

General purchasing terms and conditions of Portchester Crematorium Joint Committee

Purchase agreements concluded between PCJC and the Supplier (being the organisation to whom the PCJC's purchase order ("Order") is addressed) shall be subject to these terms and conditions. Unless PCJC expressly agrees otherwise in writing, every purchase shall be governed by these terms and conditions, to the exclusion of all other conditions. By taking action against an Order, the Supplier will be deemed to have accepted these terms and conditions.

1. DEFINITIONS AND INTERPRETATION

1. The words in parenthesis and/or quotation marks on the front of the Order or in these terms and conditions describe or identify as appropriate the following or preceding words or matters and have the same meaning throughout these terms and conditions. References to Clauses are to clauses in these terms and conditions.
2. The headings to the terms and conditions shall not affect their interpretation. The singular includes the plural; one gender includes both or either.

2. THE SUPPLY OF GOODS, SERVICES OR WORKS QUALITY STANDARDS

1. Goods, services and works required pursuant to the Order (the "Supply") shall be to the reasonable satisfaction of PCJC's authorised officer ("Authorised Officer") and shall without limitation conform with and fulfil in all respects:
 - the Order, these terms and conditions and any other documents described on or referred to on the Order or otherwise made known to the Supplier by PCJC (together being the "Contract") any variation of the Contract agreed in writing by the parties
 - the requirements of any relevant UK or EC statute, order, regulation, directives, standard, code of practice or byelaw from time to time in force which is relevant to the Supply
 - any recommendation or representation made by the Supplier and any professional standards which might reasonably be expected of the Supplier

3. PURCHASE PRICE, INVOICING AND PAYMENT

2. The price of the goods, services and/or works shall be as stated in the Order ("Price") and unless so stated shall be
 1. exclusive of any applicable value added tax (which, subject to clause 3.6 shall be payable by PCJC in addition subject to receipt by PCJC of a VAT invoice); AND
 2. inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the goods to the Delivery Address and any duties, imposts or levies other than value added tax.
 3. The Supplier will make the Supply in line with PCJC's requirements as specified in the Order.
 4. Supplier invoices MUST quote the Order number to avoid invoice rejection and potential payment delay.
 5. PCJC shall make payment via BACS transfer (provided the Supply complies with the Contract) within 30 days from a) date of receipt of a valid and correctly presented invoice OR b) date of goods receipt / works or services performed (whichever is the later date).
 6. PCJC may set off against the price any sums owed to PCJC by the Supplier.
 7. In respect of the supply of works only, the Supplier acknowledges, agrees and accepts that, unless expressly informed otherwise by PCJC, for the purposes of section 55A of the VAT Act 1994 PCJC is an 'end user' (as defined in Article 2 of the Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019) and accordingly the Supplier shall issue PCJC with a VAT invoice, with VAT charged at the appropriate rate, in accordance with clause 3.1.1 and PCJC will not account for the reverse charge applicable under clause 55A unless the Supplier is expressly informed in any particular case that PCJC is not an end user for the purposes of section 55A in which case PCJC will account for the reverse charge and VAT shall not be payable by PCJC to the Supplier in accordance with clause 3.1.1.

4. DELIVERY AND TIME FOR PERFORMANCE

1. The Supplier shall not deliver the Supply or related documentation purchased by PCJC earlier than the date specified in the Order or as may otherwise be agreed in writing by PCJC ("Delivery Date"). Delivery shall be to the delivery address defined by PCJC. Goods forming a Supply ("Goods") shall be deemed to have been delivered only when PCJC has signed the delivery advice note in confirmation of receipt. The Supplier shall immediately take back Goods which have not been so delivered and in such circumstances no charge is payable by PCJC. Evidence of delivery shall not be evidence of acceptance by PCJC.
2. Subject to Clause 4.4 time shall be of the essence. Notwithstanding the foregoing there shall be no extension to the Delivery Date without the prior written consent of the Authorised Officer.
3. Access to PCJC's premises, facilities or storage by the Supplier shall comply with the reasonable requirements of PCJC and shall be at the Supplier's risk and cost.
4. If either party is unable to make or accept the Supply, through
 - strike, lockout by employees, war or civil commotion
 - cessation or serious interruption of land, sea or air communications or power supplies
 - exceptionally adverse weather, fire or other unavoidable cause

it shall immediately notify the other party and then the disabled party may decline to make or accept the Supply. PCJC shall notify the Supplier within 30 days of the end of that period whether it requires the Supply to be recommenced, varied or cancelled (without further liability to either party). Where the Supply is recommenced the Contract shall be varied to extend the time for completion or delivery of the Supply by the period of disability.

5. At the completion of the Supply the Supplier shall remove all its materials from the delivery address (unless otherwise instructed) and permanently reinstate any damaged areas or surfaces and leave the delivery address in a clean condition ready for occupation.

5. PROPERTY RISK AND ACCEPTANCE

1. Without prejudice to any of the rights or remedies of PCJC (including but not limited to those under Clause 7), property and risk in any Goods shall pass to PCJC on delivery or on successful completion of testing, whichever shall be the later.

Notwithstanding the foregoing acceptance of Goods shall not take place until PCJC has had a reasonable opportunity inspect the Goods.

6. DESPATCH OF GOODS AND DAMAGE IN TRANSIT

1. The Supplier shall free of charge and as quickly as possible either repair or replace (as PCJC shall elect) Goods which fail to arrive or arrive damaged.

7. INSPECTION AND REJECTION

1. The Supplier shall assist PCJC or his authorised representatives (free of charge) to make any inspections or tests PCJC may reasonably require of the Supply at any time prior to acceptance.
2. PCJC may suspend the Supply in whole or in part without paying compensation if the Authorised Officer is reasonably of the opinion that the Supplier is in breach of Clause 10.
3. PCJC may reject the Supply in whole or in part before acceptance if it is not completely in accordance with the Contract or becomes so during any guarantee or warranty period specified in the Contract (or if none as is generally given by the Supplier (including without limitation any slight or minor variation) and in such circumstances may (as PCJC shall elect), without prejudice to other rights or remedies:
 - have the Supply repaired, redone or replaced by the Supplier with a supply which complies in all respects with the requirements of the Contract
 - request a return authority reference number from the supplier to properly track returned product
 - require a refund from the Supplier via a formal credit note (to be provided by the supplier within 7 days of PCJC notification)
 - make a reasonable deduction from the Price determined by the Authorised Officer

8. LABELLING AND PACKAGING

1. All Goods supplied shall be clearly marked. All containers of hazardous goods (and all relevant documents) shall bear prominent and adequate warnings. Where relevant, Product Data Sheets required by the Control of Substances Hazardous to Health Regulations 2002 (as amended), the European Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures and Commission Regulation (EU) No 453/2010 of 20 May 2010 amending Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals must be provided (in a form suitable for photocopying).
2. All packaging materials will be considered non-returnable unless otherwise agreed with PCJC in writing.

9. INTELLECTUAL PROPERTY RIGHTS

1. The Supply shall not infringe the intellectual property rights of any third party.
2. All rights (including without limitation ownership and copyright) in any specifications, information, instructions, plans, drawings, patterns, models, designs or other material furnished to or made available to the Supplier by PCJC shall remain vested solely in PCJC and shall be kept confidential.
3. This Clause 9 shall apply both during the Contract and after its termination or expiry.
4. The intellectual property rights (including without limitation copyright) in any thing created out of the Supply shall vest in PCJC.

10. HEALTH AND SAFETY

1. Without prejudice to the generality of Clause 2.1 the Supplier in making the Supply shall have full regard to safety of persons who may be affected in any way and shall comply with the requirements of the Health and Safety at Work Act 1974 and its subordinate regulatory framework, and of any other legislation relating to health and safety.
2. The Supplier shall conduct all necessary tests and examinations 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 them. The Supplier shall give PCJC adequate information about the use for which the Goods have been designed and have been tested and about any conditions necessary to ensure that when put to use the Goods will be safe and without risk to health.
3. Throughout the progress of any works, the Supplier shall keep the site in an orderly state and shall provide and maintain at its own cost all lights, guards, fencing and warning signs for the protection of the works and the safety and convenience of the public and others.

11. INDEMNITY AND INSURANCE

1. Without prejudice to any rights or remedies of PCJC (including but not limited to those under Clause 7) the Supplier shall indemnify PCJC and keep PCJC indemnified in full against any expense, liability, loss, claim, fine, cost or proceeding whatsoever incurred by or made against PCJC arising directly or indirectly out of the wrongful act, default, breach of contract or negligence of the Supplier, its subcontractors, employees or agents in the course of the provision of the Supply or otherwise in connection with the Contract.
2. The Supplier shall effect, with a reputable company, public and employer's liability and other insurances necessary to cover the risks contemplated by the Contract and shall at the request of PCJC produce the relevant policy or policies together with receipts or other evidence of payment of the latest premium due thereunder. Unless agreed otherwise with the Authorised Officer the supplier will maintain the following insurance levels; Public liability cover of at least £2 Million. Employer's liability cover of at least £5 Million (less than 5 employees) and at least £10 Million (more than 5 employees and hazardous activities). Where the Supply is for professional or consultancy services, Professional Indemnity cover of at least £2 Million during the period of the Supply and for 6 years afterwards to cover its liability to PCJC under the contract.

12. DISCRIMINATION, OMBUDSMAN INVESTIGATIONS AND HUMAN RIGHTS

1. The Supplier shall not unlawfully discriminate within the meaning and scope of the provisions of Equality Act 2010 or any statutory modification or re-enactment thereof or contravene the Human Rights Act 1998. The Supplier shall, to the extent relevant to the delivery of the Supply comply with PCJC's equal opportunities policies, which may be consulted at <http://www.fareham.gov.uk>. The Supplier shall take all reasonable steps to secure the observance of these provisions by all servants, employees or agents of the Supplier and all subcontractors employed in relation to the Supply.
2. If either PCJC's internal or external auditors or if the Commissioner for Local Administration (the Ombudsman) wish to investigate the Order or any part of the Contract, then the Supplier shall provide all such information, access and cooperation as those persons may reasonably require.

13. PREVENTION OF CORRUPTION AND WHISTLEBLOWING POLICY

1. PCJC may immediately terminate the Contract and recover all its loss if the Supplier, its employees or anyone acting on the Supplier's behalf does any of the following things:
 - offer, give or agree to give to anyone any inducement or reward in respect of this or any other contract with PCJC (even if the Supplier does not know what has been done); or
 - commit an offence under the Bribery Act 2010 and/or under Section 117(2) of the Local Government Act 1972
 - commit any fraud in connection with this or any other contract with PCJC whether alone or in conjunction with members or employees of PCJC
2. The Supplier will ensure that their employees and agents report to us any genuine suspicions of fraud and corruption by anyone acting on behalf of the Council or who does business with the Council. This can be done by phoning our fraud hotline on 01329 824667 or emailing us at corporatefraud@fareham.gov.uk
3. PCJC is under a duty to protect the public funds it administers and consequently may use information about or in relation to the Supplier which it has acquired in relation to the Order or otherwise for the prevention and detection of fraud. Accordingly PCJC may share for such purposes all such information with other bodies responsible for auditing or administering public funds, including participation in the National Fraud Initiative, and the Supplier acknowledges and consents to such use and sharing of all such information. For the purpose of this Clause 13.3 the "National Fraud Initiative" means the sophisticated data matching exercise (or any similar successor exercise) run by the Audit Commission (or any successor body) under Part IIA of the Audit Commission Act 1998 which matches electronic data within and between participating bodies, including by way of example local authorities, to prevent and detect fraud.

14. TERMINATION

1. PCJC may also by notice in writing terminate the Contract in whole or in part (and expel the Supplier from any premises or site to which it has been given access) if any of the events specified in Clause 14.2 occur. No period of notice shall be required but the notice shall state the date on which it is to take effect.
2. The events referred to in Clause 14.1 are:- the Supplier has failed to make the Supply within the time specified in the Contract; the Supplier has breached the Contract in a way which PCJC reasonably regards as irremediable, which may include, without limitation, repeated and/or persistent remediable breaches of the Contract; PCJC has given the Supplier at least 30 days' notice to remedy a breach of contract which can be remedied and the Supplier has failed to do so; the Supplier has without reasonable cause failed to proceed diligently with or wholly suspends performance of any Supply; the Supplier has a receiver appointed over all or substantial part of his or its assets or (if an individual) be declared bankrupt or (if a company) shall go into liquidation or have an administrator appointed to manage its affairs; or is affected by any event similar or analogous to any of the foregoing.
3. In the event of termination of the Contract or rejection under Clause 7, PCJC may engage another supplier to make the Supply and the Supplier shall be liable to pay PCJC as a debt any extra cost that PCJC incurs in so doing in excess of the Price.

15. ASSIGNMENT AND SUBCONTRACTING

1. The Supplier shall not without the written consent of the Authorised Officer assign or subcontract the benefit or burden of the whole or any part of the Contract. No subcontracting by the Supplier shall in any way relieve the Supplier of any of its responsibilities under the Contract.

16. NON-EXCLUSIVITY AND THIRD PARTIES

1. At its absolute discretion PCJC shall have the right to employ a person other than the Supplier to make supplies of the same type as referred to in the Order.
2. The Contract is not intended to confer and shall not confer any benefit on any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.

17. NOTICES

1. Any notice about the Contract may be sent by hand or by first class ordinary or special delivery post or transmitted by facsimile transmission or email or (in the case of notices from PCJC) any other form of electronic purchase order amendment used by PCJC and if so sent or transmitted to the address of the party shown on the Order, or to such other address as the party has notified to the other, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would be first be received by the addressee during normal business hours.

18. FOI

1. The Supplier acknowledges that PCJC is subject to the Freedom of Information Act 2000 ("FOIA"). The Supplier consents to PCJC disclosing, providing or publishing information provided to PCJC by the Supplier in order for PCJC to discharge its obligations under the FOIA.
2. Notwithstanding any other provision of the Contract the parties acknowledge and agree that except for any information which is exempt from disclosure in accordance with the provisions of the FOIA the content of the Contract is not confidential information.
3. The Supplier acknowledges that PCJC may be subject to governmental codes of practice or guidance relating to a transparency agenda, including the policy of publishing contracts and all other documents relating to public procurement activity, such as for example the 1 May 2014 document "The Local Government Transparency Code 2014". Accordingly and notwithstanding any other provision of the Contract, the Supplier hereby gives its consent for PCJC to publish the Contract in whole or in part (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including any variation to it. The Supplier shall assist and cooperate with PCJC to enable PCJC to publish the Contract in accordance with the aforementioned governmental transparency agenda.

19. GOVERNING LAW

1. The Contract shall be governed by and construed in accordance with English law and the Supplier hereby irrevocably submits to the exclusive jurisdiction of the English courts.

20. CONSTRUCTION CONTRACTS

1. This Clause 20 shall only apply where the Contract is a construction contract as defined in the Housing Grants Construction and Regeneration Act 1996 and shall take precedence over clause 3.4. For the purposes of this Clause the "Act" shall mean the Housing Grants Construction and Regeneration Act 1996.
2. The due date of payment of any monies payable pursuant to the Contract for works shall be the date of receipt by PCJC of the Supplier's proper invoice in the form and with such supporting documentation as PCJC may reasonably require (the "Due Date").
3. Within 5 days of the Due Date PCJC shall give the Supplier notice of the amount of any payment to be made to the Supplier and the basis on which that amount was calculated.

4. The final date for payment of any sum payable pursuant to the Contract shall be 30 days after the Due Date (the "Final Date for Payment").
5. Any notice of withholding payment shall be given by PCJC no later than 7 days before the Final Date for Payment and shall specify the amount proposed to be withheld and the ground for withholding and, if more than one ground, each ground the amount attributable to it.
6. Any adjudication under the Act shall be governed by the Construction Industry Council model adjudication procedure current at the date of the relevant notice of adjudication subject to the following amendment: at the same time as he gives any decision the adjudicator shall give reasons for the decision in writing.
7. For the purpose of this Clause 20 time shall be reckoned in accordance with section 116(1) of the Act.

21. DATA PROTECTION

1. The Supplier acknowledges that it is subject to the requirements of the General Data Protection Regulation (Regulation (EU) 2016/679) and the Data Protection Act 2018 (together the "Data Protection Legislation") and shall at all times assist and cooperate with PCJC to enable PCJC to comply and to ensure that the Supplier complies with all obligations relating to the storage, processing, and sharing of data and notification requirements under the Data Protection Legislation. The Supplier shall process personal data only in accordance with the requirements of the Data Protection Legislation and this Order unless required to do otherwise by law. The Supplier shall ensure that it has in place appropriate technical and organisational measures, the effectiveness of which it regularly assesses and evaluates, to protect against unauthorised access to, loss of or destruction of personal data (a "Data Loss Event") having taken into account the nature of the data to be protected, the harm that might result from a Data Loss Event, the state of technological development and the cost of implementing any such technical and organisational measures. The Supplier agrees, at the direction of PCJC, to delete or return to PCJC all personal data (and any copies of it) which have been provided to the Supplier by PCJC and in any event on termination of this Order unless required by law to retain such personal data.