



**Clackmannanshire  
Council**

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**Version 4 - October 2019**

**Clackmannanshire Council  
Standard Terms and Conditions  
Supply of Goods**

## Guidance Note to Users

These terms and conditions should be selected where the purchasing officer is seeking offers for the supply of goods. These terms and conditions should be used in un-amended form, unless otherwise approved by Legal Services and the Procurement Manager.

These conditions are not suitable for use for:

1. The purchase of services, being any services from consultancy, ongoing service provision or one for which registration is required with the Care Inspectorate;
2. The purchase of IT services;
3. The supply and fit of goods in respect of or ancillary to a public works contract;
4. Any public works contract; or
5. Any services contract that would fall within the meaning of construction operations in terms of section 104 and 105 of the Housing Grants, Construction and Regeneration Act 1996.

The supply and fit of goods is where a contract requires the contractor to supply **AND** thereafter install the goods for the Council. This contract is not regulated by the Sale of Goods Act 1979 (as amended) therefore these conditions cannot be used. Refer to Legal Services for further guidance.

These guidance notes are for the assistance of internal Council officers and do not form part of the Contract between the Council and the Supplier.

**Clackmannanshire Council**  
**Standard Terms and Conditions**  
**Supply of Goods**

These terms and conditions shall govern the relationship between the Council and the Supplier, and no other terms and conditions shall be accepted.

The selected terms and conditions will form the basis of any written signed contract between us, and will take precedence over any other conditions that you may propose.

No variation, replacement, alternative or substitute terms and conditions shall apply to the contract unless such terms are subscribed by the Clackmannanshire Council Procurement Manager.

This will be in accordance with section 3 of the Requirements of Writing (Scotland) Act 1995 and any attempt by the supplier to impose any alternative conditions (including the imposition of any clause superseding or constituting an entire agreement clause) shall be null and void and shall not be binding on the Council.

## **1. Definitions**

In these terms and conditions, unless otherwise stated, the following terms shall have the following meanings:

**"Award Letter"** means the formal acceptance letter signed by the proper officer of the Council accepting the Tender by the Supplier;

**"Commencement Date"** means the date specified in the Award Letter, failing which, the date falling 2 weeks after the Date of the Award letter issued by the Council to the Supplier, or such other date as the Council and the Supplier may agree in writing;

**"Community Benefit Provision"** means, without prejudice to the generality, the provision of paid or unpaid work placements, modern or vocational apprenticeships or training and educational training to persons within the local government area of the Council;

**"Completion Date"** means the date for delivery of the Goods by the Supplier, which date shall be set out in the Specification and/or Invitation to Tender, or failing which, set out in the Award Letter (which date may be extended by the agreement of the Council and the Supplier), or where the Goods are to be provided for on a call off basis, the earlier of (i) the date specified in that specific order or (ii) the Termination Date;

**"Contract"** means these terms and conditions and any supplementary conditions set out in the Invitation to Tender;

**"Contract Notice"** means the contract notice in respect of the proposed works published by the Employer on the Public Contracts Scotland Portal;

**"Council"** means Clackmannanshire Council, a local authority constituted under section 2 of the Local Government etc (Scotland) Act 1994 and having its principal offices at Council Offices, Kilncraigs, Greenside Street, Alloa, FK10 1EB;

**"Goods"** means the items set out in the Specification and the Invitation to Tender;

**"Interest Rate"** means a rate of 2% above the official dealing rate of the Bank of England current at the date that a payment due under this Contract becomes overdue;

**"Invitation to Tender"** means the invitation to tender either (i) sent out by the Council to the Contractor (and such other candidates) or (ii) downloaded from the Public Contracts Scotland Portal and completed by the Supplier, and in each case such invitation which includes the Specification;

**"Procurement Regulations"** means the Public Contracts (Scotland) Regulations 2015 - applied to Council contracts whose value is equal to or above the EC Procurement Threshold, Procurement Reform (Scotland) Act 2014 and the Procurement (Scotland) Regulations 2016 and any other legislation governing or regulating the purchase of goods, supplies and services by local authorities constituted under the Local Government etc (Scotland) Act 1994;

**"Public Contracts Scotland Portal"** means the national advertising portal maintained by the Scottish Government on behalf of (amongst others) the Employer;

**"Public Holiday"** means Christmas Day, Good Friday, a day which under the Banking and Financial Dealings Act 1971 is a Bank Holiday in Scotland and any week day being a local holiday which the principal offices of the Council are closed for business to the public;

**"Purchase Order"** means the purchase order referred to and enclosed with the Award Letter (which sum specified therein represents the Council's maximum expenditure under the Contract and is not a guarantee of any orders for the Services);

**"Specification"** means the written description of the goods to be supplied by the Supplier under the Contract as set out in the Invitation to Tender;

**"Supplier"** means the contractor selected by the Council following a response to the Invitation to Tender advertised by a Contract Notice in the Public Contracts Scotland Portal and being the entity set out in the Invitation to Tender and as identified in the Award Letter;

**"Tender"** means the formal offer to carry out the works by the Supplier to the Council in accordance with the requirements set out in the Invitation to Tender (and including any derogations as approved in accordance with clause 7.2);

**"Termination Date"** means the date falling 4 years after the Commencement Date, or such earlier date as is specified in terms of the Contract;

## **2. The Goods**

- 2.1 The Supplier shall supply the Goods to the Council by no later than the Completion Date. The Goods shall be fit for the purpose set out in the Specification and shall be of a satisfactory quality.
- 2.2 Where specified in the Invitation to Tender, the Council has made the Supplier aware of the Council's requirements, and that the Council is relying on the skill and judgement of the Supplier in supplying the Goods.
- 2.2 Notwithstanding the terms of clauses 2.1 and 2.2, the Supplier in supplying the Goods shall comply with:
- (a) all relevant Legislation;
  - (b) all applicable statutory consents;
  - (c) the applicable provisions of this Contract; and
  - (d) Good Industry Practice

## **3. The Price**

- 3.1 The price payable by the Council shall be the price set out in the Suppliers Tender, as adjusted by the Award Letter and the Purchase Order and shall be payable in accordance with clause 3.2 below. No increases in the price shall be permissible except in accordance with this Contract. Where the Contract Notice, Specification and/or Invitation to Tender specify that the Contract is made on a call off or as required basis, the Supplier expressly acknowledges that there is no guarantee of any orders for the Goods being instructed by the Council.
- 3.2 The Supplier shall invoice the Council on or after the Goods have been delivered to the Council in accordance with clause 4, setting out the price for the Goods as set out in the Tender. All invoices must quote the Purchase Order number. The Council reserves the right to reject or withhold payment where the Supplier fails to comply with the terms of this clause. At no time shall the Supplier be entitled to payment in advance under this Contract.
- 3.3 Where the Supplier is VAT registered, the invoice must comply with the requirements of the Value Added Tax Act 1994 or such other legislation that may be enacted in relation to input tax from time to time.

3.4 Where the Council has specified within the Invitation to Tender that they can place multiple orders with the Supplier under this Contract, the terms of the Contract shall apply mutatis mutandis to each order placed with the Supplier, and the terms of the Contract shall be construed accordingly.

3.5 The Contractor shall be required to provide a minimum of twenty eight (28) days written notice of any proposed increase in price and shall be required to submit documentary evidence to support any proposed increase to the satisfaction of the Council's Procurement Manager.

–The proposed increase shall not be applied until the Council is satisfied as to the validity of such increase and the Council shall have the right to call for any further information required to enable substantiation of such increase. The Council shall only be obliged to consider any proposed increase if it arises from a general rise in the market in the cost of raw materials or the cost of delivery due to circumstances outwith the contractor's control and which were not reasonably foreseeable at the time of the Tender Response.

If the proposed increase is deemed by the Council to be uncompetitive/unacceptable the Council may remove the Article, Goods, Material or related Service to which the increase is to be applied from the Contract and source such Article, Goods, Material or related Service from another supplier/contractor.

#### **4. Delivery and Performance**

4.1 The Goods shall be delivered to the place specified within the Specification, or failing which the Award Letter. If neither is specified, the Goods shall be delivered to such address is specified in writing by the Council to the Supplier.

4.2 Title to and risk in the Goods (subject to the provisions of clause 6) shall pass on delivery of the Goods by the Supplier to the Council.

4.3 The time of delivery shall be of the essence and failure to deliver the Goods by the date set out in the Award Letter and/or Specification shall be a material breach of contract where the Supplier fails to deliver the Goods by the above date. Such failure shall entitle the Council to terminate the contract without compensation (or payment or acceptance of the Goods being required) being payable to the Supplier, and such right is without prejudice to any other such remedy as the Council may have under this Contract.

4.4 The Provider may not subcontract its interests and/or obligations under the Contract to any other person without the prior consent in writing of the Council which consent shall not be unreasonably withheld. Such consent shall not be required where the Supplier has

stated their intention to subcontract part or all of the Contract in the Tender.

- 4.5 Where there is agreement to sub-contract any part of the performance of the Suppliers obligations, the Supplier shall be responsible for the acts and/or omissions of their sub-contractors as though they were their own and shall ensure that the terms of the Contract are reflected mutatis mutandis to any sub contractor.
- 4.6 Subject to the provisions of clause 4.7, neither party may assign its interests and/or obligations under the Contract to any other person without the prior consent in writing of the other party, which consent shall not be unreasonably withheld.
- 4.7 The Council shall be free to assign its interests and/or obligations under the Contract without the consent of the Supplier to any other local authority constituted in terms of the Local Government etc (Scotland) Act 1994, providing that the Council gives the Supplier not less than 7 days written notice of its intention to do so.
- 4.8 The Supplier represents and warrants to the Council that the Supplier has satisfied himself that all necessary tests, inspections 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 Council adequate information about the use for which the Goods have been designed and have been tested and about any conditions necessary to ensure that when put to use the goods will be safe and without risk to health.
- 4.9 With prejudice to the generality of clause 4.8 hereof, the Supplier shall indemnify the Council against all actions, suits, claims, demands, losses, charges, costs and expenses which the Council may suffer or incur as a result of or in connection with any breach of this clause 4.8

#### **4A. Health & Safety**

- 4A.1 The Supplier operates appropriate health and safety policies and must perform the contract in accordance with all current health and safety legislation. If requested by the Council, the Supplier provides the Council with a copy of his current health and safety policy statement.
- 4A.2 The Council must be notified immediately by the Supplier of any risks to health or safety which are identified or arise during the performance of the Contract.
- 4A.3 While on the Council's premises, the Supplier shall comply at all times with any health and safety measures implemented by the Council in

respect of the premises and notifies the Council immediately of any incident occurring while the Supplier is on the premises which causes or is likely to cause any personal injury or damage to property.

- 4A.4 If work is to be carried out at the Council's premises, the Council will notify the Supplier of any health and safety hazards which may exist or arise at the premises and which may affect the Supplier in the performance of his duties under this contract.

## **5. Damage in Transit**

- 5.1 On dispatch of any consignment of the Goods the Supplier shall send to the Council at the address for delivery of the Goods as specified in clause 4.1, an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. The Supplier shall free of charge and as quickly as possible either repair or replace (as the Council shall elect) such of the Goods as may either be damaged in transit or having been placed in transit fail to be delivered to the Council provided that:

- (a) In the case of damage to such Goods in transit the Council shall within 30 days of delivery give notice (either verbally or in writing) to the Supplier that the Goods have been damaged;
- (b) In the case of non-delivery the Council shall (provided always that the Council has been advised of the dispatch of the Goods in accordance with this clause 5) within ten days of the notified date of delivery give notice to the Supplier that the Goods have not been delivered.



## **6. Inspection, Rejection and Guarantee**

- 6.1 The Supplier shall permit the Council or his authorised representatives to make any inspections or tests he may reasonably require and the Supplier shall afford all reasonable facilities and assistance free of charge at his premises. No failure to make complaint at the time of such inspection or tests and no approval given during or after such tests or inspections shall constitute a waiver by the Council of any rights or remedies in respect of the Goods.
- 6.2 The Council may by written notice to the Supplier reject any of the Goods which fail to meet the requirements specified in the contract. Such notice shall be given within a reasonable time after delivery to the Council of Goods concerned. If the Council shall reject any of the Goods pursuant to this Condition the Council shall be entitled (without prejudice to his other rights and remedies) either:
- (a) To have the Goods concerned as quickly as possible either repaired by the Supplier or (as the Council shall elect) replaced by the Supplier with Goods which comply in all respects with the requirements specified herein; or
  - (b) To obtain a refund from the Supplier in respect of the Goods concerned.
- 6.3 The guarantee period applicable to the Goods shall be 12 months from the date that the Council puts the goods into service or 18 months from the actual date of delivery, whichever shall be the shorter (subject to any alternative guarantee arrangements agreed in writing between the Council and the Supplier). If the Council shall within such guarantee period or within 30 days thereafter of the expiry of such period 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 Council may have) as quickly as possible remedy such defects (whether by repair or replacement as the Council shall elect) without cost to the Council.
- 6.4 Any Goods rejected or returned by the Council as described in paragraphs 6.2 or 6.3 shall be returned to the Supplier at the Supplier's risk and expense.

## **7. Variations - Contract Terms**

- 7.1 No variations to these contract terms shall be accepted by the Council except where the variation procedure detailed in this clause 7 has been complied with.
- 7.2 Any request for variations or alterations to these terms and conditions must be sent in writing to (i) the Governance Manager, Council Offices, Kilncraigs, Greenside Street, Alloa, FK10 1EB; (ii) by enclosing a Schedule of Derogations with the Tender; or (iii) by email to: [procurement@clacks.gov.uk](mailto:procurement@clacks.gov.uk). Providing that the supplier provides a copy of the proposed variation(s) or replacement terms, the Governance Manager will consider any such request and will advise the Supplier accordingly.
- 7.3 No variation, replacement, alternative or substitute terms and conditions shall apply to the contract unless such terms are subscribed by the Governance Manager and in accordance with section 3 of the Requirements of Writing (Scotland) Act 1995 and any attempt by the Supplier to impose any alternative conditions (including the imposition of any clause superseding or constituting an entire agreement clause) shall be null and void and shall not be binding on the Council.

## **8. Variations - Specification**

- 8.1 The Council shall be entitled to add or remove Goods from the scope of the Contract.
- 8.2 Where the Goods are priced within the Tender, the additional Goods shall be supplied at no greater cost than is specified for such item(s) in the Suppliers Tender. Where the Goods to be supplied are reduced in number then the applicable deduction shall be made from the final price payable.
- 8.3 Where the Goods to be ordered are not described in the Specification, but are ancillary to the requirements of the Specification, the Council may issue a request for quotation for such additional Goods to the Supplier.
- 8.4 The Supplier shall within 14 days (or such other period as may be agreed) provide the quotation for the additional Goods. The Council may either accept the quotation or determine not to proceed with the order for the additional Goods.
- 8.5 Where the Council accepts the quotation, the additional Goods shall be provided to the Council by the Supplier in accordance with the Contract. If the Council rejects the quotation, no compensation shall be payable to the Supplier.

- 8.6 The Council shall not be required to make payment for any additional Goods supplied in accordance with clauses 8.3 to clauses 8.5, except where (i) this clause has been complied with by the Supplier or (ii) the Council has advised the Supplier that the additional Goods are required as a result of an emergency or unforeseen circumstances and as such the terms of clause 8.6 do not apply. In order to rely on the terms of clause 8.6, the Supplier shall notify the Council of this in writing (but only in the case where verbal instructions have been given).

## **9. Termination of the Contract**

- 9.1 Without prejudice to any other rights or remedies of the Council under the Contract the Council shall have the right forthwith to terminate the Contract by written notice to the Supplier or the appropriate trustee in bankruptcy or sequestration, receiver, liquidator or administrator:
- (a) where the Supplier is an individual and if a petition is presented for the Supplier's bankruptcy or the sequestration of his estate or a criminal bankruptcy order is made against the Supplier, or he is apparently insolvent, or he makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator or trustee is appointed to manage his affairs; or
  - (b) where the Supplier is not an individual but is a firm or a number of persons acting together in any capacity, if any event in (a) or (c) of this Condition occurs in respect of the firm or any partner in the firm or any of those persons or a petition is presented for the Supplier to be wound up as an unregistered company; or
  - (c) where the Supplier is a company, if the company passes a resolution for winding-up or dissolution (otherwise than for the purposes of and followed by a solvent 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.
- 9.2 The Council may terminate the Contract where the Supplier is in material breach of any of the terms of this Contract. Where such a term is not specified as such, the Council may by immediate written notice notify the Supplier that they are in material breach of Contract, and give the Supplier a period of not less than 14 days (or such longer period as the Council may determine) to rectify the material breaches set out in the notice.

- 9.3 The Council shall be entitled by notice to the Supplier to terminate the Contract, any other contract with the Council if, in relation to this or any other such contract, the Supplier or any person employed by him, or acting on his behalf shall have:
- (i) Committed an offence under the Bribery Act 2010; or
  - (ii) Shall have given any fee or reward the receipt of which is an offence under section 66 of the Local Government (Scotland) Act 1973 or any re-enactment thereof; or
  - (iii) Committed any breach of the Employment Relations 1999 Act (Blacklists Regulations) 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992; or
  - (iv) Committed any breach of the Data Protection Act 2018 by unlawful processing of personal data in connection with any blacklisting activities described at (iii) above.
- 9.4 In the event that the Council receives notification by an economic operator (within the meaning of the Procurement Regulations) that they intend to challenge the award of this Contract by the Council to the Supplier, the Council may on giving immediate written notice to the Supplier, either (i) suspend the operation of the Contract; or (ii) terminate the Contract in its entirety.
- 9.5 In the event of termination or suspension pursuant to this section 9.4, no compensation, damages or other monetary payment shall be due by the Employer to the Contractor.
- 9.6 The right of the Council to terminate or suspend the Contract in accordance with sections 9.4 and 9.5 shall expire on the date occurring 4 months from the publication by the Council of a contract award notice in the Public Contracts Scotland Portal.
- 9.7 In the event that the Council does not exercise its rights under clauses 9.1 to 9.6, this Contract (subject to the any of the parties accrued rights herein) shall terminate on the Termination Date.
- 9.8 On or before the Termination Date, the Supplier shall (if requested) return all documents and other information supplied by the Council in relation to this Contract (unless the Council requires the Supplier to destroy or securely dispose of such documents).

## **10. Governing Law and Jurisdiction**

- 10.1 This Contract shall be considered as a contract made in Scotland and shall be subject to the Laws of Scotland.

- 10.2 The Supplier and the Council agree that the courts of Scotland shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Contract and irrevocably submit to the jurisdiction of those courts.

### **11. 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 and if so sent to the address of the party shown on the Purchase Order, or to such other address as the party may by notice to the other have substituted 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, or in the case of the Council, in accordance with the relevant provisions of the Local Government (Scotland) Act 1973. All notices to be served on the Council must be served on the Governance Manager, Clackmannanshire Council, Kilncraigs, Greenside Street, Alloa, FK10 1EB

### **12. Severability**

If any provision of this Contract shall be declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Contract.

### **13. Third Party Rights**

Save to the extent expressly provided in this Contract and, to avoid doubt, without prejudice to the rights of any permitted successor to the rights of the Supplier or of any permitted assignee, it is expressly declared that no rights shall be conferred under and arising out of this Contract upon any person other than the Council and the Supplier and without prejudice to the generality of the foregoing, there shall not be created by this Contract a *jus quaesitum tertio* in favour of any person whatsoever.

### **14. Limitation of Liability**

- 14.1 Nothing in this Contract shall exclude or limit liability of the Council or the Supplier in respect of any death or personal injury to any party caused by the negligence of that party.
- 14.2 in respect of any sanctions or fines imposed due to the breach or breaches of the Data Protection Act 1998 by the Information Commissioners Office, £500,000 on an each and every occurrence basis;
- 14.3 in respect of any losses, damage or destruction caused by the default of the Supplier under this Agreement for which there is a policy of

insurance in place, the sum specified in the Specification, Invitation to Tender or such other document which states the requisite insurance level; or

- 14.4 in respect of any losses, damage or destruction caused by the default of the Council under this Agreement for which the Council is required by law to have in place a policy of insurance, the sum of £1million pounds sterling (or such higher sum that the Council may notify in writing to the Supplier); or
- 14.5 in respect of any other losses howsoever arising as a result of that party's breach of contract, the total amount payable under the Contract. Where the Contract is a call off arrangement, then such sum shall be limited to the value of any orders placed with the Supplier under the Contract.
- 14.6 Notwithstanding the above provisions, nothing in this clause shall allow for the Supplier to claim for any special or indirect, consequential or indirect losses, loss of profit, turnover, additional business or damage to goodwill.
- 14.7 Nothing in this clause 14 shall affect the parties general duty to mitigate any losses incurred.

## **15. Freedom of Information & Data Protection**

- 15.1 Where the Supplier processes (or will process) or controls (or will control) personal data it hereby confirms that it has (or will acquire) a valid notification with the Information Commissioner as defined by section 6 of the Data Protection Act 2018 covering its processing of personal data, including in that notification the disclosure of personal data to the Council. This requirement shall not apply if the Supplier is, by virtue of the Data Protection (Notification and Notification Fees) Regulations 2000, exempt from the requirement to notify.
- 15.2 The Supplier hereby warrants:
  - (i) that the processing and/or controlling of any information will be subject to technical and organisational security measures of a sort, which if the Supplier were the data controller in respect of the Resident Information, would satisfy the Seventh Data Protection Principle;
  - (ii) that it will take reasonable steps to ensure compliance with the measures described in Clause 15.2(i) above;
  - (iii) that it will process the Resident Information only in accordance with instructions from the Council and the terms of the Contract; and
  - (iv) that it will comply with all obligations imposed by the Seventh Data Protection Principle as though the Supplier were the data controller in respect of the Resident Information.

- 15.3 In the Contract the expressions “personal data”, “data controller”, “data processor”, “processing” and “process” shall have the meanings assigned to them by the Data Protection Act 2018, and the “Seventh Data Protection Principle” shall mean the Seventh Principle set out in Part 1 of Schedule 1 to that Act.
- 15.4 The Supplier shall not be required to pass any information to the Council if in doing so would cause the Supplier to breach the terms of the Data Protection Act 2018. The Supplier must supply detailed reasons in terms of the said Act in support of such an assertion within a reasonable timescale specified by the Council.
- 15.5 the Supplier shall be prohibited from undertaking any secondary processing or from passing to any third party or utilising any storage medium or processing outside the bounds of the United Kingdom, without the express written consent of the Council.
- 15.6 At the end of the Contract, the obligations contained in this clause 14 shall continue in full force and effect (notwithstanding the event of earlier termination of the Contract in accordance with its terms) until all personal data that has been passed to the Supplier by the Council as part of the Contract has been destroyed.
- 15.7 The Supplier shall indemnify the Council in respect of any claims, losses, fines, damages or other such liability howsoever arising in respect of the Suppliers breach of this clause 15.
- 15.8 The Supplier acknowledges the Council's obligations under the Freedom of Information (Scotland) Act 2002 ("the 2002 Act") and acknowledges in particular that the Council may be required to provide information relating to the Contract or the Supplier to any person on request in order to comply with the 2002 Act. The Council will presume the information submitted by the Supplier to the Council is not commercially sensitive unless specifically drawn to the Council's attention. The Council must act in accordance with the 2002 Act but in deciding whether to release any information in response to a request for information shall where practicable take into account any opinion of the Supplier as regards commercial confidentiality and, in particular, any reasons given to support such exemption
- 15.9 Where the Council seeks to consult the Supplier in connection with a request for information made under the 2002 Act the Supplier will facilitate the Council's compliance with the 2002 Act by consulting timeously with the Council.
- 15.10 The Supplier shall keep secret and not disclose (and shall procure that his employees, agents, sub-contractors or any party that the Supplier is legally responsible for, keep secret and not disclose) any information of a confidential nature obtained by the Supplier by reason of the Contract, except information which is in the public domain otherwise than by reason of a breach of this Clause.

## **16. Unlawful Discrimination**

- 16.1 The Supplier 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 (the "Act").
- 16.2 The Supplier shall monitor its own staff and sub-contractors and provide such information on request to the Council. The Supplier shall provide such information as the Council requires about its policies and practices concerning the prevention of unlawful discrimination and the promotion of equality and diversity and equality both in terms of employment and customer service. The Council and the Supplier shall continue to monitor the performance and objectives of the Contract throughout the duration of the Contract and to make any amendments or changes necessary to the Contract or its performance or objectives in order further to promote equality.
- 16.3 The Supplier shall notify the Council immediately in writing as soon as it becomes aware of any investigation or proceedings brought against the Supplier under the Act.
- 16.4 Where any investigation is undertaken by a person or body empowered to conduct such an investigation and/or proceedings are instituted following such an investigation against the Supplier or against the Council either in connection with the performance of the Contract or otherwise, the Supplier shall at its own expense:
- i) provide any information requested in the timescale allotted;
  - ii) attend any meetings as required and permit its staff and sub-contractors to attend any meetings as required;
  - iii) promptly allow access to and investigation of any documents or data deemed to be relevant to the investigation;
  - iv) allow itself and any of its Staff and sub-contractors to appear as witnesses in any proceedings; and
  - v) co-operate fully and promptly with the person or body conducting the investigation during the course of the investigation.
- 16.5 Where any investigation is conducted, or proceedings are brought which arise directly or indirectly out of any act or omission of the Supplier, its Staff or sub-contractors and where there is a finding against the Supplier in any such investigation or proceedings, the Supplier shall, without prejudice to indemnify the Council with respect proceedings, costs, expenses (including legal and administrative expenses), liabilities, injury, loss or damages arising from or incurred by the Council during or in connection with any such investigation or proceedings and further indemnify the Council for any compensation,



loss or damages, costs, expenses (including legal and administrative expenses) or other award the Council may be ordered or required to pay to a third party.

- 16.6 If a finding of unlawful discrimination or breach of equality and diversity legislation is made against the Supplier or against the Council arising from the conduct of the Supplier, the Supplier shall take such immediate remedial steps, as the Council may reasonably require, to prevent any further unlawful discrimination or breaches of equality and diversity legislation.
- 16.7 If the Supplier enters into any sub-contract in connection with this Contract, the Supplier shall impose obligations on its sub-contractors terms which are identical to those imposed on it in this clause 16. The Council expects that the Supplier will not subcontract to any business, service or group which has a poor history of discrimination in employment or service delivery.
- 16.8 In recognition of the Council's legal obligation to tackle discrimination and promote equalities and diversity in all its functions and policies under the Act, the Council may from time to time require the Supplier complete a questionnaire and/or provide information to the Council on the extent and quality of the Supplier's equalities and diversity policies and practice.

## **17. Entire Agreement**

Except where expressly provided otherwise in this Contract, this Contract constitutes the entire agreement between the Council and the Supplier in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement.

## **18. Waiver**

- 18.1 Any relaxation, forbearance, indulgence or delay (together "indulgence") of any party in exercising any right shall not be construed as a waiver of the right and shall not affect the ability of that party subsequently to exercise that right or to pursue any remedy, nor shall any indulgence constitute a waiver of any other right (whether against that party or any other person).
- 18.2 Notwithstanding any breach of this Contract by either party, and without prejudice to any other rights which the party may have in relation to it, the other party may elect to continue to treat this Contract as being in full force and effect and to enforce its rights under this Contract. The failure of any party to exercise any right under this Contract, including any right to terminate this Contract and any right to claim damages, shall not be deemed a waiver of such right for any continuing or subsequent breach.

## **19. Set Off and Retention of Sums Due**

- 19.1 Wherever under the Contract any sum of money is recoverable from or payable by the Supplier, that sum may be deducted from any sum then due, or which at any later time may become due, to the Supplier under the Contract or under any other agreement or contract with the Council or with any department, agency or authority of the Council.
- 19.2 Without prejudice to the terms of clause 19.1 above, where the Supplier has offered within the Tender to provide Community Benefit Provision to the Council (pursuant to the Council's statutory powers under the Local Government in Scotland Act 2003), the Supplier shall be obliged to deliver the Community Benefit Provision in accordance with the Tender and any further requirements of the Council and at no cost to the Council as more particularly specified in the Specification and Invitation to Tender.
- 19.3 In the event that the Supplier fails to provide the Community Benefit Provision in accordance with their Tender, the Council reserves the right, on giving the Supplier not less than 7 days written notice, to either (i) provide the Community Benefit Provision directly; or (ii) employ others to carry out the Community Benefit Provision.
- 19.4 The Supplier shall be liable for all additional costs incurred by the Council in connection with such employment and such costs may be withheld or deducted by the Council from any monies due or to become due to the Supplier under this Contract or shall be recoverable from the Supplier as a debt.

## **20. Payment**

- 20.1 Unless otherwise stated in the Contract, payment will be made within 30 days of receipt of and agreement of invoices, submitted monthly in arrears, for work completed to the satisfaction of the Purchaser.
- 20.2 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge