



monmouthshire
sir fynwy

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS

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1 PRELIMINARIES

- 1.1 In this document:
 - 1.1.1 the "Supplier" shall mean the body, person or persons tendering for or supplying the Goods;
 - the "Council" shall mean Monmouthshire County Council and any successor authority or any person or body to which the Council has assigned the benefit of this Agreement or any part thereof as referred to in Clause **Error! Reference source not found.** and;
- 1.1.2 the Council and the Supplier are each referred to as a "Party" and together, the "Parties".
- 1.2 The terms of this Agreement shall apply to all Orders made by the Council.
- 1.3 The Supplier shall, if required to do so by the Council, enter into a form of supplementary agreement determined by the Council to reflect the relevant requirements of any Invitation to Tender and (as appropriate) the offers or proposals set out in any Tender submitted in response to it.
- 1.4 If required to do so by the Council, the Supplier shall provide the names and addresses of two substantial sureties who are prepared to guarantee the due performance of this Agreement.

2 DEFINITIONS AND INTERPRETATION

- 2.1 For the purposes of this Agreement except where expressly stated to the contrary, the following words shall have the following meaning:

Acceptance Criteria	means any acceptance criteria set out in this Agreement;
Affected Party	means the Party seeking to claim relief in respect of a Force Majeure Event;
Agreement	shall have the meaning given in Clause 4.1;

Award Letter	means the letter sent by the Council to the Supplier notifying them that their tender has been successful and they have been awarded a contract to supply goods;
Best Value	shall have the meaning given in Part I of the Local Government Act 1999 (as amended);
BACS System	means the Bankers' Automated Clearing Services System which is a UK scheme for the processing of financial transactions;
Commercially Sensitive Information	means any information listed in the FOI Schedule which is considered by the Supplier to be commercially sensitive under Section 43 of the FOIA (without prejudice to the Council's obligations under the FOIA);
Confidential Information	means information listed in the FOI Schedule, which is considered by the Supplier to be confidential under Section 41 of the FOIA, and any information designated as confidential by the Council, the disclosure of which would be considered by the Supplier to constitute an actionable breach of confidence (without prejudice to the Council's obligations under the FOIA);
Confidentiality Undertaking	means an undertaking not to use or disclose any Confidential Information received save as strictly required to fulfil the purposes of this Agreement (including, without limitation, its re-tender);
Contracting Authority	means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006;

Contract Period	means the period calculated in accordance with Clause 3;
Data Controller	shall have the meaning given in section 1 of the Data Protection Act 1998;
Data Processor	shall have the meaning given in section 1 of the Data Protection Act 1998;
FOIA	means the Freedom of Information Act 2000, the Environmental Information Regulations 2004 and any subordinate legislation made under or in connection with the Act or the Regulations from time to time in force, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to the Act or the Regulations;
FOI Schedule	means the schedule of information submitted by the Supplier with the Supplier's Tender setting out the information which the Supplier considers to be Commercially sensitive Information or Confidential Information;
Force Majeure Event	means an event occurring after the date of this Agreement of war, armed conflict, acts of terrorism, riots, fire, flood, storm, earthquake, or disaster or such other similar events which directly causes the Affected Party to be unable to comply with all or a material part of its obligations under this Agreement but excluding any industrial dispute relating to the Supplier, the Supplier Personnel or any other failure in the Supplier or any Sub-contractor's

	supply chain;
Good Industry Practice	means the exercise of the degree of skill, diligence, prudence, efficiency, foresight and timeliness which would be expected from a leading supplier within the relevant industry or business sector of goods (and of any services associated with the supply of such goods) of a similar type to the Goods and associated services to be supplied under this Agreement;
Goods	means any Goods supplied or to be supplied by the Supplier in accordance with this Agreement, together with any services associated with the supply of such Goods including (but not limited to) delivery, installation, testing, maintenance, repair, removal and/or disposal;
Health and Safety Regime	means the Factories Act 1961, the Offices, Shops and Railway Premises Act 1963, the Health & Safety at Work etc Act 1974, the Fire Precautions Act 1971, the Environmental Protection Act 1990, the Food Safety Act 1990 the Environment Act 1995, the Water Industry Act 1991, and the Water Resources Act 1991 (including in each case any associated regulations, guidance or approved codes of practice), and any similar or analogous health, safety or environmental Legislation which has as its aim the protection of persons or the environment or the prevention or reduction of risk of harm or injury to persons or the environment, or relating to the health and safety of the Goods or their use, as is in force from time to time;

Holding Company	shall have the meaning given in section 1159 of the Companies Act 2006;
Information	shall have the meaning given under section 84 of the Freedom of Information Act 2000 and/or Regulation 2 of the Environment Information Regulations;
Intellectual Property Rights	<p>means:</p> <p>(a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, trade secrets and rights in confidential information</p> <p>(b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</p> <p>(c) all other rights having equivalent or similar effect in any country or jurisdiction;</p>
Invitation to Tender	means the invitation to tender issued by the Council for the supply of the Goods;
Legislation	<p>means:</p> <p>(a) any applicable statute or proclamation or any delegated or subordinate legislation;</p> <p>(b) any enforceable community right within the meaning of section 2(1) European Communities Act 1972;</p> <p>(c) any applicable guidance, direction or determination with which the Council and/or the Supplier is bound to comply to the extent that the same are published and publicly</p>

	available or the existence or contents of them have been notified to the Supplier by the Council; and
	(d) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales,
	In each case in force or applicable in England and Wales, or in Wales;
Order	means an order for the Goods placed by the Council in accordance with Clause 5 of this Agreement.
Order Number	means the official number allocated by the Council to an Order;
Parent Company	shall have the meaning given in section 1162 and Schedule 7 of the Companies Act 2006;
Personal Data	shall have the meaning given in section 1 of the Data Protection Act 1998;
Price	means the price or prices specified in the Order;
Relevant Authority	means any court with the relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the Welsh Ministers, the government of the United Kingdom or of the European Union;
Requests for Information	shall have the meaning set out in section 8 of the FOIA and/or Regulation 5 of the Environmental Information Regulations 2004 and includes any apparent request for such information;

Samples	means any samples submitted to the Council as part of the procurement process leading to the award of this Agreement;
Schedule	means the schedule attached hereto;
Special Conditions	means any special conditions either referred to the Invitation to Tender or set out in the schedule hereto;
Specification	means the specification attached to the Invitation to Tender;
Sub-contractor	means any third party with whom the Supplier enters into a sub-contract or its servants or agents and any third party with whom that third party enters into a sub-contract or its servants or agents for the performance of any part of the Supplier's obligations under this Agreement;
Supplier Personnel	means all officers, partners, employees, servants, agents, consultants and contractors of whatever nature of the Supplier and/or of any Sub-contractor; and
Tender	means the tender submitted by the Supplier in response to the Invitation to Tender.
Variation	means a variation as set out in Clause 23.

- 2.2 In this Agreement the masculine includes the feminine and the neuter and the singular includes the plural and vice versa.
- 2.3 A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as subsequently amended and as in force at the relevant time.

- 2.4 A reference to any document shall be construed as a reference to the document as at the date of execution of this Agreement.
- 2.5 Each Party shall comply with any express obligation in this Agreement to comply with any document, statute, enactment, order, regulation or other similar instrument that is referred to in this Agreement.
- 2.6 Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement.
- 2.7 Except as otherwise expressly provided in this Agreement, all remedies available to the Parties for default under this Agreement are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not exclude the exercise of any other remedy.
- 2.8 Neither Party shall be liable for any default of its obligations under this Agreement to the extent that such default is caused by a failure or delay by the other Party in performing its obligations under this Agreement provided and to the extent, that the affected party notifies the other party of such failure or delay within thirty (30) days of the affected Party becoming aware of its occurrence and of its likely impact.

3 COMMENCEMENT AND DURATION

- 3.1 This Agreement shall take effect on the date specified in the Order.
- 3.2 This Agreement shall expire on the date specified in the Order subject to:
 - 3.2.1 the rights of termination contained herein;
 - 3.2.2 Clause 1.3 ;and
 - 3.2.3 Clause 5.3.
- 3.3 The Council may extend the Contract Period beyond that stated in Clause 3.2 above, for a further period as specified in the Invitation to Tender on the same terms and conditions, by giving such written notice to the Supplier as is allowed for in the Invitation to Tender or if none is specified, a reasonable period of notice.

4 SCOPE

- 4.1 This Agreement shall comprise the following:
 - 4.1.1 the Terms and Conditions;
 - 4.1.2 the Special Conditions, and supplementary agreement pursuant to Clause 1.3, if any;
 - 4.1.3 the Specification;
 - 4.1.4 the Tender; and
 - 4.1.5 the Order.
- 4.2 The documents listed in Clause 4.1 above shall be read together and construed so as to be consistent with one another so far as possible. In the event of any unavoidable conflict or inconsistency between any of the various documents forming part of this Agreement the following order of precedence shall apply:
 - 4.2.1 the Terms and Conditions;
 - 4.2.2 the Special Conditions, and/or supplementary agreement pursuant to Clause 1.3 ;
 - 4.2.3 the Specification;
 - 4.2.4 the Tender;
 - 4.2.5 the Order.
- 4.3 This Agreement constitutes the entire understanding between the Parties relating to the subject matter of this Agreement and, save as may be expressly referred to or referenced herein, supersedes all prior representations, writings, negotiations or understandings with respect hereto, except in respect of any fraudulent misrepresentation made by either Party.

5 SUPPLY AND DELIVERY

- 5.1 The Council may at any time during the Contract Period order Goods from the Supplier by giving an Order to the Supplier.

- 5.2 The Supplier shall at its own expense supply, deliver and, where specified in this Agreement, install, in accordance with the provisions of this Agreement, such Goods and in such quantities and by such methods of delivery and at such times and places as are set out in the Order or (if not so set out) as shall be required by the Council in writing.
- 5.3 If the Contract Period expires before the supply or delivery of any Goods comprised in an Order, the Supplier shall remain liable for the completion of the Order. The terms and conditions of this Agreement shall continue in full force and effect in respect of such completion.
- 5.4 Clause 5.3 shall survive the termination or expiry of this Agreement.
- 5.5 The Supplier's premises shall be available at all reasonable times for inspection by a representative of the Council with or without a prior appointment and during such inspections the Supplier shall allow the representative of the Council to examine any Goods to be supplied under the provisions of this Agreement or to take samples of all or any Goods for the purpose of testing or analysis to determine compliance with the Specification.

6 THE GOODS

- 6.1 The Supplier shall at its own cost ensure that all Goods supplied to the Council pursuant to this Agreement shall be compliant with:
 - 6.1.1 the Specification;
 - 6.1.2 any requirement of any Legislation;
 - 6.1.3 any relevant British Standard, specification or code of practice or European Union equivalents.
- 6.2 The Supplier shall ensure that any Goods which are supplied hereunder will correspond in all respects with any Samples.
- 6.3 The Council shall have the right, where in its sole opinion any Goods do not correspond with the Samples, to reject those Goods.
- 6.4 Where under the terms of this Agreement any Acceptance Criteria have been specified, the Council shall not be obliged to accept the Goods unless and until the Supplier has demonstrated that all Acceptance Criteria for the Goods have been met and the Council has issued an acceptance certificate.

- 6.5 All Goods provided under the Agreement shall be of satisfactory quality and fit for any purpose for which such Goods are commonly used or which is made known to the Supplier in writing by the Council.
- 6.6 The Council may reject any Goods which it believes are not of satisfactory quality or are not in accordance with the requirements of this Agreement or which fail to satisfy any relevant Acceptance Criteria.
- 6.7 In all cases of rejection the Supplier shall at its own expense remove the rejected Goods and replace the same as the Council shall direct with Goods which comply with all requirements of this Agreement and are to the satisfaction of the Council.

7 LEGISLATIVE CHANGE

- 7.1 The Supplier shall bear the cost of complying with all Legislation and any amendments thereto. In the event that a change in Legislation necessitates a material change to the performance of this Agreement and provided that such change could not have reasonably been foreseen by the Supplier at the date of the Agreement the Parties shall enter into negotiations in good faith to make such adjustments to the Price as may be necessary to compensate the Supplier for any additional costs as are both reasonably and necessarily incurred by the Supplier in accommodating such changes. If the Parties cannot reach agreement on such costs within a reasonable time, then the Council may at its discretion terminate this Agreement in whole or in part.

8 ALTERATION OF PLACE OF MANUFACTURE

- 8.1 Where the Supplier has stated that the Goods will be manufactured at a particular place or places, it shall not alter such place or places without the prior written consent of the Council (such consent not to be unreasonably withheld or delayed) and any such alteration shall not have any financial consequences to the Council.

9 DELIVERY AND CARRIAGE

- 9.1 The Goods shall be delivered at the expense of the Supplier to the place or places specified in the Order or otherwise specified by the Council free of charge and at the Supplier's own risk, in such quantities as specified in the Order.

- 9.2 The Supplier shall provide to the Council with any delivery of Goods, a delivery note or delivery notes giving full particulars thereof, quoting the Order Number.
- 9.3 Where the Goods are to be supplied by weight and are not weighed at the place of delivery, the Supplier shall provide to the Council at the time of delivery a weight ticket.
- 9.4 Where the Goods are sold by weight, the weight of all packing materials shall be deducted from the gross weight of the Goods and the Council shall pay only for the net weight thereof and shall not be liable for the return of any such packing materials.
- 9.5 The Supplier shall deliver the Goods at the time(s) and date(s) specified in the Order.
- 9.6 Unless otherwise stated in the Order, where the Supplier delivers the Goods, the point of delivery shall be where the Goods are removed from the transporting vehicle at the Council's premises. Where the Council collects the Goods, the point of delivery shall be where the Goods are loaded on to the Council's vehicle.
- 9.7 Except where otherwise provided in the Order, delivery shall include the unloading, stacking or installation of the Goods by the Supplier or the Supplier Personnel at such place as the Council or other duly authorised person shall reasonably direct.
- 9.8 Time of delivery shall be of the essence and if the Supplier fails to deliver the Goods within the time specified in the Order, the Council may release itself from any obligation to accept and pay for the Goods and/or may terminate the Agreement, in either case, without prejudice to any other rights and remedies of the Council.

- 9.9 The Council shall be under no obligation to accept or pay for any Goods supplied in excess of the quantity ordered. If the Council elects not to accept such over-delivered Goods it shall give notice in writing to the Supplier to remove them within five (5) working days and to refund to the Council any expenses incurred by it as a result of such over-delivery (including but not limited to the costs of moving and storing the Goods), failing which the Council may dispose of such Goods and charge the Supplier for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Supplier unless they are expressly accepted in writing by the Council.
- 9.10 The Council shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the Order.
- 9.11 Unless expressly agreed to the contrary, the Council shall not be obliged to accept delivery by instalments. If the Council specifies or agrees to delivery by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to any other rights or remedies of the Council, entitle the Council to terminate the whole of any unfulfilled part of the Order without further liability to the Council.

10 TITLE AND RISK

- 10.1 Title in any Goods shall, without prejudice to the Council's right to reject the Goods if they are defective, pass to the Council when they have been delivered to the location specified by the Council in the Order.
- 10.2 The risk in the Goods shall pass to the Council on acceptance by the Council.

11 REPLACEMENT AND REPAIR

- 11.1 Notwithstanding acceptance by the Council, and without prejudice to any other right of the Council under this Agreement, the Supplier shall at the Council's option repair or replace at the Supplier's expense and to the satisfaction of the Council any Goods which are notified by the Council as being defective within a reasonable period of time (dependent on the nature of the Goods) from the date when the Goods have been put into operational use either following delivery or following repair, modification or replacement of the Goods or any part thereof pursuant to this Clause.

11.2 In addition to the remedies under Clause 11.1 and without prejudice to any of its other rights, the Council shall have the right to recover from the Supplier all costs and expenses arising from the defective Goods including, but not limited to those of:

- 11.2.1 removing the Goods;
- 11.2.2 carriage and storage of the Goods;
- 11.2.3 testing the Goods; and
- 11.2.4 reinstalling and re-commissioning the Goods.

12 FRAUD

- 12.1 The Supplier must take all reasonable steps including all preliminary enquiries and investigations to prevent the risk of fraud to the Council.
- 12.2 Where such preliminary actions suggest the possibility of fraud or other irregularity affecting the resources of the Council the Supplier shall immediately inform the Council.

13 SUPPLIER'S PERSONNEL

- 13.1 The Council reserves the right under this Agreement to refuse to admit to any premises occupied by or on behalf of the Council any Supplier Personnel, whose admission would be, in the opinion of the Council, undesirable.
- 13.2 If and when directed by the Council, the Supplier shall provide a list of the names and addresses of all persons who may require admission in connection with the performance of this Agreement to any premises occupied by or on behalf of the Council, specifying the capacities in which they are concerned with this Agreement and giving such other particulars as the Council may reasonably require.
- 13.3 The Supplier and its Supplier Personnel, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at any Council establishment and when in the vicinity thereof.

- 13.4 The decision of the Council as to whether any person is to be refused admission to any premises occupied by or on behalf of the Council and as to whether the Supplier has failed to comply with Clause 13.2 shall be final and conclusive.
- 13.5 If the Supplier shall fail to comply with Clause 13.2 or fails to do so within a reasonable time of written notice so to do then the Council may terminate this Agreement in accordance with Clause 33 provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

14 DISRUPTION

- 14.1 The Supplier shall (and shall ensure that its Supplier Personnel will) take all reasonable care at all times not to disrupt the operations of the Council, its employees or any contractor or other person employed by the Council.

15 INDUSTRIAL ACTION

- 15.1 The Supplier shall immediately inform the Council of any actual or potential industrial action, whether such action be by its own Supplier Personnel or others, which affects or might affect its ability at any time to deliver the Goods in accordance with the requirements of this Agreement.
- 15.2 In the event of industrial action by the Supplier Personnel, the Supplier shall seek the Council's prior written approval to any revised proposals to deliver the Goods.
- 15.3 If the Supplier's proposals referred to in Clause 15.2 are considered insufficient or unacceptable by the Council, then the Council may terminate this Agreement in whole or in part.

16 DISCRIMINATION AND EQUALITY

- 16.1 The Supplier shall ensure that it complies (and shall take all reasonable steps to ensure that all Supplier Personnel comply) with all relevant requirements of all current Equalities legislation, including but not limited to the Equality Act 2010 and all other similar Legislation ("equality legislation") in force from time to time together with any guidance or Codes of Practice issued by the Equality and Human Rights Commission (EHRC) and shall in addition discharge its

obligation under this agreement and provide the services in a manner consistent with the Council's equalities policies.

16.2 The Supplier shall provide any information reasonably requested by the Council in respect of such equality legislation in so far as it relates to the performance of this Agreement.

16.3 The Council is required by the Welsh Language Act 1993 to maintain a Welsh Language Scheme. The Supplier shall (and shall take all reasonable steps to ensure that all Supplier Personnel shall) comply with the Council's Welsh Language Scheme as updated from time to time and notified to the Supplier in writing.

17 HEALTH AND SAFETY

17.1 The Supplier shall:

17.1.1 comply with all relevant parts of the Health and Safety Regime;

17.1.2 in relation to all persons likely to be affected by the execution of this Agreement and/or by use, handling or otherwise coming into contact with the Goods take all such steps as may be reasonably practicable to ensure their health and safety; and notify the Council of any health and safety hazards which may arise in connection with the performance of this Agreement.

17.2 The Council shall use its reasonable endeavours to notify the Supplier of any health and safety hazards which may exist or arise at its premises and which may affect the Supplier. The Supplier shall draw these hazards to the attention of its Supplier Personnel or any persons engaged by the Supplier in the performance of this Agreement at the premises and shall instruct such persons in connection with any necessary associated safety measures.

18 PROTECTION OF PERSONAL DATA

18.1 Each party shall comply with its respective obligations under the provisions of the Data Protection Act 1998.

18.2 Where the Supplier or any of its Supplier Personnel, in performing its obligations under this Agreement, processes Personal Data as a Data Processor on behalf of the Council, the Supplier shall, and shall procure its Supplier Personnel:

- 18.2.1 act only on instructions from the Council as Data Controller; and
- 18.2.2 comply with the Council's instructions in relation to the processing of Personal Data as such instructions are given and varied from time to time by the Council.

19 NATIONAL MINIMUM WAGE

- 19.1 The Supplier shall ensure that, where appropriate, staff employed by it are paid at least the national minimum wage in accordance with the National Minimum Wage Act 1998 or any other Legislation making similar provision.

20 HUMAN RIGHTS

- 20.1 The Supplier shall not (and shall ensure that its Supplier Personnel shall not) do or permit or allow anything to be done which may result in the Council acting incompatibly with the rights contained within the European Convention on Human Rights and the Human Rights Act 1998.

21 ENVIRONMENTAL REQUIREMENTS

- 21.1 The Supplier shall:

- 21.1.1 have a sustainable approach to waste management and not treat, keep or dispose of any waste produced and/or carried by the Supplier as a result of executing this Agreement in a manner likely to cause harm to the health and safety of any person or to the environment and shall comply with all relevant Legislation including The Producer Responsibility (Packaging Waste) Regulations 1997 – 2007 together with any amendments, additions or re-enactments that may take place from time to time;
- 21.1.2 perform the Agreement in such a way as to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment;
- 21.1.3 during the execution of the Agreement, take such steps as are reasonably practicable to avoid (or, where avoidance is not possible, to minimise) harm to the environment.

- 21.1.4 In the event the Supplier believes that a change to this Agreement or a change to the Specification would reduce the overall environmental impact of this Agreement (for example by the increased use of recycled or re-furbished or otherwise environmentally friendly materials, or by the production of Goods with a longer life span, or that a change would result in increased energy efficiency or reduce in other ways the impact on the environment) the Supplier must notify the Council in writing (whether or not this change would affect the Price payable for the Goods). The Council shall consider the proposed change and may request a Variation in accordance with Clause 23;
- 21.1.5 Immediately after delivery, the Supplier shall remove all packaging relating to the Goods which is no longer required by the Council. The Council may recycle, re-use or dispose of any packaging left at its premises. However, if requested to do so, the Supplier shall collect any remaining packaging free of charge and as quickly as possible.

21.2 Nothing in this Clause 21 shall relieve the obligations of the Supplier to comply with all applicable Legislation and Good Industry Practice.

22 CHARGES AND PAYMENTS

- 22.1 The charges payable by the Council in respect of Goods shall be determined by reference to the Price for the Goods specified in the Order.
- 22.2 The charges are exclusive of Value Added Tax. The Council shall pay the Value Added Tax on the charges at the rate and in the manner prescribed by law, from time to time.
- 22.3 All invoices submitted by the Supplier to the Council shall be valid VAT invoices and shall contain the Order Number(s) to which the invoice relates and subject to the provisions of Clause 28, shall be denominated in sterling.
- 22.4 The Service Provider shall ensure that all invoices clearly show the following information (where applicable):
 - 22.4.1 name and address of the Supplier;
 - 22.4.2 the period to which the payment relates;

22.4.3 the hourly rate for any services including premium rates for weekends, evenings etc.

22.5 In the event of the submitted invoice being incorrect, the Council may return the invoice to the Supplier as a query, and/or raise any query or request for information, and the Supplier shall answer any such request within five (5) working days. The period for payment shall not commence until the date of receipt of an accurate invoice by the Finance Section of the Council.

22.6 Payment of invoices by the Council for Goods supplied shall be made by way of BACS system. The Council shall only consider an alternative method of payment where it can be determined that payment by way of BACS is not possible.

22.7 Payment shall be made within thirty (30) days of receipt by the Council (at its nominated address for invoices) of a valid and agreed invoice from the Supplier.

22.8 The Council will require commitment from suppliers to explore the use of purchasing cards if requested, including upto Level 2 (Summary) and Level 3 (Line Item Detail) where necessary. Where this is required any associated charges aligned to the use of purchasing cards will be agreed between the supplier and the council.

23 MINOR VARIATIONS

23.1 Before the Supplier delivers the Goods, the Council may change any of the requirements set out in the Order including any of the following:

22.8.1 the quantity of the Goods required;

22.8.2 the delivery date; and/or

22.8.3 the location to which the Goods must be delivered;

23.2 the Council will only be permitted to do this if the Council informs you within a reasonable time before the Goods were originally due to be delivered.

23.3 Variations of a minor or temporary nature may be required to the Goods from time to time and such Variations shall be agreed in writing between the Council and the Supplier. The Supplier shall comply with such minor or temporary Variations, which shall normally be accommodated at no extra cost to the Council, provided they do not involve additional cost to the Supplier. If such extra cost is incurred the Supplier shall provide written evidence to the Council and the Parties shall then agree such additional costs. If the Parties cannot reach agreement on such costs within a reasonable time, then the Council may at its discretion terminate the Agreement in whole or in part. The Council shall not as a result of such termination be in breach of this Agreement or be under any liability to the Supplier (whether in contract, tort, legitimate expectation, restitution, statutory duty or in any other way whatsoever).

24 DEFAULT

24.1 In the event of the Supplier being unable to supply the Goods in accordance with the foregoing conditions or within the agreed time limit, the Supplier shall immediately notify the Council's Head of Procurement of its inability to do so and the reasons therefor and the Council, without prejudice to any other right or remedy to which it may be entitled, shall be at liberty to terminate the Agreement either wholly, or to the extent of such default and to purchase from an alternative supplier such other goods or materials of the same or similar description to make good the default, as the Council may reasonably decide. The Council may recover from the Supplier any additional costs of purchasing the goods and materials from an alternative supplier together with any additional costs (including but not limited to increased administration costs, and costs of delay and disruption) thereby incurred by the Council.

24.2 The Supplier shall be liable to make good and pay all damages, costs, charges and expenses arising out of the breach of contract or negligence of itself and/or its Supplier Personnel arising out of the performance of this Agreement howsoever such damages, costs, charges and expenses arise.

24.3 The Supplier shall make good or replace with all possible speed any Goods which are or which become subject to defects arising from defective design, materials or workmanship of the Goods within twelve (12) months of either:

24.3.1 delivery and acceptance of such Goods by the Council; or

- 24.3.2 any making good or replacement of such Goods by the Supplier (whichever shall be the later).
- 24.4 The Supplier must meet any costs incurred as a result of such making good or replacement under Clause 24.3 above. In this Clause 24, "making good" means bringing the Goods into a condition which fully meets all the obligations of the Supplier under this Agreement, and "replacement" means replacement with Goods of at least equal quality which fully meet all the Supplier's obligations under this Agreement.
- 24.5 If the Supplier makes good or replaces any portion of the Goods supplied, the provisions of this Agreement shall apply in full to the portion made good or replaced as if that portion had been supplied on the date of replacement or renewal.
- 24.6 For the purpose of this Agreement the expression "additional costs" shall include (without limitation) the reasonable cost to the Council of the time spent by its officers in terminating this Agreement and in making alternative arrangements for the provision of the Goods, any additional costs of the Goods, and the costs of any delay or disruption.

25 INTEREST

- 25.1 If the Council fails to pay any amount properly due and payable by it under this Agreement, the Supplier shall have the right to charge interest on the overdue amount at the rate of 2% per cent per annum above the base rate for the time being of The Co-operative Bank Plc base rate accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment. The Parties agree that this rate is a substantial remedy in accordance with section 9 of the Late Payments of Commercial Debts (Interest) Act 1998.

26 SET OFF

- 26.1 The Council may retain or set off any amount owed to it by the Supplier whether under this Agreement or otherwise which has fallen due and payable against any amount due to the Supplier under this Agreement.

27 COMPLIANCE WITH VALUE ADDED TAX AND OTHER TAX REQUIREMENTS

- 27.1 The Supplier shall at all times comply with the Value Added Tax Act 1994 and all other statutes relating to direct or indirect taxes.
- 27.2 Failure to comply will constitute a material breach of this Agreement and the Council may exercise the rights and provisions conferred by Clause 33.
- 27.3 The Supplier shall furnish to the Council the name, and if applicable, the VAT registration number of any Supplier Personnel prior to the commencement of any work under this Agreement by such Supplier Personnel.
- 27.4 Upon a request by the Council, the Supplier shall not employ or will cease to employ any Supplier Personnel which the Council believes is not complying with the Value Added Tax Act 1994 and all other statutes relating to direct or indirect taxes.

28 EURO

- 28.1 If, following the introduction of the Euro, Sterling is substituted by the Euro as the currency of the United Kingdom, then all references in this Agreement and any Order to "Sterling" or "£" shall be construed as references to "Euro" or "€" (as the case may be) at the agreed Sterling-Euro conversion rate on the date of that substitution provided that the provisions of this Clause 28 shall not apply during any transitional period when Sterling is a sub-unit of the Euro, unless the Parties otherwise agree.

29 WARRANTIES AND REPRESENTATIONS

- 29.1 The Supplier warrants and represents that:
 - 29.1.1 it has full capacity and authority to enter into and to perform this Agreement and that this Agreement is executed by a duly authorised representative of the Supplier;
 - 29.1.2 the Goods shall (to the extent required under this Agreement) be supplied, installed, tested and commissioned and thereafter maintained and repaired by appropriately experienced, qualified and trained personnel in accordance with Good Industry Practice; and

29.1.3 the Supplier shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to Good Industry Practice and (without limiting the generality of this Clause) in accordance with its own established internal procedures.

30 INSURANCE

30.1 The Supplier shall hold and shall ensure that all Sub-contractors involved in the provision of the Goods shall maintain the following insurance cover:

30.1.1 public liability including products liability; and

30.1.2 employer's liability

in each case with the minimum level of indemnity set at five million pounds (£5,000,000)

30.2 Such insurance to be held by the Supplier or by any Sub-contractor involved in the provision of the Goods may be limited in respect of any one claim (but shall not be limited in any other respect), PROVIDED THAT any such limit shall in any event be at least one million pounds (£1,000,000). This Clause shall not be construed as imposing any limit of liability on the Supplier.

30.3 Such insurance shall be maintained for a minimum of six (6) years following expiration or earlier termination of this Agreement.

31 LIMITATION OF LIABILITY

31.1 Neither Party excludes or limits liability to the other party for death of or personal injury to any individual or any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.

31.2 Subject always to Clause 31.1, and notwithstanding any other provision contained herein, the total liability of the Supplier (whether under contract, tort or statutory provision) arising out of or in connection with this Agreement shall in no circumstances exceed five million pounds (£5,000,000) in respect of any one incident or series of related incidents and ten million pounds (£10,000,000) in the aggregate for any or all incidents (whether related or not) arising during the period of the Agreement.

- 31.3 The Council's liability under this Agreement shall be limited to the total Price payable for the Goods pursuant to this Agreement.
- 31.4 Subject always to Clause 31.1, in no event shall either Party be liable to the other for:
 - 31.4.1 indirect or consequential loss or damage; and/or
 - 31.4.2 loss of profits, business, revenue, goodwill or anticipated savings, save as expressly provided for under the terms of this Agreement.
- 31.5 The provisions of Clause 31.4 shall not be taken as limiting the right of the Council to claim against the Supplier for any:
 - 31.5.1 additional operational and administrative costs and expenses;
 - 31.5.2 additional costs of obtaining the Goods or their equivalent;
 - 31.5.3 costs or expenses rendered worthless; and/or
 - 31.5.4 loss or damage resulting directly from the default of the Supplier.
- 31.6 The Parties expressly agree that neither Party shall be entitled to an order for specific performance to enforce any provision hereunder.
- 31.7 The Parties expressly agree that should any limitation or provision contained in this Clause be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed omitted but if any Party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out herein.

32 FORCE MAJEURE

- 32.1 Subject to the remaining provisions of this Clause 32 either Party to this Agreement may claim relief from liability for non-performance of its obligations to the extent any non-performance is due to a Force Majeure Event.
- 32.2 A Party cannot claim relief if the Force Majeure Event is attributable to its wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.

- 32.3 An Affected Party cannot claim relief as a result of a failure or delay by any other person in the performance of that other person's obligations under an agreement with the Affected Party (unless that other person is itself prevented from or delayed in complying with its obligations as a result of a Force Majeure Event).
- 32.4 The Affected Party shall immediately give the other Party written notice of the Force Majeure Event. The notification shall include details of the Force Majeure Event together with evidence of its effect on the obligations of the Affected Party, and any action the Affected Party proposes to take to mitigate its effect.
- 32.5 As soon as practicable following the Affected Party's notification, the Parties shall discuss in good faith and endeavour to agree a means of performing the Agreement so far as reasonably possible for the duration of the Force Majeure Event. In the event that the Parties fail to agree a means of performing the Agreement within two (2) months from the date of the Affected Party's notification, the Council may in its absolute discretion elect to terminate the Agreement in whole or in part.
- 32.6 The Affected Party shall use all reasonable endeavours to continue to perform, or resume performance of this Agreement for the duration of such Force Majeure Event and if the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 32.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.
- 32.8 In the event that the Force Majeure Event continues for a period of two (2) months from the date of the Affected Party's notification, the Council may in its absolute discretion elect to terminate the Agreement in whole or in part.

33 TERMINATION

Supplier Default

33.1 The Council may at any time by notice in writing terminate this Agreement as from the date of service of such notice if:

- 33.1.1 any of the circumstances detailed in Clause 9.8 and/or 9.11 (Delivery and Carriage), Clause 13.5 (Supplier Personnel), Clause 15.3 (Industrial Action), Clause 24.1 (Default), Clause 35.2 (Corrupt Gifts, etc) and/or Clause 36.9 (Confidentiality) arise;
- 33.1.2 there is a change of control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, in the Supplier or its Parent Company provided that the Council shall only be permitted to exercise its rights pursuant to this Clause 33.1.2 for six (6) months after each such change of control and shall not be permitted to exercise such rights where the Council has agreed in advance in writing to the particular change of control and such change of control takes place as proposed; or
- 33.1.3 the Supplier, being a company, passes a resolution, or the Court makes an order that the Supplier or its Parent Company be wound up otherwise than for the purpose of a bona fide reconstruction or amalgamation, or a receiver, manager or administrator on behalf of a creditor is appointed in respect of the business or any part thereof of the Supplier or the Parent Company, or circumstances arise which entitle the Court or a creditor to appoint a receiver, manager or administrator or which entitle the Court otherwise than for the purpose of a bona fide reconstruction or amalgamation to make a winding-up order, or the Supplier or its Parent Company is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 (except where the claim is made under Section 123, 1(a) and is for an amount of not less than ten thousand pounds (£10,000)) or any similar event occurs under the law of any other jurisdiction; or

- 33.1.4 the Supplier, being an individual, or where the Supplier is a firm, any partner or partners in that firm who together are able to exercise direct or indirect control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, shall at any time become bankrupt or shall have a receiving order or administration order made against him or shall make any composition or arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or appears unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of Section 268 of the Insolvency Act 1986 or he shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985 or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of his estate, or a trust deed shall be granted by him for the benefit of his creditors, or any similar event occurs under the law of any other jurisdiction;
- 33.1.5 the Supplier commits a breach of its obligations under this Agreement (other than as a consequence of a breach by the Council of its obligations under this Agreement) which breach results in the criminal investigation, prosecution and conviction of the Supplier or any Sub-contractor under the Health and Safety Regime (a “Health and Safety Conviction”);
- 33.1.6 the Supplier:
 - (a) commits a material breach of this Agreement and:
 - (b) the material breach is capable of remedy and the Supplier shall have failed to remedy the material breach within thirty (30) days of written notice to the Supplier served in accordance with Clause 47.3 specifying the material breach and requiring its remedy; or
 - (c) the material breach is not capable of remedy; or
- 33.1.7 the Supplier commits a series of breaches of this Agreement which when taken together amount to a material breach of this Agreement.

“No Default” termination

- 33.2 The Authority may terminate this Contract by giving to the Goods Provider six month's prior notice in writing
- 33.3 Without prejudice to Clause 33.1:
- 33.4 the Council may by notice in writing terminate this Agreement as from the date of service of such notice if any of the circumstances detailed in Clause 7.1 (Legislative Change), Clauses 32.5 and 32.8 (Force Majeure), Clause 48.1(Severability) and/or Clause 58.4 (Price Variation) arise; and
- 33.5 the Supplier may by notice in writing served in accordance with Clause 47.3 terminate this Agreement as from the date of service of such notice if any of the circumstances detailed in Clause 48.1 (Severability) or Clause 58.4 (Price Variation) arise.

Council Default

- 33.6 The Supplier may at any time by notice in writing terminate this Agreement as from the date of service of such notice if:
 - 33.6.1 the Council has failed to pay any sum which is properly due and owing to the Supplier (such sum not being in dispute) by the due date under Clause 22.7; and
 - 33.6.2 which sum amounts to at least fifteen per cent (15%) of the total Price; and
 - 33.6.3 the Supplier has given to the Council at least thirty (30) days' notice that such sum is overdue for payment and clearly stating the Supplier's intention to terminate the Agreement if such sum is not paid; and
 - 33.6.4 the Council has not paid within the time specified in the Supplier's notice under Clause 33.6.3 above.

34 CONSEQUENCES OF TERMINATION

- 34.1 The termination or expiry of this Agreement or any Order shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party.

- 34.2 In the event of any termination of this Agreement (and/or of any Order), any Orders which at the date of termination have yet to be discharged shall be terminated and the Council shall, in respect of any non-discharged Orders, be entitled without prejudice to the Council's other rights and remedies, to obtain a refund of any payments made by the Council in respect of any Goods which have not been provided by the Supplier in accordance with the terms of the non-discharged Order.
- 34.3 In the event of the termination of this Agreement by either Party, the provisions of this Clause and Clauses 18 (Protection of Personal Data), 25 (Interest), 26 (Set Off), 30 (Insurance), 31 (Limitation of Liability), 35 (Corrupt Gifts and Payment of Commission), 36 (Confidentiality), 42 (Information and Assistance), 54 (Law and Jurisdiction) and 56 (Freedom of Information) shall survive the termination of this Agreement.
- 34.4 Where the Council re-lets the Agreement or any part thereof to an alternative supplier pursuant to Clause 40.1 the Supplier shall make good to the Council all loss damages and expenses it may incur or be liable to in consequence of such re-letting.

35 CORRUPT GIFTS AND PAYMENTS OF COMMISSION

- 35.1 The Supplier shall neither:
 - 35.1.1 offer or give or agree to give any person employed by the Council or acting on its behalf any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or performance of this Agreement or any other agreement with the Council or for showing or forbearing to show favour or disfavour to any person in relation to this Agreement; nor
 - 35.1.2 enter into this Agreement if in connection with it commission has been paid or agreed to be paid to any person employed by the Council or any person acting on its behalf by the Supplier or the Supplier Personnel, unless before this Agreement is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the Council.

35.2 In the event of any breach of this Clause 35 by the Supplier or by any Supplier Personnel acting on the Supplier's behalf (whether with or without the knowledge of the Supplier) or the commission of any offence by the Supplier or by anyone employed by the Supplier or acting on behalf of the Supplier under the Prevention of Corruption Acts, 1889 to 1916 or under Section 117(2) and (3) of the Local Government Act 1972 in relation to this or any other agreement with the Council, the Council may summarily terminate this Agreement or the relevant Order by notice in writing to the Supplier in accordance with Clause 33.4 provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Council and provided always that the Council may recover from the Supplier the amount or value of any such gift, consideration or commission together with all costs to the Council of terminating and re-letting.

35.3 The decision of the Council shall be final and conclusive in any dispute, difference or question arising in respect of:

35.3.1 the interpretation of this Clause (except so far as the same may relate to the amount recoverable from the Supplier under Clause 35.2 in respect of any loss resulting from such termination of this Agreement); or

35.3.2 the right of the Council under this Clause 35 to terminate this Agreement; or

35.3.3 the amount or value of any such gift, consideration or commission.

36 CONFIDENTIALITY

36.1 The Supplier acknowledges that any Confidential Information obtained from or relating to the Council, its servants or agents is the property of the Council.

36.2 Each Party:

36.2.1 shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and

36.2.2 shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Agreement or except where disclosure is otherwise expressly permitted by the provisions of this Agreement.

36.3 The Supplier shall take all necessary precautions to ensure that all Confidential Information obtained from the Council under or in connection with the Agreement:

36.3.1 is given only to such of the staff and professional advisers or consultants engaged to advise it in connection with the Agreement as is strictly necessary for the performance of the Agreement;

36.3.2 is treated as confidential and not disclosed (without prior approval) or used by any staff or such professional advisers or consultants otherwise than for the purposes of the Agreement.

36.4 Where it is considered necessary in the opinion of the Council, the Supplier shall ensure that staff or such professional advisers or consultants sign a Confidentiality Undertaking before commencing work in connection with the Agreement.

36.5 The Supplier shall not use any Confidential Information received otherwise than for the purposes of the Agreement.

36.6 The provisions of Clauses 36.1 to 36.5 shall not apply to any Confidential Information received by one Party from the other:

36.6.1 which is or becomes public knowledge (otherwise than by breach of this Clause);

36.6.2 which was in the possession of the receiving party, without restriction as to its disclosure, before receiving it from the disclosing party;

36.6.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

36.6.4 is independently developed without access to the Confidential Information; or

36.6.5 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure under the FOIA pursuant to Clause 56.

36.7 Nothing in this Clause shall prevent the Council:

36.7.1 disclosing any Confidential Information for the purpose of:

- (i) the examination and certification of the Council's accounts; or
- (ii) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources; or

36.7.2 disclosing any Confidential Information obtained from the Supplier:-

- (i) to any other department, office or agency of the Government; or
- (ii) to any person engaged in providing any goods or services to the Council for any purpose relating to or ancillary to the Agreement. Provided that in disclosing information under this Clause the Council discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a Confidentiality Undertaking is given where appropriate.

36.8 Nothing in this Clause shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

36.9 In the event that the Supplier fails to comply with this Clause 36 the Council reserves the right to terminate the Agreement by notice in writing with immediate effect.

37 PUBLICITY

37.1 Except with the written consent of the Council the Supplier shall not make any press announcements or publicise this Agreement in any way but the Council shall be at liberty to make any press announces or publicise this agreement without obtaining the consent of the Supplier.

- 37.2 Both Parties shall take all reasonable steps to ensure the observance of the provisions of Clause 37.1 by all their servants, employees, agents and consultants and the Supplier shall take all reasonable steps to ensure the observance of the provisions of Clause 37.1 by its Supplier Personnel.
- 37.3 Neither Party shall use business logos or publicise the logos of the Party's either in print or electronically without the express written consent of the other Party such consent shall not be unreasonably withheld or delayed.
- 37.4 Notwithstanding the provisions of Clause 37.1, the Council shall be entitled to publicise this Agreement in accordance with any legal obligation upon the Council, including any examination of this Agreement by the Audit Commission and the Council's external Auditors and the provisions of FOIA.
- 37.5 The Parties acknowledge that the Audit Commission has the right to publish details of this Agreement (including Confidential Information) in its relevant reports to Parliament to the extent permitted by law.

38 ASSIGNMENT AND SUB-CONTRACTING

- 38.1 This Agreement is personal to the Supplier.
- 38.2 The Supplier shall not assign, novate, or otherwise dispose of this Agreement or any part thereof without the previous consent in writing of the Council acting in its absolute discretion.
- 38.3 The Supplier shall not sub-contract the performance of any of its obligations under this Agreement without the prior written consent of the Council. Where such consent is granted the Supplier and the Supplier's Sub-contractor shall comply with the Council's reasonable requirements.
- 38.4 Notwithstanding any sub-contracting permitted hereunder, the Supplier shall remain primarily responsible for the acts and omissions of its Sub-contractors as though they were its own.
- 38.5 Subject to Clause 38.6, the Council shall be entitled to:
 - 38.5.1 assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof to any Contracting Authority; and

- 38.5.2 novate this Agreement to any other body (including but not limited to any private sector body) which substantially performs any of the functions that previously had been performed by the Council.
- 38.6 This Agreement is binding on the Council and its successors and assignees and the Supplier and the Supplier's successors and permitted assignees.
- 38.7 Any change in the legal status of the Council such that it ceases to be a Contracting Authority shall not affect the validity of this Agreement. In such circumstances, this Agreement shall be binding on any successor body to the Council.
- 38.8 In the event that the Supplier, in accordance with the terms of this Agreement, enters into a Sub-Contract in connection with this Agreement, the Supplier shall ensure that a term is included in the Sub-Contract which requires the Supplier to pay all sums due thereunder to the Sub-Contractor within a specified period, not to exceed thirty (30) days, from the date of receipt of a valid and agreed invoice as defined by the terms of the supply contract or Sub-Contract (as appropriate).

39 DAMAGE

- 39.1 Where the Supplier causes damage to any property (whether tangible or otherwise) of the Council or of third parties in the performance of this Agreement the Supplier shall make good the said damage forthwith at the Supplier's own risk and expense to the Council's satisfaction.

40 POWER OF THE COUNCIL IN DEFAULT

- 40.1 Where the Council re-lets the Agreement or any part thereof following termination in accordance with Clause 33.1 (Supplier Default), the Supplier shall make good to the Council all losses damages and expenses that the Council may incur or be liable for in consequence of such re-letting.

41 AUDIT (INTERNAL, DISTRICT OR NATIONAL AUDIT OFFICE)

- 41.1 The Supplier shall on request afford the Council, the Council's representatives or any representative of any funding body pertinent to the supply of the Goods including the Audit Commission and the Council's external auditors such access to those records as may be required in connection with the Agreement.

42 INFORMATION AND ASSISTANCE

42.1 Throughout the Period of the Agreement and for a minimum period of six (6) years or such other period as may be required to comply with any conditions imposed by any funding body as referred to in 41.1 above after its expiry, the Supplier shall:

- 42.1.1 maintain full and accurate records of the Agreement, all expenditure reimbursed by the Council and all payments made by the Council; and
- 42.1.2 give all reasonable assistance to the Council including attending all meetings of any body of the Council and/or of the Council's Executive in order to answer questions pertaining to this Agreement should the need arise.

43 BEST VALUE

43.1 The Supplier shall co-operate with the Council in respect of the introduction and implementation of any requirements imposed on the Council in connection with Best Value and shall comply with the reasonable instructions and requests for information of the Council's responsible officer in respect thereof.

44 EMERGENCIES AND DISASTERS

44.1 If the Council notifies the Supplier of a situation, which in the opinion of the Council amounts to a possible, potential or actual emergency or disaster, the Supplier shall immediately undertake such tasks and for such purposes provide such assistance including labour, vehicles, equipment and materials as are reasonably available to it and used in connection with the Agreement as the Council may reasonably require. The Council shall reimburse the actual reasonable costs incurred by the Supplier in connection with the services provided to the Council in an emergency or disaster situation.

- 44.2 During the continuation of such emergency or disaster the Supplier shall keep such records in the form of a log of all key decisions, activities and services provided by the Supplier during the emergency or disaster. The Supplier shall on request afford the Council such access to those records as may be required by the Council. The records shall be submitted to the Council with the Supplier's invoices for payment for the services provided during the emergency or disaster.
- 44.3 The Supplier shall if requested by the Council prior to the commencement of the Agreement provide the Council with the names, addresses and telephone numbers of up to three of its employees who may be contacted at any time (approved by the Council) and who will be able to initiate an immediate response to the tasks identified by the Council in the event of an emergency or disaster. The Supplier shall further notify the Council of any changes in the information provided as soon as reasonably practicable.
- 44.4 The Supplier shall have no liability for any failure to perform its obligations under this Agreement as a result of the Council exercising its powers under this Clause, subject to the Supplier using all reasonable endeavours to continue to perform its obligations under this Agreement during such emergency or disaster situations.
- 44.5 In the event that the Supplier's performance is affected by an emergency or disaster the Council shall not be liable to pay for any element of the Goods which it does not receive or to the extent that any aspect of the Supplier's performance is adversely affected by the situation.

45 MISTAKES IN INFORMATION

- 45.1 The Supplier shall be responsible for the accuracy of all drawings, documentation and information in any form whatsoever supplied to the Council and shall pay the Council any extra costs occasioned by any discrepancies, errors or omissions therein.

45.2 Whilst the Council shall endeavour to ensure the accuracy of all drawings, documentation and information in any form whatsoever ("material") provided by it to the Supplier, the Council shall be under no liability whatsoever for the content of such material, and the Supplier acknowledges that it is solely responsible for making its own enquiries and conducting all due diligence to verify the accuracy of such material, and further that the Supplier shall have no remedy against the Council for any mistake, error or omission in such material, whether in breach or contract, negligence or in any other way whatsoever.

46 INFORMATION AND INTELLECTUAL PROPERTY RIGHTS

46.1 It shall be a condition of the Agreement that, except to the extent that the Goods incorporate designs furnished by the Council, the Goods will not infringe any Intellectual Property Right of any third party and the Supplier shall indemnify the Council against all actions, suits, claims, demands, losses, charges, costs and expenses which the Council may suffer or incur as a result of or in connection with any breach of this Clause.

46.2 All Intellectual Property Rights (including ownership and copyright) in any specifications, instructions, plans, drawings, patents, patterns, models, designs or other material:

46.2.1 provided or made available to the Supplier by the Council shall remain the property of the Council;

46.2.2 prepared or provided by or for the Supplier for use, or intended use, in relation to the performance of this Agreement shall be the subject of a perpetual, irrevocable, royalty free licence to the Council (which shall carry the right to grant sub-licences) to use the Goods for all purposes reasonably contemplated by, connected with or ancillary to this Agreement, including (without limitation) their repair and maintenance.

46.3 At the termination of the Agreement the Supplier shall immediately return to the Council all materials, work or records held in connection with this Agreement, including any back up media.

46.4 The provisions of this Clause shall apply during the continuance of this Agreement and indefinitely after its expiry or termination.

47 COMMUNICATIONS

- 47.1 Except as otherwise expressly provided no communication from one Party to the other shall have any validity under this Agreement unless made in writing.
- 47.2 The Parties agree that e-mail will be considered a satisfactory form of communication for the purposes of Clause 47.1.
- 47.3 Any notice whatsoever which either Party hereto is required or authorised by this Agreement to give or make to the other shall be given or made either by letter, delivered by hand or by recorded or registered post.
- 47.4 For the purposes of Clause 47.3 above the address and contact details of the Supplier shall be as set out in the contact form in the Invitation To Tender and the Council's details shall be as referred to in the Award Letter.
- 47.5 Either party may change its address for service by notice as provided in this Clause 47.

48 SEVERABILITY

- 48.1 If any provision of this Agreement 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 hereof shall continue in full force and effect as if this Agreement had been executed with the invalid illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Agreement, the Council and the Supplier shall immediately commence good faith negotiations to remedy such invalidity, and if no agreement has been reached within twenty (20) working days of commencement, either Party may by notice to the other terminate the Agreement and neither Party shall bear any liability to the other in respect of such termination (but without prejudice to any other provisions of this Agreement).

49 WAIVER

- 49.1 The failure of either Party to insist upon strict performance of any provision of this Agreement, or the failure of either Party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Agreement.

- 49.2 Waiver of any default shall not constitute a waiver of any subsequent default.
- 49.3 No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing in accordance with the provisions of Clause 47.

50 REMEDIES CUMULATIVE

- 50.1 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of this Agreement 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.

51 AMENDMENTS TO THIS AGREEMENT

- 51.1 This Agreement shall not be varied or amended unless such variation or amendment is agreed in writing by a duly authorised representative of the Council ("the Authorised Representative") and by a duly authorised representative of the Supplier ("the Supplier Representative") on behalf of the Supplier.
- 51.2 Orders placed under this Agreement shall not be varied or amended unless such variation or amendment is agreed in writing by the duly Authorised Representative of the Council on behalf of the Council and by a duly authorised Supplier Representative on behalf of the Supplier.

52 THIRD PARTY RIGHTS

- 52.1 A person who is not a Party to this Agreement shall not have any rights under or in connection with it and shall not be entitled to enforce any part of it.

53 DISPUTE RESOLUTION PROCESS

- 53.1 The Parties shall refer all matters in dispute arising out of or in connection with this Agreement for consideration and decision by directors or designated senior managers of each Party, who shall use their reasonable endeavours to reach a solution to any such dispute within a period of twenty one (21) days, and failing which, unless the Parties agree another period of time, any such dispute may, upon agreement of the Parties be dealt with as set out in sub-clause 53.2.

- 53.2 If the dispute cannot be resolved by the Parties' representatives nominated under Clause 53.1, the dispute may be referred to mediation under the supervision of the Centre for Effective Dispute Resolution of 70 Fleet Street, London, EC47 1EU ("CEDR"). Mediation shall commence by either Party serving on the other written notice ("Mediation Notice") setting out in summary the issues in dispute and calling upon that other Party to join in an approach to CEDR for the appointment of a mediator.
- 53.3 The mediation shall be conducted using a sole mediator in or substantially in accordance with CEDR's recommended agreement for the time being in use. The mediator must be a CEDR accredited mediator agreed between the Parties, or in default of agreement within fourteen (14) days of notice of either Party calling upon the other to engage in mediation, appointed by CEDR (provided that both parties have agreed in principle to mediation).
- 53.4 The Parties agree to co-operate fully and promptly and in good faith with CEDR and/or the mediator in the performance of their obligations under this Clause. Both Parties will afford the mediator all necessary assistance which the mediator requires to consider the dispute including but not limited to full access to any documentation or correspondence relating to the matters in dispute.
- 53.5 Unless agreed otherwise in the course of the procedure each Party shall bear its own costs of the mediation.
- 53.6 If and to the extent that after engaging in good faith in mediation the Parties do not resolve the matters in dispute, all matters remaining in dispute may be referred to the Courts in accordance with Clause 54 below.
- 53.7 In the event that mediation does not resolve all matters in dispute within a period of fifty-six (56) days, or such other time as the Parties may agree, either Party may take such action as is available to it under this Agreement or generally at law.
- 53.8 Nothing in this Agreement shall be taken to prevent or constrain either Party from seeking an injunction or other urgent remedy where justified in the circumstances.
- 53.9 Work and activity to be carried out under this Agreement shall not cease or be delayed by this dispute resolution procedure.

54 LAW AND JURISDICTION

54.1 This Agreement is a contract made in Wales and the applicable law shall be the law of England and Wales, as it applies in Wales. Subject to Clause 53, the Parties hereby irrevocably submit to the exclusive jurisdiction of the Courts of England and Wales sitting in the locality of the Council, or at Cardiff.

55 NO AGENCY

55.1 The Supplier is not and shall not in any circumstances hold itself out as being the servant or agent of the Council. The Supplier shall not hold itself out as being authorised to enter in any contract on behalf of the Council or in any way bind the Council to the performance, variation, release or discharge of any obligation to a third party. The Supplier Personnel shall not hold themselves out to be and shall not be held out by the Supplier as being servants or agents of the Council.

56 FREEDOM OF INFORMATION

56.1 The Supplier acknowledges that the Council is subject to the requirements of the FOIA and shall assist and co-operate with the Council (at the Supplier's expense) to enable the Council to comply with these requirements.

56.2 The Supplier shall and shall procure that its sub-contractors shall:

56.2.1 transfer the Request for Information to the Council as soon as practicable after receipt and in any event within two (2) working days of receiving a Request for Information;

56.2.2 provide the Council with a copy of all Information in its possession or power in the form that the Council requires within five (5) working days (or such other period as the Council may specify) of the Council requesting that Information; and

56.2.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5(2) of the Environment Information Regulations.

56.3 The Council shall be responsible for determining in its absolute discretion whether the Commercially Sensitive Information and/or any other Information:

- 56.3.1 is exempt from disclosure under the FOIA; and
- 56.3.2 is to be disclosed in response to a Request for Information.

56.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Council.

56.5 The Supplier acknowledges that the Council may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part I of the FOIA ("the Code") be obliged under the FOIA to disclose information concerning the Supplier:

- 56.5.1 in certain circumstances without consulting with the Supplier or,
- 56.5.2 following consultation with the Supplier and having taken its views into account.

56.6 Provided always that where 56.5.1 applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

56.7 The Supplier shall ensure all information submitted in connection with tendering process or in the course of this Agreement or relating to this Agreement is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

56.8 The Supplier acknowledges that any lists or schedules provided by it as part of the tendering process outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with this Clause.

56.9 Any failure to agree between the Council and the Supplier arising out of or in connection with the disclosure of information under the FOIA shall be referred to the Information Commissioner for determination and resolution prior to any disclosure.

57 WHISTLEBLOWING

57.1 The Supplier shall comply with the Council's whistle blowing procedure, which ensures that employees of the Supplier are able to bring to the attention of a Relevant Authority malpractice, fraud and breach of Legislation on the part of the Supplier or any Supplier Personnel without fear of disciplinary and other retribution or discriminatory action.

58 PRICE VARIATION

58.1 If during the period of this Agreement there shall be any variations in the cost to the Supplier in supplying the Goods, an application may be made by either Party for a net increase to or deduction from the Price as the case may be, at twelve (12) month intervals or longer from the commencement of this Agreement provided that no addition to or deduction from the Price shall alter the amount of profit of the Supplier included in the Price. Orders placed before the effective date of any proposed price increase must be supplied at the pre-increased Price(s).

58.2 Proposals for the revision of Prices must be submitted in writing to Monmouthshire County Council nominated lead officer at least sixty (60) days prior to the effective date of the variation. The Supplier must furnish such evidence as may be reasonably required to satisfy the Council that any increase in cost is justified and/or any decrease in cost is adequate.

58.3 Revised Prices will only be paid after the Supplier has received written confirmation of the new Prices from the nominated lead officer of Monmouthshire County Council.

58.4 In the event of failure to reach agreement on the revision of Prices, either Party shall be at liberty to give the other two months notice in writing to terminate this Agreement with the price or prices in dispute remaining unaltered.