

REQUEST FOR QUOTATION/ PURCHASE ORDERS

Conditions of Contract- Goods

These Conditions may be varied only by the written agreement of the Council. No terms or conditions put forward at any time by the Supplier 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

'Supplier' means the person, firm or company to whom the Contract is issued;

'Goods' means any such goods as are to be supplied to the Council by the Supplier (or by any of the Supplier's sub-contractors) pursuant to or in connection with this Contract;

'Contract' means the contract between the Council and the Supplier 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. THE GOODS

2.1 The Goods shall conform to the detailed specification provided by the Council and no variation will be accepted unless approved in writing by the Council. Where specified goods shall be supplied with a Certificate of Conformity and/or other legally required information such as COSSH data.

2.2 The Goods shall conform in all respects with the requirements of any statutes, orders, regulations or bye-laws in force.

3. THE PRICE

3.1 The price of the goods shall be as stated in the Contract and no increase will be accepted by the Council unless agreed by him in writing before the execution of the Contract.

3.2 All prices shall be inclusive of delivery, carriage and packaging unless agreed in advance with the Council. Any additional or one-off charges such as artwork, tooling or set-up costs must be agreed in advance and shown separately on the invoice.

3.3 Unless otherwise agreed in writing by the Council, the Supplier shall render a separate invoice in respect of each purchase order under the Contract. Payment shall be due 28 days after receipt of the correct invoice.

3.4 Value Added Tax, where applicable, shall be shown separately on all invoices.

3.5 All prices shall be in sterling.

4. DELIVERY

4.1 The Goods shall be delivered to the place named in the Contract. Any access to premises and any labour and equipment that may be provided by the Council in connection with delivery shall be provided without acceptance by the Council of any liability whatsoever and the Supplier shall indemnify the Council in respect of any 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 or injury (whether fatal or otherwise) occurring in the course of delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Supplier or any of his sub-contractors.

4.2 Where any access to the premises is necessary in connection with delivery or installation the Supplier and his sub-contractors shall at all times comply with the reasonable requirements of the Council.

4.3 The time of delivery shall be of the essence and failure to deliver within the time promised or specified shall enable the Council (at his option) to release himself from any obligation to accept and pay for the Goods and/or to cancel all or part of the Contract therefore, in either case without prejudice to his other rights and remedies.

4.4 Any deliveries outwith normal working hours or the need for specialist equipment must be agreed in advance with the Council.

5. PURCHASE ORDERS & INVOICING

5.1 No goods 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.

5.2 All goods must be accompanied by a delivery note. The delivery note must state the Council's order number, full description of the goods, quantity, delivery address details and delivery date. Where a carrier/courier is used the delivery note should include the above details and also the name of carrier, date of dispatch and the total number of packages. Delivery notes must be signed by an authorised member of the Council's staff at point of delivery and a copy left with the employee as proof of delivery.

5.3 Invoices must state the purchase order number, description of the goods, actual quantity delivered, date of delivery and the correct prices both by unit and totals.

6. PROPERTY AND RISK

Property and risk in the Goods shall without prejudice to any of the rights or remedies of the Council (including the Council's rights and remedies under Condition 8 hereof) pass to the Council after practical completion including installation, testing & commissioning.

7. DAMAGE IN TRANSIT

On dispatch of any consignment of the Goods the Supplier shall send to the Council at the address for delivery of the Goods an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. The Supplier shall free of charge and as quickly as possible either repair or replace (as the Council shall elect) such of the Goods as may either be damaged in transit or having been placed in transit fail to be delivered to the Council provided that:

- (a) in the case of damage to such Goods in transit the Council shall within 30 days of delivery give notice to the Supplier that the Goods have been damaged;
- (b) in the case of non-delivery the Council shall (provided that the Council has been advised of the dispatch of the Goods) within ten days of the notified date of delivery give notice to the Supplier that the Goods have not been delivered.

8. INSPECTION, REJECTION, GUARANTEE AND WARRANTIES

8.1 The Supplier shall permit the Council or his authorised representatives to make any inspections or tests he may reasonably require and the Supplier shall afford all reasonable facilities and assistance free of charge at his premises. No failure to make complaint at the time of such inspection or tests and no approval given during or after such tests or inspections shall constitute a waiver by the Council of any rights or remedies in respect of the Goods.

8.2 The Council may by written notice to the Supplier reject any of the Goods which fail to meet the requirements specified in the contract. Such notice shall be given within a reasonable time after delivery to the Council of Goods concerned. If the Council shall reject any of the Goods pursuant to this Condition the Council shall be entitled (without prejudice to his other rights and remedies) either:

(a) to have the Goods concerned as quickly as possible either repaired by the Supplier or (as the Council shall elect) replaced by the Supplier with Goods which comply in all respects with the requirements specified herein; or

(b) to obtain a refund from the Supplier in respect of the Goods concerned.

8.3 The Supplier shall guarantee the Goods supplied against faulty workmanship or design and for satisfactory quality and functioning for a minimum period of 12 months from putting into service or 18 months from delivery, whichever shall be the shorter (subject to any alternative guarantee arrangements agreed in writing between the Council and the Supplier).

8.4 Any Goods rejected or returned by the Council as described in paragraphs 8.2 or 8.3 shall be returned to the Supplier at the Supplier's risk and expense.

9. LABELLING AND PACKAGING

9.1 The Goods shall be packed and marked in a proper manner and in accordance with the Council's instructions and any statutory requirements and any requirements of the carriers. In particular the Goods shall be marked with the Purchase Order Number, the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous goods (and all documents relating thereto) shall bear prominent and adequate warnings. The Supplier 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 breach of this Condition.

9.2 The Supplier shall where possible be required to take away packaging for re-use, recycling or appropriate disposal.

9.3 The Supplier represents and warrants that the maximum use has been made of recycled materials in the manufacture of crates, pallets, boxes, cartons, cushioning and other forms of packing, where these fulfil the packing specifications.

9.4 With reference to the Waste Electrical and Electronic Equipment Regulations 2006 (SI 2006 No. 3289) the Supplier will be required to arrange collection of any goods that are being replaced under the contract which are of an equivalent type or are to fulfil the same function, at no cost to the Council, for re-use, recycling or appropriate disposal.

10. CORRUPT GIFTS OR PAYMENTS

The Supplier 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 Supplier is drawn to the criminal offences created by the Prevention of Corruption Acts 1889 to 1916.

11. PATENTS, INFORMATION AND COPYRIGHT

11.1 It shall be a condition of the Contract, except to the extent that the Goods incorporate designs furnished by the Council, that nothing done by the Supplier in the provision of the Goods shall infringe any patent, trade mark, registered design, copyright or other right in the nature of intellectual property of any third party and the Supplier 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.

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

(a) furnished to or made available to the Supplier by the Council shall remain vested in the Council absolutely.

(b) prepared by or for the Supplier 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 16.2) the Supplier shall not and shall procure that his servants and 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 Supplier 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 Supplier shall not refer to the Council or the contract in any advertisement without the Council's prior written consent.

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

12. HEALTH AND SAFETY

The Supplier represents and warrants to the Council that the Supplier has satisfied himself that all necessary tests and examinations have been made or will be made prior to delivery of the Goods to ensure that the Goods are designed and constructed so as to be safe and without risk to the health or safety of persons using the same, and that he has made available to the Council adequate information about the use for which the Goods have been designed and have been tested and about any conditions necessary to ensure that when put to use the goods will be safe and without risk to health. The Supplier 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 breach of this Condition.

13. 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.

14. INDEMNITY AND INSURANCE

14.1 Without prejudice to any rights or remedies of the Council (including the Council's rights and remedies under Condition 8 hereof) the Supplier 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 defect in the Goods or the negligent or wrongful act or omission of the Supplier.

14.2 The Supplier shall effect with a reputable insurance company a policy or policies of insurance covering all the matters which are the subject of indemnities under these Conditions and shall at the request of the Council produce the relevant policy or policies together with receipts or other evidence of payment of the latest premium due there under.

1. RACIAL DISCRIMINATION

The Supplier shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976 or any statutory modification or re-enactment thereof relating to discrimination in employment. The Supplier shall take all reasonable steps to secure the observance of these provisions by all servants, employees or agents of the Supplier and all sub-contractors employed in the execution of the Contract.

1. 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.

16.1 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 Supplier'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 15 below.

16.2 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 Supplier's provision of this contract. However, any request to the Supplier 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.

17. TERMINATION ON SUPPLIER'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 Supplier or the appropriate trustee in bankruptcy or sequestration, receiver, liquidator or administrator:

(a) where the Supplier is an individual and if a petition is presented for the Supplier's bankruptcy or the sequestration of his estate or a criminal bankruptcy order is made against the Supplier, 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 Supplier 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 Supplier to be wound up as an unregistered company; or

(c) where the Supplier 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.

1. RECOVERY OF SUMS DUE

Wherever under the Contract any sum of money is recoverable from or payable by the Supplier, that sum may be deducted from any sum then due, or which at any later time may become due, to the Supplier under the Contract or under any other agreement or contract with the Council or with any department, agency or authority of the Council.

19. ASSIGNATION AND SUB-CONTRACTING

19.1 The Supplier shall not without the written consent of the Council assign the benefit or burden of the Contract or any part thereof.

19.2 No sub-contracting by the Supplier shall in any way relieve the Supplier of any of his responsibilities under the Contract.

19.3 Where the Supplier enters a sub-contract with a supplier 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 supplier or contractor within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the sub-contract requirements.

20. 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.

1. ARBITRATION

In the first instance, any dispute that shall arise between the Council and the Supplier, 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 1994.

1. HEADINGS

The headings to Conditions shall not affect their interpretation.

1. GOVERNING LAW

These Conditions shall be governed by and construed in accordance with Scottish law and the Supplier 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 Supplier 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.