

LONDON BOROUGH OF BARNET
STANDARD TERMS AND CONDITIONS OF CONTRACT
FOR THE PURCHASE OF GOODS AND SERVICES

CONTENTS

CLAUSE NO	HEADING	PAGE NO
1.0	Definitions	1
2.0	General	1
3.0	Conditions Applicable	2
4.0	Price and Payment	2
5.0	The Goods/Services	3
6.0	Warranties/Conditions	5
7.0	Delivery of Goods/Provision of Service.....	5
8.0	Acceptance of Goods	6
9.0	Title and Risk	7
10.0	Indemnity.....	8
11.0	Insurance	8
12.0	Intellectual Property	9
13.0	Confidentiality.....	9
14.0	Corruption	9
15.0	Damage and Sureties.....	10
16.0	Bankruptcy/Insolvency.....	11
17.0	Resolution and Disputes.....	12
18.0	Transfer and Sub-Contracting	12

19.0	Default.....	13
20.0	Termination	13
21.0	Conduct of Contractor's Employees	14
22.0	Health and Safety	14
23.0	Equal Opportunities	15
24.0	Quality Management System	15
25.0	Severance.....	15
26.0	Notices	15
27.0	Waiver	16
28.0	Force Majeure.....	16
29.0	Proper Law of Contract	16
30.0	The Education (Teachers) (Amendment) Regulations 1998	16
31.0	Environmental Health	17
32.0	Transfer of Undertakings (Protection of Employment Regulations).	17
33.0	Best Value.....	17

1.0 **Definitions**

1.1 "**The Contract**" means this document and any Purchase Orders Quotations Specifications Plans Drawings and any other documents expressly incorporated herein by written reference

1.2 "**The Conditions**" means the terms and conditions set out in this document and any other special terms and conditions agreed in writing between the Contractor and the Council

1.3 "**The Contractor**" means the person who supplies or agrees to supply goods or services to the Council

1.4 "**The Council**" means The Mayor and Burgesses of the London Borough of Barnet

1.5 "**The Goods**" means the articles/materials which the Contractor agrees to sell to the Council

1.6 "**The Services**" means the services which the Contractor agrees to provide to the Council

1.7 "**The Price**" means the price to be paid by the Council to the Contractor for the services exclusive of Value Added Tax

2.0 **General**

2.1 A reference to any Act of Parliament or to any Order Regulation Statutory Instrument or the like shall include a reference to any amendment or re-enactment thereof

2.2 Paragraph headings are inserted for convenience only and do not define limit or otherwise affect the interpretation thereof

2.3 Under the Council's Constitution the Council has delegated to particular officers the power to act for the purposes of the Contract Upon written

request the Council shall provide to the Contractor the names of officers so empowered

3.0 Conditions Applicable

3.1 The Conditions shall apply to all Contracts for the purchase of goods/provision of Services by the Council from the Contractor to the exclusion of all other terms and conditions including any terms or conditions which the Contractor or the Council may purport to apply under any sales offer or similar document

3.2 Despatch or delivery/provision of the Goods/Services by the Contractor to the Council shall be deemed conclusive evidence of the Contractor's acceptance of these Conditions

3.3 Any variation of these Conditions (including any special terms and conditions agreed between the parties) shall be of no effect unless agreed in writing between the parties

4.0 Price and Payment

4.1 The Price shall be the Contractor's quoted price or the price agreed by the parties The Price is exclusive of VAT which shall be due at the rate prevailing on the date of the Contractor's invoice

4.2 Unless otherwise agreed payment of the Price and VAT shall be due 30 days from receipt of the Contractor's Invoice or 30 days from when the Goods/Services are delivered/provided whichever is the later

4.3 The Price shall be "net" i.e. it shall include the cost of any packaging addressing labelling loading and delivery to the address specified by the Council The amount of any VAT payable and any early settlement discounts shall be shown separately in the Invoice

4.4 The Council may set off against the Price (including any applicable VAT payable) any amounts lawfully due from the Contractor to the Council whether under this Contract or otherwise

4.5 All Invoices shall be clearly marked with the Council's Purchase Order Number and a sufficiently detailed description of the Goods/Services delivered/provided to enable the Council to ascertain in respect of which Goods/Services the Invoice has been rendered

4.6 Except for reasons beyond the Council's control where the Council has not made payment to the Contractor by the due date set out in clause 4.2 above the Council shall upon written request by the Contractor pay interest to the Contractor on any amount outstanding at the statutory interest rate prescribed from time to time by the Late Payment of Commercial Debts (Interest) Act 1998 from the due date of payment until payment is actually made

5.0 The Goods/Services

5.1 The Contractor shall provide the Goods/Services strictly in accordance with any Specification/Order issued by the Council Where the Contractor has provided a written quotation/proposal which the Council has accepted in writing then the quantity and description of the goods/ nature and extent of the Services to be provided shall be as set out in any such quotation/proposal

5.2 All representations statements or warranties made or given by the Contractor its servants and agents to the Council before the conclusion of the contract (whether orally in writing or in any of the Contractor's brochures catalogues and advertisements) regarding the quality and

fitness for purpose of the Goods/Services shall be deemed by the Council to be express conditions of the Contract

- 5.3 The Contractor shall ensure that all Goods supplied under the Contract shall be manufactured stored tested and packed in accordance with all relevant British and/or European Standards applicable to them and shall from time to time make changes in the specification of the goods which are required to comply with any applicable safety or statutory requirements and ensure that the Goods are of satisfactory quality and fit for the purpose including any specific purpose notified to the Contractor by the Council for which the Goods are normally supplied
- 5.4 The Council has a statutory duty to provide Best Value pursuant to the provisions of the Local Government Act 1999 which includes the need for continuous improvement in standards of Goods/Services and quality within financial restrictions The Contractor shall work with the Council to identify develop and deliver Best Value Goods/Services under the terms and conditions and Additional Terms of the Contract within available resources
- 5.4.1 Types of requirements of the Contractor by the Council shall include but not necessarily be restricted to provision of Goods/Services that are cost effective efficient timely reliable responsive consistent courteous and gives effect to the Council's policies
- 5.4.2 The Contractor will provide periodical and regular inspections and reviews of performance standards and suggested improvements
- 5.5 All Goods supplied under the Contract shall be marked in accordance with the Council's instructions and all lawful requirements and shall be

properly packed and secured for delivery to the Council in an undamaged condition

- 5.6 The Council may require that particular Goods shall prior to despatch be tested by the Contractor in the presence of a representative of the Council. The Council shall not be bound to take delivery of any Goods so tested where any defects are discovered.

6.0 Warranties/Conditions

- 6.1 The Contractor warrants that the Goods will at the time of delivery correspond to any description or sample given/provided by the Contractor.

All warranties, conditions or terms relating to fitness for purpose, satisfactory quality or condition of the Goods, whether implied by statute or common law, shall apply to Goods delivered under the Contract.

- 6.2 All Services provided under the Contract must be provided with reasonable care and skill and to the reasonable satisfaction of the Council.

7.0 Delivery of Goods/Provision of Services

- 7.1 Delivery of Goods shall be made to the Council's address on the delivery date specified. The Council shall make all arrangements necessary to take delivery of the Goods.

- 7.2 Where any time is stipulated by the Council for the delivery of Goods/provision of Service under the Contract, the time for delivery of the Goods/the provision of such Services shall be of the essence. Where no time is stipulated by the Council for the delivery of the Goods/provision of Services, delivery shall be made within ten working days of receipt of an order by the Contractor or within such other time as may be agreed.

between the parties

7.3 If the Contractor fails to deliver all of the Goods/Services in accordance with the Contract on the delivery date then without prejudice to the Council's rights for the breach of Contract

7.3.1 the Council may terminate the Contract In this event without prejudice to the Council's other remedies the Contractor shall promptly collect any Goods which have been delivered or

7.3.2 the Council may in its absolute discretion accept a quantity of Goods corresponding to the Contract which has been delivered and recover from the Contractor damages for breach of Contract in respect of the failure to deliver the total quantity of Goods

7.4 The Contractor upon receiving notice to that effect from the Council shall repair or replace free of charge Goods damaged or lost in transit and due delivery of the Goods shall not be deemed to have taken place until replacement or repaired Goods have been delivered by the Contractor to the Council The Council reserves the right to hold such damaged Goods at the Contractor's risk or to return them at the risk and expense of the Contractor

8.0 Acceptance of Goods

8.1 The Council shall not be deemed to have accepted any part of the Goods until the Council has actually inspected them and ascertained that they are in accordance with the Contract The Council may reject Goods which are not in accordance with Contract until a reasonable time after such inspection Where part only of the Goods are not in accordance with the Contract the Council may reject any such Goods and accept those Goods

which are in accordance with the Contract

8.2 The Council may set off against any payment due to the Contractor (whether under this Contract or otherwise) the price of any Goods rejected under the Contract Unless within a reasonable time of receipt of notice of rejection the Contractor collects such Goods the Council may dispose of them as the Council shall deem fit (provided that if the Council sells such Goods the Council shall account to the Contractor for the net proceeds of such sale)

8.3 Where Goods are delivered in bulk form the whole of any consignment may be rejected if a reasonable sample of the Goods taken at random from such consignment are found not to confirm in any material respect to the requirements of the Contract

8.4 The Council's right of rejection shall continue until after a reasonable time from the date on which the Council discovers or might reasonably be expected to discover the relevant defect/breach of Contract

9.0 Title and Risk

9.1 The title and risk in the Goods shall pass to the Council when the Goods have been delivered to the specified address of the Council delivery has been acknowledged by virtue of a signed delivery note and the Council has accepted the Goods under clause 8.0 above For the avoidance of doubt this clause does not apply to rented/hired Goods or equipment which shall at all times remain the property of the Contractor/Finance Company

10.0 Indemnity

10.1 Without prejudice to its liability for breach of Contract the Contractor shall

be liable for and shall indemnify the Council against any liability loss costs expenses claims or proceedings whatsoever arising under any statute or common law in respect of:-

- 10.1.1 any loss of or damage to Council property (whether real or personal) and
- 10.1.2 any injury to or death of any person in consequence of or in any way arising from the supply or delivery/provision of the Goods or Services under the Contract except insofar as such loss damage or injury shall have been caused by the negligence of the Council its servants or agents not being the Contractor

11 Insurance

- 11.1 The Contractor shall insure against its full liability under Condition 10.0. and maintain all statutory required insurance policies including Public liability insurance Employers liability insurance and motor insurance (if applicable)
- 11.2 Public liability insurance cover 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 Employers liability in the minimum sum of £10,000,000.00 in respect of one incident and the number of incidents covered shall be unlimited
- 11.3 The Contractor shall upon request by the Council produce to the Council satisfactory documentary evidence that the insurance required under this clause is properly maintained
- 11.4 Should the Contractor fail to insure in accordance with this clause the Council may itself effect such insurance and may charge the cost of so doing together with an administrative charge of 5% to the Contractor

12 **Intellectual Property**

12.1 The Contractor warrants that all licenses permissions and consents required in relation to the use of the Goods/Services delivered/provided shall have been obtained and shall hold harmless the Council against any claim costs proceedings expenses and demands from any third parties alleging infringement of intellectual property rights

13 **Confidentiality**

13.1 The Contractor its employees agents and servants shall generally and in accordance with the provisions of the Data Protection Act 1998 at all times keep confidential and secret and shall not disclose to any person other than required by the Freedom of Information Act 2000 or any other enactment or expressly authorised by the Council any information or other matters acquired by the Contractor in connection with the supply or provision of the Goods/Services under the Contract

14 **Corruption**

14.1 If any of the following events occurs in connection with this or any other Contract between the Council and the Contractor the Council may terminate this Contract and recover any consequential loss from the Contractor:-

14.1.1 the Contractor offers gives or agrees to give anything to any person as an inducement or reward for

(a) doing or having done (or not doing or not having done) anything connected with the obtaining of the award execution or completion of the Contract or

(b) showing or not showing favour or disfavour to any person in

connection with the obtaining of the award execution or completion of the Contract

- 14.1.2 the Contractor commits an offence under the Prevention of Corruption Acts 1889 to 1916;
- 14.1.3 the Contractor gives any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972;
- 14.1.4 any employee or agent of the Contractor does anything described in sub-clauses 14.1.1 to 14.1.3 above whether or not the Contractor has knowledge of it

15.0 Damages and Sureties

- 15.1 Where practicable and appropriate the Contractor shall be required to pay to the Council liquidated damages at a rate to be agreed in writing between the parties prior to Contract in the event of default or breach of this Contract For the avoidance of doubt it is hereby expressly declared and agreed that such agreed liquidated damages shall not be in the nature of a penalty
- 15.2 Where practicable and appropriate and where the cost of the Goods and/or Services to be supplied under the Contract is greater than £300,000 the Contractor shall be required to provide the Council with a sufficient surety (for example a Contract Guarantee Bond) for due performance of the Contract
- 15.3 If the Contractor is a subsidiary company or a member of a group of companies then the Council may require its parent company or another company in the group whose assets are sufficient to guarantee performance and indemnity the Council against loss from any default or

breach of this Contract

16.0 Bankruptcy/Insolvency

16.1 The Council may at any time by notice in writing summarily determine the Contract without compensation to the Contractor in any of the following events:-

16.1.1 if the Contractor being an individual or where the Contractor is a firm any partner in that firm shall at any time become bankrupt or shall have a receiving order or administration order made against him/her or shall make any composition or arrangement with or for the benefit of his/her creditors or shall make any conveyance or assignment for the benefit of his/her creditors or shall purport to do so or if in Scotland s/he shall become insolvent or bankrupt or any application shall be made under any Bankruptcy Act for the time being in force for sequestration of his/her estate or a trust deed shall be granted by him/her for the benefit of his/her creditors; or

16.1.2 if the Contractor being a company shall pass a resolution or the Court shall make an order that the company shall be wound up or if a receiver or manager on behalf of creditors shall be appointed or if circumstances shall arise which entitle the Court or a creditor to appoint a receiver or manager or which entitle the Court to make a winding-up order; provided always that such determination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Council

17.0 Resolution of Disputes

17.1 If any dispute or difference shall arise between the parties then senior

representatives of each party shall meet within fourteen days of such dispute or difference arising in a good faith effort to resolve the dispute or difference. If the dispute or difference cannot be resolved within a further fourteen days then the dispute or difference may be referred to the decision of a single arbitrator to be agreed upon between the parties or in default of agreement to be appointed at the request of either party by the President for the time being of the Law Society in accordance with and subject to the provisions of the Arbitration Acts 1950 to 1996

18.0 Transfer and Sub-Contracting

18.1 The Contractor shall not transfer or sub-contract its obligations under this Contract without the previous consent in writing of the Council

18.2 Such consent shall not relieve the Contractor from any liability or obligation under the Contract and the Contractor shall remain responsible for the acts defaults and neglects of any such transferee/sub-contractor its servants or agents as though they were the acts defaults and neglects of the Contractor itself

19.0 Default

19.1 Where in the opinion of the Council the Contractor is in default of any requirement of the Contract without prejudice to any other rights or remedies which the Council has under this Contract the Council shall be entitled to issue a written Notice of Default giving full details of the default and the rectification if any required of the Contractor together with the time within which such rectification is to be effected by the Contractor

19.2 If the Contractor fails to comply with the terms of the Notice of Default or where rectification is not required by the Council the Council shall be entitled to recover any costs reasonably incurred by the Council as a consequence of such default from the Contractor and may deduct such costs from any monies due or that become due to the Contractor

19.3 Where rectification is required by the Council and the Contractor complies with the Notice of Default to the satisfaction of the Council the Council shall not recover the costs pursuant to Clause 19.2

20.0 Termination

20.1 The Council may terminate this Contract at any time and recover from the Contractor all consequential loss where:-

20.1.1 the Contractor commits a fundamental breach of any of its obligations under the Contract;

20.1.2 the Contractor commits a persistent breach of any of its obligations under the Contract A persistent breach shall be deemed to have occurred after the Council has issued to the Contractor two or more Notices of Default

20.2 The Council may also terminate this Contract at any time by giving reasonable written notice to the Contractor of its intention to do so

21.0 Conduct of Contractor's Employees

21.1 The Contractor shall ensure that its employees maintain high standards of courtesy and behave in an acceptable manner while engaged in supplying Goods or Services to the Council whenever they have contact with members of the public or with the Council's own employees

21.2 The Contractor shall ensure that its employees cause minimum disruption to the Council and its employees while providing Goods/Services to the

Council having regard always to the nature and extent of the Goods/Services being supplied/provided

21.3 The Contractor's employees agents or servants shall not smoke whilst on Council premises

21.4 The Contractor its employees servants and agents shall at all times whilst on Council premises wear an identification badge clearly showing the person's name and the Supplier Contractor s/he represents

22.0 Health and Safety

22.1 The Contractor shall ensure that its employees and agents shall at all times in connection with this Contract comply with the Health and Safety at Work etc Act 1974

22.2 The Contractor shall comply with all relevant and applicable Statutes Regulations Orders and the like which may impose requirements in relation to the supply/delivery of particular Goods or Services

22.3 Any accident or other incident occurring as a result of anything done by the Contractor under the Contract shall be reported immediately in writing to the Council

23.0 Equal Opportunities

23.1 The Contractor shall ensure that it complies at all times with Equal Opportunities Legislation In particular the Supplier shall comply with the requirements of the Race Relations Act 1976 and as amended by the Race Relations (Amendment) Act 2000 the Sex Discrimination Act 1975 and the Disability Discrimination Act 1995 as amended by Disability Rights Commission Act 1999

24.0 Quality Management System

24.1 The Contractor shall have or be working towards achieving accreditation under ISO 9000/BS5750 or an equivalent European Standard

24.2 The Contractor must operate a Quality Management System and shall provide the Council with a contact name and number

25.0 Severance

25.1 If any provision of this Contract shall become or shall be declared by any Court of competent jurisdiction to be invalid or unenforceable this shall not in any way impair or affect any other provision of this Contract all of which shall remain in full force and effect to the extent permitted by Law

26.0 Notices

26.1 Any Notices to be served by either party under this Contract shall be sufficiently served:-

26.1.1 if served personally on the Contractor or its Authorised Representative

26.1.2 if sent by pre-paid first class post by facsimile transmission to the last known address or place of business of the party to be served or by electronic mail (email)

26.2 Any Notices sent in accordance with sub-paragraph 26.1.2 shall subject to proof to the contrary be deemed to have been received by the addressee on the second day of business after the date of posting or on successful transmission in the case of facsimile and/or email as the case may be

27.0 Waiver

27.1 No Waiver or forbearance by the Council whether express or implied in enforcing any of its rights under this Contract shall prejudice its right to do so in the future

28.0 **Force Majeure**

28.1 Neither party shall be liable for any default in performance under the Contract due to any act of God war fire flood drought tempest or other like event beyond the reasonable control of either party

29.0 **Proper Law of Contract**

29.1 This Contract is subject to the Laws of England in every particular including formation and interpretation and shall be deemed to have been made in England

29.2 A company person firm or organisation who is not party to this Contract shall have no right under the contracts (Right to Third Parties) Act 1999 to enforce any of the terms of this Contract

30.0 **The Education (Teachers) (Amendment) Regulations 1998**

30.1 Under the Education (Teachers) (Amendment) Regulations 1998 workers who may come into contact with children whilst working under this Contract have to be checked as to whether they have been excluded by the Secretary of State for England and Wales from working with children

30.2 Prior to commencing work under the contract the Contractor shall submit a full list of personnel they wish to use in connection with this Contract the list to include the Contractor's Directors staff employees their servants or agents (the Workers)

30.3 If any workers of the Contractor or Sub Contractors servants or agents their agents is discovered to be on the list maintained by the Secretary of State the Contractor shall remove them from work under this Contract immediately

30.4 The Contractor shall also submit details of any changes in personnel

working on this Contract to the Council prior to that individual commencing work

31.0 Environmental Health

31.1 The Contractor shall ensure compliance with any direction given by the Secretary of State and/or any statutory provisions including the Environmental protection Act 1990 and the Waste Minimisation Act 1998 as amended and any other relevant legislation relating to environmental protection

32.0 Transfer of Undertakings (Protection of Employment) Regulations

32.1 Upon request by the Authorised Officer the Provider shall provide him with such details relating to the numbers of staff employed by the provider in fulfilling the Provider's obligations under the Agreement and their terms and conditions of employment as is reasonably necessary for prospective contractors to prepare tenders on the basis that the Transfer of Undertakings (Protection of Employment) Regulations 1981 or any modification or successor thereto will apply to their carrying out of part or all of the Service for a contractual period commencing after the termination of this Agreement

33. Best Value

33.1 The Council has a statutory duty to provide Best Value pursuant to the provisions of the Local Government Act 1999 which includes the need for continuous improvement in standards of Goods/Services and quality within financial restrictions. The Contractor shall work with the Council to identify develop and deliver Best Value Goods/Services under the terms and conditions of the Contract within available resources.

- 33.2 Types of requirements of the Contractor by the Council shall include but not necessarily be restricted to provisions of Goods/Services that are cost effective efficient timely reliable responsive consistent courteous and gives effect to the Council's policies.
- 33.3 The Contractor will provide periodical and regular inspections and reviews of (performance) standards and suggested improvements