

BARNSLEY METROPOLITAN BOROUGH COUNCIL

**STANDARD TERMS AND CONDITIONS FOR THE
PURCHASE OF GOODS UNDER £100,000**

SIAN ROXBOROUGH
HEAD OF LAW AND GOVERNANCE
SOLICITOR TO THE COUNCIL
TOWN HALL
BARNSLEY
S70 2TA

1. The Contract is made up of the following:

(a) The Contract Details as set out in the Order Form.

(b) These Conditions.

2. If there is any conflict or ambiguity between the terms of the documents listed in paragraph 1, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list.

The Contract has been entered into on the date stated on the Order Form at the beginning of it.

CONDITIONS

1. INTERPRETATION

1.1 Definitions:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Commencement Date: the date the Contract commences, as set out in the Contract Details on the Order Form.

Conditions: these terms and conditions.

Contract: the contract between the Council and the Supplier for the sale and purchase of the Goods in accordance with the Contract Details on the Order Form and these Conditions.

Delivery Date: the date specified for delivery set out in the Contract details on the Order Form , in accordance with Clause 3.2.

Delivery Location: the address for delivery of the Goods, as set out in the Contract Details on the Order Form.

Goods: the goods (or any part of them) as set out in the Contract Details on the Order Form.

Law: means any UK law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or requirements of any regulatory body with which the Supplier is bound to comply.

Order: the Council's order for the Goods.

Order Form: the Council's purchase order form for the Goods submitted by the Council in accordance with Clause 3.

Necessary Consents: means all approvals, certificates, authorisations, permissions, licences, permits and consents necessary from time to time for the performance of the Contract.

Price: the price for the Goods, as set out in the Contract Details on the Order Form.

Purchase Order Number: the unique order number issued by the Council with each Order Form

Specification: the specification for the Goods, including any related plans and drawings that are agreed in writing by the Council and the Supplier as set out in the Contract Details on the Order Form.

UK Data Protection Legislation: means all applicable data protection and privacy legislation in force from time to time in the UK including the UK General Data Protection Regulation (UK GDPR), the Data Protection Act 2018, as amended, the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426), as amended, and the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (SI 2019/419).

UK GDPR: has the meaning defined in Regulation 2 of the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (SI 2019/419).

1.2 Interpretation:

(a) a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

(b) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

(c) a reference to **writing** or **written** includes emails.

2. COMMENCEMENT AND TERM

The Contract shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with its terms, until the expiry date set out in the Contract Details on the Order Form or where no expiry date is set out for a period of twelve (12) months from the Commencement Date, when it shall terminate automatically without notice.

3. ORDERS

3.1 The Council may submit orders for Goods by issuing an Order Form which sets out the Purchase Order Number. The Supplier must ensure that it has received a valid Order Form with a Purchase Order Number prior to commencing any manufacture or supply of the Goods. The Council shall have no obligation to make any payment unless the Purchase Order Number is stated on the Supplier's invoice.

3.2 The Supplier shall use its best endeavours to supply Goods in accordance with the specification set out in the Council's Order Form, by the delivery date specified in the Order Form, or, if none is specified, within twenty (20) Business Days of the Council submitting the Order Form.

3.3 The Council may amend or cancel an Order Form in whole or in part at any time before delivery by giving the Supplier written notice. The Council shall pay the Supplier fair and reasonable compensation for any work in progress on the Goods at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.

4. THE GOODS

4.1 The Supplier shall ensure that the Goods:

- (a)** correspond with their description and any applicable Specification;
- (b)** be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Council expressly or by implication, and in this respect the Council relies on the Supplier's skill and judgement;
- (c)** where they are manufactured products, be free from defects in design, material and workmanship and remain so for 12 months after delivery; and
- (d)** comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

4.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.

4.3 The Council has the right to inspect and test the Goods at any time before delivery.

4.4 If following such inspection or testing the Council considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at Clause 4.1, the Council shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

4.5 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and the Council shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

5. DELIVERY

5.1 The Supplier shall ensure that:

- (a)** the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
- (b)** each delivery of Goods is accompanied by a delivery note which shows the Purchase Order Number, the type and quantity of Goods (including the serial number, model number, or code number of the Goods, where applicable), special storage instructions (if any) and, if the relevant Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- (c)** if the Supplier requires the Council to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.

5.2 The Supplier shall deliver the Goods specified in each Order Form:

- (a)** on or before its relevant Delivery Date;
- (b)** at the Delivery Location; and
- (c)** during the Council's normal business hours, or as instructed by the Council.

5.3 Delivery of Goods is completed on the completion of unloading of those Goods at the Delivery Location.

5.4 If the Council rejects any Goods they are returnable at the Supplier's risk and expense. If the Supplier fails to collect rejected Goods within a reasonable period after notification of the rejection, the Council may charge the

Supplier storage costs and sell or dispose of the rejected Goods. The Council will account to the Supplier for the proceeds of sale (if any) after deducting the purchase price paid for the Goods, storage costs and its reasonable costs and expenses in connection with the sale.

5.5 The Supplier shall not deliver Orders in instalments without the Council's prior written consent. Where it is agreed that Orders may be delivered by instalments, such instalments shall be invoiced separately. However, failure by the Supplier to deliver any one instalment on time or at all, or any defect in an instalment, shall entitle the Council to the remedies set out in Clause 6.

6. COUNCIL REMEDIES

6.1 If the Goods are not delivered on the relevant Delivery Date, or do not comply with the undertakings set out in: Clause 4.1, then, without limiting any of its other rights or remedies, and whether or not it has accepted the Goods, and the Council may exercise any one or more of the following remedies:

- (a)** to terminate the Contract;
- (b)** to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
- (c)** to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if pre-paid);
- (d)** to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- (e)** to recover from the Supplier any costs incurred by the Council in obtaining substitute goods from a third party; and
- (f)** to claim damages for any other costs, loss or expenses incurred by the Council which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.

6.2 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

6.3 The Council's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.

7. TITLE AND RISK

Title and risk in the Goods shall pass to the Council on acceptance of the Goods by the Council after completion of delivery.

8. PRICE AND PAYMENT

8.1 The Council shall pay for Goods in accordance with this Clause 8.

8.2 The Price:

- (a)** excludes amounts in respect of value added tax (**VAT**), which the Council shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and
- (b)** includes the costs of packaging, insurance and carriage of the Goods.

8.3 No extra charges shall be effective unless agreed in writing and signed by the Council.

8.4 The Supplier may invoice the Council for price of the Goods plus VAT at the prevailing rate (if applicable) on or at any time after the completion of delivery. The Supplier shall ensure that the invoice includes the date of the Order, the invoice number, the Council's Purchase Order Number, the Supplier's VAT registration number, and any

supporting documentation that the Council may reasonably require.

8.5 The Council shall pay correctly rendered undisputed invoices within 30 days of receipt of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier.

8.6 If a party fails to make any payment due to the other under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 2% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments the defaulting party disputes in good faith.

8.7 The Council may at any time, without limiting any of its other rights or remedies, withhold or set off any liability of the Supplier to the Council against any liability of the Council to the Supplier.

9. COUNCIL MATERIALS

The Supplier acknowledges that all materials, equipment and tools, drawings, Specifications, and data supplied by the Council to the Supplier (**Council Materials**) and all rights in the Council Materials are and shall remain the exclusive property of the Council. The Supplier shall keep the Council Materials in safe custody at its own risk, maintain them in good condition until returned to the Council, and not dispose or use the same other than in accordance with the Council's written instructions or authorisation.

10. INDEMNITY

10.1 The Supplier shall keep the Council indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct losses, 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 Council as a result of or in connection with:

(a) any claim made against the Council for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the supply or use of the Goods, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;

(b) any claim made against the Council by a third party for death, personal injury or damage to property arising out of or in connection with defects in Goods, to the extent that the defects in the Goods are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and

(c) any claim made against the Council by a third party arising out of or in connection with the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.

10.2 This Clause 10 shall survive termination of the Contract.

11. INSURANCE

During the term of the Contract and for a period of six years thereafter, the Supplier shall maintain in force, with a reputable insurance company

- a) product liability insurance in a minimum indemnity sum of £5 million in respect of each claim or series of connected claims; and
- b) public liability insurance in a minimum indemnity sum of £5 million in respect of each claim or series of connected claims
- c) employers liability insurance in a minimum indemnity sum of £5 million in respect of each claim or series of

connected claims

to cover the liabilities that may arise under or in connection with the Contract, and shall, on the Council'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.

12. COMPLIANCE WITH RELEVANT LAWS AND POLICIES

12.1 In performing its obligations under the Contract, the Supplier shall comply with all applicable Laws, statutes, regulations and codes from time to time in force.

12.2 The Council may immediately terminate the Contract for any breach of Clause 12 by the Supplier.

13. TERMINATION

13.1 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

(a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 20 Business Days of that party being notified in writing to do so;

(b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

(c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

(d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

13.2 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

13.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

13.4 If the Contract is terminated by the Council for cause such termination shall be at no loss or cost to the Council and the Supplier hereby indemnifies the Council against any such loss or costs which the Council may suffer as a result of any such termination for cause including the cost of procuring and implementing replacement goods and services.

14. GENERAL

14.1 Not Used

14.2 Assignment and Subcontracting. The Supplier may not assign or subcontract any or all of its rights or obligations under the Contract without the prior written consent of the Council. If the Council consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all acts and omissions of its subcontractors as if they were its own.

14.3 Confidentiality.

(a) Each party undertakes that it shall not at any time during this agreement, and for a period of two (2) years after termination of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party except as permitted by Clause 14.3(b).

(b) Each party may disclose the other party's confidential information:

(i) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this Clause 14.3(b); and

(ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

(c) No party shall use any other party's confidential information for any purpose other than to perform its obligations under the Contract.

14.4 Entire agreement. 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.

14.5 Variation. No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

14.6 Waiver. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

14.7 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. 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 Notices.

(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, or email.

(b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Clause 14.8(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, at the time of transmission, except that, an email sent after 5.00 pm on any Business day, shall be deemed to be received at 9.00 am on the next Business Day after transmission.

(c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

14.9 Third party rights. No one other than a party to the Contract shall have any right to enforce any of its terms.

14.10 Governing law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with the law of England.

14.11 Jurisdiction. Each party irrevocably agrees that the courts of England 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.

14.12 Counterparts. The Contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of the Contract, but all the counterparts shall together constitute the same agreement.

15. DISPUTE RESOLUTION

- 15.1 If any dispute arises in connection with these terms and conditions or delivery of the Goods, the Council's Representative and the Supplier's Representative shall, within 10 Business Days of a written request from one party to the other, meet in a good faith effort to resolve the dispute.
- 15.2 If the dispute is not resolved at that meeting, the parties will attempt to settle it by referring the matter to the relevant senior officers at the Council and the Supplier who will meet in a good faith effort to resolve the matter within 20 Business Days of referral.
- 15.3 If the dispute is not resolved by the parties referred to in clause 15.2, the parties will attempt to settle it by referring the matter to the parties respective directors (or equivalent) who will meet in a good faith effort to resolve the matter within 20 Business Days of referral.
- 15.4 If the matter is not resolved through negotiation either party may refer the matter to the Centre for Dispute Resolution ("CEDR") for mediation under its Model Mediation Procedure ("MMP").

16. LIMITATION OF LIABILITY

- 16.1 Subject to clause 16.4, neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in connection with the Contract which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.
- 16.2 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to the Contract. Subject to clause 16.4, the Council's total aggregate liability in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with the Contract (other than a failure to pay the Price that is properly due and payable and for which the Council shall remain fully liable), shall in no event exceed the Price paid or payable under or pursuant to the Contract.
- 16.3 Subject to clause 16.4, the Suppliers total liability in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with the Contract shall in no event exceed the sum of five million pounds (£5 million) in relation to any one claim or series of connected claims;.
- 16.4 Notwithstanding any other provision of the Contract neither party limits or excludes its liability for:
 - a) fraud or fraudulent misrepresentation;
 - b) death or personal injury caused by its negligence;
 - c) breach of any obligation as to title implied by statute; or
 - d) any other act or omission, liability for which may not be limited under any applicable Law.

17. PREVENTION OF BRIBERY

- 17.1 The Council may terminate the Contract by written notice with immediate effect, and recover from the Supplier all losses resulting from such termination, if the Supplier, or any of its employees, agents or sub-contractors (in all cases whether or not acting with the Supplier's knowledge):
 - (a) directly or indirectly offers, promises or gives any person working for or engaged by the Council a financial or other advantage to;
 - (b) induces that person to perform improperly a relevant function or activity;

- (c) rewards that person for improper performance of a relevant function or activity;
- (d) directly or indirectly requests, agrees to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;
- (e) commits any offence:
 - (i) under Section 117(2) of the Local Government Act 1972;
 - (ii) under the Bribery Act 2010;
 - (iii) under legislation creating offences concerning fraudulent acts; or
 - (iv) at common law concerning fraudulent acts relating to the Contract or any other contract with the Council.
- (f) defrauds, attempts to defraud, or conspires to defraud the Council.

Any termination under clause 17.1 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

18 MODERN SLAVERY

18.1 To the extent that the Modern Slavery Act 2015 may apply to the Supplier, the Supplier:

- (a) represents and warrants that it is compliant with its obligations under the Modern Slavery Act 2015 and that neither the Supplier nor any of its officers, employees, agents, subcontractors or other persons associated with it:
 - (i) have been convicted of any offence involving slavery and human trafficking anywhere in the world;
 - (ii) have been or are the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body anywhere in the world regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- (b) shall implement and maintain throughout the term of any contract with the Council, due diligence procedures for its own suppliers, sub-contractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.
- (c) Shall report to the Council any breach or alleged breach of the Supplier's anti-slavery and human trafficking policies and procedures or those of its suppliers, sub-contractors and other participants in its supply chain and shall provide reasonable assistance to the Council to allow the Council to carry out any audit of the Suppliers anti-slavery and human trafficking policies and procedures or those of any suppliers, sub-contractors and other participants in its supply chains.

19 EQUAL OPPORTUNITIES

- 19.1 The Supplier shall not unlawfully harass or victimise a person or discriminate either directly or indirectly because of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, colour, nationality, ethnic or national origin, religion, or belief, sex, or sexual orientation (the **Protected Characteristics**) and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010, the Human Rights Act 1998 or other relevant legislation, or any statutory modification or re-enactment thereof.
- 19.2 The Supplier shall give due regard to the need to eliminate discrimination, advance equality and foster good relations within the meaning and scope of the Public Sector Equality Duty in Section 149 of the Equality Act 2010 in the execution of the Contract.
- 19.3 The Supplier shall take all reasonable steps to secure the observance of Clauses 19.1 and 19.2 by all servants, employees or agents of the Supplier and all suppliers and sub-contractors employed in the execution of the Contract.

- 19.4 The Supplier shall demonstrate to the Council that it has a policy to comply with its statutory obligations under the legislation referred to above in Clauses 19.1 and 19.2.
- 19.5 If there should be any findings of unlawful discrimination made against the Supplier by any court or employment tribunal, or an adverse finding in a formal investigation by the Equality and Human Rights Commission, the Supplier shall take appropriate steps to prevent repetition of the unlawful discrimination.
- 19.6 The Council reserve the right to test the Supplier's equality performance through the life of the Contract. The Supplier shall cooperate with the Council regarding the provision of a data and/or access for site visits as reasonably required by the Council.

20 DATA PROTECTION

The Supplier shall comply in all respects with the provision of the UK Data Protection Legislation and will indemnify the Council against all actions, costs, expenses, claims, proceedings and demands which may be brought against the Council for any breach of the UK Data Protection Legislation attributable to the Supplier.

21 WARRANTIES

21.1 The Supplier represents and warrants that:

- 21.1.1 it has full capacity and authority to enter into and to perform its obligations under the Contract;
- 21.1.2 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might adversely affect its ability to perform its obligations under the Contract;
- 21.1.3 it has not done, and in performing its obligations under the Contract, it shall not do, any act or thing that contravenes the Bribery Act 2010 or any other applicable anti-bribery or anti-money laundering laws and/or regulations and it has maintained and monitored, and will maintain and monitor, policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance with the Bribery Act 2010 and related applicable Laws; and
- 21.1.4 its obligations under the Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or Law).

21.2 The Supplier represents and warrants that as at the Commencement Date:

- 21.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- 21.2.2 it has obtained all Necessary Consents;
- 21.2.3 all information contained in the Supplier's quotation remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to the Commencement Date and separately warrants to inform the Council in the event there are any changes to such information during the Contract term; and
- 21.2.4 shall promptly notify the Council in writing if it becomes aware during the performance of the Contract of any inaccuracies in any information provided to it by the Council during such due diligence which materially and adversely affects its ability to perform the Contract.

- 21.3 Each of the representations and warranties set out in Clauses 21.1 to 21.2 (inclusive) shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in the Contract. Save as expressly set out in the Contract, all warranties, representations, conditions and other terms implied by Law (whether statutory or otherwise), are hereby excluded to the fullest extent permitted by Law.

22. FORCE MAJEURE

- 22.1 **Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation:

- 22.1.1 acts of God, flood, drought, earthquake or other natural disaster;
- 22.1.2 epidemic or pandemic;
- 22.1.3 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- 22.1.4 nuclear, chemical or biological contamination or sonic boom;
- 22.1.5 any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- 22.1.6 collapse of buildings, fire, explosion or accident;
- 22.1.7 any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party); or
- 22.1.8 interruption or failure of utility service.

- 22.2 Provided it has complied with Clause 22.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

- 22.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

- 22.4 The Affected Party shall:

- 22.4.1 as soon as reasonably practicable after the start of the Force Majeure Event but no later than 7 days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement; and
- 22.4.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

- 22.5 If the Force Majeure Event prevents, hinders, or delays the Affected Party's performance of its obligations for a continuous period of more than 4 weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving 2 weeks' written notice to the Affected Party.

23 LIQUIDATED DAMAGES

- 23.1 If the Supplier fails to deliver the Goods by the date agreed, or (where an extension of time has been agreed by the Parties) the revised date for delivery (as the context requires, the "**Agreed Delivery Date**"):-

- 23.1.1 the Supplier shall pay the Council a sum by way of liquidated damages for each day between the Agreed Delivery Date and the date on which the Goods are delivered equal to five percent

(5%) of the Price for the relevant Goods], up to a maximum amount of fifty percent (50%) of the Price for the relevant Goods ("**Liquidated Damages**"). Subject to Clause 23.3, during the period in which liquidated damages are payable under this Clause 23.1 ("**Liquidated Damages Period**") the liquidated damages payable in accordance with this Clause shall be the Council's only remedy for any loss or damage suffered or incurred by the Council in relation to the failure by the Supplier to deliver the Goods by the Agreed Delivery Date; and

- 23.1.2 if the sums payable by the Supplier pursuant to Clause 23.1 do not meet the actual losses or damages incurred by the Council resulting from the failure of the Supplier, the Council shall be entitled to:
 - 23.1.2.1 claim any remedy available to it (whether under the Agreement or otherwise) for loss or damage incurred or suffered over and above the Liquidated Damages; and
 - 23.1.2.2 without prejudice to Clause 23.1 the Council shall be entitled to terminate the Agreement with immediate effect by giving notice in writing to the Supplier.
- 23.2 The Supplier shall not be obliged to pay any sums pursuant to Clause 23.1 if and to the extent the failure by the Supplier to deliver the Goods by the Agreed Delivery Date directly results from the Council Default provided that the Supplier notifies the Council immediately of such circumstances in sufficient detail to enable the Council to remedy the situation. Except as set out in this Clause 23.2, no payment or concession to the Supplier by the Council or other act or omission of the Council shall in any way affect its rights to liquidated damages pursuant to Clause 23.1 or be deemed to be a waiver of the right of the Council to recover any damages unless such waiver has been expressly made in writing by the Council.
- 23.3 Notwithstanding Clause 23.1 the Supplier does not exclude responsibility for performing or re-performing the obligation or duty which gave rise to the relevant claim at its own cost in such manner as would (if possible) result in the same or substantively similar effect for the Council, whether or not such performance or re-performance gives rise to additional costs for the Supplier and the cost of re-performance shall be borne solely by the Supplier and shall not be re-charged to the Council whether by way of costs, reimbursement or otherwise.
- 23.4 Having given careful consideration to this matter, all monies payable by the Supplier under Clause 23.1 are considered by the Parties:
 - 23.4.1 to be a genuine pre-estimate of the losses which the Council will incur in relation to the Supplier's failure to deliver the Goods by the Agreed Delivery Date, it being impossible to quantify the actual aggregate losses sustainable by the Council in terms of both loss of revenue as well as loss of reputation and prestige (the Parties acknowledging that hypothetically the losses sufferable by the Council might be more or less than the agreed liquidated damages calculation);
 - 23.4.2 to be arrived at without any inequality of bargaining position as between the Parties as a true bargain between the Parties;
 - 23.4.3 to be fair, given the nature and circumstances of the Agreement;
 - 23.4.4 to be neither excessive, extravagant, unconscionable or oppressive in all the circumstances;
 - 23.4.5 and as such these monies are payable as liquidated damages such that the Supplier waives absolutely any entitlement to challenge the enforceability in whole or in part of this Clause 23.
 - 23.4.6 The Parties' joint intention in agreeing a scheme of liquidated damages in such circumstances is to substantially reduce and, to the fullest extent possible in law, eliminate, the risk of a dispute and potential litigation in relation to such circumstances.
- 23.5 Each Party confirms that:-
 - 23.5.1 it has taken specific legal advice on the effect of this clause; and
 - 23.5.2 based on such advice, it does not enter into the Contract in anticipation that, or with any expectation that this Clause will be unenforceable for any reason.

24. SOCIAL VALUE

24.1 The Supplier acknowledges that, under the Public Services (Social Value) Act 2012, the Council is required to consider how goods, services and works, that it procures, improve the economic, social and environmental well-being of the Metropolitan Borough of Barnsley, and furthermore, that as a matter of procurement policy and practice, the Council requires any supplier, provider, consultant or contractor providing goods, services and works to the Council to use all reasonable endeavours to assist the Council to improve the economic, social and environmental well-being of the Borough.