

**PURCHASE ORDER TERMS AND CONDITIONS BELOW £5,000**

These terms and conditions (the "Conditions") apply to goods and or services purchased under the Purchase Order procedure for Kettering Borough Council (the "Customer").

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

**PART A - DEFINITION****A1 Definitions**

"Contract" means the agreement between the Customer and the Supplier consisting of these Conditions, the Purchase Order and any other documents (or parts thereof) specified in the Purchase Order;

"Contract Price" means the price for the Goods and or Services set out on the Purchase Order and or the specification;

"Contract Term" means the contract period which shall be from the agreed commencement date until the agreed termination date referred to in the Contract subject to any termination for breach or otherwise;

"Default" means any breach of the obligations of the Supplier under the Contract;

"Goods" means the goods (or any part of them), if any, to be supplied by the Supplier and identified in the Purchase Order and or specification;

"Purchase Order" means the purchase order used by the Customer to place an order with Supplier for Goods and or Services;

"Services" means the services, if any, to be provided by the Supplier as identified in the Purchase Order;

"Supplier" means the person, firm or company who is the supplier of the Goods or Services named in the Purchase Order;

"Tax" means Value Added Tax, customs duties and any other taxes or duties.

**A2 Basis of Contract**

A2.1 The Contract shall become binding and these Conditions shall be deemed to have been accepted by the Supplier (either verbally or in writing) or on delivery of the Goods or Services whichever is the earlier and this shall be the "Commencement Date".

A2.3 The Contract shall commence on the Commencement Date and shall expire automatically at the end of the Contract Term unless it is terminated in accordance with these Conditions, or otherwise lawfully terminated.

**PART B - OPERATIVE PROVISIONS****B1 Supply of Goods and or Services**

B1.1 The Supplier shall provide the Goods and or Services on the Conditions set out in the Contract and shall comply with and take into account all applicable laws, enactments, orders, regulations and other similar instruments, the requirements of any court with relevant jurisdiction and any local, national or supranational agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union.

**B2 Contracts for Goods**

B2.1 The Goods shall be to the reasonable satisfaction of the Customer, shall conform to any particulars specified in the Purchase Order, shall be of satisfactory quality and free from defects and be fit and sufficient for all the purposes for which such Goods are ordinarily used and for any particular purpose made known to the Supplier by the Customer, and the Customer relies on the skill and judgement of the Supplier in the supply of the Goods and the execution of the Purchase Order.

B2.2 The Goods shall be packed and marked in a proper manner and in accordance with the Customer's instructions, any statutory

requirements, and any requirements of carriers. The Goods shall be delivered to the location(s), and at the times and dates specified in the Purchase Order, and time of delivery shall be of the essence. If no times and dates are specified, the Goods shall be delivered promptly following the Supplier's receipt of the Purchase Order. Except where otherwise provided in the Purchase Order, delivery shall include the unloading, stacking or installation of the Goods by the Supplier at such place(s) as the Customer shall reasonably direct.

B2.3 Property and risk in the Goods shall without prejudice to any other rights or remedies of the Customer pass to the Customer at the time of acceptance.

B2.4 The Customer may by reasonable written notice to the Supplier reject any of the Goods which fail to meet the requirements specified herein, and shall be entitled (without prejudice to any other rights and remedies) either to have the Goods repaired or replaced (at the option of the Customer) or to treat the Contract as discharged and seek damages from the Supplier. The issue by the Customer of a receipt note for the Goods shall not constitute any acknowledgement of the condition or nature of those Goods.

B2.5 The Supplier shall guarantee the Goods for a period of twelve (12) months from installation or eighteen (18) months from delivery, whichever shall be the shorter (subject to any alternative guarantee arrangements agreed in writing between the Customer and the Supplier). If the Customer shall within such guarantee period or within thirty (30) days thereafter give notice in writing to the Supplier of any defect in any of the Goods that have arisen during the guarantee period under proper and normal use, the Supplier shall (without prejudice to any of the Customer's other rights and remedies) as quickly as possible remedy such defects (whether by repair or replacement as the customer shall elect in its sole discretion) without cost to the Customer.

B2.6 The Supplier represents and warrants to the Customer that the Supplier has satisfied itself that the Goods are designed, manufactured, supplied and installed to be safe and without risk to the health and safety of persons using the same.

**B3 Contracts for Services**

B3.1 The Supplier shall provide the Services for the Contract Term. Timely provision of the Services shall be of the essence of the Contract, including in relation to commencing the provision of the Services.

B3.2 The Supplier shall perform the Services with all reasonable care, skill and diligence, and in accordance with good industry practice. The Supplier warrants and represents that all persons engaged by the Supplier for performance of the Services have the qualifications, skill and experience necessary for the proper performance of the Services.

B3.3 If the Customer informs the Supplier that the Customer considers any part of the Services to be inadequate, without prejudice to Condition B3.5 below, the Supplier shall at its own expense re-schedule and perform the work correctly within such reasonable time as may be specified by the Customer.

B3.4 Without prejudice to the Customer's other rights and remedies, the Supplier shall reimburse the Customer for all reasonable costs incurred by the Customer which have arisen as a direct consequence of the Supplier's delay in the performance of the Contract.

B3.5 In the event that the Customer is of the opinion that there has been a Default by the Supplier in respect to the Services, then the Customer may, without prejudice to its other rights herein: (a) make such deduction from the Contract Price as the Customer shall reasonably determine in respect of such of the Services as the Supplier shall have failed to provide; or (b) provide or procure the provision of part of the Services; or (c) terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself provide or procure a third party to provide such part of the Services; and or (d) terminate, in accordance with Condition B11.

B3.6 The Customer may charge to the Supplier any cost reasonably incurred by the Customer and any reasonable administration costs in respect of the provision of any part of the Services by the

Customer or by a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Services.

**B4 Contract Price**

B4.1 In consideration of the satisfactory performance of the Supplier's obligations under the Contract, the Customer shall pay the Contract Price.

B4.2 The Customer shall pay the Supplier, in addition to the Contract Price, a sum equal to the Tax chargeable on the value of the Goods and/or Services provided in accordance with the Contract.

B4.3 The Customer undertakes to pay correctly submitted invoices within thirty (30) days of receipt. The Supplier shall not render invoices until completion of delivery of all the Goods or Services that are the subject of the Purchase Order or completion of the Services to the satisfaction of the Customer

B4.4 The Customer reserves the right to withhold or deduct by way of set-off or otherwise from any monies due or to become to the Supplier any monies due to the Customer from the Supplier.

**B5 Information sharing and confidentiality**

B5.1 When required to do so by the Customer, the Supplier shall assist the Customer at no additional charge in meeting its obligations under the Freedom of Information Act 2000 or any statutory modification or re-enactment thereof of any related guidelines or codes of practice.

B5.2 The Supplier shall comply in all respects with the provisions of the General Data Protection Regulation (Regulation (EU) 2016/679) and the Data Protection Act 2018 as amended and will indemnify the Customer against all actions, costs, claims proceedings or demands that may be brought or made against the Customer under the Act which arise from the improper use, disclosure or transfer of personal data by the Supplier.

B5.3 The Supplier shall keep confidential all information belonging to or provided by the Customer in connection with this Contract and shall not further use or disclose it to any third party without the express consent of the Customer or except to the extent permitted by law.

**B6 Security**

B6.1 The Supplier shall comply with all reasonable security requirements of the Customer while on the Customer's premises, and shall procure that all its employees, agents, servants and sub-contractors shall likewise comply with such requirements. The Customer shall provide the Supplier upon request copies of its written security procedures. The Customer reserves the right to refuse to admit to, or to withdraw permission to remain on, any of its premises, the Supplier or any sub-contractor, agent or servant of the Supplier.

**B7 Intellectual Property Rights**

B7.1 The Supplier warrants that the Goods and or Services will not infringe any intellectual property rights of any third party and the Supplier shall fully indemnify and keep indemnified the Customer against all actions, suits, claims, demands, losses, charges, costs and expenses which the Customer may suffer or incur as a result of or in connection with any breach of this Condition.

B7.2 All intellectual property rights in any specifications, instructions, plans, drawings, patents, patterns, models, designs or other material prepared by or for the Supplier for use, or intended use, in relation to the performance of the Contract shall belong to the Customer.

**B8 Remedies Cumulative**

B8.1 Except as otherwise expressly provided by the Contract, all remedies available to either party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

**B9 Indemnity and Insurance**

B9.1 The Supplier shall indemnify and keep the Customer indemnified against any and all liabilities, costs, expenses, damages and losses

(including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with:	<b>B14 Anti-bribery and Corruption</b>	confers a benefit on him without the prior agreement in writing of both parties.
<p>(a) any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services;</p> <p>(b) any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods and or Services delivered; and</p> <p>(c) any claim made against the Customer by a third party arising out of or in connection with the supply of the Goods, as delivered, or the Services.</p>	<p><b>B14.1</b> The Customer may cancel the Contract and recover from the Supplier the amount of any loss resulting from the cancellation if at any time it becomes known to the Customer that the Supplier or any person employed by the Supplier or acting on his behalf whether with or without the knowledge of the Supplier has directly or indirectly offered, promised or given any person working for or engaged by the Customer a financial or other advantage to:</p> <p>(a) induce that person to perform improperly a relevant function or activity; or</p> <p>(b) reward that person for improper performance of a relevant function or activity;</p> <p>(c) under the Bribery Act (means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation);</p> <p>(d) under legislation or common law concerning fraudulent acts;</p> <p>(e) defrauding, attempting to defraud or conspiring to defraud the Customer.</p>	<p><b>C8 Variation</b></p> <p><b>C8.2</b> The Contract shall not be varied or amended unless such variation or amendment is agreed in writing by the Customer and the Supplier.</p> <p><b>C9 Entire agreement</b></p> <p><b>C9.1</b> The 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.</p> <p><b>C10 Governing Law</b></p> <p><b>C10.1</b> This Contract shall be governed by and interpreted in accordance with English law and the parties submit to the exclusive jurisdiction of the courts of England and Wales.</p> <p><b>C11 Jurisdiction</b></p> <p><b>C11.1</b> Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.</p>
<b>B9.2</b> Condition B9.1 shall survive termination of the Contract.	<b>PART C - GENERAL PROVISIONS</b>	
<b>B9.3</b> Nothing in these Conditions or the Contract shall exclude or limit the liability of either party for death or personal injury caused by its negligence or for fraudulent misrepresentation.	<b>C1 Assignment and Sub-Contracting</b>	
<b>B9.3</b> During the Contract Term and for a period of six (6) years thereafter, the Supplier shall maintain in force, with a reputable insurance company, employers liability, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on the Customer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.	<b>C1.1</b> The Supplier shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without prior written consent of the Customer.	
<b>B10 Termination on bankruptcy or insolvency</b>	<b>C2 Notices</b>	
<b>B10.1</b> The Customer may terminate the Contract by notice in writing with immediate effect where:- a petition is presented for the Supplier's bankruptcy, or a bankruptcy order is made against the Supplier, or the Supplier makes any composition or arrangement with or for the benefit of creditors, or if the Supplier passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for an administration order in relation to it, or any party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court makes a winding-up order, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or the Supplier is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or any similar event occurs under the law of any other jurisdiction within the United Kingdom.	<b>C2.1</b> Any notice to be given by either party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail (confirmed in either case by letter), to the addresses/numbers set out on the Purchase Order, and such notice or communication shall be deemed to have been given 2 working days after the day on which the letter was posted, or four hours, in the case of electronic mail or facsimile transmission or sooner where the other party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.	
<b>B11 Termination on Default</b>	<b>C3 Severability</b>	
<b>B11.2</b> The Customer may terminate the Contract, or terminate the provision of any part of the Contract by written notice to the Supplier with immediate effect if the Supplier commits a Default and if: (a) the Supplier has not remedied the Default within thirty (30) days after issue of a written notice specifying the Default and requesting it to be remedied; or (b) the Default is not capable of remedy; or (c) the Default is a fundamental breach of the Contract.	<b>C3.1</b> If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.	
<b>B12 Consequences of Termination</b>	<b>C4 Waiver</b>	
<b>B12.1</b> Where the Customer terminates all or part of the Contract under Condition B11, and makes other arrangements for the provision of Goods and or Services, the Customer shall be entitled to recover from the Supplier the cost of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Contract Term, and no further payments shall be payable by the Customer to the Supplier until the Customer has established the final cost of making those other arrangements.	<b>C4.1</b> The failure to insist upon strict performance of any provision of the Contract or to exercise any right or remedy shall not constitute a waiver of that right or remedy, no waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing, and a waiver of any right or remedy shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.	
<b>B13 Break</b>	<b>C5 Publicity</b>	
<b>B13.1</b> Notwithstanding any other provision of this Contract, the Customer may terminate this Contract after giving thirty (30) days written notice to the Supplier.	<b>C5.1</b> The Supplier shall not make any press announcements or publicise this agreement or its contents in any way; or use the Customer's name or logo in any promotion or marketing or announcement of Purchase Orders, except as required by law, any government or regulatory authority, any court or other authority of competent jurisdiction, without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed.	
	<b>C5 Partnership</b>	
	<b>C6.1</b> Nothing in the Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the Customer and the Supplier.	
	<b>C7 The Contracts (Rights of Third Parties) Act 1999</b>	
	<b>C7.1</b> No person who is not a party to the Contract shall have any right to enforce any term of the Contract, which expressly or by implication,	