the extent that the Supplier is responsible for design) or any claim that any Goods prepared or supplied under the Contract except exclusively in accordance with a design or instruction given by the Council infringe or are alleged to infringe the rights of any third party claimed under or in connection with any patent, registered design, copyright or breach of confidence.
 - 17.2 The Supplier shall provide all facilities, assistance and advice required by the Council or its insurers for the purpose of contesting or dealing with any action claim or matter arising out of the Supplier's performance or purported performance of or failure to perform the Contract.
 - 17.3 The Supplier shall at all times be fully insured with a reputable insurer against all insurable liability under the Contract for at least the sum of £5 million for any one claim, unlimited in any one period of insurance. The Supplier shall provide all facilities, assistance and advice required by the Council or its insurers for the purpose of contesting or dealing with any action claim or matter arising out of the Supplier's performance or purported performance of or failure to perform the Contract.
18. **INTELLECTUAL PROPERTY RIGHTS**

The Supplier shall indemnify the Council against any claim or infringement of letters patent, registered design, service or trade mark or copyright by the use of any article or material supplied to the Council and against all costs and damages which the Council may incur in any action for such infringement or for which the Council may become liable in any such action.
19. **EQUIPMENT AND MATERIALS**
 - 19.1 The Supplier shall provide at its own risk, cost and expense all equipment and material (save for free-issue material) necessary for the performance of the Contract.
 - 19.2 The Supplier shall be responsible for the security of all equipment and material used by the Supplier in performance of the Contract and the Council shall be under no liability in respect thereof. For the avoidance of doubt, this shall include all equipment and materials left unattended or unguarded on site for any period.
20. **STATUTORY AND OTHER REQUIREMENTS**
 - 20.1 The Supplier undertakes that the Goods are safe and without risk, when properly used, and comply in all respects with all Legal Obligations in force at the date of delivery. The Supplier shall supply in respect of the Goods such information about the use of them as required by the Legal Obligations enabling the Council to comply with them so far as is required by law.
 - 20.2 The Council's rights under these conditions are in addition to the statutory conditions implied in favour of the Council by the Sale of Goods Act 1979.
21. **ASSIGNMENT AND SUB-LETTING**
 - 21.1 The Supplier shall not assign or sub-let the Contract in whole or in part without first obtaining the Council's written consent.
 - 21.2 It shall be a condition of any such consent to any sub-letting of the Contract that the Supplier shall ensure and be responsible for the compliance by any sub-contractor with the terms of the Contract, include in the sub-contract provisions consistent with these conditions for the benefit of and enforceable by the Council and furnish the Council with copies of any sub-contract arrangement upon the Council's request at any time.
22. **FORCE MAJEURE**

Neither party shall be liable for failure to perform its obligations under Contract if such failure results from abnormal unforeseeable circumstances which could not have been avoided by exercising reasonable control and due care.
23. **LAW AND JURISDICTION**

These terms and conditions shall be governed by English Law and the Supplier consents to the exclusive jurisdiction of the English courts in all matters regarding it.
24. **NOTICES**

Any notice to be given under these terms and conditions shall be in writing and shall be sent by first class mail or by fax (confirmed by first class mail) to the address of the relevant party or to the relevant fax number, or such other addresses or fax numbers as the Council or Supplier may from time to time notify the other. Notices will be deemed to have been received two working days after the day of posting or one working day after the fax transmission (only where a transmission report is generated by the senders fax machine confirming successful transmission).
25. **FREEDOM OF INFORMATION ACT 2000 (FOIA)**
 - 25.1 The Supplier acknowledges that the Council is subject to the requirements of the FOIA and shall therefore facilitate the Council's compliance with information disclosure requirements (as defined in section 84 FOIA). The Supplier shall ensure that all information produced, or held on behalf of the Council, be retained and made available for disclosure or inspection upon the Council's request.
 - 25.2 The Council draws to the Suppliers attention that the Council may be obliged under the FOIA, to disclose information supplied by it or its agents to the Council:
 - (a) without consulting with the Supplier; or (b) following consultation with the Supplier and having taken the Supplier's views into account.
26. **DISCRIMINATION, EQUALITIES AND HUMAN RIGHTS**
 - 26.1 The Supplier shall not unlawfully discriminate within the meaning and scope of the provisions of the Sex Discrimination Acts 1975 and 1986, the Race Relations Act 1976, Race Relations (Amendment) Act 2000, the Disability Discrimination Act 1995 and 2005, the Employment Equality (Sexual Orientation) Regulations 2003 and Employment Equality (Religion or Belief) Regulations 2003, or contravene the Human Rights Act 1999 or any statutory modifications or re-enactments of them or any current or future enacted part, in the provision of Goods in accordance with the order.
 - 26.2 The Supplier shall provide to the extent relevant, comply with the Council's equal opportunities policies.
 - 26.3 The Supplier shall take all reasonable steps to ensure that servants, employees, agents and sub-contractors employed by the Supplier to fulfil its obligations under the Contract observe all relevant Legal Obligations.
27. **ANTI CORRUPTION**
 - 27.1 The Supplier shall not do, and warrants that in entering the Contract it has not done, any of the following (hereafter 'prohibited acts')
 - (a) offer, give or agree to give any employee, officer, Member or servant of the Council any gift or consideration or any kind of inducement or reward (i) for doing or not doing (or having done or not having done) any act in relation to the obtaining or performance of this or any other Contract with the Council, or (ii) for showing or not showing favour or disfavour to any person in relation to this or any other Contract with the Council
 - (b) enter into this or any other contract with the Council in connection with which commission has been paid or has been agreed to be paid by the Supplier or on the Supplier's behalf, or to the Supplier's knowledge, unless before this Contract is made particulars of any such agreement for the payment thereof have been disclosed in writing to the Council.
 - 27.2 If the Supplier, its employees, agents or any sub-contractor (or anyone acting on its or their behalf) does any of the prohibited acts or commits any offences under the Prevention of Corruption Acts 1889 - 1916 with or without the knowledge of the Supplier in relation to this or any other contract with the Council, the Council shall be entitled:
 - (a) to terminate this Contract and recover from the Supplier the amount of any loss resulting from the termination;
 - (b) to recover from the Supplier the amount or value of any such gift, consideration or commission;
 - (c) to recover from the Supplier any other loss sustained in consequence of any breach of this condition, whether or not this Agreement has been terminated.
- 27.3 In exercising its rights or remedies under this condition, the Council shall:
 - (a) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the prohibited act;
 - (b) give all due consideration, where appropriate, to action other than termination of any contract, including (without being limited to):
 - (i) requiring the Supplier to procure the termination of a sub-contract where the prohibited act is that of a sub-contractor;
 - (ii) requiring the Supplier to procure the dismissal of any employee (whether his own or that of a sub-contractor) where the prohibited act is that of such employee.