

**CONDITIONS OF CONTRACT
FOR THE PROVISION OF SERVICES**

1. Definitions

In these conditions:

- "Contractor" means the person, firm or company to whom the Order is addressed
- "the Council" means ISLE OF WIGHT COUNCIL of County Hall
High Street, Newport, Isle of Wight PO30 1UD
- "Equality Legislation" includes, but not limited to, the Equal Pay Act 1970, the Sex Discrimination Act 1975, the Race Relations Acts 1976 and 2000, the Disability Discrimination Acts 1995 and 2005 and the Equality Act 2006, all secondary legislation to those Acts and all further legislation pertinent thereto whether in force at the date of these conditions or which come into force during the provision of the Services
- "Services" means the services described in the Order and shall, where the context so admits, include any materials, articles and goods to be supplied thereunder
- "Order" means any order placed by the Council for the supply of services including all specifications, patterns, plans, drawings, reports and other documents which are incorporated or referred to therein
- "the parties" means the Council and the Contractor

Words which use the male derivatives such as "his or him" also refer to and it is agreed that they have prescribed to them the female derivatives such as "her or hers"

2. Conditions of Purchase

- i. These conditions shall apply to all contracts for the purchase of Services by the Council from the Contractor to the exclusion of all other terms and conditions including any terms or conditions which the Contractor may

purport to apply under any sales offer or similar document or in correspondence. These conditions constitute the entire understanding between the Council and the Contractor with respect to the subject matter covered by the Order and supersede all previous agreements and understandings between the parties

- ii. Any variation of these conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the parties

3. Provision of the Services

- i. The Contractor shall at all times carry out the Services with all reasonable care and skill and shall conform in all respects with any particulars specified in the Order or any variations thereto
- ii. The Contractor shall provide all staff, equipment, materials and other things whatsoever required for the provision of the Services
- iii. The Contractor shall provide the Council with such progress reports of its work at such intervals and in such form as is detailed in the Order or as otherwise agreed in writing from time to time
- iv. The Contractor shall complete the Services at the time(s) specified in the Order or as agreed by the parties in writing and in either event time shall be considered to be of the essence. If no time is specified for completion of the Services then the Contractor shall complete the Services within a reasonable time

4. Contractor's Status

- i. In carrying out the Services the Contractor shall be acting as principal and not as the agent of the Council. Accordingly:
 - (a) the Contractor shall not (and shall procure that its employees, servants and agents do not) say or do anything that might lead any

other person to believe that the Contractor is acting as the agent of the Council, and

- (b) nothing in the Order or these conditions shall impose any liability on the Council in respect of any liability incurred by the Contractor to any other person but this shall not be taken to exclude or limit any liability of the Council to the Contractor that may arise by virtue of either a breach of this Contract or any negligence on the part of the Council

5. Personnel

- i. The Contractor shall take the steps reasonably required by the Council to prevent unauthorised persons being admitted to the Council's premises. If the Council gives the Contractor notice that any person is not to be admitted to or is to be removed from the Council's premises or is not to become involved in or is to be removed from involvement in the performance of the Order, the Contractor shall take all reasonable steps to comply with such notice and if required by the Council the Contractor shall replace any person removed under this condition with another suitably qualified person and procure that any pass or permit issued to the person removed is surrendered
- ii. If and when directed by the Council, the Contractor shall provide a list of names and addresses of all persons who are or may be at any time concerned with the Services or any part of them, specifying the capacities in which they are so concerned and giving such other particulars and evidence of identity and other supporting details as the Council may reasonably require

6. Payment

- i. Payment of the price specified in the Order shall be made by the Council to the Contractor on such date or dates as may be specified in the Order

or if not so specified shall be made within 30 days of receipt of the appropriate VAT invoice, such invoice to be received no earlier than the date for the completion date of the Services

- ii. Wherever pursuant to the Order any sum of money is recoverable from or payable by the Contractor, that sum may be deducted from any sum then due, or which at any later time may become due, to the Contractor under the Order or under any other agreement or contract with the Council

7. Service Monitoring

The Council or its authorised representative shall have the right to inspect and examine the work being performed on the Council's behalf at any reasonable time; where any part of the work is being performed on premises other than the Council 's premises, reasonable notice shall be given to the Contractor. The Contractor shall give all such facilities as the Council or its authorised representative may reasonably require for such inspection and examination

8. Default

- i. If the Contractor shall at any time fail to carry out any part of the Services in accordance with the specification set out in the Order then, without prejudice to any other right or remedy which the Council may possess in respect of such failure, the Council may:
 - (a) require the Contractor to remedy such default within such time as may be specified by the Council by providing or providing again (as the case may be) without further charges to the Council such part of the Services to the required standard; and/or
 - (b) without determining the Order in whole or in part, itself provide or procure the provision of such part of the Services until such time as the Contractor shall have proved to the reasonable satisfaction of the Council that such part of the Services will once more be provided by the Contractor to the required standard or, at the Council's option

until such later time as the Council may specify as being reasonable notice in all the circumstances that the Contractor will once more so provide such part of the Services; and

(c) without determining the whole of the Order, determine the Order in respect of such part of the Services only and thereafter itself provide or procure the provision of such part of the Services

ii. The Council may charge the cost of any services provided or procured by it under condition 8 i together with an administration charge equal to 10% of the cost of such Services, to the Contractor

9. Risk and Insurance

i. The Contractor will indemnify the Council in respect of any failure of the Contractor to use the skill and care normally used by professionals providing similar services to the Services and for these purposes the Contractor shall maintain professional indemnity insurance with a minimum amount of third party insurance of one million pounds (£1,000,000) for any one claim/number of claims unlimited and the Contractor will continue to hold such professional indemnity insurance for at least 12 years from the completion or termination of the Services.

ii. The Contractor will indemnify the Council in respect of any damage to the Council's property or premises and physical or other personal injury to the Council's employees or to members of the public or other persons occasioned during delivery of the Services and for these purposes the Contractor shall maintain public liability insurance with a minimum amount of third party insurance of ten million pounds (£10,000,000) for any one accident/number of accidents unlimited.

iii. The Contractor shall provide written evidence of the above-mentioned insurances to the Council at the Council's request throughout the period of the Agreement.

- iv. This condition 9 is expressly stated to be entirely without prejudice to any rights that might subsist between the Council, the Contractor and third parties at common law or otherwise.

10. Assignment or Sub-Contracting

- i. The Contractor shall not without the consent in writing of the Council assign or transfer the Order or any part thereof to any other person except as part of a company amalgamation or reconstruction
- ii. The Contractor shall not without the consent in writing of the Council sub-let the Order or any part thereof but this shall not prevent the Contractor sub-letting part of the Order to any company which is a member of the group to which the Contractor belongs or a company with whom the Contractor is associated (provided that the Contractor shall provide such evidence of proof as required by the Council). Any such consent shall not relieve the Contractor of any of his obligations under the Order

11. Bankruptcy/Liquidation etc.

In the event of the Contractor becoming bankrupt or making a composition or arrangement with its creditors or having a proposal in respect of its company for a voluntary arrangement for a composition of debts or scheme or arrangement approved in accordance with the Insolvency Act, 1986 or any statutory re-enactment or amendment thereof, or having an application made under the Insolvency Act, 1986 or any statutory re-enactment or amendment thereof in respect of its company to the Court for the appointment of an administrator, or having a winding-up order made or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding up passed or having a provisional liquidator, receiver or manager of his business or undertaking duly appointed or having an administrative receiver as defined in the Insolvency Act, 1986 or any statutory re-enactment or amendment thereof, appointed or having possession taken by or on behalf of the holders of any

debentures secured by a floating charge, or any property comprised in or subject to the floating charge then in any and all of such eventualities the Council shall be at liberty:

- (a) to cancel the Order summarily by notice in writing without compensation to the Contractor, or
- (b) to give any receiver, liquidator, trustee or insolvency practitioner the option of carrying out the Order

PROVIDED THAT the exercise of the right under this condition shall be at the sole discretion of the Council and shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Council

12. Force Majeure

The Contractor or its designated representatives shall not be liable to the council for any delay or failure by the Contractor to perform its obligations under the Order and/or these conditions if such delay or failure arises from any cause or causes beyond the reasonable control of the Contractor, including, but not limited to, labour disputes, lightning, shortages of materials, rationing, utility or commitments failures, earthquakes, blockages, actions, restrictions, regulations or orders of any Government, agency or subdivision thereof

13. Infringement of Patents

- i. Where applicable the Contractor shall fully indemnify the Council against any action, claim, demand costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of any letters patent, registered design, trademark, or trade name protected in the United Kingdom by the use or sale of the Goods and against all costs and damages which the Council may incur in any action for such infringement or for which the Council may become liable in any such action. PROVIDED ALWAYS that this indemnity shall not apply to any

infringement which is due to the Contractor having followed a design or instruction furnished by the Council or to the use of the Goods in a manner or for a purpose not reasonably to be inferred by the Contractor or disclosed to the Contractor prior to the making of the Contract

- ii. In the event of any claim being made or action brought against the Council arising out of the matters referred to in this condition the Contractor shall be promptly notified thereof and at his own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom. The Council shall not, unless and until the Contractor shall have failed to take over the conduct of negotiations or litigation, make any admission which might be prejudicial thereto. The conduct by the Contractor of such negotiations or litigation shall be conditional upon the Contractor having first given to the Council such reasonable security as shall from time to time be required by the Council to cover the amount ascertained or agreed estimated, as the case may be, of any compensation, damages, expenses and costs for which the Council may become liable. The Council shall, at the request of the Contractor, afford all available assistance for any such purpose and shall be repaid any expenses incurred in doing so
- iii. The Council on his part warrants that any design or instructions furnished or given by him shall not be such or cause the Contractor to infringe any letters patent, registered designs, trademarks or trade name in the performance of the Contract

14. Value Added Tax (VAT)

- i. All sums payable pursuant to the Order, unless otherwise stated, are exclusive of VAT and other duties or taxes
- ii. Any VAT or other duties payable in respect of such sums shall be payable in addition to such sums

15. Corruption

The Council shall be entitled to cancel the Order and to recover from the Contractor the amount of any loss resulting from such cancellation if the Contractor shall have offered or given or agreed to give any person a gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to any action in relation to the obtaining or execution of the Order or for showing or forbearing to show favour or disfavour to any person in relation to the Order or any other contract with the Council or if the like acts shall have been done by any person employed by him or acting on his behalf (whether with or without the knowledge of the Contractor) or if in relation to the Order, the Contractor or any person employed by him or acting on his behalf shall have committed any offence under the Prevention of Corruption Acts, 1889 and 1916 or shall have given any fee or reward the receipt of which is an offence under Section 117(2) Local Government Act, 1972

16. Equality

- i. The Council as a public body in carrying out its functions must:
 - have due regard to the need to eliminate unlawful race, disability and sex discrimination; and
 - promote equality of opportunity and good relations between persons of different racial groups, persons with disabilities and between men and women,in accordance with appropriate Equality Legislation
- ii. The Contractor confirms that it will perform its obligations pursuant to the Order in all respects in conformance with the Equality Legislation where appropriate

- iii. The Contractor shall indemnify the Council in respect of all costs claims and demands arising from a third party claim resulting from the Contractor's obligations under this condition

17. Human Rights Act

- i. The Council as a public authority has a positive obligation to ensure compliance with the Human Rights Act 1998 and as a contractor working for and on behalf of the Council the Contractor has a similar duty under the said Act
- ii. The Contractor confirms that it will perform its obligations pursuant to the Order in all respects in conformance with the said Act
- ii. The Contractor shall indemnify the Council in respect of all costs claims and demands arising from a third party claim resulting from a breach of the Contractor's obligations under this condition

18. Data Protection Act

The Contractor shall comply in all respects with the provisions of the Data Protection Act 1998 (or subsequent legislation) and will indemnify the Council against all actions costs expenses claims proceedings and demands which may be made or brought against the Council for breach of statutory duty under the said Act which arises from the use disclosure or transfer of personal data by the Council and his servants and agents

19. Freedom of Information

The Contractor acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 and The Environmental Information Regulations 2004 and shall assist and co-operate with the Council (at the Contractor's expense) to enable the Council to comply with its obligations as to the disclosure of information.

20. Confidentiality

The Contractor shall not at any time during or after the term of the Order divulge or allow to be divulged to any person any information, confidential or otherwise, relating to the business or affairs of the Council unless expressly agreed to by the Council

21. Indemnity

- i. The Contractor shall, subject to paragraphs ii and iii of this condition indemnify the Council in respect of all damage or injury occurring to any person or to any property and against all actions, suits, claims, demands, costs, charges or expenses (including legal fees and costs incurred) arising in connection therewith to the extent that the same shall have been occasioned by the negligence of the Contractor, his servants or agents during such time as he or they were on, entering onto or departing from the Council's premises for any purpose connected with the Contractor.
- ii. The Contractor shall not be liable to the Council for:
 - (a) any loss of profit or of contracts, and
 - (b) any damage or injuryto the extent that the same is caused by or arises out of the act or omissions of the Council or of others (not being the Contractor's servants or agents)
- iii. In the event of any claim being made against the Council by the reason of any matter referred to and in respect of which the Contractor is liable under this condition, the Contractor shall be promptly notified thereof and may at his own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom. The Council shall not unless and until the Contractor shall have failed to take over the conduct of negotiations or litigation make any admission which may be prejudiced

thereto. The conduct by the Council of such negotiations or litigation shall be conditional upon the Contractor having first given to the Council such reasonable security as shall from time to time be required by the Council to cover the amount ascertained or agreed or estimated as the case may be of any compensation, damages, expenses and costs for which the Council may become liable. The Council shall at the request of the Contractor afford all available assistance for any such purpose and shall be repaid any out of pocket expenses incurred in doing so

22. Termination for Breach

The following obligations are conditions of the Order and any breach of them shall be deemed a fundamental breach which shall determine the Order immediately and the rights and liabilities of the party not at fault shall then be determined

- i. Failure on the part of the Contractor to observe any obligation(s) under the Order or these conditions
- ii. The levying of any distress or execution against the Contractor or the making by him of any composition or arrangement with creditors or being a company in bankruptcy/liquidation in accordance with the terms of condition 11

23. Severance

If any provision of these conditions is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, or indications to that effect are received by either of the parties from any competent authority the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality or at the discretion of the Council it may be severed from the Order or these conditions as the case may be and the remaining provisions of the Order or these conditions shall remain in full force and effect unless the Council in the

Council's discretion decides that the effect of such a declaration is to defeat the original intention of the parties in which event the Council shall be entitled to terminate the Order by 14 days' written notice to the Contractor

24. Change of Address

Each of the parties shall give notice to the other of the change of address at the earliest opportunity but in any event within 48 hours of such change

25. Notice

Any Notice to be served on either of the parties by the other shall be sent by pre-paid recorded delivery or first class post to the address of the relevant party as detailed in the Order or, in the event of the change of address to that address

26. Third Parties

The parties hereby declare that no term of the Order is intended by the parties to confer a benefit on any third party (as defined by the Contracts (Right of Third Parties) Act 1999) nor is intended to be enforceable by any third party. The provisions of the said Act are hereby excluded

27. Law and Jurisdiction

The Order and these conditions shall be construed and be subject to English Law and jurisdiction of the English Courts