

South Downs National Park Authority

Terms and Conditions for the Supply of Goods

1. DEFINITIONS AND INTERPRETATION

- 1.1. The definitions and rules of interpretation in this clause apply in these conditions;
- “**Contract**” means the contract between the Supplier and SDNPA consisting of these conditions and (where applicable) the Tender, the Purchase Order and the Specification;
- “**SDNPA**” means South Downs National Park Authority of South Downs Centre, North Street, Midhurst, GU29 9DH.
- “**Goods**” means the goods described in the Purchase Order and/or the Tender;
- “**Purchase Order**” means the purchase order generated (where applicable) by SDNPA for the Goods;
- “**Price**” means the fee to be paid under the Contract to the Supplier;
- “**Specification**” means the document provided (where applicable) by SDNPA detailing the required specifications of the Goods;
- “**Supplier**” means the person, company, form or partnership who have accepted SDNPA’s Purchase Order for the Goods and is identified in the Purchase Order;
- “**Tender**” means (where applicable) the Tender or Request for Quotation issued by SDNPA and the response given to SDNPA by the Supplier.

2. APPLICATION OF TERMS

- 2.1. These conditions are SDNPA’s standard terms and conditions which will govern the Contract between SDNPA and the Supplier to the entire exclusion of all other terms and conditions (except SDNPA’s Standard Terms and Conditions for the Supply of Services where applicable) unless any other contract terms have been agreed between the parties in writing.

3. QUALITY AND DEFECTS

- 3.1. The Supplier warrants that the Goods shall be of the best available design, of the best quality, material and workmanship, be without fault and conform in all respects with the Purchase Order and/or Tender and/or the Specification supplied by SDNPA to the Supplier and all other warranties, conditions or terms relating to the fitness for purpose, quality or condition of the Goods implied by statute or common law apply in relation to the Contract and may not be excluded.
- 3.2. The Supplier shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging and delivery of the Goods. SDNPA’s rights under these conditions are in addition and without prejudice to SDNPA’s rights under the Sale of Goods Act 1979 and any other applicable legislation (as amended).
- 3.3. The Supplier warrants that title to the Goods is free from all encumbrances and that the Supplier has the right to sell the same.

- 3.4. At any time prior to delivery of the Goods, SDNPA shall have the right to inspect and/or test the Goods.
- 3.5. If as a result of inspection and/or testing of the Goods, SDNPA is not satisfied that the Goods will comply in all respects with the Purchase Order and/or the Tender and/or the Specification, SDNPA may;

- 3.5.1. inform the Supplier of its opinion and the Supplier shall take such steps as are necessary to ensure compliance; or
- 3.5.2. cancel the Purchase Order and terminate the Contract at any time prior to the delivery of the Goods,

in each case without penalty or other obligation to compensate the Supplier for losses it has and/or may occur.

- 3.6. The Goods shall be marked in accordance with SDNPA's instructions and any applicable regulation or requirement of the carrier and properly packed and secured so as to reach their destination in an undamaged condition.

4. PRICE

- 4.1. The Price of the Goods shall be as stated in the Purchase Order and/or the Tender and, unless otherwise so stated, shall be exclusive of any applicable Value Added Tax but inclusive of all other charges including but not limited to those relating to delivery and (where applicable) installation.

- 4.2. No variation to the Price or extra charges shall be made without SDNPA's prior written consent.

5. PAYMENT

- 5.1. The Supplier shall invoice SDNPA with the Price in pounds sterling (£) and shall include:

- 5.1.1. an invoice date and invoice number;
- 5.1.2. the period to which the invoice relates;
- 5.1.3. details of the Goods for which payment is claimed;
- 5.1.4. any VAT payable, with a breakdown showing the net figure, the VAT amount and the gross figure;
- 5.1.5. a VAT registration number if VAT registered;
- 5.1.6. a valid purchase order number as issued by SDNPA;
- 5.1.7. the Supplier's vendor/supplier number as set out in the Purchase Order issued by SDNPA;
- 5.1.8. the Supplier's full business name and address; and
- 5.1.9. the name and address of SDNPA.

- 5.2. The Supplier must submit all invoices electronically via email to sdnpapayments@brighton-hove.gov.uk and shall:

- 5.2.1. add the word 'Invoice' in the email subject field,
- 5.2.2. make sure it contains a valid Purchase Order number; and

5.2.3. add it as an attachment in PDF or TIFF format.

5.3. In the event electronic submission is not possible the Supplier may, with prior written notice to SDNPA, submit invoices to:

South Downs National Park Authority, c/o Central Payments Unit, Brighton & Hove Council, 1st Floor Bartholomew House, Bartholomew Square, Brighton, BN1 1JE.

5.4. Unless otherwise stated in the Purchase Order and/or the Tender, SDNPA shall pay the Price by BACS (unless otherwise agreed in writing) within 30 days of receipt by the SDNPA of a proper invoice following successful delivery of the Goods in accordance with the Purchase Order and/or Tender.

5.5. SDNPA shall advise the Supplier in writing of any discrepancy between the amount stated in the invoice and the amount properly due to the Supplier. The Supplier shall reissue the invoice showing the correct amount within seven (7) days of such notification.

5.6. Without prejudice to any other right or remedy, SDNPA reserves the right to set-off against its indebtedness to the Supplier any debt owed to it by the Supplier and any liabilities, damages, losses, costs, charges and expenses which it has incurred as a consequence of any breach by the Supplier of the Contract or any other contract with SDNPA.

6. DELIVERY

6.1. The Goods shall be delivered, carriage paid, to SDNPA's place of business as stated on the Purchase Order, or to such other place of delivery as is agreed between the parties in writing prior to delivery of the Goods.

6.2. The Supplier will deliver the Goods during normal business hours and the Supplier shall off-load the Goods at its own risk.

6.3. Where the date of delivery of the Goods is not specified by SDNPA, the Supplier shall give SDNPA reasonable notice of the specified date.

6.4. The time of delivery of the Goods is of the essence of the Contract.

6.5. A packing note quoting the number of the Purchase Order must accompany each delivery or consignment of the Goods and must be displayed prominently. Unless otherwise agreed, signed proof of delivery will be required.

6.6. SDNPA shall be entitled to reject any Goods delivered which are not strictly in accordance with the Purchase Order and/or the Tender and/or the Specification and the Contract; SDNPA shall not be deemed to have accepted any Goods until SDNPA has had a reasonable time to inspect them following delivery or (where applicable) within a reasonable time after any latent defect in the Goods has become apparent.

- 6.7. If the Supplier requires SDNPA to return any packaging material to them, that fact must be clearly stated on any delivery note and any such packaging material shall only be returned to the Supplier at the Supplier's own cost which shall be payable in advance.
- 6.8. On dispatch of any consignment of Goods, the Supplier shall send SDNPA an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume.
- 6.9. The Supplier shall, free of charge and within 5 working days either repair or replace (as SDNPA shall elect) such of the Goods as may either be damaged in transit or have been placed in transit but have failed to be delivered to SDNPA provided that:
- 6.9.1. in the case of damage to the Goods in transit, SDNPA shall within a reasonable period of delivery give notice to the Supplier that the Goods have been damaged; and
- 6.9.2. in the case of non-delivery of the Goods, SDNPA shall (provided that SDNPA have been advised of the dispatch of the Goods and their date of delivery) within a reasonable period of the notified date of delivery give notice to the Supplier that the Goods have not been delivered.

7. RISK AND PROPERTY

- 7.1. The Goods shall remain at the Supplier's risk until delivery to SDNPA is complete, SDNPA has accepted the Goods in accordance with clause 6.6 and payment has been made when ownership and title of the Goods shall pass to SDNPA.
- 7.2. SDNPA may by written notice to the Supplier reject any of the Goods which fail to meet the requirements specified in the Purchase Order and/or the Tender and/or the Specification or any other written document. Such notice shall be given within a reasonable time after delivery of the Goods. If SDNPA rejects any of the Goods pursuant to this clause SDNPA shall be entitled (without prejudice to any other rights and remedies):
- 7.2.1. to have the Goods either repaired by the Supplier or (if SDNPA shall elect) replaced by the Supplier with Goods which comply in all respects with the requirements specified;
or
- 7.2.2. to obtain a refund from the Supplier.
- 7.3. The guarantee period applicable to the Goods shall be 12 months from putting into service or 18 months from delivery, whichever shall be the longer (subject to any longer written guarantee arrangements agreed in writing between the parties). If SDNPA 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 the proper and normal use of the Goods, the Supplier shall (without prejudice to any other rights and remedies which SDNPA may have) remedy such defects within 5 working days (whether by repair or replacement as SDNPA shall elect) without cost to SDNPA.

7.4. Any Goods rejected or returned by SDNPA shall be returned to the Supplier at the Supplier's own risk and expense.

8. AUDIT AND CORRUPT GIFTS OR PAYMENTS

8.1. The Supplier shall keep and maintain records of the payments made to them by SDNPA for 6 years' following expiry of the Contract.

8.2. The Supplier shall not offer or give, or agree to give, to any officers or representatives of SDNPA any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other contract with SDNPA or for showing or refraining from showing favour or disfavour to any person in relation to this or any such contract. The Supplier's attention is drawn to the criminal offences created by the Bribery Act 2010, section 117(2) of the Local Government Act 1972 and the offences listed in regulation 57(1) of the Public Contracts Regulations 2015 and the similar offences within the Procurement Act 2023.

9. INDEMNITY

9.1. The Supplier shall keep SDNPA indemnified in full against all direct, indirect and/or consequential losses (all of which include, without limitation, project delays, loss of business, depletion of goodwill and like loss), other liabilities, damages, injury, costs and expenses (including legal and other professional fees and expenses) incurred and/or paid by SDNPA as a result of or in connection with:

- 9.1.1. defective workmanship, quality and/or materials evidenced in the Goods;
- 9.1.2. any infringement or alleged infringement of any intellectual property rights caused by the use, manufacture and/or supply of the Goods; and
- 9.1.3. any claim made against SDNPA in respect of any liability, loss, damage, injury, cost or expense sustained by SDNPA, its employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the Contract by the Supplier.

9.2. The Supplier shall hold appropriate insurance sufficient to cover the liabilities referred to above. "SDNPA will set the type and minimum insurance cover required for each individual purchase".

10. CONFIDENTIALITY

10.1. The Supplier shall keep in strict confidence all documents, information, technical and/or commercial know-how, specifications, inventions, processes and initiatives which are of a confidential nature and have been disclosed to the Supplier by SDNPA or SDNPA's agents and any other confidential information concerning SDNPA's business or services which the Supplier may obtain or be made aware of, and the Supplier shall restrict disclosure of such confidential material to such of the Supplier's employees or agents as need to know the same for the sole

purpose of discharging the Suppliers obligations to SDNPA and shall ensure that such employees or agents are subject to like obligations of confidentiality as bind the Supplier.

11. SDNPA PROPERTY

11.1. All property (including land and buildings), materials, equipment, tools, copyright, design rights or any other forms of intellectual property rights in all drawings, specifications and data supplied by SDNPA to the Supplier or not so supplied but used by the Supplier specifically in the manufacture or development of the Goods shall at all times be and remain SDNPA's exclusive property but shall be held by the Supplier in safe custody at the Supplier's risk and maintained and kept in good condition by the Supplier until returned to SDNPA shall not be disposed of other than in accordance with SDNPA's written instructions, nor shall such items be used otherwise than as authorised by SDNPA in writing.

12. TERMINATION

12.1. SDNPA shall be entitled to cancel the Purchase Order or terminate the Contract in respect of all or part only of the Goods by giving notice to the Supplier 3 days prior to delivery, in which event SDNPA shall not be liable for payment for Goods not delivered, loss of anticipated profits or any consequential loss.

12.2. SDNPA shall be entitled to terminate the Contract immediately without liability if:

- 12.2.1. the Supplier commits a material breach of any of the terms and conditions of the Contract;
- 12.2.2. the Supplier has a bankruptcy order made against it or has made an arrangement with its creditors or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors or (being a body corporate) has convened a meeting of creditors or enters into liquidation or has a receiver or an administrative receiver appointed or is the subject of similar procedures under the law of any other state or a resolution is passed or a petition presented to any court for the Suppliers winding up, or for the granting of an administration order, or any proceedings are commenced relating to the Supplier's insolvency or possible insolvency;
- 12.2.3. the Supplier ceases or threatens to cease to carry on business;
- 12.2.4. SDNPA reasonably apprehends that any of the events mentioned above are about to occur;
- 12.2.5. in SDNPA's opinion the Supplier has abandoned the Contract; or
- 12.2.6. the Supplier, their employee or anyone acting on their behalf corruptly offers, gives or agrees to give to anyone any inducement or reward in respect of this or any other authority contract (even if the Supplier does not know this has been done), or commits an offence under the Bribery Act 2010, Section 117(2) of the Local Government Act 1972 or as listed in regulation 57(1) of the Public Contracts Regulation 2015 and similar provisions in the Procurement Act 2023.

12.3. The termination of the Contract, howsoever arising, shall be without prejudice to the rights and duties of the parties accrued prior to termination.

13. SUBSTITUTE SUPPLIER

13.1. SDNPA may engage a substitute supplier if:

13.1.1. the Supplier fails to deliver the Goods within the timescales set out in the Purchase Order and/or the Specification; or

13.1.2. the Goods fail to meet the requirements set out in the Specification or are not fit for purpose.

13.2. Where SDNPA engages a substitute supplier, SDNPA must notify the Supplier in respect of the Supplier's failure and raise a Purchase Order with a substitute supplier of SDNPA's choice to supply the Goods.

13.3. Where SDNPA has notified the Supplier in accordance with clause 13, SDNPA may recover from the Supplier any costs, losses, damages and expenses incurred by SDNPA because of the failure of the Supplier together with any costs and expenses incurred over and above the amount which SDNPA had originally agreed to pay to the Supplier for the supply of the Goods.

14. SUSTAINABLE PROCUREMENT AND EQUALITY

14.1. SDNPA is committed to purchasing sustainable products wherever possible and SDNPA will give appropriate weighting to sustainable products in the purchasing process.

14.2. To support SDNPA in its delivery of sustainable procurement, the Supplier shall without prejudice:

14.2.1. comply with all reasonable stipulations of SDNPA aimed at minimising product packaging directly provided to SDNPA as part of the performance of the Services;

14.2.2. manage electrical equipment and associated consumables at end of life to facilitate recovery, treatment, recycling and provide any information which the Customer may reasonably require from time to time regarding the costs of such activity;

14.2.3. promptly provide all such information regarding the environmental impact of any products supplied or used under the Contract as may reasonably be required by SDNPA to permit informed choices by end users.

14.3. The Supplier shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of the equality legislation in force from time to time, in particular the Equality Act 2010.

15. GENERAL

15.1. The Supplier acknowledges that SDNPA, as a Contracting Authority under the Procurement Act 2023, is subject to the Best Value duty and the Supplier shall throughout the Contract assist SDNPA in discharging the Best Value duty by actively promoting, supporting and assisting SDNPA in meeting its Best Value duty arising out of the Contract.

- 15.2. The Supplier recognises that SDNPA is subject to legal duties which may require the release of Information under the Freedom of Information Act 2000 or the Environmental Information Regulation 2004 or any other applicable legislation or codes governing access to information and that SDNPA may be under an obligation to provide information on request. Such information may include matters relating to, arising out of or under the Contract. The Supplier will assist SDNPA to enable SDNPA to comply with its obligations under the Freedom of Information Act 2000 or other applicable legislation governing access to information.
- 15.3. The Supplier acknowledges that SDNPA has a duty under the Counter Terrorism and Security Act 2015 ("CTSA 2015") to have due regard to the requirement to prevent people from being drawn into terrorism ("Prevent Duty"). The Supplier shall, and shall procure that its representatives shall, give all reasonable assistance and support to the Supplier in meeting its duty as a specified authority pursuant to the CTSA 2015 (and all regulations made thereunder) and the Supplier shall have regard to the statutory guidance issued under section 29 of the CTSA 2015.
- 15.4. The Supplier and SDNPA shall each comply with their respective obligations under the Data Protection Act 2018, the General Data Protection Regulations and other applicable statutory provisions or provision of any European directive in respect of data and records containing personal information.
- 15.5. The Supplier shall allow persons nominated by SDNPA access to all management records and documents in the possession of the Supplier in connection with the performance of the Contract, including all accounting records and financial information in the possession, custody or control of the Supplier or the Supplier's auditors.
- 15.6. The Supplier shall not be entitled to assign the Contract or any part of it or sub-contract any of its obligations without SDNPA's prior written consent.
- 15.7. SDNPA reserves the right to defer the date of payment or to cancel the Contract or reduce the volume of Goods ordered without liability if SDNPA is prevented from or delayed in the carrying on of the project or business for which the Goods are required due to circumstances beyond SDNPA's reasonable control.
- 15.8. Any waiver by SDNPA of any breach of or default under the Contract by the Supplier shall not be considered as a waiver of any subsequent breach or default of the Contract.
- 15.9. Failure or delay by SDNPA in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of SDNPA rights under the Contract.
- 15.10. If any provision of the Contract is held by any competent authority to be invalid, void, voidable, unenforceable or unreasonable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall continue in full force and effect.

- 15.11. The Contract shall be subject to English Law in all respects (including formation) and shall be construed and interpreted in accordance with English Law and shall be subject to the jurisdiction of the Courts of England.
- 15.12. This document supersedes all prior agreements of whatever nature and prevails over any other terms and conditions including but not limited to any standard conditions printed and/or contained on any invoice or quotation submitted by the Supplier.
- 15.13. In performing its obligations under the agreement, the Supplier shall:
- i. Comply with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force including but not limited to the Modern Slavery Act 2015;
 - ii. Not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;
 - iii. Include in contracts with its direct subcontractors and suppliers provisions which are at least as onerous as those set out in this clause; and
 - iv. Notify SDNPA as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this contract.

16. FORCE MAJEURE

- 16.1. If a Force Majeure event (as described in Clause 16.2) arises on or following the date of the Contract which directly causes the Supplier to be materially unable to comply with any of its obligations hereunder, the Supplier and SDNPA may agree such terms as are appropriate for the continued performance of the Contract. If no such terms are agreed within one month of the commencement of the said event, and such event is continuing or its consequence remains such that the Supplier is materially unable to comply with its obligations, the Parties hereby agree that the Contract shall thereupon terminate, subject to the provisions of Clause 12 (Termination). Failure by the Supplier to comply with its contractual obligations by reason of a Force Majeure event shall not constitute a breach of contract.
- 16.2. The events which are to be classified as Force Majeure events shall include each of the following:
- 16.2.1. war, civil war, conflict or terrorist attack arising within and affecting the United Kingdom;
 - 16.2.2. nuclear, chemical or biological contamination of the Supplier's property arising from any of the events at 16.2.1 above;
 - 16.2.3. riot, flood or earthquake;
 - 16.2.4. pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds; or
 - 16.2.5. any circumstances beyond the reasonable control of either of the parties.

17 DISPUTE RESOLUTION

- 17.1 The Parties shall use reasonable endeavours to resolve any dispute arising under or in connection with this Agreement amicably and at working level.

- 17.2 If the dispute cannot be resolved informally, it shall be escalated as follows:
- (a) First, to SDNPA's Project Officer or appropriate other manager and the Supplier's nominated officer, to meet within ten (10) Business Days of the dispute arising;
 - (b) If unresolved within ten (10) Business Days, or other period agreed between the parties, to SDNPA's Head of Legal (West Sussex County Council, County Hall, West Street, Chichester, PO19 1RG) and the Supplier's nominated equivalent officer, to meet within ten (10) Business Days;
 - (c) If still unresolved, the Parties shall attempt to settle the dispute by mediation in accordance with the Centre for Effective Dispute Resolution's (CEDR) Model Mediation Procedure. The mediator shall be nominated by CEDR unless otherwise agreed.
 - (d) If still unresolved to the satisfaction of both Parties, either Party may refer the dispute to adjudication.
- 17.3 If the Parties cannot agree on the adjudicator within seven (7) Business Days, one shall be appointed by the President of CEDR and both Parties agree to accept such appointment.
- 17.4 Each Party shall provide the adjudicator with information reasonably required for the purpose of resolving the dispute. If either party considers any part of the information to be confidential, it shall clearly identify such information as confidential at the time of disclosure. Provided the adjudicator agrees that the confidentiality claim is properly made, the adjudicator shall not disclose the confidential information to the other party or to any third party.
- 17.5 The adjudicator shall determine the dispute in accordance with the latest CEDR Rules of Adjudication.
- 17.6 The costs of adjudication shall be borne as determined by the adjudicator to be fair and reasonable, or equally if no determination is made.
- 17.7 Nothing in this clause shall prevent either Party from applying to a court of England and Wales for interim measures.