

SOUTH RIBBLE BOROUGH COUNCIL - TERMS AND CONDITIONS OF PURCHASE FOR GOODS & SERVICES (“Conditions”)

- 1 In these Conditions the following expressions will have the following meanings unless inconsistent with the context:
- “**Contract**” the contract between SRBC and the Seller consisting (in order of precedence), and subject to any variation under Condition 3, of the Purchase Order (and any Purchase Order Amendment (if relevant)) or Letter of Tender Acceptance or LOI, these Conditions, any other documents (or parts thereof) specified in the Purchase Order (and any Purchase Order Amendment (if relevant)) or Letter of Tender Acceptance or LOI;
 - “**Goods**” any goods which the Seller supplies to SRBC (including any part of them) under a Contract;
 - “**Letter of Tender Acceptance**” any authorised letter of tender acceptance or letter of quotation acceptance given by SRBC to the Seller in response to the Seller’s tender bid submission or submission of quotation;
 - “**LOI**” any legally binding letter of intent given by SRBC to the Seller (incorporating these Conditions) for Goods and/or Services;
 - “**SRBC**” South Ribble Borough Council of Civic Centre, West Paddock, Leyland, Lancashire, PR25 1DH, its successors and/or assignees;
 - “**Package**” any type of package including without limitation bags, cases, cylinders, drums, pallets and other containers;
 - “**Price**” the price as defined in Condition 4;
 - “**Purchase Order**” any authorised purchase order of SRBC (incorporating these Conditions) for Goods and/or Services;
 - “**Purchase Order Amendment**” any authorised Purchase Order amendment form or series of Purchase Order amendment forms, each Purchase Order amendment form having precedence over any earlier Purchase Order amendment form;
 - “**Seller**” the person who sells or agrees to sell the Goods and/or Services to SRBC;
 - “**Services**” any services which SRBC receives from the Seller (including any part of them) under a Contract;
 - “**Specifications**” the technical description (if any) of the Goods and/or Services contained or referred to in either the Purchase Order, Purchase Order Amendment or Letter of Tender Acceptance or LOI (as appropriate);
 - “**Confidential Information**” means any information which has been designated as confidential by either party in writing or that ought reasonably to be considered as confidential including without limitation intellectual property rights trade secrets know-how and all personal data and sensitive personal data within the meaning of the Data Protection Act 2018 (DPA), the General Data Protection Regulation (EU) 2016/679 (GDPR) and the Law Enforcement Directive (EU) 2016/680 (LED).
- The headings in these Conditions are intended for reference only and do not affect their construction
- 2. Formation**
- 2.1 These Conditions shall be deemed to be incorporated in the Contract and in the case of any inconsistency with any letter incorporating or referring to these Conditions or any acknowledgment of Purchase Order or Purchase Order Amendment or Letter of Tender Acceptance or LOI, letter or form of contract sent by the Seller to SRBC or any other notification between the Seller and SRBC whatever may be their respective dates the provisions of these Conditions shall prevail unless expressly varied in writing and signed by Serb’s authorised signatory. If in any particular case any of these Conditions shall be held to be invalid or shall not apply to the Contract the other Conditions shall continue in full force and effect.
- 2.2 Each quotation for Goods and/or Services from the Seller will be deemed to be an offer by the Seller to sell the Goods and/or Services upon these Conditions. The Contract is only formed when either:
- 2.2.1 an official Purchase Order signed by SRBC’s authorised signatory; or
 - 2.2.2 a Letter of Tender Acceptance signed by SRBC’s authorised signatory; or
 - 2.2.3 a LOI signed by SRBC’s authorised signatory
- is served by SRBC on the Seller. Delivery of the Goods and/or performance of the Services in response to a Purchase Order (or Purchase Order Amendment (if relevant)) or Letter of Tender Acceptance or LOI shall be taken to imply that you have accepted the terms and conditions of this Contract.
- 3 Purchase Order Amendment**
- 3.1 SRBC shall have the right to send the Seller a Purchase Order Amendment adding to, deleting or modifying the Goods and/or Services. If the Purchase Order Amendment causes a change to the price or delivery date then the Seller shall promptly notify SRBC of such change, calculating the new price and delivery date at the same level of cost and profitability as the original price. The Seller will allow SRBC a minimum of 10 working days to consider any new price and/or delivery date. The Purchase Order Amendment shall only take effect if SRBC accepts in writing any new price and/or delivery date failing which the performance of the Contract will immediately resume as though the said Purchase Order Amendment had not been issued except, where appropriate, SRBC may still exercise its right of cancellation in accordance with clause 14.1.
- 4 Price and Payment**
- 4.1 The Price for the Goods and/or Services will be the fixed price stated in the Contract. If no price is stated in Contract then the Price shall be a fair price, taking into account prevailing market conditions. The Price shall include all charges including, without limitation, Packaging, packing, shipping, loading, carriage, insurance, delivery and installation but shall exclude VAT which shall be shown separately.
- 4.2 No variation to the Price or extra charges can be made without the prior written consent of SRBC.
- 4.3 Unless otherwise stated in the Contract, the Seller shall submit a VAT invoice to the Council, stating the Purchase Order Number or Letter of Tender Acceptance or LOI detailing the Goods and/ or Services provided and the amount payable
- 4.4 Where the Seller submits an invoice to the Council in accordance with Condition 4.3, the Council will consider and verify that invoice in a timely fashion.
- 4.5 Subject to Conditions 4.8 and 4.9 payment of any undisputed invoice will be made no later than thirty (30) days from the date on which the Council has determined that the invoice is valid and undisputed.
- 4.6 Where the Council fails to comply with Condition 4.4 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of Condition 4.5 after a reasonable time has passed.
- 4.7 Where the Seller enters into a Sub-Contract, the Seller shall include in that Sub-Contract:
- a) Provisions having the same effect as clauses 4.4 to 4.6 of this Agreement; and
 - b) A provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clauses 4.4 to 4.6 of this Agreement.
- c) In Condition 4.7, “Sub-Contract” means a contract between two or more suppliers, at any stage of remoteness from the Council in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.
- 4.8 The Seller shall ensure that each invoice contains all appropriate references and a detailed breakdown of the goods supplied and that it is supported by any other documentation reasonably required by the Council to accept or verify the invoice. The parties agree that if such documentation is not supplied by the Seller to the Council with the invoice then the invoice shall not be deemed to be accepted and shall be returned to the Seller for correction.
- 4.9 In the event that the invoice is disputed the Council will notify the Seller in writing that the invoice has not been verified and that the payment will not be made unless and until the invoice is accepted and verified by the Council. The Seller agrees to use its best

endeavours to provide such information to the Council as the Council reasonably requires to complete the procedure of acceptance or verification.

- 4.10 The Council reserves the right to withhold payment of the relevant part of the Price, without payment of interest, where the Seller has either failed to deliver the Goods / Services at all or has delivered Goods/ Services which, in the reasonable opinion of the Council, are unsatisfactory and any invoice relating to such Goods / Services will not be paid unless or until the Goods have been delivered to the Council's satisfaction.
- 4.11 Without prejudice to any other right or remedy, SRBC reserves the right to set off any liability of the Seller to SRBC against any liability of SRBC to the Seller (in either case howsoever arising and whether any liability is present or future, liquidated or unliquidated and irrespective of the currency).
- 4.12 If any sum under the Contract is not paid when due then that sum will bear interest from the due date until payment in full, in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 as amended. The Seller is not entitled to suspend deliveries of the Goods or performance of the Services as a result of any sums being outstanding.

5 Quality and Description

- 5.1 The Seller warrants to SRBC that the Goods and/or the Services:
- 5.1.1 conform in every respect with the provisions of the Contract;
- 5.1.2 comply with all applicable standards, regulations and current legislation in force in the United Kingdom at the time when the same are supplied;
- 5.1.3 are new (unless otherwise specified on the Purchase Order (or Purchase Order Amendment (if relevant)) or Letter of Tender Acceptance or LOI) and of sound materials and skilled and careful workmanship;
- 5.1.4 equal in all respects the Specifications and the samples or patterns provided by either party and accepted by the other;
- 5.1.5 are capable of any standard of performance specified in the Contract and be of satisfactory quality;
- 5.1.6 are free from defects in design, material and workmanship; and
- 5.1.7 if the purpose for which they are required is indicated in the Contract either expressly or by implication, are fit for that purpose.

6 Inspection, Testing and Samples

- 6.1 If so required by SRBC the Seller shall submit samples of the Goods for SRBC's approval before the bulk of the relevant Contract is delivered or before the bulk of the Services are performed (as the case may be). Such samples should be marked for identification by the Seller and will be retained by SRBC until the Services are completed or the Goods have been delivered.
- 6.2 SRBC shall be entitled to inspect and test the Goods during manufacture, processing or storage or check the progress of the Services.
- 6.3 If as a result of any inspection or test (pursuant to Condition 6.2) SRBC's representative is of the reasonable opinion that the Goods and/or Services do not comply with the Contract or are unlikely on completion of manufacture or processing so to comply SRBC may inform the Seller accordingly and the Seller shall promptly take such steps as may be necessary to ensure such compliance.

7 Delivery

- 7.1 The Goods shall be properly packed, secured and despatched at the Seller's expense to arrive in good condition at the time or times and the place or places specified in the Contract unless otherwise prior agreed in writing by the parties.
- 7.2 The Seller will off-load the Goods at its own risk as directed by SRBC. If the Seller delivers any Goods at the wrong time or to the wrong place then SRBC may deduct from the Price any resulting costs of storage or transport. The Services will be provided at the address stated in the Contract. The Goods and/or Services will be delivered and/or performed during SRBC's normal office hours on the date or within the period specified in the Purchase Order (or Purchase Order Amendment (if relevant)) or Letter of Tender Acceptance or LOI, or if no such period is specified then within 28 days of the date of the Contract. Time for delivery and/or performance will be of the essence and if SRBC terminates the Contract pursuant to this Condition 7.2, then without prejudice to any other of its rights, SRBC shall have the power to purchase elsewhere and charge the Seller with any extra expense incurred by SRBC.
- 7.3 Unless otherwise prior agreed by SRBC in writing, it shall have no obligation to pay for or return Package whether or not re-usable. If the Contract states that Package is returnable, the Seller must provide full disposal instructions prior to delivery.
- 7.4 All Goods should be accompanied by a detailed advice note stating the Purchase Order or Letter of Tender Acceptance or LOI number and giving full particulars of the Goods supplied (except when such Goods are sent directly to premises of SRBC's customer when the advice note sent with Goods should not show the Seller's name.)
- 7.5 If for any reason SRBC is unable to accept delivery of the Goods at the time when the Goods are due and ready for delivery, the Seller shall store the Goods, safeguard them and take all reasonable steps to prevent their deterioration until their actual delivery and SRBC shall be responsible for any reasonable and properly incurred costs of the Seller associated with such storage pursuant to this Condition 7.5.
- 7.6 The Seller may not deliver the Goods by separate instalments or perform the Services in stages unless prior agreed in writing by SRBC's authorised signatory. If SRBC does not agree, the Contract will be construed as a separate Contract in respect of each instalment or stage, and without prejudice to any other right or remedy; SRBC will have the right to:
- 7.6.1 treat all the Contracts for the total Purchase Order or Letter of Tender Acceptance or LOI (as appropriate) as repudiated if the Seller fails to deliver or perform any instalment at any stage; and
- 7.6.2 reject any or all of the instalments for the total Purchase Order or Letter of Tender Acceptance or LOI (as appropriate) if SRBC is entitled to reject any one instalment.
- 7.7 SRBC will not be deemed to have accepted the Goods until it has had 14 days to inspect them following delivery. SRBC will also have the right to reject the Goods as though they had not been accepted for 14 days after any latent defect in the Goods has become apparent.

8 Risk/Ownership

- 8.1 The Seller shall bear all risk of loss or damage to the Goods until they have been delivered and shall insure accordingly.
- 8.2 Ownership of the Goods shall only pass to SRBC when the Goods have been delivered but without prejudice to SRBC's right of rejection under this Contract.

9 Work on SRBC's premises

- 9.1 If the Contract involves any Services which the Seller is to perform on SRBC's premises then the Seller, its employees, sub-Sellers and their employees and any other person associated with the Seller shall:
- 9.1.1 adhere in every respect to the obligations imposed on them by current legislation; and
- 9.1.2 comply with any regulations and/or codes of practice that SRBC may notify to the Seller in writing.

10 Safety

- 10.1 The Seller shall observe all legal requirements of the United Kingdom, European Union and all relevant international agreements in relation to health, safety and environment.

11 SRBC's Equipment and Material

- 11.1 All jigs, tools, moulds, patterns and other equipment (the "Equipment") supplied to the Seller or purchased by SRBC from the Seller for the performance of the Contract shall be maintained in good condition by the Seller and the Seller shall indemnify SRBC against all loss thereof or damage thereto whilst the same are in the Seller's possession or control. Any Materials and/or Equipments shall only be used for the purpose of manufacturing and supplying the Goods to or performing the Services for SRBC and shall remain SRBC's property at all times.
- 11.2 All containers, pallets and other packing materials ("Packaging") supplied by SRBC to the Seller shall be maintained in good condition and shall remain SRBC's property at all times. At SRBC's request, the Seller shall promptly return any Material, Equipment and/or Packaging to SRBC.
- 11.3 Without prejudice to the Seller's liability under this Condition 11, the Seller shall maintain such insurance as SRBC may stipulate in respect of the Material and the Equipment and as shall be necessary to cover the said liability of the Seller and the Seller shall produce to SRBC on demand a current certificate of insurance from the insurers under such policies.
- 12 Intellectual Property**
- 12.1 Where the Goods and/or Services are designed, created or otherwise developed by or for the Seller pursuant to the Contract, then all intellectual property rights therein or relating thereto throughout the world (including without limitation, patents, copyrights, design rights, registered designs, trade marks, service marks and know-how and the rights to apply for any of the foregoing) ("the Intellectual Property Rights") shall belong to SRBC absolutely. The Seller hereby assigns the Intellectual Property Rights to SRBC with the intent that upon the making or creation thereof the Intellectual Property Rights shall automatically vest in SRBC.
- 12.2 The Seller shall at SRBC's request (and notwithstanding the termination of the Contract) sign and execute and procure the signature and execution of all such documents and do all such acts as SRBC may reasonably require:
- 12.2.1 to vest the legal title in, apply for, obtain and maintain in force in SRBC's sole name (unless it otherwise directs) any Intellectual Property Rights;
- 12.2.2 to resist any objection or opposition to obtaining, and any petitions or applications for revocation of, any of the Intellectual Property Rights; and
- 12.2.3 to bring any proceedings for infringement of any of the Intellectual Property Rights.
- 12.3 The Seller irrevocably undertakes that neither it nor any other person will assert against SRBC or any third party any moral rights in or relating to the Intellectual Property Rights and warrants that all such moral rights are irrevocably waived and extinguished. For the purpose of this Condition 12 "moral rights" shall have the meaning ascribed thereto by the Copyright, Designs and Patents 1988 Act and all rights similar or corresponding thereto subsisting in any other country of the world from time to time.
- 13 Rejection**
- 13.1 Without prejudice to any other of its rights SRBC may by notice in writing to the Seller reject any or all of the Goods if the Seller fails to comply with any of its/his obligations under the Contract.
- 13.2 SRBC shall when giving notice of rejection specify the reason therefore and the Seller shall remove such Goods at its risk and expense. In such case the Seller shall:
- 13.2.1 at SRBC's option replace such rejected Goods with goods which are in all respects in accordance with the Contract or credit SRBC with the invoice price thereof and reimburse SRBC all freight and handling costs reasonably incurred by SRBC and/or for which it may be liable in respect of such Goods; or
- 13.2.2 reimburse SRBC all freight and handling costs reasonably incurred by SRBC in the implementation of a stock recovery, recall or market withdrawal of the Goods in any part of the world.
- 14 Cancellation and Termination**
- 14.1 SRBC shall be entitled to cancel any Purchase Order (or Purchase Order Amendment (if appropriate)) or Letter of Tender Acceptance or LOI in whole or in part by giving to the Seller at any time prior to delivery or performance of the Goods and/or Services in which event SRBC's sole liability shall be to pay to the Seller fair and reasonable compensation for work-in-progress at the time of cancellation but for the avoidance of doubt such compensation shall not include loss of anticipated profits or any consequential loss.
- 14.2 SRBC shall have the right at any time by giving notice in writing to the Seller to terminate the Contract with immediate effect if:
- 14.2.1 the Seller is in continuing or material breach of any of the terms of the Contract and the breach is incapable of remedy;
- 14.2.2 the Seller is in continuing or material breach of any of the terms of the Contract and, the breach is capable of remedy, but the Seller fails to remedy such breach within 14 days service of a written notice from SRBC, specifying the breach and requiring it to be remedied;
- 14.2.3 any distress, execution or other legal process is levied upon any of the assets of the seller;
- 14.2.4 the Seller becomes bankrupt, insolvent, makes any composition with its creditors, has a receiver appointed under the Mental Health Act 1983 or dies;
- 14.2.5 the Seller ceases to trade or appears in the reasonable opinion of SRBC likely or is threatening to cease to trade; or
- 14.2.6 the Seller has a change in its management and/or control;
- 14.3 The termination of the Contract, howsoever arising, will be without prejudice to the rights and duties of either party prior to termination. Any provision of these Conditions which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.
- 15 Warranty and Indemnity**
- 15.1 Without prejudice to any other remedies of SRBC, the Seller shall promptly (at SRBC's option) repair or replace all Goods which are or become defective during the period of twelve months from the date of delivery where such defect occurs under proper usage and is due to faulty design, the Seller's erroneous instructions as to use or erroneous data or inadequate or faulty materials or workmanship, or any breach of by the Seller of any provision of the Contract. Repairs and replacements shall themselves be subject to the foregoing obligations for a period of twelve months from the date of delivery, re-installation or passing of tests (if any) whichever is appropriate after repair or replacement. If any Services are found to have been performed defectively within twelve months of the date of their performance the Seller shall forthwith upon notice thereof re-perform the same.
- 15.2 **THE SELLER WILL INDEMNIFY, KEEP INDEMNIFIED AND HOLD HARMLESS SRBC FROM AND AGAINST ALL COSTS (INCLUDING THE COST OF ENFORCEMENT), EXPENSES, LIABILITIES (INCLUDING ANY TAX LIABILITY) INJURIES, DAMAGES CLAIMS, DEMANDS, PROCEEDINGS OR LEGAL COSTS (ON A FULL INDEMNITY BASIS) AND JUDGEMENTS WHICH SRBC INCURS OR SUFFERS AS A CONSEQUENCE OF A BREACH OR NEGLIGENT PERFORMANCE BY THE SELLER (ITS EMPLOYEES, AGENTS OR CONTRACTORS) OR FAILURE OR DELAY IN PERFORMANCE OF THE TERMS OF THE CONTRACT OR FOR ANY INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, REGISTERED DESIGN, DESIGN RIGHT, TRADE MARK, TRADE NAME OR OTHER INTELLECTUAL PROPERTY RIGHT FOR OR RELATING TO THE GOODS AND/OR SERVICES UNLESS SUCH INFRINGEMENT HAS OCCURRED DIRECTLY AS A RESULT OF ANY SPECIFICATION SUPPLIED BY SRBC.**
- 15.3 Neither SRBC nor the Seller exclude or limit liability to the other party for death or personal injury caused by its negligence.
- 15.4 The Seller sells in the course of a business and warrants that the Goods supplied will at the time of delivery correspond to the description given by the Seller to SRBC.

- 15.5 All other warranties, conditions or terms relating to the Goods, whether express or implied by the Sale of Goods Act 1979, the Supply of Goods and Services Act 1982, or by other statute or common law or otherwise are included to the fullest extent.
- 16 General**
- 16.1 The Contract is personal to the Seller who may not assign, delegate, licence, part with or sub-contract all or any of its rights or obligations hereunder without the prior written consent of SRBC's authorised signatory.
- 16.2 SRBC may assign, delegate, licence, or sub-contract all or any part of its rights or obligations under the Contract.
- 16.3 The Seller (and any sub-Seller approved pursuant to Condition 16.1) shall implement an Equal Opportunities Policy.
- 16.4 In connection with this or any other contract between the parties, the Seller shall not give, provide, or offer to SRBC's staff and agents any loan, fee, reward, gift or any emolument or advantage whatsoever, the receipt of which is an offence under Section 117(2) of the Local Government Act 1972 or in breach of any code of conduct governing employees of SRBC. In the event of any breach of this Condition 16.4, SRBC shall, without prejudice to its other rights, be at liberty forthwith to terminate this Contract and any other contract and to recover from the Seller any loss or damage resulting from such termination.
- 16.5 SRBC reserves the right to defer the date of delivery or payment, to cancel the Contract or reduce the volume of the Goods and/or Services ordered if it is prevented from or delayed in the carrying on of its business through any circumstance beyond its reasonable control (including, without limitation, any form of Government intervention, epidemic, riot or industrial disputes)
- 16.6 A failure at any time to enforce any provision of the Contract shall in no way affect the right at a later date to require complete performance of the Contract; nor shall the waiver of the breach of any provision be taken or held to be a waiver of any subsequent breach of the provision or be a waiver of the provisions itself.
- 16.7 All notices/notifications in connection with any Contract shall be in writing addressed to the other at its registered office, or principal place of business and in respect of notices sent to SRBC addressed to the Purchasing Officer, Central Purchasing Department and delivered by hand, or first class post or special delivery post. The notice will be deemed to have been duly served, if delivered by hand, when left at the proper address for service or if made by pre-paid, first class post or special delivery post, 48 hours after being posted.
- 16.8 No variation to these Conditions shall bind SRBC unless approved in writing by SRBC's authorised signatory.
- 16.9 The parties to the Contract do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
- 16.10 The Seller will note SRBC's obligations under the Freedom of Information Act 2000 and Human Rights Act 1998 and any codes of practice and best guidance notes issued by the government and appropriate enforcement agencies. The Seller must comply with this legislation in so far as it places obligations on it as well as facilitating SRBC's compliance. The Seller should particularly note, that SRBC may be required to provide information relating to this Contract or information relating to the Seller to a person in order to comply with SRBC's obligations under the aforementioned legislation. The Seller notes SRBC's obligations under the DPA, the GDPR, and the LED. The Seller shall utilise appropriate technical measures to comply with this data protection legislation and shall comply with any notification requirements.
- 16.11 The Seller shall comply with the provisions of the Equalities Act 2010, and all applicable equality legislation and the codes of practice thereto as amended from time to time.
- 16.12 The Seller shall comply with SRBC's Whistle Blowing Policy as amended from time to time or demonstrate on request by SRBC that it maintains a broadly similar policy.
- 16.13 Any references in this Contract, to any statute or statutory provision shall be construed as referring to that statute or statutory provision as the same may from time to time be amended, modified, extended, re-enacted or replaced (whether before or after the date of this Contract) and including all subordinate legislation made under it from time to time.
- 16.14 This Contract shall be subject to English Law and the parties submit to the exclusive jurisdiction of the English courts.
- 16.15 Transparency
- a. The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act ("the Act") this Contract is not Confidential Information. SRBC shall be responsible for determining in its absolute discretion whether any part of this Contract is exempt from disclosure in accordance with the provisions of the Act.
 - b. Notwithstanding any other term of this Contract, the Seller hereby gives its consent to SRBC to publish this Contract in its entirety, including from time to time agreed changes to the Contract to the general public in whatever form SRBC decides.