

ANGUS COUNCIL CONDITIONS OF CONTRACT FOR CONSULTANCY SERVICES (other than Works Consultancies)

GENERAL CONDITIONS

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

1. DEFINITIONS

In these Conditions:

'Client' means Angus Council, the local authority for the local government area of Angus, Angus House, Orchardbank Business Park, Forfar, DD8 1AX;

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

'Project' means the services to be provided as specified in the Specification of Requirements;

'Premises' means the location where the Project is to be performed, as specified in the Specification of Requirements;

'Contract' means the contract between the Client and the Consultant consisting of the Specification of Requirements, these Conditions and any other documents (or parts thereof) specified in the Specification of Requirements;

'Specification of Requirements' means the document setting out the Client's requirements for the Contract. Where the contract between the Client and the Consultant proceeds only on a purchase order and acceptance of that order, this phrase means that purchase order and any document incorporated in the purchase order by reference setting out the Client's requirement.

2. THE PROJECT

- 2.1 The Consultant shall complete the Project with reasonable skill, care and diligence in accordance with the Contract.
- 2.2 The Consultant shall provide the Client with such reports of his work on the Project at such intervals in such form as the Client may from time to time require.
- 2.3 The Client reserves the right by notice to the Consultant to modify the Client's requirements in relation to the Project and any alteration to the Contract fee or the completion date arising by reason of such modification shall be agreed between the parties. Failing agreement the matter shall be determined by arbitration in accordance with the provisions of Condition 17.

3. CONSULTANT'S PERSONNEL

- 3.1 The Consultant shall make available for the purposes of the Project any individuals named on the Specification of Requirements as key personnel. The Consultant shall provide the Client with a list of the names and addresses of all others regarded by the Consultant as key personnel and, if and when instructed by the Client, all other persons who may at any time be concerned with the Project or any part of it, specifying in each case the capacities in which they are so concerned and giving such other particulars and evidence of identity and other supporting evidence as the Client may reasonably require. The Client may at any time by notice to the Consultant designate any person concerned with the Project or any part of it as a key person. The Consultant shall not without the prior written approval of the Client make any changes in the key personnel referred to in this paragraph.
- 3.2 The Consultant shall take the steps reasonably required by the Client, to prevent unauthorised persons being admitted to the Premises. If the Client gives the Consultant 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 Project, the Consultant shall take all reasonable steps to comply with such notice.
- 3.3 The decision of the Client shall be final and conclusive 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 Project or as to the designation or approval of key personnel and as to whether the Consultant has furnished the information or taken the steps required of the Consultant by this Condition.

3.4 The Consultant shall bear the cost of any notice, instruction or decision of the Client under this Condition.

4. CHANGE TO CONTRACT REQUIREMENTS

4.1 The Client may order any variation to any part of the Services that for any other reason shall in the Client's 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.

4.2 Save as otherwise provided herein, no variation of the Services as provided for in Clause 4.1 hereof shall be valid unless given or confirmed in the form of an order given by the Client. All such orders shall be given in writing provided that if for any reason the Client shall find it necessary to give any such order orally in the first instance the Contractor shall comply with such oral order which must be confirmed in writing by the Client within 2 working days of the giving of such oral order by the Client, failing which the variation made by such oral order shall cease to have effect on the expiry of the said 2 working day period.

4.3 Where any such variation of the Services made in accordance with Clauses 4.1 and 4.2 has affected or may affect the costs incurred by the Consultant in providing the Services, the Consultant will notify the Client in writing of the effect which it has had or may have on the said costs and such notification shall be considered by the Client, who shall take all of the facts into account (including such information as may be provided by the Consultant in respect of the effect which such variation has had or may have on the costs incurred by the Consultant in providing the service) and may authorise such alteration to the sums to be paid to the Consultant in accordance with the provisions of the Contract as are, in the Client's opinion, appropriate and reasonable in the circumstances.

5. FEES AND EXPENSES

5.1 The Client shall pay to the Consultant fees and expenses at the rate specified in the Specification of Requirements.

5.2 The Consultant shall be entitled to be reimbursed by the Client only for expenses reasonably and properly incurred by the Consultant in the performance of the duties hereunder, subject to production of such evidence thereof as the Client may reasonably require.

5.3 Unless otherwise stated in the Contract, payment will be made within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed to the satisfaction of the Client.

5.4 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.

5.5 Notwithstanding Condition 15 of this Contract the Consultant may assign to another person (an "assignee") the right to receive payment of the fees or expenses or any part thereof due to the Consultant under this Contract subject to (i) deduction of sums in respect of which the Client exercises its right of recovery under Condition 14 of this Contract and (ii) all the related rights of the Client under this Contract in relation to the recovery of sums due but unpaid. The Consultant shall notify or procure that any assignee notifies the Client of any variations to the arrangements for payment of the fees and expenses or for handling invoices, in each case in good time to enable the Client to redirect payments or invoices accordingly. In the absence of such notification the Client shall be under no obligation to vary the Client's arrangements for payment of the fees or expenses or for handling invoices.

6. AUDIT

The Consultant shall keep and maintain until 2 years after the Contract has been completed records to the satisfaction of the Client of all expenditures which are reimbursable by the Client and of the hours worked and costs incurred by the Consultant or in connection with any employees of the Consultant paid for by the Client on a time charge basis. The Consultant shall on request afford the Client or the Client's representatives such access to those records as may be required by the Client in connection with the Contract.

7. CORRUPT GIFTS OR PAYMENTS

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

8. PATENTS, INFORMATION AND COPYRIGHT

- 8.1 It shall be a condition of the Contract that, except to the extent that the Services incorporate designs furnished by the Client, that nothing done by the Consultant 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 Consultant shall **indemnify** the Client against all actions, claims, demands, costs and expenses which the Client may suffer or incur as a result of or in connection with any breach of this Condition.
- 8.2 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 Consultant by the Client shall remain vested in the Client absolutely.
 - (b) prepared by or for the Consultant for use, or intended use, in relation to the performance of this Contract are hereby assigned to and shall vest in the Client absolutely, and (without prejudice to Condition 11.2) the Consultant shall not and shall procure that the Consultant's servants and agents shall not (except to the extent necessary for the implementation of this Contract) without the prior written consent of the Client 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 Consultant 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 Consultant shall not refer to the Client or the contract in any advertisement without the Client's prior written consent.
- 8.3 The provisions of this Condition 8 shall apply during the continuance of this Contract and after its termination howsoever arising.

9. INDEMNITIES AND INSURANCE

- 9.1 The Consultant shall indemnify and keep indemnified the Client, its servants and agents against all actions, claims, demands, costs and expenses incurred by or made against the Client its servants or agents in respect of any loss or damage or personal injury (including death) which arises from any advice given or anything done or omitted to be done under this Contract to the extent that such loss, damage or injury is caused by the negligence or other wrongful act of the Consultant, or the Consultant's servants or agents.
- 9.2 The Consultant (if an individual) represents that the Consultant is regarded by both the Inland Revenue and the Department of Social Security as self-employed and accordingly shall indemnify the Client against any tax, national insurance contributions or similar impost for which the Client may be liable in respect of the Consultant by reason of this Contract.
- 9.3 The Consultant 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 but covering at least all employer's liability matters which are the subject of indemnities or compensation obligations under these Conditions in the sum of not less than £10 million for any one incident and unlimited in total, unless otherwise agreed by the Client in writing,
 - (b) public liability insurance for such sum and range of cover as the Consultant deems to be appropriate but covering at least all public liability 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, unless otherwise agreed by the Client in writing, and
 - (c) professional indemnity insurance for such sums and range of cover as the consultant deems to be appropriate but covering at least all the professional indemnity matters which are the subject of indemnities or compensation obligations under these Conditions in the sum of not less than £1 million for any one incident and unlimited in total, unless otherwise agreed by the Client in writing.

Where an indemnity or compensation obligation falls within more than one of the heads of insurance cover referred to above, the Consultant shall secure that the insurance effected to cover that obligation is to the extent of the highest of the indemnity limits stipulated in the clauses of this condition applying to that obligation.

9.4 If requested, by the Client the Consultant shall produce to the Client the relevant policy or policies together with receipts or other evidence of payment of premiums, including the latest premium due thereunder.

10. DISCRIMINATION

The Consultant shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Consultant shall not unlawfully discriminate within the meaning and scope of the Sex Discrimination Act 1975, the Race Relations Act 1976, the Equal Pay Act 1970, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Age) Regulations 2006, the Equality Act 2006, the Equality Act (Sexual Orientation) Regulations 2007, the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof. The Consultant shall take all reasonable steps to secure the observance of this Condition by all employees and representatives of the Consultant.

11. DATA PROTECTION, ACCESS TO AND PROVISION OF INFORMATION

11.1 No term of the Contract shall preclude the parties from making public, under the Freedom of Information (Scotland) Act 2002 ("the Act"), and any codes applicable from time to time relating to access to public authorities information, details of any matters relating to the Contract, unless any such details constitute a trade secret; the disclosure of such details would or would be likely to prejudice substantially the commercial interest of any person (including but not limited to the Client or the Consultant or such details fall within such other exemption as may be applicable at the discretion of the Client, in terms of the Act. The Consultant shall facilitate the Client's compliance with the Client's obligations under these provisions and comply with any request from the Client for that purpose. No term of the Contract either shall preclude the Client from sharing pricing and under information under the Contract with other UK public bodies for the purpose of achieving better public procurement and subject to a reciprocal obligation of confidence upon such other public bodies as is imposed on the Client in terms of Condition 11.2(b).

11.2 Subject to Condition 11.1:-

(a) The Consultant shall keep secret and not disclose and shall procure that the Consultant's employees keep secret and do not disclose any information of a confidential nature obtained by the Consultant by reason of this Contract except information which is in the public domain otherwise than by reason of a breach of this provision.

(b) Commercially sensitive information related to the Contract with the Consultant will be treated as commercial in confidence by the Client except insofar as required by law or judicial order to be disclosed.

11.3 Where and insofar as provision of the Services by the Consultant under the Contract does or may involve the Consultant processing personal data on behalf of the Client, the following terms of this Condition 11.3 shall apply during the continuance of this Contract and after its termination, however arising.

1. This Condition 11.3 takes account of paragraph 12 of Part II of Schedule 1 to the Data under the 1998 Act and words and phrases defined in the 1998 Act shall have the same meaning when used in this clause.
2. Both parties warrant to the other that, in terms of the Contract, the Client as data controller and the Consultant as data processor shall comply strictly with all of the requirements of the 1998 Act, together with any subsequent amendment or re-enactment thereof and of all secondary legislation made under the 1998 Act or any subsequent amendment thereto or re-enactment thereof;
3. Without prejudice to the foregoing generality of Condition 11.3.2, the Consultant warrants that it has read and that it shall comply strictly with the seventh principle of the Act, namely that it shall take appropriate technical and organisational measures against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data;
4. No sub-Consultant shall be appointed by the Consultant in connection with the processing of any data relative to the Contract without the prior written approval of the Client. The Consultant will enter into an equivalent agreement to the terms of this Condition 25 with any such approved sub-Consultant in terms of paragraph 12 of Part II of schedule 1 of the 1998 Act;
5. The Consultant undertakes to keep all data disclosed to it by the Client under the Contract confidential and to process all such data strictly and only in accordance with the Client's instructions

from time to time; all instructions given by the Client will be in accordance with the laws of Scotland;

6. The Consultant shall ensure that only such of its employees who may be required by the Consultant to assist it in meeting its obligations under this contract shall have access to the data. Where the Consultant is providing third party system support to the Client, whether remotely or on site, the Consultant and any sub-contractor appointed in terms of this Contract must act reasonably and must access only such information as is required to enable the Consultant or sub-contractor to carry out the support required. The Consultant also agrees to comply with the Client's Access Procedures for External Support, a copy of which is available on request from the Client's Head of Information Technology (or equivalent post).
7. The Consultant agrees to assist the Client with any subject information requests related to data processed by the Consultant which may be received by the Client under the 1998 Act within the time limits imposed by the 1998 Act;
8. The Consultant undertakes not to use the data for a purpose which is inconsistent with the purposes notified to the data subjects by the Client or to disclose the data to a third party other than at the specific request of the Client;
9. The Consultant confirms that it has a written security policy for the processing of data and that it will allow its data processing facilities, procedures and documentation to be submitted for scrutiny by the Client and to allow the Client to visit the Consultant to ensure that the terms of this condition are being complied with;
10. Without prejudice to the terms of Condition 14, the Consultant shall indemnify the Client against all losses, costs, expenses, damages, liabilities, demands, claims, actions or proceedings which the Client may incur arising out of any breach of this Condition 11.3 by the Consultant;
11. In the event of a breach of this Condition 11.3 by the Consultant, the Consultant shall be bound to remedy the breach within five working days of the breach coming to the attention of the Consultant or the breach being notified to the Consultant by the Client, whichever is earlier. In the event that the breach is not resolved timeously, the Client will be entitled to terminate the Contract forthwith.
12. On termination of the Contract, the Consultant shall cease to process the data and shall arrange for the prompt and safe return of all data belonging to the Client to the Client, together with all copies of the data in its possession or control, including all copies with any approved sub-contractor;
13. In this Condition 11.3, "data" shall mean all information relating to the Client's service users and prospective service users, current and projected financial and trading situations, business plans, business strategies, developments and all other information relating to the Client's business affairs including all information of a confidential nature or imparted by whatever nature by the Client to the Consultant during the currency of the Contract. All right, title and interest in and to the data shall vest solely in the Client.

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

11.5 The Consultant will provide the Client with such management information on delivery of the Services as the Client may reasonably require from time to time, including in particular summary reports on the detail of each item of supply provided within the Services, when and to whom.

12. TERMINATION

12.1 The Consultant shall notify the Client in writing immediately upon the occurrence of any of the following events:

- (a) where the Consultant is an individual and if a petition is presented for the Consultant's bankruptcy or the sequestration of the Consultant's estate or a criminal bankruptcy order is made against the Consultant, or the Consultant makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignation for the benefit of creditors, or if an administrator or trustee is appointed to manage the Consultant's affairs; or

(b) where the Consultant 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 any partner in the firm or any of those persons or a petition is presented for the Consultant to be wound up as an unregistered company; or

(c) where the Consultant is a company, if the company passes a resolution for winding-up 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.

12.2 On the occurrence of any of the events described in paragraph 12.1, or if the Consultant shall have committed a material breach of this contract and (if such breach is capable of remedy) shall have failed to remedy such breach within 7 days of being required by the Client in writing to do so, or, where the Consultant is an individual, if the Consultant shall die or be adjudged incapable of managing his or her affairs within the meaning of the Adults with Incapacity (Scotland) Act 2000, the Client shall be entitled to terminate this Contract by notice to the Consultant with immediate effect.

12.3 In addition to his rights of termination under paragraph 12.2, the Client shall be entitled to terminate this Contract by giving to the Consultant not less than 7 days' notice to that effect. In the event of such termination, the Consultant shall, if required to do so by the Client, prepare and submit to the Client a report on the work done prior to the termination and making such recommendations as may be based on the work done prior to termination.

12.4 Termination under paragraphs 12.2 or 12.3 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Client and shall not affect the continued operation of Conditions 8 and 11.

13. RETURN OF DOCUMENTS

13.1 The Consultant will return to the Client promptly upon the termination of the Contract any document, paper, material or information supplied by or obtained from the Client or any associated body or person in connection with the Contract, or extracted from such documents, papers, materials or information.

13.2 Where the Contract has been terminated pursuant to paragraph 12.3, the Consultant may retain any documents papers, materials or information which shall be required by the Consultant to prepare any report required under that paragraph. Promptly upon submission of the report to the Client, the Consultant will return any documents, papers, materials or information which the Consultant may have retained in terms of this paragraph.

14. RECOVERY OF SUMS DUE

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

15. ASSIGNATION AND SUB-CONTRACTING

15.1 The Consultant shall not assign or sub-contract any portion of the Contract without the prior written consent of the Client. Sub-contracting any part of the Contract shall not relieve the Consultant of any obligation or duty attributable to the Consultant under the Contract or these Conditions.

15.2 Where the Client has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Consultant to the Client immediately it is issued.

15.3 Where the Consultant enters a sub-contract with a consultant or contractor for the purpose of performing the Contract, the Consultant shall cause a term to be included in such sub-contract which requires payment to be made to the consultant or contractor within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the sub-contract requirements.

16. 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, telemessage, 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 Specification of Requirements, or to such other address as the party may by notice to the other have substituted therefor, 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.

17. STATUS OF CONTRACT

Nothing in the Contract shall have the effect of making the Consultant the servant of the Client.

18. ARBITRATION

All disputes, differences or questions between the parties to the Contract with respect to any matter or thing arising out of or relating to the Contract, other than a matter or thing as to which the decisions of the Client is under the Contract to be final and conclusive, and except to the extent to which special provision for arbitration is made elsewhere in the Contract, shall be referred to a single arbiter to be mutually chosen by the parties or, failing agreement, nominated by the President of the Law Society of Scotland for the time being on the application of either party. 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.

19. HEADINGS

The headings to Conditions shall not affect their interpretation.

20. GOVERNING LAW

These Conditions shall be governed by and construed in accordance with Scottish law and the Consultant 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 Client to take proceedings against the Consultant 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.

SUPPLEMENTARY NOTICE

1. PROTECTING THE ENVIRONMENT

Consultants to Angus Council are requested to satisfy themselves that no product will be supplied or used in the Supply of Goods to the Client which will endanger the health of the consumers or others, will cause significant damage to the environment during manufacture, use, or disposal, which consumes a disproportionate amount of energy during manufacture, use, or disposal, which causes unnecessary waste because of over-packaging or because of an unusually short shelf life, or which contains materials derived from threatened species or threatened environments.

2. LATE PAYMENT OF INVOICES

Consultants to Angus Council are requested to address complaints regarding late payment of invoices to, in the first instance, the addressee of the invoice and, in the second instance to the Head of Finance, Angus Council, Finance Division, Corporate Services Department, Angus House, Forfar DD8 1AF; Telephone 01307-461460; e-mail FINANCE@angus.gov.uk. This procedure is suggested as the best practical way of ensuring problems of late payment are resolved, and is not intended to interfere with Consultants' legal rights.

THIS NOTICE DOES NOT FORM PART OF THE CONDITIONS OF CONTRACT