

CONDITIONS OF CONTRACT

No terms or conditions submitted at any time by the Contractor shall form any part of the Contract. In the event of a conflict between any of these Conditions and any specific term or condition (whether in the main Contract or otherwise) referred to in the Purchase Order, the latter shall prevail.

1. DEFINITIONS

1.1 In these Conditions:

'Charges' means the Charges for the Services set out in the Purchase Order and/or as agreed between the Parties pursuant to 2.3;

'Contract' means the contract between the Council and the Contractor consisting of the Purchase Order, these Conditions, and any other documents (or parts thereof) specified in the Purchase Order;

'Contractor' means the person, firm or company who is to provide the Service under the Contract, as detailed in the Purchase Order;

'Council' means the County Council of the City and County of Cardiff;

"Data Processing Agreement" means an agreement to be entered into by the Contractor in relation to the processing of Personal Data.

"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.

"DPA 2018" means Data Protection Act 2018

'FOIA' the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such legislation;

'Premises' means the location where the Services are to be performed, as specified in the Purchase Order;

'Property' means the property, other than real property, issued or made available to the Contractor by the Council in connection with the Contract.

'Purchase Order' means the document setting out the Council's requirements for the Contract, including but not limited to the period of the Contract and any right to extend the period;

'Request for Information' a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;

'Services' means the services to be provided as specified in the Purchase Order and shall, where the context requires, include any and all materials, articles and goods to be supplied under the Contract; and

'Staff' means the Contractor and its employees, agents, representatives and sub-contractors.

"UK GDPR" has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

'Working Day' any day other than a Saturday, Sunday or public holiday in England and Wales.

1.2 The headings in these Conditions are for convenience only and shall not affect its construction or interpretation.

2. VARIATION OF THE SERVICES

2.1 These Conditions may only be varied with the written agreement of the Council.

2.2 The performance of Services by the Contractor pursuant to the Purchase Order shall constitute acceptance of these Conditions where acceptance has not previously been communicated.

2.3 The Council reserves the right by notice to the Contractor to vary the Services and any alteration to the Contract price or the completion date arising by reason of such modification shall be agreed between the parties and evidenced in writing.

3. INSPECTION OF PREMISES AND NATURE OF SERVICES

3.1 The Contractor is deemed to have inspected the Premises before tendering so as to have understood the nature and extent of the Services to be carried out and satisfied itself in relation to all matters connected with the Services and Premises.

3.2 The Council shall, at the request of the Contractor, grant such access to the Premises as it may deem to be reasonable for the purpose of the Services.

3.3 The Contractor shall not in any way be relieved from any of its obligations under the Contract on the ground that information is

incorrect or insufficient and the Contractor shall make its own assessment as to the accuracy and adequacy of the information provided in relation to the Contract.

4. CONTRACTOR'S STATUS

In carrying out the Services the Contractor shall act as an independent Contractor, and as principal and not as the agent of the Council, and nothing in the Contract shall create the relationship of employer and employee, principal and agent or a partnership. Accordingly:

5. CONTRACTOR'S PERSONNEL

5.1 The Contractor shall take all reasonable steps to satisfy itself that its employees or sub-contractors (or their employees) are suitable in all respects to perform the Services.

5.2 The Contractor shall immediately notify the Council if they have any concerns regarding the propriety of any of its sub-contractors in respect of work/services rendered in connection with this Contract.

5.3 The Contractor, its employees and sub-contractors (or their employees), whilst on the Council's premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time.

5.4 The Contractor shall ensure the security of all the Property whilst in its possession, during the supply of the Services, in accordance with the Council's reasonable security requirements as required from time to time.

6. MANNER OF CARRYING OUT THE SERVICES

6.1 The Contractor shall make no delivery of materials, plant or other equipment to nor commence any work on the Premises without obtaining the prior consent of the Council.

6.2 Access to the Premises shall not be exclusive to the Contractor but only such as shall enable it to carry out the Services concurrently with the execution of work by others. The Contractor shall co-operate with such others as the Council may reasonably require.

6.3 The Council shall have the power at any time during the progress of the Services to order in writing:

6.3.1 the removal from the Premises of any materials which in the opinion of the Council are either hazardous, noxious or not in accordance with the Contract; and/or

6.3.2 substitution of proper and suitable materials; and/or

6.3.3 the removal and proper re-execution, notwithstanding any previous test of any work of interim payment for such work which, in respect of material or workmanship, is not in the sole opinion of the Council in accordance with the Contract.

6.4 The Charges shall be deemed to include all costs and expenses (of whatever nature) incurred by the Contractor, in particular but not limited to, in complying with all legislation, guidance or regulation (whether known or in contemplation).

6.5 In carrying out the Services the Contractor shall comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply from time to time to the provision of the Contract including but not limited to the Welsh Government's Code of Practice on Ethical Employment in Supply Chains (insofar as it relates to the provision of the Contract), safeguarding policy for contractors, available on [Policies, procedures and guidance \(cardiff.gov.uk\)](https://policies.proceduresandguidance.cardiff.gov.uk) and with any Council policy which the Council may notify to the Contractor.

7. TIME OF PERFORMANCE

7.1 The Contractor shall begin performing the Services on the date stated in the Purchase Order and shall complete or continue to perform the Services for the period stated in the Purchase Order. Time for performance of the Services shall be of the essence for the purposes of the Contract unless otherwise agreed in writing by the Council prior to the Services commencing. The Council may by written notice require the Contractor to execute the Services in such order as the Council may decide. In the absence of such notice, the Contractor shall submit such detailed programmes of work and progress reports as the Council may from time to time require.

7.2 Failure by the Contractor to adhere to any provision as to time contained in the Purchase Order shall entitle the Council at its option to terminate the Services (in whole or in part) under the Contract. The Council shall be entitled to exercise its option at any time notwithstanding that it has waived any delay, unless a written extension of time has been given to the Contractor by the Council and the time of any extension has not elapsed. Failure by the Council to exercise its option to terminate in respect of any part of the Contract shall not be deemed to constitute a waiver with respect to any subsequent part.

8. WARRANTIES

8.1 The Contractor warrants and represents to the Council that the Contractor and its Staff:

8.1.1 are properly trained, qualified, and adequately skilled and competent to the levels necessary to undertake the Services; and

8.1.2 shall undertake the Services in a workmanlike manner using reasonable skill, care and expertise to be expected on a competent Contractor using good industry practice.

8.2 The Council will be relying upon the Contractor's skill, expertise and experience in the performance of the Services and also upon the accuracy of all representations or statements made and any advice given by the Contractor in connection with the performance of the Services.

8.3 The Contractor shall ensure that any goods procured for the purposes of the Services shall be of satisfactory quality, fit for their purpose and be free from defects in materials and workmanship.

Title and risk in any goods shall pass to the Council upon acceptance of delivery by the Council in writing.

9. PAYMENT

9.1 The Council undertakes to pay valid invoices within 30 days of receipt from the day of physical or electronic arrival at the nominated address of the Council.

9.2 A valid invoice is one that is:
- delivered in timing in accordance with the contract;
- that is for the correct sum;
- in respect of goods / services supplied or delivered to the required quality (or are expected to be at the required quality);
- which quote the relevant purchase order / contract reference (where used)
- which has been delivered to the nominated address.

9.3 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge. The Council shall pay the Contractor, on the production of a valid Tax invoice, in addition to the Charges, a sum equal to the Tax chargeable on the value of the Services provided in accordance with the Contract.

9.4 The Council specifically reserves the right to withhold or deduct by way of set-off or otherwise due or to become due to the Contractor any monies due to the Council from the Contractor, arising under the Contract or any other agreement between the Council and the Contractor.

9.5 The Council shall not be liable for any Charges relating to changes to the Services or additional Services other than those issued or confirmed on the Purchase Order or by agreed written variations signed by the duly authorised representatives of either party.

9.6 No payment of or on account of the Charges shall constitute any admission by the Council as to proper performance by the Contractor of its obligations.

9.7 The Contractor shall be exclusively responsible for the discharge of any income tax in relation to its Staff or such similar liability arising out of remuneration of the performance of the Services under the Contract.

10. FREE ISSUE MATERIALS

Where the Council for the purpose of the Contract issues materials free of charge to the Contractor such materials shall be and remain the property of the Council. The Contractor shall maintain all such materials in good order and condition and shall use such materials solely in connection with the Contract. The Contractor shall notify the Council of any surplus materials remaining after completion of the Services and shall dispose of them as the Council may direct. Waste of such materials arising from defective workmanship or negligence of the Contractor or its Staff shall be made good at the Contractor's expense. Without prejudice to any other of the rights of the Council, the Contractor shall deliver up such materials whether processed or not to the Council on demand.

11. AUDIT

The Contractor shall keep and maintain, until six years after the Contract has been completed, records to the satisfaction of the Council of all expenditure which are reimbursable by the Council and of the hours worked and costs incurred in connection with any of the Contractor's Staff paid for by the Council on a time charge basis. The Contractor shall on request afford the Council or its representatives such access to those records as may be required by the Council in connection with the Contract.

12. COPYRIGHT

Copyright in all reports and other documents and materials arising out of the performance by the Contractor of their duties under this Contract are to be assigned to and shall vest in the Council absolutely. This condition shall apply during the continuance of this Contract and after its termination howsoever arising.

13. INDEMNITY AND INSURANCE

13.1 Nothing in the Contract shall exclude or limit the liability of either party for death or personal injury caused by its negligence or for fraudulent misrepresentation or any fine incurred as a result of the Contractor's breach of the DPA.

13.2 The Contractor shall indemnify and keep indemnified the Council against all claims, proceedings, losses, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with the Contract including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor. This clause shall not apply where the Contractor is able to demonstrate that such loss, damage or injury was caused by the negligence or wilful default of the Council.

13.3 Subject to Clause 13.1, the Contractor's total liability to the Council, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to 150% of the total Charges paid under the Contract or the level of insurance provided, whichever is the greater.

13.4 Subject to clause 13.1, the Council's total liability to the Contractor whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to the Charges paid under the Contract

13.5 Subject always to clause 13.1, in no event shall either Party be liable to the other for:
(a) loss of profits, business, revenue or goodwill;
(b) loss of savings (whether anticipated or otherwise); and/or
(c) indirect or consequential loss or damage.

13.6 The Contractor shall have in force and shall require any sub-contractor to have in force with an insurer of good repute:

- 13.6.1 employer's liability insurance in accordance with any legal requirements for the time being in force;
- 13.6.2 public liability insurance for such sum and range of cover as the Contractor deems to be appropriate but covering at least all matters which are the subject of indemnities or compensation obligations under these Conditions in the sum of not less than that stated in the Purchase Order for any one incident and unlimited in total, unless otherwise agreed by the Council in writing; and
- 13.6.3 such other adequate and suitable insurance as required under contracts of the nature of the Contract.
- 13.7 The policy or policies of insurance referred to in Condition 13.6 shall be shown to the Council whenever it requests, together with satisfactory evidence of payment of premiums.

14. CONFIDENTIALITY & DATA PROTECTION

- 14.1 The Contractor shall and shall procure that its staff keep secret and do not disclose any information of a confidential nature obtained by reason of the Contract except information which is in the public domain otherwise than as required to be by reason of a breach of this Condition 14 or disclosed by law.
- 14.2 The provision of this Condition 14 shall apply during the continuance of the Contract and after its termination howsoever arising without limitation in time.
- 14.3 The Contractor shall comply with any and all requirements under the Data Protection Legislation and shall not disclose or allow access to any personal data as defined under the Data Protection Legislation ("Personal Data") provided or acquired during the term of the Contract (unless authorised to do so by the Authority in writing pursuant to clause 14.6).
- 14.4 The Contractor shall use, disclose or allow access to any data produced as a result of the Contract in accordance with the Council's strict instructions and only to the extent that is specifically necessary for the purposes of the Contract.
- 14.5 The Contractor shall store or process such Personal Data provided as a result of the Contract only at site specifically agreed by the parties in writing in advance and shall take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.
- 14.6 The Contractor shall not cause or permit the Personal Data to be transferred outside of the European Economic Area without the prior written consent of the Council.
- 14.7 Where the Contractor processes Personal Data as part of this Contract, the Contractor shall enter into a Data Processing Agreement.

15. TERMINATION

- 15.1 The Contract may be terminated by the Council giving to the Contractor at least 30 days notice in writing.
- 15.2 In the event of any breach of the Contract by either party, the non-breaching party may serve a notice on the party in breach requiring the breach to be remedied within a period specified in the notice which shall be reasonable in all the circumstances. If the breach has not been remedied by the expiry of the specified period, the non-breaching party may terminate the Contract with immediate effect by notice in writing.
- 15.3 In the event of a material breach of the Contract by either party, the non-breaching party may terminate the Contract with immediate effect by notice in writing.
- 15.4 The Council may terminate the Contract with immediate effect by notice in writing to the Contractor if at any time:-
- 15.4.1 the Contractor passes a resolution that it be wound-up or that an application be made for an administration order or the Contractor applies to enter into a voluntary arrangement with its creditors;
- 15.4.2 a receiver, liquidator, administrator, supervisor or administrative receiver be appointed in respect of the Contractor's property, assets or any part thereof;
- 15.4.3 the court orders that the Contractor be wound-up or a receiver of all or any part of the Contractor's assets be appointed;
- 15.4.4 the Contractor is unable to pay its debts in accordance with Section 123 of the Insolvency Act 1986;
- 15.4.5 the Contractor (being an individual or partnership) is declared or adjudicated bankrupt or enters into any arrangement or composition with its creditors;
- 15.4.5 there is a change in the legal or beneficial ownership of 50% or more of the Contractor's share capital issued at the date of the Contract or there is a change in the control of the Contractor. For the purpose of this Sub-Condition 15.4.5 "control" means the power of a person to secure that the affairs of the Contractor are conducted in accordance with the wishes of that person by means of the holding of shares or the possession of voting power;
- 15.4.6 the Contractor is convicted (or being a company, any officers or representatives of the Contractor are convicted) of a criminal offence related to the business or professional conduct;
- 15.4.7 the Contractor commits (or being a company, any officers or representatives of the Contractor commit) an act of grave misconduct in the course of the business;
- 15.4.7 the Contractor fails (or being a company, any officers or representatives of the Contractor fail) to disclose any serious misrepresentation in supplying information required by the Council in or pursuant to the Contract;

- 15.4.8 the Contractor's actions brings the Council into disrepute.
- 15.5 Nothing in this Condition 15 shall affect the coming into, or continuance in force of any provision of the Contract which is expressly or by implication intended to come into force or continue in force upon termination of the Contract.
- 15.6 On termination of the Contract for any reason whatsoever, the Contractor shall:
- 15.6.1 cease to have any right to use any intellectual property rights owned by the Council;
- 15.6.2 return any and all documents or information (in a tangible or intangible form) belonging to the Council and shall destroy all copies of such documentation or information relating to or supplied by the Council to the Contractor for the purposes of the Contract and being in the Contractor's possession, power or control.

16. ASSIGNMENT AND SUB-CONTRACTING

- 16.1 The Council may at any time assign, transfer or sub contract the Contract or deal in any other manner with any or all of its rights and obligations under the Contract.
- 16.2 The Contractor shall not assign, transfer or sub-contract any portion of the Contract without the prior written consent of the Council. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations duly attributable under the Contract.
- 16.3 Where the Council has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Contractor to the Council immediately when it is issued. Any authority given by the Council for the Contractor to sub-contract the Contract (or any part of it) shall not impose any duty on the Council to enquire as to the competency of any authorised sub-contractor but that the Contractor shall ensure that any authorised sub-contractor is competent and that the work is properly done.

17. NOTICES

Any notices to be given under the Contract shall be delivered personally or sent by post or by facsimile transmission to the Council's representative or to the address set out in the Contract (in the case of the Contractor). Any such notice shall be deemed to be served, if delivered personally, at the time of delivery, if sent by post, 48 hours after posting or, if sent by facsimile transmission, 12 hours after proper transmission.

18. THIRD PARTY RIGHTS

The Contract is not intended to create any rights of any kind whatsoever enforceable by any person who is not a party to the Contract (including any rights enforceable under the Contracts (Rights of Third Parties) Act 1999).

19. SEVERABILITY

If any provision under the Contract is or becomes unenforceable, void or invalid, such provision shall not take effect and shall be deemed to be severed from the remainder of the Contract to the extent that the remainder of the Contract and the unaffected part of the provision shall continue to be fully enforceable.

20. WAIVER

No delay or omission by the Council in exercising any of its rights under the Contract shall constitute a waiver of that right and any partial exercise of any such right shall not prevent any future exercise of the right.

21. DISCRIMINATION

- 21.1 The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation or good practice relating to discrimination (whether in age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership, and pregnancy and maternity or otherwise) in employment.
- 21.2 The Contractor shall comply with the Council's statement on modern slavery published by the Council from time to time.
- 21.3 The Contractor shall take all reasonable steps to secure the observance of Clause 21.1 and 21.2 by all servants, employees or agents of the Contractor and all suppliers and sub-contractors employed in the execution of the Contract.

22. FREEDOM OF INFORMATION

- 22.1 The Contractor acknowledges that the Council is subject to the requirements of the Code of Practice on Government Information, FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable the Council to comply with its Information disclosure obligations.
- 22.2 The Contractor shall and shall procure that its Sub-contractors shall:
- 22.2.1 transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
- 22.2.2 provide the Council with a copy of all Information in its possession, or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council's request; and
- 22.2.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 22.3 The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether any Information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the Environmental Information Regulations.
- 22.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Council.

22.5 The Contractor acknowledges that (notwithstanding the provisions of Clause 22) the Council may, acting in accordance with the Council of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Project:

- 22.5.1 in certain circumstances without consulting the Contractor; or
- 22.5.2 following consultation with the Contractor and having taken their views into account;
- 22.5.3 provided always that where 22.5.1 applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.
- 22.6 The Contractor shall ensure that all Information is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

23. WELSH LANGUAGE

The Contractor shall comply with all applicable requirements of the Authority's Welsh Language Scheme and the Welsh Language (Wales) Measure 2011 ("the Measure") and the Welsh language standards issued to the City of Cardiff Council (Compliance Notice – Section 44 Welsh Language (Wales) Measure 2011) insofar as it relates to the provision of the Services. A copy of the Welsh language standards is available from www.cardiff.gov.uk/bilingualcardiff

22. FORCE MAJEURE

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for 6 months or such shorter period as the parties agree in writing, the party not affected may terminate the Contract by giving written notice with immediate effect to the affected party.

23. ENTIRE AGREEMENT

This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

24. DISPUTE

Without prejudice to Condition 25 below, if there is any dispute arising out of or in connection to the Contract between the parties, the Parties shall consult in good faith to try to resolve such dispute

25. LAW AND JURISDICTION

The Contract and any dispute arising under or in any way connected with the subject matter of the Contract (whether of a contractual or tortious nature or otherwise) shall be governed by and interpreted in accordance with English and Welsh Law and the parties submit to the jurisdiction of the English and Welsh courts.