

## CONDITIONS OF CONTRACT - GOODS

### DEFINITIONS AND INTERPRETATIONS

- 1.1 In these conditions "the Contract" means the Agreement concluded between the Council and the Supplier, including all specifications, plans, drawings, instructions to tender, Tender Documents and all other documents that are relevant to the Contract and also such of these conditions as are included in the terms and provisions of the Contract;
- 1.2 The following provisions shall have effect with respect to interpretation of the Contract except where the context otherwise requires:-
- (a) "the Goods" means all Goods which the Supplier is required under the Contract to supply or in connection with which he is required under the Contract to carry out any service;
  - (b) "the Council" means Antrim and Newtownabbey Borough Council;
  - (c) "the Supplier" means the person who by the Contract undertakes to supply the Goods or render such other service for the Council as is provided by the Contract and, where the Supplier is an individual or partnership, the expression shall include the personal representatives of that individual or of the partners, as the case may be, and the expression shall also include any person to whom the benefit of the Contract may be assigned by the Supplier with the consent of the Council;
  - (d) "the Contract price" means the price exclusive of Value Added Tax, payable to the Supplier by the Council under the Contract for the full and proper
  - (e) by the Supplier of his part of the Contract as determined under the provisions of the Contract but before taking into account the effect of any variation of price conditions of these conditions where those conditions, or any of them, are included in the terms and conditions of the Contract;
  - (f) "loss" includes destruction;
  - (g) "month" means calendar month;
  - (h) "person" includes a corporation;
  - (i) "representatives of the Council" in any provision of the Contract means the person duly authorised by the Council to act within the purposes of the provision;
  - (j) the masculine includes the feminine;
  - (k) the singular includes the plural, vice versa;
  - (l) references to any Enactment, Order, Regulation or other similar Instrument shall be construed as a reference to the Enactment, Order, Regulation or Instrument as amended by any subsequent Enactment, Order, Regulation or Instrument;
  - (m) "commercially sensitive information" means the information listed by the Supplier in the "Freedom of Information Statement";
    - (i) which is provided by the Supplier to the Client in confidence for the period set out in that schedule; and/or
    - (ii) that constitutes a trade secret;"confidential information" means all information disclosed by either party to the other in any form or manner, provided that each item of information would appear to a reasonable person to be confidential or is specially stated by the disclosing party to be confidential;

(n) "FOIA" means the Freedom of Information Act 2000

(o) "'Force Majeure Event' means any circumstance not within a party's reasonable control including, without limitation:

- acts of God, flood, drought, earthquake or other natural disaster;
- epidemic or pandemic;
- terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- nuclear, chemical or biological contamination or sonic boom; and
- collapse of buildings, fire, explosion or accident;

but excluding any labour or trade dispute, strikes, industrial action or lockouts relating to the Service Provider or the Service Provider's personnel.

1.3 The headings to these Conditions shall not affect the interpretation thereof;

1.4 Any decision, act or thing that the Council is required or authorised to take or do under the Contract may be taken or done by any person authorised either generally or specifically, by the Council to take or do that decision, act or thing, and that person shall be the "Authorised Officer" and shall be the person named in the tender documents or his appointed representative;

1.5 Any notice or other communication whatsoever which the Council is required or authorised by the Contract to give or make to the Supplier shall, without prejudice to any other method, giving or making it, be sufficiently given or made if it is sent by post in a pre-paid letter addressed to the Supplier by name at the last known place of abode or business of the Supplier and if the letter is not returned through the Post Office undelivered that Notice or Communication shall be deemed for the purposes of the Contract to have been given or made at the time at which that letter would in the ordinary course of post be delivered;

## **2. CONTRACT DURATION**

Subject to the Articles of Association the duration of the Contract shall be as stated in the Tender Documents.

## **3. SPECIFICATION**

3.1 The Goods shall be of the qualities and sorts described and equal in all respects to the samples, patterns, specifications, plans, drawings or any other documents, individually or collectively which form part of the Contract. Except insofar as may otherwise be indicated by a sample, pattern, specification, plan, drawing or other document, the Goods shall be strictly in accordance with the latest British Standard Specification, where such exists, published before the date of the Contract or otherwise shall be to the satisfaction of the Council.

3.2 The Goods shall conform in all respects with the requirements of any statutes, orders, regulations or bye-laws from time to time in force.

- 3.3 The Goods shall be sufficient for the purpose for which such Goods are ordinarily used and for any particular purpose made known to the Supplier by the Council and the Council relies on the skill and judgement of the Supplier in the supply of the Goods and their execution of the Contract.

#### **4. ALTERATION OF SPECIFICATIONS, PLANS, DRAWINGS, PATTERNS, SAMPLES**

- 4.1 The Council reserves the right to alter from time to time the said samples, patterns, specifications, plans, drawings, or other documents as and from a date and to the extent specified by the Council after consultation, where appropriate, with the Supplier on the effect of such proposed alterations. The Goods shall be in accordance with the samples, patterns, specifications, plans, drawings or other documents as so altered.
- 4.2 Where any such alteration involves an alteration in the cost of, or delivery of, or in the period required for the production of any of the Goods which are affected by the alteration, such revision of the Contract price or of the time for delivery of those Goods should be made as may be appropriate, save that if price fixing forms part of the terms of the Contract, such revision shall be made by the fixing of such new prices as may be attributable to the alteration. Save as aforesaid, the Contract shall remain unaltered.

#### **5. INSPECTION**

- 5.1 The Council may inspect or arrange for the inspection of the Goods, or any of them, in course of production, at the Supplier's premises at any reasonable time.
- 5.2 Without prejudice to the Council's right of inspection under Clause 5.1 of this Condition, the Council may inspect or arrange for the inspection of the completed Goods, or any of them, at the Supplier's premises where the Goods have been produced or after delivery, or as otherwise provided in the Contract.
- 5.3 When the Council wishes to exercise its right of inspection under this Condition, the Supplier shall give to the representative of the Council full and free access to the said premises as and when required for that purpose and shall provide at its own expense all such accommodation and facilities in connection with the inspection as the Council may reasonably require, and all appliances, materials and labour for inspection purposes.

#### **6. ACCEPTANCE MARKS**

The Supplier, if so required by the Contract, shall at his own expense, mark or permit the representatives of the Council to mark all approved materials, Goods, or parts thereof with the recognised Council marks. In the case of material, Goods or parts thereof which cannot be so marked, the same shall, if required by the said representative, be packed in suitable packages or cases, each of which shall be sealed and shall have the Council mark placed on the Seals.

#### **7. PACKAGES**

Unless otherwise provided by the Contract all containers (including packing cases, boxes, tins, drums and wrappings) supplied by the Supplier shall be considered as non-returnable, and their costs as having been included in the

Contract price.

## **8. DELIVERY**

- 8.1 The Supplier shall hand over the Goods to the Council, or the agent of the Council at the time or times and at the place or places and in the manner specified in the Contract or in orders issued under the Contract and any access to premises and any labour and equipment that may be provided by the Council in connection with delivery shall be provided without acceptance by the Council of any liability whatsoever and the Supplier shall indemnify the Council in respect of any actions, suits, claims, demands, losses, charges, loss and expenses which the Supplier or the Council suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Supplier or any of its sub-contractors.
- 8.2 The time of delivery shall be of the essence.
- 8.3 When handing over the Goods in accordance with this Condition, the Supplier shall:-
- (a) ensure that the Goods are properly packed and secured as may be stipulated in the Contract and;
  - (b) comply with any additional instructions which from time to time the Council may give with regard to the transportation of the Goods, provided that any extra costs necessarily incurred so doing shall be borne by the Council as an addition to the Contract price;
  - (c) furnish the Council with a Delivery Note giving the number of each order and the particulars of the Goods supplied which shall accompany each delivery of the said Goods.
- 8.4 When the Supplier or any Order issued under the Contract specifies that the Goods shall be handed over ex-works or dispatched to a destination the Supplier shall hand over or dispatch the article or Goods accordingly, consigning them to such destinations as the Council may require.
- 8.5 When the Goods are handed over in accordance with Clause 8.1, delivery of the Goods shall occur on their being handed over. When the Goods are handed over or dispatched in accordance with Clause 8.3, delivery of the Goods shall occur on their going into the possession of the Council or its agents.
- 8.6 Unless the Contract specifically otherwise provides, and subject to the provisions of the Contract, the property in the Goods passes from the Supplier to the Council upon delivery in accordance with Clause 8.4.
- 8.7 When after delivery any of the Goods are rejected, those Goods shall for the purposes of the Contract be considered as not having being delivered under the Contract and the property in those Goods shall return to the Supplier from the Council provided that this Clause shall have effect only when the Supplier has received notice of rejection.
- 8.8 Any quantity of Goods supplied in excess of that ordered and all empties shall be returned at the Supplier's risk and expense unless otherwise stated.

## **9. REJECTION**

- 9.1 The Council may reject any Goods which on inspection and in accordance with the Contract are found not to conform to the requirements of the Contract.
- 9.2 The Council may reject the whole of any consignment of the Goods if inspection in accordance with the Contract shows that:-
- (a) such proportion or percentage of the Goods in that consignment as the Contract may specify as being appropriate for the purposes of this Condition, or which would be reasonable in the normal course of business, or
  - (b) samples taken indiscriminately from that consignment, whether of the Goods or of the material in the Goods,
  - (c) do not conform to the requirements of the Contract.
- 9.3 When under this Condition the Council rejects any of the Goods after delivery, the Supplier shall, subject to the provisions of Clause 9.6 of this Condition, at its own expense, remove from the Council each and every item of the rejected Goods and shall do so within such period as provided by the Contract, or if the Contract makes no such provision, within 8 working days of receiving notification of rejection.
- 9.4 If the Supplier shall fail to remove the Goods or any of them in accordance with Clause 8.3 the Council may return the rejected Goods or any of them to the Supplier at the Supplier's risk, the cost of carriage being recoverable from the Supplier.
- 9.5 When under this Condition the Council rejects any Goods or consignment after delivery, the Supplier shall at his own expense deliver in the place of each and every one of the rejected Goods, Goods which conform with the requirements of the Contract and shall do so within the period for delivery stipulated in the Contract or within such further reasonable period as the Council may allow.
- 9.6 If the Supplier considers himself aggrieved by a rejection under this Condition, he may give the Council notice of objection. To be effective, such notice shall be given in 8 working days from receipt of notification of rejection and before removing the rejected Goods from the Council. The objection shall constitute a dispute between the parties which is not otherwise resolved between the parties within a reasonable time shall be dealt with in accordance with the provisions of the Contract relating to the settlement of disputes. If the Supplier gives notice of objection the Goods shall not be removed until the Council directs.
- 9.7 If any of the Goods whether completed or in course of production are rejected on inspection by the Council, the same shall, if the Council so requires, be marked in such a manner satisfactory to the Council as to ensure the subsequent identification of same as rejected Goods.

## 10. INVOICES AND PAYMENT

- 10.1 The Supplier shall submit an invoice to the Council as specified in the Contract or within 30 days of the provision of the Goods.
- 10.2 The Council will not be responsible for goods supplied unless covered by an official purchase order.
- 10.3 Details of the goods (delivery docket) must be sent with the goods.
- 10.4 Invoices **MUST** be emailed to [accountspayable@antrimandnewtownabbey.gov.uk](mailto:accountspayable@antrimandnewtownabbey.gov.uk) as a PDF attachment.

- 10.5 The invoice address is Antrim and Newtownabbey Borough Council, 50 Stiles Way, Antrim BT41 2UB.
- 10.6 All invoices **MUST** include a valid purchase order number on each invoice/credit note issued to the Council. Failure to provide a valid purchase order number will result in payment delay or the invoice being returned to you.
- 10.7 All payments will be made electronically. The Supplier must ensure that their bank details are submitted with their invoice if not already held on record by Antrim and Newtownabbey Borough Council.
- 10.8 Except where otherwise provided in the Contract, the amount payable to the Supplier for the Goods shall be inclusive of all costs incurred by the Supplier in discharging his obligations under the Contract.
- 10.9 All alterations in quantity, quality specification and/or conditions must be confirmed in writing by the Council.
- 10.10 No charge will be allowed for packages of any description. All reasonable care will be taken for the safe despatch, at owner's risk and expense, or any whose return is required. Any damage or loss caused by the Supplier's failure to pack perfectly will be charged against the account. Separate invoices must be provided for returnable packages.
- 10.11 All goods are subject to inspection after delivery. The Council reserves the right to reject any goods which prove to be faulty or not up to sample or specification.
- 10.12 The property risk in the goods shall remain with the seller until the point of delivery named in the order.
- 10.13 Carriage is to be paid to our delivery address unless otherwise agreed.
- 10.14 The foregoing conditions in this Condition are in addition to and without prejudice to the rights of the Council at law. The execution of this order or any part thereof constitutes acceptance of these conditions.

### **11. RENDERING OF BILLS**

Bills in respect of any of the Goods shall be rendered within the time and in the manner specified in the Notices and Instructions to the persons tendering or as otherwise required by the Council, and in accordance with any instructions in the Schedule hereto.

### **12. RECOVERY OF SUMS DUE**

Whenever under the Contract any sum of money shall be recoverable from or payable to the Supplier, the same may be deducted from any sum then due or which at any time thereafter may become due to the Supplier under the Contract or under any other Contract with the Council.

### **13. PRICING**

The prices tendered in the Tender Documents shall remain fixed (not subject to variation) for the initial period of Contract. Thereafter, by reason of any rise or fall on the costs (ruling at the date of tender) the materials, labour, transport or the carrying out of the Supplier with statutory obligations, the cost of the Supplier providing his/its obligations under the Contract shall be increased or reduced, the amount of such increase or decrease to be added or deducted from the price tendered in the Tender Documents, as the case may be, provided that no account shall be taken of any amount by which any costs incurred by the Supplier have been increased by the default, act or omission of

the Supplier. The Supplier shall only be entitled to one price increase for each year of the remainder of the extended Contract period.

#### **14. VALUE ADDED TAX**

If applicable the Council shall pay the Supplier, in addition to the Contract price, a sum equal to the Value Added Tax chargeable on the value of the supply of the Goods.

#### **15. PROGRESS REPORTS**

Then Supplier shall render such reports as to the progress of the Contract and in such form and at such frequency as may reasonably be called for by the Council. The submission and acceptance of these reports shall not prejudice the rights of the Council under Condition 17 (Default).

#### **16. ISSUES OF COUNCIL PROPERTY**

16.1 All Council property issued in connection with the Contract (hereinafter called "issued property" shall remain the property of the Council whether paid for by or charged against the Supplier or not and shall be used in the execution of the Contract and for no other purposes whatsoever, without the prior written approval of the Council. If requested, the Council will notify the Supplier, within a reasonable time, of the current value of issued property.

16.2

- (a) Upon receipt of issued property, the Supplier shall subject it to:-
- (i) a reasonable visual inspection and;
  - (ii) such additional inspection and testing as may be necessary and practicable to check that the issued property is not defective or deficient for the purpose for which it has been provided and as can reasonably be carried out within the under-mentioned period and;
  - (iii) shall notify the Council within 14 days of receipt or such longer period as may be specified in the Contract, of any defects or deficiencies thereby discovered; provided that items issued in a "preserved, identified and packaged" condition shall not be unpackaged earlier than is necessary and for such items the said 14 days or longer period shall count from the date from which packages are opened.
- (b) Where the Supplier shall reasonably carry out the additional inspection and testing within the prescribed period as recorded by Paragraph (a), whether after receipt or unpacking as the case may be, he shall inform the Council promptly of the position and shall carry out such inspection and testing as soon as is practicable thereafter and shall notify the Council within 7 days of completion of such inspection and testing of any defects or deficiencies thereby discovered.

16.3 The Council shall within a reasonable time of receipt of any notice under Clause 16.2 replace, re-issue or authorise repair of issued property agreed to be defective or deficient and if appropriate in the circumstances the Council shall revise the Contract price and/or the time specified in the Contract for delivery of the Goods. Should the Council fail to replace re-issue or authorise repair of defective or deficient issued property within a reasonable time of receipt of notice under Clause 16.2, such revisions of the Contract price and /or of the times specified in the Contract for delivery of the Goods shall be made as may be appropriate, provided

that the Supplier shall have taken all reasonable measures to mitigate the consequence of any delay.

- 16.4 The Supplier shall be responsible for the safe custody and, subject to Clause 16.5, due return of issued property, whether or not incorporated in the Goods, and shall be responsible for all loss thereof or damage thereto from whatever cause (except as provided below) until re-delivered in accordance with the Council's instructions. For the purposes of this Condition, defects or deficiencies notified to the Council in accordance with Clause 16.2 or deterioration in issued property resulting from its normal or proper use in the execution of the Contract shall not be deemed to be loss or damage (except insofar as the deterioration is contributed to be any misuse, lack of maintenance of the Supplier). Except as hereinafter provided, the Supplier shall not be liable for loss or damage of the issued property arising from:-
- (a) aircraft or other aerial devices dropped therefrom, including pressure waves caused by aircraft or such devices whether travelling at sonic or supersonic speeds;
  - (b) ionising radiations or contamination by radioactivity from any nuclear fuel or from nuclear waste from the combustion of nuclear fuel;
  - (c) the radioactive, toxic, explosive or any other hazardous properties of any nuclear assembly or nuclear component thereof;
  - (d) riot, civil commotion, civil war, rebellion, revolution, insurrection, military or a usurped power or enemy risks provided that the Supplier shall be so liable to the extent that any of the aforementioned risks are covered by existing insurance.
- 16.5 Instructions for the return or disposal of the defective or deficient issued property shall be issued by the Council and such property shall not be at the risk of the Supplier once it has been delivered in accordance with the Council's instructions.
- 16.6 If any Goods in which issued property has been incorporated is damaged or rejected or are subject to additional costs by reason of a defect or deficiency in the issued property which is not and could not reasonably have been discovered by the Supplier and notified to the Council in accordance with the provisions in Clause 16.2 of this Condition and provided that such defect or deficiency shall not be attributable to any misuse, lack of care, want of maintenance by the Supplier, the Council shall replace, re-issue or authorise repair of the issued property and shall make such revision of the Contract price and/or of the time specified in the Contract for delivery of the Goods as may be appropriate provided that the Supplier shall have taken all reasonable measures to mitigate the consequences of any delay.
- 16.7 Neither the Supplier nor any Sub-Contractor, nor any other person shall have a lien on issued property whether paid for by or charged against the Supplier or not, for any sum due to the Supplier or other person, and the Supplier shall take all such steps as may be reasonably necessary to ensure that the title of the Council, and the exclusion of any such lien, are brought to the notice of all Sub-Contractors and other persons dealing with any issued property.

## **17. LOSS OF OR DAMAGE TO THE GOODS**

- 17.1 The Supplier is responsible for the Goods and any materials, equipment, fitting or things acquired or allocated by him for incorporation therein until delivery has been effected in accordance with Condition 8 (Delivery) and shall make good any loss of or damage to the Goods or any such material equipment fitting or things however occasioned which may occur before such delivery.
- 17.2 The Provisions of Clause 17.1 of this Condition shall apply notwithstanding that the Goods concerned may have been inspected in accordance with the Contract or that the property therein may in accordance with the provisions of the Contract where applicable have passed from the Supplier to the Council or its agent earlier than upon delivery.
- 17.3 Unless the Contract specifically or otherwise provides, the Supplier is not responsible for loss of or damage to the Goods after delivery save that he shall become responsible in all respects for the Goods:-
- (a) where such loss or damage is caused as a result of the negligence or default of the Supplier;
  - (b) which the Council rejects after delivery and such responsibility shall take effect upon the Supplier removing the Goods in accordance with the Contract or upon return of the Goods to the Supplier or, if he fails so to remove the Goods, or if the Council does not exercise the right to return the Goods, on expiry of the 8<sup>th</sup> working day from his receipt of notification of rejection of the Goods.
- 17.4 Notwithstanding the provisions of Clause 17.3, the Supplier shall not be responsible for any Goods which remain in the possession of the Council after the Council has rejected them if and for so long as they remain after notice of rejection has been given under the terms of the Contract and the dispute between the parties relating to the rejection remains unresolved.

## **18. DEFAULT**

- 18.1 Should the Goods or any portion thereof not be delivered within the time or time specified in the Contract whether at Clause 8 or otherwise, or in a Warrant or Order where used, the Council may without prejudice to any other remedies, by notice to the Supplier determine the Contract either as respects the Goods which has not been delivered in accordance with the Contract at the time of such determination or as respects all the Goods to which the Contract relates other than those delivered in accordance with the Contract before that time.
- 18.2 There the Council has determined the Contract under Clause 18 and without prejudice as aforesaid the Council may replace all or any of the Goods with respect to which the Contract is determined by purchasing or manufacturing other Goods of the same or similar description, or by allocating other Goods of the same or similar description in the possession or control of the Council to the purposes or control of the Council to the purposes for which the Goods replaced are required and there shall be recoverable from the Supplier the cost to the Council of such replacement, purchase, manufacture or allocation (being the amount by which the aggregate of the cost of purchasing and of manufacturing Goods in this way and of the value of any Goods allocated as aforesaid exceeds the amount which would have been payable to the Supplier in

respect of all the Goods so replaced if that they have been delivered in accordance with the Contract).

#### **19. TRANSFER AND SUB-LETTING**

The Supplier shall not give, bargain, sell, assign, sublet or otherwise dispose of the Contract or any part thereof or the benefit or advantage of the Contract or any part thereof without the previous consent in writing of the Council.

#### **20. GUARANTEE**

Subject to the provisions of the Contract the Guarantee Period applicable to the Goods shall be twelve months including end of service for eighteen months from delivery whichever shall be the shorter. If the Council shall within such Guarantee Period or within thirty days thereafter give notice in writing to the Supplier of any defect in any of the Goods which may have arisen during such Guarantee Period under proper and normal use the Supplier shall (without prejudice to any other rights or remedies which the Council may have) as quickly as possible remedy such defects (whether by repair or replacement as the Council may elect) without cost to the Council.

#### **21. ACCEPTANCE**

Acceptance of the Goods shall take place when the Council confirms acceptance of the Goods in accordance with the procedure specified in the Contract, or if none is so specified, then the Council shall be deemed to have accepted the Goods without prejudice to any other remedies, when or as soon as the following events have occurred:-

- (a) the Council has taken the Goods into use;
- (b) the Council has not exercised its right of rejection of the Goods under the Contract within any period specified for that purpose;
- (c) there being no period for exercising the right of rejection specified in the Contract, a reasonable time, all the circumstances having been taken into account, has elapsed since delivery of the Goods was affected in accordance with the Contract.

#### **22. LAW (NORTHERN IRELAND)**

The Contract shall be considered as a contract made in Northern Ireland and subject to Northern Ireland law.

#### **23. ARBITRATION**

All disputes, differences or questions between the parties to the Contract with respect to any matter or thing arising out of or relating to the Contract (other than a matter or thing as to which the decision of the Council is under the Contract to be final and conclusive, and except to the extent to which special provision for arbitration is made elsewhere in the Contract), shall be referred to either:-

- (a) the arbitration of two persons, one to be appointed by the Council, one by the Supplier, or;
- (b) to their empire

in accordance with the provisions of the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force.

#### **24. CONFIDENTIALITY**

- 24.1 Each Party:-
- (a) shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly, and;
  - (b) shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Contract or except where disclosure is otherwise expressly permitted by the provisions of the Contract.
- 24.2 The Supplier shall take all necessary precautions to ensure that all Confidential Information obtained under or in connection with the Contract is:-
- (a) given only to such of the Workers and professional advisors or consultants engaged to advise it in connection with the Contract as is strictly necessary for the performance of the Contract and only to the extent necessary for the performance of the Contract;
  - (b) treated as Confidential and not disclosed (without prior Council approval) or used by any Workers or such professional advisors or consultants otherwise than for the purposes of the Contract.
- 24.3 The Supplier shall ensure that Workers or its professional advisors or consultants are aware of the Supplier's Confidentiality obligations under this Contract.
- 24.4 The Supplier shall not use any Confidential Information it received from the Council otherwise than for the purposes of the Contract.
- 24.5 The provisions of Clauses 24.1 to 24.4 shall not apply to any Confidential Information received by one Party from the other:-
- (a) which is or becomes public knowledge (otherwise than by breach of this Condition);
  - (b) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
  - (c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
  - (d) which is independently developed without access to the Confidential Information; or
  - (e) which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, or the Environmental Information Regulations pursuant to Condition 25.3 (Freedom of Information).
- 24.6 Nothing in this Condition shall prevent the Council:-
- (a) disclosing any Confidential Information for the purposes of:-
    - (i) the examination and certification of the Council's accounts; or
    - (ii) any examination pursuant to Section 6(1) of the National Audit Act 1983, or any other Statutory provision, of the economy, efficiency and effectiveness with which the Council has used its resources; or
  - (b) disclosing any Confidential Information obtained from the Supplier:-
    - (i) to any government department or any other Contracting Authority. All government departments or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential

and is not to be disclosed to a third party which is not part of any government department or Contracting Authority; or

(ii) to any person engaged in providing any goods to the Council for any purpose relating to or ancillary to the Contract: provided that, in disclosing information under sub-paragraph (b), the Council discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

24.7 Nothing in this Condition shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

24.8 In the event that the Supplier fails to comply with this Condition, the Council reserves the right to determine the Contract by notice in writing with immediate effect.

## **25. FREEDOM OF INFORMATION**

25.1 The Supplier acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Council (at the Supplier's expense) to enable the Council to comply with these Information disclosure requirements.

25.2 The Supplier shall and shall procure that its sub-contractors shall:-

(a) transfer the Request for Information, as defined in the FOIA or the Environmental Information Regulations, to the Council as soon as practicable after receipt and in any event, within (two) Working Days of receiving a Request for Information;

(b) provide the Council with a copy of all Information in its possession or power in the form that the Council requires within (five) Working Days (or such other period as the Council may specify) of the Council requesting that Information; and

(c) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA (or Regulation 5 of the Environmental Information Regulations).

25.3 The Council shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other information is:-

(a) exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations;

(b) to be disclosed in response to a Request for Information, and in no event shall the Supplier respond directly to a Request for Information, unless expressly authorised to do so by the Council.

25.4 The Supplier acknowledges that the Council may be obliged under the FOIA, or the Environmental Information Regulations, or any regulations or guidelines made thereunder, to disclose information:-

(a) without consulting with the Supplier; or

(b) following consultation with the Supplier and having taken its views into account.

25.5 The Supplier shall ensure that all information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall

permit the Council to inspect such records as requested from time to time.

- 25.6 The Supplier acknowledges that any lists or schedules provided by it outlining Confidential Information or Commercially Sensitive Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information or Commercially Sensitive Information in accordance with Clause 25.4.

## **26. USE OF DOCUMENTS, INFORMATION ETC.**

- 26.1 The Council reserves the general right to disclose information about this Contract, unless otherwise agreed in writing.
- 26.2 Except with the consent in writing of the Council, the Supplier shall not disclose the Contract or any provision thereof to any person other than a person employed by the Supplier in the carrying out of the Contract or any Sub-Contractor, Supplier or other person connected with same. Such disclosure shall be made in confidence and shall extend so far only as may be necessary for the purposes of the Contract.
- 26.3 Except with the consent in writing of the Council the Supplier shall not make use of the Contract or any information issued by or on behalf of the Council otherwise than for the purpose of the Contract, and, save as provided for in Clause 4, the Supplier shall not make any article or good or part thereof similar to the Goods for any other purpose.
- 26.4 Subject to any rights third parties, nothing in this Condition shall, however, constrain the use for any purpose by the Supplier of any specifications, plans drawings and other documents, the rights of which vest in him otherwise than as a result of work carried out under the Supplier.
- 26.5 Any samples or patterns or any specifications, plans, drawings, or any other documents issued by or on behalf of the Council for the purposes of the Contract remain the property of the Council and must be returned on completion of the Contract.

## **27. PATENTS AND INFORMATION**

- 27.1 It shall be a condition of this contract that, except to the extent that the Goods are made up in accordance with designs furnished by the council, none of the Goods will infringe any patent, trademark, registered design, copyright or other right in the nature of industrial property of any third party and 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 Condition.
- 27.2 All rights (including ownership and copyright) in any specification, instructions, plans, drawings, patterns, models, designs or other materials furnished to or made available to the Supplier by the Council pursuant to this order shall remain vested solely in the Council and the Supplier shall not (except to the extent necessary for the implementation of this Contract), without prior written consent of the Council use or disclose any such specifications, plans, drawings, patterns, models or designs or any information (whether or not relevant to this Order) which the Supplier may obtain pursuant to the Contract and in particular (but without prejudice to the generality of the foregoing) the Supplier will not refer to the Council or the Contract in any advertisement without the Council's prior written

agreement.

## **28. HEALTH AND SAFETY**

The Supplier represents and warrants to the Council that the Supplier has satisfied himself that all necessary tests and examinations have been made or will be made prior to the delivery of the Goods to ensure that the Goods are designed and constructed so as to be safe without the risk to the health and safety of persons using the same and, that he 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. The Supplier shall indemnify the Council against all actions, suits, claims, demands, losses, charges, costs and expenses which the Council may suffer and incur as a result of or in connection with any breach of this Condition.

## **29. INDEMNITY AND INSURANCE**

- 29.1 Without prejudice to any rights or remedies of the Council (including the Council's rights and remedies under the Contract) the Supplier shall indemnify the Council against all actions, suits, claims, demands, losses, charges, costs and expenses which the Council or any third party may suffer or incur as a result of or in connection with any damage to property or in respect of any injury (whether fatal or otherwise) to any person or in respect of any consequential loss which may result directly or indirectly from any defect in the Goods or the negligent or wrongful act or admission of the Supplier.
- 29.2 The Supplier shall effect with a reputable insurance company a policy or policies of insurance hereto covering the matters which are the subject of indemnities under these conditions and shall at the request of the Council produce the relevant policy or policies together with receipts or other evidence of payment of the latest premium due thereunder. The Supplier shall insure against its liability with a limit as requested in the Tender Documents in any insurance year or such other sum as may be agreed between the Supplier and the Council.

## **30. LOSS OR DAMAGE**

- 30.1 Condition 30 applies to any loss or damage which arises out of or is in any way connected with the performance of the Contract and shall include, for the avoidance of doubt without prejudice to the generality of foregoing, breaches of Conditions 37 (Data Protection) and 38 (Royalties and Licence Fees).
- 30.2 The Supplier shall, without delay and at his own expense, replace or make good to the satisfaction of the Council, or if the Council requires, compensate the Council for, any loss or damage.
- 30.3 If any loss or damage:-
- (a) was not caused or contributed by the Supplier's neglect or default, whether by act, or omission or otherwise (for the purposes of this condition the Supplier shall include his servants, agents or Sub-Contractors), he shall be under no liability under this Condition;
  - (b) was in part caused or contributed to the Supplier's neglect or default, whether by act, omission or otherwise and in part by:-
    - (i) the act, neglect or default of any other person; and/or

- (ii) circumstances outside both the Supplier's control and his reasonable contemplation;
- (iii) The Supplier's liability under this Condition shall, except in relation to any loss or damage arising out of the Supplier's fraud or breach of Condition 42 (Discrimination) or 43 (Corrupt Gift and Payments of Commission) (to which this Condition shall not apply) be limited to the proportion of the loss or damage which it is just and equitable for the Supplier to pay.

30.4 In this Condition loss or damage includes:-

- (a) loss or damage to property;
- (b) personal injury and death;
- (c) loss of property or loss of use;
- (d) any other loss.

### **31. MEETINGS AND REPORTS**

31.1 The Supplier shall attend all meetings arranged by the Council for the discussion of matters connected with the Contract.

31.2 Without prejudice to the submission of reports as specified under the Contract, the Supplier shall render such reports as to the performance of the Contract at such time or times, and in such form as the Council may reasonably require.

### **32. MERGER, TAKEOVER OR CHANGE OF CONTROL**

The Supplier shall forthwith inform the Council in writing of any proposal or negotiations which may or will result in a merger, takeover, change of control, change of name or status of the Supplier (being Company as defined in the Companies (NI) Order 1986 – 1990) shall inform the Council of any such change as defined in Section 416 of the Income Incorporation Taxes 1988. The Supplier shall comply with any request by the Council for information arising from this Condition.

### **33. UNSATISFACTORY PERFORMANCE**

33.1 Where, in the option of the Council, the Supplier has failed to perform the whole or any part of the Contract, to the standard of skill, care and diligence which a competent and suitably qualified Supplier performing the same contract could reasonably be expected to exercise, or in accordance with the Contract, the Council may give the Supplier a notice specifying the way in which his performance falls short of the requirements of the Contract, or is otherwise unsatisfactory.

33.2 Where the Supplier has been notified of a failure in accordance with Condition 33.1 the Council may:-

- (a) request from the Supplier that, at his own expense and as specified by the Council, he re-schedules and performs the Contract to the Council's satisfaction within such period as may be specified by the Council in the notice including where necessary, the repair or re-supply of any goods already supplied: or
- (b) withhold or reduce payments to the Supplier, in such amount as the Council deems appropriate in each particular case.

33.3 The waiver of any right or remedy arising from the breach of Contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.

### **34. TERMINATION OF THE CONTRACT**

Without prejudice to any other power of termination, the Council may terminate the Contract without notice, for any of the following reasons:-

- (a) the breach by the Supplier of any of Condition 26 (Use of Documents, Information etc.), Condition 42 (Discrimination), Condition 43 (Corrupt Gifts and Payments of Commission), of the Contract, or any other material breaches of contract;
- (b) the failure by the Supplier to comply with a Notice given under Condition 33 (Unsatisfactory Performance) within fourteen days from the date of that Notice;
- (c) the Supplier ceases or proposes to cease to carry on business;
- (d) there is a change of control of the type referred to in Condition 32 (Merger, Takeover or Change of Control), and the Council has not agreed in advance in writing to the particular change of control, save that in this event the Council shall give one month's notice in writing to the Supplier.

### **35. BREAK**

The Council shall in addition to any powers under any of these Conditions have power to terminate the Contract at any time by giving the Supplier one month's written notice. Upon the expiry of the Notice the Contract shall be terminated without prejudice to the rights of the parties accrued to the date of termination.

### **36. CONSEQUENCES OF TERMINATION AND BREAK**

- 36.1 Where the Contract is terminated under Condition 34 (Termination of Contract), the following provisions shall apply:-
- (a) any sum due of accruing from the Council to the Supplier may be withheld or reduced by such amount as the Council in either case considers reasonable and appropriate in the circumstances;
  - (b) the Council may make other arrangements which are actually necessary to procure the orderly supply of the Goods including the letting of another Contract or Contracts;
  - (c) where the total cost reasonably and properly incurred by the Council by reason of such arrangements exceed the amount that would have been payable to the Supplier for the supply of Goods, the excess shall, subject to any overall limitation of liability contained in Condition 30 (Loss or Damage), be recoverable from the Supplier, and the Council reserves the right to recover such excess by set off against any amount withheld by the Council under Condition 36.1 (a) or as otherwise provided for under the Contract.
- 36.2 Without prejudice to Condition 36, where the Contract is terminated under Condition 34 (Termination of Contract) or Condition 35 (Break), except where the Contract is terminated by reason of the Supplier's default, the Supplier shall have the right to claim from the Council reimbursement of all reasonable costs necessarily and properly incurred by him in relation to the orderly cessation of the supply of the Goods, including any commitments, liabilities or expenditure which are reasonably and properly incurred, and would otherwise represent an unavoidable loss by the Supplier by reason of the termination of the Contract. For the avoidance of doubt the Council will not indemnify the

Supplier against loss of profit. The Council shall not in any case be liable to pay under the provisions of this Condition any sum which, when taken together with any sums paid or due or becoming due to the Supplier under the Contract, shall exceed the total Contract price.

- 36.3 Where the Contract is terminated under this Condition 36 or Condition 35 (Break) the Council may, during any notice period:-
- (a) Direct the Supplier, where the supply of Goods has not been commenced, to refrain from commencing such supply or where the supply has been commenced, to cease same immediately;
  - (b) Direct the Supplier to complete in accordance with the Contract the supply of all or any of the Goods, or any part or component thereof, which shall be paid at the agreed price or, where no agreement exists at a fair and reasonable price.

### **37. FORCE MAJEURE**

- 37.1 Subject to the remaining provisions of this clause 21, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event (**'Affected Party'**), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 37.2 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 37.3 The Affected Party shall:
- 37.3.1 as soon as reasonably practicable after the start of the Force Majeure Event notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this Agreement; and
  - 37.3.2 Use all reasonable endeavours to mitigate the effect of the Force Majeure Event.
- 37.4 Where the Supplier is the Affected Party, it shall not be entitled to claim relief to the extent that the consequences of the relevant Force Majeure Event should have been foreseen and prevented or avoided by a prudent provider of service similar to the Services.
- 37.5 The Affected Party shall notify the other party in writing as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.

- 37.6 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 4 weeks, the party not affected by the Force Majeure Event may terminate this Agreement by giving 1 week's notice to the Affected Party.

### **38. DATA PROTECTION**

The Supplier shall take such technical and organisational measures as are necessary to comply with the Data Protection Act 2018 and the principles relating to the processing of personal data as set out in Article 5 of the GDPR.

### **39. ROYALTIES AND LICENCE FEES**

The Supplier shall ensure that all royalties, licence fees or similar expenses in respect of all intellectual property used in connection with the Contract has been paid and are included within the Contract price.

### **40. RETENTION OF DOCUMENTATION**

The Supplier shall retain, produce and require (and explain as necessary) such accounts, documents (including working documents) and records as the Council may request in connection with the Contract, at any time during the Contract and for a period of two years from the date of expiry or termination or such longer period as may be agreed between the Council and the Supplier in writing at or before the commencement of the Contract; and afford such facilities as the Council may reasonably require for its representatives to visit the Supplier's premises and examine the records under this Condition.

### **41. TRANSFER OF RESPONSIBILITY**

- 41.1 In the event that a different organisation is required to take over the supply of the Goods at the expiry or termination of the Contract, the Supplier shall co-operate the transfer, under arrangements to be notified to him be the Council.
- 41.2 Transfer shall be arranged between the Council and the Supplier so as to reduce to a minimum any interruption in the supply of Goods.

### **42. BANKRUPTCY ETC.**

The Council may at any time by notice in writing summarily determine the Contract without compensation to the Supplier in any of the following events:-

- (a) the Supplier being an individual or where the Supplier is a firm, any partner in that firm, shall at any time become bankrupt, or shall have a receiving order or administration order made against him, or shall make any composition or arrangement with or for the benefit of his creditors, or shall make any Conveyance or Assignment for the benefit of his creditors or shall purport to do so, or is in Scotland, he shall become insolvent or notour bankrupt, or any application shall be made under the Insolvency legislation for the time being in force for sequestration of his estate or a trust deed shall be granted by him for behoof of his creditors;
- (b) if the Supplier, being a company, shall pass a resolution, or the Court shall make an order, that the Company shall be wound up, or if a receiver or manager on behalf of a creditor shall be appointed, or if circumstances shall arise that entitle the Court or a creditor to appoint a Receiver or Manager which entitle the Court to make a winding up order provided always that such determination shall not prejudice or affect any right of

action or remedy which shall have accrued or shall accrue thereafter to the Council.

#### **43. DISCRIMINATION**

The Supplier shall not unlawfully discriminate within the meaning and scope of the Provisions of the Race Relations (NI) Order 1997, Sex Discrimination (NI) Order 1976 (as Amended), Fair Employment and Treatment (NI) Order 1998 and the Disability Discrimination Act 1995 and shall take all reasonable steps to ensure that all servants, employees or agents of the Supplier and all Sub-Contractors employed in the execution of the Contract do not unlawfully discriminate. This Condition shall not in any way relieve the Supplier of his general obligations to comply with any legislative requirements as provided in the Contract.

#### **44. CORRUPT GIFTS AND PAYMENTS OF COMMISSION**

- 44.1 The Supplier shall not receive or agree to receive from any person, or offer or agree to give to any person, or procure for any person any gift or consideration of any kind as an inducement or reward for doing or not doing anything, or for showing favour or disfavour to any person in relation to the Contract or any other contracts for the Council (Crown).
- 44.2 The Supplier shall not conspire with any person to do any of the acts mentioned in Condition 43.1.
- 44.3 Any:-
- (a) breach by the Supplier of this Condition or;
  - (b) commission of an offence by the Supplier under the Prevention of Corruption Act 1889-1916 or Section 46-47 Local Government Act (NI) 1972 in relation to this or any other Contract with the Council shall entitle the Council to terminate the Contract and recover from the Supplier the amount of any loss resulting from such termination and recover from the Supplier the amount or value of any such gift, consideration or commission.
- 44.4 The decision of the Council in relation to this Condition shall be final and conclusive.

#### **45. THE BRIBERY ACT 2010**

The Supplier shall:-

- (a) comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);
- (b) not engage in any activity, practice or conduct which would constitute an offence under Sections 1,2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (c) have and shall maintain in place throughout the term of this agreement its own policies and procedure, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and Clause 1.1 (b), and will enforce them where appropriate;
- (d) promptly report to the Council any request or demand for any under financial or other advantage of any kind received by the Supplier in connection with the performance of this agreement;
- (e) immediately notify the Council (in writing) if a foreign public official becomes an officer or employee of the Supplier or acquired a direct or

- indirect interest in the Supplier (and the Supplier warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this agreement);
- (f) within three months of the date of this Contract, and annually thereafter, certify to the Council if requested in writing, signed by an officer of the Supplier, compliance with this Clause 1 by the Supplier and all persons associated with it under Clause 1.2. The Supplier shall provide such supporting evidence of compliance as the Council may reasonably request.

#### **46. SEVERABILITY**

If any provision of these conditions is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the illegal, invalid, wrong or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Council and the Supplier shall immediately commence negotiations in good faith to remedy the invalidity.

#### **47. WAIVER**

- 47.1 The failure of the Council or the Supplier to exercise any right or remedy shall not constitute a waiver of that right of remedy.
- 47.2 The waiver shall be effective unless it is communicated to either the Council or the Supplier in writing.
- 47.3 A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.

#### **48. RIGHTS OF THIRD PARTIES**

Nothing in this Contract confers or purports to confer on any third party any right to enforce any term of the Contract.

#### **49. CONFLICT OF PROVISIONS**

Where there is any conflict between any Terms and Conditions of the Supplier and these Conditions, these Conditions will prevail.

#### **50. AMENDMENT TO THESE CONDITIONS**

These Conditions may be amended by agreement of the Council and Supplier, such agreement to be evidenced in the Articles of Agreement.

#### **51. CURRENCY OF TENDERS**

All prices shall be tendered in pounds sterling and shall be exclusive of VAT.

#### **52. ENVIRONMENTAL**

The Supplier will be required to comply with the Council's management controls in respect of waste management, energy consumption and pollution control. The Council is audited and externally certified to ISO 14001 standard. The Supplier shall ensure that waste created in the delivery of goods shall be kept to a minimum and disposed appropriately to meet legislative requirements and to reduce impact on the environment.

The Supplier shall ensure that harmful emissions (air, ground, water) are kept to a minimum by:-

- (a) minimisation of frequency and number of deliveries to the sites;
- (b) using fuel and energy efficient vehicles and machinery;
- (c) ensure vehicles and machinery are driven appropriately and serviced regularly;
- (d) clear action in case of chemical/oil spills.

### **53. THE WITHDRAWAL OF THE UNITED KINGDOM FROM THE EUROPEAN UNION**

The Council is willing to pay the charges relating to the withdrawal of the United Kingdom from the European Union, should they become relevant, as long as the charges are a standard taxation cost appropriate to all manufacturers in your field.

### **54. COVID CLAUSE**

In the event that goods are not required due to the COVID-19 pandemic which restricts the delivery of the goods, Clause 34 of the Terms and Conditions for Termination will apply. If the recipient has been already been paid for undelivered goods in the agreement, the Council reserves the right to clawback 100% of its contribution paid in respect of eligible costs.