

REQUEST FOR QUOTATION/ PURCHASE ORDER

Conditions of Contract- Services

These Conditions may be varied only by the written agreement of the Council. No terms or conditions put forward at any time by the Service Provider shall form any part of the Contract unless specifically agreed in writing by the Council.

1. DEFINITIONS

In these Conditions:

'**Council**' means East Ayrshire Council

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

'**Services**' means the services to be provided as specified in the Request for Quotation and/or Purchase Order and shall, where the context so admits, include any materials, articles and goods to be supplied thereunder;

'**Premises**' means the location where the services are to be performed, as specified in the Request for Quotation and/or Purchase Order;

'**Contract**' means the contract between the Council and the Service Provider 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 Council's requirements for the Contract.

2. CHANGE TO CONTRACT REQUIREMENTS

2.1 The Council may order any variation to any part of the Services that for any other reason shall in its opinion be desirable. Any such variation may include (but shall not be restricted to) additions, omissions, alterations, substitutions to the Services and changes in quality, form, character, kind, timing, method or sequence of the Services.

2.2 Save as otherwise provided herein, no variation of the Services as provided for in Condition 2.1 hereof shall be valid unless given or confirmed in the form of an order given by the Council. All such orders shall be given in writing provided that if for any reason the Council shall find it necessary to give any such order orally in the first instance the Service Provider shall comply with such oral order which must be confirmed in writing by the Council within 2 working days of the giving of such oral order by the Council, failing which the variation made by such oral order shall cease to have effect on the expiry of the said 2 working day period.

2.3 Where any such variation of the Services made in accordance with Condition 2.1 and 2.2 has affected or may affect the costs incurred by the Service Provider in providing the Services, the Service Provider will notify the Council in writing of the effect which it has had or may have on the said costs and such notification shall be considered by the Council, who shall take all of the facts into account (including such information as may be provided by the Service Provider in respect of the effect which such variation has had or may have on the costs incurred by the Service Provider in providing the service) and may authorise such alteration to the sums to be paid to the Service Provider in accordance with the provisions of the Contract as are, in his opinion, appropriate and reasonable in the circumstances.

3. INSPECTION OF PREMISES AND NATURE OF SERVICES

3.1 Where applicable, the Service Provider is deemed to have inspected the Premises before tendering so as to have understood the nature and extent of the Services to be carried out and satisfied himself in relation to all matters connected with the Services and Premises.

3.2 The Council shall, at the request of the Service Provider, grant such access as may be reasonable for this purpose.

4. SERVICE PROVIDER'S STATUS

In carrying out the Services the Service Provider shall be acting as principal and not as the agent of the Council. Accordingly:

- (a) the Service Provider shall not (and shall procure that his agents do not) say or do anything that might lead any other person to believe that the Service Provider is acting as the agent of the Council, and
- (b) nothing in this Contract shall impose any liability on the Council in respect of any liability incurred by the Service Provider to any other person but this shall not be taken to exclude or limit any liability of the Council to the Service Provider that may arise by virtue of either a breach of this Contract or any negligence on the part of the Council, his staff or agents.

5. SERVICE PROVIDER'S PERSONNEL

- 5.1 The Service Provider shall take the steps reasonably required by the Council to prevent unauthorised persons being admitted to the Premises. If the Council gives the Service Provider notice that any person is not to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract, the Service Provider shall take all reasonable steps to comply with such notice and if required by the Council the Service Provider shall replace any person removed under this Condition with another suitably qualified person and procure that any pass issued to the person removed is surrendered.
- 5.2 If and when instructed by the Council, the Service Provider shall give to the Council a list of names and addresses of all persons who are or may be at any time concerned with the Services or any part of them, specifying the capacities in which they are so concerned, and giving such other particulars and evidence of identity and other supporting evidence as the Council may reasonably require.
- 5.3 The decision of the Council as to whether any person is to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract and as to whether the Service Provider has furnished the information or taken the steps required of him by this Condition shall be final and conclusive.
- 5.4 The Service Provider shall bear the cost of any notice, instruction or decision of the Council under this Condition.

6. METHOD OF CARRYING OUT THE SERVICES

- 6.1 The Service Provider shall make no delivery of materials, plant or other things nor commence any work on the Premises without obtaining the Council's prior consent.
- 6.2 Access to the Premises shall not be exclusive to the Service Provider but only such as shall enable him to carry out the Services concurrently with the execution of work by others. The Service Provider shall co-operate with such others as the Council may reasonably require.
- 6.3 The Council shall have the power at any time during the progress of the Services to order in writing:
- (a) the removal from the Premises of any materials which in the opinion of the Council are either hazardous, noxious or not in accordance with the Contract, and/or
 - (b) the substitution of proper and suitable materials, and/or

- (c) the removal and proper re-execution notwithstanding any previous test thereof or interim payment therefore of any work which, in respect of material or workmanship is not in the opinion of the Council in accordance with the Contract.

6.4 On completion of the Services the Service Provider shall remove his plant, equipment and unused materials and shall clear away from the Premises all rubbish arising out of the Services and leave the Premises in a neat and tidy condition.

7. PERIOD OF CONTRACT

The Service Provider shall begin performing the Services on the date stated in the Purchase Order and shall complete them by the date stated in the Purchase Order or continue to perform them for the period stated in the Purchase Order (whichever is applicable). Time is of the essence of the Contract. The Council may by written notice require the Service Provider to execute the Services in such order as the Council may decide. In the absence of such notice the Service Provider shall submit such detailed programmes of work and progress reports as the Council may from time to time require.

8. INVOICING AND PAYMENT

8.1 No services shall be delivered to the Council without the Supplier receiving an authorised Council purchase order. All documentation relating to the order must state the purchase order number.

8.2 Unless otherwise stated in the Contract, payment will be made within 28 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed to the satisfaction of the Council.

8.3 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge. All prices shall be in sterling.

9. FREE-ISSUE MATERIALS

Where the Council for the purpose of the Contract issues materials free of charge to the Service Provider such materials shall be and remain the property of the Council. The Service Provider shall maintain all such materials in good order and condition and shall use such materials solely in connection with the Contract. The Service Provider shall notify the Council of any surplus materials remaining after completion of the Services and shall dispose of them as the Council may direct. Waste of such materials arising from bad workmanship or negligence of the Service Provider or any of his agents or sub-Contractors shall be made good at the Service Provider's expense. Without prejudice to any other of the rights of the Council, the Service Provider shall deliver up such materials whether processed or not to the Council on demand.

10. CORRUPT GIFTS OR PAYMENTS

The Service Provider shall not offer or give, or agree to give, to any employee or representative of the Council 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 Council 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 Service Provider is drawn to the criminal offences created by the Prevention of Corruption Acts 1889 to 1916.

11. ENVIRONMENTAL and SUSTAINABLE DEVELOPMENT

The Council is endeavouring to manage the environmental and social impacts of its activities and that of its suppliers. Both the Council and its suppliers must meet all relevant current and future statutory regulations and official codes of practice. Suppliers will be required to work with the Council in conserving resources, reducing waste through re-use and recycling and in developing environmentally preferable goods and services at competitive prices.

12. PATENTS, INFORMATION AND COPYRIGHT

12.1 It shall be a condition of the Contract that, except to the extent that the Services incorporate designs furnished by the Council, that nothing done by the Service Provider in the performance of the Services shall infringe any patent, trade mark, registered design, copyright or other right in the nature of intellectual property of any third party and the Service Provider shall indemnify the Council against all actions, claims, demands, costs and expenses which the Council may suffer or incur as a result of or in connection with any breach of this Condition.

12.2 All rights (including ownership and copyright) in any reports, documents, specifications, instructions, plans, drawings, patents, models or designs whether in writing or on other media:

- (a) furnished to or made available to the Service Provider by the Council shall remain vested in the Council absolutely.
- (b) prepared by or for the Service Provider for use, or intended use, in relation to the performance of this Contract are hereby assigned to and shall vest in the Council absolutely, and (without prejudice to Condition 15.2) the Service Provider shall not and shall procure that his agents shall not (except to the extent necessary for the implementation of this Contract) without the prior written consent of the Council 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 Service Provider 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 Service Provider shall not refer to the Council or the contract in any advertisement without the Council's prior written consent.

12.3 The provisions of this Condition 11 shall apply during the continuance of this Contract and after its termination howsoever arising.

13. INDEMNITY AND INSURANCE

13.1 Without prejudice to any rights or remedies of the Council, the Service Provider shall indemnify the Council against all actions, suits, claims, demands, losses, charges, costs and expenses which the Council 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 negligent or wrongful act or omission of the Service Provider.

13.2 Except in the case of loss, damage or personal injury (including death) suffered by an employee of the Service Provider (in respect of which the indemnity in Condition 13.1 shall apply whether or not the loss, damage or personal injury was caused by the negligent or wilful act or omission of the Council or agent of the Council) the indemnity contained in Condition shall not apply to the extent that the loss, damage or injury is caused by the negligent or wilful act or omission of the Council or agent of the Council.

13.3 The Service Provider shall have in force and shall require any sub-Contractor to have in force:

- (a) employer's liability insurance in accordance with any legal requirements for the time being in force, and
- (b) public liability insurance for such sum and range of cover as the Service Provider deems to be appropriate but covering at least all matters which are the subject of indemnities or compensation obligations under these Conditions in the sum of not less than £5 million for any one incident and unlimited in total.

13.4 The policy or policies of insurance referred to in Condition 13.3 shall be shown to the Council whenever he requests, together with satisfactory evidence of payment of premiums.

14. EQUAL OPPORTUNITIES

The Contractor will be required as an employer to comply with his statutory obligations under the Race Relations Act, 1976, the Sex Discrimination Act, 1975, the Disability Discrimination Act 1995, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Sexual Orientation) Regulations 2003, the Equality Act 2006, the Employment Equality (Age) Regulations 2006 and the Equality Act (Sexual Orientation) Regulations 2007.

15. CONFIDENTIALITY

The parties to this contract shall treat the information obtained in connection with this contract as confidential. Neither party shall disclose any information or any supplementary information obtained in carrying out the contract to any third party without prior written consent of the other party.

15.1 Data Protection Act Agreement

All parties to the contract will be expected to comply with the relevant provisions of the Data Protection Act 1998, including the Service Provider's sub-contractors, if appropriate. Any Service Provider infringing the provisions of the Act during the service provision may be subject to contract termination according to Condition 16 below.

15.2 Freedom of Information (Scotland) Act 2002

The Freedom of Information (Scotland) Act 2002 came into force in two stages, the initial stage, (the Publication Scheme) on 1st June 2004 and the final stage on 1st January 2005.

Whilst the Council undertakes to use their best endeavours to hold confidential any information provided in the tender submitted, subject to their obligations under law, including the Freedom of Information (Scotland) Act 2002, if the tenderer considers that any of the information submitted in the tender should not be disclosed because of its sensitivity this should be stated, with the reason for considering it sensitive. The Council will then consult with the tenderer in considering any request received under the Freedom of Information (Scotland) Act 2002 before replying to such a request.

Whilst the Act mainly affects the Council's information provision services, it may involve the Service Provider's provision of this contract. However, any request to the Service Provider under the terms of the Freedom of Information Act will be referred immediately to the Council prior to any information being provided to any person or organisation making the request. Following consultation, a mutually agreed solution will be instructed by the Council to deal with such a request.

16. TERMINATION ON SERVICE PROVIDER'S INSOLVENCY

Without prejudice to any other rights or remedies of the Council under the Contract the Council shall have the right forthwith to terminate the Contract by written notice to the Service Provider or the appropriate trustee in bankruptcy or sequestration, receiver, liquidator or administrator:

- (a) where the Service Provider is an individual and if a petition is presented for the Service Provider's bankruptcy or the sequestration of his estate or a criminal bankruptcy order is made against the Service Provider, or he is apparently insolvent, or he 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 his affairs; or
- (b) where the Service Provider 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 Service Provider to be wound up as an unregistered company; or

- (c) where the Service Provider 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 Service Provider, that sum may be deducted from any sum then due, or which at any later time may become due, to the Service Provider under the Contract or under any other agreement or contract with the Council or with any department, agency or authority of the Council.

18. ASSIGNATION AND SUB-CONTRACTING

18.1 The Service Provider shall not without the written consent of the Council assign the benefit or burden of the Contract or any part thereof.

18.2 No sub-contracting by the Service Provider shall in any way relieve the Service Provider of any of his responsibilities under the Contract.

18.3 Where the Service Provider enters a sub-contract with a Service Provider or contractor for the purpose of performing the Contract, he shall cause a term to be included in such sub-contract which requires payment to be made to the Service Provider or contractor within a specified period not exceeding 28 days from receipt of a valid invoice as defined by the sub-contract requirements.

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, teletext, 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 therefore, 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. ARBITRATION

In the first instance, any dispute that shall arise between the Council and the Service Provider, shall be referred to the Chief Executive of the Council. The Chief Executive shall consult representatives from both parties and suggest a course of action for resolution of the dispute. Failure to resolve the dispute to the satisfaction of either party will necessitate the referral of the dispute to arbitration.

If a dispute is not resolved in the first instance, the dispute shall be referred to the arbitration of a person agreed by both the parties. Failing initial agreement, either party may give written notice for the other party to concur to the appointment of the arbiter. If after 14 days of written notice the parties have not reached agreement, the Sheriff of the Sheriffdom of North Strathclyde at Kilmarnock shall appoint an arbiter. Any such reference to arbitration shall be deemed to be an agreement to refer to arbitration within the meaning of the Arbitration (Scotland) Act 1894.

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 Service Provider 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 Council to take proceedings against the Service Provider 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.