

## **1. DEFINITIONS**

**“Business Day”** is a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**“Contract”** means the PO and these Terms and Conditions.

**“Council”** means Oxford City Council.

**“Council’s Representative”** means any person who the Council notifies to the Supplier is to be regarded as a key contact during the course of the Contract.

**“Data Protection Legislation”**: means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party;

**“Delivery”** means completion of delivery of an Order in accordance with clauses 5.1 and 5.2 or clause 5.4 (a).

**“Delivery Date”** means the date specified in the PO, or as agreed in writing by the Council Representative.

**“Delivery Location”** means the address, site or building where the Goods are to be delivered as specified in the PO. If the PO does not specify, then delivery is to be made to the address specified by the Council Representative to the Supplier.

**“Goods”** means the Goods described in the PO.

**“Intellectual Property Rights”** means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world. **Intellectual Property Right** means any one of the Intellectual Property Rights.

**“Order”** means the order for Goods made by the Council under this Contract.

**“Parties”** means the Council and the Supplier.

**“PO”** means a formal Purchase Order document (including a PO number) that has been generated electronically via the Council’s internal system Agresso, or any other system that may be updated by the Council from time to time.

**“Premises”** means any Council owned land or building.

**“Price”** means the price for the Goods set out in the PO and includes all packaging insurance and carriage of the Goods.

**“Supplier”** means the person, firm or company who is to supply the Goods and is identified in the PO.

**“Suppliers Representative”** means any person who the Supplier notifies to the Council is to be regarded as a key contact during the course of the Contract.

**“Terms and Conditions”** means these terms and conditions for the supply of Goods.

## **2. GENERAL**

2.1 This Contract constitutes the entire agreement between the Parties relating to the Goods and replaces all previous negotiations, agreements, understandings and representations whether oral or in writing.

2.2 All Goods shall comply with the Council's requirements and shall be supplied by the Supplier and purchased by the Council subject only to the terms and conditions set out in this Contract. Any terms and conditions purported to be imposed by the Supplier shall not be binding on the Council under any circumstances. Where the Supplier appends its standard terms and conditions to any communication and/or invoice the Supplier acknowledges that the Terms and Conditions in this Contract shall prevail.

2.3 Nothing in these Terms and Conditions shall have the effect of making the Supplier an agent, servant or employee of the Council.

2.4 The headings to these Terms and Conditions are for convenience only and will not affect construction or interpretation and reference to a clause shall be a reference to a clause of these Terms and Conditions unless explicitly stated otherwise.

2.5 Words denoting any one gender include all genders and vice versa and the singular includes the plural and vice versa.

2.6 References to persons includes individuals, partnerships, bodies corporate and unincorporated associations.

2.7 References to statutes or statutory provision shall be construed to include references to those statutes or provisions as amended or re-enacted from time to time. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.

2.8 The words and phrases "other", "including" and "in particular" shall not limit the generality of any preceding words.

2.9 References to "writing" or "written" excludes fax but not email.

## **3. THE ORDER**

3.1 The Supplier shall supply the Goods in accordance with the requirements set out in this Contract. In the event that the PO does not specify any timescales, the Supplier shall comply with any reasonable timescales notified by the Council Representative.

3.2 If the Delivery Date and/or Delivery Location are not set out in the PO the Council shall give the Supplier reasonable advance notice of the relevant information.

3.3 The Supplier shall be assigned a PO number by the Council. Each Party shall use the relevant PO number in all subsequent correspondence relating to the Order.

3.4 The Council may at any time prior to despatch of the Goods amend or cancel the Order by written notice to the Supplier. If the Council amends or cancels the

Order, its liability to the Supplier shall be limited to payment to the Supplier of all costs reasonably incurred by the Supplier in fulfilling the Order up until the date of receipt of the notice of amendment or cancellation, except that where the amendment or cancellation results from the Supplier's failure to comply with its obligations under this Contract, the Council shall have no liability to the Supplier in respect of it.

3.5 The Supplier shall make the Suppliers Representative available for the purposes of the Contract and shall not make any changes to the Suppliers Representative without prior written notification to the Council.

### 4. QUALITY AND PACKING

4.1 The Supplier shall provide the Goods set out in the PO.

4.2 The Goods supplied to the Council by the Supplier under this Contract shall:

- (a) conform to the details as specified within the PO;
- (b) comply with all relevant British standards, and remain in line with best industry practice;
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Council;
- (d) be free from defects in design, material and workmanship and remain so for twelve 12 months after Delivery; and
- (e) comply with all applicable statutory and regulatory requirements.

4.3 The Supplier shall ensure that the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition.

4.4 The Supplier shall obtain and maintain in force for the term of this Contract, all licences, permissions, authorisations, consents and permits needed to manufacture and supply the Goods in accordance with the terms of this Contract.

4.5 In the event that the Supplier fails to meet a date or dates set out in the PO it shall, on the request of the Council, and without prejudice to the Council's other rights and remedies, arrange to provide all such additional resources as are necessary to fulfil its obligations at no additional cost to the Council.

### 5. DELIVERY

5.1 The Supplier shall deliver the Goods to the Delivery Location on the Delivery Date. The Supplier shall not deliver the Goods in advance of the Delivery Date without the prior written consent of the Council.

5.2 Delivery of the Goods shall be complete on the completion of unloading of the Goods at the Delivery Location.

5.3 If the Goods are not delivered on the specified Delivery Date, then, without limiting any other right or remedy the Council may have, the Council may:

- (a) refuse to take any subsequent attempted delivery of the Goods;
- (b) terminate this Contract with immediate effect;

(c) obtain substitute Goods from another supplier and recover from the Supplier any costs and expenses reasonably incurred by the Council in obtaining such substitute goods; and

(d) claim damages for any other costs, expenses or losses resulting from the Supplier's failure to deliver the Goods on the Delivery Date, provided that the Supplier shall have no liability for any failure or delay in delivering the Goods to the extent that such failure or delay is caused by the Council's failure to comply with its obligations under this Contract.

5.4 If the Council fails to accept delivery of the Goods on the specified Delivery Date, then, except where such failure or delay is caused by the Supplier's failure to comply with its obligations under this Contract:

(a) the Goods shall be deemed to have been delivered at 9.00am on the Delivery Date; and

(b) the Supplier shall store the Goods until delivery takes place, and charge the Council for all related costs and expenses (including insurance).

5.5 The Goods shall be accompanied by a delivery note from the Supplier showing the PO number, the type and quantity of Goods included in the Order and, in the case of the Goods being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

5.6 If the Supplier requires the Council to return any packaging materials to the Supplier, that fact must be clearly stated on the delivery note accompanying the relevant Order, and any such returns shall be at the Supplier's expense.

5.7 The Council may require the immediate removal from its Premises of anything delivered by the Supplier which, in the reasonable view of the Council, is hazardous, not fit for purpose or noxious. The Supplier shall comply with any such request at its own expense.

5.8 The Supplier shall notify the Council Representative immediately if it becomes aware of any event that it believes is likely to delay or impede the delivery of the Goods.

5.9 Where the Goods are delivered to Premises that are owned or occupied by the Council the Supplier shall comply and shall ensure that its staff, sub-contractors and agents comply with any rules or regulations applied by the Council in relation to security and health and safety requirements at its Premises.

## **6. ACCEPTANCE AND DEFECTIVE GOODS**

6.1 The Council shall not be deemed to have accepted the Goods until it has had a reasonable time to inspect them following Delivery, or, in the case of a latent defect in the Goods, until a reasonable time after the latent defect has become apparent.

6.2 If the Goods delivered to the Council do not comply with clause 4.2, or are otherwise not in conformity with the terms of this Contract, then, without limiting any other right or remedy that the Council may have, the Council may reject the Goods and:

(a) require the Supplier to repair or replace the rejected Goods at the Supplier's risk and expense within five 5 Business Days of being requested to do so; or

(b) require the Supplier to repay the price of the rejected Goods in full (whether or not the Council has previously required the Supplier to repair or replace the rejected Goods); and

(c) claim damages for any other costs, expenses or losses resulting from the Supplier's delivery of Goods that are not in conformity with the terms of this Contract.

6.3 The Council's rights and remedies under clause 4 are in addition to the rights and remedies available to it in respect of the statutory conditions relating to description, quality, fitness for purpose and correspondence with sample implied into this Contract by the Sale of Goods Act 1979.

6.4 The terms of this Contract shall apply to any repaired or replacement Goods supplied by the Supplier.

6.5 If the Supplier fails to promptly repair or replace rejected Goods in accordance with clause 6.2(a), the Council may, without affecting its rights under clause 6.2(c), obtain substitute Goods from a third party supplier, or have the rejected Goods repaired by a third party, and the Supplier shall reimburse the Council for the costs it incurs in doing so.

## **7. TITLE AND RISK**

7.1 The risk in Goods delivered to the Council shall pass to the Council on Delivery.

7.2 Title to the Goods ordered shall pass to the Council on Delivery unless the Goods have been paid in advance of Delivery in which case title shall pass to the Council on receipt of payment by the Supplier.

## **8. PAYMENT**

8.1 In consideration of the supply of the Goods in compliance with this Contract by the Supplier the Council shall pay the Supplier the Price.

8.2 The Supplier shall submit the invoice to the Council on or at any time after Delivery. The invoice shall quote the relevant PO number, contain a description of the goods supplied, the quantity supplied, the price and be addressed to the Council's address for invoices given in the PO or as specified by the Council Representative.

8.3 The Council shall pay the Supplier within thirty (30) days of receipt of an undisputed invoice, for Goods supplied to the satisfaction of the Council.

8.4 Where VAT is lawfully due on the Goods, the Council shall on receipt of a valid VAT invoice pay the Supplier such amounts in respect of VAT as are chargeable on the supply of the Goods.

8.5 If a Party fails to make any payment due to the other under this Contract by the due date for payment (due date), then, without limiting the other Party's remedies under the Contract, the defaulting party shall pay interest on the overdue amount at the rate of four percent (4%) per annum above Barclays Bank's base rate from time to time. The defaulting party shall pay the interest together with the overdue

amount. This clause shall not apply to payments that the defaulting party disputes in good faith.

8.6 If the Council disputes any invoice or other statement of monies due, the Council shall notify the Supplier in writing. The parties shall negotiate in good faith to attempt to resolve the dispute promptly. The Supplier shall provide all such evidence as may be reasonably necessary to verify the disputed invoice or request for payment. Where only part of an invoice is disputed, the undisputed amount shall be paid on the due date as set out in clause 8.3. The Supplier's obligations to supply the Goods shall not be affected by any payment dispute.

### 9. RECOVERY OF SUMS DUE

If any sum is recoverable from or payable by the Supplier under the Contract, that sum may be deducted from any sum then due or which at a later date becomes due to the Supplier under the Contract or under any other agreement with the Council.

### 10. AUDIT

The Supplier shall keep and maintain until six (6) years after the Contract has been completed, records to the satisfaction of the Council of all expenditures that are reimbursable by the Council. The Supplier shall on request afford the Council or any person reasonably specified by the Council such access to those records as may be required by the Council in connection with the Contract.

### 11. FREEDOM OF INFORMATION/DATA PROTECTION /CYBER SECURITY

The following definitions apply to this cause 11.

**Appropriate Security Safeguards:** administrative, physical, and technical safeguards (appropriate to the risk posed) with a view to protecting the data and network and information systems of the Council and the Supplier from unauthorised access, acquisition, disclosure, destruction, alteration, accidental loss, misuse, or damage.

**Breach** means any actual or suspected unauthorised or unlawful access, acquisition, use, disclosure, loss, alteration, destruction, damage, or compromise of Personal Data, or any event that results in the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Council Data and or Personal Data, including any breach of the Supplier's security measures that may impact the confidentiality, integrity, or availability of Personal Data.

**Council Data:** data which the Supplier, or its representatives, process in connection with this Contract.

**Good Industry Practice:** in relation to any undertaking and any circumstances, the exercise of skill, diligence, prudence, foresight and judgement, and the making of any expenditure that would reasonably be expected from a skilled person engaged in the same type of undertaking under the same or similar circumstances.

**ICT Product:** an element or a group of elements of a network or information system.

**ICT Service:** a service consisting fully or mainly in the transmission, storing, retrieving or processing of information by means of network and information systems.

**Incident:** an event compromising The availability, authenticity, integrity or confidentiality of stored, transmitted or processed data, or of the services offered or accessible by a network and information system.

**Legal Security Requirement:** a requirement under legislation or common law relating to cyber security which is applicable to the Supplier.

**Vulnerability:** a weakness, susceptibility or flaw of an ICT Product or an ICT Service that can be exploited.

11.1 The Supplier acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR) and shall assist and co-operate with the Council (at the Supplier's expense) to enable the Council to comply with information disclosure requirements under the FOIA or EIR.

11.2 The Council shall be responsible for determining at its absolute discretion whether any information in connection with this Contract is exempt from disclosure in accordance with the provisions of the FOIA or the EIR and/or is to be disclosed in response to a request for information.

11.3 Where Data Protection Legislation imposes an obligation on either party to include provisions in this Contract relating to personal data, those provisions shall be deemed to be included within this Contract.

11.4 Notwithstanding the general obligation in clause 11.3, the Supplier shall ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under the Data Protection Legislation.

11.5 The Supplier shall implement and maintain appropriate technical and organisational measures to protect all Personal Data and Council Data held by either the Client or the Supplier against unauthorised or unlawful access, use, disclosure, alteration, or destruction, and against accidental loss or damage due to this Contract. Such measures shall be in accordance with Good Industry Practice and comply with all applicable data protection and information security laws.

11.6 The Supplier shall comply with at all times all laws, regulations and codes of conduct, standards, industry schemes and sanctions which apply to it, and which relate to;

- a) the security of any ICT Products or ICT Services which it provides in connection with this Contract;
- b) the security of any network and information systems which provide such ICT Products or ICT Services;
- c) The security of any data which are processed by any of the above-mentioned; and
- d) any incident reporting or conformity assessment obligations related to any of the above-mentioned.

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11.7 Without affecting its obligations under clause 11.6 the Supplier warrants that, so far as it is aware no specific Legal Security Requirements are applicable to it other than those obligations which apply under general data protection legislation. Should this determination change, or should this warranty become false, the Supplier shall immediately notify the Council. The Supplier shall undertake any action reasonable requested by the Council to address the applicable Legal Security Requirements.

11.8 Without affecting the Suppliers' obligations under 11.6 the Supplier shall, in accordance with Good Industry Practice, at all times, implement (and maintain and comply with) Appropriate Security Safeguards when designing, developing, implementing, providing or maintaining any ICT Product or ICT Service to be provided in connection with this Contract and performing its obligations or exercising its rights under this Contract.

11.9 The Supplier shall all times in accordance with Good Industry Practice:

- a) continuously log and monitor all activities on its network and implement, operate, maintain, and comply with, an incident management, which shall enable the Supplier, as a minimum, to proactively detect, prioritise and manage Incidents and Vulnerabilities, on a continuous basis, sufficient to meet its obligations under this clause;
- b) mitigate against all Incidents and Vulnerabilities;
- c) not introduce any Vulnerability into the Council's network and information systems or any ICT Products or ICT Services which it provides in connection with this Contract;
- d) take reasonable steps to preserve the integrity of any Council Data to prevent any corruption, compromise or loss of Council Data; and
- e) in the event of any loss or corruption to Council Data attributable to any default by or on behalf of the Supplier, promptly restore that Council Data from the most recent backup copy at its own expense or, at the Council's option, promptly reimburse the Council for any reasonable expenses it incurs in having the Council Data restored by a third party.

11.10 The Supplier warrants and represents that it has implemented, and will at all times maintain and comply with, a written and fully documented information security program (**WISP**) which includes appropriate policies, procedures, and risk assessments sufficient to ensure the confidentiality, integrity, and availability of its network and information systems (and those of its customers) and any data processed via such systems, in accordance with Good Industry Practice. The Supplier warrants that it shall review the WISP and these measures at least annually and when significant Incidents or changes to its operations or risks occur. The Supplier shall provide copies of the WISP and any policies referred to in it promptly on request by the Council.

11.11 The Supplier warrants and represents that:

- a) each ICT Product and/or ICT Services provided in connection with this Contract has been designed, developed and implemented in accordance with Good Industry Practice and incorporates Appropriate Security Safeguards;
- b) it has conducted a cybersecurity risk assessment, in accordance with Good Industry Practice, covering all its core IT or operational technology environments

and critical supply chains, within the last 12 months the results of which do not, as of the date of this Contract, reveal any material and unresolved:

- i) Vulnerabilities;
- ii) gaps in regulatory compliance;
- iii) breaches of third party contract terms and conditions relating to security obligations;
- iv) security practices not in accordance with Good Industry Practice;
- v) it has not suffered any Incident or Vulnerability within the last 12 months that has disrupted or compromised the operations of the Supplier in any material respect; and
- vi) it has not been subject to any regulatory or third-party action, request, enforcement, litigation, claim, or dispute or complaint in connection with any Incident or Vulnerability within the last 12 months.

11.12 If the Supplier becomes aware of any actual or suspected Breach Incident or Vulnerability affecting Personal Data or Council Data, the Supplier shall:

- (a) notify the Client immediately;
- (b) respond, without undue delay at the Supplier's expense, to all queries and requests for information from the Council about any actual or suspected Breach, Incident or Vulnerability, whether discovered by the Supplier or the Council;
- (c) take all steps necessary to mitigate the effects of the Breach Incident or Vulnerability and prevent its recurrence; and
- (d) cooperate fully with the Council and any supervisory authority in relation to the Incident or Vulnerability.

11.13 The Supplier shall respond, without undue delay at the Supplier's expense, to all queries and requests for information from the Council about any actual or suspected Breach Incident or Vulnerability, whether discovered by the Supplier or the Council

11.14 The Supplier shall indemnify and keep indemnified the Council against all losses, damages, liabilities, costs, claims, and expenses (including reasonable legal fees) arising out of or in connection with any Breach Incident or Vulnerability to the extent such Breach Incident or Vulnerability is caused by the Council's failure to comply with this Contract, negligence, or failure to comply with applicable data protection or information security laws.

11.15 The Supplier shall not be liable to the extent any Breach Incident or Vulnerability is caused by:

- (a) the Council's own breach of this Contract;
- (b) the Council's failure to implement reasonable security measures within its own environment; or
- (c) instructions provided by the Council that the Supplier could not reasonably comply with securely.

11.16 The Supplier shall maintain adequate records, and, on the Council's request, make available such information as the Council may reasonably request, and supply copies of an applicable third party audit report provided in the previous twelve months to demonstrate its compliance with this schedule and the Legal Security Requirement.

## **12. HEALTH AND SAFETY**

12.1 The Supplier shall notify the Council of any health and safety hazards which may arise in connection with the storage and or use of the Goods.

## **13. CONFIDENTIALITY**

13.1 The Supplier undertakes to keep secret and not to disclose and to procure that its employees, sub-contractors and agents keep secret and do not disclose any information of a confidential nature which it has obtained by reason of this Contract. Nothing in this clause applies to information which is already in the public domain or the possession of the Supplier other than by reason of breach of this clause.

13.2 The provisions of this clause shall survive the termination of this Contract however that occurs.

## **14. INDEMNITY AND INSURANCE**

14.1 The Supplier shall indemnify the Council against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Council arising out of or in connection with:

(a) any claim made against the Council for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the supply or use of the Goods;

(b) any claim made against the Council by a third party arising out of, or in connection with, the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Contract by the Supplier, its employees, agents or subcontractors; and

(c) any claim made against the Council by a third party for death, personal injury or damage to property arising out of, or in connection with, defective Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.

14.2 Nothing in this clause shall restrict or limit the Council's general obligation at law to mitigate a loss which it may suffer or incur as a result of a matter that may give rise to a claim under this indemnity.

14.3 The Supplier warrants that it has in place with a reputable insurance company a policy or policies of insurance covering all the liabilities and indemnities under this Contract.

14.4 The Supplier shall at its own cost effect and maintain public liability insurance cover of not less than five million pounds (£5 million) with a reputable insurance company.

14.5 The Supplier shall at its own cost maintain a policy or policies of insurance providing an adequate level of cover as is reasonable with a reputable insurance

company, the production, supply and delivery of the Goods. The cover shall be in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of the Contract, including death or personal injury, loss of or damage to property or any other loss.

14.6 The Supplier shall ensure that any subcontractors also maintain adequate insurance having regard to the obligations under this Contract which they are contracted to fulfil.

14.7 The Supplier shall:

(a) do nothing to invalidate any insurance policy or to prejudice the Council's entitlement under it; and

(b) notify the Council if any policy is (or will be) cancelled or its terms are (or will be) subject to any material change.

14.8 The Supplier shall give the Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the insurances are in place.

14.9 Where professional indemnity insurance is required, the Supplier shall continue to maintain such insurance with a reputable insurer for a period of three (3) years following Delivery of the Goods.

14.10 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under this Contract.

14.11 Notwithstanding any other provision of this Contract, neither Party limits or excludes its liability for fraud or fraudulent misrepresentation, death or personal injury caused by its negligence, or any other act or omission, liability for which may not be limited under any applicable law.

## **15. VARIATION**

15.1 This Contract may not be varied or amended unless the variation or amendment is in writing, and signed by both the Council and the Supplier.

15.2 The price for any variation (if applicable) shall be the fair and reasonable price taking into account the market price available to the Council for similar goods. The Supplier shall supply the Council with all information necessary to allow the Council to ascertain whether the price is fair and reasonable.

15.3 These Terms and Conditions shall apply to any variation as if it were included in the original PO.

## **16. ASSIGNMENT OR SUB-CONTRACTING**

16.1 The Supplier shall not assign, transfer or novate the Contract or any part of the Contract.

16.2 The Supplier shall not sub-contract the Contract or any part of it without the prior written consent of the Council.

16.3 Sub-contracting of this Contract shall not in any way relieve the Supplier of its obligations under the Contract.

16.4 The Council shall be entitled to novate (and the Supplier shall be deemed to consent to any such novation) the Contract to any other body which substantially performs any of the functions that previously had been performed by the Council.

## **17. RIGHTS OF THIRD PARTIES**

This Contract shall not create any rights which are enforceable by anyone other than the Parties.

## **18. TERMINATION**

18.1 The Supplier shall notify the Council in writing immediately upon the occurrence of any of the following events:

a) (where the Supplier is an individual)

if a petition is presented for the Supplier's bankruptcy or the Supplier makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage his affairs;

b) (where the Supplier is a firm; or a number of persons acting together in any capacity) if any event in (a) or (c)

of this clause occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Supplier to be wound up as an unregistered company; or

c) where the Supplier is a company, if the company passes a resolution for winding-up or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge.

18.2 The Council shall be entitled to terminate this Contract by notice to the Supplier with immediate effect if:

a) any of the events described in clause 18.1 occurs;

b) the Supplier has committed a material breach of this Contract and (if such breach is capable of remedy) has failed to remedy such breach within ten (10) Business Days of being required by the Council in writing to do so;

c) the Supplier repeatedly breaches any of the terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract; or

d) (where the Supplier is an individual), if he shall die or be adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983.

18.3 Notwithstanding clause 18.2 the Council shall be entitled to terminate this Contract at any time by giving to the Supplier not less than thirty (30) days' notice to that effect.

18.4 The rights to terminate the Contract set out in this clause 18 are in addition to any other right to terminate set out elsewhere in this Contract.

18.5 Where this Contract provides for termination other than under clause 18 the exercise of such rights shall not be subject to the requirements of clause

## **19. EQUALITY AND NONDISCRIMINATION**

19.1 The Council may terminate the Contract and recover from the Supplier the amount of any loss resulting from such termination if under this Contract (or any other contract the Supplier has):

- (a) the Supplier fails, to ensure provision of equality of treatment for anyone who shares a Protected Characteristic as defined in the Equality Act 2010 (whether it is on such grounds as maternity, gender, transgender, marital status, ethnicity, disability, age, religion and belief and sexual orientation or otherwise) in the provision of Goods and in the employment of its staff and sub-contractors; and/or
- (b) the Supplier unlawfully discriminates either directly or indirectly and does not comply with the obligations of the Equality Act 2010 and or any other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

## **20. CONSEQUENCES OF TERMINATION**

20.1 On expiry or termination of this Contract the Supplier shall procure that all Goods, data and other material paid for by and or belonging to the Council (and all media of any nature containing information and data belonging to the Council or relating to the Goods), shall be delivered to the Council forthwith.

20.2 On expiry or termination of this Contract the Supplier shall collect any equipment and or materials on the Council's premises placed there by the Supplier, and the title of said equipment and or materials has not transferred to the Council.

20.3 Where the Contract is terminated due to Supplier default the Supplier shall be liable for any costs incurred by the Council in finding a substitute Supplier to supply the Goods whether incurred before or after the termination of the Contract.

## **21. NOTICES**

21.1 Any notice or other communication given under or pursuant to this Contract must be given in writing and must be sent by first class post, which must be marked for the attention of the Council Representative, and sent to the Council's address identified in the PO ).

21.2 A notice or communication shall be deemed to have been received two (2) Business Days after posting.

## **22. GOVERNING LAW**

This Contract shall be governed by and construed in accordance with the laws of England and shall be subject to the exclusive jurisdiction of the courts of England and Wales.

### **23. BRIBERY AND CORRUPTION**

23.1 The Council may terminate the Contract and recover from the Supplier the amount of any loss resulting from such termination:

- a) If the Supplier shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for so doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the contract or any other contract, with the Council or for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Council; or
- b) If the like acts shall have been done by any person in the employ or on behalf of the Supplier (whether with or without the Supplier's knowledge); or
- c) If in relation to any contract with the Council the Supplier or any person in the employ of or acting on the Supplier's behalf shall have committed any offence under the Bribery Act 2010, or shall have given any fee or reward the receipt of which is an offence under Section 117 of the Local Government Act 1972.

### **24. SEVERANCE**

24.1 If any provision of this Contract shall be found by any court or body or authority of competent jurisdiction to be invalid or unenforceable, that provision shall be severed from the remainder of the Contract which shall remain in full force and effect to the extent permitted by law.

24.2 If any provision of this Contract is found to be invalid or unenforceable but would be valid or enforceable if some part of the provision was deleted, the provision in question shall apply with any necessary modifications to make it valid.

### **25. WAIVER**

No forbearance or delay by either Party in enforcing its respective rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach. In particular, but without limitation to the generality of the foregoing, any prior acceptance or approval communicated by the Council to the Supplier in respect of the Goods or any omission on the part of the Council to communicate such prior acceptance or approval shall not relieve the Supplier of its obligations to deliver the Goods in accordance with the provisions of this Contract.

**26. RIGHTS & REMEDIES**

Subject to the specific limitations set out in this Contract, no remedy conferred by any provision of this Contract is intended to be exclusive of any other remedy except as expressly provided for in this Contract and each and every remedy shall be cumulative and shall be in addition to every other remedy given thereunder or existing at law or in equity by statute or otherwise.

**27. SURVIVAL**

27.1 Any provision of this Contract which expressly or by implication is intended to come into or continue in force on or after termination of this Contract including clauses 10, 13, 14.1, 14.8, 14.10, and 22 shall remain in full force and effect.

27.2 For the avoidance of doubt any explicit and or implicit requirements relating to the quality of the Goods and liability for the Goods shall remain in full force and effect after termination or expiry of this contract.

**28 OXFORD LIVING WAGE**

28.1 The Supplier, shall pay its employees (including those of any subcontractors) engaged in delivering this Contract not less than the Oxford Living Wage or the Living Wage Foundation rate, as defined and the figure updated from time to time online, for the duration of the Contract, and upon request, the Supplier must provide reasonable evidence of compliance.

28.2 For the purpose of clause 28 Oxford Living Wage means the rate identified on the Oxford City Council Website.