

FYLDE BOROUGH COUNCIL - TERMS AND CONDITIONS OF PURCHASE FOR GOODS & SERVICES
("Conditions")

1 In these Conditions the following expressions will have the following meanings unless inconsistent with the context:

"Contract" the contract between FBC and the Seller consisting (in order of precedence), and subject to any variation under Condition 3, of the Purchase Order (and any Purchase Order Amendment (if relevant)) or Letter of Tender Acceptance or LOI, these Conditions, any other documents (or parts thereof) specified in the Purchase Order (and any Purchase Order Amendment (if relevant)) or Letter of Tender Acceptance or LOI;

"Goods" any goods which the Seller supplies to FBC (including any part of them) under a Contract;

"Letter of Tender Acceptance" any authorised letter of tender acceptance or letter of quotation acceptance given by FBC to the Seller in response to the Seller's tender bid submission or submission of quotation;

"LOI" any legally binding letter of intent given by FBC to the Seller (incorporating these Conditions) for Goods and/or Services;

"FBC" Fylde Borough Council of Town Hall, St.Annes Road West, FY8 1LW, its successors and/or assignees;

"Package" any type of package including without limitation bags, cases, cylinders, drums, pallets and other containers;

"Price" the price as defined in Condition 4;

"Purchase Order" any authorised purchase order of FBC (incorporating these Conditions) for Goods and/or Services;

"Purchase Order Amendment" any authorised Purchase Order amendment form or series of Purchase Order amendment forms, each Purchase Order amendment form having precedence over any earlier Purchase Order amendment form;

"Seller" the person who sells or agrees to sell the Goods and/or Services to FBC;

"Services" any services which FBC receives from the Seller (including any part of them) under a Contract;

"Specifications" the technical description (if any) of the Goods and/or Services contained or referred to in either the Purchase Order, Purchase Order Amendment or Letter of Tender Acceptance or LOI (as appropriate);

The headings in these Conditions are intended for reference only and do not affect their construction.

2. Formation

2.1 These Conditions shall be deemed to be incorporated in the Contract and in the case of any inconsistency with any letter incorporating or referring to these Conditions or any acknowledgment of Purchase Order or Purchase Order Amendment or Letter of Tender Acceptance or LOI, letter or form of contract sent by the Seller to FBC or any other notification between the Seller and FBC whatever may be their respective dates the provisions of these Conditions shall prevail unless expressly varied in writing and signed by FBC's authorised signatory. If in any particular case any of these Conditions shall be held to be invalid or shall not apply to the Contract the other Conditions shall continue in full force and effect.

2.2 Each quotation for Goods and/or Services from the Seller will be deemed to be an offer by the Seller to sell the Goods and/or Services upon these Conditions. The Contract is only formed when either:

2.2.1 An official Purchase Order signed by FBC's authorised signatory; or

2.2.2 A Letter of Tender Acceptance signed by FBC's authorised signatory; or

2.2.3 A LOI signed by FBC's authorised signatory is served by FBC on the Seller. Delivery of the Goods and/or performance of the Services in response to a Purchase Order (or Purchase Order

Amendment (if relevant)) or Letter of Tender Acceptance or LOI shall be taken to imply that you have accepted the terms and conditions of this Contract.

3 Purchase Order Amendments

3.1 FBC shall have the right to send the Seller a Purchase Order Amendment adding to, deleting or modifying the Goods and/or Services. If the Purchase Order Amendment causes a change to the price or delivery date then the Seller shall promptly notify FBC of such change, calculating the new price and delivery date at the same level of cost and profitability as the original price. The Seller will allow FBC a minimum of 10 working days to consider any new price and/or delivery date. The Purchase Order Amendment shall only take effect if FBC accepts in writing any new price and/or delivery date failing which the performance of the Contract will immediately resume as though the said Purchase Order Amendment had not been issued except, where appropriate, FBC may still exercise its right of cancellation in accordance with clause 14.1.

4 Price and Payment

4.1 The Price for the Goods and/or Services will be the fixed price stated in the Contract. If no price is stated in Contract then the Price shall be a fair price, taking into account prevailing market conditions. The Price shall include all charges including, without limitation, Packaging, packing, shipping, loading, carriage, insurance, delivery and installation but shall exclude VAT which shall be shown separately.

4.2 No variation to the Price or extra charges can be made without the prior written consent of FBC.

4.3 Unless otherwise stated in the Contract, FBC shall pay the Seller within 30 working days of receipt of a correctly rendered invoice addressed to the department indicated on the Purchase Order or Letter of Tender Acceptance or LOI and stating the Purchase Order or Letter of Tender Acceptance or LOI number. FBC shall not be responsible for any delays in payment caused by the Seller failing to comply with FBC's invoicing instructions as specified in this Condition 4.3. Time for payment shall not be of the essence of the Contract.

4.4 Without prejudice to any other right or remedy, FBC reserves the right to set off any liability of the Seller to FBC against any liability of FBC to the Seller (in either case howsoever arising and whether any liability is present or future, liquidated or unliquidated and irrespective of the currency).

4.5 If any sum under the Contract is not paid when due then that sum will bear interest from the due date until payment in full, before and after judgment, at 1% per annum over NatWest Bank plc base rate from time to time. The Seller is not entitled to suspend deliveries or performance of the Goods or Services as a result of any sums being outstanding.

5 Quality and Description

5.1 The Seller warrants to FBC that the Goods and/or the Services:

5.1.1 Conform in every respect with the provisions of the Contract;

5.1.2 Comply with all applicable standards, regulations and current legislation in force in the United Kingdom at the time when the same are supplied;

5.1.3 Are new (unless otherwise specified on the Purchase Order (or Purchase Order Amendment (if relevant)) or Letter of Tender Acceptance or LOI) and of sound materials and skilled and careful workmanship;

5.1.4 Equal in all respects the Specifications and the samples or patterns provided by either party and accepted by the other;

5.1.5 are capable of any standard of performance specified in the Contract and be of satisfactory quality;

5.1.6 are free from defects in design, material and workmanship; and

5.1.7 if the purpose for which they are required is indicated in the Contract either expressly or by implication, are fit for that purpose.

6 Inspection, Testing and Samples

6.1 If so required by FBC the Seller shall submit samples of the Goods for FBC's approval before the bulk of the relevant Contract is delivered or before the bulk of the Services are performed (as the case may be). Such samples should be marked for identification by the Seller and will be retained by FBC until the Services are completed or the Goods have been delivered.

6.2 FBC shall be entitled to inspect and test the Goods during manufacture, processing or storage or check the progress of the Services.

6.3 If as a result of any inspection or test (pursuant to Condition 6.2) FBC's representative is of the reasonable opinion that the Goods and/or Services do not comply with the Contract or are unlikely on completion of manufacture or processing so to comply FBC may inform the Seller accordingly and the Seller shall promptly take such steps as may be necessary to ensure such compliance.

7 Delivery

7.1 The Goods shall be properly packed, secured and dispatched at the Seller's expense to arrive in good condition at the time or times and the place or places specified in the Contract unless otherwise prior agreed in writing by the parties.

7.2 The Seller will off-load the Goods at its own risk as directed by FBC. If the Seller delivers any Goods at the wrong time or to the wrong place then FBC may deduct from the Price any resulting costs of storage or transport. The Services will be provided at the address stated in the Contract. The Goods and/or Services will be delivered and/or performed during FBC's normal office hours on the date or within the period specified in the Purchase Order (or Purchase Order Amendment (if relevant)) or Letter of Tender Acceptance or LOI, or if no such period is specified then within 28 days of the date of the Contract. Time for delivery and/or performance will be of the essence and if FBC terminates the Contract pursuant to this Condition 7.2, then without prejudice to any other of its rights, FBC shall have the power to purchase elsewhere and charge the Seller with any extra expense incurred by FBC.

7.3 Unless otherwise prior agreed by FBC in writing, it shall have no obligation to pay for or return Package whether or not re-usable. If the Contract states that Package is returnable, the Seller must provide full disposal instructions prior to delivery.

7.4 All Goods should be accompanied by a detailed advice note stating the Purchase Order or Letter of Tender Acceptance or LOI number and giving full particulars of the Goods supplied (except when such Goods are sent directly to premises of FBC's customer when the advice note sent with Goods should not show the Seller's name.)

7.5 If for any reason FBC is unable to accept delivery of the Goods at the time when the Goods are due and ready for delivery, the Seller shall store the Goods, safeguard them and take all reasonable steps to prevent their deterioration until their actual delivery and FBC shall be responsible for any reasonable and properly incurred costs

of the Seller associated with such storage pursuant to this Condition 7.5.

7.6 The Seller may not deliver the Goods by separate installments or perform the Services in stages unless prior agreed in writing by FBC's authorised signatory. If FBC does not agree, the Contract will be construed as a separate Contract in respect of each instalment or stage, and without prejudice to any other right or remedy FBC will have the right to:

7.6.1 treat all the Contracts for the total Purchase Order or Letter of Tender Acceptance or LOI (as appropriate) as repudiated if the Seller fails to deliver or perform any instalment at any stage; and

7.6.2 Reject any or all of the instalments for the total Purchase Order or Letter of Tender Acceptance or LOI (as appropriate) if FBC is entitled to reject any one instalment.

7.7 FBC will not be deemed to have accepted the Goods until it has had 14 days to inspect them following delivery. FBC will also have the right to reject the Goods as though they had not been accepted for 14 days after any latent defect in the Goods has become apparent.

8 Risk/Ownership

8.1 The Seller shall bear all risk of loss or damage to the Goods until they have been delivered and shall insure accordingly.

8.2 Ownership of the Goods shall only pass to FBC when the Goods have been delivered but without prejudice to FBC's right of rejection under this Contract.

9 Work on FBC's premises

9.1 If the Contract involves any Services which the Seller is to perform on FBC's premises then the Seller, its employees, sub-contractors and their employees and any other person associated with the Seller shall:

9.1.1 adhere in every respect to the obligations imposed on them by current legislation; and

9.1.2 comply with any regulations and/or codes of practice that FBC may notify to the Seller in writing.

10 Safety

10.1 The Seller shall observe all legal requirements of the United Kingdom, European Union and all relevant international agreements in relation to health, safety and environment.

11 FBC's Equipment and Material

11.1 All drawings, specification (including the Specifications), information ("Material") supplied by FBC to the Seller in connection with the Contract are confidential and, without FBC's prior written consent, shall not at any time be published or disclosed or made use of except for the purpose of implementing the Contract.

11.2 All jigs, tools, moulds, patterns and other equipment (the "Equipment") supplied to the Seller or purchased by FBC from the Seller for the performance of the Contract shall be maintained in good condition by the Seller and the Seller shall indemnify FBC against all loss thereof or damage thereto whilst the same are in the Seller's possession or control. Any Materials and/or Equipments shall only be used for the purpose of manufacturing and supplying the Goods to or performing the Services for FBC and shall remain FBC's property at all times.

11.3 All containers, pallets and other packing materials ("Packaging") supplied by FBC to the Seller shall be maintained in good condition and shall remain FBC's property at all times. At FBC's request, the Seller shall promptly return any Material, Equipment and/or Packaging to FBC.

11.4 Without prejudice to the Seller's liability under this Condition 11, the Seller shall maintain such insurance as FBC may stipulate in respect of the Material and the Equipment and as shall be necessary to cover the said liability of the Seller and the Seller shall produce to FBC on demand a current certificate of insurance from the insurers under such policies.

12 Intellectual Property

12.1 Where the Goods and/or Services are designed, created or otherwise developed by or for the Seller pursuant to the Contract, then all intellectual property rights therein or relating thereto throughout the world (including without limitation, patents, copyrights, design rights, registered designs, trade marks, service marks and know-how and the rights to apply for any of the foregoing) ("the Intellectual Property Rights") shall belong to FBC absolutely. The Seller hereby assigns the Intellectual Property Rights to FBC with the intent that upon the making or creation thereof the Intellectual Property Rights shall automatically vest in FBC.

12.2 The Seller shall at FBC's request (and notwithstanding the termination of the Contract) sign and execute and procure the signature and execution of all such documents and do all such acts as FBC may reasonably require:

12.2.1 To vest the legal title in, apply for, obtain and maintain in force in FBC's sole name (unless it otherwise directs) any Intellectual Property Rights;

12.2.2 To resist any objection or opposition to obtaining, and any petitions or applications for revocation of, any of the Intellectual Property Rights; and

12.2.3 To bring any proceedings for infringement of any of the Intellectual Property Rights.

12.3 The Seller irrevocably undertakes that neither it nor any other person will assert against FBC or any third party any moral rights in or relating to the Intellectual Property Rights and warrants that all such moral rights are irrevocably waived and extinguished. For the purpose of this Condition 12 "moral rights"

shall have the meaning ascribed thereto by the Copyright, Designs and Patents 1988 Act and all rights similar or corresponding thereto subsisting in any other country of the world from time to time.

13 Rejection

13.1 Without prejudice to any other of its rights FBC may by notice in writing to the Seller reject any or all of the Goods if the Seller fails to comply with any of its/his obligations under the Contract.

13.2 FBC shall when giving notice of rejection specify the reason therefore and the Seller shall remove such Goods at its risk and expense. In such case the Seller shall:

13.2.1 at FBC's option replace such rejected Goods with goods which are in all respects in accordance with the Contract or credit FBC with the invoice price thereof and reimburse FBC all freight and handling costs reasonably incurred by FBC and/or for which it may be liable in respect of such Goods; or

13.2.2 reimburse FBC all freight and handling costs reasonably incurred by FBC in the implementation of a stock recovery, recall or market withdrawal of the Goods in any part of the world.

14 Cancellation and Termination

14.1 FBC shall be entitled to cancel any Purchase Order (or Purchase Order Amendment (if appropriate)) or Letter of Tender Acceptance or LOI in whole or in part by giving to the Seller at any time prior to delivery or performance of the Goods and/or Services in which event FBC's sole liability shall be to pay to the Seller fair and reasonable compensation for work-in-progress at the time of cancellation but for the avoidance of doubt such compensation shall not include loss of anticipated profits or any consequential loss.

14.2 FBC shall have the right at any time by giving notice in writing to the Seller to terminate the Contract with immediate effect if:

14.2.1 the Seller is in continuing or material breach of any of the terms of the Contract and the breach is incapable of remedy;

14.2.2 the Seller is in continuing or material breach of any of the terms of the Contract and, the breach is capable of remedy, but the Seller fails to remedy such breach within

14 days service of a written notice from FBC, specifying the breach and requiring it to be remedied;

14.2.3 any distress, execution or other legal process is levied upon any of the assets of the seller;

14.2.4 the Seller becomes bankrupt, insolvent, makes any composition with its creditors, has a receiver appointed under the Mental Health Act 1983 or dies;

14.2.5 the Seller ceases to trade or appears in the reasonable opinion of FBC likely or is threatening to cease to trade; or

14.2.6 the Seller has a change in its management and/or control;

14.3 The termination of the Contract, howsoever arising, will be without prejudice to the rights and duties of either party prior to termination. Any provision of these Conditions which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

15 Warranty and Indemnity

15.1 Without prejudice to any other remedies of FBC, the Seller shall promptly (at FBC's option) repair or replace all Goods which are or become defective during the period of twelve months from the date of delivery where such defect occurs under proper usage and is due to faulty design, the Seller's erroneous instructions as to use or erroneous data or inadequate or faulty materials or workmanship, or any breach of by the Seller of any provision of the Contract. Repairs and replacements shall themselves be subject to the foregoing obligations for a period of twelve months from the date of delivery, re-installation or passing of tests (if any) whichever is appropriate after repair or replacement. If any Services are found to have been performed defectively within twelve months of the date of their performance the Seller shall forthwith upon notice thereof re-perform the same.

15.2 THE SELLER WILL INDEMNIFY, KEEP INDEMNIFIED AND HOLD HARMLESS FBC FROM AND AGAINST ALL COSTS (INCLUDING THE COST OF ENFORCEMENT), EXPENSES, LIABILITIES (INCLUDING ANY TAX LIABILITY) INJURIES, DIRECT, INDIRECT OR CONSEQUENTIAL LOSS (ALL THREE OF WHICH TERMS INCLUDE, WITHOUT LIMITATION, PURE ECONOMIC LOSS, LOSS OF PROFITS, LOSS OF BUSINESS, DEPLETION OF GOODWILL AND LIKE LOSS), DAMAGES CLAIMS, DEMANDS, PROCEEDINGS OR LEGAL COSTS (ON A FULL INDEMNITY BASIS) AND JUDGEMENTS WHICH FBC INCURS OR SUFFERS AS A CONSEQUENCE OF A DIRECT OR INDIRECT BREACH OR NEGLIGENT PERFORMANCE BY THE SELLER (ITS EMPLOYEES, AGENTS OR CONTRACTORS) OR FAILURE OR DELAY IN PERFORMANCE OF THE TERMS OF THE CONTRACT OR FOR ANY INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, REGISTERED DESIGN, DESIGN RIGHT, TRADE MARK, TRADE NAME OR OTHER INTELLECTUAL PROPERTY RIGHT FOR OR RELATING TO THE GOODS AND/OR SERVICES UNLESS SUCH INFRINGEMENT HAS OCCURRED DIRECTLY AS A RESULT OF ANY SPECIFICATION SUPPLIED BY FBC.

15.3 The Seller sells in the course of a business and warrants that the Goods supplied will at the time of delivery correspond to the description given by the Seller to FBC.

15.4 All other warranties, conditions or terms relating to the Goods, whether express or implied by the Sale of Goods Act 1979, the Supply of Goods and Services Act 1982, or by other statute or common law or otherwise are included to the fullest extent.

16 General

16.1 The Contract is personal to the Seller who may not assign, delegate, licence, part with or sub-contract all or any of its rights or obligations hereunder without the prior written consent of FBC's authorised signatory.

16.2 Where the Seller enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under the Agreement, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Seller to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.

16.3 The FBC may assign, delegate, licence, or sub-contract all or any part of its rights or obligations under the Contract.

16.4 The Seller (and any sub-contractor approved pursuant to Condition 16.1) shall implement an Equal Opportunities Policy.

16.5 In connection with this or any other contract between the parties, the Seller shall not give, provide, or offer to FBC's staff and agents any loan, fee, reward, gift or any emolument or advantage whatsoever, the receipt of which is an offence under Section 117(2) of the Local Government Act 1972 or in breach of any code of conduct governing employees of FBC. In the event of any breach of this Condition 16.4, FBC shall, without prejudice to its other rights, be at liberty forthwith to terminate this Contract and any other contract and to recover from the Seller any loss or damage resulting from such termination.

16.6 FBC reserves the right to defer the date of delivery or payment, to cancel the Contract or reduce the volume of the Goods and/or Services ordered if it is prevented from or delayed in the carrying on of its business through any circumstance beyond its reasonable control (including, without limitation, any form of Government intervention, epidemic, riot or industrial disputes)

16.7 A failure at any time to enforce any provision of the Contract shall in no way affect the right at a later date to require complete performance of the Contract; nor shall the waiver of the breach of any provision be taken or held to be a waiver of any subsequent breach of the provision or be a waiver of the provisions itself.

16.8 All notices/notifications in connection with any Contract shall be in writing addressed to the other at its registered office, or principal place of business and in respect of notices sent to FBC addressed to the Purchasing Officer, Central Purchasing Department and delivered by hand, or first class post or special delivery post. The notice will be deemed to have been duly served, if delivered by hand, when left at the proper address for service or if made by pre-paid, first class post or special delivery post, 48 hours after being posted.

16.9 No variation to these Conditions shall bind FBC unless approved in writing by FBC's authorised signatory.

16.10 The parties to the Contract do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

16.11 The Seller will note FBC's obligations under the Freedom of Information Act 2000 and Human Rights Act 1998 and any codes of practice and best guidance notes issued by the government and appropriate enforcement agencies. The Seller must comply with this legislation in so far as it places obligations on it as well as facilitating FBC's compliance. The Seller should particularly note, that FBC may be required to provide information relating to this Contract or information relating to the Seller to a person in order to comply with FBC's obligations under the aforementioned legislation.

16.12 The Seller notes FBC's obligations under the Data Protection Act 2018 and the General Data Protection Regulation (together, "Data Protection Legislation"). The Seller acknowledges that it is not anticipated that it will receive or process personal information as defined in the Data Protection Legislation under this agreement and will inform FBC immediately if it becomes aware that it has received or processed such personal information as a result of this agreement or providing any goods or services to FBC.

16.13 The Seller shall comply with the provisions of the Equality Act 2010 and the codes of practice thereto as amended from time to time.

16.14 Any references in this Contract, to any statute or statutory provision shall be construed as referring to that statute or statutory provision as the same may from time to time be amended, modified, extended, re-enacted or replaced (whether before or after the date of this Contract) and including all subordinate legislation made under it from time to time.

16.15 In relation to any Services it provides to FBC, the Seller will abide by the relevant parts of FBC's whistleblowing policy, as it applies at the commencement of this agreement, and in particular will allow its employees to make disclosures under the policy as if they were members of FBC's staff and to deal with any such disclosures and the persons making them as if they were made by an employee of the FBC to FBC.

16.16 This Contract shall be subject to English Law and the parties submit to the exclusive jurisdiction of the English courts.