

ANGUS COUNCIL SUPPLEMENTARY CONDITIONS OF CONTRACT

SC 01 - Contract Performance Guarantee Insurance

For contracts equal to or exceeding £750,000 in value the Contractor shall, within 28 days of the date of the award of the Contract, obtain and provide to the Employer a Performance Bond for the proper performance of the Contract in a sum equal to not less than 10% of the value of the Contract.

The Performance Bond shall be provided by a Bank or Insurance Company to be approved by the Employer and the Performance Bond shall be in the form included in the tender documents.

If required by the Employer the Contractor shall, within 28 days of the date of the award of the Contract, obtain and provide to the Employer a Parent Company Financial Guarantee in the form included in the tender documents.

The Contractor shall not be given possession of the site until the Performance Bond and, if required, Parent Company Financial Guarantee has been properly executed and is in the hands of the Employer and if the Contractor shall have failed to provide the Performance Bond and, if required, Parent Company Financial Guarantee within 28 days of the date of the award of the Contract or within such further period as may be permitted by the Employer, the Employer shall be entitled to terminate the Contract by giving seven days notice to the Contractor.

In the event of termination under this Supplementary Condition, the Contractor shall pay to the Employer all costs incurred by the Employer in connection with the obtaining of new tenders and the Employer shall not be liable for any claim or demand from the Contractor in respect of anything already done or furnished in connection with the Contract or in respect of any matter or thing in connection with the Contract whatsoever.

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SC 02 – Not used

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SC 03 - Unsafe Operations

In the event that Officers or Safety Personnel employed by the Employer become aware of what they would consider to be an unsafe operation which carries potential danger to the Contractor's employees or any other persons or property, the Employer's employees or the public at large during the execution of the Works they may notify the Contractor of such unsafe operation.

For the purposes of this clause the following definitions apply:

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| Safety Personnel | Persons employed by the Employer who may visit the Works to carry out safety audits, health and safety inspections and accident investigations. |
| Officer | Persons employed by the Employer who will visit the Works. These persons may be architects, quantity surveyors, engineers, clerks of works etc. |

The Contractor should note that persons termed Safety Personnel are authorised by the Employer to enter all buildings and sites owned, leased, operated, rented or to any extent in the control of the Employer, to inspect any documentation required to be kept by health and safety legislation and all parts of the building/site to monitor conformity with health and safety requirements. The Contractor must provide all necessary access facilities for such inspections by Safety Personnel.

Notification to the Contractor of identified unsafe working operations will normally be made through the following procedure. The Officer or Safety Personnel:

- ◇ may notify the operative of the likely danger
- ◇ will notify the Contractor's site manager
- ◇ will record the notification both in the site log and on an "Unsafe Operation" proforma issued by the department (Example copy attached as Appendix VI)
- ◇ will record the notification in the project health and safety file
- ◇ will record the notification in the Contractor's performance record. This record will be taken into account in determining whether the Employer will employ the Contractor on further projects and in extreme circumstances may result in the Contractor being removed from the Employer's Standing List of Contractors. In the event that the Employer is requested by another person or body to provide a reference for the Contractor this information will be taken into account in the provision of such reference
- ◇ will forward a copy of the notification to the Employer's Safety Personnel
- ◇ may forward a copy of the notification to the Health & Safety Executive. This notification may be made at the same time as notification to the Contractor's site manager, depending on the severity of the event

In the event that the Contractor fails to take the necessary actions to eliminate any notified unsafe working operation the Architect/ Contract Administrator may take such actions as he deems necessary to safeguard any persons. It should be noted that any resultant cost incurred by the Contractor will be borne by the Contractor and the Employer will not be responsible for any costs arising from actions considered necessary to avoid danger or death to any persons employed on, visiting or in the location of the Works.

Further, and without prejudice to the foregoing, notification of unsafe working operations shall be within the sole discretion of the Employer and failure to notify such events shall not in any way infer any approval on the part of the Employer in respect of the Contractor's operating methods or practices nor shall it free or relieve the Contractor from any obligation otherwise incumbent upon it.

The Employer accepts no liability for any loss, injury or damage occasioned to the Contractor, or to any third party, whether arising directly or indirectly as a result of the Employer's notification or non-notification of unsafe working operations.

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SC 04 - Warranties and Design

Each of the Contractor's Designed Portions of the Works must be listed in Tender Appendix 1; together with full details of the party responsible for designing each of the Portions. This includes the Contractor, where he is carrying out the design work and each Design Sub-Contractor and each Design Sub-consultant.

The Contractor's Designed Portions are to be designed and constructed in such a manner as to be totally fit for the purpose for which these Works are intended to be used and of entirely satisfactory quality, based on principles acceptable to the Employer for design and construction.

All design work shall be entrusted to suitably qualified professional persons with adequate and appropriate experience.

The Contractor will be responsible for providing, in respect of his Designed Portions and for obtaining and providing, from each Design Sub-Contractor and Design Sub-Consultant, in respect of their Designed Portions; the collateral warranties described in Appendix I, Part 2.

Variable clauses applicable to the above Warranty Agreements and amendments thereto are listed in Appendix V.

If the Contractor shall have failed to provide and obtain the necessary Warranty Agreements, or necessary Statutory Approvals relative to the Contractor's Designed Portions, on or before the date for completion of the works the Employer may withhold or deduct sums up to the value of 10% of the relevant Contractor Designed Portion works until such time as a Warranty Agreement, acceptable to the Employer, is executed.

The above requirement shall apply in respect of all Purchasers, Tenants and Funders known and identified at Acceptance stage.

Where further Purchasers, Tenants or Funders are identified, after Acceptance stage, the Contractor will be required to arrange such further Warranties to be entered into within 14 days from receipt of the Employer's notice in writing of such further requirement.

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SC 05 - Professional Indemnity Insurance

Where the Contractor is responsible for designing Contractor's Designed Portions he will be required to hold and maintain a current Professional Indemnity Insurance policy. All Design Sub-Consultants and Design Sub-Contractors will also be required to hold and maintain current Professional Indemnity Insurance policies.

The limit for each and every claim is to be at least that stated in the Contract Particulars or, where the company's declared gross fee income earned on UK schemes in their last financial year exceeds £1,000,000, at least twice that gross fee income up to a maximum cover of £5,000,000 (unless the company has required a greater amount).

The Contractor must hold and maintain such insurance for the period stated in Appendix I Contract Particulars; from the date of the Employer's Certificate of Practical Completion of the Works and the Contractor is responsible for ensuring that all Design Sub-Consultants and Design Sub-Contractors employed comply with the same requirement.

The Contractor must submit, with the tender, certificates of the Contractor's own Professional Indemnity Insurance together with certificates for each Design Sub-Consultant and Design Sub-Contractor, as confirmation of current, valid Professional Indemnity Insurance. Each certificate of cover must be provided by the respective company's insurance broker and provided prior to commencement of any design works.

At any time the Employer may request documentary evidence that such insurance is in place and being maintained and the Contractor may be required to produce for inspection by the Employer the relevant policy or policies and the premium receipts therefor.

If the Contractor defaults in this requirement and fails to take out and maintain the required insurances or any Design Sub-Consultant or Design Sub-Contractor defaults in this requirement the Employer may insure against any liability or expense which the Employer may incur arising out of such default and a sum or sums equivalent to the amounts paid or payable in respect of such premiums may be deducted by the Employer from any monies due or to become due to the Contractor or such amount may be recoverable by the Employer from the Contractor as a debt.

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SC 06 - Human Rights Act

Where, in terms of this Contract, the Contractor is deemed to be a public authority in terms of Section 6(3)(b) of the Human Rights Act 1998 ("the 1998 Act") the Contractor shall, at all times, strictly comply with the requirements of the 1998 Act together with 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.

The Contractor shall take all reasonable steps to ensure the observance of this Condition by all servants, employees or agents of the Contractor and all Sub-Contractors employed by the Contractor.

The Contractor shall indemnify the Employer against all losses, costs, expenses, damages, liabilities, demands, claims, actions or proceedings which the Employer may incur arising out of a breach of this condition by the Contractor.

The Employer will monitor the Contractor's compliance with the 1998 Act at periodic intervals during the performance of the Contract.

SC 07 - Freedom of Information (Scotland) Act 2002

Anyone will have a right to receive information held by the Employer under the Freedom of Information (Scotland) Act 2002 ("the Act"), with effect from January 2005. As part of the Employer's duties under the Act, the Employer must disclose information, which forms part of the tender or Contract, to anyone who requests it; unless an exemption applies. Before releasing any information, the Employer will consult the tenderer or Contractor and have regard to the tenderer's or Contractor's comments or objections, but the ultimate decision, as to whether the information falls within one of the exemptions or not, rests with the Employer as holder of the information.

No term of the Contract, whether express or implied, shall preclude the Employer from making public, under the Act, and any codes applicable from time to time relating to access to public authorities' information, details of all matters relating to the Contract, unless 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 Contractor or the Employer) or such details fall within such other exemption as may be applicable at the discretion of the Employer, in terms of the Act. The Contractor will facilitate the Employer's compliance with the Employer's obligations under these provisions and comply with any request from the Employer for that purpose.

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SC 08 – Required Memberships and Registrations

The Control of Asbestos Regulations 2012

Where the Works include the removal or disposal of asbestos-containing materials the Contractor must hold a current and valid Licence in accordance with the above Regulation and a copy of the Contractor's Licence must be submitted with the tender.

Gas Installations and Repairs

In accordance with the Gas Safety (Installation and Use) Regulations 1998 all gas installation and repair works must be carried out by contractors who are registered members of the Gas Safe Register. In addition all gas fitting operatives must have been assessed, tested and hold current certificates of competence in the appropriate area of gas work to be carried out.

PRIOR to carrying out any works, or arranging for any works to be carried out on gas installations, the contractor MUST provide documentary proof of registration to the Contract Administrator, together with current, valid certificates of competence, operative numbers and insurance appropriate to the type and nature of work; in respect of all operatives who are to be engaged on the works. Failure to provide such proof will be considered a material breach of contract and will be treated accordingly. Such failure will also be notified to the Health and Safety Executive.

In this regard any contractor not so registered who submits a tender for Plumbing or Heating Works shall, if successful, employ a registered contractor with appropriately certified operatives to carry out any gas installation or repair work.

See Schedule of Clause Headings and Details of Amendments and Modifications to the Standard Conditions.

Electrical Installations and Repairs

Electrical Installations and Repairs - The Contractor must be currently enrolled with the National Inspection Council for Electrical Installation Contracting (NICEIC) or be a current member of the Electrical Contractors' Association of Scotland (SELECT) (or European equivalent of either organisation) for these works and the Contractor's registration/membership number must be inserted in Tender Appendix I, under "Registration/Membership Number", as confirmation of same.

Security Systems Installations and Repairs

The Contractor must be a fully subscribed current member of The National Supervisory Council for Security Systems (NACOSS) for these works must be registered members of the organisations indicated and the Contractor's registration number must be inserted in Tender Appendix I under "Registered Nr" as confirmation of same.

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SC 09 - Working Platforms

Tenderers are expressly directed to note the HSE publication "Health and Safety in Construction" [HSG150 (rev)], which details the various methods of working at height and in particular the statement that ladders should be primarily used for access and only be used as workplaces to do light work of short duration.

The Employer's interpretation of this statement is that ladders are not considered to be an acceptable working platform and accordingly the use of ladders as working platforms will not normally be permitted. Any exception to this must be agreed in writing by the Contract Administrator prior to commencing any work of this nature.

Tenderers particular attention is drawn to the completion of Method Statements regarding identified risks for pre-tender Health & Safety Plans.

Use of stepladders is acceptable as working platforms up to single storey height, as long as they are fitted with handrails. Otherwise ladders may only be used for access, inspection and survey purposes.

SC 10 – Data Protection Act – Security Condition

As the parties to this Contract must enter into an agreement in terms of paragraph 12 of Part II of schedule 1 to the Data Protection Act 1998 ("the 1998 Act"); in order to regulate the processing of data (as defined in the 1998 Act) under this Contract, the parties therefore agree as follows:

- 1 Both parties warrant to the other that, in terms of this Contract, the Employer as Data Controller and the Contractor 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.
- 2 Without prejudice to the foregoing generality of sub-clause 1 above, the Contractor 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 of destruction of, or damage to, personal data.

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- 3 No Sub-Contractor shall be appointed by the Contractor in connection with the processing of any data relative to this Contract without the prior written approval of the Employer. The Contractor will enter into an equivalent agreement with any such approved Sub-Contractor in terms of paragraph 12 of Part II schedule 1 of the 1998 Act.
- 4 The Contractor undertakes to keep all data disclosed to it by the Employer under this Contract confidential and to process all such data strictly and only in accordance with the Employer's instructions from time to time; all instructions given by the Employer will be in accordance with the laws of Scotland.
- 5 The Contractor shall ensure that only such of its employees who may be required by the Contractor to assist it in meeting its obligations under this Contract shall have access to the data. Where the Contractor is providing third party system support to the Employer, whether remotely or on site, the Contractor 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 Contractor or Sub-Contractor to carry out the support required. The Contractor also agrees to comply with the Employer's Access Procedures for External Support, a copy of which is available on request from the Employer's Head of Information Technology.
- 6 The Contractor agrees to assist the Employer with any subject information requests, which may be received by the Employer, under the 1998 Act; within the time limits imposed by the 1998 Act.
- 7 The Contractor undertakes not to use the data for a purpose which is inconsistent with the purposes notified to the data subjects by the Employer or to disclose the data to a third party other than at the specific request of the Employer.
- 8 The Contractor 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 Employer and to allow the Employer to visit the Contractor to ensure that the terms of this condition are being complied with.
- 9 The Contractor shall indemnify the Employer against all losses, costs, expenses, damages, liabilities, demands, claims, actions or proceedings which the Employer may incur, arising out of any breach of this condition by the Contractor.
- 10 On termination of this Contract, the Contractor shall cease to process the data and shall arrange for the prompt and safe return of all data, belonging to the Employer, to the Employer, together with all copies of the data in its possession or control, including all copies with any agreed Sub-Contractor.
- 11 In this condition, "data" shall mean all information relating to the Employer's clients and prospective clients, current and projected financial and trading situations, business plans, business strategies, developments and all other information relating to the Employer's business affairs including all information of a confidential nature or imparted by whatever nature by the Employer to the Contractor during the currency of the Contract. All right, title and interest in and to the data shall vest solely in the Employer.

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SC 11 – The Control of Asbestos Regulations 2012

Whether or not asbestos-containing materials have been identified as being part of the Works or in the vicinity of the Works the Contractor must:

Inspect and sign the local asbestos register. In the case of occupied non-Housing properties this will normally be held at a central location within the property (normally Reception) and for Housing properties at the local ACCESS office.

Consultants and contractors shall be directed to the location of the local asbestos register for buildings, which are not normally occupied.

Where asbestos-containing materials are to be removed and disposed of as part of the Works, and/ or the Works are carried out in close proximity to asbestos-containing materials, the Contractor must:

Submit, with the tender, a copy of a valid and current License in terms of The Control of Asbestos Regulations 2012

Submit, with the tender a completed Method Statement detailing proposals for dealing with the hazard. Please refer to the Risk Assessment sheets as part of the Pre-contract Health & Safety Plan.

Immediately upon acceptance of Tender, submit to the Health and Safety Executive a method statement and plan of work, for their approval. All costs involved in obtaining such approval will be deemed to be included in the Tender amount. At the same time as submitting these documents to the Health and Safety Executive the Contractor must also submit a copy of this information to the Employer.

Tenders submitted will be deemed to include for all costs necessary for executing the Works, taking account of all appropriate Health & Safety requirements.

Nothing contained in this document shall overrule, set aside or in any way alter the Contractor's statutory liability to carry out the Works in accordance with all current Health & Safety legislation.

Further, and without prejudice to the foregoing, notification of failure to comply with the requirements contained herein shall be within the sole discretion of the Employer and failure to notify non-compliance shall not in any way infer any approval on the part of the Employer in respect of the Contractor's operating methods or practices nor shall it free or relieve the Contractor from any obligation otherwise incumbent upon it.

The Employer accepts no liability for any loss, injury or damage occasioned to the Contractor, or to any third party, whether arising directly or indirectly as a result of the Employer's notification or non-notification of failure to comply with these requirements.

The Contractor shall not be given possession of the site until the necessary approvals have been obtained from the Health and Safety Executive and, paperwork confirming same, is in the hands of the Employer. If the Contractor shall have failed to provide the required paperwork within 28 days of the date of the award of the Contract or within such further period as may be permitted by the Employer, the Employer shall be entitled to terminate the Contract by giving seven days notice to the Contractor.

In the event of termination under this Supplementary Condition, the Contractor shall pay to the Employer all costs incurred by the Employer in connection with the obtaining of new tenders and the Employer shall not be liable for any claim or demand from the Contractor in respect of anything already done or furnished in connection with the Contract or in respect of any matter or thing in connection with the Contract whatsoever.

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In the event that the Contractor discovers, or suspects, the existence of asbestos-containing materials, not previously identified, the Contractor must cease work immediately and notify the Contract Administrator. Thereafter the Contractor will be required to co-operate whilst samples of materials are taken and analysed. Once the results of any analysis are known the Contract Administrator will instruct the Contractor on the appropriate course of action.

SC 12 - Race Relations Act

Angus Council has a Statutory Duty under the Race Relations Act 1976, as amended by the Race Relations (Amendment) Act 2000, to have due regard to the need to eliminate unlawful discrimination, promote equality of opportunity and good relations between persons of different racial groups.

The Council is committed to ensuring that racial equality is achieved in all aspects of its functions and services and requires all Contractors to comply with the provisions of the Race Relations Act 1976 and Race Relations (Amendment) Act 2000.

SC 13 – Equality Act

In recognition of the Council's legal obligation to tackle discrimination and promote equalities and diversity in all its functions and policies under the Equality Act, the Council may from time to time require the Contractor to complete a questionnaire and/or provide information to the Council on the extent and quality of the Contractor's equalities and diversity policies and practice.

The Contractor shall not discriminate directly or indirectly, or by way of victimisation or harassment, against any person on grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation contrary to the Equality Act 2010.