

## STANDARD TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS AND/OR PURCHASE OF SERVICES BY WALES & WEST UTILITIES LIMITED

*All contract orders are issued under these standard terms and conditions unless separate Wales & West Utilities terms have been agreed as a result of a tendering exercise, awarding of framework agreement or otherwise between Wales & West Utilities and the Supplier. Where separate Wales & West Utilities terms have been agreed, those terms shall prevail over all other terms and conditions. The Supplier's standard terms and conditions if any shall not apply.*

The Supplier wishes to sell and the Customer wishes to purchase the Goods and/or Services on the terms set out in this Agreement.

### 1. INTERPRETATION

1.1 In this Agreement, the following expressions shall have the following meanings unless the context otherwise requires:

<b>"Business Day"</b>	a day other than Saturday or Sunday or public holiday in England
<b>"Commencement Date"</b>	the commencement date set out in the Contract Order or Specification (as the case may be)
<b>"Completion Date"</b>	the completion date set out in the Contract Order or Specification (as the case may be)
<b>"Contract Order"</b>	means the Customer's standard contract order
<b>"Customer"</b>	means the Customer identified as such in the Contract Order
<b>"Data Protection Legislation"</b>	means the Data Protection Act 1998 or replacement legislation (as amended), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as amended), General Data Protection Regulation (Regulation (EU) 2016/679), any subordinate legislation from time to time together with any guidance and/or all other data protection laws, regulations, codes of practice issued by the Information Commissioner or relevant government department and statutory instruments as may be in force in relation to such legislation in the United Kingdom from time to time
<b>"Event of Force Majeure"</b>	in relation to either party, any circumstances beyond the reasonable control of that party
<b>"Goods"</b>	the Goods to be provided by the Supplier under this Agreement as set out in the Contract Order
<b>"Specification"</b>	the description or specification of the Goods and/or Services (as the case maybe) provided in writing and referred to in the Contract Order
<b>"Supplier"</b>	the Supplier identified as such in the Contract Order
<b>"Services"</b>	the services and/or works (if any) to be carried out by the Supplier (or its subcontractor/s) under the terms of the Contract Order or as set out in the Specification (as the case may be)

### 2. SALE AND PURCHASE OF THE GOODS

2.1 The Supplier shall sell and the Customer shall purchase such quantities of the Goods as the Customer orders from time to time pursuant to clause 3, upon the terms and conditions of this Agreement. The appointment of the Supplier under this Agreement is not exclusive and the Customer does not guarantee to purchase Goods or any volume of Goods from the Supplier.

2.2 Unless otherwise agreed by the Customer in writing, every purchase of Goods from the Supplier by the Customer shall be subject to the terms and conditions contained in this Agreement. Any terms and conditions other than those contained in this Agreement are expressly excluded.

### 3. ORDERS

Contract Orders for the Goods shall be given by the Customer to the Supplier in writing or, if given orally, shall be confirmed by the Customer in writing within twenty four (24) hours after the Contract Order is given by the Customer. The Supplier shall acknowledge and confirm whether or not it can accept an order within five (5) Business Days. In any event, the Supplier shall be deemed to have accepted the Contract Order in accordance with the terms of this Agreement upon commencing the work on the Contract Order.

### 4. SPECIFICATION OF THE GOODS AND WARRANTY

4.1 All Goods sold by the Supplier to the Customer pursuant to this Agreement shall conform in all respects to the Specification and the Customer shall be entitled to reject any quantity of the Goods which is not in accordance with the Specification. The Supplier acknowledges that precise

conformity of the Goods with the Specification is of the essence of this Agreement and accordingly the Customer shall be entitled to reject the Goods if they are not in conformity with this Agreement, however slight the breach may be. The Supplier shall be responsible for the costs of carriage of any Goods rejected.

4.2 The Supplier warrants to the Customer that the Goods will be of satisfactory quality within the meaning of the Sale of Goods Act 1979 (as amended) and fit for the purpose made known to the Supplier at the time of placing the Contract Order, and will comply with all statutory and EC requirements and regulations relating to the Goods or to the sale of the Goods.

4.3 Without prejudice to all other rights and remedies of the Customer in respect of supply to it of Goods which do not conform with the provisions of clause 4.2, the Supplier shall, at the Customer's option, immediately replace or repair, free of charge, within a period of sixty (60) months from the date the Goods are delivered to or collected by the Customer (as the case may be), any Goods which do not comply with the provisions of clause 4.2. Any repaired or replacement Goods will be guaranteed on these terms for the unexpired portion of the sixty (60) month period plus such period during which the Goods were defective.

4.4 The Supplier shall indemnify the Customer and keep the Customer indemnified against all losses, liabilities, claims, demands, suits, actions, damages, costs and expenses of whatsoever nature that may arise or occur as a result of the Goods not complying with the provisions of clause 4.2, any other breach of this Agreement, or any personal injury or damage to property caused by any defects in the Goods.

4.5 The Supplier warrants that the Goods do not or will not constitute an infringement of any intellectual property rights. In the event of any infringement of intellectual property rights, the Supplier hereby undertakes at the Supplier's own expense to attempt to procure for the Customer the right to continue to use the infringing Goods and/or software or to modify it to become non-infringing or to substitute another device and/or piece of software of equal or greater capacity. The Supplier hereby undertakes in any event to indemnify the Customer fully against all costs related to such infringement including, but not limited to, all legal costs (including the cost of any settlement) incurred by the Customer. In the event of the Supplier not being able to modify, substitute or otherwise procure for the Customer the right to continue using the infringing Goods, the Supplier may remove such Goods with the consent of the Customer upon payment to the Customer of an amount equal to all payments made by the Customer to the Supplier under this Agreement.

4.6 The Supplier shall comply with the Customer's health, safety and security and site policies and procedures, and its environmental standards which are available from the Customer's website or otherwise upon request (but not more than twice in any Regulatory Year in respect of any one version of any policy, procedure or standard).

### 5. DELIVERY / COLLECTION OF THE GOODS

5.1 The Supplier will deliver the Goods or make them available for collection, as the case may be, pursuant to the Contract Order, on the date specified in the Contract Order. The Supplier shall obtain a signed delivery note from the Customer (or its subcontractors) upon delivery or collection of the Goods, as the case may be.

5.2 The Customer shall be entitled to cancel a Contract Order if the Goods are not delivered or made available, as the case may be, within ten (10) days of the dates specified in the Contract Order, or such other date as is agreed by the parties in writing.

5.3 The Supplier shall package the Goods in a manner which shall be suitable for transit and/or storage at no additional cost to the Customer with as little additional weight as possible and in the smallest cubical bulk possible consistent with safe carriage and insurance requirements. The Goods shall be labelled in accordance with the Customer's reasonable instructions provided in advance to the Supplier and any applicable regulations or requirements of the carrier. The details of the Goods shall be prominently displayed on the wrapping or casing of all shipments and shall be noted on all invoices and bills of lading. The Customer shall not be obliged to return to the Supplier any packaging or packing materials for the Goods, whether any Goods are accepted by the Customer or not.

5.4 The Supplier shall identify any special handling requirements (including but not limited to hazardous materials) on the packaging.

5.5 The Supplier shall notify the Customer a minimum of twelve (12) months prior to the Goods going obsolete or the Supplier ceasing to actively support the Goods. Spares, where applicable, shall be made available for a pre-determined period of time agreed by the Supplier.

5.6 Risk and property in and responsibility for the Goods shall pass to the Customer once they are delivered to or collected by the Customer, as the case may be.

### 6. PRICE OF THE GOODS

6.1 The price for each type of the Goods shall be the price stated in the Contract Order ("the Prices").

6.2 The Prices shall be inclusive of any costs of packaging, carriage (where applicable) and insurance of the Goods but exclusive of any value added tax or other applicable sales tax or duty, which shall be added to the sum in question.

6.3 The Customer shall pay the sums shown to be due in cleared funds to the bank account nominated by the Supplier within twenty eight (28) calendar days after the end of the month in which the Customer receives the Supplier's invoice. The Supplier expressly waives and releases any and all liens or claims or rights of lien on any of the Goods.

6.4 The Customer may set off and withhold against the Supplier against any invoiced Prices any debt or sum owed to it by the Supplier under this Agreement or otherwise.

6.5 In respect of any undisputed sum which remains outstanding after the period specified in clause 6.3, the Supplier may charge interest on such sum on a daily basis from the due date until paid in full, calculated at a rate of 2% per annum above the base rate then prevailing at Barclays Bank Plc.

### 7. SERVICES

7.1 Where under this Agreement, the Services are supplied in accordance with this clause 7, then such Services shall be carried out and completed:

7.1.1 in accordance with the Specification or Contract Order (as the case may be);

7.1.2 in accordance with the terms of this Agreement;

7.1.3 in accordance with all relevant laws;

7.1.4 in a proper and workmanlike manner;

7.1.5 with all due speed, care and diligence; and

7.1.6 using all the reasonable skill, care and diligence to be expected of a competent Supplier experienced in carrying out services of a similar scope, nature and complexity to the Services

7.2 The Supplier shall begin the Services on the Commencement Date and thereafter shall diligently proceed to complete the same on or before the Completion Date.

7.3 The Supplier agrees and confirms that the Prices (as defined in clause 6.1) shall be inclusive of:

7.3.1 any design services carried out or to be carried out by or on behalf of the Supplier;

7.3.2 labour;

7.3.3 materials;

7.3.4 plant and equipment;

7.3.5 accommodation;

7.3.6 access to and transport to and from and in and about the site where the Services are to be performed.

7.4 The Supplier warrants that it has not specified or used and shall not specify or use in the Services:

7.4.1 products, goods or materials generally known at the time of the Specification or Contract Order (as the case may be) to be deleterious to health and safety or to the durability of buildings and/or other structures and/or finishes and/or plant and machinery in the particular circumstances in which they are used; and/or

7.4.2 products, goods or materials which do not accord with British or European Standards and/or Codes of Practice current at the time of the Specification or Contract Order (as the case may be) or such equivalent standards or requirements and good building practice; and/or

7.4.3 products, good or materials which do not accord with the guidelines in the edition of the publication "Good Practice in the Selection of Construction Materials" (Ove Arup &

Partners) current at the time of the Specification or Contract Order (as the case may be).

7.5 The Customer shall grant to the Supplier a non-exclusive licence to enter and occupy the site where the Services are to be performed for such periods and at such times as may be necessary to enable the Supplier to perform his obligations under this Agreement.

7.6 The Services, including all work executed and all unfixed materials and goods delivered to and intended for the Services shall, as regards loss or damage, be at the risk of the Supplier until either the Completion Date or practical completion of the works, whichever is the later.

8. **EVENT OF FORCE MAJEURE**

8.1 Neither party to this Agreement shall be deemed to be in breach of this Agreement or otherwise liable to the other party in any manner whatsoever for any failure or delay in performing its obligations under this Agreement due to an Event of Force Majeure.

8.2 If either party is affected by an Event of Force Majeure it shall promptly notify the other party of the nature and extent of the circumstances in question.

8.3 If the Event of Force Majeure in question continues for more than three months, the party not subject to the Event of Force Majeure may give notice in writing to the other to terminate this Agreement. The notice to terminate must specify the termination date, which must not be less than fifteen (15) days after the date on which the notice is given, and once such notice has been validly given, this Agreement will terminate on that termination date.

9. **TERMINATION**

9.1 Either party may terminate this Agreement with immediate effect by giving written notice to the other if the other:

9.1.1 commits any breach of this Agreement and fails to remedy the same within fourteen (14) days of service of notice by the non-defaulting party specifying the breach and requiring it to be remedied; or

9.1.2 becomes bankrupt or insolvent or enters into any arrangement with its creditors or takes or suffers any similar actions in consequence of a debt.

9.2 The Customer may terminate this Agreement or any Contract Order with immediate effect by giving written notice to the Supplier if the Supplier commits a breach of any health & safety regulation which is not remedied within thirty (30) days after being required to be remedied by the Customer.

9.3 The rights to terminate this Agreement given by this clause 9 shall not prejudice any other right or remedy of either party in respect of the breach concerned (if any) or any other breach.

9.4 Upon the termination of this Agreement for any reason, subject as otherwise provided in this Agreement and to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under this Agreement.

10. **NATURE OF AGREEMENT**

10.1 Subject to the Customer's consent (which shall not be unreasonably withheld) the Supplier shall be entitled to carry out its obligations under this Agreement through any agents or subcontractors appointed by it in its absolute discretion for that purpose.

10.2 Except as provided in clause 10.1, this Agreement is personal to the Supplier, and the Supplier may not, without the prior written consent of the Customer, assign, mortgage, charge (otherwise than by floating charge) or dispose of any of its rights hereunder, or subcontract or otherwise delegate any of its obligations under this Agreement.

10.3 The Customer may novate, assign or otherwise transfer to any person any of its rights and obligations under this Agreement.

10.4 No exercise or failure to exercise or delay in exercising any right, power or remedy by either party will constitute a waiver by that party of any other right, power or remedy.

10.5 This Agreement contains all the terms which the parties have agreed in relation to its subject matter and neither of them has been induced to enter into this Agreement by a statement or a promise which this Agreement does not contain. This shall not exclude any liability which a party would otherwise have to the other party in respect of any statement made fraudulently by that party prior to the date of this Agreement. No variation of this Agreement shall be effective unless in writing signed by duly authorised representatives of the parties.

11. **NOTICES**

Any demand, notice or communication may be given by hand or sent by first class pre-paid post or facsimile transmission and shall be deemed to have been duly served:

11.1 if delivered by hand, when left at the proper address for service;

11.2 if given or made by prepaid first class post, forty eight (48) hours after being posted (excluding Saturdays, Sundays and public holidays);

11.3 if given or made by facsimile transmission, at the time of transmission, provided that a confirming copy is sent by first class pre-paid post to the other party within 24 hours after transmission;

provided that, where in the case of delivery by hand or transmission by facsimile, such delivery or transmission occurs either after 4.00 pm on a Business Day, or on a day other than a Business Day, service shall be deemed

to occur at 9.00 am on the next following Business Day (such times being local time at the address of the recipient).

Any demand, notice or communication shall be made in writing or by facsimile addressed to the recipient at its registered office or its address stated in this Agreement (or such other address or facsimile number as may be notified in writing from time to time) and shall be marked for the attention of the Chief Procurement Officer.

12. **CONFIDENTIALITY**

12.1 A party (the "Receiving Party") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (the "Disclosing Party"), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and goods which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Agreement, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Agreement. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

12.2 This clause 12 shall survive termination of the Agreement.

13. **DATA PROTECTION**

13.1 The terms "Controller", "Processor", "Data Subject", "Personal Data", "Personal Data Breach" and "Process/Processing" have the same meaning as described in the Data Protection Legislation.

13.2 The Parties acknowledge that, for the purposes of Data Protection Legislation, in performing this Agreement, the Supplier is a Processor and the Customer is the Controller.

13.3 When handling Personal Data provided by or collected or generated on behalf of the Customer ("Customer Personal Data"), the Supplier must:

(a) have in place appropriate technical and organisational measures to protect such Customer Personal Data processed by it against unauthorised or unlawful processing and against accidental loss, destruction, or damage and will provide the Customer with details of such security measures and procedures in relation to its processing of Customer Personal Data;

(b) process Customer Personal Data solely in order to meet its obligations under this Agreement and in accordance with the terms of this Agreement or any other express written instructions of the Customer;

(c) promptly (and in any case by the end of the next Working Day) notify the Customer in writing (providing full details) if any Customer Personal Data may have been lost, destroyed, damaged, corrupted or accessed by or disclosed to unauthorised third parties or if it suspects or has reason to believe any Customer Personal Data may have been lost, destroyed, damaged, corrupted or accessed by or disclosed to unauthorised third parties;

(d) promptly notify the Customer of any request by a Data Subject relating to exercise of a right of a data subject pursuant to Data Protection Legislation and provide such assistance as is reasonably requested by the Customer to allow the Customer to comply with the request;

(e) process Customer Personal Data in compliance with Data Protection Legislation and any applicable law and immediately inform the Customer if it believes any instruction or processing is likely to breach such law;

(f) co-operate fully with the Customer and any regulatory body and promptly (and in any case by the end of the next Working Day) make available to the Customer upon request, all information necessary to demonstrate its compliance with this clause 13;

(g) promptly and properly respond to all enquiries and written instructions from the Customer relating to processing of Customer Personal Data in order to enable the Customer to meet in good time any requirements imposed by Data Protection Legislation;

(h) meet its obligations under this Agreement so as in no respect whatsoever to cause WWU to breach any of its obligations under Data Protection Legislation; and

(i) promptly: (i) following termination or expiry of this Agreement at the Customer's choice; or (ii) in any circumstance where the Customer is required by Data Protection Legislation at the Customer's request, delete or return the Customer Personal Data and delete all existing copies of the Customer Personal Data.

13.4 The Supplier must not engage a subcontractor to process the Customer Personal Data without the prior written consent of the Customer. Where the Supplier engages a subcontractor in accordance with this clause the Supplier must ensure that it imposes obligations on the subcontractor that are substantially the same as the obligations imposed on the Supplier under this clause 13.

13.5 The Supplier must fully indemnify the Customer, and keep the Customer fully indemnified, against all losses and liabilities (including fines and penalties) which the Customer may suffer or incur as a result of the Supplier's failure (or the failure of any the Supplier's or subcontractor of Supplier) to comply with the obligations of this clause 13.

13.6 The Supplier must ensure the Customer Personal Data is not made available by default to all personnel of Supplier or all personnel of any subcontractor and that only such staff as are strictly required to do so in order to meet its obligations under this Agreement and have committed themselves to confidentiality shall have access to the Customer Personal Data.

13.7 The Supplier agrees to allow its (and must ensure that those of its subcontractors' allow their) data processing facilities, procedures and documentation which relate to the processing of the Customer Personal Data to be scrutinised by auditors of the Customer in order to ascertain compliance with the terms of this Agreement

13.8 The Supplier must notify the Customer immediately upon receiving any notice or communication from any the Customer's customers or employees or a regulatory body which relates directly or indirectly to the processing of the Customer Personal Data or other Law applicable to the Customer

13.9 The Supplier may only disclose any personal data provided to it under the terms of this Agreement to third party subcontractors of the Supplier with the prior written consent of the Customer (which may be withheld in the Customer's absolute discretion).

13.10 The Supplier shall not transfer any of the Customer Personal Data outside the European Economic Area without the prior written consent of the Customer (which may be withheld in its absolute discretion).

14. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

The parties to this Agreement 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.

15. **ANTI-SLAVERY AND HUMAN TRAFFICKING**

The Customer may terminate this Agreement and any Contract Order forthwith by giving notice in writing to the Supplier and recover from the Supplier the amount of any loss resulting from such termination if in relation to any contract with the Customer the Supplier or any person employed by the Supplier or acting on its behalf shall have committed any offence under the Modern Slavery Act 2015.

16. **ANTI-FACILITATION OF TAX EVASION**

16.1 The Supplier shall:

(a) not engage in any activity, practice or conduct which would constitute either:

(i) a UK tax evasion facilitation offence under section 45(1) of the Criminal Finances Act 2017; or

(ii) a foreign tax evasion facilitation offence under section 46(1) of the Criminal Finances Act 2017; and

(b) have and shall maintain in place throughout the term of this agreement such policies and procedures as are both reasonable to prevent the facilitation of tax evasion by another person (including without limitation employees of the Supplier) and to ensure compliance with clause 16.1 (a) above.

17. **ANTI-BRIBERY AND CORRUPTION**

The Supplier shall comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010.

18. **INSURANCE**

The Supplier shall maintain sufficient public liability, product liability, professional liability and other insurances to satisfy all identifiable risks. The Supplier shall provide evidence of such insurance at the request of the Customer.

19. **GOVERNING LAW**

The formation, construction, performance, validity and all aspects whatsoever of this Agreement shall be governed by the laws of England and Wales and the parties hereby agree to submit to the exclusive jurisdiction of the English and Welsh Courts.

**I have read, understood and accept the terms of these Terms and Conditions**

**Signature** \_\_\_\_\_

**Name** \_\_\_\_\_

**For and on behalf of** \_\_\_\_\_

**Date** \_\_\_\_\_