

THIS AGREEMENT is made the _____ day of _____ 2024
B E T W E E N THE BOROUGH COUNCIL OF KINGS LYNN AND WEST NORFOLK of
Kings Court, Chapel Street, Kings Lynn, PE30 1EX (hereinafter called "the Council") of the
one part and of Registered Company
No.(XXXX) (hereinafter called "the Supplier") of the other part

WHEREAS:-

1. The Council wishes the following Goods namely "the Goods" to be supplied (and installed)
2. The Supplier has submitted a Tender dated _____ 2024 for the supply of the Goods which the Council has accepted
3. The following documents which have been signed on behalf of the parties hereto form part of this agreement:-
 - 3.1 Invitation to Tender, including the specification
 - 3.2 Tender Clarifications
 - 3.3 Contractor's Tender Response
 - 3.4 Correspondence between the Council and the Contractor
 - 3.5 The Acceptance of Tender
 - 3.6 Contractor's Insurance Documentation together called "the Contract Documents"

NOW THIS DEED WITNESSETH as follows:-

- 1. Suppliers obligation**
 - 1.1 The Supplier will supply the Goods in accordance with the Contract Documents.
 - 1.2 The quantity, quality and description of the Goods shall be as set out in the Specification or any written variation included in the Contract Documents.
 - 1.3 The Goods shall conform in all respects with the requirements of any statutes, orders, regulations or bye-laws from time to time in force.
 - 1.4 The Goods shall be fit and sufficient for all the purposes for which such Goods are ordinarily used and for any particular purpose made known to the Supplier by the Council and the Council relies on the professional expertise of the Supplier in the supply of the Goods and the execution of the contract.
 - 1.5 The Goods shall mean any part or all parts of the items specified in the Specification and the term The Goods shall apply as applicable
- 2. The Goods**
 - 2.1 The Goods shall be to the reasonable satisfaction of the Council and shall conform in all respects with any sample approved by the Council and with any particulars specified in the Contract Documents and in any variations thereto.
- 3. Delivery**
 - 3.1 The Goods shall be delivered as specified in the Contract Documents. Any access to the Council's premises and any labour and equipment that may be provided by the Council in connection with delivery shall be provided without acceptance by the Council of any liability whatsoever and the Supplier shall indemnify the Council in respect of any 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 damage or injury (whether fatal or otherwise) occurring in the course of delivery to the extent that any such damage or injury is attributable to any act or omission of the Supplier or any of the Supplier's sub-Suppliers or suppliers.
 - 3.2 Except where otherwise provided in the Contract Documents, delivery shall include the unloading of the Goods by the Supplier's employees, suppliers or carriers at such place as the Council or duly authorised person shall reasonably direct.

- 3.3 The time of delivery shall be of the essence and failure to deliver within the time tendered or specified shall enable the Council (at the Council's option) to release the Council from any obligation to accept and pay for the Goods and/or cancel all or part of the Contract therefore, in either case without prejudice to other rights and remedies
- 3.4 Without prejudice to the Council's rights under Clause 3.3 above for each week or part thereof that the Goods or any part thereof are not delivered as set out in the Contract Documents then the Council shall be entitled to a discount on the price stated in the Tender response form in the sum of **0.5%** per week for each part of the Goods which are not delivered by the date(s) stated in the Contract Documents.

4. Labelling and Packing

- 4.1 The Goods shall be packed and marked in a proper manner and in accordance with the Council's instruction and any statutory requirements and any requirements of the carriers. In particular the name of the contents shall be clearly marked on each container and all containers of hazardous goods (and all documents relating thereto) shall bear prominent and adequate warnings. The Supplier shall indemnify the Council against all actions, suits, claims, demands losses, charges, cost and expenses which the Council may suffer or incur as a result of or in connection with any breach of this condition.
- 4.2 All packaging materials will be considered non-returnable and will be destroyed unless the Supplier's advice note states that such materials will be charged unless returned. The Council accepts no liability in respect of the non-arrival at the Supplier's premises of empty packages returned by the Council unless the Supplier shall within ten days of receiving notice from the Council that the packages have been dispatched notify the Council of such non-arrival.
- 4.3 Maximum use must be made of recycled materials in the manufacturing of crates, pallets, boxes, cartons, cushioning and other forms of packing, where these fulfil other packing specification. Packaging specification should be reviewed periodically to ensure that no unnecessary limitation on the use of recycled materials exists.

5. Property and Risk

- 5.1 Property and risk in the Goods shall without prejudice to any other rights or remedies of the Council pass to the Council at the time of acceptance of Delivery.

6. Damage in Transit

- 6.1 On dispatch of any consignment of the Goods the Supplier shall send to the Council at the address for delivery of the Goods an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. The Supplier shall free of charge and as quickly as possible either repair or replace (as the Council shall elect) such of the Goods as may either be damaged in transit or having been placed in transit fail to be delivered to the Council provided that:
- 6.1.1 in the case of damage to such Goods in transit the Council shall within thirty days of delivery give notice to the Supplier that the Goods have been damaged,
- 6.1.2 in the case of non-delivery the Council shall (provided that the Council has been advised of the dispatch of the Goods) within ten days of the notified date of delivery give notice to the Supplier that the Goods have not been delivered

7. Inspection, Rejection and Guarantee

- 7.1 The Council may by written notice to the Supplier reject any of the Goods which fail to meet the requirements specified in the Contract Documents. Such notice shall be given within a reasonable time after delivery to the Council of the Goods concerned. If the Council shall reject any of the Goods pursuant to this Condition the Council shall be entitled (without prejudice to other rights and remedies) either:

- 7.1.1 to have the Goods concerned as quickly as possible either repaired by the Supplier or (as the Council shall elect) replaced by the Supplier with Goods which conform in all respects with the requirements specified herein; or
- 7.1.2 to obtain a refund from the Supplier in respect of the Goods concerned.
- 7.2 The guarantee period applicable to the Goods shall be as specified by the Supplier in the Tender Response Form. If the Council shall within such guarantee period or within 30 days thereafter give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use the Supplier shall (without prejudice to any other rights and remedies which the Council may have) as quickly as possible remedy such defects (whether by repair or replacement as the Council shall elect) without cost to the Council.
- 7.3 Any Goods rejected or returned by the Council as described in Clauses 7.1 or 7.2 shall be returned to the Supplier at the Supplier's risk and expense.
- 8. Payment**
- 8.1 The Council will pay to the Supplier such sums as are due under the Contract Documents within 30 days of receipt of valid invoice following delivery.
- 9. Variation**
- 9.1 Any variation to these conditions shall be inapplicable unless agreed in writing between the parties
- 10. Termination**
- 10.1 If the Supplier without reasonable cause makes default by failing to deliver the Goods in accordance with this Contract the Council may by notice in writing to the Supplier determine the employment of the Supplier under this contract.
- 10.2 If the Supplier makes a composition or arrangement with his creditors or becomes bankrupt or being a company makes a proposal for a voluntary arrangement for a composition of debts or scheme of arrangement or has a provisional liquidator appointed or has a winding up order made or passes a resolution for voluntary winding up (except for the purposes of amalgamation or reconstruction) or has an administrator or an administrative receiver appointed the Council may by notice in writing to the Supplier determine the employment of the Supplier under this contract
- 10.3 Upon determination of the employment of the Supplier under Clause 10.1 or 10.2 above the Council may recover from the Supplier the additional cost to him of acquiring the Goods any expenses properly incurred by the Council as a result of and any direct loss and/or damage caused to the Council by the determination.
- 11. Representations made by the Supplier**
- 11.1 All representations, statements or warranties made or given by the Supplier, its servants and agents (whether orally in writing or in any of the Supplier'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 this Contract
- 12. Notices**
- 12.1 Any notice to be served on either of the parties by the other shall be sent by prepaid recorded delivery or registered post to the address of the relevant party shown at the head of this agreement
- 13. Waiver**
- 13.1 The failure by either party to enforce at any time or for any period any one or more of the terms or conditions of this agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement
- 14. Recovery of sums due**
- 14.1 Wherever under this contract any sum of money is recoverable from or payable by the Supplier that sum may be deducted from any sum then due or which at any later date may become due to the Supplier under this contract or under any other contract with the Council

15. No assignment or sub-contracting

- 15.1 The Supplier shall not assign or sub-contract this Contract or any part thereof without the consent in writing of the Council
- 15.2 The Supplier may not substitute any goods or materials specified within the Contract Documents for any others without the consent in writing of the Council
- 15.3 If the Supplier has without the previous consent in writing of the Council sub-let any part of the Services the Council may determine this contract notwithstanding that the Supplier may have subsequently ceased to employ the sub-supplier
- 15.4 It shall be a condition of any consent to sub-let any part of the contract that:
 - 15.4.1 the employment of the sub-supplier shall cease immediately upon the determination (for whatever reason) of the Supplier's employment under this contract
 - 15.4.2 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-supplier within a specified period, not to exceed thirty (30) days, from the date of receipt of a valid invoice as defined by the terms of the supply contract or sub-contract (as appropriate).
 - 15.4.3 in the case of a local sub-contract entered into in connection with this Agreement – where the local sub-supplier is deemed to be a business with headquarters within the Council's borough boundary, the Supplier will use their best endeavours to ensure that payment to such a sub-supplier shall be within a period not to exceed ten (10) days, from the date of receipt of a valid invoice as defined by the terms of the sub-contract.

16. Whole agreement

- 16.1 Each party acknowledges that this Agreement contain the whole agreement between the parties and that it has not relied upon any oral or written representation made to it by the other or its employees or agents and has made its own independent investigations into all matters relevant to it
- 16.2 This agreement supersedes any prior agreement between the parties whether written or oral

17. Patents and information

- 17.1 It shall be a condition of this Contract that, except to the extent that the Goods are made up in accordance with design furnished by the purchaser, none of the Goods will infringe any patent, trade mark, registered design, copyright or other right in the nature of industrial property or 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 the condition.
- 17.2 All rights (including ownership and copyright) in any specification, instruction, plans, drawings, patterns, models, design or other materials furnished to or made available to the supplier by the Council pursuant to this Contract shall remain vested solely in the Council and the Supplier shall not (except to the extent necessary for the implementation of this Contract) without prior written consent of the Council use or disclose any such specification, instruction, plans, drawings, patterns, models, design or any information (whether or not relevant to this Contract) which the supplier may obtain pursuant to this Contract and in particular (but without prejudice to the generality of the forgoing) the Supplier shall not refer to the Council or the Contract in any advertisement without the Council's prior written agreement.

18. Health and Safety

- 18.1 The Supplier represents and warrants to the Council that the Supplier has satisfied himself that all necessary test and examinations have been made or will be made prior to delivery of the Goods to ensure that the Goods are designed and constructed so as to be safe and without risk to the health or safety of persons using

the same, and that he has made available to the Council adequate information about the use for which the Goods have been designed and have been tested and about any condition necessary to ensure that when put to use the Goods will be safe and without risk to health. 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 condition.

19. Prevention of Corruption

- 19.1 The Council shall be entitled to terminate the contract forthwith and to recover from the Supplier the amount of any loss resulting from such termination if:
- 19.1.1 the Supplier shall, in the opinion of the Council, have offered or given or agreed to give to 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 this Contract or any other contract, whether with the Council or anyone else; or
- 19.1.2 the like acts shall have been done by any person employed by the Supplier or acting on his behalf and whether with or without his knowledge; or
- 19.1.3 in relation to any contract whether with the Council or anyone else, the Supplier or any person employed by him or acting on his behalf and whether with or without his knowledge, shall have committed any offence under the Bribery Act 2010 or under Section 117 (2) of the Local Government Act 1972.
- 19.1.4 the Contractor when tendering fixed or adjusted the amount of the tender under or in accordance with any agreement or arrangement with any other person or before the hours specified for the return of tenders
- 19.1.4.1 communicated to a person other than the Council the amount or the approximate amount of its tender (except where the disclosure in confidence of the approximate amount of its tender was essential to obtain insurance premium quotations required for the preparation of its tender)
- 19.1.4.2 entered into an agreement with any other person whereby that other person would refrain from tendering or as to the amount of any tender to be submitted
- 19.1.4.3 offered or paid or gave or agreed to give any sum of money or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other tender or proposed tender any act or thing of the sort described above.

20. Freedom of Information Act 2000

- 20.1 The Supplier acknowledges that the Council has legal responsibilities to make information available under the Freedom of Information Act 2000 ("the Act")
- 20.2 The Supplier shall give reasonable assistance to the Council to comply with the Act.
- 20.3 In particular, the Supplier shall supply all such information and records to the Council (together with reasonable assistance to locate the same) which are needed by the Council to comply with its obligations under the Act.
- 20.4 The Council shall have the discretion to disclose any information which is the subject of Agreement to any person who makes a request under the Act and which, in the opinion of the Council, it has to disclose to discharge its responsibilities under the Act.
- 20.5 When exercising its right under Clause 20.4 above, the Council shall consult the Supplier (and may take account of any reasonable suggestions made by it)
- 20.6 The Supplier shall not raise any additional charge to the Council in relation to complying with this clause.

21. Contracts (Right of Third Parties) Act 1999

- 21.1 For the avoidance of doubt, nothing in this Contract confers or is intended to confer on any third party and benefit or the right to enforce any term of this Contract pursuant to the Contracts (Rights of Third Parties) Act 1999

22. Headings

22.1 The heading to Conditions shall not affect their interpretation.

23. Governing Law

23.1 These Conditions shall be governed by and construed in accordance with English law and the Supplier hereby irrevocably submits to the jurisdiction of the English courts. The submission to such jurisdiction shall not (and not be construed so as to) limit the right of the Council to take proceeding against the Supplier in any other court of competent jurisdiction, nor shall the taking of proceeding in any way one or more jurisdiction prelude the taking of proceeding in any other jurisdiction whether concurrently or not.

In witness whereof the parties have executed this Deed in the presence of the attesting witnesses the day and year first before written

EXECUTED as a DEED by)
)
acting by:-)

Director

Director/Company Secretary

THE COMMON SEAL of)
THE BOROUGH COUNCIL OF)
KINGS LYNN AND WEST NORFOLK)
was hereunto affixed in the)
presence of:-)

Authorised Signatory