

TERMS AND CONDITIONS OF PURCHASE

In these Conditions: -

“Contract” means the contract between the Council and the Supplier, on the terms specified in these Conditions and in the Order including any schedule, appendix, plan, drawing and/or other document as may be attached thereto;

“Council” means South Ayrshire Council, being the organisation placing the Order

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

“Order” means the order (with any schedules attached or referred to therein) for the purchase of goods 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 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

- a) All goods/services will be delivered to/at the delivery point specified in the Contract and shall take place on the date or dates specified in the Contract 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 Contract.
- b) Acceptance of the goods occurs at the time and in accordance with the procedure specified in the Contract or if none is so specified:
 - (i) where the Contract specifies a time limit within which to reject, that time has elapsed;
 - (ii) where the Contract 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 Contract if not executed on the date(s)/within the time(s) specified in the Contract, (including any schedules forming part of or referred to in the Contract). 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 Contract, 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 Contract:

- a) The price stated in (or ascertained in accordance with) the Contract 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 Contract:

- 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 30days 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 Contract, 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 Contract 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 Contract 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 Contract and with good workmanship, and the Supplier guarantees that the results intended to be achieved according to the Contract 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 Contract.

9 LIABILITY

a) 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:

- (i) 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;
- (ii) 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;
- (iii) Any defect of any installation, erection or work of any nature carried out by the Supplier;
- (iv) 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.

b) The Supplier shall at its own cost and until the expiry or termination of the Contract insure to the extent of not less than FIVE MILLION POUNDS (£5,000,000) for any individual incident against all third party risks in respect of persons or property (including employees and property of the Council) arising out of or incidental to the Supplier's supply of goods in terms of the Contract. Such insurance shall provide for the Council to be indemnified in accordance with clause 9(a). Further, the Supplier shall at its own cost and until the expiry or termination of the Contract maintain a policy of Employer Liability Insurance to the extent of not less than TEN MILLION POUNDS (£10,000,000) for any individual incident along with such other insurance policies as may be specified in the Order. Whenever so required, the Supplier shall produce to the Council satisfactory evidence that this clause 9(b) has been complied with and shall, from time to time, review the level of insurance so maintained and also increase it as is reasonably required by the Council.

10 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 Codes of Practice and directives on health and safety;
 - iii) all UK 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 Contract 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 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.

11 SUSTAINABLE DEVELOPMENT

- a) No goods, products or services shall be supplied under the Contract 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.
- b) 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.

12 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 Contract, either before or during their manufacture. Previous notice will be given by the Council of its intention to send its representatives.

13 PUBLICITY

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.

14 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 Contract 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 Contract.

15 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 Contract 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 Contract. 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.

16 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.

17 SUB-CONTRACTING

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

18 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 Contract: -

- a) Where the Contract 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 Contract to the Council's satisfaction;
- b) Where the Contract 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 Contract ("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 Contract 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 Contract 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 Contract, 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.

19 SET OFF

Any sum or sums which may become payable to the Council by the Supplier (either under the Contract or as a result of the Supplier's breach of any of its provisions) may, without prejudice to any other legal right or remedy, be deducted from and retained out of any money due or to become due from the Council to the Supplier under the Contract or any other agreement between the Council and the Supplier.

20 DISPUTES

If any dispute or difference of any kind whatsoever shall arise or occur between the parties in relation to any matter or thing arising out of or under the Contract, unless the parties mutually consent to seeking resolution by other means, the dispute or difference shall be referred to and be settled by an arbiter, to be agreed upon by the parties hereto or, in the event that such agreement cannot be reached within one calendar month of either party serving on the other written notice to concur, an arbiter to be nominated by the President or Vice-President for the time being of the Law Society of Scotland, on the application of either Party and the provisions of the Arbitration (Scotland) Act 2010 or any statutory re-enactment or amendment thereof for the time being in force shall apply to any reference under this clause.

21 TERMINATION

- a) Without prejudice to any other rights the Council may have, the Council shall be at liberty to terminate the Contract, without compensation to the Supplier, forthwith in the event either:
 - (i) of breach or non observance of any of the terms and conditions of the Contract by the Supplier; or
 - (ii) 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").
- b) The Council reserves the right to terminate the Contract at any time by giving notice in writing, in which case the Supplier will reduce the production rate of goods specified in the Contract 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.
- c) In the event of the Contract being terminated by the Council under this clause, by whatever means, the Council shall be entitled to recover from the Supplier all

losses, expenses, costs and charges incurred by them as a consequence of such termination, which shall be recoverable from the Supplier as a debt to the Council.

- d) In the event that the Council is required to engage other persons to supply, deliver, install and/or commission the goods, the Council will be entitled to recover from the Supplier any difference in cost between the cost of the Contract and the cost of the new contract, if greater.
- e) For the avoidance of doubt, clauses 21(c), 21(d) and 25 hereof shall survive any termination of the Contract.

22 REMEDIES

Failure by the Supplier to perform any of the obligations or to meet any of the requirements of the Contract 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 Contract.
- 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 Contract, 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 Contract, or within such further reasonable period as the Council may allow, supply goods that conform with the requirements of the Contract.

23 VARIATIONS

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

24 FREEDOM OF INFORMATION

The Council may disclose and/or publish the information contained in this Contract and/ or information held by the Council as a consequence of, in relation to or in connection with, this Contract 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 Contract, 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 Contract 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.

25 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 technical and organisational

security measures will be taken to avoid unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

26 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.

27 NOTICES

Any notice required to be given by either party under the provisions of the Contract shall, unless the context otherwise requires or permits, be in writing and shall be sufficiently served if delivered by hand or sent by registered or recorded delivery post, addressed (in the case of the Council) to the originator of the Order, South Ayrshire Council, County Buildings, Wellington Square, Ayr KA7 1DR and, in the case of the Service Provider, to its registered office or place of business.

28 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 Contract to any extent becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining Conditions shall in no way be affected.

29 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.

30 PREVENTION OF COLLUSION AND CORRUPT OR ILLEGAL PRACTICES

The Council shall entitle to cancel the Contract 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 Contract or any other contract with the Council or shall have employed any corrupt or illegal

practices either in the obtaining or execution of the Contract or any other contract with the Council.

31 WAIVER

Failure by the Council to insist on the Service Provider'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.

32 ENTIRE AGREEMENT

Except where expressly provided herein, 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.

33 LAW

The Contract 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.