

## 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 the Dumfries and Galloway Council;

*'Supplier'* means the person, firm or company to whom the Contract is issued;

*'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 contract between the Purchaser and the Supplier 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.

### 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. THE PRICE

- 3.1 The price of the goods shall be as stated in the Contract and no increase will be accepted by the Purchaser unless agreed by the Purchaser in writing before the execution of the Contract.
- 3.2 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.
- 3.3 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.
- 3.4 Notwithstanding Condition 17 of this Contract the Supplier may assign to another person (an "assignee") the right to receive payment of the Price or any part thereof due to the Supplier under this Contract subject to (i) deduction of sums in respect of which the Purchaser exercises the right of recovery under Condition 16 of this Contract and (ii) all the related rights of the Purchaser under this Contract in relation to the recovery of sums due but unpaid. The Supplier shall notify or procure that any assignee notifies the Purchaser of any variations to the arrangements for payment of the Price or for handling invoices, in each case in good time to enable the Purchaser to redirect payments or

invoices accordingly. In the absence of such notification the Purchaser shall be under no obligation to vary its arrangements for payment of the Price or for handling invoices.

#### **4. DELIVERY**

4.1 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.

4.2 Where any access to the premises is necessary in connection with delivery or installation the Supplier and the Supplier's sub-contractors shall at all times comply with the reasonable requirements of the Purchaser's Head of Security.

4.3 The time of delivery shall be of the essence and failure to deliver within the time promised or specified shall enable the Purchaser (at the Purchaser's option) to release themselves 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 the Purchaser's other rights and remedies.

#### **5. 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 7 hereof) pass to the Purchaser at the time of delivery.

#### **6. 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.

#### **7. INSPECTION, REJECTION AND GUARANTEE**

7.1 The Supplier shall permit the Purchaser or the Purchaser's authorised representatives to make any inspections or tests they may reasonably require and the Supplier shall afford all reasonable facilities and assistance free of charge at the Supplier's 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.

7.2 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 the Purchaser's 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.

7.3 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.

7.4 Any Goods rejected or returned by the Purchaser as described in paragraphs 7.2 or 7.3 shall be returned to the Supplier at the Supplier's risk and expense.

## 8. LABELLING AND PACKAGING

8.1 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.

8.2 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.

8.3 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.

## 9. 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 Bribery Act 2010.

## 10. PATENTS, INFORMATION AND COPYRIGHT

10.1 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.

10.2 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 Dumfries and Galloway Council 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 Dumfries and Galloway Council absolutely, and (without prejudice to Condition 14.2) the Supplier shall not and shall procure that the Supplier's 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.

10.3 The provisions of this Condition 10 shall apply during the continuance of this Contract and after its termination howsoever arising.

## **11. HEALTH AND SAFETY**

The Supplier represents and warrants to the Purchaser that the Supplier is satisfied 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 the Supplier 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.

## **12. INDEMNITY AND INSURANCE**

12.1 Without prejudice to any rights or remedies of the Purchaser (including the Purchaser's rights and remedies under Condition 7 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 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.

12.2 The Supplier shall effect with a reputable insurance company a policy or policies of insurance covering all the matters which are the subject of indemnities under these Conditions and shall at the request of the Purchaser produce the relevant policy or policies together with receipts or other evidence of payment of premiums, including the latest premium due thereunder.

## **13. DISCRIMINATION**

The Supplier must not unlawfully discriminate against any person within the meaning of the Equality Act 2010 in its activities relating to the Contract or any other contract with the Purchaser.

#### **14. OFFICIAL SECRETS ACTS, CONFIDENTIALITY, AND ACCESS TO GOVERNMENT INFORMATION**

- 14.1 The Supplier undertakes to abide and procure that the Supplier's employees abide by the provisions of the Official Secrets Acts 1911-1989.
- 14.2 The Supplier shall keep secret and not disclose and shall procure that the Supplier's employees keep secret and do not disclose any information of a confidential nature obtained by the Supplier by reason of the Contract except information which is in the public domain otherwise than by reason of a breach of this provision.
- 14.3 All information related to the Contract with the Supplier will be treated as commercial in confidence by the Purchaser except that:
- (a) The Supplier may disclose any information as required by law or judicial order to be disclosed.
  - (b) The Purchaser may disclose any information as required by law or judicial order to be disclosed, further the Purchaser may disclose all information obtained by the Purchaser by virtue of the Contract to the Dumfries and Galloway Council.
- 14.4 The provisions of this Condition 14 shall apply during the continuance of the Contract and after its termination howsoever arising.

#### **15. DATA PROTECTION**

- 15.1 Where the Provider gives any personal data to the Council, the Council will use that personal data to make sure the Provider complies with the terms of the Contract. The Council may share that personal data with other Council Services or appropriate bodies. The Provider agrees to make sure that all people whose personal data are (or are to be) disclosed to the Council are told of this fact.
- 15.2 Where the Provider processes (or will process) personal data it hereby confirms that it has (or will acquire) a valid notification with the Information Commissioner as defined by section 6 of the Data Protection Act 2018 covering its processing of personal data, including in that notification the disclosure of personal data to the Council.
- 15.3 The Provider acknowledges that in order for it to perform its duties, the Council may need to disclose personal data to the Provider. This may include sensitive personal data relating to people who use the services, such information being called 'people who use the service information'. The Council is the data controller in respect of the people who use the service information. The Provider shall take all steps necessary to permit this to occur including providing any requested information on its processing and arrangements and shall execute all the required documentation when required to do so.
- 15.4 The Provider hereby warrants:
- (i) that processing of the person's information will be subject to technical and organisational security measures which, if the Provider were the data controller in respect of the person's information, would satisfy the seventh Data Protection Principle and the General Data Protection Regulations;
  - (ii) that it will take reasonable steps to make sure it complies with the measures described in clause 15.4(i) above;
  - (iii) that it will comply with all obligations imposed by the seventh Data Protection Principle as though the Provider were the data controller in respect of the person's information.

- 15.5 In the Contract the expressions “personal data”, “data controller”, “data processor”, “processing” and “process” shall have the meanings assigned to them by the Data Protection Act 2018, and the “Seventh Data Protection Principle”.
- 15.6 Personal information shall be used by the Provider purely to enable the Provider to provide the Service to people in accordance with the Contract and as requested by the Council, and for no other purpose. It must not be processed or disclosed for any other purpose whatsoever apart from when the Provider is required to do so by law; or with the consent of the person or other individual to whom the personal data in question relates. In the case of a person who lacks the mental capacity necessary to consent to the processing in question, this shall mean with the consent of a person entitled in law to make decisions relating to the personal welfare of the person but only to the extent that such processing will be of benefit to the person, and the processing is in accordance with the wishes of the person so far as these can be ascertained. The Provider shall make sure that the recipients of any personal data disclosed under this clause are made aware of the duty of confidentiality which attaches to it.
- 15.7 The Provider shall not be required to pass information to the Council in relation to a person, member of staff, volunteer or any other person if the same would cause the Provider to breach the terms of the Data Protection Act 2018. The Provider must supply detailed reasons in terms of the said Act in support of such an assertion within a reasonable timescale specified by the Council. Where the cause of the potential breach of the said Act is lack of consent to disclosure of the information, the Provider agrees to use its best endeavours to obtain the consent required to prevent the potential breach from occurring.
- 15.8 Information provided by the Council to the Provider in connection with the Contract will be treated as confidential by the Provider (and any people employed or engaged by the Provider in connection with the Contract).
- 15.9 The Provider (and any people employed or engaged by the Provider in connection with the Contract) shall only use information obtained from the Council for the purposes of the Contract and shall not tell anyone else this information without the prior written approval of the Council.
- 15.10 Personal or identifiable information developed while delivering the Contract shall be shared with the Council by the Provider and shall be treated as confidential by the Council (and any person employed or engaged by the Council in connection with the Contract). If required a Data Sharing Protocol will be developed.
- 15.11 The duty of confidentiality will continue after the end of the Contract as well as during the life of the Contract.
- 15.12 The Council reserves the right to use information that has been changed to remove personal or identifiable details, where this is considered to be in the public interest.

## **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 the Supplier is apparently insolvent, or 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 the Supplier's 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.

## **18. ASSIGNATION AND SUB-CONTRACTING**

18.1 The Supplier shall not without the written consent of the Purchaser assign the benefit or burden of the Contract or any part thereof.

18.2 No sub-contracting by the Supplier shall in any way relieve the Supplier of any of the Supplier's responsibilities under the Contract.

18.3 Where the Supplier enters into a sub-contract must ensure that a provision is included which:

18.3.1 requires payment to be made of all sums due by the Supplier to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice as defined by the sub-contract requirements and provides that, where the Purchaser has made payment to the Supplier in respect of Services and the sub-contractor's invoice relates to such Services then, to that extent, the invoice must be treated as valid and, provided the Supplier is not exercising a right of retention or set-off in respect of a breach of contract by the sub-contractor or in respect of a sum otherwise due by the sub-contractor to the Supplier, payment must be made to the sub-contractor without deduction;

18.3.2 notifies the sub-contractor that the sub-contract forms part of a larger contract for the benefit of the Purchaser and that should the sub-contractor have any difficulty in securing the timely payment of an invoice, that matter may be referred by the sub-contractor to the Purchaser; and

18.3.3 in the same terms as that set out in this clause 17.3 (including for the avoidance of doubt this clause 17.3.3) subject only to modification to refer to the correct designation of the equivalent party as the Supplier and sub-contractor as the case may be.

## 19. 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.

## 20. DISPUTE RESOLUTION

20.1 The parties must attempt in good faith to resolve any dispute between them arising out of or in connection with the Contract.

20.2 Any dispute or difference arising out of or in connection with the Contract, including any question regarding its existence, validity or termination which cannot be resolved in good faith, shall be determined by the appointment of a single arbitrator to be agreed between the parties, and failing agreement within 14 days after either party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the Scottish Arbitration Centre on the written application of either party. The seat of the arbitration shall be in Scotland. The language used in the arbitral proceedings shall be in English.

20.3 Any arbitration under 20.2 is subject to the Arbitration (Scotland) Act 2010.

## 21. HEADINGS

The headings to Conditions shall not affect their interpretation.

## 22. 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.

## 23. ELECTRONIC PROCUREMENT

23.1 Dumfries and Galloway Council uses PECOS (Professional Electronic Commerce Online System) which is a web-based electronic online ordering system that allows Council departments to place orders to suppliers online and for invoices to be paid electronically.

23.2 Upon award of the contract, the Supplier will be sent a supplier form together with an electronic catalogue template to complete. These will be returned to the Council timeously to ensure that the Supplier's catalogue is available for the Operational Date.

23.3 It is a condition of this contract that the Supplier agrees to accept orders via PECOS and that invoices will be issued on a one order per invoice basis. Invoices and accompanying paperwork can be e-mailed in pdf format to our central Purchase Ledger Team. This has the potential to generate savings for the Council and the Supplier by reducing administration costs etc.