

**These Conditions may only be varied with 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 on behalf of 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.

*'Services'* means the services to be provided as specified in the Purchase Order and shall, where the context so admits, include any materials, articles and goods to be supplied thereunder;

*'Premises'* means the location(s) where the services are to be performed, as specified in the Purchase Order;

*'Contract'* means the legally binding agreement between the Parties to the Contract consisting of the Purchase Order, these Conditions and 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. CHANGE TO CONTRACT REQUIREMENTS**

2.1 The Purchaser may from time to time require variation to any part of the Services that for any other reason shall in its opinion be desirable. Any such variation may include (but shall not be restricted to) additions, omissions, alterations, substitutions to the Services and changes in quality, form, character, kind, timing, method or sequence of the Services.

2.2 Save as otherwise provided herein, no variation of the Services as provided for in Clause 2.1 hereof shall be valid unless given or confirmed in the form of an order given by the Purchaser. All such orders shall be given in writing provided that if for any reason the Purchaser shall find it necessary to give any such order orally in the first instance the Supplier shall comply with such oral order which must be confirmed in writing by the Purchaser within 2

working days of the giving of such oral order by the Purchaser, failing which the variation made by such oral order shall cease to have effect on the expiry of the said 2 working day period.

2.3 Where any such variation of the Services made in accordance with Clause 2.1 and 2.2 has affected or may affect the costs incurred by the Supplier in providing the Services, the Supplier will notify the Purchaser in writing of the effect which it has had or may have on the said costs and such notification shall be considered by the Purchaser, who shall take all of the facts into account (including such information as may be provided by the Supplier in respect of the effect which such variation has had or may have on the costs incurred by the Supplier in providing the service) and may authorise such alteration to the sums to be paid to the Supplier in accordance with the provisions of the Contract as are, in his opinion, appropriate and reasonable in the circumstances.

## **3. INSPECTION OF PREMISES AND NATURE OF SERVICES**

3.1 The Supplier is deemed to have inspected the Premises before tendering so as to have understood the nature and extent of the Services to be carried out and satisfied himself in relation to all matters connected with the Services and Premises.

3.2 The Purchaser shall, at the request of the Supplier, grant such access as may be reasonable for this purpose.

## **4. SUPPLIER'S STATUS**

In carrying out the Services the Supplier shall be acting as principal and not as the agent of the Purchaser. Accordingly:

(a) The Supplier shall not (and shall procure that his agents and servants do not) say or do anything that might lead any other person to believe that the Supplier is acting as the agent of the Purchaser, and

(b) Nothing in this Contract shall impose any liability on the Purchaser in respect of any liability incurred by the Supplier to any other person but this shall not be taken to exclude or limit any liability of the Purchaser to the Supplier that may arise by virtue of either a breach of this Contract or any negligence on the part of the Purchaser, his staff or agents.

## **5. SUPPLIER'S PERSONNEL**

5.1 The Supplier shall take the steps reasonably required by the Purchaser to prevent unauthorised persons being admitted to the

Premises. If the Purchaser gives the Supplier notice that any person is not to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract, the Supplier shall take all reasonable steps to comply with such notice and if required by the Purchaser the Supplier shall replace any person removed under this Condition with another suitably qualified person and procure that any pass issued to the person removed is surrendered.

- 5.2 If and when instructed by the Purchaser, the Supplier shall give to the Purchaser a list of names and addresses of all persons who are or may be at any time concerned with the Services or any part of them, specifying the capacities in which they are so concerned, and giving such other particulars and evidence of identity and other supporting evidence as the Purchaser may reasonably require.
- 5.3 The decision of the Purchaser as to whether any person is to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract and as to whether the Supplier has furnished the information or taken the steps required of him by this Condition shall be final and conclusive.
- 5.4 The Supplier shall bear the cost of any notice, instruction or decision of the Purchaser under this Condition.

#### **6. MANNER OF CARRYING OUT THE SERVICES**

- 6.1 The Supplier shall make no delivery of materials, plant or other things nor commence any work on the Premises without obtaining the Purchaser's prior consent.
- 6.2 Access to the Premises shall not be exclusive to the Supplier but only such as shall enable him to carry out the Services concurrently with the execution of work by others. The Supplier shall co-operate with such others as the Purchaser may reasonably require.
- 6.3 The Purchaser shall have the power at any time during the progress of the Services to order in writing:
- (a) The removal from the Premises of any materials which in the opinion of the Purchaser are either hazardous, noxious or not in accordance with the Contract, and/or
- (b) The substitution of proper and suitable materials, and/or
- (c) The removal and proper re-execution notwithstanding any previous test thereof or interim payment therefor of any work which, in respect of material or workmanship is

not in the opinion of the Purchaser in accordance with the Contract.

- 6.4 On completion of the Services the Supplier shall remove his plant, equipment and unused materials and shall clear away from the Premises all rubbish arising out of the Services and leave the Premises in a neat and tidy condition.

#### **7. TIME OF PERFORMANCE**

The Supplier shall begin performing the Services on the date stated in the Purchase Order and shall complete them by the date stated in the Purchase Order or continue to perform them for the period stated in the Purchase Order (whichever is applicable). Time is of the essence of the Contract. The Purchaser may by written notice require the Supplier to execute the Services in such order as the Purchaser may decide. In the absence of such notice the Supplier shall submit such detailed programmes of work and progress reports as the Purchaser may from time to time require.

#### **8. PAYMENT**

- 8.1 Unless otherwise stated in the Contract, payment will be made within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed to the satisfaction of the Purchaser.
- 8.2 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.

#### **9. FREE-ISSUE MATERIALS**

Where the Purchaser for the purpose of the Contract issues materials free of charge to the Supplier such materials shall be and remain the property of the Purchaser. The Supplier shall maintain all such materials in good order and condition and shall use such materials solely in connection with the Contract. The Supplier shall notify the Purchaser of any surplus materials remaining after completion of the Services and shall dispose of them as the Purchaser may direct. Waste of such materials arising from bad workmanship or negligence of the Supplier or any of his servants, agents or sub-Contractors shall be made good at the Supplier's expense. Without prejudice to any other of the rights of the Purchaser, the Supplier shall deliver up such materials whether processed or not to the Purchaser on demand.

#### **10. AUDIT**

The Supplier shall keep and maintain until 2 years after the Contract has been completed accurate records relating to the provision of the Contract in such form as the Purchaser may from time to time specify of all expenditures which are reimbursable by the Purchaser and of the hours worked and costs incurred in connection with any employees of the Supplier paid for by the Purchaser on a time charge basis. The Supplier shall on request afford the

Purchaser or his representatives such access to those records as may be required by the Purchaser in connection with the Contract.

#### **11. 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.

#### **12. PATENTS, INFORMATION AND COPYRIGHT**

12.1 It shall be a condition of the Contract that, except to the extent that the Services incorporate designs furnished by the Purchaser, that nothing done by the Supplier in the performance of the Services 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.

12.2 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.

12.3 The provisions of this Condition 12 shall apply during the continuance of this Contract and after its termination howsoever arising.

#### **13. INDEMNITY AND INSURANCE**

13.1 Without prejudice to any rights or remedies of the Purchaser the Supplier shall **indemnify** the Purchaser, its officers, employees, agents and other contractors 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 negligent or wrongful act or omission of the Supplier.

13.2 Except in the case of loss, damage or personal injury (including death) suffered by an employee of the Supplier (in respect of which the **indemnity** in Condition 13.1 shall apply whether or not the loss, damage or personal injury was caused by the negligent or wilful act or omission of the Purchaser, its officers, employees, agents and other contractors.) the **indemnity** contained in Condition 13.1 shall **not** apply to the extent that the loss, damage or injury is caused by the negligent or wilful act or omission of the Purchaser or its officers, employees, agents or other contractors.

13.3 The Supplier shall have in force and shall require any sub-Contractor to have in force:

(a) Employer's liability insurance in accordance with any legal requirements for the time being in force, and

(b) Public liability insurance for such sum and range of cover as the Supplier deems to be appropriate but covering at least all matters which are the subject of indemnities or compensation obligations under these Conditions in the sum of not less than £5 million for any one incident and unlimited in total, unless otherwise agreed by the Purchaser in writing.

13.4 The policy or policies of insurance referred to in paragraph 13.3 shall be shown to the Purchaser whenever he requests, together with satisfactory evidence of payment of premiums.

#### **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

16.1 The Supplier shall notify the Purchaser in writing immediately upon the occurrence of any of the following events:

(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 of 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.

16.2 On the occurrence of any of the events described in paragraph 16.1 or, if the Supplier shall have committed a material breach of this Contract and (if such breach is capable of remedy) shall have failed to remedy such breach within 30 days of being required by the Purchaser in writing to do so or, where the Supplier is an individual if he shall die or be adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983 or of Part V of the Mental Health (Scotland) Act 1984, the Purchaser shall be entitled to terminate this Contract by notice to the Supplier with immediate effect. Thereupon, without prejudice to any other of his rights, the Purchaser may himself complete the Services or have them completed by a third party, using for that purpose (making a fair and proper allowance therefor in any payment subsequently made to the Supplier) all materials, plant and equipment on the Premises belonging to the Supplier, and the Purchaser shall not be liable to make any further payment to the Supplier until the Services have been completed in accordance with the requirements

of the Contract, and shall be entitled to deduct from any amount due to the Supplier the costs thereof incurred by the Purchaser (including the Purchaser's own costs). If the total cost to the Purchaser exceeds the amount (if any) due to the Supplier, the difference shall be recoverable by the Purchaser from the Supplier.

16.3 In addition to his rights of termination under paragraph 16.2, the Purchaser shall be entitled to terminate this Contract by giving to the Supplier not less than 30 days notice to that effect.

16.4 Termination under paragraphs 16.2 or 16.3 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Purchaser and shall not affect the continued operation of Conditions 12 and 15.

#### **17. RECOVERY OF SUMS DUE**

Wherever under this 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 this 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 or Services to ensure that the Goods or Services 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 The Supplier shall perform the Services in such a manner as to be safe and without risk to the health or safety of persons in the vicinity of the place where the Services are being performed (whether such persons are in the vicinity of the said place at the time when the Services are being performed or otherwise) and in such a manner as to comply with any relevant health and safety or other legislation (including Statutory Instrument, Orders, or Regulations made under the said legislation) and any requirements imposed by a local or other regulatory authority in connection with the performance of services of the type supplied to the Purchaser, whether specifically or generally.

18.3 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 paragraphs 18.1 or 18.2 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, teletext, 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.

