



**TERMS AND CONDITIONS
FOR SUPPLY OF TRAFFIC
SIGNS
SOUTHEND-ON-SEA BOROUGH
COUNCIL**

DEFINITIONS AND INTERPRETATION

1.1 In these Terms and Conditions, the following words and phrases shall have the following meanings:

“Condition” means any one or more of these Terms and Conditions.

“Council” means [signing members of the Southend Borough Council].

“Goods” means the goods described in the Purchase Order.

“Order Number” means the unique number that appears on the Purchase Order.

“Parties” means the Council and the Provider.

“Price” means the price for the Goods given in the Purchase Order.

“Provider” means the person, firm or company with whom the Council enters into the Contract.

“Purchase Order” means an order for the purchase of goods served by the Council on the Provider which includes:

- The Order Number
- a description of the Goods;
- the date and, if appropriate, time, for delivery of the Goods;
- details of the delivery address;
- details of the Council’s address for invoices;
- the Provider’s address for notices; and
- the Price; and
- any terms applying to the purchase of the goods which are additional to these Terms and Conditions.

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

1.2 The headings in these Terms and Conditions are for ease of reference only and shall not affect the interpretation or construction of these Terms and Conditions.

1.3 Where the context permits, the use of the singular shall be construed to include the plural, and the use of plural the singular, and the use of any gender shall include all genders.

1.4 References to an Act of Parliament shall be deemed to include any subordinate legislation of any sort made from time to time under that Act.

1.5 References to any statute, enactment, order, regulation, code or similar instrument shall be construed as a reference to the statute, enactment, order, regulation, code or instrument as subsequently amended or re-enacted.

2. GENERAL

2.1 These Terms and Conditions together with the relevant Purchase Order, any specifications and plans provided by the Council and any specific guarantee arrangements applying to the Goods constitute the contract between the Parties for the supply of the Goods (the “**Contract**”).

2.2 In the event of any conflict between a clause in these Terms and Conditions and a term of the Purchase Order, the term of the Purchase Order shall prevail.

2.3 The Contract constitutes the entire agreement between the Parties relating to the supply of the Goods and replaces all previous negotiations, agreements, understandings and representations, whether oral or in writing. However nothing in the Contract shall limit or exclude any liability for fraud.

2.4 In providing services to The Council , the Provider will work at all times:

- a) in accordance with the specification ;
- b) with reasonable skill, care and diligence;
- c) to the reasonable satisfaction of The Council ;
- d) with appropriate skills and qualifications

2.5 The Provider shall disclose to The Council any actual or potential conflict of interest arising from the Project as soon as is reasonably practicable after becoming aware of the conflict. If the Parties are unable to resolve the conflict to the reasonable satisfaction of The Council, The Council shall be entitled to terminate the Contract with immediate effect.

3. THE GOODS

3.1 The Provider shall supply the Goods in accordance with the terms set out in the Purchase Order.

3.2 The Goods shall:

- a) be to the reasonable satisfaction of the Council;

- b) be fit and sufficient for all purposes for which such Goods are generally used and for any specific purpose made known to the Provider by the Council;
- c) be of the same quality and description as any sample provided; and
- d) comply with any requirements or specifications given on the Purchase Order.

4. DELIVERY

- 4.1 The Provider shall deliver the Goods to the addresses for delivery given in the Purchase Order, as set out following the sites visit and/ or following conversation with the Contract Manager.
- 4.2 In the event, where the Provider requires access to the Council's premises in order to deliver the Goods:
- a) the Provider shall agree delivery times with the Council in advance (unless the Council agrees otherwise);
 - b) the Provider shall comply with any rules or security requirements applied by the Council in relation to access to its premises.
- 4.3 Except where otherwise agreed by the Council, delivery of the Goods shall include unloading the Goods at such place and in such manner as the Council shall reasonably direct.
- 4.4 The Provider shall deliver and install the Goods on or (where the Council agrees) before the date or dates given in the Purchase Order. Unless the Purchase Order provides otherwise, the time of delivery and installation is of the essence in this Contract and any failure to deliver the Goods by the date (or at the time) given in the Purchase Order shall entitle the Council to give the Provider notice terminating the Contract with immediate effect.

5. PROPERTY AND RISK

- 5.1 Without prejudice to the Council's other rights and remedies under this Contract, property and risk in the Goods shall pass to the Council on acceptance of delivery.

6. DAMAGE TO GOODS IN TRANSIT

- 6.1 Any consignment of Goods dispatched by the Provider for delivery to the Council shall be accompanied by a delivery note prepared by the Provider marked with the order number from the Purchase Order. Where applicable, the delivery note shall also specify the means of transport, the place and date of delivery, the number of packages, the content of the packages, the weight and volume of the packages and whether or not the packaging must be returned to the Provider. As the goods will be delivered and installed at various sites, the specific delivery, installation and inspection arrangements are to be agreed.
- 6.2 Where some or all of the Goods have been damaged in transit (or have failed to arrive at the Council after dispatch by the Provider) the Provider shall

either repair or replace the Goods in question (at the choice of the Council) provided always that:

- a) in the case of damage in transit the Council has informed the Provider of the damage within 10 days of receiving the Goods; and
- b) in the case of non-delivery and where the Provider has notified the Council of the intended date of delivery, the Council has informed the Provider within 10 days of the notified delivery date that the Goods have not been received.

7. INSPECTION, REJECTION AND GUARANTEE

7.1 The Provider shall permit the Council to inspect the Goods and shall provide all reasonable assistance to the Council in undertaking an inspection.

7.2 The Council shall not be taken to have waived any of its rights under this Contract (and in particular its right to reject the Goods) if it does not carry an inspection or if it approves the Goods following an inspection.

7.3 The Council may, by written notice to the Provider, reject any of the Goods and Services, such as installation, which fail to meet the requirements of this Contract, provided always that the Council gives notice of such rejection within a reasonable time of receiving the Goods.

7.4 If the Council rejects any of the Goods pursuant to this clause, it shall be entitled to:

- a) have the Goods concerned either repaired by the Provider or (at the choice of the Council) replaced by the Provider with Goods which comply with this Contract; or
- b). obtain a refund of any payment it has made to the Provider.

7.5 Subject to any alternative guarantee arrangements made between the Council and the Provider, the guarantee period applicable to the Goods shall be 12 months from the Council putting the Goods into service or 18 months from delivery (whichever is the shorter).

7.6 If, within the guarantee period or within 30 days thereafter, the Council gives the Provider written notice of any defect which arose within the guarantee period under proper and normal use of the Goods, the Provider shall remedy such defect as quickly as possible (whether by repair or replacement, as the Council shall choose) without cost to the Council.

7.7 Any Goods rejected or returned to the Provider shall be returned at the Provider's expense.

8. LABELLING AND PACKAGING

8.1 The Goods shall be appropriately packaged and clearly labeled. The labeling and packaging shall comply with any reasonable requirements of the Council of which the Provider is aware, and with any statutory requirements. In

particular, if the packages contain any material which is hazardous, noxious or dangerous this shall be clearly indicated.

8.2 All packaging shall be considered non-returnable and shall be destroyed unless the Provider indicates in the advice note accompanying the consignment of Goods that the packaging will be charged for unless it is returned. The Council shall only accept liability for packaging that does not arrive at the Provider's premises following dispatch by the Council if the Provider informs the Council of its non-arrival within 10 days of receiving notification from the Council that the packaging has been dispatched.

9. INSTALLATION

9.1 Where the Purchase Order requires the Provider to install the Goods at the specified premises:

- a) the Provider shall make no delivery of plant, materials or equipment and shall not commence any installation work without the prior consent of the Council;
- b) the Provider shall carry out the installation work diligently and with reasonable skill and care;
- c) the Provider shall comply with the Council's requirements relating to access to and use of its premises and shall co-ordinate its work with any other employee or contractor who is carrying out work for the Council; and
- d) the Provider shall keep the Council's premises clean and tidy at all times and shall remove all plant and unused materials when the installation work is complete.

9.2 The Council shall have the power at any time during any installation works to give notice to the Provider requiring:

- a) the removal from its premises of any materials which are hazardous or noxious or not in accordance with the Contract;
- b) the substitution of proper and suitable materials; and/or
- c) the removal and re-execution of any installation work or any Goods which are not in accordance with the Contract.

10. PAYMENT

10.1 In consideration of the supply and delivery of the Goods by the Provider, the Council shall pay the Provider the Price.

10.2 The Provider shall submit an invoice for the Goods to the Council's address for invoices given in the Purchase Order. The invoice shall contain the Order Number given in the Purchase Order, a full description of the Goods supplied and the Price.

10.3 Save where the Goods have not been delivered or are not in accordance with the Contract, the Council shall pay the Provider's invoice within 30 days of receiving it.

10.4 In addition to the Price, the Council shall (where applicable) pay the Provider a sum equivalent to any Value Added Tax chargeable on the Goods supplied.

10.5 The Provider shall implement any legislative requirement to account for goods and services in Euros instead of, or as well as, Sterling at no cost to the Council. The Council shall provide all reasonable assistance to facilitate any such requirement.

11. RECOVERY OF SUMS DUE

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

12. INTELLECTUAL PROPERTY

12. 1 All Intellectual Property Rights (IPR) in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:

- a) provided to the Provider by The Council shall remain the property of The Council ;
- b) Prepared by or for the Provider specifically for the use, or intended use, in relation to the performance of the Contract shall belong to The Council on creation.

12.2 The Provider shall obtain necessary approval before using any material, in relation to the performance of the Contract which is or may be subject to any third party IPR. The Provider shall procure that the owner of the IPR grant to The Council a non-exclusive perpetual and irrevocable licence for the purpose of The Council's functions and duties as a local authority; or if the Provider is itself a licensee of those rights, the Provider shall grant to The Council a sub-licence for the purposes mentioned. Such licence and any sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right for The Council to sub-license, transfer, and novate or assign to other The Council s, any Replacement Provider or to any other third party providing services to The Council, and shall be granted at no cost to The Council.

12.3 It is a condition of the Contract that the Goods and Services will not infringe the IPR of any third party and the Provider shall during and after the Contract Period on written demand indemnify and keep indemnified without limitation The Council against all Liabilities which The Council may suffer or incur as a result of or in connection with any breach of this clause or any claim of IPR infringement arising from the Goods and Services or performance of the Provider or Provider's Assigned Personnel.

12.4 At the termination of the Contract the Provider shall immediately return to The Council all materials, work or records held in relation to the Goods and Services, including any back-up media and information relating to service users.

13. HEALTH AND SAFETY

13.1 The Provider warrants and represents that:

- a) it has satisfied itself that all necessary examinations have been made prior to delivery of the Goods, to ensure that the Goods are designed and constructed so that they can be used without risk to health and safety; and
- b) that it has made available to the Council adequate information about any conditions necessary to ensure the Goods can be used safely and without risk to health.

13.2 The Provider shall indemnify the Council against all actions, demands, charges, expenses and costs (including legal costs on a solicitor and client basis) which the Council may incur as a result of or in connection with any breach of Condition 13.1.

13.3 The Provider shall notify the Council of any health and safety hazards that may arise in connection with the performance of this Contract.

13.4 The Council shall notify the Provider of any health and safety hazards which may exist or arise at its premises and which may affect the Provider. The Provider shall draw these hazards to the attention of any of its employees, subcontractors or agents who may be affected by them and instruct such persons in connection with any necessary safety measures.

14. CONFIDENTIALITY AND OFFICIAL SECRETS

14.1 The Provider undertakes to comply and to procure that its employees comply with the provisions of the Official Secrets Acts 1911 to 1989.

14.2 The Provider 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 Condition applies to information that is already in the public domain or the possession of the Provider, other than by reason of breach of this Condition.

15. SECURITY MATTERS

15.1 The Provide shall report any findings of breach of confidential information to the Council's nominated representative in the manner requested by the Council's representative.

16. ENVIRONMENTAL MATTERS

16.1 The Provider confirms that:

- a) the process used in the manufacture of the Goods relied on minimal use of ozone depleting substances, toxic chemicals and other pollutants including lead, methyl chloroform and formaldehyde;
- b) that minimal dependence has been made on non-renewable natural resources such as non-sustainably produced hardwoods;
- c) in the manufacture of the Goods and in the choice of any packaging for the Goods, it has given preference to Goods that have maximum recyclability or, where cost effective recycling is impracticable, maximum biodegradability.

17. INDEMNITY AND INSURANCE

17.1 Without prejudice to any rights or remedies of the Council, the Provider shall indemnify the Council against all actions, demands, losses, expenses and costs (including legal costs on a solicitor and client basis) which the Council may suffer or incur as a result of or in connection with any damage to property or any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any defect in the Goods, or any negligence or breach of this Contract by the Provider.

17.2 The Provider warrants that it has in place with a reputable insurance company a policy or policies of insurance covering all the indemnities under this Contract. At the request of the Council, the Provider shall produce the relevant policy of insurance together with evidence of payment of its latest premium. Insurance to be held is Employers Liability to £5m (million), Public Liability to £5m (million) and Professional Indemnity to £1m (million) on a per occurrence/claim basis.

18. CHANGE CONTROL

18.1 There shall be no change to the amount of or description of the Goods or the Price unless the Council has issued a new purchase order in substitution for the Purchase Order. These Terms and Conditions shall apply to any new purchase order and the new purchase order shall become “the Purchase Order” for the purpose of this Contract from the moment it is received by the Provider.

18.2 This Contract may not be varied or amended unless the variation or amendment is in writing and agreed by authorised representatives of both the Council and the Provider.

19. ASSIGNMENT OR SUB-CONTRACTING

19.1 The Provider shall not assign nor sub-contract any part of this Contract without the prior written consent of the Council.

19.2 Sub-contracting of this Contract shall in no way relieve the Provider of its obligations under the Contract.

19.3 Where the Provider enters a sub-contract with a Provider or contractor for the purpose of performing this Contract it shall ensure that the sub-contract has a term requiring the Provider to pay that Provider or contractor within 30 days of receipt of a valid invoice.

20. RIGHTS OF THIRD PARTIES

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

21. TERMINATION

21.1 Without prejudice to any other rights or remedies of the Council under this Contract, the Council shall have the right forthwith to terminate this Contract by written notice to the Provider or his trustee in bankruptcy or receiver or (if a company) its liquidator or administrator, if the Provider shall have a receiver appointed over all or a substantial part of his or its assets or (if an individual) be declared bankrupt or (if a company) shall go into liquidation or have an administrator appointed to manage its affairs.

21.2 The Council shall be entitled to terminate this Contract by notice to the Provider with immediate effect if the Provider has committed a material breach of this Contract and (if such breach is capable of remedy) has failed to remedy such breach within thirty days of being required by the Council in writing to do so; or

22. NOTICES

22.1 Any notice or other communication given under or pursuant to this Contract must be given in writing. Communications must be sent to the email address for communications given in the tender documents and specified on the Purchase Order (which may be altered at any time by the altering Party giving the other Party 15 days notice of a changed address).

22.2 If the communication is sent by post, a notice or communication shall be deemed to have been received 2 working days after posting in the case of first class delivery and 4 working days after posting in the case of second class delivery unless the receiving Party proves otherwise.

23. FREEDOM OF INFORMATION

23.1 The Provider and the Council shall to comply with the Freedom Of Information Act 2000 (the “**FOI Act**”), any subordinate legislation made under the FOI Act and any guidance issued by the Information Commissioner, in relation to the Contract.

23.2 The Provider agrees to assist and cooperate with the Council to enable the Council to comply with its obligations under the FOI Act whenever a request is made for information which relates to or arises out of this Contract and/or the supply of the Goods.

24 DISPUTES AND MEDIATION

24.1 Before resorting to litigation, the Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Contract.

24.2 If the Parties are unable to resolve the dispute, either party may, at any time, refer the dispute to mediation by a neutral advisor or mediator ("the Mediator").

24.3 If the Parties are unable to agree on a Mediator within 7 days of the request by one party to refer the dispute to mediation, they shall apply to the Centre for Dispute Resolution ("CEDR") to appoint a Mediator.

24.4 The Parties shall seek to agree directions for how the mediation is conducted and, failing agreement, they shall seek directions from the Mediator.

24.5 If the Parties reach agreement on the resolution of their dispute the agreement shall be reduced to writing and shall be binding.

25 DATA PROTECTION

25.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in Schedule A by the Customer and may not be determined by the Contractor.

25.2 The Contractor shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.

25.3 The Contractor shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

25.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

(a) process that Personal Data only in accordance with Schedule 16, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;

(b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:

- (i) nature of the data to be protected;
- (ii) harm that might result from a Data Loss Event;
- (iii) state of technological development; and
- (iv) cost of implementing any measures;

(c) ensure that:

- (i) the Contractor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 16);
- (ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:

- (A) are aware of and comply with the Contractor's duties under this clause;
- (B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
- (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement; and
- (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

(d) not transfer Personal Data outside of the EU unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

- (i) the Customer or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer;
- (ii) the Data Subject has enforceable rights and effective legal remedies;
- (iii) Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations); and
- (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

(e) at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data.

25.5 Subject to clause 25.6, the Contractor shall notify the Customer immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either
Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

25.6 The Contractor's obligation to notify under clause 25.5 shall include the provision of further information to the Customer in phases, as details become available.

25.7 Taking into account the nature of the processing, the Contractor shall provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 25.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:

- (a) the Customer with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Customer following any Data Loss Event;
- (e) assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.

25.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:

- (a) the Customer determines that the processing is not occasional;

- (b) the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
- (c) the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

25.9 The Contractor shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.

25.10 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.

25.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:

- (a) notify the Customer in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the Customer;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause [25] such that they apply to the Sub-processor; and
- (d) provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.

25.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.

25.13 The Contractor may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

25.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

26 GOVERNING LAW

26.1 Unless the Purchase Order specifies otherwise, this Contract shall be governed by and construed in accordance with the law of England and Wales and shall be subject to the exclusive jurisdiction of the courts of England and Wales.

IN WITNESS of which this Agreement has been duly executed by the parties.

SIGNED for and on behalf of **[Council]**

SIGNED for and on behalf of

[Provider]

Signature.....

Signature.....

.....

Name

Name.....

.....

Position

Position.....

.....