

## **HYNDBURN BOROUGH COUNCIL**

### **GENERAL CONDITIONS OF CONTRACT FOR THE SUPPLY OF GOODS, MATERIALS, PLANT, EQUIPMENT OR SERVICES**

#### **1. DEFINITIONS**

In these conditions

- 1.1 The “Order” means any order, requirement or instructions given concerning the Supplies by any employee of the Council with the authority to do so.
- 1.2 The “Council” means Hyndburn Borough Council
- 1.3 The “Supplier” means the person with whom the Order is placed
- 1.4 The “Supplies” means all goods, materials, equipment or services the subject of the Order
- 1.5 The “Specification” means the technical requirements and/or description of the Supplies and/or the Supplier’s proprietary specification set out in the Order and any attached documentation of the Council.

#### **2. DELIVERY AND ACCEPTANCE**

- 2.1 On delivery the Council shall not be deemed to accept the Supplies (whether or not an advice/delivery note has been signed) until the Council has had a reasonable opportunity to examine the Supplies. The Council shall have the right to reject any Supplies or part hereof which in its opinion fails to meet the Specification.
- 2.2 The Council may reject any Supplies that are not appropriately packed and labelled.
- 2.3 Property in the Supplies shall pass to the Council only when they have been delivered as specified in the Order and accepted by the Council.
- 2.4 Without prejudice to any other right or remedy of the Council, if the Supplier does not deliver the Supplies as set out in the Order, the Council will be entitled to determine this contract and to purchase other goods of the same or similar description in their place. In such circumstances the Supplier shall pay to the Council on demand the amount by which the cost of so purchasing the other goods exceeds the amount which would have been payable to the Supplier in respect of the Supplies and the Council may deduct this amount from any sums whatsoever payable by the Council to the Supplier.

#### **3. SUPPLIER’S DOCUMENTATION**

The Supplier shall provide the Council with all current and future instructions that relate to the use, and where appropriate the storage, of the Supplies. In particular the Supplier shall draw the Council’s attention to any danger which may be encountered with the storage, use, handling and application of any processes undertaken with the Supplies. Such documentation and instructions shall be in

accordance with the requirements of the Health and Safety at Work etc Act 1974, the Provision and Use of Work Equipment Regulations and any other relevant legislation in force at any time.

#### **4. WARRANTY INDEMNIFICATION AND INSURANCE**

- 4.1 With regard to the supply and delivery of any Supplies the Supplier is to be completely responsible for and shall completely indemnify the Council against any liability, loss, claim, demand or proceedings whatsoever (other than death or personal injury resulting from the negligence of the Council) whether arising under statute or otherwise in respect of personal injury to or the death of any person and injury or damage to real or personal property if such liability, loss, claim, demand or proceeding arises out of, in the course of or is caused by the supply and/or delivery of the Supplies. In respect of such injury or damage the Supplier shall affect adequate and satisfactory insurance with a reputable Insurance Company and shall produce on demand the policy for such insurance and the receipt for the current premium to any duly authorised officer of the Council.
- 4.2 The Supplier warrants that the Supplies comply with the description in the Order.
- 4.3 The Supplier warrants that the Supplies are of good quality and material.
- 4.4 The Supplier warrants that the supply of the Supplies under the Order will not infringe any third party intellectual property rights.
- 4.5 The Supplier will fully indemnify the Council against any breach of clause 4.4

#### **5. QUALITY STANDARDS**

Where an appropriate British Standard Specification, British Standard Code of Practice or European Directive is current at the date of this Contract all Supplies shall be in accordance with that Standard.

#### **6. INSOLVENCY**

The Council may at any time by notice in writing summarily determine this Contract without compensation of any amount being payable to the Supplier by the Council in any of the following events:

- 6.1 The Supplier is an individual and becomes bankrupt or has a receiving order or administration order or interim order made against him or makes any composition or scheme of arrangement with his creditors, or
- 6.2 The Supplier is a firm and any partner in it becomes bankrupt or has a receiving order or administration order or interim order made against him or makes any composition or scheme of arrangement with his creditors, or
- 6.3 The Supplier is a company and passes a resolution or a court makes an order for winding it up (except for the purpose of amalgamation or reconstruction); or an administrative receiver is appointed or an administration is made.

Such determination will not prejudice or affect any right of action or remedy, which shall have accrued at any time to the council.

## **7. TRANSFER OF CONTRACT**

The Supplier must not assign or sublet the contract or any part of it without first getting the Council's written permission.

## **8. CANCELLATION ON GROUNDS OF IMPROPRIETY**

The Council may cancel the contract and recover from the Supplier the amount of any loss resulting from such cancellation if:

- 8.1 The Supplier has offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or not doing anything relating to the contract or any other contract with the Council or for favouring or not favouring any person in relation to the contract or any other contract with the Council;
- 8.2 Like acts have been done by any person employed by the Supplier or acting on his behalf; or
- 8.3 Any such person has committed any offence under the Prevention of Corruption Acts 1889 to 1916 or has given any fee or reward the receipt of which is an offence under the Local Government Act 1972, section 117.

## **9. CONTRACT RATE AND PAYMENT**

- 9.1 All contract prices shall be fixed unless the Order says otherwise.
- 9.2 Payment will be made by the Council within thirty days of receiving a valid VAT invoice.
- 9.3 The Supplier's invoice must include the Order number for the Supplies and be sent to the invoice address shown on the Order.
- 9.4 Payment will normally be made direct to Supplier's bank account. The Supplier should ensure that the Council has its bank account details.
- 9.5 A valid VAT debit or credit note must support any alterations to the amount invoiced.

## **10. RECOVERY OF SUMS DUE TO THE DEPARTMENT**

Any sum of money payable by the Supplier to the Council under the contract may be deducted from any sum then due or which at any time thereafter may become due to the Supplier under this or any other contract with the Council.

## **11. ARBITRATION**

- 11.1 All disputes between the parties, arising out of or connected with this contract, shall be referred to an arbitrator to be agreed (within 14 days of notice being given in writing by the party requiring such agreement) by the parties or in default of such agreement to be nominated by the President of the Chartered Institute of Arbitrators save that the Council may refer such dispute to a court of competent jurisdiction in which case this paragraph will no longer have effect with respect to that dispute.

- 11.2 The decisions of the arbitrator shall be binding on both the Council and the Supplier. The costs of arbitration shall be borne by the unsuccessful party unless the arbitrator determines otherwise.

12. **AGENCY**

Neither the Supplier nor its employees shall in any circumstances hold itself or themselves out as being the servant, agent or partner of the Council.

13. **PATENTS**

The Supplier shall indemnify the Council against any costs, claims, proceedings, expenses and demands arising from the use, manufacture, supply or delivery of any process, article, matter or thing supplied under the contract which would constitute any infringement of any patent, right, design, trademark or copyright.

14. **WAIVER**

Any concession or waiver allowed by the Council to the Supplier in respect of any term hereof at any time shall not prevent the Council from subsequently enforcing that term and shall not be deemed a waiver of any subsequent breach.

15. **SEVERANCE**

In the event that any term, condition or provision of the contract shall be nullified or made void by any law, decree, regulation or order or by the decision or order of any court having jurisdiction, the remaining terms, conditions and provisions of the contract shall remain in full force and effect.

16. **APPLICABLE LAW**

The contract is subject to English law.

17. **APPLICATION**

These conditions are an integral part of the contract, and shall apply except to the extent that they may be inconsistent with any special conditions which apply to the contract, which shall have precedence over these conditions. These conditions shall take precedence over any standard conditions of the Supplier

18. **ORDERED VARIATIONS**

The Council shall be entitled to issue to the Supplier instructions in writing requiring the Supplier to do all or any of the following:

To omit the whole or any part or parts of the Supplies, either permanently or indefinitely or during a specific period or periods specified by the Council, provided that an instruction to omit the whole of the Supplies will only be issued if the provision of the Supplies is no longer operationally expedient to the Council.

19. **FREEDOM IN INFORMATION**

- 19.1 The Supplier shall provide all reasonable assistance to enable the Council to comply with any request received under the Freedom of Information Act 2000 (FOIA) which relates to the Contract and / or the Supplies.
- 19.2 In the event that any request made under the FOIA relates to the Supplier, the Supplies, the contract price or any other matter which falls under the auspices of this agreement, the Council shall consult with the Supplier prior to disclosure.
- 19.3 The Council shall have an absolute discretion to determine the question of disclosure having consulted with the Supplier in accordance with Clause 19.2 above.

## **20. EQUALITY AND NON-DISCRIMINATION**

- 20.1 The Supplier will not discriminate directly or indirectly against any person on the grounds of gender, marriage, sexuality, religion and belief, colour, race, nationality, national or ethnic origin, contrary to the Equal Pay Act 1970, the Sex Discrimination Act 1975 (as amended), the Race Relations Act 1976 (as amended), the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003 or any re-enactment or any other legal requirement applicable during this Contract.
- 20.2 The Supplier will not treat a person less favourably for a reason relating to that person's disability (as defined by the Disability Discrimination Act 1995) nor fail to comply with a duty under that Act to make a reasonable adjustment in relation to the disabled person.
- 20.3 The Supplier will ensure that it observes as far as possible the Commission for Racial Equality's Code of Practice in Employment, the Equal Opportunity Commission's Codes of Practice on Sex Discrimination and Equal Pay and the Disability Rights Commission's Code of Practice for the elimination of discrimination against disabled persons in the field of employment.
- 20.4 Where the Supplier carries out work on the Council's premises or alongside the Council's staff or has contact with the public under this Contract, the Supplier will comply with the Council's relevant employment policies and codes of practice.
- 20.5 The Supplier will notify the Council as soon as it becomes aware of any complaint or proceedings against the Supplier alleging unlawful discrimination of any investigation of the Contractor's performance of this Contract by a body referred to in Clause 20.3. In the event of any such complaint, proceedings or investigation, the Contractor will co-operate fully and promptly with the body undertaking the investigation or bringing the proceedings, and will indemnify the Council against all costs, charges and expenses (including legal and administrative expenses and any compensation that the Council is required to pay) arising out of such investigation or proceedings.
- 20.6 The Supplier will provide to the Council such information as the Council may reasonably request in respect of the impact of equality issues on the operation of the contract and vice versa.
- 20.7 The Council reserves the right to require the Supplier, by written request, to remove any person involved in the performance of the contract where in the Council's reasonable opinion such person is acting contrary to the requirements of this Clause 20.

- 20.8 The Supplier will discharge its obligations under this contract without infringing the human rights of any person, as defined by the Human Rights Act 1998.
- 20.9 The Supplier will, in performing this contract, comply with the provisions of section 71(1) of the Race Relations Act 1976 (as amended) as if the Supplier were a body within the meaning of Schedule 1A of the Act and subject to an obligation to have due regard to the need to eliminate unlawful racial discrimination, and to promote equality of opportunity and good relations between persons of different racial groups.

**21. Contract**

In the absence of a formal contract between the parties:

The Order and any agreed written amendments will constitute a binding agreement, and

All written quotations received and formally accepted are subject to these terms and conditions and no addition or variation should be made or applied unless agreed in writing to the Council.

**22. SUPPLIER RELATIONSHIP**

Nothing in these terms and conditions is intended to create any legal relationship between the parties other than that of a supplier and customer.