

SOUTH AYRSHIRE COUNCIL TERMS AND CONDITIONS OF PURCHASE

In these Conditions: -

“the Council” shall mean South Ayrshire Council, being the organisation placing the Order

“the Supplier” shall mean the person, firm, company or organisation accepting the Order.

“Order” shall mean the order (with any schedules attached or referred to therein) for the purchase of goods and services issued by the Council to the Supplier which specifies or accepts, expressly or by implication, that these Conditions apply to it and which on acceptance shall form the contract between the Council and the Supplier for the purchase and supply of the goods and/or services specified in the Order. References in these Conditions to “the Order” shall, where the context so permits, be deemed to include reference to these Conditions also.

1 TERMS OF CONTRACT AND VARIATIONS

The contract between the Council and the Supplier shall be on the terms specified in the Order and these Conditions, and shall not be subject to any other terms and conditions of sale of the Supplier or otherwise, however communicated, unless such other terms and conditions have been specifically agreed to in writing by the Council as a variation to the Order. In the event of any inconsistency between any of the documents referred to above they shall have precedence in the order referred to in this clause.

2 ACCEPTANCE OF ORDER

Acceptance of the Order by the Supplier, whether verbal or written, (and in the absence of such acceptance, or of written agreement to the contrary, the execution of the Order in whole or in part) shall constitute acceptance by the Supplier of all the terms and conditions contained in the Order.

3 DELIVERY AND OWNERSHIP

All goods/services will be delivered to/at the delivery point specified in the Order and shall take place on the date or dates specified in the Order unless otherwise agreed in writing. Time and place of delivery are of the essence of the contract between the Council and the Supplier. Property and risk in goods shall not pass to the Council until they are delivered as aforesaid and the Council has had a reasonable opportunity to inspect and, as appropriate, test the goods and confirm that they are in accordance with the Order.

a) Acceptance of the goods occurs at the time and in accordance with the procedure specified in the Order or if none is so specified:

- (i) where the Order specifies a time limit within which to reject, that time has elapsed;
- (ii) where the Order specifies no time limit within which to reject, a reasonable time has elapsed since delivery has occurred or
- (iii) when they have been delivered and the Council performs any act in relation to them which is inconsistent with the supplier's ownership.

4 DELAYS AND ERRORS IN DELIVERY

Without prejudice to the Council's other rights the Council reserves the right to cancel, without redress by the Supplier, either the whole or any unexecuted part of the Order if not executed on the date(s)/within the time(s) specified in the Order, (including any schedules forming part of or referred to in the Order). Should the Supplier's

failure to deliver by the specified delivery date, necessitate deliveries by special transport, all additional carriage charges shall be at the Supplier's expense. The Council reserves the right to return to the Supplier at the Supplier's cost any goods delivered in excess of the quantities specified in the Order, or outwith agreed delivery dates/schedules. If goods are incorrectly delivered the Supplier shall be responsible for any additional expense incurred in delivering them to their correct destination.

5 PRICE

Unless otherwise stated in the Order:

- a) The price stated in (or ascertained in accordance with) the Order shall be a firm and fixed price.
- b) The price shall include all packing, insurance, delivery, installations and commissioning (if applicable), but shall exclude Value Added Tax.

6 TERMS OF PAYMENT

Unless otherwise stated in the Order:

- a) The Supplier may invoice the Council for the goods on delivery or, if installation and commissioning is included, following satisfactory installation and commissioning. Value Added tax, where applicable, shall be shown separately on all invoices.
- b) Payment will be due 30 days from the date of receipt and agreement of the invoice by the Council, subject to acceptance of the goods delivered or (if applicable) installed and commissioned.
- c) The Council reserves the right to reject incorrect or incomplete invoices and to require correction or completion and resubmission.

7 QUALITY

In the absence of a specification or sample, all goods supplied shall be within the normal limits of satisfactory quality.

Without prejudice to any other rights that the Council may have the Supplier shall ensure that:

- a) The goods conform as to quantity, quality and description with the terms stated in the Order, be of sound materials and workmanship, be equal in all respects to the samples, patterns or specification provided or given by either party, be capable of meeting any standard or performance specified in the Order and, if the purposes for which the goods are required is made known to the Supplier either expressly or by implication, be fit for that purpose.
- b) Where the Order provides for installation, erection or work of any nature to be carried out by the Supplier, the same shall be executed in accordance with the requirements stated in the Order and with good workmanship, and the Supplier guarantees that the results intended to be achieved according to the Order will be met. The Supplier shall take all precautions necessary to ensure that such installation, erection, or work is carried out safely and without risk to persons or property and shall provide and bear the cost of all insurances necessary to indemnify the Council in respect of any negligent act or omission, or breach of statutory obligations on the part of the Supplier, its employees, sub-contractors or agents.
- c) Where the Supplier operates to ISO9000 or other quality accreditation system the goods shall be manufactured and supplied according to the requirements of that quality system.

8 REPRESENTATIONS AND WARRANTIES

All statements, representations or warranties made or given by the Supplier in respect of the goods or services to

be supplied (whether orally or in any written document submitted by the Supplier including but not limited to quotations, promotional or advertising material) shall be deemed to be express conditions of the Order.

9 BREAK CLAUSE

The Council reserves the right to terminate the Order (in whole or in part) at any time by giving notice in writing, in which case the Supplier will reduce the production rate of goods specified in the Order as rapidly as possible. Goods in process of manufacture or manufactured in accordance with the Council's delivery requirements may, at the option of the Council, either be completed, delivered and paid for or, alternatively, the Council may pay reasonable compensation in respect of the cost of materials and labour involved in the production of such goods up to the time of the termination.

10 LIABILITY

Without prejudice to the Supplier's liability under any warranty or condition implied by law, the Supplier shall indemnify the Council against all claims, costs, losses, damages and expenses whatsoever and whether arising in contract, delict or otherwise from:

- a) Any defect in the goods whether such defect is attributable to faulty design (other than a design made, furnished or specified by the Council), materials or workmanship;
- b) Any infringement or alleged infringement of any patent, patent application, registered design or other proprietary right by use or sale of the goods supplied to a specification or design of the Council; this indemnity shall apply only to the extent that the infringement, or alleged infringement, arises from the manufacturing process employed by the Supplier;
- c) Any defect of any installation, erection or work of any nature carried out by the Supplier;
- d) Any damage to property or injury to persons arising during or as a consequence of any installation, erection or work of any other nature undertaken by the Supplier, its employees, sub-contractors or agents on the Council's premises.

11 STANDARDS, SAFETY AND ENVIRONMENTAL CARE

Without prejudice to the Council's rights under statute or otherwise, the Supplier undertakes with the Council as follows:

- a) That the Supplier shall comply with:
 - i) all relevant health, safety and environmental Standards, Codes of Practice and legislation;
 - ii) all relevant UK and European Community Standards, Codes of Practice and directives on health and safety;
 - iii) all UK and European Community legislation and directives that encompass specific health, safety and/or environmental requirements; any safety precautions required for the handling, use, operation or disposal of the goods shall be communicated in writing by the Supplier and shall be agreed with the Council prior to acceptance;
 - iv) all relevant EC Standards and British Standard Specifications or British Standard Codes of Practice current at the date of implementation of the Order to ensure that all goods and materials supplied or used and all workmanship shall at least meet the requirements of that EC Standard or British Standard, as the case may be;

- b) that the Supplier shall not use any legally banned chemical substances, or any other chemical substances that the Council advises in writing shall not be used in its production processes and goods, and shall comply with all UK legislation and European Community directives concerning notification, restrictions and use of chemical substances; at the request of the Council the Supplier shall provide details of chemical substances which the Supplier intends to use on the Council's premises;

- c) that the Supplier shall comply with the Environmental Protection Act and all other legislation and directives relating to clean air and air pollution arising from industrial plant.

12 SUSTAINABLE DEVELOPMENT

No goods, products or services shall be supplied under the Order which may endanger the health of any person, will cause significant damage to the environment during manufacture, use or disposal, which consume a disproportionate amount of energy during manufacture, use or disposal, which cause unnecessary waste, or which contain materials derived from threatened species or environments.

The Supplier may be asked to provide verification that all timber and wood derived products, including pallets and packaging used in performing the order are from legal and sustainable sources conform to UK Government policy.

13 VISITS TO SUPPLIER'S PREMISES

The duly authorised representative of the Council shall be given access at all reasonable times to the Supplier's premises and shall be permitted to inspect, examine and test materials used in the manufacture of goods to be supplied under the Order, either before or during their manufacture. Previous notice will be given by the Council of its intention to send its representatives.

14 ADVERTISEMENT

Orders shall not, without the Council's prior consent in writing, be disclosed to any third party or used in any way for public announcement or advertisement.

15 COUNCIL'S RIGHTS IN DRAWINGS & SPECIFICATIONS

Any specifications, plans, drawings, process information, patterns or designs (whether patentable, registrable or not) and related computer software supplied by the Council to the Supplier in connection with the Contract shall remain the property of the Council and any information contained therein or otherwise communicated to the Supplier in connection with the Order shall be kept secret and shall not, without the written consent of the Council, be disclosed to any third party or made use of, for any purpose other than the implementation of the Order.

16 MATERIALS SENT

The Supplier shall be responsible for any materials or other property of the Council that may be issued to the Supplier in connection with the Order and shall keep the same in good order and condition and shall indemnify the Council against all loss or damage to such materials and other property. The Supplier shall use such materials and other property solely in connection with the implementation of the Order. The Supplier shall clearly mark all such property as the property of the Council and shall submit stock returns thereof as and when requested by the Council.

17 FORCE MAJEURE

The Council reserves the right to require the Supplier to suspend deliveries in the case of any industrial action or

other events which are beyond the reasonable control of the Council and which prevent or hinder the receipt, acceptance or use of the goods, and payment shall be postponed until such time as the Council instructs that deliveries shall be resumed.

18 SUB-CONTRACTING

The Order shall not be assigned or sub-contracted either in whole or in part without the prior consent in writing of the Council.

19 SPECIAL CONDITIONS RELATING TO TOOLS, MOULDS, ARTWORK AND OTHER EQUIPMENT

These conditions shall apply in respect of all tools, moulds, artwork, printing plates, computer software and such other special equipment, which may be made or purchased for the manufacture or in connection with the supply of any goods to be supplied under the Order: -

- a) Where the Order relates to the supply to the Council of tools, moulds, artwork, printing plates, computer software or other special equipment ("Council's equipment") and where, with the consent of the Council, the Council's equipment is to be retained in the possession of the Supplier, the property in such equipment shall be deemed to pass to the Council on completion of the Order to the Council's satisfaction;
- b) Where the Order provides for any contribution by the Council towards the costs of any tools, moulds, artwork, printing plates, computer software or other special equipment required by the Supplier for the manufacture of any items to be supplied under the Order ("Supplier's equipment"), the Council shall be deemed to have a beneficial interest in the Supplier's equipment. The Council will have the right at its request to acquire full ownership in the Supplier's equipment upon payment of a fair price if:
 - i) the Supplier is unable or unwilling for any reason to execute any order for items of the required quality from such equipment within a reasonable period, and at acceptable prices;
 - ii) an Insolvency Event (as defined in clause 21) has occurred or is threatened to occur;
 - iii) the Council has discharged all its liabilities to the Supplier whether under the Order or otherwise.
- c) The Supplier undertakes at its own expense to keep all the Council's equipment and the Supplier's equipment in good repair and condition and not to use the Council's equipment for any purposes other than the implementation of the Order without the Council's prior consent in writing.
- d) The Supplier further undertakes not to sell or dispose of any of the Council's equipment or the Supplier's equipment required to execute the Order, or create or allow to be created any lien, charge or other encumbrances over any such equipment.
- e) For as long as any of the Council's equipment shall be in the Supplier's possession, such of the Council's equipment shall be clearly and permanently marked by the Supplier as the property of the Council. The Council's equipment and the Supplier's equipment shall both remain at the risk of the Supplier and the Supplier shall be fully responsible for all obligations and liabilities in respect of such equipment and its operation as though the Supplier were the owner thereof.
- f) The Council shall have the right at any time, on giving reasonable notice, to enter upon the premises of the Supplier to inspect or make tests upon the Council's equipment or the Supplier's equipment and at its discretion to take possession of and remove from the premises of the Supplier any equipment of which it is

or has become the owner by virtue of sub-clause (a) or (b) of this clause.

20 OFFSETS OF AMOUNTS DUE

The Council shall be entitled to offset amounts due from it to the Supplier, with amounts due from the Supplier (and/or its subsidiaries or holding company or other subsidiaries of the same holding company as such expressions are defined by Section 736 of the Companies Act 1988) to the Council whether under the Order or otherwise.

21 TERMINATION

Without prejudice to any other rights the Council may have, the Council shall be at liberty to terminate the Order, without compensation to the Supplier, forthwith in the event either:

- a) of breach or non observance of any of the terms and conditions of the Order by the Supplier; or
- b) that the Supplier (being a company) shall pass a resolution for winding up (not being a members' winding up for the purposes of reconstruction or amalgamation), or that the Court shall make an order that the Supplier be wound up, or an administrator appointed to the Supplier or that a receiver or manager of any property of the Supplier shall be appointed, or (where the Supplier is an individual or a firm) that the Supplier shall become apparently insolvent or a trust deed be granted by it for behoof of creditors or a trustee in sequestration be appointed to the Supplier, or in any case that the Supplier enters into an arrangement or composition for the benefit of creditors or suffers any diligence to be done or executed or levied on its goods (any of the foregoing events being referred to, in these conditions, as an "Insolvency Event").

22 REMEDIES

Failure by the Supplier to perform any of the obligations or to meet any of the requirements of the Order shall entitle the Council at its option either to retain or to reject the goods without prejudice to such other rights as it may have to compensation and damages.

- a) The Council may reject any goods (whether or not after inspection) that do not conform with the requirements of the Order.
- b) The Supplier shall at his own expense and within fourteen days of being notified of the rejection, or within any other period specified in the Order, remove any goods or consignment that the Council has rejected;
- c) If the Supplier fails to remove the rejected goods or consignment in accordance with clause 22(b), the Council may return it to the Supplier at the Suppliers risk and expense;
- d) The Supplier shall at his own expense and within the delivery period stated within the Order, or within such further reasonable period as the Council may allow, supply goods that conform with the requirements of the Order.

23 COMPLIANCE AND OBLIGATIONS

Failure by the Council to insist on the Supplier's compliance with any of its obligations shall not be construed as a waiver or relinquishment of the Council's right to insist upon strict compliance with such obligations at any other time.

24 VARIATIONS

Variations to the Order shall only be accepted if confirmed in writing as a variation to the Order by the originator of the Order.

25 CONSTRUCTION OF CONTRACT

- a) These conditions shall apply, the necessary changes having been made, to the supply of services by the Supplier, and references to "goods" shall, where appropriate, be deemed to include services.
- b) The headings of these Conditions shall not affect the construction thereof.
- c) If any term or condition contained in the Order or these Conditions to any extent becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining Conditions shall in no way be affected.

26 FREEDOM OF INFORMATION

The Council may disclose and/or publish the information contained in this Order and/ or information held by the Council as a consequence of, in relation to or in connection with, this Order in order to comply with the Council's obligations under the Freedom of Information (Scotland) Act 2002 ("the 2002 Act"), or the Environmental Information (Scotland) Regulations 2004 ("the 2004 Regulations"), or any statutory modification or re-enactment thereof, or Code of Practice or Guidance issued pursuant thereto, or notice by the Scottish Information Commissioner issued thereunder, or any other law, or as a consequence of judicial order, or order by any court or tribunal with authority to order disclosure. Without prejudice to the foregoing generality, the Council may also disclose such information to the Scottish or United Kingdom Parliament or any other department, office or agency of Her Majesty's Government in Scotland or the United Kingdom. The Council will aim to consult with the Supplier on any request for information which has been identified as being sensitive, however no term of the Order, whether express or implied, shall preclude the Council from disclosing and/ or publishing such information as aforesaid, unless the information is exempt information under Part 2 of the 2002 Act or Regulation 10 of the 2004 Regulations. In the event that this Order involves environmental functions, responsibilities or services, it is understood that the Supplier may be subject to the terms of the 2004 Regulations in relation to this contract. For the purposes of this condition, "Order" shall include any schedule, appendix, plan, drawing and any other attachment hereto.

27 DATA PROTECTION

The Supplier undertakes that it will comply with the provisions of the Data Protection Act 1998 and in particular, warrants that all appropriate steps will be taken to avoid unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

28 BLACKLISTING

The Supplier undertakes that it shall not commit any breach of the Employment Relations 1999 Act (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992 and any statutory modification or re-enactment thereof, 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.

29 EQUALITY OF TREATMENT

The Supplier undertakes that it has and shall comply with all statutory requirements in respect of ensuring equal opportunity in employment and has not and shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, gender, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Provider shall not unlawfully discriminate within the meaning and scope of the Equality Acts 2006 and 2010, the Equal Pay Act 1970, the Sex Discrimination Acts of 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995, the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000, the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Age) Regulations 2006, the Equality Act (Sexual Orientation) Regulations 2007, the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof. The Supplier shall take all reasonable steps to secure the observance of this clause by all employees and representatives of the Supplier.

30 PREVENTION OF COLLUSION AND CORRUPT OR ILLEGAL PRACTICES

The Council shall be entitled to cancel the Order and to recover from the Supplier the amount of all losses suffered by the Council as a result of such cancellation if the Supplier or any representative of the Supplier (whether with or without the knowledge of the Supplier) shall have practised collusion in tendering for the Order or any other contract with the Council or shall have employed any corrupt or illegal practices either in the obtaining or execution of the Order or any other contract with the Council.

31 LAW

The Order shall be governed by and construed in accordance with the Law of Scotland and the Supplier agrees to submit to the jurisdiction of the Scottish Courts