

CONDITIONS OF CONTRACT FOR THE PURCHASE OF GOODS

These Conditions may be varied only by the written agreement of the Purchaser. No terms or conditions put forward at any time by the Supplier shall form any part of the Contract unless specifically agreed in writing by the Purchaser.

1. DEFINITIONS

In these Conditions:

'Purchaser' means Clackmannanshire Council, incorporated in terms of the Local Government etc (Scotland) Act 1994 and having its Chief Office at Greenfield, Alloa, or any succeeding authority;

'Supplier' means the person(s), firms or companies to whom the Contract is issued and includes the Supplier's personal representatives, successors or permitted assignees.

'Goods' means any such goods as are to be supplied to the Purchaser by the Supplier (or by any of the Supplier's sub-contractors) pursuant to or in connection with this Contract;

'Contract' means the legally binding agreement between the Parties to the Contract consisting of the Purchase Order, these Conditions and any other documents (or parts thereof) specified in the Purchase Order;

'Purchase Order' means the document setting out the Purchaser's requirements for the Contract.

'Parties to the Contract' means the Purchaser and the Supplier.

2. THE GOODS

- 2.1 The Goods shall be to the reasonable satisfaction of the Purchaser and shall conform in all respects with any particulars specified in the Contract and in any variations thereto.
- 2.2 The Goods shall conform in all respects with the requirements of any statutes, orders, regulations or bye-laws from time to time in force.
- 2.3 The Goods shall be fit and sufficient for the purpose for which such goods are ordinarily used and for any particular purpose made known to the Supplier by the Purchaser and the Purchaser relies on the skill and judgement of the Supplier in the supply of the Goods and the execution of the Contract.

3. PROTECTING THE ENVIRONMENT

Suppliers to the Purchaser are requested to satisfy themselves that no product will be supplied or used in the Supply of Goods to the Purchaser which will endanger the health of the consumers or others, will cause significant damage to the environment during manufacture, use, or disposal, which consumes a disproportionate amount of energy during manufacture, use, or disposal, which causes unnecessary waste because of over-packaging or because of an unusually short shelf life, or which contains materials derived from threatened species or threatened environments.

4. THE PRICE

- 4.1 The price of the goods shall be as stated in the Contract and no increase will be accepted by the Purchaser unless agreed by him in writing before the execution of the Contract.
- 4.2 Unless otherwise agreed in writing by the Purchaser, the Supplier shall render a separate invoice in respect of each consignment delivered under the Contract. Payment shall be due 30 days after receipt of the Goods or the correct invoice therefor, whichever is the later.
- 4.3 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.

5. DELIVERY

- 5.1 The Goods shall be delivered to the place named in the Contract. Any access to premises and any labour and equipment that may be provided by the Purchaser in connection with delivery shall be provided without acceptance by the Purchaser of any liability whatsoever and the Supplier shall **indemnify** the Purchaser in respect of any actions, suits, claims, demands losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Supplier or any of his sub-contractors.
- 5.2 Where any access to the premises is necessary in connection with delivery or installation the Supplier and his sub-contractors shall at all times comply with the reasonable requirements of the Purchaser.

5.3 The time of delivery shall be of the essence and failure to deliver within the time promised or specified shall enable the Purchaser (at his option) to release himself from any obligation to accept and pay for the Goods and/or to cancel all or part of the Contract therefor, in either case without prejudice to his other rights and remedies.

6. PROPERTY AND RISK

Property and risk in the Goods shall without prejudice to any of the rights or remedies of the Purchaser (including the Purchaser's rights and remedies under Condition 8 hereof) pass to the Purchaser at the time of delivery.

7. DAMAGE IN TRANSIT

On dispatch of any consignment of the Goods the Supplier shall send to the Purchaser at the address for delivery of the Goods an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. The Supplier shall free of charge and as quickly as possible either repair or replace (as the Purchaser shall elect) such of the Goods as may either be damaged in transit or having been placed in transit fail to be delivered to the Purchaser provided that:

(a) In the case of damage to such Goods in transit the Purchaser shall within 30 days of delivery give notice to the Supplier that the Goods have been damaged;

(b) In the case of non-delivery the Purchaser shall (provided that the Purchaser has been advised of the dispatch of the Goods) within ten days of the notified date of delivery give notice to the Supplier that the Goods have not been delivered.

8. INSPECTION, REJECTION AND GUARANTEE

8.1 The Supplier shall permit the Purchaser or his authorised representatives to make any inspections or tests he may reasonably require and the Supplier shall afford all reasonable facilities and assistance free of charge at his premises. No failure to make complaint at the time of such inspection or tests and no approval given during or after such tests or inspections shall constitute a waiver by the Purchaser of any rights or remedies in respect of the Goods.

8.2 The Purchaser may by written notice to the Supplier reject any of the Goods which fail to meet the requirements specified in the contract. Such notice shall be given within a reasonable time after delivery to the Purchaser of Goods concerned. If the Purchaser shall reject any of the Goods pursuant to this Condition the

Purchaser shall be entitled (without prejudice to his other rights and remedies) either:

(a) To have the Goods concerned as quickly as possible either repaired by the Supplier or (as the Purchaser shall elect) replaced by the Supplier with Goods which comply in all respects with the requirements specified herein; or

(b) To obtain a refund from the Supplier in respect of the Goods concerned.

8.3 The guarantee period applicable to the Goods shall be 12 months from putting into service or 18 months from delivery, whichever shall be the shorter (subject to any alternative guarantee arrangements agreed in writing between the Purchaser and the Supplier). If the Purchaser shall within such guarantee period or within 30 days thereafter give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use the Supplier shall (without prejudice to any other rights and remedies which the Purchaser may have) as quickly as possible remedy such defects (whether by repair or replacement as the Purchaser shall elect) without cost to the Purchaser.

8.4 Any Goods rejected or returned by the Purchaser as described in paragraphs 8.2 or 8.3 shall be returned to the Supplier at the Supplier's risk and expense.

9. LABELLING AND PACKAGING

9.1 The Goods shall be packed and marked in a proper manner and in accordance with the Purchaser's instructions and any statutory requirements and any requirements of the carriers. In particular the Goods shall be marked with the Purchase Order Number, the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous goods (and all documents relating thereto) shall bear prominent and adequate warnings. The Supplier shall **indemnify** the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any breach of this Condition.

9.2 All packaging materials will be considered non-returnable and will be destroyed unless the Supplier's advice note states that such materials will be charged for unless returned. The Purchaser accepts no liability in respect of the non-arrival at the Supplier's premises of empty packages returned by the Purchaser unless the Supplier shall within 10 days of receiving notice from the Purchaser that the packages have been

dispatched notify the Purchaser of such non-arrival.

- 9.3 The Supplier represents and warrants that the maximum use has been made of recycled materials in the manufacture of crates, pallets, boxes, cartons, cushioning and other forms of packing, where these fulfil other packing specifications.

10. CORRUPT GIFTS OR PAYMENTS

The Supplier shall not offer or give, or agree to give, to any employee or representative of the Purchaser any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other contract with the Purchaser or for showing or refraining from showing favour or disfavour to any person in relation to this or any such Contract. The attention of the Supplier is drawn to the criminal offences created by the Prevention of Corruption Acts 1889 to 1916.

11. PATENTS, INFORMATION AND COPYRIGHT

- 11.1 It shall be a condition of the Contract, except to the extent that the Goods incorporate designs furnished by the Purchaser, that nothing done by the Supplier in the provision of the Goods shall infringe any patent, trade mark, registered design, copyright or other right in the nature of intellectual property of any third party and the Supplier shall **indemnify** the Purchaser against all actions, claims, demands, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any breach of this Condition.

- 11.2 All rights (including ownership and copyright) in any reports, documents, specifications, instructions, plans, drawings, patents, models or designs whether in writing or on magnetic or other media:

(a) Furnished to or made available to the Supplier by the Purchaser shall remain vested in the Purchaser absolutely.

(b) Prepared by or for the Supplier for use, or intended use, in relation to the performance of this Contract are hereby assigned to and shall vest in the Purchaser absolutely, and (without prejudice to Condition 15.1) the Supplier shall not and shall procure that his servants and agents shall not (except to the extent necessary for the implementation of this Contract) without the prior written consent of the Purchaser use or disclose any such reports, documents, specifications, instructions, plans, drawings, patents, models, designs or other material as aforesaid or any other information (whether or

not relevant to this Contract) which the Supplier may obtain pursuant to or by reason of this Contract, except information which is in the public domain otherwise than by reason of a breach of this provision, and in particular (but without prejudice to the generality of the foregoing) the Supplier shall not refer to the Purchaser or the contract in any advertisement without the Purchaser's prior written consent.

- 11.3 The provisions of this Condition 11 shall apply during the continuance of this Contract and after its termination howsoever arising.

12. HEALTH AND SAFETY

The Supplier represents and warrants to the Purchaser that the Supplier has satisfied himself that all necessary tests and examinations have been made or will be made 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 the same, and that he has made available to the Purchaser 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. The Supplier shall **indemnify** the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any breach of this Condition.

13. INDEMNITY AND INSURANCE

- 13.1 Without prejudice to any rights or remedies of the Purchaser (including the Purchaser's rights and remedies under Condition 8 hereof) the Supplier shall be liable for and shall indemnify the Purchaser, its officers, employees and agents against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any damage to property or in respect of any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any defect in the Goods or the negligent or wrongful act or omission of the Supplier, his servants or agents.

- 13.2 The Supplier shall effect and maintain in force, with a reputable insurance company a policy or policies of insurance covering all the matters which are the subject of indemnities on the part of the Supplier under these Conditions in the sum of £5 million at least in respect of any one incident and unlimited in total, unless otherwise agreed by the Purchaser in writing.

- 13.3 The Purchaser shall produce the relevant policy or policies together with receipts or other evidence of payment of the latest premium due thereunder.

14. RACIAL DISCRIMINATION

The Supplier shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976 or any statutory modification or re-enactment thereof relating to discrimination in employment. 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 sub-contractors employed in the execution of the Contract.

15. CONFIDENTIALITY, DATA PROTECTION and FREEDOM OF INFORMATION

15.1 The Supplier shall keep secret and not disclose and shall procure that his employees keep secret and do not disclose any information of a confidential nature obtained by him by reason of the Contract except information which is in the public domain otherwise than by reason of a breach of this condition.

15.2 The expression "any information of a confidential nature" includes the identity of any person and includes information about any of their affairs, whether or not their identity is, or their affairs are, in the public domain.

15.3 **Data Protection.** To the extent that the contractor is a data processor under the contract, of data in respect of which the Council is the data controller, it is agreed that:

- a) The contractor may only use the data on the instruction of the Council. The data cannot be used for the contractor's own purposes.
- b) The contractor shall comply with the security measures required by the seventh data protection principle in part 1 of schedule 1 to the Data Protection Act 1998 (as interpreted by paragraph 9 of part 2 of that schedule).
- c) The contractor shall, upon request, demonstrate to the reasonable satisfaction of the Council the security and related organisational measures operated by the contractor and as applied to the contract.

The contractor shall ensure the written agreement of any sub-contractor to observe the same obligations to the Council as outlined above.

15.4 The Supplier shall, from time to time as the Purchaser may require, report in confidence on the measures which it has introduced and operates in order to achieve compliance with the requirements of this Condition and the provisions of the Data Protection Act and

subsequent revisions.

15.5 **Freedom of information.** In accordance with Freedom of Information (Scotland) Act (FOI) 2002, the Council will presume the information submitted by the Contractor to the Council is not commercially sensitive unless specifically drawn to the Council's attention. The Council must act in accordance with FOI requirements but in deciding whether to release any information in response to a request for information shall where practicable take into account any opinion of the contractor as regards commercial confidentiality and, in particular, any reasons given to support such exemption

16. TERMINATION ON SUPPLIER'S INSOLVENCY

Without prejudice to any other rights or remedies of the Purchaser under the Contract the Purchaser shall have the right forthwith to terminate the Contract by written notice to the Supplier or the appropriate trustee in bankruptcy or sequestration, receiver, liquidator or administrator:

(a) where the Supplier is an individual and if a petition is presented for the Supplier's bankruptcy or the sequestration of his estate or a criminal bankruptcy order is made against the Supplier, or he is apparently insolvent, or he makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator or trustee is appointed to manage his affairs; or

(b) where the Supplier is not an individual but is a firm or a number of persons acting together in any capacity, if any event in (a) or (c) of this Condition occurs in respect of the firm or any partner in the firm or any of those persons or a petition is presented for the Supplier to be wound up as an unregistered company; or

(c) where the Supplier is a company, if the company passes a resolution for winding-up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrator, administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge.

17. RECOVERY OF SUMS DUE

Wherever under the Contract any sum of money is recoverable from or payable by the Supplier, that sum may be deducted from any sum then due, or which at any later time may become due, to the Supplier under the Contract or under any other agreement or contract with the Purchaser or with any department, agency or authority of the Purchaser.

18. HEALTH AND SAFETY

18.1 The Supplier represents and warrants to the Purchaser that the Supplier has satisfied himself that all necessary tests and examinations have been made or will be made 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 the same, and that he has made available to the Purchaser 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.

18.2 With prejudice to the generality of paragraph 18.1 hereof, the Supplier shall indemnify the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any breach of paragraph 18.1 hereof.

19. ASSIGNATION AND SUB-CONTRACTING

19.1 The Supplier shall not assign or sub-contract any portion of the Contract without the prior written consent of the Purchaser. Sub-contracting any part of the Contract shall not relieve the Supplier of any obligation or duty attributable to him under the Contract or these Conditions and the Supplier shall be responsible for acts, defaults or neglects of any sub-contractor or its agents, servants or workmen, notwithstanding that the Purchaser shall require as a condition of giving any consent to sub-contract a direct warranty and undertaking from the sub-contractor concerning the provision of the Services in compliance with the Contract in all respects.

19.2 Where the Purchaser has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Supplier to the Purchaser immediately it is issued.

19.3 Where the Supplier enters a sub-contract with a supplier or contractor for the purpose of performing the Contract, he shall cause a term to be included in such sub-contract which requires payment to be made to the supplier or contractor within a specified period not exceeding 30 days from receipt of a valid

invoice as defined by the sub-contract requirements.

20. NOTICES

Any notice given under or pursuant to the Contract may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted by telex, telemessage, facsimile transmission or other means of telecommunication resulting in the receipt of a written communication in permanent form and if so sent or transmitted to the address of the party shown on the Purchase Order, or to such other address as the party may by notice to the other have substituted therefor, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours. All notices to be served on the Purchaser must be served on the Head of Administration & Legal Services, Clackmannanshire Council, Greenfield, Alloa, FK10 2AD

21. ARBITRATION

All disputes, differences or questions between the parties to the Contract with respect to any matter or thing arising out of or relating to the Contract, other than a matter or thing as to which the decision of the Purchaser is under the Contract to be final and conclusive, and except to the extent to which special provision for arbitration is made elsewhere in the Contract, shall be referred to a single arbiter to be mutually chosen by the parties or, failing agreement, nominated by the Sheriff of the Sheriffdom of Tayside, Central & Fife at Alloa for the time being on the application of either party. Any such reference to arbitration shall be deemed to be an agreement to refer to arbitration within the meaning of the Arbitration (Scotland) Act 1894.

Where any matter arising out of or under the Contract is subject to discussion or referral to arbitration in accordance with paragraph 20, the consultant shall remain responsible for the provision of the Contract and the Client shall remain responsible for the payment, without prejudice to the rights of the parties in matters other than the matter in dispute.

22. HEADINGS

The headings to Conditions shall not affect their interpretation.

23. GOVERNING LAW

These Conditions shall be governed by and construed in accordance with Scottish law and the Supplier hereby irrevocably submits to the jurisdiction of the Scottish courts. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the Purchaser

to take proceedings against the Supplier in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not

