

# Haverhill Town Council

STANDARD CONDITIONS OF CONTRACT (GENERAL CONDITIONS for  
EXECUTION of WORKS)



**HAVERHILL**  
TOWN COUNCIL

**1<sup>ST</sup> June 2017**

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## **1. Definitions**

- 1.1. In these conditions unless the context otherwise requires - "the Council" means Haverhill Town Council in its capacity as itself or as sole trustee of Haverhill Community Trust; "the Contractor" means the person firm or company whose name appears on an Order placed by the Council or on a Tender received by the Council and shall include its staff, agents and/or subcontractors employed in the performance of the contract; "the Works" means the works referred to in the Order or Tender; "the Contract" means the contract arising from the acceptance by the Contractor of an Order, or the acceptance by the Council of a Tender in whole or in part; "Order" means a document which is marked "Official Order" describing the works and which is placed on behalf of the Council; "Tender" means the document wherein the Contractor offers to execute the Works and which is sent in response to an invitation by the Council.
- 1.2. In the Contract unless the context otherwise requires or admits the masculine gender includes the feminine and vice versa and the singular includes the plural and vice versa.
- 1.3. If Special Conditions are incorporated in the Contract and are inconsistent with the General Conditions the Special Conditions shall prevail.

## **2. Variations**

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. Quality and Description of Works**

The Contractor shall:

- 3.1 carry out the Works diligently and in a proper and efficient manner to the satisfaction of the Council;
- 3.2 unless other instructions have been issued by the Council commence work promptly and complete the Works within the time specified or if none is specified then within a reasonable time and should a delay occur the Council must be notified in writing as soon as possible and the Council's consent sought to a reasonable extension of the period for the completion of Works;
- 3.3 provide all suitably qualified and skilled labour, plant, tools, transport and equipment necessary for the safe execution of the Works, such plant, tools and equipment to be stored at the sole risk of the Contractor and so as to cause minimum inconvenience to the Council;
- 3.4 throughout the progress of the Works, have full regard for the safety of all persons on the site and shall keep the site in an orderly state and shall provide and maintain at his own cost all lights, guards, fencing, temporary reinstatements and warning signs for the protection of the Works and the safety and convenience of the public and others;
- 3.5 at the completion of the Works, remove all materials from the site (unless otherwise instructed) and permanently reinstate any damaged surfaces and leave the site in a clean condition ready for occupation.

#### **4. Default by Contractor in the Execution of Works**

- 4.1 If any or part of the Works to be executed under the Contract shall
- 4.1.1 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 or resulting from the operation of Condition 6 hereof, or
  - 4.1.2 in the opinion of the Council Officer 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
  - 4.1.3 be deficient in the quantity or number required by the Contract, or
  - 4.1.4 be executed without a delivery or advice note containing correct and sufficient particulars of the name, quality, sort, rate, price, quantity and number of such works then the Council may, without prejudice to any other remedy, by notice as defined in Condition 15 served on the Contractor reject those Works 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 Works 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 works are under the Contract to be supplied and delivered.
- 4.2. The Council through its appropriate officer shall have the power to order the removal and proper re-execution of any Works which are not, in the officer's reasonable opinion (which shall be conclusive), in accordance with the requirements of the Contract and the Contractor shall comply with the Council's written instructions within the time stated therein and all the costs of meeting the instructions shall be met by the Contractor.
- 4.3. If the Contractor without reasonable cause fails to proceed diligently with the 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 Works and expel the Contractor there from and may itself or through another Contractor complete the 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.
- 4.4. The Contractor shall make good any defect which occurs within six months of completion as may be required by the Council.
- 4.5. If the Contractor fails to provide, or suspends the Works, or if default is made by the Contractor in complying with this condition, the Council may (in addition to any other remedy) itself or through another contractor execute the Services or make good the default, in which event the Contractor shall pay to 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 executing such

Works over and above the rate or price at which the Works were to have been executed under the Contract.

## **5. Postponement or Cancellation of Works**

If for any unavoidable cause including i) any strike or lock-out of employees or any working to rule by employees, ii) civil commotion, iii) cessation or material interruption of traffic by air road rail or sea, iv) force majeure, or v) 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 Works which at the commencement of such disability be bound to deliver or accept as the case may be any 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 Works not executed to be cancelled or to be executed. 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. In the event of any of the causes detailed in i) to v) arising, the Contractor or the Council as the case may be shall Notify the other as soon as is reasonably practical.

## **6. Inspection of Goods 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 or execution of any of the Works to be carried out under the Contract for the following purposes:

- 6.1. to inspect all or any part of the said land premises or vehicles to ascertain whether they are suitable for the preparation or execution of said Works
- 6.2. to check the quantity and/or quality of the Works undertaken
- 6.3. to verify that the contractor is complying with its statutory obligations relevant to the contract or agreements made between the Council and the contractor 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 or supporting information where requested).

## **7. 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 forborne 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 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.

## **8. Payment**

- 8.1. The Council will not be liable to pay for Works unless requisitioned by an Official Order signed by an authorised Officer of the Council.
- 8.2. The Contractor's invoice shall quote the Order or Tender number or otherwise make reference to the Contract and shall be sent within seven days of the final completion of the Works together with, where applicable, a proof of completion. Interim payments will only be made where they are specifically provided for in the Contract or Order.
- 8.3. Unless separately negotiated and agreed the Council will pay any invoice issued within 30 days of. Payment will not be made if there are queries regarding details on the invoice or compliance with the terms of the Contract until such queries are resolved.
- 8.4. Payment will normally be made directly to the Contractor's bank account (by BACS). The Contractor shall ensure that the Council has received details of the Contractor's latest bank details.

## **9. Right of Set-off**

The Council shall have the right 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 due to the Council from the Contractor.

## **10. Compliance with Law**

- 10.1. The Contractor declares that the design, construction and quality Works or of any goods or materials used in the execution of the Works complies in all respects with all relevant requirements of any statute statutory rule or order or other instrument having the force of law or British, European or International specification which may be in force at the time when the same are supplied.
- 10.2. The contractor shall comply in all material respects with applicable health, safety and environmental laws and regulations in force from time to time in relation to the good or material the subject of the contract. Where the provisions of any such legislation are implemented by the use of voluntary agreements or codes of practice, the contractor shall comply with such agreements or codes of practice as if they were incorporated into English law subject to those voluntary agreements being cited in the tender or quotation documentation.
- 10.3. Without prejudice to condition 11.2, the contractor shall comply with the requirements of the St Edmundsbury Borough Council health, safety and environmental policies and guidelines for contractors when working on Council land or premises. A copy of their documentation is provided.

## **11. Indemnity**

- 11.1. Patents etc.

- 11.1.1. The contractor shall fully indemnify the Council against any action claim demand costs charges and expenses arising from or incurred by reason of any infringement or alleged infringement of any letters patent registered design trade mark or trade name protected in the United Kingdom by the use of any Goods and against all costs and damages which the Council may incur in any action for such infringement or for which the Council may become liable in any such action PROVIDED ALWAYS that this indemnity shall not apply to any infringement which is due to the use of the Goods in question in a manner or for a purpose not reasonably to be inferred by the Contractor or disclosed to the Contractor prior to the making of the Contract.
- 11.1.2 In the event of any claim being made or action brought against the Council arising out of the matters referred to in this condition the Contractor shall be promptly notified thereof and may with the agreement of the Council at his own expense conduct all negotiations for the settlement of the same and any litigation that may arise there from. The Council shall not unless and until the Contractor shall have failed to take over the conduct of the negotiations or litigation make any admission which might be prejudicial thereto. The conduct by the Contractor of such negotiations or litigation shall be conditional upon the Contractor having first given to the Council such reasonable security as shall from time to time be required by the Council to cover the amount ascertained or agreed or estimated as the case may be of any compensation damages expenses and costs for which the Council may become liable. The Council shall at the request of the Contractor afford all available assistance for any such purposes and shall be repaid any expenses incurred in so doing.

## **11.2. Injury or Damage**

- 11.2.1. The Contractor shall indemnify and keep indemnified the Council against all losses and claims for death, injuries or damage to any person or property whatsoever (including where the Contract is for the supply of goods the goods themselves) which may arise out of or in consequence of the performance of the Contract and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto provided always that:
- 11.2.2. The Contractor's liability to indemnify the Council as aforesaid shall be reduced proportionately to the extent that the act or neglect of the Council, its servants or agents may have contributed to the said death, loss, injury or damage, and
- 11.2.3. Nothing herein shall render the Contractor liable for or in respect of or to indemnify the Council against any compensation or damages with respect to damage which is the unavoidable result of the way in which the Contract is required to be performed.

## **12. Professional Indemnity**

- 12.1. Where part of the execution of Works involves dispensing professional advice the Contractor shall indemnify and keep indemnified the Council against any claims arising from incorrect or inappropriate professional advice given by the Contractor during the period of the Contract and for a period of not less than 6 (six) years from the date of termination.
- 12.2. The liability of the Contractor in respect of any one act or default where the Contractor is acting for the Council providing services on a consultancy basis shall not be less than £2 million pounds.

### **13. Intellectual Property**

Intellectual property rights in any works, methods or revisions thereof created by virtue of this Contract shall vest in the Council unless otherwise agreed in writing.

### **14. Assignment and Sub-Letting**

The Contractor shall not transfer or assign directly or indirectly to any person whatever any portion of this contract without the prior written permission of the Council. Sub-letting other than that which may be customary in the trade concerned shall not take place without the prior written permission of the Council.

### **15. Notice to Contractor and to Council**

Any notice or other document whatsoever to be served by either party to the other shall be sufficiently made if sent by first class post, postage paid, by facsimile transmission, or by e-mail to the address of the other party specified in the Contract, or to any other address as either party may substitute by written notice to the other and shall be deemed to have been made on the day on which such communications ought to have been received in due course of postal, facsimile transmission, or e-mail. Notice to the Council shall only be effective if it identifies the name of the officer appearing on the Contract, Order or Tender and the Contract to which it relates

### **16. Insurance**

The Contractor shall if required by the Council before the commencement of the Works insure himself and keep himself insured in a sum of £10 million during the continuance of the Contract against the liabilities defined in Condition 11 and shall if required produce to the Council the policy or policies of insurance required to be effected hereunder together with the receipt for the payment of the last premium in respect of each policy. Insurance cover beyond £10 million will be required for works on property that has a value in excess of this minimum level.

### **17. Effect of Bankruptcy, etc.**

In the event of the Contractor becoming bankrupt or making a composition or arrangement with his creditors or having a winding up order made or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding up passed or having a provisional liquidator, receiver or manager of his business or undertaking duly appointed or having possession taken by or on behalf of the holder of any debentures secured by a floating charge of any property comprised in or subject to the floating charge or if in Scotland he shall become insolvent or any application shall be made under any Bankruptcy Act for the time being in force for sequestration of his estate or a trust deed shall be granted by him on behalf of his creditors the Council shall be at liberty to terminate the Contract forthwith by notice in writing to the Contractor or to the receiver or liquidator or to any person in whom the Contract may become vested and to act in the manner provided in Conditions 5 or 6 (as the case may be).

### **18. Equal Opportunities**

- 18.1. Without prejudice to Condition 10 the Contractor shall at all times comply with their statutory obligations imposed by Human Rights and Discrimination legislation and shall not treat one group of people less favourably than others because of their age, disability, gender reassignment, marriage & civil partnership, pregnancy and

maternity, race, religion or belief, sex or sexual orientation in relation to decisions to recruit, train or promote staff.

## **19. Use of dates in electronic equipment**

- 19.1. The Contractor represents to the Council that the continued effective functioning of the Contract and any hardware, software, firmware and other goods and services supplied and all subsequent replacements upgrades and enhancements will not be prevented or in any way adversely affected by any date change.
- 19.2. The Council in entering into the Contract is relying on the said representation but in the event that the representation should prove to be incorrect, the Contractor shall:
- (i) Compensate the Council for all reasonable consequential losses and expenses, payment to be made within 14 days of a written demand therefore and
  - (ii) At its own expense (and with no allowance for betterment) and within timescales acceptable to the Council make such adjustments as are necessary to ensure proper functioning including if necessary the replacement of the hardware, software, firmware and other goods supplied and all subsequent replacements upgrades and enhancements. In the event that it is impossible to adjust or replace as aforesaid, then the Contractor shall refund to the Council the purchase price and the Council will give Notice to the Contractor that it may collect the goods on a date and time convenient to the Council.

## **20. Confidentiality**

The Contractor shall maintain commercial confidentiality of its dealings with the Council and shall not, other than that statutorily required or for the purpose of obtaining insurance, divulge, advertise or make any public announcement concerning any contracts with the Council without consent.

## **21. Freedom of Information**

The Contractor will note and facilitate to the extent consistent with the provision or performance of the Works the Council's compliance with any central government freedom of information requirements and codes for the provision of information including, without limitation, any freedom of information requirements and codes for the provision of information including, without limitation, the Code of Practice of Access to Government Information (1994) and the Freedom of Information Act 2000. In the event that the Council is required to provide information to a person as a result of a request made to it under the Code, the Council shall adhere to the requirements of the Code in disclosing information relating to the Agreement and the Contractor.

## **22. Arbitration**

In the event of a dispute between the Council and the Contractor, should the Council in writing require, the Contractor agrees to submit to arbitration in accordance with the Arbitration Act for the time being in force as a legally binding alternative to Court action.

### **23. Legal Effect**

- 23.1. The invalidity, illegality or unenforceability of any term or condition of this Contract shall not affect the validity, legality or enforceability of any other term or condition of this Contract.
- 23.2. The Contract shall not create any rights for the benefit of or enforceable by any person not a party to this Contract.
- 23.3. These are the only conditions upon which the Council is prepared to deal with the Contract and which shall govern the Contract to the exclusion of any other terms and conditions.
- 23.4. The Contract shall be construed in accordance with English Law.

### **24. Termination**

Either party may terminate this contract at any time without prejudice provided that they give the other party not less than 2 months' notice as defined in Condition 15