



Stratfield Mortimer Parish Council

Procurement Terms

1 Interpretation

1.1 In these terms (“**Procurement Terms**”), the following words or phrases expressed in bold type shall have the meanings ascribed to them:

2015 Act	the Modern Slavery Act 2015;
Applicable Law	the applicable law of the United Kingdom (or a part of the United Kingdom) in the context of the Term in question;
Commencement Date	the commencement date specified in the Purchase Order;
Contract	the contract between the Council and the Supplier consisting of the Purchase Order and these Procurement Terms;
Contract Payment	each element of the Contract Price due to be paid in accordance with the Contract (eg the Contract Price where it is payable in one lump sum, or each payment due in respect of consignments of particular Goods, or each specific payment due for elements of the Contract);
Contract Period	the period over which the Contract is to be performed as set out in the Purchase Order;
Contract Price	the price of the Goods and/or Services as detailed in the Purchase Order, together with any applicable tax if not already included;
Contract Specification	the specification of the Goods to be supplied and/or the Services to be undertaken and/or any specific Terms issued by the Council;
Council	Stratfield Mortimer Parish Council;
Councillor	an elected or co-opted member of the Council;
Force Majeure	any act, event, omission, happening or non-happening beyond the Parties reasonable control including, acts of God, war, riot, fire, flood or any disaster affecting either of the Parties;
Goods	any goods to be supplied subject to these Terms;
Officer	an employee of the Council;
Parties	the Council and the Supplier together;
PCR	The Public Contracts Regulations 2015;
Procurement	any procurement exercise undertaken by the Council in relation to a prospective Contract;
Prohibited Act	(a) offering or agreeing to give to any Councillor or Officer any gift or consideration of any kind as an inducement or reward for:

- (i) undertaking or not undertaking any act in relation to the granting or performance of the Contract; or
- (ii) showing or not showing favour to any person in relation to the Contract;
- (b) committing any act:
 - (i) prohibited by any Applicable Law;
 - (ii) constituting a fraudulent act at common law in relation to the Contract; or
 - (iii) defrauding or intended to defraud the Council;

Purchase Order	the purchase order issued by the Council in relation to the supply of the Goods/Services by the Supplier to include any Contract Specification issued;
Services	any services to be supplied subject to the Terms;
Staff	the Supplier's directors, employees, agents, consultants and/or sub-contractors in relation to the Contract;
Supplier	the party wishing to supply or supplying the Council with the Goods and/or Services in accordance with the Terms;
Terms	the terms of the Contract as set out in the Purchase Order and these Procurement Terms;
Warranty Period	whichever is the greater of: <ul style="list-style-type: none"> (a) the warranty period given by the Supplier or the manufacturer of the Goods; or (b) two calendar years from the latest of: <ul style="list-style-type: none"> (i) the Commencement Date; or (ii) the date of delivery of Goods (which shall be the last such delivery date if the goods are delivered in a series of consignments); or (iii) the date of the replacement or repair of the Goods in accordance with the Terms.
Working Day	a day (other than a Saturday or Sunday) on which banks are generally open for business.

1.2 Sums referred to in the Terms exclude Value Added Tax unless stated otherwise.

2 Preamble and duration

2.1 The Council wishes to be supplied with the Goods/Services and has selected the Supplier detailed in the Purchase Order to undertake the supply of the same in accordance with the Terms.

2.2 The Contract and the rights and obligations of the Parties shall take effect on the Commencement Date and shall continue until the expiry of the Contract Period or

earlier termination of the Contract (unless the Terms provide that such right or obligation continues beyond such date).

3 Contract for Goods

3.1 Any notice, request, demand, consent or approval given under or in connection with the Contract must be given in writing by email to the relevant email address specified in the Purchase Order.

3.2 Specification:

3.2.1 all Goods shall be of the quality or kind mentioned in the Purchase Order but otherwise the Goods shall be in accordance with any specification of the British Standards Institute that relates to the Goods and is current at the date of the quotation or tender;

3.2.2 the Goods shall comply with the requirements of any Applicable Law;

3.2.3 the Supplier shall indemnify the Council against all loss, damage, costs and expenses for which the Council is or becomes liable as a result of any infringement or alleged infringement by the Supplier of any third party's rights.

3.3 Delivery:

3.3.1 Goods are to be delivered between the times, on the day, and at the place specified in the Purchase Order;

3.3.2 unless otherwise agreed delivery shall be free of charge to the Council;

3.3.3 delivery shall be at the Supplier's risk;

3.3.4 delivery of Goods to a carrier shall not be deemed to be delivery of such Goods to the Council;

3.3.5 the time of delivery shall be of essence and failure to deliver within the time promised or specified shall permit the Council, without prejudice to other rights, to release itself from any obligation to accept and pay for the Goods and/or to cancel all or part of the Contract;

3.3.6 the Council shall be under no obligation to accept or pay for Goods delivered in excess or in advance of the quantity, date or rate (as appropriate) stipulated in the Purchase Order.

3.4 Rejection and replacement:

3.4.1 Goods may be rejected by the Council at its sole option if they:

3.4.1.1 are not supplied and delivered by the Supplier in accordance with the Contract;
or

3.4.1.2 are not of the sort or quality contracted for; or

3.4.1.3 are deficient in the quality or number charged for or stated in any delivery or advice note accompanying or preceding them; and

3.4.2 in the event of rejection:

3.4.2.1 the decision of the Council shall be conclusive as against the Supplier; and

3.4.2.2 the Council may, without prejudice to any other remedy for breach of contract, employ any other person to supply the Council with the Goods on such terms

and conditions as the Council thinks fit for the remainder of the term of the Contract or any part thereof, in which event the Supplier shall pay the Council, or the Council may deduct from any sum due or that may become due to the Supplier under the Contract or otherwise, all additional costs, charges or expenses incurred by the Council arising from the Supplier's default.

3.5 Warranty and rejection:

3.5.1 without prejudice to the Council's other rights and remedies if, during the Warranty Period, any defect occurs in any of the Goods due to the material, workmanship or design of the Goods not being in accordance with the Purchase Order or the Specification or any applicable statutory or regulatory standards, the Supplier shall as soon as practicable and in any event within a reasonable time as stipulated by the Council replace or repair such defective Goods at this own expense;

3.5.2 Goods replaced or repaired under this Condition shall be subject to a fresh Warranty commencing on the actual date of delivery of the repaired or replaced Goods and continuing for the Warranty Period;

3.5.3 without prejudice to or limitation of its statutory or other rights:

3.5.3.1 the Council may within the Warranty Period, notwithstanding the use or continued use by the Council of the Goods after the right to reject them has arisen, reject by notice in writing (without liability to the Council) any Goods which, in the opinion of the Council are not of satisfactory quality and/or fit for purpose and/or not in accordance with the Purchase Order;

3.5.3.2 the Supplier shall in any event indemnify the Council against all costs and expenses incurred by the Council as a result of the Supplier's original supply of the rejected Goods; and

3.5.3.3 the Supplier shall remove rejected Goods within 14 days of the date of the Council's notice of rejection, failing which the Council may (at its sole option) deliver them to the Supplier, in either case at the Supplier's cost and risk; but

3.5.3.4 where such rejected Goods form part of a series of consignments, nothing in the Terms shall prevent the Council at its sole option from accepting subsequent consignments if the Goods contained within such subsequent consignments are acceptable to the Council.

3.6 Title and risk:

3.6.1 title in the Goods will pass to the Council:

3.6.1.1 where the Council has supplied materials to be incorporated in the Goods, from the commencement of their manufacture (and title to all materials and other items which the Supplier shall acquire or allocate for incorporation in any of the Goods shall vest in the Council from the time they are so acquired or allocated); or

3.6.1.2 where payment (either in whole or in part) is made for the Goods prior to their delivery to the Council, upon the first such payment; or otherwise

3.6.1.3 upon payment to the Supplier;

- 3.6.2 the Goods shall be at the Supplier's risk until they are delivered to the Council notwithstanding that payment may have already been made and title passed to the Council, and the Supplier shall be responsible for any loss or damage and for arranging and paying for their storage, handling and insurance (and such insurance shall be endorsed in the name of and protect the interests of the Council on an all-risks basis and shall provide cover for loss or damage in transit).

4 Contract for Services

- 4.1 The Supplier will at all times throughout the Contract Period:
- 4.1.1 provide the Services in accordance with the Council's requirements as set out in the Purchase Order;
 - 4.1.2 comply with the Terms;
 - 4.1.3 exercise and continue to exercise the degree of skill, care and diligence reasonably to be expected of a skilled and competent provider of such Services;
 - 4.1.4 carry out all reasonable directions of any Officer;
 - 4.1.5 use its reasonable endeavours to secure and achieve continuous improvement in the delivery of the Services during the Contract Period;
 - 4.1.6 notify the Council in writing immediately on learning of any relationship or potential conflict of interest that might influence or be perceived to influence the provision of the Services.
- 4.2 The Terms will (except in respect of any obligations fully performed prior to or at the completion of the Services) continue in force and effect after the completion of the Services by the Supplier.

5 Price and Payment

- 5.1 The Supplier acknowledges that information relating to the Supplier's name and details of the Contract (but not commercially sensitive Contract details) may be published from time to time by the Council.
- 5.2 The Supplier shall invoice the Council:
- 5.2.1 in accordance with the Contract in respect of a Contract Payment for Goods delivered; and
 - 5.2.2 monthly (or such longer period as may be agreed between the Parties) in arrears in respect of a Contract Payment for Services performed.
- 5.3 The Council shall pay an undisputed invoice for a Contract Payment in accordance with Regulation 113 of the PCR ("any payment due from the contracting authority to the contractor under the contract is to be made no later than the end of a period of 30 days from the date on which the relevant invoice is regarded as valid and undisputed").
- 5.4 Where a Contract Payment is disputed, the Council may choose to pay the undisputed element or none of the invoice at their sole option.
- 5.5 No increase in the Contract Price may be made (whether on account of increased material, labour or transport costs, fluctuations in rates of exchange or otherwise) without the prior written consent of the Council.

- 5.6 Payment by the Council shall be without prejudice to any claims or rights which the Council may have against the Supplier and shall not constitute any admission by the Council as to the Supplier's performance of the Supplier's obligations.

6 Indemnity and Insurance

- 6.1 Without prejudice to or limitation of the Council's other rights, if the Supplier does not fulfil the Supplier's responsibilities and obligations under the Contract the Supplier shall indemnify the Council against all costs for which the Council becomes liable and for which it would not otherwise be liable.
- 6.2 The Supplier shall indemnify and keep indemnified the Council in respect of all claims, demands, proceedings, damages, costs, charges, and expenses whatsoever:
- 6.2.1 in respect of injury (including death) to any persons, or loss of or damage to any property, which may arise out of any act, default or negligence of the Supplier or Staff;
- 6.2.2 arising from the provision of the Goods and/or Services.
- 6.3 The Supplier shall:
- 6.3.1 obtain, with a reputable company, public and employer's liability insurance cover of at least £10 million, and all other insurances necessary to cover the risks contemplated by the Contract; and
- 6.3.2 at the request of the Council produce the relevant policy or policies together with receipts or other evidence of payment of the latest premium due thereunder.
- 6.4 For any supply of professional services the Supplier shall maintain professional indemnity insurance sufficient to cover any liability to the Council during the Contract Period and for:
- 6.4.1 a minimum period of six (6) years afterwards; or
- 6.4.2 the limitation period set by Applicable Law if greater.

7 Intellectual Property

- 7.1 Any specification supplied by the Council to the Supplier, or specifically produced by the Supplier for the Council, in connection with the Contract, together with the copyright, design rights or any other intellectual property rights in the Purchase Order, shall be the exclusive property of the Council.
- 7.2 All designs, drawing, specifications and information supplied by Council in connection with the Contract are confidential, and their use must be strictly confined to the Supplier's own works for the purposes of the Contract.
- 7.3 All such designs, drawings, specifications and information and all copies thereof must be returned to the Council on completion of the Contract.
- 7.4 The Supplier shall indemnify the Council against all actions, claims and demands, costs charges and expenses awarded against or incurred by the Council as a result of or in connection with any claim that Goods, or their use or resale, infringe the patent, registered design, trademark, copyright or other intellectual property rights of any other person except to the extent that the claim arises from compliance with the Purchase Order.

8 Confidentiality

- 8.1 The Supplier shall not, without the prior written consent of the Council, during or after the termination or expiry of the Contract disclose, directly or indirectly, to any person any information of whatever nature which is not in the public domain relating to the Contract or the Council.
- 8.2 The Supplier's obligations in relation to confidentiality shall survive the expiry or termination of the Contract for whatever reason.

9 Prohibited Acts

- 9.1 If either Party becomes aware of, or suspects, the commission of any Prohibited Act in respect of any aspect of the Contract it will immediately notify the other Party.
- 9.2 If any Staff is reasonably suspected of having committed a Prohibited Act the Supplier will provide to the Council such information as it requires to safeguard the Council, Councillors, Officers, service users of the Council, and any other person affected.

10 Anti-Slavery

- 10.1 In performing the Contract the Supplier shall:
- 10.1.1 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the 2015 Act; and
 - 10.1.2 not engage in any activity, practice or conduct that would constitute an offence under the 2015 Act if such activity, practice or conduct were carried out in the UK; and
 - 10.1.3 ensure that the Staff and any of the Supplier's sub-contractors or suppliers are required to comply with these obligations as if they were the Supplier.
- 10.2 The Supplier represents and warrants that neither the Supplier nor any Staff:
- 10.2.1 have been convicted of any offence involving slavery and human trafficking; and
 - 10.2.2 having made reasonable enquiries, so far as the Supplier is aware, have been or are the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.

11 Force Majeure

- 11.1 Notwithstanding anything contained in the Contract neither the Council nor the Supplier shall be liable for any loss, damage or expense suffered or incurred by reason of:
- 11.1.1 a Force Majeure event;
 - 11.1.2 any restriction or prohibition imposed by the Government or any duly authorised authority which could not reasonably have been prevented or avoided by the Party in question.

12 Waiver

- 12.1 No delay, neglect or forbearance on the part of either Party in enforcing against the other Party any term or condition of the Contract shall either be or be deemed to be a waiver or in any way prejudice any right of that Party under the Contract.

13 Termination of Contract

- 13.1 The Council may terminate the Contract with immediate effect by notice in writing to the Supplier on or at any time after the occurrence of any of the following:
- 13.1.1 a material and substantial breach of any of the Supplier's obligations under the Contract;
 - 13.1.2 any act of insolvency in respect of the Supplier, including but not limited to:
 - 13.1.2.1 the passing of a resolution for the Supplier's winding up or the making by a court of competent jurisdiction of an order for the winding up of the Supplier or the Supplier's dissolution;
 - 13.1.2.2 an application for, or the making of, an administration order in relation to the Supplier or the appointment of a receiver or administrative receiver over, or the taking of possession or sale by an encumbrancer of a material part of the Supplier's assets;
 - 13.1.2.3 the making of an arrangement or composition with the Supplier's creditors generally or making an application to a court of competent jurisdiction for protection from the Supplier's creditors generally.
 - 13.2 In the event of the Council having the right to terminate in respect of an act of insolvency, the Council may, at its sole discretion, give the administrator, receiver, liquidator or such other person as appropriate the option of carrying out the Contract subject to a guarantee acceptable to the Council being provided for the due and faithful performance of the Contract.
 - 13.3 The termination of the Contract will not prejudice or affect any claim, right, action or remedy that will have accrued or will thereafter accrue to either Party.

14 General

- 14.1 The Contract constitutes the entire agreement between the Parties and supersedes and extinguishes all previous discussions, correspondence, negotiations, drafts, agreements, promises, assurances, warranties, representations, arrangements and understandings between them, whether written or oral, relating to its subject matter.
- 14.2 The Supplier acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract (but nothing in this Clause shall limit or exclude any liability for fraud).
- 14.3 No variation of the Contract shall be effective unless it is agreed in writing.
- 14.4 The Supplier shall not assign, transfer, sublet or subcontract the whole or any part of the Contract without the prior written consent of the Council.
- 14.5 Where the Supplier issues a subcontract with the prior written consent of the Council it shall ensure that the subcontract contains clauses in accordance with Regulation 113 of the PCR (as to timely payment of undisputed invoices etc).

- 14.6 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties or constitute any Party the agent of another Party.
- 14.7 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable:
- 14.7.1 it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable; but
- 14.7.2 if such modification is not possible, the relevant provision or part-provision shall be deemed deleted; and
- 14.7.3 any modification to or deletion of a provision or part-provision under this Clause shall not affect the validity and enforceability of the rest of the Contract.
- 14.8 A person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 14.9 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 14.10 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).