

LONDON BOROUGH OF BARNET
STANDARD PURCHASE ORDER TERMS & CONDITIONS

This agreement is entered into on the date of the Purchase Order.

Customer's name:	The Mayor and Burgesses of the London Borough of Barnet
Customer's address:	2 Bristol Avenue, Colindale, London, NW9 4EW
Supplier:	You as the supplier of Goods and/or Services as named on the Purchase Order
Commencement Date:	As further described on the Purchase Order or the date of the Purchase Order.
Expiry Date:	On completion of supply of Goods and/or Services as determined by the Customer.
Services and/or Goods:	As further detailed and prescribed in the Purchase Order and by the Customer.
Charges:	As per the Purchase Order.
Payable in instalments:	As per the Purchase Order.
Possibility of extension:	As determined by the Customer at their sole and absolute discretion.
Duration of extension:	Subject to the Customer's sole and absolute discretion in accordance with clause 2.2.

The Supplier's acknowledgement of the Purchase Order shall constitute acceptance of these terms and conditions and shall create the contract between the Customer and the Supplier.

Agreed terms

1. Definitions and Interpretation

1.1 The following definitions and rules of interpretation apply in this agreement:

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

Conditions: these terms and conditions set out in clause 1 (Interpretation) to clause 8 (General) (inclusive) of this agreement.

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures: as defined in the Data Protection Legislation.

Customer Materials: all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.

Deliverables: all documents, products and materials developed by the Supplier or its agents, subcontractors and personnel as part of or in relation to the Services in any form, including without limitation computer programs, data, reports and specifications (including drafts), and the key deliverables set out in this agreement.

Domestic Law: the law of the United Kingdom or a part of the United Kingdom.

Goods: means the goods or equipment and related accessories, spare parts and documents and other physical material to be supplied by the Supplier to the Customer in accordance with this agreement.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Services: the services, including without limitation any Deliverables, to be provided by the Supplier pursuant to the agreement.

Purchase Order: means a written or electronic order issued by Customer to the Supplier for the purchase of Goods and/or Services, which includes a description of the Goods and/or Services, quantities, prices, delivery instructions, and any other

applicable terms and conditions. Each Purchase Order shall be governed by the terms of this agreement.

UK GDPR: has the meaning given in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

1.2 Interpretation:

- (a) Clause and paragraph headings shall not affect the interpretation of this agreement.
- (b) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (c) Unless the context otherwise requires, words in the singular shall include the plural. Unless the context otherwise requires, a reference to one gender shall include a reference to the other gender.
- (d) A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- (e) A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- (f) All undefined words and expressions are to be given their normal English meaning.
- (g) A reference to **writing** or **written** includes e-mail but excludes fax.
- (h) Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- (i) Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Supply of Services and/or Goods

- 2.1 The Supplier shall supply the Services and/or Goods to the Customer from the Commencement Date in accordance with this agreement and the Purchase Order. Unless otherwise agreed by the parties, time shall be of the essence in delivering the Services and/or Goods.
- 2.2 The Supplier shall provide the Services and/or Goods to the Customer from the Commencement Date until the Expiry Date and this agreement shall terminate automatically on the Expiry Date unless extended by the Customer providing at least one (1) month's written notice. If the Customer gives such notice, then the term shall be extended by the period set out in the notice.

2.3 In supplying the Services and/or Goods, the Supplier shall:

- (a) co-operate fully with the Customer in all matters relating to the Services and comply with all instructions and rectification requirements issued by the Customer;
- (b) perform the Services and supply the Goods with the highest level of care, skill and diligence and in accordance with best practice in the Supplier's industry, profession or trade;
- (c) appoint, or at the written request of the Customer, promptly replace a manager with full authority to contractually bind the Supplier in all matters relating to the Services;
- (d) use only personnel who are suitably skilled, experienced, and in sufficient number to fulfil the Supplier's obligations under this agreement;
- (e) ensure that all Deliverables, Goods, and any materials used in performing the Services:
 - (i) conform in all respects with their description as set out in the applicable Purchase Order;
 - (ii) are of the best quality and free from defects in workmanship, installation and design;
 - (iii) are fit for any purpose expressly or impliedly made known to the Supplier by the Customer;
 - (iv) are provided in a cost-effective manner consistent with the required level of quality and performance;
- (f) use best endeavours to pass on to the Customer the benefit of any manufacturer warranties relating to the Goods;
- (g) comply with all applicable statutory and regulatory requirements and industry standards in relation to:
 - (i) the manufacture, labelling, packaging, storage, handling, delivery and installation of the Goods;
 - (ii) the performance of the Services;
- (h) provide all equipment, tools, vehicles, and other items required to provide the Services or deliver the Goods;
- (i) obtain, maintain and comply with, at its own cost (unless otherwise agreed in writing by the Customer), all necessary consents, licences and permissions (statutory, regulatory, contractual or otherwise) required to carry out its obligations under this agreement;

- (j) be responsible for the accuracy of all deliverables, drawings, documents, and information provided to the Customer and shall reimburse the Customer for any costs arising from discrepancies, errors or omissions;
- (k) comply with all applicable laws, statutes, regulations, codes, guidance, and requirements or recommendations issued from time to time by any relevant regulatory or supervisory body;
- (l) observe all health and safety rules, regulations, and any other reasonable security requirements applicable at any of the Customer's premises, as notified from time to time;
- (m) hold all Customer Materials in safe custody at its own risk, maintain them in good condition, and use or dispose of them only in accordance with the Customer's written instructions or authorisation;
- (n) at all times comply with the provisions of the Modern Slavery Act 2015, the Human Rights Act 1998, the UK Government's Prevent Strategy, and all equality laws in force from time to time;
- (o) provide, in respect of Goods, a 12 (twelve) month warranty to the Customer;
- (p) notify the Customer promptly upon becoming aware of any matter adversely affecting or threatening the Services, the Goods, or its responsibilities under this Agreement; and
- (q) ensure that the Services and Goods comply with all underpinning values, best practices, and any other specific requirements as set out in the relevant Purchase Order.

3. Data protection

- 3.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 3 (Data protection) is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 3.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor. The Supplier shall comply with any written instructions in respect of processing received from the Customer. The Customer shall set out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 3.3 Without prejudice to the generality of clause 3.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this agreement.

3.4 Without prejudice to the generality of clause 3.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:

- (a) process that Personal Data only on the documented written instructions of the Customer unless the Supplier is required by Domestic Law to otherwise process that Personal Data. Where the Supplier is relying on Domestic Law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits the Supplier from so notifying the Customer;
- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- (d) not transfer any Personal Data outside of the UK unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- (e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications,

impact assessments and consultations with supervisory authorities or regulators;

- (f) notify the Customer without undue delay on becoming aware of a Personal Data Breach;
- (g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Domestic Law to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 3 (Data protection) and allow for audits by the Customer or the Customer's designated auditor and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

3.5 The Customer does not consent to the Supplier appointing any third party processor of Personal Data under this agreement.

3.6 Either party may, at any time on not less than 30 (thirty) days' notice, revise this clause 3 (Data protection) by replacing it with any applicable controller to processor standard clauses or similar terms adopted under the Data Protection Legislation or forming part of an applicable certification scheme (which shall apply when replaced by varying this agreement in accordance with clause 8.7 (Variation)).

4. Title and intellectual property

4.1 Title to any Deliverables that are goods or title in any physical media on which Deliverables are stored and title to any goods or materials transferred to the Customer as part of the Services shall pass to the Customer on the earlier of their delivery to the Customer or payment of the Charges for them. The Supplier transfers the Deliverables and all such goods and materials to the Customer free from all liens, charges and encumbrances.

4.2 Title to the Goods shall pass to the Customer on payment of the Charges by the Customer. Risk to the Goods shall pass to the Customer on the Customer's acceptance of the Goods.

4.3 In the absence of prior written agreement by the Customer to the contrary, all Intellectual Property Rights created by the Supplier:

- (a) in the course of performing the Services; or
- (b) exclusively for the purpose of performing the Services,

shall vest in the Customer on creation.

5. Indemnity and limitation of liability

- 5.1 The Supplier shall indemnify the Customer, and keep it indemnified, from and against any and all losses and liabilities whatsoever and howsoever caused to the extent arising directly (but not indirectly or consequentially) out of the act, default, negligence, breach of contract, or breach of statutory duty by the Supplier or any of its employees or agents acting within the course of their employment or any of its subcontractors and their employees or agents.
- 5.2 The Supplier shall indemnify and keep indemnified the Customer against all losses, claims, damages, liabilities, fines, interest, penalties, costs, charges, sanctions, expenses, compensation (including compensation to protect goodwill and ex gratia payments), demands and legal and other professional costs (calculated on a full indemnity basis) arising from its breach of any obligations under the Data Protection Legislation.
- 5.3 Nothing in this agreement limits any liability which cannot legally be limited, including but not limited to liability for death or personal injury caused by negligence; fraud or fraudulent misrepresentation; those arising under Part 1 of the Consumer Protection Act 1987; breach of its obligations arising under any of Section 12 Sale of Goods Act 1979, section 2 Supply of Goods and Services Act 1982 or section 8 Supply of Goods (Implied Terms) Act 1973; or any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.

6. Insurance

During the term of the agreement and for a period of six (6) years thereafter, the Supplier shall maintain in force, with a reputable insurance company, employers liability insurance, professional indemnity insurance (if relevant), product indemnity insurance (if relevant), and public liability insurance to cover the liabilities that may arise under or in connection with this agreement, and shall produce to the Customer on request both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

7. Termination

- 7.1 Without affecting any other right or remedy available to it, the Customer may terminate this agreement in whole or in part at any time by giving one (1) weeks written notice to the Supplier.
- 7.2 Without affecting any other right or remedy available to it, the Customer may terminate this agreement with immediate effect by giving written notice to the Supplier if:

- (a) it commits any or repeated breach or non-observance of any of the terms or conditions of this agreement;
- (b) if the Supplier takes or has taken against it (other than in relation to a solvent restructuring) any step or action towards its entering bankruptcy, administration, provisional liquidation or any composition or arrangement with its creditors, applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court), being struck off the register of companies, having a receiver appointed to any of its assets, or its entering a procedure in any jurisdiction with a similar effect to a procedure listed in this clause;
- (c) the Supplier or its affiliates embarrass or bring the Customer into disrepute or diminish the public trust in them; and/or
- (d) the Supplier fails to comply with its legal obligations in the fields of environmental, social or employment law when delivering the Services and/or Goods.

7.3 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.

7.4 Termination or expiry of this agreement shall not affect any of the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of this agreement which existed at or before the date of termination or expiry.

8. General

8.1 Force majeure. Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for six (6) days, the party not affected may terminate this agreement by giving one (1) days written notice to the affected party.

8.2 Subcontracting. The Supplier may not subcontract any or all of its rights or obligations under this agreement without the prior written consent of the Customer. If the Customer 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.

8.3 Confidentiality. The Supplier undertakes that it shall not disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party. The Supplier shall not use the Customer's confidential

information for any purpose other than to perform its obligations under this agreement.

- 8.4 Publicity.** The Supplier shall not make, or permit any person to make, any press or public announcement concerning the existence, subject matter or terms of this agreement, the wider transactions contemplated by it, or the relationship between it and the Customer, without the prior written consent of the Customer except as required by law, any governmental or regulatory authority, any court or other authority of competent jurisdiction.
- 8.5 Transparency.** The Supplier will provide the Customer with all assistance and information required in order for the Customer to meet their obligations under the Freedom of Information Act 2000, The Environmental Information Regulations 2004 and the Local Government Transparency Code.
- 8.6 Entire agreement.** This agreement 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.
- 8.7 Variation.** No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 8.8 Waiver.**
- (a) A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
 - (b) A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 8.9 Set-off.** The Customer may at any time, without notice to the Supplier, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this agreement.
- 8.10 Payment.** Notwithstanding any other clause in this agreement the Customer reserves the right to withhold, in whole or in part, the Charges for any and all of the Services and/or Goods that: (i) have not been completed by the Supplier; (ii) are inadequate

or defective and have not been remedied or resolved in a manner satisfactory to the Customer; and/or (iii) fail to comply with the terms and conditions of this agreement.

- 8.11 Severance.** If any provision or part-provision of this agreement 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 8.11 shall not affect the validity and enforceability of the rest of this agreement.
- 8.12 Dispute resolution.** The parties shall use all reasonable endeavours to resolve any dispute arising out of or in connection with this agreement. If the parties' respective contract managers are unable to resolve any such dispute within seven (7) days of the matter arising, the matter shall be referred to a senior representative who shall use their reasonable endeavours to resolve the dispute within seven (7) days of the referral.
- 8.13 Notices.** Any notice or other communication given to a party under or in connection with this agreement shall be in writing and sent to the party at the address given in this agreement or using details as notified by that party in writing to the other party.
- 8.14 Third party rights.** This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.
- 8.15 Governing law.** This agreement, 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 and Wales.
- 8.16 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.