

TERMS AND CONDITIONS OF PURCHASE ORDER

1. DEFINITIONS

'Council' means the District Council of Folkestone & Hythe.

'Supplier' means the person, firm or company to whom the Order is issued.

'Goods' means all goods covered by the Order.

'Services' means any services described in the Order.

The term 'Order' means the Council's Purchase Order.

The 'Contract' means the Contract between the Council and the Supplier consisting of the Order, these conditions and any other documents specified in the Order.

2. OFFER. An order constitutes an offer on the part of the Council which must be accepted either in writing by the Supplier or by the execution of the Order.
3. ACCEPTANCE. Acceptance of an Order will be deemed to bind the Supplier to these terms and conditions and no Goods or Services shall be supplied or performed by the Supplier their employees agents or representatives except in accordance with such terms. In the case of any conflict between these conditions and those of the Supplier unless modifications are accepted in writing by the Council, these conditions will prevail.
4. SUB-LETTING. The Supplier shall not sublet any portion of the Contract without the prior consent in writing of the Council.
5. RECORDS. The Supplier shall keep proper wage books and time sheets in respect of the Contract and such records shall be produced whenever required for the inspection of any officer authorised by the Council.
6. TERMS OF PAYMENT. Unless otherwise stated in the Order or agreed in writing, payment will be made following the receipt of an invoice within 30 days of the agreement by an officer of the Council that the Goods or Services have been provided to the Council's complete satisfaction. Value Added Tax, where applicable, shall be shown separately on all invoices. All invoices containing Value Added Tax must conform with the requirements of the Inland Revenue.
7. QUALITY. All Goods and Services supplied or carried out shall conform in all respects with particulars as stated on the Order or Contract, be of sound materials and first class workmanship; be equal in all respects to the samples, patterns, description or specification provided or given by either party and if the purpose for which they are required is indicated in the Order, either expressly or by implication, be fit for that purpose.

If an appropriate European Union Specification or Code of Practice is current Goods and Services supplied or performed shall be at least of the standard required by the appropriate European Union Specification or Code of Practice.

In the case of Goods delivered or Services performed by the Supplier not conforming with the Contract whether by reason of not being of the quality or quantity stipulated or being otherwise than in accordance with the specification or being unfit for the purpose for which they are required where such purpose has been made known in writing to the Supplier, the Council shall have the right to reject such Goods or discontinue the Services as the case may be within a reasonable time of their delivery and to purchase elsewhere as near as practicable to the same specifications and conditions as circumstances shall permit but without prejudice to any other right which the Council may have against the Supplier.

Any excess cost incurred by doing so shall be recoverable from the Supplier. The making of payment shall not prejudice the Council's right of rejection. Before exercising the right to purchase elsewhere the Council shall give the Supplier reasonable opportunity to replace rejected Goods or Services with Goods or Services which conform to the Contract. Any Goods or Services so rejected are done so at the Supplier's expense and risk.

8. VARIATIONS. The Supplier shall not alter the Goods or Services except as directed in writing by the Council; but the Council shall have the right from time to time during the execution of the Contract, by notice in writing to direct the Supplier to add or to omit, or otherwise vary, the Goods and Services, and the Supplier shall carry out such variations and be bound by the same conditions so far as applicable, as though the said variations were stated in the Contract.
9. DELIVERY. The point(s) of delivery and the date(s) and/or time(s) of delivery shall be that specified in the Order unless otherwise agreed between the Council and the Supplier. Time shall be of the essence as to delivery.

If Goods are incorrectly delivered the Supplier shall be held responsible for any additional cost incurred in delivering them to their correct destination.

Should the Supplier fail to deliver the Goods or Services or any portion thereof within the time(s) as specified in the Contract or Order, the Council shall, without prejudice to any other remedy for breach of Contract, be at liberty to determine the Contract wholly or to the extent of such default and to purchase the Goods or Services, as the case may be, of the same or similar description to make good (a) such default or (b) in the event of the Contract being wholly determined, the Goods or Services remaining to be supplied. The amount by which the cost of doing so exceeds the amount which would have been payable to the original Supplier if they had been delivered in accordance with the Contract shall be recoverable from the Supplier.

Unless otherwise agreed the Council will not bear the cost of carriage and insurance of Goods or the unloading of materials at a point of delivery.

The property and risk in the Goods shall remain in the Seller until they are delivered in full at the point specified in the Order and delivery is accepted by a member of the Council's staff.

10. **LOSS OR DAMAGE IN TRANSIT.** The Supplier will repair or replace free of charge Goods damaged or lost in transit provided the Council shall give the Supplier written notice of any such loss or damage within a reasonable time.
11. **FORCE MAJEURE.** Neither party shall be liable for failure to perform its obligations under the Contract if such failure results from circumstances which are beyond the party's reasonable control. The Council will be at liberty to defer the date of delivery or cancel the Order. The Council shall not be liable for any loss to the Supplier including consequential loss.
12. **CANCELLATION.** The Order may be cancelled at any time by the Council giving the Supplier notice in writing. A fair and reasonable price shall be paid by the Council for any work in progress at the time of the cancellation and subsequently received by the Council.
13. **INDEMNITY.** The Supplier will indemnify and keep the Council indemnified against any loss or damage, death or personal injury whatsoever and whensoever arising caused to the Council, or for which the Council may be liable to third parties arising directly or indirectly from any breach by the Supplier of these terms and conditions or through the entering into of the arrangements envisaged by these terms and conditions.
14. **WARRANTIES.** The Supplier warrants that (i) the Goods are of high quality and fit for purpose and accord with any specification in the Order or Contract and (ii) that the sale or use of the Goods by the Council would not infringe any Patent, Trade Mark, Registered Design, Trade Name or Copyright. and (iii) the design, construction and quality of any Goods to be manufactured or supplied comply in all respects with any Statute, Statutory Rule or Order, or Regulations which may be in force at the time and (iv) all Services will be supplied in accordance with the highest professional standards
15. **PROGRESS AND INSPECTION.** Council's representatives have the right to progress and inspect all Goods at Supplier's works premises and the works of sub-Contractors at all reasonable times and to reject Goods that do not comply with the terms of the Contract. The Supplier's sub-Contracts shall include this provision. Any inspection, checking, approval or acceptance given on behalf of the Council shall not relieve the Supplier, or his sub-Contractors from any obligation under the Contract.
16. **HAZARDOUS GOODS.** Hazardous Goods must be marked by the Supplier with international danger symbol(s) and display the name of the material in English. Transport and other documents must include declaration of the hazard and the name of the material in English. 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 European and International Agreements relating to the packaging, labelling and carriage of such Goods.

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 Goods supplied shall be promptly communicated to the Council.
17. **REPAIR.** The Supplier shall as soon as reasonably practicable repair or replace all Goods which are or become defective during the period of 12 months from putting into service or 18 months from delivery, whichever shall be the shorter, where such defects occur under proper usage. Repairs and replacements shall themselves be subject to the foregoing obligations for a period of 12 months from the date of delivery, reinstallation or passing of tests (if any) whichever is appropriate after repair or replacement.
18. **BREACH.** Any breach of any term of an Order by the Supplier, either regarding time of delivery or otherwise, shall (whether the Council have accepted the Goods or Services or any part thereof, or not, and whether the property in the Goods or Services has passed to the Council or not) entitle the Council to treat the Order as repudiated or as a breach of warranty giving rise to a claim for damages.
19. **INSOLVENCY AND BANKRUPTCY.** If the Supplier becomes insolvent or bankrupt or being a Company makes an arrangement with its creditors or has an administrative receiver or administrator appointed or commences to be wound up (other than for the purpose of amalgamation or reconstruction) the Council may without prejudice to any other of its rights, terminate the Contract forthwith by notice to the Supplier.
20. **GENERAL.** No conditions submitted or referred to by the Supplier when tendering shall form part of the Contract unless otherwise agreed in writing by the Council.
21. The Supplier shall treat this Order and all designs, drawings, specifications and information supplied therewith as confidential and shall not disclose the same to any third party without the Council's written consent.
22. The Council shall have power to cancel the Contract and to recover from the Supplier the amount of any loss resulting from such cancellation, if the Supplier:
 - a) does anything improper to influence the Council either to give him the Contract or to take action or to refrain from taking action in relation to the Contract OR
 - b) offers any fee or reward, the acceptance of which would constitute an offence under the Prevention of Corruption Act 1889 to 1916 or section 117 part 2 of the Local Government Act 1972.
23. **GOVERNING LAW.** The construction, validity, performance and enforcement of the Contract shall be governed by the law of England.