

Wigan Leisure & Culture Trust Terms and Conditions of Contract

Definitions

'We', 'Us' 'Our' 'Trust' 'Enterprise' 'Pro Co' or 'Company' means Wigan Leisure and Culture Trust and its trading subsidiaries.

'You' 'Your' 'Vendor' 'Supplier' 'Contractor' 'Service Provider' or 'Consultant' means the person, firm or company providing the Goods or Services to whom the Purchase Order is addressed and any employees, sub-Contractors or agents of said person, firm or company.

'Goods' or 'Services' means the materials, articles, works and services described in this Contract.

'Package' or 'Packaging' means any type of package including bags, cases, carboys, cylinders, drums, pallets, tank wagons and other containers.

'Authorised Officer' means our employee authorised, either generally or specifically, by us to act on behalf of the Trust.

'Authorised' means agreed by one of our Authorised Officers.

'Order Amendment' means our authorised order amendment or series of order amendments, each order amendment having precedence over any earlier order amendment.

'Contract' has the meaning given in Condition 2 below.

'Contract Price' has the meaning given in Condition 3 below.

'Form of Agreement' means a document signed by both parties which details the full statement of the contractual rights and liabilities of the Trust and the Supplier in relation to the supply of the Goods or Services.

'Purchase Order' is the printed instruction stating our full requirements, which will quote a unique Purchase Order Number, which must be quoted on all correspondence.

'Sale of Goods Act 1979' shall mean the Sale of Goods Act 1979 as amended by the Sale and Supply of Goods Act 1994 and any other statutory amendment.

'Supply of Goods and Services Act 1982' shall mean the Supply of Goods and Services Act 1982 as amended by the Sale and Supply of Goods Act 1994 and any other statutory amendment.

2. The Contract

You agree to sell and we agree to purchase the Goods / Services in accordance with the Contract. The Contract shall comprise (in order of precedence): any order amendments raised by us, the Purchase Order, (where applicable) - the Form of Agreement, these General Conditions of Purchase and any other document (or part document) referred to on the Purchase Order. The Contract shall not include any of your conditions of sale, notwithstanding reference to them in any document. However, should this Contract be held by a court of competent jurisdiction to include your terms and conditions of sale then in the event of any conflict or apparent conflict these general conditions of purchase shall always prevail over your terms and conditions of sale. Delivery of Goods as described in the Contract shall be taken to imply that you have accepted the terms and conditions of this Contract.

3. Contract Price

You will sell us the Goods for the firm and fixed Price stated in the Form of Agreement or on the Purchase Order. If no Price is stated, then the Price shall be a reasonable Price, taking into account prevailing market conditions. The Price shall include storage, packing, insurance, delivery, installation and commissioning (as applicable) but shall exclude VAT.

4. Variations

We shall have the right, before delivery, to send you an order amendment adding to, deleting or modifying the Goods / Services. If the order amendment will cause a change to the Price or delivery date then you must suspend performance of the Contract and notify us immediately, calculating the new Price and delivery date at the same level of cost and profitability as the original Price. You must allow us at least 10 working days to consider any new Price and delivery date. The order amendment shall take effect when but only if our Authorised Officer accepts in writing the new Price and delivery date within the time you stipulate. If our Authorised Officer fails to confirm the order amendment within the time you stipulate then performance of the Contract shall immediately resume as though the said order amendment had not been issued (except that we may still exercise our right of cancellation in accordance with Condition 5).

5. Our Right of Cancellation

In addition to our other rights of cancellation under this Contract, we may cancel the order and any order amendment thereto at any time by sending you a notice of termination. You will comply with any instructions that we may issue with regard to the Goods / Services. If you submit a termination claim then we will pay to you the cost of any commitments, liabilities or expenditure, which in our reasonable opinion were a consequence of this Contract at the time of termination. The total of all payments made or due to you under this Contract, including any termination payment, shall not exceed the Price. If you fail to submit a termination claim within three months of the date of our notice of termination then we shall have no further liability under the Contract.

6. Quality and Description

The Goods / Services shall:

- i. conform in every respect with the provisions of the Contract;
- ii. be capable of all standards of performance specified in the Contract
- iii. be fit for any purpose made known to you expressly or by implication and in this respect we rely on your skill and judgement

- iv. be new (unless otherwise specified in the Specification) and be of sound materials and skilled and careful workmanship
- v. correspond to their description or any samples, patterns, drawings, plans and specifications referred to in the Contract
- vi. be of satisfactory quality
- vii. comply with any current legislation

7. Work on our Premises

If the Contract involves any works or services, which you perform on our premises then the following conditions shall apply:

- a. You shall ensure that you and your employees, your sub-Contractors and their employees and any other person associated with you will adhere in every respect to the obligations imposed on you by current safety legislation.
- b. You shall ensure that you and your employees, your sub-Contractors and their employees and any other person associated with you will comply with any regulations and requirements that we may notify to you.

8. Progress and Inspection

- a. You shall at your expense provide any programmes of manufacture and delivery that we may reasonably require. You shall notify us immediately in writing if your progress falls behind or may fall behind any of these programmes.
- b. We shall have the right to check progress at your works or the works of sub-Contractors at all reasonable times, to inspect and to reject Goods / Services that do not comply with the Contract. Your sub-Contracts shall reserve such right for us.
- c. Any inspection or approval shall not relieve you from your obligations under this Contract.

9. Packaging

Unless otherwise stated in the Contract, all packages shall be non-returnable. If the Contract states that packaging is returnable, you must give us full disposal instructions before the time of delivery. The packaging must be clearly marked to show to whom it belongs. You must pay the cost of all carriage and handling for the return of packages. We shall not be liable for any packages lost or damaged in transit. Where Goods are delivered by road vehicle, available empty packages may be returned by the same vehicle.

10. Safety

You shall observe all legal requirements applicable within the United Kingdom and European Union and relevant international agreements in relation to health, safety and environment, and in particular to the marking of hazardous Goods, the provision of data sheets for hazardous materials and all provisions relating to food. Hazardous Goods must be clearly marked and display the name of the material in English. Transport and other documents must include declaration of the hazard and name of the material in English and Goods must be accompanied by emergency information in English.

11. Delivery

- a. The Goods shall be properly packed, secured and despatched at your expense to arrive in good condition at the time or times and the place or places specified in the Contract.
- b. If you or your carrier deliver any Goods at the wrong time or to the wrong place then we may deduct from the Price any resulting costs of storage or transport.

12. Late Delivery

If the Goods or any part of them are not delivered by the time or times specified on the Purchase Order then we may by written notice cancel any undelivered balance of the Goods. We may also return for full credit and at your expense any Goods that in our opinion cannot be used owing to this cancellation. In the case of services, we may have the work performed by alternative means and any additional costs reasonably so incurred shall be at your expense. This shall not affect any other rights that we have.

13. Property and Risk

- a. You shall bear all risks of loss or damage to the Goods until they have been delivered and shall insure accordingly.
- b. Ownership of the Goods shall pass to us:
 - i. when the Goods have been delivered but without prejudice to our right of rejection under this Contract, or
 - ii. if we make any advance or stage payment, at the time such payment is made, in which case you must mark the Goods as our property.

14. Acceptance

We shall have the right to reject the Goods in whole or in part whether or not paid for in full or in part within a reasonable time of delivery if they do not conform with the requirements of the Contract. It is agreed that we may exercise the right of rejection notwithstanding any provision contained in section 11 or section 15A or section 30 (subsections 2A and 2B) or section 35 of the Sale of Goods Act 1979. We shall give you a reasonable opportunity to replace the Goods with new Goods that conform with this Contract, after which time we shall be entitled to cancel the Contract and purchase the nearest equivalent Goods

elsewhere. In the event of cancellation under this condition, you shall promptly repay any monies paid under the Contract without any retention or offset whatsoever. Cancellation of the Contract under this condition shall not affect any other rights we may have. You must collect all rejected Goods within a reasonable time of rejection or we shall return them to you at your risk and expense.

15. Payment

Unless stated otherwise on the Purchase Order all payments will be using the Trusts standard terms of 30 days from receipt of a correct invoice. Your invoice must be addressed as stated on the Purchase Order and must quote the full Purchase Order Number. VAT, where applicable, shall be shown separately on all invoices as a strictly nett extra charge. We shall not be held responsible for delays in payment caused by your failure to comply with our invoicing instructions. It is our intention to pay all suppliers by BACS transfer; therefore, we request that full bank details be submitted on your invoice.

16. Your Warranty

It is expressly agreed between us that:

- a. You shall promptly make good at your expense any defect in the Goods that we discover under proper usage during the first of 12 months of actual use or 18 months from the date of acceptance by us whichever period shall expire first. Such defects may arise from your faulty design, your erroneous instructions as to use or inadequate or faulty materials or poor workmanship or any other breach of your obligations whether in this Contract or at law.
- b. Repairs or replacements will themselves be covered by the above warranty but for a period of 12 months from acceptance by us.

17. Indemnity and Insurance

- a. You will indemnify us against any and all loss, costs, claims, expenses and liabilities which we may incur either at common law or by statute (other than as a result of any personal injury to or death of any person or in respect of any loss of or damage to property (other than as a result of any default or neglect of ourselves or of any person for whom we are responsible) which shall have occurred in connection with any work or services performed by you under this Contract or shall be attributable to some defect in the Goods.
- b. You will indemnify us against any and all loss, costs, claims, expenses and liabilities which we may incur either at common law or by statute (other than as a result of any default or neglect of ourselves or of any person for whom we are responsible) in respect of personal injury to or death of any of your or our employees, agents, sub-Contractors or other representatives while on our premises whether or not such persons are (at the time such personal injury or death is caused) acting in the course of their employment.
- c. You will indemnify us against any and all loss, costs, expenses and liabilities caused to us whether directly or as a result of the claim or demand of any third party by reason of any breach by you of these conditions or of any terms or obligations on your part implied by the Sale of Goods Act 1979, the Supply of Goods and Services Act 1982 or any other statute or statutory provision relevant to the Contract or to Goods or work covered thereby. This indemnity shall not be prejudiced or waived by any exercise of our rights under Condition 14.
- d. You will hold satisfactory insurance cover with an insurer approved by us for the duration of this Contract in respect of your obligations in law and in connection with this Contract including Public liability insurance cover of no less than £5M and Employer's liability cover of no less than £5M. Satisfactory evidence of such insurance and payment of current premiums shall be shown to us upon request.
- e. Nothing in this Contract shall restrict the liability of either party for death or personal injury arising from its negligence or for fraud.

18. Recovery of Sums Due

Whenever under the Contract any sums of money shall be recoverable from or payable by you, they may be deducted from any sums then due, or which at any later time may become due to you under this Contract or under any other contract, you may have with us.

19. Matters Beyond Control

If either party is delayed or prevented from performing its obligations under this Contract, by circumstances beyond the reasonable control of either party, such performance shall be suspended, and if it cannot be completed within a reasonable time after the due date as specified in the Contract, then the Contract may be cancelled by either party. We shall pay to you such sum as may be fair and reasonable in all the circumstances in respect of performance of the Contract by you prior to cancellation. This provision can have effect only if it is called into operation by the party wishing to rely on it giving written notice to the other to that effect.

20. Information

- a. Any information derived from our property or otherwise communicated to you in connection with the Contract shall be kept secret and confidential and shall not without the consent in writing of our Authorised Officer be published or disclosed to any third party, or made use of by you except for the purpose of implementing the Contract.
- b. You acknowledge that we may be required to disclose information to partners relating to the Contract in response to an information request made to us under the Freedom of Information Act 2000 (FOIA) and that we shall determine whether information is exempt from disclosure under FOIA and what information if any is to be disclosed. Except as may be required by FOIA we will not disclose to a third party confidential information relating to your business.

21. Ownership of Results

If the Contract involves design and/or development work:

- a. All rights in the results of work arising out of or deriving from this Contract, including inventions, designs, copyright and knowledge, shall be our property and we shall have the sole right to determine whether any letters patent, registered design, trademark and other protection shall be sought.
- b. You shall promptly communicate to us all such results and shall if requested and at our expense do all acts and things necessary to enable us or our nominee to obtain letters patent, registered designs and other protection for such results in all territories and to assign the same to us or our nominee.
- c. You shall ensure that all technical information (including computer programs and programming information) arising out of or deriving from this Contract is held in strict confidence except for any such information which becomes public knowledge other than by breach of this Contract.

22. Infringement of Patents / Protected Rights

With the exception of Goods made to our design or instructions, you warrant that neither the Goods nor our use of them will infringe any patent registered design trade mark copyright or other protected right and undertake to indemnify us against all actions claims demands costs charges and expenses arising from or incurred by reason of any infringement or alleged infringement of any such right.

23. Non-Observance of Conditions

If you breach or fail to observe any provision of this Contract and that breach or non-observance can in our opinion be rectified by you we may give you written notice of such breach or non-observance and you shall have 28 days from receipt of the notice in which to rectify the breach or non-observance. Should you fail to rectify the breach or non-observance or that breach or non-observance cannot in our opinion be rectified, then we shall have the right to give you written notice terminating the Contract with immediate effect.

24. Your Insolvency

If you become insolvent or bankrupt or (being a company) make an arrangement with your creditors or have an administrative receiver or administrator appointed or commence to be wound up (other than for the purposes of amalgamation or reconstruction) we may without replacing or reducing any other of our rights terminate the Contract with immediate effect by written notice to you or any person in whom the Contract may have become vested.

25. Assignment and Sub-Letting

The Contract shall not be assigned by you nor sub-let as a whole. You shall not sub-let any part of the Contract without our written consent, but we shall not refuse such consent unreasonably. The restriction contained in this condition shall not apply to sub-Contracts for materials for minor details or for any part of which the makers are named in the Contract. You shall be responsible for all work done and Goods supplied by all sub-Contractors.

26. Gifts and Favours

In connection with this or any other Contract between you and us you shall not give, provide, or offer to our staff and agents any loan, fee, reward, gift or any emolument or advantage whatsoever. In the event of any breach of this Condition and, without prejudice to any other rights we may have, we may immediately terminate this and any other contracts and recover from you any loss or damage resulting from such termination.

27. Waiver

A failure at any time to enforce any provision of the Contract shall in no way affect the right at a later date to require complete performance of the Contract. Nor shall the waiver of the breach of any provision be taken or held to be a waiver of any subsequent breach of the provision or be a waiver of the provision itself.

28. Notices

All notices and communications required to be sent by you or us in this Contract shall be made in writing and sent by first class mail, fax or personal delivery. If sent to you they will be sent to your registered or head office and if sent to us sent to the person named and at the address on the Purchase Order or Form of Agreement and shall be deemed to have reached the party to whom it is addressed, if posted 2 working days after the date of posting, if sent by fax when a transmission report is generated confirming its transmission in full and if delivered personally on the date of delivery.

29. Amendments

No addition, alteration or substitution of these conditions will bind us or form part of the Contract unless and until accepted in writing by our Authorised Officer.

30. Law

This Contract shall be subject to English Law and the exclusive jurisdiction of the English Courts.