

GENERAL CONDITIONS

These Conditions may be varied only by the written agreement of the Purchaser. 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 Purchaser.

1. DEFINITIONS

In these Conditions:

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

'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 Purchaser 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 Purchaser and the Supplier 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 Purchaser's requirements for the Contract. Where the contract between the Purchaser and Supplier 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 Purchaser's requirement.

2. THE GOODS

- 2.1 The Goods shall be to the reasonable satisfaction of the Purchaser and shall conform in all respects with any particulars specified in the Contract and in any variations thereto.
- 2.2 The Goods shall conform in all respects with the requirements of any statutes, orders, regulations or bye-laws from time to time in force.
- 2.3 The Goods shall be fit and sufficient for the purpose for which such goods are ordinarily used and for any particular purpose made known to the Supplier by the Purchaser and the Purchaser relies on the skill and judgement of the Supplier in the supply of the Goods and the execution of the Contract.

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 Purchaser unless agreed by the Purchaser in writing before the execution of the Contract.
- 3.2 Unless otherwise agreed in writing by the Purchaser, the Supplier shall render a separate invoice in respect of each consignment delivered under the Contract. Payment shall be due 30 days after receipt of the Goods or the correct invoice therefor, whichever is the later.
- 3.3 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.
- 3.4 Notwithstanding Condition 17 of this Contract the Supplier may assign to another person (an "assignee") the right to receive payment of the Price or any part thereof due to the Supplier under this Contract subject to (i) deduction of sums in respect of which the Purchaser exercises the right of recovery under Condition 16 of this Contract and (ii) all the related rights of the Purchaser under this Contract in relation to the recovery of sums due but unpaid. The Supplier shall notify or procure that any assignee notifies the Purchaser of any variations to the arrangements for payment of the Price or for handling invoices, in each case in good time to enable the Purchaser to redirect payments or invoices accordingly. In the absence of such notification the Purchaser shall be under no obligation to vary its arrangements for payment of the Price or for handling invoices.

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 Purchaser in connection with delivery shall be provided without acceptance by the Purchaser of any liability whatsoever and the Supplier shall **indemnify** the Purchaser in

respect of any actions, suits, claims, demands losses, charges, costs and expenses which the Purchaser or the Crown 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 premises is necessary in connection with delivery or installation the Supplier and the Supplier's sub-contractors shall at all times comply with the reasonable requirements of the Purchaser's facilities manager for those premises.
- 4.3 The time of delivery shall be of the essence and failure to deliver within the time promised or specified shall enable the Purchaser (at the Purchaser's option) to release themselves from any obligation to accept and pay for the Goods and/or to cancel all or part of the Contract therefor, in either case without prejudice to the Purchaser's other rights and remedies.

5. PROPERTY AND RISK

Property and risk in the Goods shall without prejudice to any of the rights or remedies of the Purchaser (including the Purchaser's rights and remedies under Condition 7 hereof) pass to the Purchaser at the time of delivery.

6. DAMAGE IN TRANSIT

On dispatch of any consignment of the Goods the Supplier shall send to the Purchaser 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 Purchaser 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 Purchaser provided that:

(a) in the case of damage to such Goods in transit the Purchaser 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 Purchaser shall (provided that the Purchaser 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.

7. INSPECTION, REJECTION AND GUARANTEE

- 7.1 The Supplier shall permit the Purchaser or the Purchaser's authorised representatives to make any inspections or tests they may reasonably require and the Supplier shall afford all reasonable facilities and assistance free of charge at the Supplier's 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 Purchaser of any rights or remedies in respect of the Goods.
- 7.2 The Purchaser 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 Purchaser of Goods concerned. If the Purchaser shall reject any of the Goods pursuant to this Condition the Purchaser shall be entitled (without prejudice to the Purchaser's other rights and remedies) either:
- (a) to have the Goods concerned as quickly as possible either repaired by the Supplier or (as the Purchaser 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.
- 7.3 The guarantee period applicable to the Goods shall be 12 months from putting into service or 18 months from delivery, whichever shall be the shorter (subject to any alternative guarantee arrangements stipulated in the Specification of Requirements, the Supplier's Tender or otherwise agreed in writing between the Purchaser and the Supplier). If the Purchaser shall within such guarantee period or within 30 days thereafter give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use the Supplier shall (without prejudice to any other rights and remedies which the Purchaser may have) as quickly as possible remedy such defects (whether by repair or replacement as the Purchaser shall elect) without cost to the Purchaser.
- 7.4 Any Goods rejected or returned by the Purchaser as described in paragraphs 7.2 or 7.3 shall be returned to the Supplier at the Supplier's risk and expense.

8. LABELLING AND PACKAGING

- 8.1 The Goods shall be packed and marked in a proper manner and in accordance with the Purchaser'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 Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser or the Crown may suffer or incur as a result of or in connection with any breach of this Condition.
- 8.2 All packaging materials will be considered non-returnable and will be destroyed unless the Supplier's delivery advice note states that such materials will be charged for unless returned. The Purchaser accepts no liability in respect of the non-arrival at the Supplier's premises of empty packages returned by the Purchaser unless the Supplier shall within 10 days of receiving notice from the Purchaser that the packages have been dispatched notify the Purchaser of such non-arrival.
- 8.3 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 other packing specifications.

9. CORRUPT GIFTS OR PAYMENTS

The Supplier shall not offer or give, or agree to give, to any employee or representative of the Purchaser 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 Purchaser 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.

10. PATENTS, INFORMATION AND COPYRIGHT

- 10.1 It shall be a condition of the Contract, except to the extent that the Goods incorporate designs furnished by the Purchaser, 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 Purchaser against all actions, claims, demands, costs and expenses which the Purchaser or the Crown may suffer or incur as a result of or in connection with any breach of this Condition.
- 10.2 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 Purchaser shall remain vested in the Purchaser 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 Purchaser absolutely, and (without prejudice to Condition 14.2) the Supplier shall not and shall procure that the Supplier's servants and agents shall not (except to the extent necessary for the implementation of this Contract) without the prior written consent of the Purchaser 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 Purchaser or the contract in any advertisement without the Purchaser's prior written consent.
- 10.3 The provisions of this Condition 10 shall apply during the continuance of this Contract and after its termination howsoever arising.

11. HEALTH AND SAFETY

The Supplier represents and warrants to the Purchaser that the Supplier is satisfied 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 the Supplier has made available to the Purchaser 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 Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any breach of this Condition.

12. INDEMNITY AND INSURANCE

12.1 Without prejudice to any rights or remedies of the Purchaser (including the Purchaser's rights and remedies under Condition 7 hereof) the Supplier shall indemnify the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser 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.

12.2 The Supplier 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 Purchaser in writing, and

(b) public liability insurance for such sum and range of cover as the Supplier 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 Purchaser in writing.

Where an indemnity or compensation obligation falls within more than one of the heads of insurance cover referred to above, the supplier 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 and shall at the request of the Purchaser produce the relevant policy or policies together with receipts or other evidence of payment of premiums, including the latest premium due thereunder.

13. DISCRIMINATION

The Supplier 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 Supplier 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 Supplier shall take all reasonable steps to secure the observance of this clause by all employees and representatives of the Supplier.

14. DATA PROTECTION, ACCESS TO AND PROVISION OF INFORMATION

14.1 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 Purchaser or the Supplier or such details fall within such other exemption as may be applicable at the discretion of the Purchaser, in terms of the Act. The Supplier shall facilitate the Purchaser's compliance with the Purchaser's obligations under these provisions and comply with any request from the Purchaser for that purpose. No term of the Contract either shall preclude the Purchaser 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 Purchaser in terms of Condition 14.2(b).

14.2 Subject to Condition 14.1:-

(a) The Supplier shall keep secret and not disclose and shall procure that the Supplier's employees keep secret and do not disclose any information of a confidential nature obtained by the Supplier 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 Supplier will be treated as commercial in confidence by the Purchaser except insofar as required by law or judicial order to be disclosed.

- 14.3 Where and insofar as provision of the Services by the Supplier under the Contract does or may involve the Supplier processing personal data on behalf of the Purchaser, the following terms of this Condition 14.3 shall apply during the continuance of this Contract and after its termination, however arising.
1. This Condition 14.3 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 Purchaser as data controller and the Supplier 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 14.3.2, the Supplier 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-Supplier shall be appointed by the Supplier in connection with the processing of any data relative to the Contract without the prior written approval of the Purchaser. The Supplier will enter into an equivalent agreement to the terms of this Condition 14.3 with any such approved sub-Supplier in terms of paragraph 12 of Part II of schedule 1 of the 1998 Act;
 5. The Supplier undertakes to keep all data disclosed to it by the Purchaser under the Contract confidential and to process all such data strictly and only in accordance with the Purchaser's instructions from time to time; all instructions given by the Purchaser will be in accordance with the laws of Scotland;
 6. The Supplier shall ensure that only such of its employees who may be required by the Supplier to assist it in meeting its obligations under this contract shall have access to the data. Where the Supplier is providing third party system support to the Purchaser, whether remotely or on site, the Supplier 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 Supplier or sub-contractor to carry out the support required. The Supplier also agrees to comply with the Purchaser's Access Procedures for External Support, a copy of which is available on request from the Purchaser's Head of Information Technology (or equivalent post).
 7. The Supplier agrees to assist the Purchaser with any subject information requests related to data processed by the Supplier which may be received by the Purchaser under the 1998 Act within the time limits imposed by the 1998 Act;
 8. The Supplier undertakes not to use the data for a purpose which is inconsistent with the purposes notified to the data subjects by the Purchaser or to disclose the data to a third party other than at the specific request of the Purchaser;
 9. The Supplier 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 Purchaser and to allow the Purchaser to visit the Supplier to ensure that the terms of this condition are being complied with;
 10. Without prejudice to the terms of Condition 16, the Supplier shall indemnify the Purchaser against all losses, costs, expenses, damages, liabilities, demands, claims, actions or proceedings which the Purchaser may incur arising out of any breach of this Condition 14.3 by the Supplier;
 11. In the event of a breach of this Condition 14.3 by the Supplier, the Supplier shall be bound to remedy the breach within five working days of the breach coming to the attention of the Supplier or the breach being notified to the Supplier by the Purchaser, whichever is earlier. In the event that the breach is not resolved timeously, the Purchaser will be entitled to terminate the Contract forthwith.
 12. On termination of the Contract, the Supplier shall cease to process the data and shall arrange for the prompt and safe return of all data belonging to the Purchaser to the Purchaser, together with all copies of the data in its possession or control, including all copies with any approved sub-contractor;

13. In this Condition 14.3, "data" shall mean all information relating to the Purchaser'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 Purchaser's business affairs including all information of a confidential nature or imparted by whatever nature by the Purchaser to the Supplier during the currency of the Contract. All right, title and interest in and to the data shall vest solely in the Purchaser.

14.4 The provisions of this Condition 14 shall apply during the continuance of this Contract and after its termination howsoever arising.

14.5 The Supplier will provide the Purchaser with such management information on delivery of the Services as the Purchaser 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.

14.6 On the occurrence of any of the events described in Condition 14.1 or, if the Supplier 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 30 days of being required by the Purchaser in writing to do so or, where the Supplier is an individual if the Supplier shall die or be adjudged incapable of managing his or her affairs within the meaning of the Adults with Incapacity (Scotland) Act 2000, the Purchaser shall be entitled to terminate this Contract by notice to the Supplier with immediate effect. Thereupon, without prejudice to any other of the Purchaser's rights, the Purchaser may complete the Services or have them completed by a third party, using for that purpose (making a fair and proper allowance therefor in any payment subsequently made to the Supplier) all materials, plant and equipment on the Premises belonging to the Supplier, and the Purchaser shall not be liable to make any further payment to the Supplier until the Services have been completed in accordance with the requirements of the Contract, and shall be entitled to deduct from any amount due to the Supplier the costs thereof incurred by the Purchaser (including the Purchaser's own costs). If the total cost to the Purchaser exceeds the amount (if any) due to the Supplier, the difference shall be recoverable by the Purchaser from the Supplier.

14.7 In addition to the Purchaser's rights of termination under Condition 14.2, the Purchaser shall be entitled to terminate this Contract by giving to the Supplier not less than 30 days notice to that effect.

14.8 Termination under Condition 14.2 or 14.4 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Purchaser and shall not affect the continued operation of Conditions 12 and 14.

15. TERMINATION

15.1 Without prejudice to any other rights or remedies of the Purchaser under the Contract the Purchaser 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 the Supplier is apparently insolvent, or 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 the Supplier's 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.

16. 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 Purchaser or with any department, agency or authority of the Purchaser.

17. ASSIGNATION AND SUB-CONTRACTING

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

17.2 No sub-contracting by the Supplier shall in any way relieve the Supplier of any of the Supplier's responsibilities under the Contract.

17.3 Where the Supplier enters a sub-contract with a supplier or contractor for the purpose of performing the Contract, the Supplier 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.

18. 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.

19. ARBITRATION

20. 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 decision of the Purchaser 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.

20. HEADINGS

The headings to Conditions shall not affect their interpretation.

21. 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 Purchaser 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

SUPPLEMENTARY NOTICE

1. PROTECTING THE ENVIRONMENT

2. LATE PAYMENT OF INVOICES

Suppliers to Angus Council are requested to satisfy themselves that no product will be supplied or used in the Supply of Goods to the Purchaser 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.

Suppliers 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 Suppliers' legal rights.

THIS NOTICE DOES NOT FORM PART OF THE CONDITIONS OF CONTRACT