

CLEVELAND POLICE AUTHORITY
PURCHASE ORDER TERMS & CONDITIONS

1 DEFINITIONS

1.1 The terms and expressions used in these Conditions shall have the meanings set out below:

"Authority"	Cleveland Police Authority;
"Authority's Premises"	all offices, depots, police stations or other sites used by the Authority at any time;
"Business Day"	a day (other than a Saturday and Sunday) on which banks are open for domestic business in the City of London;
"Business Hours"	the hours of 9.00 a.m. to 5.00 p.m. Business Days;
"Information Request"	a request for information recorded in any form held by the Authority or by the Supplier on behalf of the Authority;
"Liabilities"	all costs, expenses, losses, damages, claims, demands, actions, compensation, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought;
"Personnel"	the Supplier's employees including sub-contractors, agents and representatives;
"Purchase Order"	the document provided by the Authority to the Supplier stating the type, quantity and price agreed for the goods or services ordered;
"Price"	the price of the goods or services as stated in the Purchase Order. Unless otherwise stated, any reference to price shall be regarded as being exclusive of value added tax;
"Supplier"	the Supplier from whom the Authority orders the goods or services;
"Third Party"	a person, partnership, company or any other undertaking not being the Supplier or the Authority;

1.2 References to clauses are to clauses in these Conditions unless otherwise confirmed. Headings are included for ease of reference only and shall not affect the interpretation or construction of these Conditions.

2 WARRANTY

2.1 The Supplier warrants to the Authority that any goods supplied:

- a) are of satisfactory quality (within the meaning of the Sale of Goods Act 1979), be fit for any purpose which would be reasonably expected having regard to the nature of the goods and the use intended by the Authority or held out by the Supplier or made known to the Supplier;
- b) be free from any defects whether in design, material and workmanship or otherwise;
- c) correspond strictly and in every respect with the Purchase Order and any other relevant specifications, drawings, samples or descriptions provided by the Authority;
- d) comply with all legislation and statutory requirements, implied terms, Good Industry Practice, standards, regulations and codes of practice relating to the goods and their manufacture, sale and supply;

e) function in accordance with the applicable specifications of the manufacturer of the goods including but not limited to, in respect of any instruction for use or care applying to the goods;

f) be supplied with all due care and in accordance with the Authority's instructions;

g) be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health.

2.2 The Supplier further warrants to the Authority that its Personnel shall at all times act in a responsible manner whilst on Authority premises with full regard to the safety of all persons at such premises and the Supplier hereby confirms that it is vicariously liable for all actions of its Personnel.

2.3 The Supplier warrants to the Authority that any Services supplied will be provided:

- a) in a proper, skilful and workmanlike manner;
- b) by a sufficient number of appropriately qualified, trained and experienced personnel, with a high standard of skill, care and due diligence and in accordance with Good Industry Practice;
- c) in accordance with the Purchase Order and any specifications or descriptions provided by the Authority;
- d) in compliance with all legislation and statutory requirements, standards, regulations and codes of practice relating to the supply of goods and services;
- e) accurately and without interruption;
- f) in a way that the Supplier takes every reasonable precaution to safeguard the Authority's property entrusted to the case of the Supplier.

2.4 The Supplier further warrants to the Authority that:

- a) its personnel shall at all times act in a responsible manner whilst on Authority premises with full regard to the safety of all persons at such premises and the Supplier hereby confirms that it is vicariously liable for all actions of its employees;
- b) it shall not infringe the British or foreign patent, copyright, registered design, design right, trade mark, trade name or other intellectual property right of any third party.

c) Any computer equipment and software used in the performance of the Services will comply with the relevant specifications and requirements.

3 BREACH

3.1 If any of the goods or services provided are not in accordance with the Authority's Purchase Order Terms and Conditions, the Authority shall be entitled (but not obliged) to:

- a) for a period of 60 months from the date of delivery of the goods or services, in respect of goods or services which do not conform with the provisions of clause 2, oblige the Supplier, at the Authority's option, forthwith to replace or repair such items free of charge and any repaired or replaced items will be guaranteed on the terms of this clause for the unexpired portion of the 60 month period; or

- b) require repayment of any proportion of the Price which has been paid in respect of any goods or services together with payment of any additional expenditure over and above the Price reasonably incurred by the Authority in obtaining replacement goods or services from another supplier.
- c) and the Authority shall be entitled to claim damages for any additional costs, loss or expenses incurred by the Authority which are in any way attributable to the Supplier's breach of the Authority's Purchase Order Terms and Conditions or failure to deliver the goods or services on the due date or at all.

4 PRICE AND PAYMENT

- 4.1 The Authority agrees to pay the Price to the Supplier.
- 4.2 Payment of any undisputed invoice will be made no later than 28 days following the date of the VAT invoice for the goods or services.
- 4.3 All payments shall be invoiced and paid in pounds sterling (£). Should the Government adopt an alternative national currency (e.g. the Euro), invoicing and payments may be transferred to such currency in compliance with appropriate legislation at that time.
- 4.4 The Authority reserves the right to withhold payment of the relevant part of the Price without payment of interest where the Supplier has either failed to provide the goods or services at all or has provided the goods or services inadequately and any invoice relating to such goods or services will not be paid unless or until the goods or services have been supplied to the Authority's satisfaction.
- 4.5 The Authority will be entitled but not obliged at any time or times without notice to the Supplier to set off any liability of the Authority to the Supplier against any liability of the Supplier to the Authority (in either case howsoever arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency) and may for such purpose convert or exchange any sums owing to the Supplier into any other currency or currencies in which the obligations of the Authority are payable under the Purchase Order. The Authority's rights under this clause will be without prejudice to any other rights or remedies available to the Authority under the Purchase Order Terms and Conditions or otherwise.

5 DELIVERY

- 5.1 Where goods are delivered by the Supplier, the point of delivery shall be when they are removed from the transporting vehicle and delivered to the Authority's Premises in with the Purchase Order. Where goods are to be collected by the Authority from the supplier, the point of delivery shall be when they are loaded onto the Authority's vehicle or collected by the Authority's representative or nominee.
- 5.2 The Goods are to be delivered within Business Hours on the day and the place specified in the Purchase Order. Delivery shall be free of charge to the Authority and at the Supplier's risk unless otherwise stated on the Purchase Order.
- 5.3 The time stipulated for delivery will be of the essence of the Purchase Order.

6 PROPERTY AND RISK

- 6.1 Property and risk in any goods shall, without prejudice to any other rights or remedies of the Authority, pass to the Authority at the time of delivery in accordance with clause 5.1.

7 SUPPLIER'S PERSONNEL

- 7.1 The Supplier must retain sufficient Personnel with sufficient experience, skills, abilities and qualifications to ensure that the goods and services are provided as specified in the Purchase Order at all times including periods of absence through staff holidays, illness or otherwise.

- 7.2 The Supplier shall, at all times ensure that its Personnel are given sufficient training to ensure their familiarity with and competence in latest legal and technical developments needed in the performance of their duties under the Purchase Order.

- 7.3 The Supplier will ensure that all Personnel are aware of the Authority's Purchase Order Terms and Conditions and their obligations under them.

- 7.4 If and when requested by the Authority, the Supplier shall provide a list of all names, addresses, dates of birth and national insurance numbers of all Personnel who may be involved in the supply of the goods or services to enable security checks to be carried out.

- 7.5 Failure by the Supplier to comply with clause 7.4 within 10 Business Days will entitle the Authority to refuse admission to the Authority's Premises to any person whose details have not been notified to the Authority.

- 7.6 The Authority will inform the Supplier when security checks have been carried out. The Supplier shall inform the individuals that security checks have been carried out. The security check information will be destroyed by the Authority following the security check results.

- 7.7 ***The Authority reserves the right to refuse to admit to, or remove from, any premises occupied by or on behalf of it any Personnel, whose admission or presence would, in the reasonable opinion of the Authority on reasonable grounds, be undesirable. The reasonable exclusion of an individual shall not relieve the Supplier of his contractual obligations.***

- 7.8 *The Supplier agrees to pay the Authority for each security check at the following rates;*

7.8.1 £30.00 for NPPV Level 1
7.8.2 £70.00 for NPPV Level 2

- 7.9 *The Authority shall inform the Supplier of the level of security check required in respect of each individual Personnel. Once granted, security clearance lasts for three years.*

- 7.10 *The Supplier shall only be required to pay for one security check per individual during the original Term of the Contract. Where security clearance expires during the Term, subsequent security checks shall be completed free of charge. In the event that the Contract Term is extended, the Supplier agrees to pay the Authority for each security check at the rates set out in clause 7.8.*

- 7.11 *The Parties agree that where security clearance is refused for any reason the security check fee shall not be refunded. Any request from the Supplier to review a decision to refuse security clearance will be dealt with free of charge.*

- 7.12 *The Authority reserves the right to request that any Supplier's Personnel re-submit themselves for security checks at the sole discretion of the Authority. Where the Authority requests re-checking this will be performed free of charge.*

8 HEALTH AND SAFETY

- 8.1 The Supplier will comply with all health and safety legislation in force when performing their duties under the Purchase Order.

9 DUE DILIGENCE

- 9.1 The Supplier acknowledges that it has:
 - a) made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Authority;
 - b) raised all relevant due diligence questions with the Authority; and

- c) agreed supply the goods or services under the Purchase Order in reliance on its own due diligence alone.
- 9.2 Any disputes relating to due diligence shall be resolved through the Dispute Resolution Procedure set out at clause 13.
- 10 INDEMNITY AND INSURANCE
- 10.1 The Supplier does not exclude its liability (if any) to the Authority:
- a) for breach of the Supplier's obligations arising under section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982;
- b) for personal injury or death resulting from the Supplier's negligence;
- c) under section 2(3) Consumer Protection Act 1987;
- d) for any matter for which it would be illegal for the Supplier to exclude or to attempt to exclude its liability; or
- e) for fraud or fraudulent misrepresentation.
- 10.2 Except as provided in clause 10.1, neither party shall in any event be liable to the other for any indirect or consequential loss (including loss of profit and pure economic loss) however caused.
- 10.3 The Supplier agrees to indemnify, keep indemnified and hold harmless the Authority against all Liabilities relating to injury (including death) or loss of or damage to property which arises out of the Supplier's direct or indirect breach, negligence, failure or delay in performing their duties under the Purchase Order or any act or omission of the supplier in supplying the goods or services except where and to the extent attributable to the Authority's own negligence or that of its servants or agents.
- 10.4 The Supplier shall at all times maintain public liability insurance in a form acceptable to the Authority (acting reasonably). Evidence of maintenance of such insurance, including details of the insurer, insured person, the limit of indemnity and deductible, and period of insurance, must be provided to the Authority on request in writing.
- 10.5 Upon the Authority's written request, the Supplier shall provide the Authority with a copy of the certificate of insurance.
- 10.6 The Supplier shall give immediate notice to the Authority in the event of any incident, accident or damage likely to form the subject of any claim under the Authority's insurance and shall provide all information and assistance in respect thereof as the Authority shall require.
- 11 TERMINATION
- 11.1 If the Supplier:
- a) has offered any gift or consideration of any kind as an inducement or disincentive for doing anything in respect of the Purchase Order or any other agreement with the Authority; or
- b) has committed an offence under the Prevention of Corruption Acts 1889 to 1916;
- c) becomes bankrupt, insolvent, makes any composition with its creditors, has a receiver appointed under the Mental Health Act 1983 or dies; or
- d) is in persistent and/or material breach of its obligations under the Purchase Order which, where capable of remedy, has not been remedied to the satisfaction of the Authority within 14 days or such other reasonable period as may be specified by the Authority after issue of a written notice specifying the breach and requesting it to be remedied.
- then the Authority will terminate the Purchase Order immediately upon written notice and recover all Liabilities it incurs resulting from such termination.
- 12 ESCALATION PROCEDURE
- 12.1 The Authority and the Supplier shall attempt in good faith to resolve any dispute in the first instance through negotiations between the respective representatives of the Authority and the Supplier having authority to settle the matter.
- 12.2 The Authority or the Supplier may at any time by written notice to the other refer any dispute that is not resolved in accordance with clause 12.1 to the Authority's Contract Manager, and to a representative of the Supplier at an equivalent level (the "First Level"), for discussion and attempted resolution.
- 12.3 In the event that any dispute is not resolved at the First Level in accordance with clause 12.2 within 14 days of such referral, the Authority or the Supplier may refer such dispute to the Authority's Head of Commissioning, and to a representative of the Supplier at an equivalent level (the "Second Level"), for discussion and attempted resolution.
- 12.4 In the event that any dispute is not resolved through discussion within 21 days of referral to the Second Level, then the escalation procedure is deemed exhausted and the Authority and the Supplier shall attempt to resolve such dispute through the dispute resolution procedure in accordance with clause 13.
- 13 DISPUTE RESOLUTION PROCEDURE
- 13.1 Nothing in this Dispute Resolution Procedure shall prevent the Authority or Supplier applying to the courts for immediate, injunctive relief, where appropriate.
- 13.2 Subject to clause 13.1, The Authority and the Supplier may not initiate any legal action (including arbitration proceedings) in relation to a dispute until the Escalation Procedure set out at clause 12 above has been exhausted, unless such Party has reasonable cause to do so to avoid damage to its operations or business or to protect or preserve any right of action it may have.
- 13.3 In the event that the dispute is not resolved as a result of the discussions held pursuant to clause 12 above, the dispute shall be referred to arbitration at the option of the Authority failing which the dispute shall be referred to the English courts.
- 13.4 The Authority and the Supplier shall continue to comply with, observe and perform all of their obligations hereunder, regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution under this paragraph, and shall give effect forthwith to every decision of the Arbitrator delivered under the Dispute Resolution Procedure.
- 13.5 Subject to any award made by the Arbitrator as to the costs of the arbitration, the Arbitrator's fees and expenses and the fees and expenses of any arbitral institution concerned, shall be paid by the Authority and the Supplier in equal shares.
- 14 CONFIDENTIALITY
- 14.1 The Supplier will not divulge or communicate to any person, firm or company any confidential information however acquired which refers to the Authority without first obtaining the written consent of the Authority and the Supplier shall ensure that all of its Personnel are bound by the provisions of this clause.
- 14.2 The Supplier shall not, without prior written consent of the Authority, advertise or publicly announce that it is undertaking work for the Authority.
- 14.3 The Supplier shall comply with the Official Secrets Acts 1911 and 1989 in connection with its obligations under the

Purchase Order and shall take all reasonable steps to ensure compliance by its Personnel. In particular, and without prejudice to the generality of the foregoing, the Supplier shall take all reasonable steps to ensure that all Personnel engaged on any work in connection with the Purchase Order have notice that these statutory provisions apply to them and will continue so to apply after the expiry or termination of the Purchase Order.

15 FREEDOM OF INFORMATION

15.1 The Supplier acknowledges that the Authority:

- a) is subject to the Legislation and agrees to assist and co-operate with the Authority to enable the Authority to comply with its obligations under the Legislation; and
- b) may be obliged under the Legislation to disclose information without consulting or obtaining consent from the Supplier;
- c) and shall assist and cooperate with the Authority (at the Supplier's expense) to enable the Authority to comply with the information disclosure requirements under the Legislation and in so doing will comply with any timescale notified to it by the Authority.

15.2 Without prejudice to the generality of clause 15.1.a), the Supplier shall and shall procure that its Personnel (if any) shall:

- a) transfer to the Freedom of Information Office, Professional Standards (or such other person as may be notified by the Authority to the Supplier) each Information Request relevant to the Purchase Order, the goods or services that it receives or they receive (as the case may be) as soon as practicable and in any event within 2 Business Days of receiving such Information Request; and
- b) in relation to information held by the Supplier on behalf of the Authority, provide the Authority with details about and/or copies of all such information that the Authority requests and such details and/or copies shall be provided as soon as possible and always within 5 Business Days of a request from the Authority (or such other period as the Authority may reasonably specify) and in such forms as the Authority may reasonably specify.

15.3 The Authority shall be responsible for determining whether information is exempt information under the Legislation and for determining what information will be disclosed in response to an Information Request in accordance with the Legislation. The Supplier shall not itself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so by the Authority.

16 DATA PROTECTION

16.1 Both Parties warrant that they will duly observe all their obligations under the Data Protection Act 1998 and any subordinate legislation relating thereto which arise in connection with the Purchase Order.

17 VARIATION

17.1 The Authority may require the goods or services to be varied upon such terms as may be agreed in writing with the Supplier.

18 DISCRIMINATION AND RIGHTS

18.1 The Supplier shall not unlawfully discriminate within the meaning and scope of the Race Relations Act 1976, the Sex Discrimination Act 1975, the Disability Discrimination Act 1995, or any statutory modification or re-enactment thereof relating to Discrimination in employment.

18.2 The Supplier shall take all reasonable steps to ensure the observance of the above by all Personnel.

18.3 The Supplier will ensure that any work carried out on behalf of the Authority under the Purchase Order will be compliant with the Human Rights Act 1998.

19 FORCE MAJEURE

19.1 The Authority and the Supplier will not be deemed to be in breach of the Contract or otherwise liable to the other party in any manner whatsoever for any failure or delay in performing its obligations under the Purchase Order due to Force Majeure, provided that it has and continues to comply with its obligations set out in clause ????.

19.2 If the Authority or the Supplier's performance of its obligations under the Purchase Order is affected by Force Majeure:

- a) it will give written notice to the other party, specifying the nature and extent of the Force Majeure, immediately on becoming aware of the Force Majeure and will at all times use all reasonable endeavours to bring the Force Majeure event to an end and, whilst the Force Majeure is continuing, to mitigate its severity;
- b) subject to the provisions of clause 19, the date for performance of such obligation will be deemed suspended only for a period equal to the delay caused by such event;
- c) it will not be entitled to payment from the other party in respect of extra costs and expenses incurred by virtue of the Force Majeure.

19.3 If the Force Majeure in question continues for more than three months, the party not subject to the Force Majeure may give written notice to the other to terminate the requirement of the Purchase Order.

19.4 If the Purchase Order is terminated in accordance with clause 19, then neither party will have any liability to the other except that rights and liabilities which accrued prior to such termination will continue to exist. Any payments made in advance over and above the actual goods / services delivered will be refunded to the Authority within 5 Business Days.

20 NOTICES

20.1 Any notice, demand or communication in connection with the Purchase Order will be in writing and may be delivered by hand, post, facsimile or email, addressed to the recipient at its registered office or any other address notified to the other party in writing in accordance with this clause as an address to which notices, invoices and other documents may be sent. The notice, demand or communication will be deemed to have been duly served:

- a) if delivered by hand, at the time of delivery;
- b) if delivered by post, 48 hours after being posted; or
- c) if delivered by facsimile, at the time of transmission.

21 GENERAL

21.1 The Purchase Order and any obligations arising out of or in connection with it will be governed by English law and, subject to clause 133 (dispute resolution procedure), shall be subject to the exclusive jurisdiction of the English courts.

21.2 The Purchase Order represents the complete agreement between the Authority and the Supplier and supersedes all other undertakings, statements and agreements relating to the goods or services.

21.3 The invalidity or enforceability of any provision of the Purchase Order shall not affect the validity or enforceability

of any other provision of the Purchase Order that shall continue in force and effect except for any such invalid and un-enforceable provision.

21.4 No failure, delay, relaxation or indulgence on the part of the Authority in exercising any power or right conferred upon it by the Purchase Order shall operate as a waiver with such power or right nor shall any single or partial exercise have any such power or right preclude any other offered exercise thereof for the subsequent exercise of any power or right thereunder.

21.5 A person who is not a party to the agreement under the Purchase Order shall not derive the right to enforce any of the terms of the Purchase Order by virtue of the Contracts (Rights of Third Parties) Act 1999(The Third Party Rights Act). Any right or remedy of a third party, which existed or is available apart from the Third Party Rights Act, is not affected.