

ABERDEENSHIRE COUNCIL

STANDARD TERMS AND CONDITIONS

RELATING TO THE PROCUREMENT OF GOODS (LOW RISK/LOW VALUE)

VERSION 2.0

Documentation Control

Revision History

Version	Effective Date	Author	Changes Made
Version 1.0	Effective from 11/04/11	AD	
Version 2.0	Effective from 30/04/14	AD	Termination for Blacklisting added at 12.3

Circulation

Name	Date
CM's, SP's, SPS, CI, AD, Intranet, PCS Website, Master File	05/05/14

Goods

- 1.1 **Goods to comply.** The Goods must comply with the acceptance criteria which are set out in the Contract and be fit for purpose in all respects.
- 1.2 **Ownership of Goods.** Unless Clause 1.3 applies, ownership of the Goods will pass to the Council when the Goods have been delivered to the Council in accordance with Clause 1.4. Risk of loss, damage or destruction will pass to the Council with ownership.
- 1.3 **Ownership of the Goods – pre-payment.** If the Contract Award Letter includes a payment schedule which requires payment by the Council before delivery of the Goods, ownership of the Goods will pass to the Council when payment is made. Risk of loss, damage or destruction will pass to the Council when the Goods have been delivered to the Council in accordance with Clause 1.4. Prior to delivery the Goods will be clearly marked by the Supplier as the property of the Council.
- 1.4 **Delivery.** Delivery of the Goods must be made at such times and to such locations as the Contract specifies. The time and date of delivery is of the essence. The signature or acceptance of a delivery note will not constitute evidence of acceptance of the Goods.
- 1.5 **Rejecting Goods.** At any time within 30 days of delivery, the Council may reject any Goods which do not meet the requirements of the Contract. After rejection the Council may choose (without affecting any of its other rights) to have any rejected Goods repaired or replaced by the Supplier, or to obtain a refund. If asked, the Supplier will uplift any rejected Goods without delay, and risk of loss, damage or destruction will pass to the supplier on uplift.
- 1.6 **Guarantee.** The Goods will be guaranteed by the Supplier for the period of 12 months from the delivery of the Goods. Without affecting any of the Council's other rights, if the Council asks the Supplier must remedy any defect in any of the Goods which occurs during the guarantee period, under proper and normal use of the Goods.
- 1.7 **Services only contract.** If no Goods are to be supplied in accordance with the Contract, Clauses 1.2 to 1.6 will not apply.

2 Services

- 2.1 **Skill and care.** Services must be provided by the Supplier in accordance with the Contract with all reasonable skill, care and diligence.

3 Progress Reports and monitoring

- 3.1 **Progress reports.** When asked by the Council, the Supplier must provide reports showing the progress of the performance of the Contract, the associated costs and performance of the Supplier against the key performance indicators which are set out in the Contract.
- 3.2 **Format and timing.** The Council may from time to time specify the format of the reports, and the Supplier will use that format. The Supplier must issue reports 2 days in advance of any review meetings scheduled by the Council.

4 Payment

- 4.1 **The Charges.** After completion of the Contract, the Council will pay to the Supplier the Charges. If the Contract Award Letter includes a different payment schedule, that schedule will apply. The Charges are inclusive of the costs of delivery of any Goods, and inclusive of the Supplier's travel, accommodation and subsistence costs.
- 4.2 **Payment.** The Council will pay the Supplier within 30 days of the date of receipt of a valid invoice from the Supplier. If the Contract Award Letter includes different payment terms, those terms will apply.
- 4.3 **Disputed invoices.** If there is a Dispute in relation to an invoice, or performance of the Contract to which the invoice relates, the Council may withhold payment of the disputed part of the invoice until the Dispute is resolved.

4.4 **VAT and invoices.** All Charges are exclusive of Value Added Tax. If any Value Added Tax is payable, the Supplier will show this separately on its invoice.

5 Access to Premises

5.1 **Agreeing access.** If the Contract needs access to any Council Premises, the dates, times and other arrangements will be agreed between the Parties, each acting reasonably.

5.2 **Council instructions.** The Supplier will comply with (and procure that all Contract Workers comply with) all reasonable instructions given by the Council in relation to the access to and use of Council Premises.

6 Employees

6.1 **Key employees.** If the Contract identifies roles and responsibilities for particular personnel of the Supplier, the Supplier will use those personnel as so identified, unless the Council agrees to changes.

6.2 **Experienced employees.** The Supplier will use suitably experienced and qualified personnel for carrying out the Contract.

7 Indemnity

7.1 **Supplier's indemnity.** If the Supplier or any Supplier Party is negligent in relation to the Contract, the Supplier will indemnify the Council against all liabilities the Council may incur as a result of such negligence.

8 Insurance

8.1 **Supplier to insure.** On the request of the Council, the Supplier will exhibit satisfactory evidence of the insurance policies required by law or required specifically by the Contract, together with satisfactory evidence of payment of the premia.

8.2 **Goods.** The Supplier shall maintain insurance, to the level of full replacement value, against the loss, damage or destruction of Goods which occurs whilst the Goods are under its control, including in circumstances where Goods are returned to the Supplier by the Council.

9 Intellectual property rights

9.1 **Supplier's indemnity.** If (a) the Supplier infringes the Intellectual Property Rights of any third party in relation to the Contract, or (b) the Council uses Materials provided to it by the Supplier for purposes contemplated or envisaged by the Contract and in so doing infringes the Intellectual Property Rights of any third party, the Supplier will indemnify the Council against all liabilities the Council may incur as a result of such infringement.

9.2 **Council documents.** All Intellectual Property Rights in any Materials which are made available to the Supplier by the Council will not be owned by the Supplier, and will be owned by the Council (or a third party owner, as the case may be).

9.3 **Transfer of IPR – materials prepared by Supplier.** All Intellectual Property Rights in any Materials prepared by or for the Supplier as the Supplier performs the Contract will be owned by the Council. If asked, the Supplier will sign and deliver an assignation of such Intellectual Property Rights to confirm ownership by the Council.

9.4 **Licence of IPR – pre-existing materials.** If there are Intellectual Property Rights in any Materials which are provided to the Council, but which have not been prepared by or for the Supplier as the Supplier performs the Contract, the Council will have all necessary and appropriate licence rights in relation to such Intellectual Property Rights to allow it to use the Materials for all purposes contemplated or envisaged by the Contract. The licence will be non-exclusive and royalty free. If asked, the Supplier will sign and deliver a licence of such Intellectual Property Rights to confirm the licence rights held by the Council.

10 Disputes

- 10.1 **Notice of dispute.** Any Dispute shall be notified, by the party raising it, to the other party.
- 10.2 **Escalation.** If a Dispute is not resolved promptly by those with day to day responsibility for the contract, either party may require by a further notice that the dispute is escalated to the Head of Procurement of the Council (or a senior officer of the Council nominated by the Head of Procurement) and a person at director level (or equivalent) of the Supplier.
- 10.3 **Resolution.** If a Dispute is resolved after escalation, the agreed resolution shall be written down and signed by both parties.
- 10.4 **Court proceedings.** Court proceedings relating to any Dispute (other than proceedings seeking interim interdict or interim relief) shall not be commenced by either party unless the Dispute has been escalated in accordance with Clause 10.2 and the Dispute has not been resolved and the resolution recorded within 14 days of escalation.

11 Default

- 11.1 **Notification.** If the Supplier is in default against any obligation under the Contract the Council will notify the Supplier.
- 11.2 **Opportunity to remedy.** The Council will give the Supplier the opportunity to remedy any default or series of defaults which (in the opinion of the Council) is not material and capable of remedy. The Council will decide (acting reasonably) whether the Supplier is to be given the opportunity to remedy a default or series of defaults which is material.
- 11.3 **Remedy.** If the Supplier is given the opportunity by notice to remedy the default, the Supplier will remedy the default as soon as possible after the notice. If the Supplier has failed to remedy the default within 30 days of the notice there will be a Termination Default, and Clause 12.1 will apply.
- 11.4 **Force Majeure.** If an event beyond the control of the Supplier and the Council means that (in the opinion of the Council) the Supplier will be unable to remedy a default within 30 days of notice there will be a Termination Default, and Clause 12.1 will apply.
- 11.5 **Termination Default.** If the Supplier is not to be given the opportunity to remedy the default (or it is not capable of remedy) then there will be a Termination Default, and Clause 12.1 will apply.

12 Termination

- 12.1 **Termination for default.** The Council may at any time by notice terminate the Contract if:
- 12.1.1 there is an Insolvency Event (unless the nature of the Insolvency Event means that it would be unreasonable for the Council to terminate); or
- 12.1.2 there is a Termination Default.
- 12.2 **Termination on Notice.** The Council will be entitled to terminate the Contract by giving not less than 30 days' notice to the Supplier.
- 12.3 **Termination in relation to Blacklisting.** The contractor must not commit any breach of the Employment Relations Act 1999 (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or commit any breach of the Data Protection Act 1998 by unlawfully processing personal data in connection with any blacklisting activities. Breach of this Clause is a material default which shall entitle the Council to terminate the contract with immediate effect.

13 Consequences of Termination

- 13.1 **Rights at termination.** Termination of the Contract will not affect any rights existing at termination.
- 13.2 **Continuing Clauses.** Termination of the Contract will not affect the continued operation of Clauses 7.1 and 9.1 (Supplier's Indemnities), 13 (this Clause), 14 (Confidentiality etc.) and 18 (Audit) or any

other of the provisions of the Contract which, having regard to their terms, are intended to apply on or to survive termination or expiry, including the licence of Intellectual Property Rights pursuant to Clause 9.4.

- 13.3 **Handover.** For a reasonable period after termination of the Contract for whatever reason (and for a reasonable period prior to termination, where this date is known in advance) the Supplier will provide the Council with assistance and information so as to facilitate the efficient handover or transition of the responsibilities and activities of the Supplier to the Council or to a subsequent contractor.

14 Confidentiality and FOI

- 14.1 **Confidential information.** All information of a confidential nature obtained by the Supplier from the Council will be treated by the Supplier in confidence. The Supplier will not use that information for other purposes or disclose it other than to the extent required to perform the Contract or to comply with a legal obligation.

- 14.2 **FOI.** The Supplier acknowledges that the Council is subject to the requirements of the Information Legislation. The Supplier will provide such assistance and co-operation as the Council may reasonably require to enable it to comply with its information disclosure obligations under the Information Legislation.

- 14.3 **Marketing and tenders.** The Supplier will not disclose that the Council is its customer or client to any third party or use the Council's name and/or brand in any tendering exercise, promotion or marketing, unless:

14.3.1 it is necessary for the Supplier to properly discharge the Contract or to comply with a legal requirement;

14.3.2 the Supplier has obtained the prior written consent of the Council.

15 Assignment and Sub-contracting

- 15.1 **Transfers.** The Supplier will not assign, sub-contract or otherwise transfer its interest in the Contract (or any part of it) without the previous consent of the Council (which will not be unreasonably withheld or delayed). The Council may assign, sub-contract or otherwise transfer its interest in the Contract (or any part of it).

- 15.2 **Responsibility for sub-contractors.** The Supplier will remain fully liable for the actions and defaults of all of its Sub-Contractors.

16 Notices

- 16.1 **Sending notices.** Notices must be sent by post, by email or delivered by hand to the relevant address detailed in the Contract Award Letter (or any substitute address notified). If posting or delivery by hand is proved, a notice will be deemed to be effectively given on the day when in the ordinary course of the means of sending it would first be received by the addressee in normal business hours.

17 The Contract

- 17.1 **Entire agreement.** The Contract constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of the Contract. Each Party acknowledges and agrees that it has not entered into this Contract on the basis of any representation or warranty made by the other, other than a representation or warranty incorporated in the Contract.

- 17.2 **Written variations only.** The Contract will not be varied unless a variation is agreed by a duly authorised representative of each of the parties.

- 17.3 **No automatic waiver.** Any failure to enforce or exercise a provision of or right under the Contract will not constitute a waiver of that provision or right.

18 Audit access

- 18.1 **The Council's auditors.** The Supplier will grant to the Council, any auditors of the Council (including internal auditors and Audit Scotland and any other organisation or body which may from time to time have cause to audit the accounts of the Council) and any other person authorised by the Council access to all of the Records for all reasonable audit and investigation purposes.

19 Relationship

- 19.1 **No agency.** The Contract will not have the effect of making any Supplier Party the agent of the Council.
- 19.2 **No employment.** Nothing in the Contract will have the effect of making any Contract Worker an employee of the Council.

20 Definitions and Interpretation

- 20.1 **Initial Definitions.** In these Conditions, unless the context otherwise requires:

- 20.1.1 **"Contract"** means the contract concluded between the Council and the Supplier formed by the Contract Award Letter, these Conditions and the documents referred to in the Contract Award Letter;
- 20.1.2 **"Contract Award Letter"** means the letter issued by the Council to the Supplier notifying the Supplier of its award of the Contract and listing the documentation which, together with these Conditions, forms part of and constitutes the Contract;
- 20.1.3 **"Council"** means Aberdeenshire Council;
- 20.1.4 **"Supplier"** means the party contracting with the Council and identified in the Contract Award Letter;

- 20.2 **Other definitions.** In these Conditions, unless the context otherwise requires:

- 20.2.1 **"Charges"** means the charges and fees payable as set out in the Contract;
- 20.2.2 **"Contract Worker"** means an officer, servant, employee or agent of a Supplier Party, and any person on or at Council Premises in connection with the Contract at the express or implied invitation of the Supplier or any other Contract Worker;
- 20.2.3 **"Council Premises"** means any premises of the Council being a location where Goods are to be delivered or Services are to be provided;
- 20.2.4 **"Dispute"** means any dispute or difference between the Parties arising from or in connection with this Contract;
- 20.2.5 **"Goods"** means the goods to be supplied by the Supplier to the Council as specified in the Contract, and includes any materials, goods or equipment to be provided by the Supplier in the delivery of Services;
- 20.2.6 **"Information Legislation"** means the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004;
- 20.2.7 **"Insolvency Event"** means 1) any event which is a step in a court, statutory or regulatory process relating to the insolvency, administration, receivership, winding up, sequestration or bankruptcy of the Supplier, or any analogous process in any jurisdiction or 2) the Supplier being unable to pay its debts as they fall due;
- 20.2.8 **"Intellectual Property Rights"** means patents, trade marks, service marks, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, know-how, trade or business names and other similar rights or obligations whether registerable or not in any country (including the United Kingdom);

- 20.2.9 **"Materials"** means all materials in which there are Intellectual Property Rights, including documents, specifications, instructions, drawings, or designs;
- 20.2.10 **"Records"** means any files, documents or other records which relate to delivery of the Contract or the management, administration, organisation or planning of the Contract;
- 20.2.11 **"Services"** means the services to be provided by the Supplier to the Council as specified in the Contract;
- 20.2.12 **"Sub-Contract"** means any contract or proposed contract between the Supplier and any third party in respect of the performance of the Contract (or any part thereof). The terms "Sub-Contractor" and "Sub-Contracting" will be similarly construed;
- 20.2.13 **"Supplier Party"** means the Supplier and any Sub-Contractor; and
- 20.2.14 **"Termination Default"** means a default as described in Clauses 11.3 to 11.5.
- 20.3 In these Conditions, unless the context otherwise requires:
- 20.3.1 a reference to a person includes natural persons, companies, partnerships, bodies corporate and other legal entities;
- 20.3.2 the singular includes the plural and vice versa;
- 20.3.3 the meaning of general words is not to be restricted by any particular examples preceding or following those general words;
- 20.3.4 references to "liabilities" in indemnity clauses includes costs, expenses, damages and losses;
- 20.3.5 the word "including" means "including without limitation";
- 20.3.6 a reference to "approval" or "consent" or "agreement" or "notice" requires writing; and
- 20.3.7 if more than one person is detailed in the Contract as the Supplier, references in this Contract to the "Supplier" will be interpreted and construed as each such person on a joint and several basis.

21 Law and Jurisdiction

- 21.1 These Conditions and the Contract will be governed by and construed in accordance with the law of Scotland and the Scottish Courts will have authority to settle any dispute. The Supplier may only raise an action against the Council in the Scottish Courts.