

WEST DORSET DISTRICT COUNCIL, WEYMOUTH & PORTLAND BOROUGH COUNCIL AND NORTH DORSET DISTRICT COUNCIL GENERAL TERMS AND CONDITIONS

1. DEFINITIONS

1.1 In these conditions unless the context otherwise requires the following expressions have the following meanings: "Contractor" means the person, firm or company or any other organisation contracting with the Council and whose name appears on the Purchase Order; "Goods" means the articles or things referred to in the Purchase Order; "Services" means all services of whatever nature, to be provided by the Contractor to the Council and described in the Purchase Order; this includes design concepts or consultants reports; "Works" means the works referred to in the Purchase Order "Council" means West Dorset District Council, Weymouth & Portland Borough Council and North Dorset District Council; "Price" means the price of the goods or services being provided by the Contractor; "Purchase Order" means the Council's authorised Purchase Order having these terms and conditions on its reverse or attached to it or referring to these terms and conditions.

1.2 In this Agreement (including the recitals) unless the context otherwise requires: clause headings are for ease of reference only; references to clauses are to clauses and schedules in these conditions; the singular includes the plural and vice-versa and any of the genders includes the other; any reference to a person includes a company, corporation, partnership of unincorporated association; reference to a party includes its successors in title, transferees and assignees; references to any statute includes any statutory modification, extension or re-enactment of it or any part of it for the time being in force and also includes all instruments and regulations deriving validity from that statute.

2. VARIATIONS

2.1 Neither the Council nor the Contractor shall be bound by any variation or waiver of or addition to these conditions unless that variation or addition shall have been agreed and evidenced in a document(s) signed by or on behalf of both parties.

3. SPECIFICATION AND QUALITY OF THE GOODS, SERVICES OR WORKS

3.1 The quantity, quality and description of the goods, services or works shall comply in all respects with any quoted British Standards and the specification or illustration contained in any product, pamphlet or other sales or marketing literature of the Contractor or drawings, samples and patterns specified in the Purchase Order or any modifications thereof that may be agreed by the Council in writing.

3.2 The goods, services or works shall be of the quantity or in the numbers specified in the contract, shall be of sound material and workmanship, shall conform in every respect to any sample provided or given by either party, shall be capable of any standard of performance specified in the contract, and where the purpose for which they are required is indicated in the Purchase Order either expressly or by implication the goods shall be fit for that purpose.

4. DELIVERY OF THE GOODS, SERVICES OR WORKS

4.1 The Goods, Services or Works shall be properly packed and secured in such a manner as to reach their destination in good condition under normal conditions of transport shall unless otherwise agreed be delivered by the Contractor to the Council or be dispatched by the Contractor for delivery to the Council at the establishment or at the place or places specified in the Contract and at the time(s) mentioned therein.

4.2 Delivery shall be free of charge to the Council and at the Contractor's risk. Delivery to a carrier shall not be deemed to be Delivery of the Goods, Services or Works to the Council.

4.3 Every delivery of the Goods, Services or Works shall be accompanied or proceeded by a delivery or advice note addressed to the appropriate officer of the Council at the establishment named in the Contract and that note shall state in full the name, quality, sort, rate, price, quantity and number of the Goods, Services or Works delivered therewith or to be delivered thereafter.

5. PASSING OF PROPERTY IN THE GOODS, SERVICES OR WORKS

5.1 The property in the Goods, Services or Works shall pass to the Council immediately on delivery but shall pass back to the Contractor if and as soon as the right of rejection under these conditions is exercised.

6. SUBSTITUTION

6.1 The Contractor shall not substitute any alternative Goods, Services or Works agreed to be supplied hereunder unless such substitution will not materially effect the requirements of the Council as specified in the Purchase Order and will not result in any increase in price and has the prior approval in writing from the Council.

7. REJECTION

7.1 The Council shall have the right to reject any Goods, Services or Works which do not comply with the Purchase Order and are, without limitation, not of a stipulated quality or quantity or measurement, unfit for the purpose for which they are required, or non-compliance with the description of specification.

7.2 If the Contractor is unable to supply acceptable replacement Goods, Services or Works within the time specified by the Council, or within any extension of such time as the Council may grant, the Council will be entitled to purchase elsewhere other Goods, Services or Works as near as is practicable to the same specifications as circumstances shall permit, but without prejudice to any other right which the Council may have against the Contractor including, but not limited to, payment by the Contractor of any excess costs incurred by the Council in doing so.

7.3 The making of such payment shall not prejudice the Council's right of rejection and the Contractor shall immediately reimburse the Council with an amount equal to that paid by the Council in respect of the Goods, Services or Works and any applicable taxes. Before exercising the said right elsewhere, the Council shall give the Contractor reasonable opportunity to replace rejected Goods, Services or Works with Goods, Services or Works that comply with the Purchase Order.

8. DEFAULT BY CONTRACTOR

8.1 If any of the Goods, Services or Works to be supplied under the contract shall a) not be duly delivered by the Contractor to the Council at the time (if any) stated in the contract subject to any extension or extensions of time granted by the Council

b) in the opinion of the officer of the Council for the use of whose department they are required (whose decision shall be conclusive as against the Contractor) not reasonably be of the quality and sort contracted for; or

c) be deficient in the quantity or number required by the Contractor; or

d) be delivered without a delivery or advice note containing correct and sufficient particulars of the name quality sort rate, price quantity and number of such Goods, Services or Works then the Council may, without prejudice to any other remedy, by written notice served on the Contractor reject those Goods, Services or Works and if the Goods, Services or Works are not removed by the Contractor within twenty four hours after service of the notice, return them to the Contractor at the expense of the Contractor and in every such case it shall be lawful for the Council to purchase at such prices and on such terms and conditions as the Council thinks fit the same or similar goods or services and in that event the Contractor shall pay to the Council or it shall be lawful for the Council to deduct from any sum that is due or may become due to the Contractor under the contract or otherwise all costs charges and expenses of such additional supply or arising from such failure to perform the contract over and above the rate or price at which such goods or services are under the contract to be supplied and delivered.

8.2 If the Contractor without reasonable cause fails to proceed diligently with the Goods, Services or Works, or wholly suspends the carrying out of the Works before completion, or if default is made by the Contractor in complying with this condition, the Council may (in addition to any other remedy), enter upon the site of the Services or Works and expel the Contractor therefrom and may itself or through another Contractor complete the Services or Works or make good the default in which event the Contractor shall pay to the Council or it shall be lawful for the Council to deduct from any sum that is due or may become due to the Contractor under the contract or otherwise all costs, charges and expenses of such work over and above the rate or price at which such work was to have been carried out under the Contract.

9. POSTPONEMENT OR CANCELLATION OF DELIVERY OF GOODS, SERVICES OR WORKS

9.1 If for any unavoidable cause including

a) any strike or lock-out of employees or any working to rule by employees,

b) civil commotion,

c) cessation or material interruption of traffic by air, road, rail or sea,

d) force majeure, or

e) exceptionally adverse weather

either party to the contract shall be unable to continue to supply or to accept delivery as the case may be of all the Goods, Services or Works which at the commencement of such disability be bound to deliver or accept as the case may be any Goods, Services or Works and within one month after the termination of that period the Council shall determine and shall serve notice on the Contractor whether it requires the quantity or the services not delivered to be cancelled or to be delivered. If it does so require the contract shall be performed in the same manner as if the time fixed for each delivery had been postponed by a period equal to the duration of the said period of disability.

10. INSPECTION OF GOODS, SERVICES, WORKS AND PREMISES

The Contractor shall without hindrance permit any authorised officer or agent of the Council to enter at any reasonable time without prior notice upon any land or premises or vehicles which are used for the preparation, distribution or storage of any of the Goods, Services or Works to be supplied under the contract for the following purposes:

10.1 to inspect all or any part of the said land premises or vehicles to ascertain whether they are suitable for the preparation, distribution or storage of the said Goods, Services or Works;

10.2 to check the quantity and /or quality of the Goods, Services or Works, their description and their country of origin for this purpose to take such samples as are deemed necessary and the Contractor shall afford all reasonable assistance to the officer or agent in carrying out such inspections (and this shall include the provision of samples where requested).

11. CANCELLATION ON ACCOUNT OF CORRUPTION

The Council shall be entitled to cancel the contract and to recover from the Contractor the amount of any loss resulting from such cancellation if the Contractor shall have offered or given or agreed to give any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forbore to do any action in relation to the obtaining or the execution of the contract or any other contract with the Council or for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Council or if the like acts shall have been done by any person employed by him or acting on his behalf (whether with or without the knowledge of the Contractor) or if in relation to any contract with the Council the Contractor or any person employed by him or acting on his behalf shall have committed any offence under the Bribery Act 2010, the Prevention of Corruption Acts 1889 to 1916 or any amendment of them or shall have given any fee or reward the receipt of which is an offence under sub-section (2) of Section 117 of the Local Government Act 1972.

12. ASSIGNMENT AND SUBCONTRACTING

12.1 Save as provided in subclause 12.2 below the Contractor shall not be entitled to transfer, assign or subcontract any of its rights or obligations under this Agreement.

12.2 The Contractor shall be entitled (subject to prior written approval of the Council which shall not be unreasonably withheld or delayed) to engage the services of independent contractors of its own to assist with its duties hereunder PROVIDED that the Contractor;

12.2.1 shall not be relieved from any of its obligations hereunder by engaging any such independent Contractor;

12.2.2 shall secure binding obligations from any such independent contractor so as to ensure that the independent will comply with all the Contractor's obligations under this Agreement;

12.2.3 shall not require the Council to make any additional payments for any independent contractor or agent appointed by the Contractor to assist in complying with its obligations under this Agreement.

12.3 Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.

12.4 The Council shall be entitled (subject to the prior written approval of the Contractor which shall not be unreasonably withheld or delayed) to transfer, assign or otherwise dispose of in whole or in part its rights under this contract.

13. INDEMNIFICATION

13.1 The Council shall indemnify the Contractor against all claims, costs and expenses which the Contractor may incur and which arise directly from the Council's breach of any of its obligations under this Agreement.

13.2 The Contractor shall indemnify the Council against all reasonable damage, liability, costs, claims, actions and proceedings arising out of the performance, defective performance or otherwise of this Agreement by the Contractor, its employees servants or agents.

13.3 It is hereby agreed and declared for the avoidance of doubt that in the event of breach of this Agreement by the Contractor any claim by the Council in respect of such breach shall not be limited by the limits of the indemnity of the insurance policies of the Contractor.

14. LIMITATION OF LIABILITY

14.1 In respect of death or personal injury due to negligence for which no limit applies, the entire liability of the Contractor to the Council in respect of any claim whatsoever or breach of this Agreement, whether or not arising out of negligence, shall be limited to £5,000,000 (FIVE MILLION POUNDS) for any one claim unless specifically stated to be otherwise in the Purchase Order or contract.

15. LIABILITY OF THE COUNCIL

15.1 The Council shall be liable to the Contractor for any loss or damage to the Contractor's property which is caused by negligence or wilful tortious act of the Council or its servant during the course of their employment but not in any other way whatsoever and the Council shall in no circumstances be liable to the Contractor for any economical or financial loss of any kind whatsoever which he sustains (other than the non-payment of sums which are or ought to have been certified as due to the Contractor under the contract) in consequence of any breach of contract or tort committed by the Council which was unintentional and did not arise from any failure by the Council or its servants to exercise reasonable care.

15.2 In the absence of fraud the Council does not warrant the accuracy of any representation or statement which may have been made or any information or advice which may have been given to the Contractor during the negotiations antecedent to this Agreement by the Council, its servants or agents, whether in relation to fact or law, and the Council shall not be liable to the Contractor for any loss or damage which the Contractor may sustain as a result of relying on any such representation, statement, information or advice, whether in contract, tort, under the Misrepresentation Act 1967 or otherwise, save insofar as the relevant statement, representation, information or advice was made or given fraudulently by the Council or its servants or agents acting in the course of their employment.

16. TERMINATION AND CANCELLATION

16.1 Either party may terminate this Agreement forthwith by notice in writing to the other if:

a) the other party commits a material breach of this Agreement and, in the case of a breach capable of being remedied fails to remedy within 14 calendar days of being given notice in writing setting out the breach and indicating that failure to remedy the breach may result in termination of this Agreement;

b) the other party commits a material breach of this Agreement which cannot be remedied under any circumstances;

c) the other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect;

d) the other party ceases to carry on its business or substantially the whole of its business; or

e) the other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.

17. CONSEQUENCES OF TERMINATION

17.1 If the Contractor's engagement is terminated as provided herein the Council shall:

17.1.1 cease to be under any obligation to make further payment until the costs, loss and/or damage resulting from arising out of the termination of the Contractor's employment shall have been calculated and provided such calculation shows a sum or sums due to the Contractor;

17.1.2 be entitled to employ and pay other persons to provide and complete provision of the Project or any part thereof;

17.1.3 be entitled to demand any sum or sums which would have been due from the Council to the Contractor under this Agreement or any other agreement or be entitled to recover the same from the Contractor as a debt any loss or damage to the Council resulting from or arising out of the termination of the Contractor's engagement. Such loss or damage shall include the reasonable costs to the Council of the time spent by its officers in terminating the Contractor's engagement and in making alternative arrangements for the provision of the Project or any part thereof;

17.1.4 when the total costs loss and/or damage resulting from or arising out of the termination of the Contractor's engagement have been calculated and deducted so far as practicable from any sum or sums which would have been to the Contractor be entitled to recover any balance shown as due to the Council as a debt or alternatively the Council shall pay to the Contractor any balance shown as due to the Contractor;

17.1.5 be entitled to terminate the Goods, Services or Works by notice in writing with immediate effect.

18. SEVERABILITY

18.1 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions herein shall continue in full force and effect as if this Agreement had been agreed with the invalid, illegal or unenforceable provision eliminated.

19. WAIVER

19.1 The failure by either party to enforce at any time or for any period any one or more of these General Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all the terms and conditions of this Agreement.

20. CONFIDENTIALITY AND DATA PROTECTION

20.1 The Contractor shall not use or divulge or communicate to any person (other than those whose province it is to know the same or with the Council, West Dorset District Council, Stratton House, 58/60 High West Street, Dorchester DT1 1UZ or Weymouth & Portland Borough Council, Council Offices, North Quay, Weymouth, DT4 8TA or North Dorset District Council, Norden, Salisbury Road, Blandford Forum, DT11 7LL as appropriate.

20.2 The Contractor shall ensure that its employees, agents, and subcontractors are aware of and comply with the confidentiality and non-disclosure provisions contained within this Clause and the Contractor shall indemnify the Council against any loss or damage whatsoever which the Council may sustain or incur as a result of any breach of confidence by any such persons.

20.3 The Contractor shall (and shall procure that its employees, agents, and subcontractors shall) comply with any requirements under the Data Protection Act 1998 and will duly observe all its obligations under the aforementioned Act which arise in connection with performance of this Contract.

20.4 The provisions of this clause shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

21. ETHICAL STANDARDS

21.1 The Contractor must promote equality, treat others with respect and not do anything which compromises the impartiality of those who work for the Contractor.

21.2 The Contractor must not, without consent, disclose confidential information they have acquired and must not prevent others from gaining access to information which they are entitled to.

21.3 The Contractor, and any of the contractor's employees or sub-contractors, must not conduct themselves in a manner, which could bring this Council into disrepute.

22. NOTICES

22.1 Unless otherwise communicated to the party in writing any notice to be given by either party to the other may be served by e-mail, fax, personal service or by post to the address of the other party that is the registered office or main place of business of the Contractor or if the Council, West Dorset District Council, Stratton House, 58/60 High West Street, Dorchester DT1 1UZ or Weymouth & Portland Borough Council, Council Offices, North Quay, Weymouth, DT4 8TA or North Dorset District Council, Norden, Salisbury Road, Blandford Forum, DT11 7LL as appropriate.

22.2 A notice sent by e-mail shall be deemed to be received providing receipt is acknowledged and confirmed. Notice given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by second class post shall be deemed to have been delivered in the ordinary course of post and if by first class post shall be deemed to have been delivered 48 hours after posting and acknowledged.

23. INSURANCE

23.1 The Contractor shall maintain a comprehensive policy of public liability and employer's liability insurance. In respect of its liability such insurance cover to be maintained and provide for a minimum of £5,000,000 (FIVE MILLION POUNDS). Cover in respect of death or personal injury due to negligence will be unlimited.

23.2 If appropriate and requested in writing, the Contractor may also be required to provide product liability insurance of at least £2,000,000 (TWO MILLION POUNDS) and professional indemnity insurance of at least £1,000,000 (ONE MILLION POUNDS) cover for any one claim, and the Contractor shall provide the Council with certified copies of the relevant policies upon request.

24. FORCE MAJEURE

24.1 Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including, but not limited to acts of God, strikes, lockouts, accidents, war, fire the act or omission of Government, highway authority or any telecommunication carrier, operator or administration or other competent authority, or the delay or failure in manufacture, production or supply by third parties of equipment or services, and the parties shall be entitled to a reasonable extension of obligations after notifying the other party of the nature and extent of such events.

25. GOVERNING LAW AND JURISDICTION (PROPER LAW OF CONTRACTS)

25.1 This contract is subject to the law of England and Wales.