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ANGUS COUNCIL

CONDITIONS OF CONTRACT FOR LOOSE FURNITURE AND EQUIPMENT

1 Definitions and Interpretation

(1) In the contract the following definitions apply:

- a) "Employer" means Angus Council and includes the Employer's personal representatives or successors;
- b) "Contractor" means the person or person's firm or company whose tender has been accepted by the Employer and includes the Contractor's personal representatives, successors and permitted assignees;
- c) "Architect/ Contract Administrator" means The Head of Property, Angus Council, or other persons appointed from time to time by the Employer and notified in writing to the Contractor to act as Architect/ Contract Administrator for the purpose of the Contract.
- d) "Quantity Surveyor" means The Head of Property, Angus Council or other Quantity Surveyor appointed from time to time by the Employer and notified in writing to the Contractor to act as Quantity Surveyor.
- e) "Contract" means the Conditions of Contract, Drawings, Specification, Schedule of Goods, the Tender and the written acceptance thereof;
- f) "Schedule of Goods" means the document containing a description of the items required under the contract with provision for pricing,
- g) "Specification" means the specification referred to in the Tender and any modification thereof or addition thereto as may from time to time be furnished or approved in writing by the Architect/ Contract Administrator;
- h) "Contract Sum" means the total at the date of acceptance of the Contractor's Tender for the works;
- i) "Works" means the works described in the Contract documents;

Where under this Contract an act is required to be done within a specified period of days after or from a specified date, the period shall begin immediately after that date. Where the period would include a day which is a Public Holiday that day shall be excluded. A "Public Holiday" shall mean Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday.

2 Contractor's Obligations

The Contractor shall upon and subject to these Conditions supply, deliver, unload, carry in and install the furniture and equipment described by or referred to in the Specification and Schedule of Goods and in these Conditions with due diligence and in good and workmanlike manner and in every respect to the reasonable satisfaction of the Architect/Contract Administrator.

3 Architect/ Contract Administrator's Instructions

The Contractor shall forthwith comply with all instructions issued to him by the Architect/Contract Administrator in regard to any matter in respect of the carrying out and completion of this Contract. All instructions shall be issued in writing. Any instructions given orally by the Architect/Contract Administrator shall be confirmed in writing by the Architect/Contract Administrator within seven days.

If within seven days after receipt of a written notice from the Architect/Contract Administrator, requiring compliance with an instruction, the Contractor does not comply therewith, then the Employer

may employ and pay other persons to provide any materials or goods or execute any work whatsoever which may be necessary to give effect to such instruction and all costs incurred with such supply or employment shall be recoverable from the Contractor by the Employer as a debt or may be deducted from any monies due or to become due to the Contractor under this Contract.

4 Statutory Obligations Fees and Charges

The Contractor shall comply with and give all notices required by any statute, any statutory instrument, rule or order or any regulation or byelaw which may be applicable and shall pay all fees and charges related thereto and legally recoverable from him.

5 Materials, Goods and Workmanship

All materials, goods and workmanship shall, so far as procurable, be of the respective kinds and standards described in the Specification and Schedule of Goods and the Contractor shall, upon the request of the Architect/Contract Administrator, furnish him with vouchers to prove that the materials and goods comply with this condition.

The Architect/Contract Administrator may issue instructions in regard to the removal of any materials, goods or work which are not in accordance with this Contract.

6 Royalties and Patent Rights

All royalties and other sums payable in respect of the supply or use in carrying out and completing the work under this Contract of any patented articles, processes or inventions shall be deemed to have been included for in the Contract Sum, and the Contractor shall indemnify the Employer from and against all claims, proceedings, damages, costs and expenses which may be brought out or made against the Employer, or to which it may be put by reason of the Contractor infringing or being held to have infringed any patent rights in relation to any such articles, processes and inventions.

7 Variations

The Architect/Contract Administrator may, without invalidating the Contract, order additions to or omissions from or other changes in the furniture and equipment described by or referred to in the Specification and Schedule of Goods, or the order or period in which they are to be delivered and installed; and any such instruction shall be valued by the Quantity Surveyor, unless otherwise agreed, at the rates contained in the Schedule of Goods or, in the case of furniture and equipment not precisely corresponding to any item in the Schedule of Goods, at rates on the basis of and in fair relation to such rates, failing such a fair and reasonable valuation thereof shall be made.

8 Contract Rates

The rates contained in the Schedule of Goods and used in computation of the Contract Sum shall be understood to represent the nett cost after deducting any trade or other discount; and shall be held to cover for providing and doing everything which may be necessary in connection with proper supply, delivery, and installation of the furniture and equipment, including the cost of packing, carriage and return of empty crates, etc.

9 Contract Sum

The Contract Sum shall not be adjusted or altered in any way whatsoever otherwise than in accordance with the express provisions of these Conditions and any error whether arithmetical or not in the computation of the Contract Sum shall be deemed to have been accepted by the parties hereto.

Any reference in these Conditions to the "Contract Sum" shall be regarded as such Sum exclusive of value added tax and the Employer shall pay to the Contractor any value added tax properly chargeable by the Commissioners of Customs and Excise on the Contractor under or by virtue of the Finance Act 1972 on the supply to the Employer of goods and services by the Contractor under this Contract.

10 Practical Completion

When in the opinion of the Architect/Contract Administrator the supply, delivery and installation of the furniture and equipment is completed, he shall forthwith issue a Certificate to that effect and Practical Completion shall be deemed for all the purposes of this Contract to have taken place on the day named in such Certificate.

11 Defects Liability

The Contractor shall, as and when instructed by the Architect/Contract Administrator, make good by replacement or otherwise any defects in the furniture and equipment which appear within 12 months from the date of Practical Completion and shall bear any expense reasonably incurred in consequence of such defects, provided that such defects are due solely to defective workmanship or material in the goods supplied or in their installation and shall not have been caused by misuse or by any act of neglect of either the Architect/Contract Administrator or the Employer or by any person or persons for whom they may be responsible. The Architect/Contract Administrator shall certify the date when in his opinion the Contractor's obligations under this Clause have been discharged.

12 Assignment or Sub-Letting

The Contractor shall not without the written consent of the Employer assign this Contract or sub-let any portion thereof.

13 Injury, Damage and Insurance

13.1 Injury to or death of persons

The Contractor shall be liable for, and shall indemnify the Employer against, any expense, liability, loss, claim or proceedings whatsoever arising under any statute or at common law in respect of personal injury to or the death of any person whomsoever arising out of or in the course of or caused by the carrying out of the Works, except to the extent that the same is due to any act or neglect of the Employer or of any person for whom the Employer is responsible. Without prejudice to his liability to indemnify the Employer the Contractor shall take out and maintain and shall cause any sub-contractor to take out and maintain insurances which, in respect of liability to employees or apprentices shall comply with the Employer's Liability (Compulsory Insurance) Act 1969 and any statutory orders made thereunder or any amendment or re-enactment thereof and in respect of any other liability for personal injury or death shall be such as is necessary to cover the liability of the Contractor or, as the case may be, of such sub-contractor. Liability to workpeople under statute to be to a value of at least £10,000,000 per claim and without unusual excess values or terms, having regard to the prevailing insurance market.

13.2 Injury or damage to property

The Contractor shall be liable for, and shall indemnify the Employer against, any expense, liability, loss, claim or proceedings in respect of any injury or damage whatsoever to any property heritable or movable (other than injury or damage to the Works) in so far as such injury or damage arises out of or in the course of or by reason of the carrying out of the Works, and to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Contractor, his servants or agents or of any person employed or engaged by the Contractor upon or in connection with the Works or any part thereof, his servants or agents. Without prejudice to his obligation to indemnify the Employer the Contractor shall take out and maintain and shall cause any sub-contractor to take out and maintain insurance in respect of the liability referred to above in respect of injury or damage to any property heritable or moveable other than the Works. Liability at common law and generally to third parties to be to a value of at least £5,000,000 per claim and without unusual excess values or terms, having regard to the prevailing insurance market.

13.3 Insurance of the Works - Fire etc - Existing structures

The Employer shall in the joint names of Employer and Contractor insure against loss or damage to the existing structures (together with the contents owned by him or for which he is responsible) and to the Works and all unfixed materials and goods, delivered to, placed on or adjacent to the Works and intended therefore by fire, lighting, explosion, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquake, aircraft and other aerial devices or articles dropped therefrom, riot and civil commotion.

If any loss or damage as referred to in this clause occurs then the Architect/Contract Administrator shall issue instructions for the reinstatement and making good of such loss or damage in accordance with clause 3 hereof and such instructions shall be valued under clause 7 hereof.

13.4 Evidence of insurance

The Contractor shall produce, and shall cause any sub-contractor to produce, such evidence as the Employer may reasonably require that the insurances referred to in clauses 13.1 and 13.2 hereof have been taken out and are in force at all material times.

If the Contractor defaults in taking out or in maintaining, or in causing any sub-contractor to take out and maintain, insurance as provided in Clauses 13.1 and 13.2 the Employer may itself insure against any liability or expense which it may incur arising out of such default and a sum or sums equivalent to the amount paid or payable by him in respect of premiums therefore may be deducted by him from any monies due or to become due to the Contractor under this Contract or such amount may be recoverable by the Employer from the Contractor as a debt.

14 Extension of Time

The delivery and Installation of the furniture and equipment shall be commenced and completed at the times and in the manner set forth in the Specification and Schedule of Goods. If it becomes apparent that the work under this Contract will not be completed by the specified date for completion as a result of force majeure, fire, civil commotion, strike or lock out or other causes beyond the control of the Contractor then the Contractor shall so notify the Architect/ Contract Administrator who may extend the time for completion by a reasonable period.

15 Certificates and Payments

The Architect/Contract Administrator shall, if requested by the Contractor during the currency of the work under this Contract, certify interim payments to the Contractor in respect of the value of furniture and equipment properly delivered and installed, including any materials and goods delivered for the purpose of carrying out the work under this Contract and any amounts ascertained or agreed under Clause 7 of these Conditions, and the Employer shall pay to the Contractor the amount so certified within 14 days of the date of the Certificate.

Provided the Contractor shall have supplied all documentation reasonably necessary for the computation of the amounts to be certified the Architect/Contract Administrator shall 14 days after the date of Practical Completion certified under Clause 10 of these Conditions certify payment to the Contractor of the total amount to be paid to the Contractor under the Contract including any amounts ascertained or agreed under Clause 7 of these Conditions less only the amount of any interim payments made under this Clause and the Employer shall pay to the Contractor the amount so certified within 14 days of that Certificate.

Provided the Contractor shall have supplied all documentation reasonably necessary for the computation of the amounts to be certified the Architect/Contract Administrator shall 14 days after the date certified in Clause 11 of these Conditions, issue a final certificate certifying the amount remaining due to the Contractor or due to the Employer as the case may be and such sum shall be as from the 14th day after the date of the final certificate be a debt payable as the case may be by the Employer to the Contractor or by the Contractor to the Employer.

If the Employer fails properly to pay the amount, or any part thereof, due to the Contractor by the final date for its payment (otherwise than as a result of the operation of Clause 16 of these Conditions) the Employer shall pay to the Contractor in addition to the amount not properly paid simple interest thereon for the period until such payment is made. Payment of such simple interest shall be treated as a debt due to the Contractor by the Employer. The rate of interest payable shall be five percent (5%) over the Base Rate of the Bank of England which is current at the date the payment by the Employer became overdue.

If the Employer shall fail to pay the amount due certified under the above conditions the Contractor may give written notice to the Employer stating the non payment and stating his intention to suspend performance if the non payment continues. If such failure shall continue for 7 days after the

Contractor has given to the Employer, with a copy to the Architect/ Contract Administrator, written notice of his intention to suspend performance of his obligations under the Contract to the Employer and the ground or grounds on which it is intended to suspend performance then the Contractor may suspend such performance of his obligations under the Contract until such payment in full occurs.

16 Construction Industry Scheme (CIS)

For the purposes of the Income and Corporation Taxes Act 1988 (ICTA) and The Income Tax (Sub-Contractors in the Construction Industry) (Amendment) Regulations 1998 S.I. No. 2622 the Employer at the Date of Tender is a 'Contractor'.

17 Fluctuations

The Contract Sum shall be deemed to have been calculated in the manner set out below and shall be subject to adjustment in the events specified hereunder:

The prices contained in the Schedule of Goods are based upon the types and rates of duty, if any, and tax, if any, by whomsoever payable which at the date 5 days before the date fixed for lodgement of the tender are payable on the import, purchase, sale, appropriation, processing or use of the materials and goods specified in the list attached thereto under or by virtue of any Act of Parliament. A type and a rate so payable are in the next paragraph referred to as a "tender type" and a "tender rate".

If in relation to any materials or goods specified as aforesaid a tender rate is increased or decreased, or a tender type ceases to be payable or a new type of duty or tax becomes payable on the import, purchase, sale, appropriation, processing or use of those materials or goods, then in any such case the nett amount of the difference between what the Contractor actually pays in respect of those materials or goods, and what he would have paid in respect of them had the alteration, cessation or imposition not occurred, shall, as the case may be, be paid to or allowed by the Contractor. In this paragraph the expression a "new type of duty or tax" includes additional duty or tax and a duty or tax imposed in regard to specified materials or goods in respect of which no duty or tax whatever was previously payable.

18 Prevention of Corruption

If the Contractor shall offer or give or agree to give to any person any gift or consideration of any kind as an inducement or reward for doing or for forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the Contract or any other Contract with the Employer, or for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other Contract with the Employer, or if the like acts shall have been done by any person employed by him or acting on his behalf (whether with or without the knowledge of the Contractor), or if in relation to any Contract with the Employer the Contractor or any person employed by him or acting on his behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916, or shall have given any fee or reward, the receipt of which is an offence under Section 68(2) of the Local Government (Scotland) Act 1973, the Employer may forthwith determine the Contract and may hold the Contractor liable for any loss or damage which the Employer may thereby sustain.

19 Health & Safety Performance Standards (“the Standards”)

Tenderers are expressly directed to note that, when carrying out work for the Employer, they should take cognisance of the Health & Safety Performance Standards prepared by the Employer's Property Services, a copy of which has been issued to all tenderers on the Employer's Standing List of Contractors. These Standards will be updated to reflect the Employer's current requirements with regard to Health and Safety and it is the responsibility of the company holding a copy of this document to ensure any updates or amendments are incorporated and complied with.

Additional copies of this document can be obtained from the Head of Property, Angus Council, Bruce House, Arbroath DD11 3TP however a charge will be made for this service.

Tenderers must be aware of the contents of this document and will be expected to take cognisance of the standards contained therein and will be held responsible for ensuring all subcontractors employed are conversant with the requirements of same.

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

Nothing contained in the Standards 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 Standards shall be within the sole discretion of the Employer and failure to notify non-compliance with the Standards 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 the Standards.

20 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:

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 "X")
- ◇ 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.

21 Determination

21.1 Notices

Any notice shall be in writing and served by actual delivery, registered post or recorded delivery. If served by registered post or recorded delivery the notice shall be deemed to have been received 48 hours after the time of posting (excluding Saturdays, Sundays and public holidays).

21.2 Determination by Employer

- 1) Without prejudice to any other rights or remedies which the Employer may possess, if the Contractor shall make default in any one or more of the following respects, that is to say:-
 - a) If he without reasonable cause wholly suspends the carrying out of the works before completion thereof, or
 - b) If he fails to proceed regularly and diligently with the Works, or
 - c) If he refuses or persistently neglects to comply with a written notice from the Architect/ Contract Administrator requiring him to remove defective work or improper materials or goods and by such refusal or neglect the Works are materially affected, or
 - d) If he fails to comply with the requirements of Clause 26 Gas Installations and Repairs.

If he fails to comply with the provisions of these Conditions, then the Architect/ Contract Administrator may give notice specifying the default, and if the Contractor either shall continue such default for fourteen days after receipt of such notice or shall at any time thereafter repeat such default then the Employer may within ten days after such continuance or repetition by notice by registered post or recorded delivery forthwith determine the employment of the Contractor under this Contract, provided that such notice shall not be given unreasonably or vexatiously.

- 2) In the event of the Contractor becoming bankrupt or making a composition or arrangement with his creditors or having a winding up order made or (except for purposes of reconstruction) a resolution for voluntary winding up passed or a provisional liquidator, receiver or manager of his business or undertaking duly appointed, or possession taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in or subject to the floating charge, the employment of the Contractor under this Contract shall be forthwith automatically determined but the said employment may be reinstated and continued if the Employer and the Contractor, his trustee in bankruptcy, liquidator, provisional liquidator, receiver or manager as the case may be shall so agree.
- 3) The Employer shall be entitled to determine the employment of the Contractor under this or any other contract, if the Contractor shall have offered or given or agreed to give to any person any gift or consideration described in clause 18.

- 4) In the event of the employment of the Contractor under this Contract being determined as aforesaid and so long as it has not been reinstated and continued, the following shall be the respective rights and duties of the Employer and Contractor:
- a) The Employer may employ and pay other persons to carry on and complete the Works and he or they may enter upon the Works and use all temporary buildings, plant, tools, equipment, goods and materials intended for, delivered to and placed on or adjacent to the Works, and may purchase all materials and goods necessary for the carrying out and completion of the Works.
 - b) The Contractor shall (except where the determination occurs by reason of the bankruptcy of the Contractor or of him have a winding up order made or (except for the purposes of reconstruction) a resolution for voluntary winding up passed), if so required by the Employer or Architect/ Contract Administrator within fourteen days of the date of determination, assign to the Employer, without payment, the benefit of any agreement for the supply of materials or goods and/or for the execution of any work for the purposes of this Contract but on the terms that a supplier or sub-contractor shall be entitled to make any reasonable objection to any further assignment thereof by the Employer. In any case the Employer may pay any supplier or sub-contractor for any materials or goods delivered or works executed for the purposes of this Contract (whether before or after the date of determination) in so far as the price thereof has not already been paid by the Contractor.
 - c) The Contractor shall, as and when required in writing by the Architect/ Contract Administrator so to do (but not before), remove from the Works any temporary buildings, plant, tools, equipment, goods and materials belonging to or hired by him. If within a reasonable time after any such requirement has been made the Contractor has not complied therewith, then the Employer may (but without being responsible for any loss or damage) remove and sell any such property of the Contractor, holding the proceeds less all costs incurred to the credit of the Contractor.
 - d) The Contractor shall allow or pay to the Employer in the manner hereinafter appearing the amount of any direct loss and/or damage caused to the Employer by the determination. Until after completion of the Works under paragraph (a) of this sub-clause the Employer shall not be bound by any provision of this contract to make any further payment to the Contractor, but upon such completion and the verification within a reasonable time of the accounts therefore the Architect/ Contract Administrator shall certify the amount of expenses properly incurred by the Employer and the amount of any direct loss and/or damage caused to the Employer by the determination and, if such amounts when added to the monies paid to the Contractor before the date of determination exceed the total amount which would have been payable on due completion in accordance with this Contract, the difference shall be a debt payable to the Employer by the Contractor; and if the said amounts when added to the said monies less than the said total amount, the difference shall be a debt payable by the Employer to the Contractor.

21.3 Determination by Contractor

- (1) Without prejudice to any other rights and remedies which the Contractor may possess, if
- (a) The Employer does not pay to the Contractor the amount due on any certificate (otherwise than as a result of the operation of Clause 16 of these Conditions) within 14 days from the issue of that certificate and continues such default for seven days after receipt by registered post or recorded delivery of a notice from the Contractor stating that notice of determination under this Condition will be served if payment is not made within seven days from receipt thereof; or
 - (b) The Employer interferes with or obstructs the issue of any certificate due under this Contract; or
 - (c) The carrying out of the whole or substantially the whole of the uncompleted Works (other than the execution of work required under Clause 11 of these Conditions) is suspended for a continuous period of 3 months by reason of:

- (i.) force majeure, or
- (ii.) loss or damage (unless caused by the negligence of the Contractor, his servants or agents or of any sub-contractor, his servants or agents) occasioned by any one or more of the contingencies referred to in clause 13.3 of these Conditions (if applicable), or
- (iii.) Civil commotion, or
- (iv.) Architect/ Contract Administrator's instructions issued under these Conditions unless caused by reason of some negligence or default of the Contractor, or
- (v.) the Contractor not having received in due time necessary instructions, drawings, details or levels from the Architect/ Contract Administrator for which he specifically applied in writing on a date which having regard to the Date of Completion stated in the Appendix to these Conditions or to any extension of time was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for him to receive the same, or
- (vi.) delay on the part of artists, tradesmen or others engaged by the Employer in executing work not forming part of this Contract, or
- (vii.) the opening up for inspection of any work covered up or of the testing of any of the work materials or goods (including making good in consequence of such opening up or testing), unless the inspection or test showed that the work materials or goods were not in accordance with this Contract,

then the Contractor may thereupon by notice by registered post or recorded delivery to the Employer or Architect/ Contract Administrator forthwith determine the employment of the Contractor under this Contract; provided that such notice shall not be given unreasonably or vexatiously.

- 2) Upon such determination, then without prejudice to the accrued rights or remedies of either party or to any liability of the classes mentioned in clause 13 of these Conditions which may accrue either before the Contractor or any sub-contractors shall have removed his temporary buildings, plant, tools, equipment, goods or materials or by reason of his or their so removing the same, the respective rights and liabilities of the Contractor and the Employer shall be as follows, that is to say:-

(a) The Contractor shall with all reasonable dispatch and in such manner and with such precautions as will prevent injury, death or damage of the classes in respect of which before the date of determination he was liable to indemnify the Employer under clause 13 of these Conditions remove from the site all his temporary buildings, plant, tools, equipment, goods and materials and shall give facilities for his sub-contractors to do the same, but subject always to the provision of sub-paragraph (iv) of paragraph (b) following.

(b) After taking into account amounts previously paid under this Contract the Contractor shall be paid by the Employer:-

- (i.) The total value of work completed at the date of determination.
- (ii.) The total value of work begun and executed but not completed at the date of determination, the value being ascertained in accordance with these Conditions as if such work were a variation required by the Architect/ Contract Administrator.
- (iii.) The cost of materials or goods properly ordered for the Works for which the Contractor shall have paid or for which the Contractor is legally bound to pay,

(iv.)The reasonable cost of removal under paragraph (a) of this sub-clause.

(v.)Any direct loss and/or damage caused to the Contractor by the determination.

22 Adjudication/ Court Proceedings

1) Adjudication

- a) The Employer or the Contractor each has the right to refer any dispute as to a matter under the Contract for adjudication and either party may give notice in writing (hereinafter called the Notice of Adjudication) to the other at any time of his intention so to do. The adjudication shall be conducted under Scottish Building Contract Committee (SBCC) Adjudication Procedure or any amendment or modification thereof being in force at the time of the said Notice.
- b) Unless the adjudicator has already been appointed he is to be appointed by a timetable with the object of securing his appointment and referral of the dispute to him within 7 days of such notice.
- c) The adjudicator shall reach a decision within 28 days of referral or such longer period as is agreed by the parties after the dispute has been referred.
- d) The adjudicator may extend the period of 28 days by up to 14 days with the consent of the party by whom the dispute was referred.
- e) The adjudicator shall act impartially.
- f) The adjudicator may take the initiative in ascertaining the facts and the law.

The decision of the adjudicator shall be binding until the dispute is finally determined by legal proceedings or by agreement.

The adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith and any employee or agent of the adjudicator is similarly not liable.

2) Court Proceedings

When any dispute or difference is to be determined by court proceedings, then insofar as the Conditions provide for the issue of a certificate or the expression of an opinion or the giving of a decision, requirement or notice such provision shall not prevent the Court, in determining the rights and liabilities of the parties hereto, from making any finding necessary to establish whether such certificate was correctly issued or opinion correctly expressed or decision, requirement or notice correctly given on the facts found by the Court establishing what certificate ought to have been issued or what other opinion should have been expressed or what other decision, requirement or notice, should have been given as if no certificate, opinion, decision, requirement or notice had been issued, expressed or given.

23 Applicable Law

The Contract shall be regarded as a Scottish Contract and it shall be construed and the rights of the parties determined, in all respects according to the Law of Scotland.

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

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

25 Freedom of Information (Scotland) Act 2002

Anyone will have a right to receive information held by the Council under the Freedom of Information (Scotland) Act 2002 ("the Act"), with effect from January 2005. As part of the Council'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.

26 Required Memberships and Registrations

The Control of Asbestos Regulations 2006

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 Clause 21.2.

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.

27 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 Council'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.

28 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 or destruction of, or damage to, personal data.
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.

29 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.

APPENDIX X - UNSAFE OPERATIONS NOTICE



HEALTH & SAFETY AT WORK

NOTICE TO CONTRACTOR OF UNSAFE OPERATION

Property: <<PROJ_PROP_NAME>>

Works: <<PROJ_WORK_DESC>>

Contract dated & (project nr):(<<PROJID>>)

Contractor's name and address: <<MAIN_CNTR_COMPANY>>

<<MAIN_CNTR_ADDRESS>>

Date of Notice: INSERT DATE

I have to advise you that, in my opinion, you are not operating in a safe manner in relation to the item(s) listed below under "Areas of Concern".

It is my opinion that the carrying out of the identified operations in this manner carries an immediate risk to persons or failure of plant/ structure and I would advise you to take appropriate actions to eliminate or reduce this risk. Please advise me, in writing as soon as practicable, of what actions you propose to take, or have taken, to eliminate or reduce this risk.

Signed.....(on behalf of Angus Council)

Architect/ Contract Administrator/ Other Officer

Print Name Tel: Ext.

Copy to Health & Safety Executive (See Guidance Notes on reverse)

AREAS OF CONCERN

Area of Operation	Comments
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.....

THE ABOVE ISSUES HAVE BEEN RESOLVED AS FOLLOWS

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.....

Copies: Contractor/ Arch-Contract Administrator/ Officer/ Safety Section/ Head of Property

Signed.....(on behalf of Angus Council)

Architect/ Contract Administrator/ Other Officer

Date of Resolution:

NB A copy of this notice will be held on file and considered in any appraisal of the contractor's performance.

Head of Property, Angus Council, Bruce House, Wellgate, Arbroath DD11 3TP