

## West Kent Housing Association Purchase Order Terms & Conditions April 2025 Version

These are the terms and conditions (**Conditions**) on and subject to which the Supplier named on the Purchase Order agrees to supply the Buyer with the Goods and/or Services specified in the Purchase Order in consideration for payment by the Buyer of the sums specified in the Purchase Order.

In these Conditions the following words shall have the following meanings: "**Business Day**" means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

"**Buyer**" means West Kent Housing Association (registration number IP26278R) whose registered address is 101 London Road, Sevenoaks, Kent, TN13 1AX, or such other entity stated as the buyer in the Purchase Order.

"**Contract**" means the contract between the Buyer and the Supplier for the supply of Goods and/or Services (as the case may be), comprising of these Conditions and the Purchase Order.

"**Goods**" means the goods to be supplied by the Supplier to the Buyer as described in the Purchase Order.

"**Parties**" means the Buyer and the Supplier and "**Party**" shall mean either one of them.

"**Purchase Order**" means the purchase order for the supply of Goods and/or Services issued by the Buyer to the Supplier.

"**Services**" means the services to be supplied by the Supplier to the Buyer as described in the Purchase Order.

"**Supplier**" means the supplier stated in the Purchase Order

In these Conditions references to "**writing**" or "**written**" shall include email but not fax.

### 1. BASIS OF CONTRACT

1.1. The Contract for the supply of Goods and/or Services (as the case may be) shall come into existence between the Parties upon:

- (a) the Supplier signing or issuing written acceptance of the Purchase Order; or
- (b) any act by the Supplier consistent with fulfilling the Purchase Order

1.2. If there is conflict between these Conditions and any special conditions contained in the Purchase Order, then the latter shall take precedence.

1.3. Only Purchase Orders sent by email from an email address ending "@wkha.org.uk" shall be valid unless the Buyer agrees otherwise.

1.4. These Conditions shall apply to the Contract to the exclusion of any other terms or conditions that the Supplier seeks to impose or incorporate or which are implied by trade, custom, practice or any course of dealing between the Parties.

1.5. All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

### 2. SUPPLY OF GOODS & SERVICES

2.1. The Supplier acknowledges and agrees that it is responsible for obtaining, reviewing and investigating any information necessary for the performance of its obligations under the Contract.

2.2. The Supplier shall notify the Buyer of any assumptions and/or dependencies which must be met for the fulfilment of the Supplier's obligations under the Contract and the Buyer shall not be liable for the Supplier's failure to identify the same nor shall the Supplier be relieved from performing its obligations as a result of such failure.

2.3. The Supplier warrants to the Buyer that:

- (a) it has full capability, capacity, authority and all necessary consents to perform the Contract; and
- (b) all personnel and sub-contractors used by the Supplier in the performance of the Contract are adequately skilled and experienced for the activities they are required to perform

#### 2.4. Conditions relating to the Goods

- (a) The Goods shall be delivered to the address specified on the Purchase Order or notified to the Supplier by the Buyer ("**Delivery Location**"), at the time and date(s) specified in the Purchase Order unless otherwise expressly agreed by the Parties. A delivery note must accompany the Goods and specify the type and quantity of Goods delivered and the Purchase Order number.
- (b) Goods shall not be delivered by instalments without the Buyer's consent or unless otherwise specified on the Purchase Order. If delivered by instalments, the Goods may be invoiced and paid for separately. Failure to deliver any instalment on time or at all or any defect in an instalment shall entitle the Buyer to the remedies below.
- (c) Delivery of the Goods shall be completed once the Goods have been unloaded at the agreed location ("**Delivery**").
- (d) The Buyer will be deemed to have accepted the Goods 10 Business Days from Delivery unless it gives notice to the Supplier under clause 3. The Buyer's signature on any delivery note is evidence only of the number of packages received and not evidence of acceptance of the Goods. Acceptance under this sub-clause (d) of the Goods shall not affect any rights or remedies that the Buyer may have under the Contract (or

otherwise).

(e) The Supplier warrants that the Goods (i) will be sold to the Buyer with valid and unrestricted title; (ii) are of satisfactory quality and fit for any purpose held out by the Supplier or expressly made known to the Supplier by the Buyer; (iii) are free from defects in design, materials and workmanship and will remain so for the longer of 12 months or any manufacturer's warranty period; (iv) comply with all applicable statutory and regulatory requirements; and (v) correspond with their description and any applicable specification referred to in the Purchase Order

(f) To the extent that the Goods are to be installed by the Supplier, the Supplier shall install the Goods in a good and workmanlike manner and make good any damage caused as a result of installation. The Supplier shall test and inspect the Goods following installation and notify the Buyer once installation has been completed. The Buyer shall have accepted the Goods after completion of installation, provided the Buyer has not exercised in writing any of the remedies below.

(g) Title and risk in the Goods shall pass to the Buyer on Delivery of the Goods at the Delivery Location (where the Supplier is not to install the Goods) or upon acceptance of the Goods in accordance with clause 2.4(f) (where the Supplier is to install the Goods).

#### 2.5. Conditions relating to the Services

(a) The Supplier warrants that the Services will (i) conform to the Buyer's requirements made known to the Supplier; (ii) conform to specifications and/or acceptance criteria (if any) set out in the Purchase Order (iii) be performed with that standard of skill, care and diligence which a competent and suitably qualified person performing such services could reasonably be expected to exercise and in accordance with all applicable statutory and regulatory requirements.

(b) The Supplier shall perform the Services in accordance with any timetable notified to the Supplier by the Buyer in writing.

(c) Unless agreed otherwise in writing, the Supplier shall provide all equipment, consumables and other items required to provide the Services.

(d) Any defects, deficiencies or other faults in the delivery of the Services which become apparent within twelve (12) months of the supply of the Services which are due to the erroneous execution of the Services shall be made good by the Supplier at no cost to the Buyer.

2.6. In performing its obligations under the Contract the Supplier shall comply with all applicable laws and regulations from time to time in force.

### 3. REMEDIES

3.1. If the Goods and/or Services are not delivered on the date they are due as referred to in clause 2.4(a) and/or clause 2.5(b), or do not comply with the provisions of clauses 2.4 or 2.5, the Buyer shall, without limiting any other remedies available to it, have the right to any one or more of these remedies:

- (a) terminate the Purchase Order and Contract with immediate effect by giving written notice to the Supplier;
- (b) reject the Goods and/or Services in full or in part and in the case of Goods, return them at the Supplier's own risk and expense;
- (c) require the Supplier to repair or replace the rejected Goods or re-perform the Services without further cost to the Buyer;
- (d) refuse to accept any subsequent supply of the Goods and/or Services;
- (e) where the Buyer has paid any sums in advance for the Goods and/or Services, to require such sums to be refunded by the Supplier; and/or
- (f) recover from the Supplier any costs and expenses reasonably incurred by the Buyer in procuring replacement Goods and/or substitute Services which are substantially similar to those to be provided by the Supplier.

3.2. These Conditions apply to any repaired or replacement Goods and/or Services provided by the Supplier.

3.3. Any repaired and/or replaced Goods and/or Services are deemed to be warranted for the longer of 12 months or the manufacturer's warranty period.

### 4. INVOICING & PAYMENT

4.1. The amounts specified on the Purchase Order represent the full and exclusive remuneration and include every cost and expense of the Supplier in respect of the supply of the Goods and/or Services (including packaging, delivery, installation, import duties and taxes where applicable).

4.2. The Supplier may invoice the Buyer for Goods supplied on or at any time after Delivery and for Services provided on or at any time after completion of the provision of the Services. Each invoice must correspond with the amount and currency specified on the Purchase Order and quote the Purchase Order number. Any invoice submitted without a valid Purchase Order number will not be considered for payment by the Buyer.

- 4.3. Purchase invoices to the Buyer must be sent to the following email address: apfinance@wkh.org.uk. The Buyer will consider and verify each invoice in a timely manner with a view to confirming whether each invoice is valid and undisputed. The Buyer shall pay each invoice in full and in cleared funds within 30 days from the date on which it determines each invoice to be valid and undisputed.
- 4.4. All fees and charges exclude VAT which the Buyer shall, upon receipt of a valid VAT invoice from the Supplier, pay in addition.
- 4.5. If the Buyer fails to make any payment due under the Contract by the due date for payment, the Buyer shall pay interest on the overdue amount at the rate of two per cent (2%) per annum above the base rate of the Bank of England from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Buyer shall pay the interest together with the overdue amount.
- 4.6. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Buyer in order to justify withholding payment of any such amount in whole or in part. The Buyer may, without limiting any other rights or remedies it may have, set off any amount owed to it by the Supplier against any amounts payable by it to the Supplier.

## 5. CANCELLATION & CHANGES IN REQUIREMENTS

- 5.1. Without prejudice to any other provision of the Contract, the Buyer may terminate the Purchase Order and the Contract in whole or in part at any time before delivery of the Goods or full and complete performance of the Services with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work in relation to the Purchase Order and the Contract.
- 5.2. Where the Buyer exercises its rights under clause 5.1, the Buyer will pay such fees or charges for Goods which are in transit or Services which have been performed together with the costs of materials which the Supplier has purchased to fulfil its obligations, provided they cannot be used for other customers or returned to the supplier of those materials for a refund.
- 5.3. The Buyer shall not be liable to the Supplier for any loss of anticipated profits or any indirect or consequential loss suffered by the Supplier arising as a result of cancellation pursuant to clause 5.1.
- 5.4. The Buyer may from time to time notify the Supplier of any change to the Buyer's requirements under a Purchase Order. The Supplier shall use its best endeavours to accommodate any such changes to the requirements of the Buyer including re-sequencing and re-programming the Goods and/or Services at no cost to the Buyer. If the Supplier has used best endeavours to the satisfaction of the Buyer but such re-sequencing and re-programming is not possible without the Supplier incurring additional material costs then the Supplier shall be entitled to payment for any such additional material costs incurred as a result of any such changes. The amount of such additional costs is to be agreed between the Buyer and the Supplier in writing prior to the Supplier undertaking any changes.

## 6. TERMINATION

- 6.1. The Buyer may terminate the Contract immediately by written notice if the Supplier:
  - (a) commits an irremediable material breach of any of its obligations under these Conditions;
  - (b) commits a remediable material breach of any of its obligations under the Contract and fails to remedy that breach within a period of 10 Business Days of receiving written notice of such breach by the Buyer; or
  - (c) becomes insolvent or any similar insolvency event occurs or action or proceeding is taken to manage the affairs of or wind up the Supplier.
- 6.2. Termination of the Contract, however arising, shall not affect any of the Parties' rights and remedies that have accrued as at termination.
- 6.3. The Buyer shall not be liable to the Supplier for any loss of profits, loss of contracts or other costs, losses and/or expenses incurred by the Supplier as a result of or in connection with termination pursuant to this clause 6.

## 7. INSURANCE

- 7.1. Unless otherwise stated in the Purchase Order, the Supplier shall take out and maintain the following insurances:
  - (a) product liability insurance in the sum of at least £5,000,000 where Goods are being supplied under the Contract;
  - (b) professional indemnity insurance in the sum of at least £2,000,000 where Services are being provided under the Contract;
  - (c) employer's liability insurance in the sum of at least £10,000,000; and
  - (d) public liability insurance in the sum of at least £5,000,000.

## 8. SUBCONTRACTING

- 8.1. The Supplier shall not enter into any contract with any third party whereby that third party agrees to perform any of the Supplier's obligations in relation to the Goods and/or Services (**Sub-Contract**)

without the Buyer's prior written consent and where the Buyer gives consent to any Sub-Contract, the Supplier shall:

- (a) be responsible for the acts or omissions of its subcontractors as though they are its own; and
  - (b) be liable to the Buyer for any costs, losses, damages or expenses suffered or incurred by the Buyer arising out of or in connection with any act or omission of its subcontractors.
- 8.2. The Supplier shall ensure that all Sub-Contracts contain a provision requiring the Supplier to consider and verify each invoice received from its subcontractors in a timely manner with a view to confirming whether each invoice is valid and undisputed and to pay each invoice received from its subcontractors within a specified period not exceeding 30 days from the date on which the Supplier determines each invoice to be valid and undisputed.
  - 8.3. The Supplier shall pay each invoice received from its subcontractors within 30 days from the date on which the Supplier confirms each invoice to be valid and undisputed and at the Buyer's request, the Supplier shall provide the Buyer with evidence of compliance with this clause 8.

## 9. INTELLECTUAL PROPERTY

- 9.1. In the Contract '**Intellectual Property Rights**' mean patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- 9.2. All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:
  - (a) provided to the Supplier by the Buyer shall remain the Buyer's property absolutely;
  - (b) prepared by or for the Supplier specifically for the Buyer in relation to the performance of the Contract shall belong to the Buyer.
  - (c) pre-existing at the commencement of the Contract and owned or licensed by the Supplier shall be licensed to the Buyer insofar as it is necessary for the Buyer to exercise its other rights under the Contract. Such a licence shall be perpetual, worldwide, irrevocable, royalty-free and capable of sub-license on those terms.
- 9.3. The Supplier indemnifies the Buyer against all claims and proceedings, and all costs and expenses incurred in connection therewith, made or brought against the Buyer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the performance of the Contract by the Supplier save where such infringement or alleged infringement is caused by any act or omission on the part of the Buyer.

## 10. HAZARDOUS GOODS AND SAFETY

- 10.1. Where access to the Buyer's premises is required by the Supplier to perform its obligations under the Contract, the Supplier and all the people employed or otherwise engaged by it (including but not limited to sub-contractors), shall throughout the duration of the Contract comply fully with the requirements of the Safety Legislation and with all those other policies and procedures in connection with the operation of the Buyer's business including but not limited to the reasonable requirements of the Buyer's security and health and safety procedures and other reasonable instructions of any of the Buyer's representatives appointed in respect of the works at the Buyer's premises.
- 10.2. For the purpose of this clause, "**Safety Legislation**" means the Health and Safety at Work Act 1974 and the Consumer Protection Act 1987 together with all regulations made under them including, but not limited to, the General Product Safety Regulations 1994, the Control of Substances Hazardous to Health Regulations 1999, the Construction Design Management Regulations 2007 and all other legislation, codes of practice and guidance from time to time amended (including subordinate legislation and European Community legislation to the effect that it has direct effect on the UK) imposing legal requirements with respect to health and safety at work and/or the safety of any goods and equipment used in the provision of Goods and/or performance of Services and the health and safety of the users of such goods and equipment.
- 10.3. Where the Goods comprise or include substances hazardous to health, the Supplier will supply to the Buyer on or before Delivery with all data (in English) necessary to allow the Buyer to form a suitable and sufficient assessment of the attendant risks and of the steps that need to be taken in order to meet the requirements of all applicable Safety Legislation.

10.4 Unless specifically agreed with the Buyer, the Goods shall not contain asbestos.

## 11. DATA PROTECTION

- 11.1 The Supplier shall only collect any Personal Data in a form which is fully compliant with the Data Protection Act 2018 which will contain a data protection notice informing the Data Subject of the identity of the Data Controller, the identity of any data protection representative it may have appointed, the purposes or purposes for which their Personal Data will be processed and any other information which is necessary having regard to the specific circumstances in which the data is, or is to be, processed to enable processing in respect of the Data Subject to be undertaken in full compliance with the relevant requirements of the Data Protection Laws..
- 11.2 The provisions of this clause 11 shall extend to sub-contractors and the Supplier shall ensure compliance with these requirements herein stated.
- 11.3 The Supplier shall process Personal Data only to the extent, and in such a manner, as is necessary for the purposes specified in the Contract and in accordance with the Buyer's instructions from time to time and shall not process the Personal Data for any other purpose. The Supplier will keep a record of any processing of Personal Data it carries out under the Contract.
- 11.5 The Supplier shall promptly comply with any request from the Buyer requiring the Supplier to amend, transfer or delete the Personal Data.
- 11.6 The Supplier shall not transfer the Personal Data outside the United Kingdom without the prior written consent of the Buyer.
- 11.7 The Supplier shall promptly inform the Buyer if any Personal Data is lost or destroyed or becomes damaged, corrupted, or unusable or if the Supplier becomes aware of any unauthorised or unlawful processing. The Supplier will restore such Personal Data at its own expense.
- 11.8 The Supplier shall notify the Buyer within 2 Business Days if it receives a request from a Data Subject for access to that person's Personal Data.
- 11.9 The Supplier shall provide the Buyer with full co-operation and assistance in relation to any request made by a Data Subject to have access to that person's Personal Data.
- 11.10 The Supplier shall not disclose the Personal Data to any Data Subject or to a third party other than at the request of the Buyer or as provided for in the Contract.
- 11.11 The Supplier agrees to indemnify and keep indemnified and defend at its own expense the Buyer against all costs, claims, damages or expenses incurred by the Buyer or for which the Buyer may become liable due to any failure by the Supplier or its employees or agents to comply with any of its obligations under this clause 11.
- 11.12 In this clause 11 the terms "Data Subject", "Personal Data", "Data Controller", "processed", "process" and "processing" shall have the meanings given in the relevant Data Protection Laws.
- 11.13 For the purposes of this clause 11 the term "Data Protection Laws" shall mean the Data Protection Act 2018, the EU Data Protection Directive 95/46/EC, the General Data Protection Regulation (EU) 2016/679 (as varied by the Data Protection Act 2018), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner and any additions, updates thereof.

## 12. GENERAL PROVISIONS

- 12.1. **Confidentiality:** The Supplier undertakes that it shall not at any time disclose to any person (other than to those of its personnel who need to know such information for the performance of the Supplier's obligations under the Contract or as may be required by law or a court of competent jurisdiction) any confidential information concerning the business, affairs, customers, clients or suppliers of the Buyer and shall not use such confidential information for any purpose other than to perform its obligations under the Contract.
- 12.2. **Force majeure:** Neither Party shall be in breach nor liable for delay in performing, or failure to perform, any of its obligations under the Contract to the extent that such delay or failure results from events, circumstances or causes beyond its reasonable control. In such circumstances the affected Party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for a continuous period of 30 days, the Party not affected may terminate the Contract by giving written notice to the other Party.
- 12.3. **Assignment and other dealings:** The Buyer may at any time assign, transfer, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the Supplier's consent being required. The Supplier may not assign, transfer, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the

Buyer's prior written consent.

- 12.4. **Severance:** If any court or competent authority finds that any provision or part-provision of the Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 12.5. **Amendment:** No amendment to the Contract will be effective unless recorded in writing and signed by an authorised representative of the Supplier and an authorised representative of the Buyer.
- 12.6. **Waiver and Cumulative Remedies:** (a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a Party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy. (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 12.7. **Third party rights:** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 12.8. **Notices:** Any notice, request, instruction or other documentation to be given under the Contract shall be delivered or sent by first class post or by electronic mail to the address of the other Party set out in the Purchase Order (or such other address as the other may have notified the first Party for this purpose) and any such notice or other document shall be deemed to have been served, (if delivered) at the time of delivery or (if sent by post) upon the expiration of 48 hours after posting and (if sent by electronic mail) upon transmission unless a notice of non-delivery is received within 2 hours after transmission.
- 12.9. **Modern Slavery:** The Supplier shall comply with all anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but limited to the Modern Slavery Act 2015 and shall not in any circumstances engage in, promote or otherwise support child labour, human trafficking or any other means of exploitation. The Supplier shall take all reasonable steps to monitor and manage its own direct supply chain and sub-contractors' compliance with all anti-slavery and human trafficking laws, statutes and regulations from time to time in force.
- 12.10. **Anti-Bribery:** The Supplier shall comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;
- 12.11. **Procurement Act 2023:** The Supplier consents to any disclosure or publication of information that the Buyer is required to make in relation to the Contract under or pursuant to the Procurement Act 2023
- 12.12. **Policies and procedures:** The Supplier shall comply with the requirements of the Buyer's policies and procedures in relation to equality, diversity, human rights and modern slavery that the Buyer may notify the Supplier of in writing from time to time.
- 12.13. **Disputes:** If there is a dispute between the Parties concerning any matter arising from or in connection with the Contract, the Parties will use reasonable endeavours to settle the matter in accordance with the following dispute resolution procedure: (a) any dispute which has not been resolved between the Parties within fourteen (14) days of the matter being raised by one to the attention of the other, may be escalated by either Party to a member of the senior management team of the other Party, by notice in writing; (b) if the dispute has not been resolved within fourteen (14) days of a notice under (a), the Parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator will be nominated by CEDR. To initiate the mediation a Party must give notice in writing (**ADR notice**) to the other Party to the dispute requesting a mediation. A copy of the request should be sent to CEDR. The mediation will start not later than twenty (20) days after the date of the ADR notice; (c) escalation of a dispute or the commencement of a mediation will not prevent the Parties commencing or continuing court proceedings at any stage.
- 12.14. **No partnership or agency:** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute a Party the agent of the other Party, nor authorise a Party to make or enter into any commitments for or on behalf of the other Party.
- 12.15. **Governing law and jurisdiction:** The Contract shall be governed by and interpreted in accordance with the law of England and Wales and shall be subject to the exclusive jurisdiction of the courts of England and Wales.