

- 2.3 words importing persons include firms companies and corporations and vice versa;
- 2.4 references to numbered clauses and schedules are references to the relevant clause in or schedule to this Contract;
- 2.5 reference in any schedule to this Contract to numbered paragraphs relate to the numbered paragraphs of that schedule;
- 2.6 where any obligation is undertaken by two or more persons jointly they are to be jointly and severally liable in respect of that obligation;
- 2.7 any obligation on any party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
- 2.8 any party who agrees to do something shall be deemed to fulfil that obligation if that party procures that it is done;
- 2.9 the headings to the clauses, schedules and paragraphs of this Contract shall not affect the interpretation;
- 2.10 any sum payable by one party to the other shall be exclusive of VAT which shall where it is chargeable be paid in addition to the sum in question at the time when the sum in question is due to be paid;
- 2.11 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment.

3. Conditions of Purchase

- 3.1 The Conditions shall apply to all Contracts for the purchase of Goods by the Council from the Seller to the exclusion of all other terms and conditions including any terms or conditions which the Seller may purport to apply under any sales offer or similar document or in correspondence. These Conditions constitute the entire understanding between the Council and the Seller with respect to the subject matter covered by the Contract and supersede all previous contracts and understandings between the parties save that all representations, statements or warranties made or given by the Seller its servants and agents (whether orally in writing or in any of the Seller's brochures, catalogues and advertisements) regarding the quality and fitness for purpose of the Goods or any of the Goods shall be deemed to be express conditions of the Contract.
- 3.2 Dispatch or delivery of the Goods by the Seller to the Council shall be deemed conclusive evidence of the Seller's acceptance of these Conditions.
- 3.3 Any variation of these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Council.

4. Quality and Description of Goods

The Goods shall:

- 4.1 conform as to quality, kind and description with the particulars stated in the Contract and with any British, European or International specification which is relevant to the Goods and is current at the date of the Contract;
- 4.2 Goods used in compliance with a standard for which there is an associated safety mark scheme shall bear the certification mark of the scheme;
- 4.3 be of the quantity or in the numbers specified in the Contract;
- 4.4 be of sound materials and workmanship and the Seller shall ensure that all the Goods shall be manufactured, stored, tested and packed in accordance with all European Standards applicable to them;
- 4.5 conform in every respect to any sample provided or given by either party;
- 4.6 be capable of any standard of performance specified in the Contract; and
- 4.7 where the purpose for which they are required is indicated in the Order or Tender either expressly or by implication be fit for that purpose.

5. Delivery of the Goods

- 5.1 The Goods shall be marked in accordance with the specifications and all lawful requirements, and shall be properly packed and secured for delivery to the Council in such a manner as to reach their destination in an undamaged condition under normal conditions of transport and shall, unless otherwise agreed, be delivered by the Seller to the Council or be despatched by the Seller for delivery to the Council at the location specified in the Contract and at the time(s) mentioned therein.
- 5.2 Delivery and unloading shall be free of charge to the Council and at the Seller's risk and delivery to a carrier shall not be deemed to be delivery of the Goods to the Council.
- 5.3 Every delivery of the Goods shall be accompanied or preceded by a delivery or advice note addressed to the appropriate officer of the Council at the establishment named in the Contract, and that note shall state in full the name, quality, sort, rate, price, quantity and number of the Goods delivered therewith or to be delivered thereafter.
- 5.4 The Seller, his servants and agents shall comply with all reasonable requirements of the Council at the place of delivery and in particular shall ensure that his vehicles are not reversed or manoeuvred at any establishment where children or other people are or are likely to be present, without assistance from a responsible adult.

5.5 Delivery and payment are not concurrent conditions. Payment for the Goods is to be made. **[NOTE: Either- in accordance with Condition [23.4] or specify event/timing of payment.]

6. Import or export licences and other formalities

The Seller shall promptly obtain all necessary export licences, clearances and other consents necessary for the supply of the Goods.

7. Council's clause making time for delivery of the essence of the Contract

7.1 The Delivery Date is of the essence of this Contract.

7.2 If the Seller fails to deliver all of the Goods in accordance with the Contract on the Delivery Date such failure shall be deemed to be a material breach of contract which is incapable of remedy in such event and without prejudice to the Council's other rights and remedies for breach of Contract:

7.2.1 The Council may terminate the Contract in accordance with Condition 31.2. In this event without prejudice to the Council's other remedies the Seller shall promptly collect any Goods which have been delivered.

7.2.2 Where delivery of a quantity of the Goods which correspond to the Contract is less than the agreed quantity and the Council has not exercised its rights of termination under Condition 7.2.1 the Council may accept the Goods which correspond to the Contract and take action in respect of the Seller's breach in failing to deliver the remainder of the Goods.

7.2.3 The Council may require the Seller promptly to deliver sufficient goods which correspond to the Contract to comply with the quantity required.

8. Passing of Title and Risk in the Goods

8.1 Title in the Goods shall pass to the Council immediately on delivery of the Goods in accordance with Condition 5.

8.2 Risk in the Goods shall not pass to the Council until a delivery note has been duly signed on behalf of the Council in accordance with Condition 5.3. If at any time after the delivery note has been signed by the Council the Goods are rejected by the Council for any reason, risk in the Goods shall revert to the Seller immediately upon the Council notifying the Seller of such rejection of the Goods.

9. Council's clause on passing of risk in Contracts for sale of unascertained goods or goods forming part of a bulk

The risk of the Goods (being goods sold as unascertained goods or as goods forming part of a bulk) shall not pass to the Council until delivery to the Council notwithstanding that property in the Goods has already been transferred to the Council.

10. Acceptance

- 10.1 Property in the Goods passes to the Council on the signing of this Contract by the Council and the Seller.
- 10.2 Risk in the Goods remains with the Seller until the Goods are delivered in accordance with this Contract and accepted at the agreed place of delivery by the Council.
- 10.3 For the purposes of this clause and of this Contract generally:
- 10.3.1 the Council's acceptance of the Goods shall be solely by way of written, signed receipt acknowledging that the Goods are in acceptable condition and otherwise in conformity with the Contract;
 - 10.3.2 the said receipt may, if the Council so determines, be signed and given by a third party acting as agent for the Council for this purpose;
 - 10.3.3 the Seller shall permit an independent expert, nominated by the Council, to inspect the Goods at the Seller's premises on or around the date on which this Contract is signed, and to compile a condition report upon the Goods; and
 - 10.3.4 the said condition report shall, for all purposes and in any dispute, difference, controversy or claim arising out of or in connection with this Contract, be conclusive as to the condition of the Goods at the time of signing of this Contract.

11. Council's provisions for sale on approval

- 11.1 The Council shall not be deemed to have accepted any part of the Goods until after the Council has actually inspected the Goods and ascertained that they are in accordance with the Contract. The Council may reject Goods that are not in accordance with the Contract until a reasonable time after such inspection.
- 11.2 The Council may by notice to the Seller prior to acceptance reject any Goods that are not in accordance with the Contract. The Council may set off against any payment due to the Seller (whether under this Contract or otherwise) the Price of such Goods. Unless within a reasonable time of receipt of notice of rejection the Seller collects such Goods the Council may dispose of them as the Council shall think fit (provided that if the Council sells such Goods the Council shall account to the Seller for the net proceeds of such sale).

12. Default by Seller in the Supply of Goods

If any or part of the Goods to be supplied under the Contract shall:

- (i) not be duly delivered by the Seller to the Council at the time (if any) stated in the Contract subject to any extension of time granted by the Council, or

- (ii) in the opinion of the Officer of the Council for the use of whose department they are required (whose decision shall be conclusive as against the Seller) not reasonably be of the quality and sort Contracted for, or
- (iii) be deficient in the quantity or number required by the Contract, or
- (iv) be delivered without a delivery or advice note containing correct and sufficient particulars of the name, quality, sort, rate, price, quantity and number of such goods,

then the Council may, without prejudice to any other remedy, by notice as defined in Condition 37 served on the Seller, reject those Goods. If the Goods are not removed by the Seller within twenty four (24) hours after service of the notice, the Council may return them to the Seller at the expense of the Seller and in every such case it shall be lawful for the Council to purchase at such prices and on such terms and conditions as the Council thinks fit the same or similar goods and in that event the Seller shall pay to the Council or it shall be lawful for the Council to deduct from any sum that is due or may become due to the Seller under the Contract or otherwise, all costs, charges and expenses of such additional supply or arising from such failure to perform the Contract over and above the rate or price at which such goods are under the Contract to be supplied and delivered.

13. Council's clause relating to damage or loss in transit

The Seller upon receiving notice of any loss or damage to the Goods in transit from the Council shall repair or replace free of charge Goods damaged or lost in transit and due delivery of the Goods shall not be deemed to have taken place until replacement or repaired Goods have been delivered by the Seller to the Council. The Council reserves the right to hold such damaged Goods at the Seller's risk or to return them at the risk and expense of the Seller.

14. Council's provisions regarding right to reject goods after acceptance

- 14.1 The Seller agrees to permit the Council to return any of the Goods which are not in accordance with the Contract at any time up to 6 months after delivery notwithstanding that some of the Goods may have already been accepted by the Council.
- 14.2 An acceptance of Goods which conform to the contract of sale shall not deprive the Council of the right to reject the rest of the Goods on the ground that they are not in conformity with the Contract, provided that, if some of those Goods are in conformity with the Contract, the Council accepts them.
- 14.3 Unless within a reasonable time of receipt of notice of rejection the Seller collects such Goods the Council may dispose of them as the Council shall think fit (provided that if the Council sells such Goods the Council shall account to the Seller for the net proceeds of such sale).

15. Obligation on Seller to repair or make replacement of defective Goods even after they have been sub-sold or installed in other assemblies

Without prejudice to the other rights of the Council for breach by the Seller where any of the Goods supplied to the Council is not in accordance with the Contract the Seller shall at the option of the Council forthwith upon notice being given either repair or replace such Goods. If it is necessary to open up or dismantle any other works or assemblies to permit such repair or replacement then the Seller shall bear the cost of such opening up or dismantling and of re-assembly and making good after repairs, replacements and testing of such goods have been completed to the Council's reasonable satisfaction.

16. Council's indemnity against claims by sub-Councils

The Seller shall indemnify the Council against all claims by the customers of the Council and their sub-Councils arising out of any breach whatever by the Seller of this Contract.

17. Postponement or Cancellation of Delivery of Goods

If for any unavoidable cause, including

- (i) civil commotion;
- (ii) cessation or material interruption of traffic by air, road, rail or sea; or
- (iii) Force Majeure Event as referred to in Condition 39 of the Contract

either party to the Contract shall be unable to continue to supply or to accept delivery as the case may be of all the Goods which at the commencement of such disability such party is bound to deliver or accept then within one month of the commencement of that unavoidable cause the Council shall serve notice on the Seller whether or not it requires the quantity or the Goods not delivered to be cancelled or to be delivered. If the Council does so require the Contract shall be performed in the same manner as if the time fixed for each delivery had been postponed by a period equal to the duration of the said period of disability. In the event of any of the causes detailed in (i) to (iii) arising, the Seller or the Council as the case may be shall notify the other as soon as is reasonably practicable.

18. Inspection of Goods and Premises

The Seller shall without hindrance, permit any authorised officer or agent of the Council to enter at any reasonable time without prior notice upon any land or premises or vehicles which are used for the preparation, distribution or storage of any of the Goods to be supplied under the Contract for the following purposes:

- 18.1 to inspect all or any part of the said land, premises or vehicles to ascertain whether they are suitable for the preparation, distribution or storage of the said Goods;

- 18.2 to check the quantity and/or quality of the Goods, their description and their country of origin for the purpose to take such samples as are deemed necessary;

and the Seller shall afford all reasonable assistance to the officer or agent in carrying out such inspections (and this shall include the provision of samples where requested) without charge to the Council.

19. Testing of goods prior to delivery

If the Council requests the same the Goods shall within 14 days prior to dispatch be tried by the Seller in the presence of a representative of the Council by working the Goods in the usual manner. If the Goods shall fail to work in accordance with their specification the Seller shall remedy the defects within 7 days after the trial and the Goods shall then be tried again in the manner set out above. Provided that if the trial shall fail to disclose any defects then the Goods shall be deemed to conform to the Contract and the Council shall be bound to accept the Goods.

20. Weighing of goods prior to delivery

If the Council requests the same the Seller shall on dispatch weigh the Goods in the presence of a representative of the Council and the weights when ascertained shall be recorded by the Seller and notified to the Council upon delivery.

21. Cancellation on Account of Corruption

The Council shall be entitled to cancel the Contract (and to recover from the Seller the amount of any loss resulting from such cancellation) if the Seller shall have

- (i) offered or given or agreed to give any person 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 action in relation to the obtaining or the execution of the Contract or any other Contract with the Council or
- (ii) for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other Contract with the Council or
- (iii) if the like acts shall have been done by any person employed by him or acting on his behalf (whether with or without the knowledge of the Seller) or
- (iv) if in relation to any Contract with the Council the Seller or any person employed by him or acting on his behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or any amendment of them or shall have given any fee or reward, the receipt of which is an offence under sub-section (2) of Section 117 of the Local Government Act 1972.

22. Council's cancellation clause

The Council may cancel this Contract at any time before all of the Goods are delivered by giving written notice. On giving such written notice:

- 22.1 the Seller shall cease to be bound to deliver and the Council shall cease to be bound to receive delivery of any further goods;
- 22.2 the Council shall cease to be bound to pay that part of the Price which relates to goods which have not been delivered;
- 22.3 the Council shall not be liable for any loss or damage whatever arising from such cancellation.

23. Payment

- 23.1 The Price of the Goods shall be the price stated in the Order which shall be binding upon the Seller. The Price is exclusive of VAT which shall be due at the rate ruling on the date of the valid VAT invoice which shall be addressed to the Council.
- 23.2 The Seller shall send an invoice to the address given in the Contract or, if no invoice address is specifically stated, to the establishment to which the Goods have been delivered.
- 23.3 The Seller's invoice shall quote the Order or Tender number or otherwise make reference to the Contract and shall be sent within seven days of the delivery of the Goods together with, where applicable, a copy of the delivery note. Interim payments will only be made where they are specifically provided for in the Contract or Order.
- 23.4 Payment will normally be made by the Council to the Seller before the expiration of 30 days of receipt of a correct invoice by the Council or within any timescales specifically provided for in this Contract or Order. If there are queries regarding details on the invoice or compliance with the terms of the Contract or Order payment will not be made until the queries are resolved.
- 23.5 Provided that no other payments are due from the Council to the Seller the Council shall be entitled to deduct a prompt payment discount of **[9]**% of the Price for payment made in accordance with these Conditions.

24. Right of Set-off

The Council shall have the right to deduct from any sum that is due or may become due to the Seller whether under the Contract or otherwise, all costs, charges and expenses due to the Council from the Seller.

25. Compliance with Law

The Seller declares that the design, construction and quality of the Goods complies in all respects with all relevant requirements of any statute, statutory rule or order or other instrument having the force of law or British, European or International specification which may be in force at the time when the same are applied.

26. Indemnities

26.1

26.1.1 The Seller shall fully indemnify and keep indemnified the Council against any action, claim, demand, costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of any letters, patent, registered design, trademark or trade name protected in the United Kingdom by the use or sale of the Goods or any of the Goods and against all costs and damages which the Council may incur in any action for such infringement or for which the Council may become liable in any such action.

26.1.2 In the event of any claim being made or action brought against the Council arising out of the matters referred to in this Condition, the Seller shall be promptly notified thereof and may, with the prior written consent of the Council, at his own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom. The Council shall not, unless and until the Seller shall have failed to promptly take over the conduct of the negotiations or litigation or been refused consent by the Council to take over the conduct of the same make any admission which might be prejudicial thereto. The conduct by the Seller of such negotiations or litigation shall be conditional upon the Seller having first given to the Council such reasonable security as shall from time to time be required by the Council to cover the amount ascertained or agreed or estimated as the case may be of any compensation, damages, expenses and costs for which the Council may become liable. The Council shall, at the request of the Seller, afford all available assistance for any such purposes and shall be repaid any expenses incurred in so doing.

26.2 The Seller shall indemnify and keep indemnified the Council against all loss, damage, actions, claims, demands and liability suffered and legal fees and costs incurred by the Council resulting from a breach of this Contract by the Seller.

26.3 The Seller shall indemnify and keep indemnified the Council against all losses and claims for death, injuries or damage to any person or property whatsoever (including where the Contract is for the supply of goods the goods themselves) which may arise out of or in consequence of the performance of the Contract and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

27. Intellectual Property

Where any specifications and designs of the Goods or any of the Goods has been provided by the Council the copyright, design right or other intellectual property in them shall remain the property of the Council.

28. Clauses regarding the provision by one party of drawings, specifications and tooling to facilitate performance of the Contract

- 28.1 All specifications, patterns, drawings, maps, photographs, samples and information provided by the Council to the Seller shall remain the exclusive property of the Council and shall not be disclosed by the Seller to any third party without the Council's written consent.
- 28.2 All moulds, tools, dies, fixtures, computer discs, plant or other equipment (including without prejudice to the generality of the foregoing computer equipment) provided by the Council to the Seller shall remain the exclusive property of the Council and shall be maintained in good order and condition while in the Seller's possession or control and shall be insured by the Seller in the name of the Council on an 'all risks' basis for their full replacement cost.
- 28.3 The Seller shall not use the Council's property referred to in Conditions 28.1 and 28.2 above nor allow it to be used for any purpose other than the supply of Goods in accordance with the Contract.
- 28.4 The Council may choose to mark the Council's property so that it is clearly identified and identifiable as belonging to the Council and the Seller shall not deface, obliterate or remove such identifying marks. The Seller shall permit the Council to enter the premises where the Council's property is kept to inspect and/or take possession of the Council's property.

29. Assignment and Sub-letting

The Seller shall not charge transfer assign sub-contract or otherwise dispose of the whole or any part of its rights and obligations pursuant to this Contract directly or indirectly to any person whatever without the prior written permission of the Council. The Council may charge transfer or otherwise deal with all or any of its rights and obligations pursuant to this Contract and the Seller consents to all such dealings.

30. Insurance

The Seller shall if so required by the Council before the delivery of any of the Goods, insure himself and keep himself insured in a minimum sum of £5 million pounds during the continuance of the Contract against all liabilities arising from the Contract and shall if required produce to the Council the policy or policies of insurance required to be effected hereunder together with the receipt for the payment of the last premium in respect of each policy.

The Seller will insure the Goods, at its own expense, for the entire period during which, by reason of this Contract, the Goods are at the Seller's risk. The insurance will be on all risks terms. The Seller will submit the insurance policy for approval by the Council in advance of the conclusion of the contract of insurance, and the said approval may be given by a third party acting as agent for the Council for this purpose. The said approval shall be a condition precedent of the Council's obligation to pay the Price. The Council shall be named as co-insured under the said insurance policy. The Seller hereby declares and constitutes itself trustee for the Council of all sums due under

the policy and of any claim against the insurer, and undertakes to take all measures necessary for the said trust to be effected.

31. Termination

31.1 This Contract may be terminated by the Council by notice in writing to the Seller such notice to take effect as specified in the notice if the Seller: -

31.1.1 becomes bankrupt or makes a composition or arrangement with its creditors or has a proposal in respect of its company for the voluntary arrangements for a composition of debts or scheme or arrangement approved in accordance with the Insolvency Act 1986;

31.1.2 has an application made under the Insolvency Act 1986 to the Court for the appointment of an administrative receiver or the making of an administrative order;

31.1.3 has a winding-up order made or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding-up passed;

31.1.4 has a provisional liquidator receiver or manager of its business or undertaking duly appointed;

31.1.5 has an administrative receiver as defined in the Insolvency Act 1986 appointed;

31.1.6 has possession taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the floating charge;

31.1.7 is in circumstances which entitle the court or a creditor to appoint or have appointed a receiver a manager or administrative receiver or which entitle the court to make a winding-up order;

31.2 Either party may terminate this Contract if the other party commits a substantial or material breach of this Contract and, if such breach is capable of remedy within 14 days, fails to remedy the same within 14 days of service of written notice requiring remedy served on the other party such termination to take effect as specified in the notice,

**31.3 The Contract may be terminated by either party upon service of [] months prior written notice upon the other party such termination to take effect upon expiry of the said notice.

32. Equal Opportunities

32.1 Without prejudice to Condition 25, the Seller shall at all times comply with its statutory obligations and shall not treat one group of people less favourably than others because of their colour, race, nationality, ethnic origin, disability, sex or sexual orientation in relation to decisions to recruit, train, promote or retain staff.

32.2.1 The Seller shall observe as far as possible the Commission for Racial Equality's Code of Practice for Employment as approved by Parliament in 1983.

33. Use of dates in electronic equipment

33.1 The Seller represents to the Council that the continued effective functioning of the Contract and any hardware, software, firmware and other goods and services supplied and all subsequent replacements, upgrades and enhancements will not be prevented or in any way adversely affected by any date change.

33.2 The Council in entering into the Contract is relying on the said representation but in the event that the representation should prove to be incorrect, the Seller shall:

- (i) compensate the Council for all reasonable consequential losses and expenses, payment to be made within fourteen (14) days of a written demand therefor; and
- (ii) at its own expense (and with no allowance for betterment) and within timescales acceptable to the Council, make such adjustments as are necessary to ensure proper functioning including if necessary the replacement of the hardware, software, firmware and other goods supplied and all subsequent replacements, upgrades and enhancements. In the event that it is impossible to adjust or replace as aforesaid, then the Seller shall refund to the Council the purchase price and the Council will give Notice to the Seller that it may collect the goods on a date and time convenient to the Council.

34. Confidentiality

34.1 Notwithstanding anything to the contrary contained or implied in any documents or negotiations leading to the formation of this Contract:

- (i) the Seller acknowledges that the Council is subject to the FOIA and to the attendant Codes of Practice;
- (ii) nothing contained in this Contract shall prevent the Council from disclosing and/or publishing under the provisions of the Data Protection Act 1998 and/or FOIA any term or condition or information contained in or relating to this Contract.

34.2 The Seller shall:

- (i) co-operate with the Council and supply to it all necessary information and documentation required in connection with any request received by the Council under the Data Protection Act 1998 and/or FOIA;
- (ii) supply all such information and documentation at no cost to the Council and within seven days of receipt of any request.

34.3 The Seller shall not publish or otherwise disclose any information contained in this Contract or in any negotiations leading to it without the Council's previous written consent unless the Seller is bound to publish and/or disclose such information under the Data Protection Act 1998 and/or FOIA and such information is not exempt from such disclosure and/or publications under the provisions of the Data Protection Act 1998 and/or FOIA.

35. Arbitration

All disputes, differences or questions arising out of this Contract or as to the rights or obligations of the parties under it or in connection with its construction shall be referred to arbitration by a single arbitrator to be agreed between the parties or, failing agreement within 14 days by an arbitrator to be appointed at the request of any party by the President for the time being of The Law Society of England and Wales having due regard to any representations made to him as to the appropriate qualifications of such arbitrator. The arbitration shall take place in London and shall be in accordance with the Arbitration Act 1996 or any re-enactment or modification of such Act for the time being in force.

36. Legal Effect

36.1 The invalidity, illegality or unenforceability of any term or condition of this Contract shall not affect the validity, legality or enforceability of any other term or condition of this Contract.

36.2 No waiver by the Council of any breach of this Contract by the Seller shall be considered as a waiver of any subsequent breach of the same or any other provision.

36.3 The Contract shall not create any rights for the benefit of or enforceable by any person not a party to this Contract.

36.4 The Contract shall be construed in accordance with English Law.

37. Notices

37.1 Any notice under or in connection with this Contract shall be in writing and shall be served by first class post or by hand on the party or sent by recorded delivery at or to the address of the party set out in this Contract or at or to such other address as may be subsequently notified by one party to the other. Notice to the Council shall only be effective if it identifies the name of the officer appearing on the Order or Tender.

37.2 In the absence of evidence of earlier receipt any notice shall be deemed to be duly served:

37.2.1 if delivered personally when left at the address in condition 1.1
and

37.2.2 if sent by recorded delivery 3 days after posting

38. Third party rights

The provisions of the Contracts (Rights of Third Parties Act) 1999 shall not apply to this Contract and a person who is not a party to this Contract shall have no right under that Act to enforce any term of the Contract.

39. Force Majeure

- 39.1 Neither party shall be liable for any default due to any act of God, war, civil disturbance, malicious damage, fire, flood, drought, extreme weather conditions, compliance with any law or governmental order, rule, regulation, direction or other circumstance beyond the reasonable control of either party ('Force Majeure Event').
- 39.2 Each party shall give notice forthwith to the other upon becoming aware of a Force Majeure Event, the notice to specify details of the circumstances giving rise to the Force Majeure Event.
- 39.3 If any Force Majeure Event delays or prevents the performance of the obligations of either party for a continuous period in excess of **[one month]** the party not so affected may give notice to the affected party to terminate this Contract specifying the date (which shall not be less than 7 days after the date on which the notice is given) on which termination will take effect. Such a termination notice shall be irrevocable except with the consent of both parties and upon termination the provisions of Condition 22 apply.
- 39.4 Any such termination shall be without prejudice to the rights and remedies of the Council in respect of any antecedent breach of the Contract by the Seller.
- 39.5 Any money paid by the Council for Goods not received from the Seller shall be repaid immediately by the Seller and credit notes and new invoices issued promptly by the Seller to the Council as appropriate.

40. Waiver

No waiver or forbearance by the Council (whether express or implied) in enforcing any of its rights under this Contract shall prejudice its right to do so in the future.

41. Law and courts of England and Wales– service of proceedings

- 41.1 This contract is subject to the law of England and Wales.
- 41.2 The parties submit to the exclusive jurisdiction of the courts of England and Wales and irrevocably agree that proceedings issued out of the said courts may without prejudice to the rules of service of such courts be

served by delivering such proceedings in an envelope addressed to the party to be served at the address for such party set out in this Contract.

IN WITNESS whereof the parties hereto have executed this Contract the day and year first before written.

Signed for and on behalf
of the Seller

Authorised Signatory

The Common Seal of The Vale
of Glamorgan Council was affixed
in the presence of:

Director of Legal & Regulatory
Services