

# Cornwall Development Company

## Standard Terms and Conditions of Purchase of Goods and Services under £25,000

These conditions shall govern the Contract to the exclusion of any terms and conditions of the Supplier. No variation to these conditions shall be binding unless expressly agreed in writing between the Cornwall Development Company and the Supplier.

### 1. Definitions and Interpretation

1.1 The following words and expressions have the following meaning unless inconsistent with the context.

“**CDC**” means Cornwall Development Company Ltd;

“**Contract**” means the contract between CDC and the Supplier to supply the Goods and/or Services consisting of this Order incorporating these standard conditions and such other conditions or documents or specifications specified on the face of this Order;

“**Goods**” means the goods specified in the Order;

“**Services**” means the services specified in the Order;

“**Order**” means the Order made by CDC for the supply of the Goods and/or Services;

“**Price**” means the Price payable by CDC for the Goods and/or Services exclusive of VAT.

“**Regulated Activity**” means a regulated activity as defined in the Safeguarding Vulnerable Groups Act 2006;

“**Supplier**” means the person, firm or company to whom this Order is issued.

“**Intellectual Property Rights**” means all vested and contingent and future Intellectual Property including but not limited to copyright, trade marks, service marks, design rights (whether registered or unregistered), patents, know-how, trade secrets, inventions, get-up, database rights and any applications for the protection or registration of these rights and all renewals and extensions thereof existing in any part of the world whether now known or in the future created.

The headings in the conditions are for convenience only and shall not affect its interpretation. The singular includes the plural and vice versa; one gender includes all others.

Reference to any Act or Parliament or any Order, Regulation, Statutory Instrument, Directive or the like shall be deemed to include a reference to any amendment or re-enactment thereof.

**2. Quality and Inspection**

- 2.1 The Goods shall be of satisfactory quality and fit for purpose, comply with all applicable published standards and conform in all aspects with the specification supplied/advised by CDC.
- 2.2 The Supplier will perform the Contract with reasonable care and skill by suitably experienced personnel.
- 2.3 All Goods/Services shall comply with all relevant Health and Safety legislation.
- 2.4 CDC shall have the right to inspect and test the Goods any time prior to acceptance. The CDC may require the Goods to be tested by the Supplier in the presence of a representative of CDC.
- 2.5 If CDC are of the opinion the results of the inspection or testing do not comply with the Order CDC shall inform the Supplier. The Supplier shall immediately take action deemed necessary to ensure compliance with the Order.
- 2.6 CDC is entitled to reject the Goods/Services where they do not comply with the Order.

**3. Price, Payment and VAT**

- 3.1 The Price of the Goods/Services shall be as stated in the Order and unless agreed in writing shall be exclusive of VAT but inclusive of all other charges.
- 3.2 Any VAT payable by CDC shall be payable at the rate and in the same manner for the time being prescribed by law. All VAT charges must be shown separately in the invoice clearly identifying what it relates to.
- 3.3 Payment of the Price and any VAT shall be made by CDC within 30 days of receipt of a valid invoice.
- 3.4 No variation in the Price nor any extra charges shall be accepted by CDC unless expressly agreed in writing prior to acceptance of the Goods/Services.
- 3.5 CDC shall be entitled from time to time to set off any liability of the Supplier to CDC under this Contract or any other contract between the Supplier and CDC without prejudice to any other rights or remedies available to CDC.

**4. Delivery, Title and Risk**

- 4.1 The Supplier shall deliver/provide the Goods/Services in accordance with such requirements as are specified in the Order unless otherwise agreed with CDC in writing.
- 4.2 The Supplier shall off-load the Goods as directed by CDC at its own risk and shall obtain written confirmation of delivery from a duly authorised representative of CDC.
- 4.3 All Goods must be properly packed and be clearly labelled and addressed. In the event that Goods are damaged or lost in transit, CDC shall inform the Supplier in writing and the Supplier shall replace or repair the Goods at its expense and in such circumstances delivery shall not be deemed to have taken place until replacement or repaired Goods are delivered to CDC.
- 4.4 Without prejudice to any rights or remedies property and risk in any Goods shall pass to the CDC on delivery or when CDC notifies acceptance in writing where the Goods are to be subject to testing, whichever shall be the later.

## 5. Gratuities

The Supplier and/or Suppliers personnel shall not solicit or accept any gratuity, tip or any other form of money-taking or reward-collection or charge for undertaking its/their work under the Contract other than charges properly approved by CDC in accordance with the provisions of the Contract.

## 6. Prevention of Bribery

- 6.1 The Supplier warrants and undertakes to the Company that:
- 6.1.1 it will comply with applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010
  - 6.1.2 it will comply with the Company's anti-bribery policy as may be amended from time to time, a copy of which will be provided to the Supplier on written request;
  - 6.1.3 it will procure that any person who performs or has performed services for or on its behalf ("Associated Person") in connection with this Contract complies with this clause 6;
  - 6.1.4 it will not enter into any agreement with any Associated Person in connection with the Contract, unless such agreement contains undertaking on the same terms as contained in the clause 6;
  - 6.1.5 it has and will maintain in place effective accounting procedures and internal controls necessary to record all expenditure in connection with the Contract;
  - 6.1.6 from time to time, at the reasonable request of the Company, it will confirm in writing that it has complied with its undertakings under clauses 6.1.1.-6.1.5 and will provide any information reasonably request by the Company in support of such compliance
  - 6.1.7 it shall notify the Company as soon as practicable of any breach of any of the undertaking contained within this clause of which it becomes aware.

## 7. Auditors

The Supplier shall co-operate fully at all times with any enquires or investigations of the CDC or CDC auditors or the Local Government Ombudsman or auditors for related funders and stakeholders for the project and when required to do so Government Departments, the European Court of Auditors, The European Commission auditors and the National Audit Office.

## 8. Cancellation/ Termination

- 8.1 CDC may cancel this Order by written notice at any time prior to the Goods/Services being delivered or performed. The Supplier shall promptly repay to CDC any monies paid in respect of the Price and CDC shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 8.2 CDC shall have the right at any time by giving notice in writing to the Supplier to terminate the Contract forthwith if:
- 8.2.1 the Supplier is in material breach of its obligations under the Contract and has failed to remedy the same within 14 days of notice from CDC specifying the breach and requiring its remedy; or
  - 8.2.2 the Supplier being an individual becomes insolvent, or is the subject of bankruptcy order or a bankruptcy petition or makes proposals to his creditors for a voluntary arrangement or any application is made for an interim order in connection therewith; or
  - 8.2.3 the Supplier being a partnership any of the matters referred to in 7.2.2 applies to any partner or if any partner dies or the partnership is dissolved; or

- 8.2.4 the Supplier being a Company becomes insolvent or goes into liquidation (compulsory or voluntary) or if an administrator, receiver, administrative receiver or manager is appointed in respect of the whole or any part of its business or assets or it makes an assignment for the benefit of or composition with its creditors generally or ceases or threatens to cease business.
- 8.2.5 The financial position of the Supplier deteriorates to such an extent that in the opinion of CDC the capability of the Supplier to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 8.3 The termination of the Contract, however arising, shall be without prejudice to the rights and duties of CDC accrued prior to termination. The conditions which have effect after termination shall continue to be enforceable notwithstanding termination.

### **9. Indemnity and Insurance**

- 9.1 The Supplier shall indemnify CDC against all matters of any kind arising in contract, tort, statute or otherwise directly or indirectly out of the wrongful act, default, breach of contract or negligence of the Supplier, its sub-contractors, employees or agents in the course of or in connection with the Contract. This indemnity shall extend to (but not be limited) in respect of death or injury to persons, damage to property, prevention of corruption, the infringement of intellectual property rights, health and safety, race relations, disability discrimination and data protection investigations.
- 9.2 The Supplier shall maintain adequate insurance against its liability under this Contract and shall provide CDC on written request with evidence that it is being maintained. Insurance levels required:
- 9.2.1 - professional indemnity insurance with a limit of liability of not less than £1 million for independent advice; and
- 9.2.2 - public liability insurance with a limit of liability of not less than £2 million; and
- 9.2.3 - employers liability insurance with a limit if liability of not less than £2 million for any one occurrence or series of occurrences arising out of any one event.

### **10. Intellectual Property Rights**

- 10.1 The Goods/Services shall not infringe the Intellectual Property Rights of any third party.
- 10.2 The Supplier shall indemnify CDC against any and all direct losses, claims, damages, costs, charges, proceedings, expenses and demands and actions arising from or incurred by reason of any infringement or alleged infringement of any Intellectual Property Right and/or royalty payment rights of any third party in respect of the Goods/Services.

### **11. Confidentiality; Disclosure of Information; Freedom of Information Act 2000**

- 11.1 The Supplier shall keep in strict confidence any confidential information provided by CDC and shall only use the confidential information received for the purposes of the Contract and shall not disclose the confidential information without the prior written consent of CDC. The Supplier shall take all necessary precautions to ensure that all confidential information is treated confidential and not disclosed (save as expressly permitted by the Contract) other than for the purposes of the Contract or is permitted under the Freedom of Information Act 2000, Data Protection Act 1998 and/or the Environmental Information Regulations 2004.

- 11.2 The Supplier acknowledges that, except for any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act 2000, the content of this Contract is not confidential information. CDC shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the Freedom of Information Act 2000. Notwithstanding any other term of this Contract, the Supplier hereby gives its consent for CDC to publish the Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act 2000 redacted), including from time to time agreed changes to the Contract, to the general public.
- 11.3 The CDC may consult with the Supplier to inform its decision regarding any exemptions but CDC shall have the final decision in its absolute discretion.
- 11.4 The Supplier shall assist and cooperate with CDC to enable CDC to publish the Contract.
- 11.5 Nothing contained in this Contract shall prevent CDC from disclosing and/or publishing under the provisions of the Freedom of Information Act 2000, Data Protection Act 1998 and/or the Environmental Information Regulations 2004 any term or Condition or information contained in or relating to the formation of this Contract.
- 11.6 The Supplier shall co-operate with CDC and supply all necessary information and documentation required in connection with any request received by CDC under the Freedom of Information Act 2000, Data Protection Act 1998 and/or the Environmental Information Regulations 2004.
- 11.7 Nothing contained in this Contract shall prevent CDC from disclosing and/or publishing any documents or information produced by the Supplier in accordance with this Contract.

## **12. Data Protection**

The Supplier and CDC shall comply with the provisions of the UK Data Protection Legislation and the General Data Protection Regulation (GDPR) and any other directly applicable European Union legislation relating to privacy insofar as the same relates to the provisions and obligations of the terms and conditions of the Contract.

## **13.1 Statutory Obligations**

- 13.1 The Supplier shall at all times comply with the requirements of:
- 13.1.1 the Health and Safety at Work Act 1974, the Management of Health and Safety at Work Regulations 1992 and all other statutory and regulatory requirements and CDC's policies and procedures relating to health and safety;
- 13.1.2 the Equality Act 2010 and all other relevant related statutory and regulatory requirements and CDC's policies and procedures, copies of which are available on request, relating to equal opportunities and shall not treat any person or group of people less favourably than another on the grounds of race, colour, religion, belief, ethnicity, gender, age, disability, nationality, marital status or sexual orientation; and
- 13.1.3 all statutory and European and domestic statutory and regulatory requirements where relevant to the provision by the Supplier of the Contract and to be observed and performed in connection with the Contract including any obligations binding upon CDC. In particular

13.1.3.1 – it is required that all documentation is retained until the end of the contract

13.1.3.2 – that all documentation for publication has the correct logo displayed

#### **14. Conflicts of Interest**

The supplier will provide a statement with regards to a conflict of interest for this procurement through the provision of either -

14.1 A Declaration that to your knowledge there is no conflict of interest between your company and the Cornwall Development Company or project team that is likely to influence the outcome of this procurement either directly or indirectly through financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the contexts of this procurement procedure.

**Or**

14.2 A Declaration that there is a likely conflict of interest between your company and the Cornwall Development Company or project team that is likely to influence the outcome of this procurement either directly or indirectly through financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the contexts of this procurement procedure, please provide details of this connection.

This will permit CDC, that in the event of a conflict of interest, appropriate steps are taken to ensure that the evaluation of any submission will be undertaken by an independent and impartial panel.

#### **15. Remedies**

15.1 If any Goods/Services are not supplied or performed in accordance with, or the Supplier fails to comply with, any terms of the Contract, the CDC shall be entitled to any one or more of the following remedies at its discretion:

15.1.1 to rescind the Order;

15.1.2 to reject the Goods (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Goods so returned shall be paid forthwith by the Supplier;

15.1.3 to reject the provision of Services (in whole or in part) at the risk and cost of the Supplier on the basis that a full refund for the rejection of the provision of Service in whole or a reduction from the Price as the CDC determines reasonable for the part performed/provided services shall be paid forthwith by the Supplier;

15.1.4 at CDC's option to give the Supplier the opportunity at the Supplier's expense either to remedy any defect in the Goods/Services or to supply or provide replacement Goods/Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;

15.1.5 to refuse to accept any further deliveries or provision of the Goods/Services or any part thereof;

15.1.6 to carry out at the Supplier's expense any work necessary to make the Goods/Services comply with the Contract; and

15.1.7 to claim such damages as may have been sustained in consequence of the Supplier's breach or breaches of the Contract.

#### **16. Dispute Resolution**

In the event of a dispute between CDC and the Supplier arising in connection with the Contract CDC and the Supplier shall use all reasonable endeavours to resolve the

matter on an amicable basis. If CDC and the Supplier fail to resolve such disputes, the dispute shall be referred to the Chief Executive of CDC and the Supplier. The submission of either party to this clause shall not limit their right to commence any proceedings in any court of competent jurisdiction in England and Wales.

### **17. Whistleblowing**

The Supplier shall have in place a process whereby its employees may report in confidence any alleged malpractice on the part of the Supplier and/or CDC as regards any part of the Contract and not take any action against any employee pursuant to its contractual rights in respect of that employee where the employee has in good faith reported alleged malpractice.

### **18. Assignment and Sub-contracting**

18.1 The Supplier shall not be entitled to assign or sub-contract the Contract or any part of it without the prior written consent of CDC.

18.2 CDC may assign or sub-contract the Contract or any part of it to any person, firm or company.

### **18. Variations**

Conditions may only be varied by agreement in writing between Supplier and CDC.

### **19. Safeguarding**

19.1 If appropriate, the Supplier shall put or have in place a safeguarding policy which reflects and complements the relevant statutory provisions relating to safeguarding children and/or vulnerable adults and;

19.1.1 CDC's safeguarding policies and procedures; and

19.1.2 if appropriate the Cornwall and Isles of Scilly Safeguarding Adults Board policies and procedures including but not limited to the Multi-Agency Safeguarding Adults Policy; and

19.1.3 the Cornwall and the Isles of Scilly Local Safeguarding Children Board's safeguarding policies and procedures including the South West Safeguarding and Child Protection Procedures and the Local Safeguarding Children Board Guidelines for Providers; as applicable and amended from time to time to ensure that all allegations, suspicions and incidents of abuse, harm or the risk of harm to children and / or vulnerable adults or where there is a concern about the behaviour of an individual are reported immediately to the Council's Directorate of Adult Care and Support (Single Point of Access) 0300 1234 131 in respect of a vulnerable adult or the Council's Directorate of Children Schools and Families (Single Referral Unit) 0300 123 1116 in respect of a vulnerable child. The Supplier's safeguarding policies and procedures should include active encouragement to staff in whistle blowing if aware of suspected abuse.

19.2 If appropriate, the Supplier shall submit its safeguarding policy to CDC for approval. The Supplier must incorporate any amendments to the policy which may be advised by CDC.

19.3 Subject to the Government Review of the Vetting and Barring Scheme announced 16<sup>th</sup> June 2010, the Supplier must, if appropriate, adhere to the requirements under the scheme including, when appropriate, the referral of individuals to the Independent Safeguarding Authority where there is a concern relating to harm or the risk of harm to children or vulnerable adults or where there is a concern about the behaviour or conduct of an individual. The Supplier shall comply with all statutory obligations in respect of safeguarding

and shall act in accordance with the guidance issued by the Independent Safeguarding Authority as amended from time to time.

- 19.4 If appropriate, all Supplier personnel (paid and voluntary) engaged in a Regulated Activity on behalf of the Supplier must have undertaken an Enhanced Criminal Records Bureau Check and the Supplier shall provide the CDC with details of individual Enhanced Criminal Records Bureau Check certificate reference numbers for all employees likely to be engaged in the provision of the Goods concerned and ensure this information is updated as required. The Supplier shall procure that no person who discloses any conviction or who is found to have any convictions following the checks referred to in this Condition is employed or engaged by the Supplier on the Supplier's behalf without CDC prior written consent. All personnel must have a fresh Enhanced Criminal Records Bureau Check if they have a break in service of three (3) months or more.
- 19.5 The Supplier shall ensure that the organisation operates a recruitment and selection procedure which aligns with CDC's recruitment and disciplinary standards and which meets the requirements of legislation, equal opportunities and anti-discriminatory practice and ensures the protection of vulnerable children and adults. The selection of all Supplier personnel and volunteers should be fair, safe and effective and the Supplier will be expected to comply with all national requirements for registered providers and shall ensure the stringent checking of identification, qualifications, curriculum vitae and the scrutiny of at least two confidential references which specifically include a response to a question enquiring as to the suitability of the applicant for the post particularly in circumstances where the carrying out of Criminal Records Bureau Checks is not a statutory requirement.
- 19.6 If appropriate, the Supplier shall ensure that vulnerable children and adults are safeguarded from any form of abuse or exploitation including physical, financial, psychological and sexual abuse, neglect, discriminatory abuse or self harm or inhuman or degrading treatment through deliberate intent, negligent acts or omissions.
- 19.7 If appropriate, the Supplier shall ensure that all allegations, suspicions and incidents of abuse are reported immediately to CDC and shall promptly take appropriate disciplinary action against any member of staff who is engaged or is alleged to be engaged in any of the improper conduct. The Supplier shall promptly inform CDC of the initiation, nature and outcome of any disciplinary action taken against any member of staff and shall immediately suspend the member of staff from providing the Goods pending investigation and completion of appropriate disciplinary action. CDC may require the Supplier to provide specific further training and support to the member of staff concerned and may request in writing that the Supplier monitors that member of staff's performance and submits a report to CDC. The Supplier shall ensure that the provisions of relevant contracts of employment of its staff provide for relevant staff consent to the sharing of the information / data described in this Condition.
- 19.8 If appropriate, the Supplier shall procure that all personnel engaged in the delivery of this Contract regularly receive appropriate safeguarding vulnerable adults training according to their job role as detailed within the Specification or discussed and agreed at subsequent contract review meetings.
- 19.9 If appropriate, the Supplier shall appoint an individual of sufficient seniority for the safeguarding of vulnerable adults. This individual shall be responsible for the implementation and monitoring of the Supplier's safeguarding policies and procedures in accordance with the terms of this Contract.



**20. Third Party Rights**

A third party who is not a party to the Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 ("the Act") to enforce any term of the Contract but this does not affect any right or remedy of a third party which exists or is available apart from the Act.

**21. Notice**

Any notice about the Contract may be sent by hand or by ordinary, registered or recorded delivery post or transmitted by facsimile transmission or other means of telecommunications resulting in the receipt of written communication in permanent form and if so sent or transmitted to the address of the party shown on the Contract, or to such other address as that party has notified to the other, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would be first received by the addressee in normal business hours.

**22. Communications**

Any communications oral or written between Supplier or CDC and any third party on behalf of the CDC shall be conducted in the English language.

**23. Force Majeure**

The CDC reserves the right to defer the date of delivery or payment or cancel the Contract or reduce the volume of Goods or provision of Services ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of CDC including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, fire, explosion, flood, epidemic, lockouts, strikes or other labour disputes (whether or not relating to either party's workforce) or restraints or delays affecting carriers or inability or delay in obtaining supplies or adequate or suitable materials.

**24. Governing Law**

The Contract shall be governed by and construed in accordance with the laws of England and Wales.