Corporate Procurement Service

Standard Terms and Conditions of Contract for the

Purchase of Goods and Services (including Consultancy)

**Document Reference Number**

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **C** | **P** | **S** | **P** | **R** | **O** | **P** | **2** | **0** | **4** |

1. DEFINITIONS 3
2. CHANGE TO CONTRACT REQUIREMENTS 4
3. SUPPLIER’S STATUS 4
4. INSPECTION, SECURITY AND ACCESS TO COUNCIL PREMISES 5
5. PRICE & PAYMENT 5
6. GOODS 6
7. DELIVERY 6
8. LABELLING AND PACKAGING 7
9. DAMAGE IN TRANSIT 7
10. INSPECTION, REJECTION AND GUARANTEE 7
11. PROPERTY AND RISK 8
12. SERVICES 8
13. MANNER OF CARRYING OUT THE SERVICES 8
14. TIME OF PERFORMANCE 9
15. SUPPLIERS PERSONNEL 9
16. RETURN OF DOCUMENTATION 10
17. FREE-ISSUE MATERIALS 10
18. AUDIT 10
19. ACCOUNTING INFORMATION 10
20. CORRUPT GIFTS OR PAYMENTS 11
21. INTELLECTUAL PROPERTY RIGHTS 11
22. HEALTH AND SAFETY 11
23. PROTECTING THE ENVIRONMENT 11
24. EQUALITY 12
25. BLACKLISTING 12
26. ANTI-SLAVERY AND HUMAN TRAFFICKING 12
27. ACCESS TO COUNCIL INFORMATION (FREEDOM OF INFORMATION ACT 2002) 13
28. DATA PROTECTION 13
29. MEDIA DISCLOSURE 16
30. SOCIAL MEDIA USE 16
31. TUPE 16
32. LIABILITY 17
33. INSURANCE 19
34. TERMINATION 19
35. ASSIGNATION AND SUB-CONTRACTING 21
36. NOTICES 21
37. DISPUTE RESOLUTION 22
38. NOVATION ETC. 22
39. FORCE MAJEURE 22
40. ENTIRE AGREEMENT 23
41. WAIVER 23
42. SEVERABILITY 23
43. HEADINGS 23
44. GOVERNING LAW 23
45. CONSULTATIONS, COMPLAINTS & COMPLIMENTS 24
46. LATE PAYMENT OF INVOICES 24

|  |
| --- |
| **CONDITIONS OF CONTRACT FOR THE PURCHASE OF GOODS AND SERVICES** |
| These Conditions may only be varied with the written agreement of the Council. No terms or conditions put forward at any time by the Supplier shall form any part of the Contract unless specifically agreed in writing by the Council. |

|  |  |  |
| --- | --- | --- |
|  | DEFINITIONS | |
| In these Conditions the following terms have the following meanings: | | |
| *“Contract”* | | means the contract between the Council and the Supplier consisting of the Purchase Order, tender documents, these conditions and any other documents (or parts thereof) specified; |
| *“Council”* | | means Scottish Borders Council, constituted under the Local Government etc. (Scotland) Act 1994 and having their Headquarters at Newtown St. Boswells, Melrose, TD6 0SA; |
| *“Data Controller”, “Data Processor”, “Data Subject” and “Data Subject Access Request”* | | have the meanings given in the Data Protection Laws; |
| *“Data Protection Laws”* | | means any law, statute, subordinate legislation, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the Processing of Personal Data to which a party is subject including the Data Protection Act 2018 and any statutory modification or re-enactment thereof and the GDPR; |
| *“GDPR”* | | means General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the Processing of Personal Data and on the free movement of such data (General Data Protection Regulation) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 |
| *“Goods”* | | means any goods as are to be supplied to the Council by the Supplier (or by any of the Supplier's sub-contractors) pursuant to or in connection with this Contract; |
| *“Intellectual Property Rights”* | | means all copyright, patent, trademark, design right, database right, and any other right in the nature of intellectual property whether or not registered, in any materials or works in whatever form (including but not limited to any materials stored in or made available by means of an information technology system and the computer software relating thereto) which are created, produced or developed in connection with this Contract by or on behalf of the Supplier; |
| *“Personal Data”* | | has the meaning given in the Data Protection Laws; |
| *“Premises”* | | means the location where Goods are to be delivered or Services performed, as specified in the Contract; |
| *“Price”* | | means the sum to be paid in consideration of supply of the Goods and/or delivery of the Services in connection with the Contract; |
| *“Processing”* | | has the meaning given in the Data Protection Laws and cognate expressions shall be construed accordingly; |
| *“Purchase Order”* | | means the order for goods or services to be provided under this Contract issued to the Supplier by the Council; |
| *“Schedule”* | | means a schedule annexed to and forming part of these  Conditions; and |
| *“Services”* | | means the services to be provided to the Council by the Supplier (or by any of the Supplier's sub-contractors) pursuant to or in connection with this Contract, where the context so admits, include any materials, articles and goods to be supplied thereunder; |
| *“Supervisory Authority”* | | has the meaning given in the Data Protection Laws. |
| *“Supplier”* | | means the person, firm, or company to whom the Contract is issued; |
| *“Supplier Representative”* | | means all persons engaged by the Supplier in the performance of its obligations under the Contract including: its employees and workers (including persons employed by a third party but working for and under the control of the Supplier); its agents, suppliers, and carriers; and any sub-contractors of the Supplier (whether approved under Condition 35 or otherwise). |

|  |  |
| --- | --- |
|  | CHANGE TO CONTRACT REQUIREMENTS |
|  | The Council may order any variation to any part of the Goods and/or Services that for any reason shall in the Council’s opinion be desirable. Any such variation may include (but shall not be restricted to) additions, omissions, alterations, substitutions to the Goods and/or Services and changes in quality, form, character, kind, timing, method, delivery, or sequence. |
|  | Save as otherwise provided herein, no variation of the Goods and/or Services as provided for in the Condition 2.1 shall be valid unless given or confirmed in the form of an order given by the Council. All such orders shall be given in writing provided that if for any reason the Council shall find it necessary to give any such order orally in the first instance the Supplier shall comply with such oral order which must be confirmed in writing by the Council within two (2) working days of the giving of such oral order by the Council, failing which the variation made by such oral order shall cease to have effect on the expiry of the said period. |
|  | Where any such variation of the Goods and/or Services made in accordance with Conditions 2.1 and 2.2 has affected or may affect the costs incurred by the Supplier in providing the Goods and/or Services, the Supplier will notify the Council in writing of the effect which it has had or may have on the said costs and such notification shall be considered by the Council, who shall take all of the facts into account (including such information as may be provided by the Supplier in respect of the effect which such variation has had or may have on the costs incurred by the Supplier in providing the Goods and/or Services) and may authorise such alteration to the sums to be paid to the Supplier in accordance with the provisions of the Contract as are, in the Council’s opinion, appropriate and reasonable in the circumstances. |

|  |  |
| --- | --- |
|  | SUPPLIER’S STATUS |
|  | The Supplier shall be acting as principal and not as the agent of the Council. Accordingly:   1. the Supplier shall not say or do anything that might lead any other person to believe that the Supplier is acting as the agent of the Council, and 2. nothing in this Contract shall impose any liability on the Council in respect of any liability incurred by the Supplier to any other person but this shall not be taken to exclude or limit any liability of the Council to the Supplier that may arise by virtue of either a breach of this Contract or any negligence on the part of the Council, or the Council’s staff or agents. |

|  |  |
| --- | --- |
|  | INSPECTION, SECURITY AND ACCESS TO COUNCIL PREMISES |
|  | The Supplier is deemed to have inspected the Premises prior acceptance of the Contract so as to have understood the nature and extent of the Services to be carried out and/or Goods to be delivered and is deemed to be satisfied in relation to all matters connected with the Services, Goods and Premises. |
|  | The Council shall, at the request of the Supplier, grant such access as may be reasonable for the purpose of Condition 4.1. |
|  | Where any access to the Council’s Premises is necessary in connection with the Contract the Supplier and the Supplier’s sub-contractors shall at all times comply with any reasonable requirements of any relevant security policy or requirement of the Council. |
|  | Access to any of the Council’s Premises shall not be exclusive to the Supplier but only such as shall enable the Supplier to carry out the Contract concurrently with the execution of work by others. The Supplier shall co-operate with such others as the Council may reasonably require. |
|  | Any access to, or occupation of, the Council’s Premises which the Council may grant the Supplier from time to time is on a non-exclusive licence basis free of charge. The Supplier must use the Council’s Premises solely for the purpose of performing its obligations under the Contract and must limit access to the Council’s Premises to such individuals as are necessary for that purpose. |
|  | At the Council’s written request, the Supplier must provide a list of the names and addresses of all persons who may require admission to the Council’s Premises in connection with the Contract, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Council may reasonably request. |
|  | The Supplier shall take the steps reasonably required by the Council to prevent unauthorised persons being admitted to the Premises. |
|  | The Council may, by notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, the Council’s Premises any Supplier Representative whose admission or continued presence would, in the opinion of the Council acting reasonably, be undesirable. The decision of the Council shall be final and conclusive. |
|  | If the Council gives the Supplier notice that any person is not to be admitted to or is to be removed from the Premises, the Supplier shall take all reasonable steps to comply with such notice. |
|  | The Supplier shall bear the cost of any notice, instruction or decision of the Council under Condition 4.8 and 4.9. |
|  | Breach of this Condition 4 by the Supplier is a material breach for the purposes of Condition 34. |

|  |  |
| --- | --- |
|  | PRICE & PAYMENT |
|  | The Price of the Goods and/or Services shall be as stated in the Contract and no increase will be accepted by the Council unless agreed by the Council in writing. |
|  | Invoices from Suppliers without a valid Purchase Order (PO) number, other than the categories recognised by the Council as an exception (utilities, business rates, passenger transport and any other exceptions approved by the Council’s Chief Financial Officer), will not be processed or paid until a valid PO number is quoted by the supplier. |
|  | The Council reserves the right to request that invoices are submitted electronically. |
|  | Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge. |
|  | Unless otherwise stated in the Contract, an electronic payment via BACS will be made within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for Goods received and/or Services delivered to the satisfaction of the Council. |
|  | Wherever under the Contract any sum of money is recoverable from or payable by the Supplier, that sum may be deducted from any sum then due, or which at any later time may become due, to the Supplier under the Contract or under any other agreement or contract with the Council. |
|  | Notwithstanding Condition 35 of this Contract the Supplier may assign to another person (an "assignee") the right to receive payment of the Price or any part thereof due to the Supplier under this Contract subject to (i) deduction of sums in respect of which the Council exercises the right of recovery under Condition 5.6 and (ii) all the related rights of the Council under this Contract in relation to the recovery of sums due but unpaid. The Supplier shall notify or procure that any assignee notifies the Council of any variations to the arrangements for payment of the Price or for handling invoices, in each case in good time to enable the Council to redirect payments or invoices accordingly. In the absence of such notification the Council shall be under no obligation to vary the arrangements for payment of the Price or for handling invoices. |

|  |  |
| --- | --- |
|  | GOODS |
|  | The Goods shall be to the reasonable satisfaction of the Council and shall conform in all respects with any particulars specified in the Contract and in any variations thereto. |
|  | The Goods shall conform in all respects with the requirements of any statutes, orders, regulations, or bylaws from time to time in force. |
|  | The Goods shall be fit and 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 the execution of the Contract. |

|  |  |
| --- | --- |
|  | DELIVERY |
|  | The Goods shall be delivered to the place named in the Contract. 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, costs, and expenses which the Council may 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 his sub-contractors. |
|  | Where any access to the Premises is necessary in connection with delivery or installation the Supplier and the Supplier’s sub-contractors shall at all times comply with the reasonable requirements of the Council. |
|  | The time of delivery shall be of the essence and failure to deliver within the time promised or specified shall enable the Council (at the Council’s option) to release themselves from any obligation to accept and pay for the Goods and/or to cancel all or part of the Contract therefor, in either case without prejudice to the Council’s other rights and remedies. |

|  |  |
| --- | --- |
|  | LABELLING AND PACKAGING |
|  | The Goods shall be packed and marked in a proper manner and in accordance with the Council’s instructions and any statutory requirements and any requirements of the carriers. In particular the Goods shall be marked with the Purchase Order number, the net, gross, and tare weights, and the name of the contents shall be clearly marked on each container and all containers of hazardous goods (and all documents relating thereto) shall bear prominent and adequate warnings. 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 8. |
|  | All packaging materials will be considered non-returnable and will be destroyed unless the Supplier's advice note states that such materials will be charged for unless returned. The Council accepts no liability in respect of the non-arrival at the Supplier's premises of empty packages returned by the Council unless the Supplier shall within ten (10) days of receiving notice from the Council that the packages have been dispatched notify the Council of such non-arrival. |
|  | The Supplier represents and warrants that the maximum use has been made of recycled materials in the manufacture of crates, pallets, boxes, cartons, cushioning, and other forms of packing, where these fulfil other packing specifications. |

|  |  |
| --- | --- |
|  | DAMAGE IN TRANSIT |
|  | The Supplier shall free of charge and as quickly as possible either repair or replace (as the Council shall elect) such of the Goods as may either be damaged in transit or having been placed in transit fail to be delivered to the Council provided that:   1. in the case of damage to such Goods in transit the Council shall within Thirty (30) days of delivery give notice to the Supplier that the Goods have been damaged; or 2. in the case of non-delivery, the Council shall (provided that the Council has been advised of the dispatch of the Goods) within ten (10) days of the notified date of delivery give notice to the Supplier that the Goods have not been delivered. |

|  |  |
| --- | --- |
|  | INSPECTION, REJECTION AND GUARANTEE |
|  | The Supplier shall permit the Council or the Council’s authorised representatives to make any inspections or tests they may reasonably require, and the Supplier shall afford all reasonable facilities and assistance free of charge at the Supplier’s premises. No failure to make complaint at the time of such inspection or tests and no approval given during or after such tests or inspections shall constitute a waiver by the Council of any rights or remedies in respect of the Goods. |
|  | The Council may by written notice to the Supplier reject any of the Goods which fail to meet the requirements specified in the Contract. Such notice shall be given within a reasonable time after delivery to the Council of Goods concerned. If the Council shall reject any of the Goods pursuant to this Condition 10 the Council shall be entitled (without prejudice to the Council’s other rights and remedies) either:   1. to have the Goods concerned as quickly as possible either repaired by the Supplier or (as the Council shall elect) replaced by the Supplier with Goods which comply in all respects with the requirements specified herein; or 2. to obtain a refund from the Supplier in respect of the Goods concerned. |
|  | The guarantee period applicable to the Goods shall be 12 months from putting into service or 18 months from delivery, whichever shall be the shorter (subject to any alternative guarantee arrangements agreed in writing between the Council and the Supplier). If the Council shall within such guarantee period or within 30 days thereafter give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use the Supplier shall (without prejudice to any other rights and remedies which the Council may have) as quickly as possible remedy such defects (whether by repair or replacement as the Council shall elect) without cost to the Council. |
|  | Any Goods rejected or returned by the Council as described in Conditions 10.2 or 10.3 shall be returned to the Supplier at the Supplier's risk and expense. |

|  |  |
| --- | --- |
|  | PROPERTY AND RISK |
|  | Property and risk in the Goods shall without prejudice to any of the rights or remedies of the Council (including the Council’s rights and remedies under Condition 10 (Inspection, Rejection and Guarantee) pass to the Council at the time of delivery. |

|  |  |
| --- | --- |
|  | SERVICES |
|  | The Supplier shall provide the Services to the Council for the duration of this Contract with reasonable skill, care and diligence, to the reasonable satisfaction of the Council and in accordance with the provisions of this Contract. |
|  | In the event that the Supplier does not comply with the provisions of Condition 12.1 in any way, the Council may serve the Supplier with a notice in writing setting out the details of the Supplier’s default. |

|  |  |
| --- | --- |
|  | MANNER OF CARRYING OUT THE SERVICES |
|  | Unless otherwise specified, the Supplier shall provide all plant, tools, material, labour, haulage and any other things necessary to complete the Contract. |
|  | The Supplier shall make no delivery of materials, plant, or other things nor commence any work on the Premises without obtaining the Council’s prior consent. |
|  | The Council shall have the power at any time during the progress of the Services to order in writing:   1. the removal from the Premises of any materials which in the opinion of the Council are either hazardous, noxious, or not in accordance with the Contract; 2. the substitution of proper and suitable materials; and/or 3. the removal and proper re-execution notwithstanding any previous test thereof or interim payment therefore of any work which, in respect of material or workmanship is not in the opinion of the Council in accordance with the Contract. |
|  | The Supplier shall forthwith comply with any order made under Condition 13.3. |
|  | On completion of the Services the Supplier shall remove the Supplier’s plant, equipment and unused materials and shall clear away from the Premises all rubbish arising out of the Services and leave the Premises in a neat and tidy condition. |

|  |  |
| --- | --- |
|  | TIME OF PERFORMANCE |
|  | The Supplier shall begin performing the Services on the date stated in the Contract and shall complete the Services by the date stated in the Contract or continue to perform them for the period stated in the Contract (whichever is applicable). Time of performance of the Services shall be of the essence and failure to perform the Services within the time promised or specified shall enable the Council (at the Council’s option) to be released from any obligation to accept and pay for the Services and/or to cancel all or part of the Contract therefor, in either case without prejudice to the Council’s other rights and remedies. The Council may by written notice require the Supplier to execute the Services in such order as the Council may decide. In the absence of such notice the Supplier shall submit such detailed programmes of work and progress reports as the Council may from time to time require. |

|  |  |
| --- | --- |
|  | SUPPLIERS PERSONNEL |
|  | The Supplier shall make available for the purposes of the Services any individuals named on the Contract as key personnel. The Supplier shall provide the Council with a list of the names and addresses of all others regarded by the Supplier as key personnel and, if and when instructed by the Council, all other persons who may at any time concerned with the Services or any part thereof, specifying in each case the capacities in which they are so concerned and giving such other particulars and evidence of identity and other supporting evidence as the Council may reasonably require. The Council may at any time by notice to the Supplier designate any person concerned with the Services or any part thereof as a key person. The Supplier shall not without the prior written approval of the Council make any changes in the key personnel referred to in this Condition 15. |
|  | If the Council gives the Supplier notice that any person is not to be involved in or is to be removed from involvement in the Services, the Supplier shall take all reasonable steps to comply with such notice. |
|  | The decision of the Council shall be final and conclusive as to whether any person is not to become involved in or is to be removed from involvement in the Service or as to the designation or approval of key personnel and as to whether the Supplier has furnished the information or taken the steps required of the Supplier by this Condition 15. |
|  | The Supplier shall bear the cost of any notice, instruction, or decision of the Council under this Condition 15. |
|  | Subject to Condition 15.8 the Supplier shall not engage for the purposes of the Contract any employee, agent, or sub-contractor who has previously been in the employment of the Council, and who left that said employment under an Early Retirement or Voluntary Severance scheme. |
|  | Subject to Condition 15.8 the Supplier confirms that none of its directors have left the employment of the Council under an Early Retirement or Voluntary Severance scheme. |
|  | Subject to Condition 15.8 where the Supplier is an individual or sole trader he confirms that he has not left the employment of the Council under an Early Retirement or Voluntary Severance scheme. |
|  | Where the Supplier, one of the Supplier's directors, or an employee, agent, or sub-contractor whom the Supplier proposes to engage was previously in the employment of the Council, and that employment was in a professional area unrelated to the Contract or comprised a role substantially different to that required by the Contract, the Council may at its sole discretion waive Conditions 15.5, 15.6, or 15.7. |

|  |  |
| --- | --- |
|  | RETURN OF DOCUMENTATION |
|  | The Supplier will return to the Council promptly upon the termination of the Contract any document, papers, material, or information supplied by or obtained from the Council or any Government Department in connection with the Contract, or extracted from such documents, papers, materials, or information. |
|  | Where the Contract has been terminated pursuant to Condition 34.3, the Supplier may retain any documents, papers, materials, or information which shall be required by the Supplier to prepare any report required under that condition. Promptly upon submission of the report to the Council, the Supplier will return any documents, papers, materials, or information which the Supplier may have retained in terms of this Condition. |

|  |  |
| --- | --- |
|  | FREE-ISSUE MATERIALS |
|  | Where the Council for the purpose of the Contract issues materials free of charge to the Supplier such materials shall be and remain the property of the Council. The Supplier shall maintain all such materials in good order and condition and shall use such materials solely in connection with the Contract. The Supplier shall notify the Council of any surplus materials remaining after completion of the Services and shall dispose of them as the Council may direct. Waste of such materials arising from bad workmanship or negligence of the Supplier or any of the Supplier’s servants, agents, or sub-contractors shall be made good at the Supplier's expense. Without prejudice to any other of the rights of the Council, the Supplier shall deliver up such materials whether processed or not to the Council on demand. |

|  |  |
| --- | --- |
|  | AUDIT |
|  | The Supplier shall keep and maintain until five (5) years after the Contract has been completed records to the satisfaction of the Council of all expenditures which are reimbursable by the Council and of the hours worked and costs incurred in connection with any employees of the Supplier paid for by the Council on a time charge basis. The Supplier shall on request afford the Council or the Council’s representatives such access to those records as may be required by the Council in connection with the Contract. |
|  | The provisions of Condition 16.1 shall apply during the continuance of this Contract and after its termination howsoever arising. |

|  |  |
| --- | --- |
|  | ACCOUNTING INFORMATION |
|  | The Supplier shall provide to the council when requested and no later than the 31st of March in each fiscal year, such information in relation to the Contract that is required for statutory accounting purposes (but not limited to just that purpose). Any data required for accounting for arrangements within the scope of International Financial Reporting Standard 16 (IFRS 16) shall be made available at the request of the Council. |

|  |  |
| --- | --- |
|  | CORRUPT GIFTS OR PAYMENTS |
|  | The Supplier shall not offer or give, or agree to give, to any employee or representative of the Council any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other contract with the Council or for showing or refraining from showing favour or disfavour to any person in relation to this or any such Contract. The attention of the Supplier is drawn to the criminal offences created by the Bribery Act 2010. |

|  |  |
| --- | --- |
|  | INTELLECTUAL PROPERTY RIGHTS |
|  | All Intellectual Property Rights in any material including but not limited to reports, guidance, specification, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, and designs which are created or developed by the Supplier on behalf of the Council for use, or intended use, in relation to the performance by the Supplier of its obligations under the Contract are hereby assigned to and shall vest in the Council absolutely. |
|  | Except as may expressly be provided for in the Contract, neither party acquires any interest in or license to use the other party’s Intellectual Property Rights owned or developed prior to or independently of the Contract. |
|  | The Supplier must not infringe any Intellectual Property Rights of any third party in performing its obligations under the Contract. The Supplier shall indemnify the Council against all actions, 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 21. |
|  | The provisions of this Condition 21 shall apply during the continuance of this Contract and after its termination howsoever arising. |

|  |  |
| --- | --- |
|  | HEALTH AND SAFETY |
|  | The Supplier represents and warrants to the Council that the Supplier is satisfied that all necessary tests and examinations have been made or will be made prior to delivery of the Goods to ensure that the Goods are designed and constructed so as to be safe and without risk to the health or safety of persons using the same, and that the Supplier 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 perform the Services in such a manner as to be safe and without risk to the health or safety of persons in the vicinity of the place where the Services are being performed (whether such persons are in the vicinity of the said place at the time when the Services are being performed or otherwise) and in such a manner as to comply with any relevant health and safety or other legislation (including any Statutory Instruments, Orders, or Regulations made under the said legislation) and any requirements imposed by a local or other regulatory authority in connection with the performance of services of the type supplied to the Council, whether specifically or generally. |
|  | 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 22. |

|  |  |
| --- | --- |
|  | PROTECTING THE ENVIRONMENT |
|  | Suppliers to the Council are requested to satisfy themselves that no product will be supplied or used in the supply of Goods and/or delivery of Services to the Council which: will endanger the health of the consumers or others; will cause significant damage to the environment during manufacture, use, or disposal; consumes a disproportionate amount of energy during manufacture, use, or disposal; causes unnecessary waste because of over-packaging or because of an unusually short shelf life; or contains materials derived from threatened species or threatened environments. |

|  |  |
| --- | --- |
|  | EQUALITY |
|  | The Supplier shall not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2010 and of any statutory instrument or Code of Practice made thereunder. |
|  | The Supplier shall take all reasonable steps to secure that all servants, employees, or agents of the Supplier and all sub-contractors employed in the performance of the Contract do not unlawfully discriminate as set out in Condition 24.1. |

|  |  |
| --- | --- |
|  | BLACKLISTING |
|  | The Supplier must not commit any breach of the Employment Relations Act 1999 (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or commit any breach of the Data Protection Laws by unlawfully Processing Personal Data in connection with any blacklisting activities. Breach of this Condition 25 is a material default which shall entitle the Council to terminate the Contract. |

|  |  |
| --- | --- |
|  | ANTI-SLAVERY AND HUMAN TRAFFICKING |
|  | In performing its obligations under the Contract, the Supplier shall:   1. comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force, including the Modern Slavery Act 2015 and the Human Trafficking and Exploitation (Scotland) Act 2015; 2. not engage in any activity, practice or conduct that would constitute an offence under the Human Trafficking and Exploitation (Scotland) Act 2015 if such activity, practice or conduct were carried out in the UK; 3. include in contracts with its direct subcontractors and contractors’ provisions which are at least as onerous as those set out in this Condition; 4. notify the Council as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with the Contract; 5. maintain a complete set of records to trace the supply chain of all Goods and Services provided to the Council; and 6. provide the Council and its third party representatives access to such records. |
|  | If required to in terms of the Modern Slavery Act 2015, the Supplier shall prepare and deliver to the Council, each year during the Contract, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking are not taking place in any of its supply chains or in any part of its business. |
|  | Breach of this Condition 26 is a material default which shall entitle the Council to terminate the Contract. |

|  |  |
| --- | --- |
|  | ACCESS TO COUNCIL INFORMATION (FREEDOM OF INFORMATION ACT 2002) |
|  | Subject always to the terms of the Freedom of Information (Scotland) Act 2002 and to other statutory requirements or court order, the Supplier shall not and shall ensure that its employees do not without the written consent of the Council during the period of this Contract or at any time thereafter divulge to any third party any information which comes into its or their possession in the course of providing the Contract. |
|  | The Supplier shall treat as private and confidential all and any information marked as private and confidential received from the Council. |
|  | The Council shall treat as private and confidential all and any information marked as private and confidential received from the Supplier (subject always to Condition 27.4). |
|  | The Council is committed to meeting its responsibilities under the Freedom of Information (Scotland) Act 2002 (“FOISA”) and the Environmental Information (Scotland) Regulations 2004 (“EIRs”). Accordingly, all information submitted to the Council may require to be disclosed or published by the Council. If the Supplier considers that specific information provided to the Council is potentially exempt from disclosure under FOISA or the EIRs, the Supplier shall identify the information it considers to be exempt and the exemption or exception which applies. If the Supplier considers that disclosure of such information would substantially prejudice its commercial interests the Supplier must provide justification for its assertions and identify the period during which it wishes the information to be withheld from public disclosure. The Council shall take into account the Supplier’s views but is not bound by them and may in its absolute discretion disclose and/or publish any such information in order to comply with FOISA or the EIRs. |
|  | The Supplier shall assist and cooperate with the Council to enable the Council to comply with FOISA and the EIRs and shall in respect of any information it, or any sub-contractor, holds on behalf of the Council provide the Council with the information, if the Council so requests, as soon as practicable and in any event within five (5) working days of receiving the Council’s request. |
|  | The parties acknowledge that, except for any Information which is exempt from  disclosure in accordance with the provisions of the FOISA, the content of the  Contract is not confidential information, and the Supplier hereby gives its  consent for the Council to publish the Contract in its entirety to the general  public (but with any Information that is exempt from disclosure in accordance  with the FOISA redacted) including any changes to the Contract agreed from  time to time. |

|  |  |
| --- | --- |
|  | DATA PROTECTION |
|  | The Supplier acknowledges that any Personal Data described in the scope of the Schedule (Data Protection) may be Processed in connection with the Contract. For the purposes of any such Processing, the parties agree that usually the Supplier acts as the Data Processor and the Council acts as the Data Controller. |
|  | Both parties agree to negotiate in good faith any such amendments to this Contract that may be required to ensure that both parties meet all their obligations under Data Protection Laws. The provisions of this Condition 28 are without prejudice to any obligations and duties imposed directly on the Supplier under the Data Protection Laws and the Supplier hereby agrees to comply with those obligations and duties. |
|  | The Supplier will, in conjunction with the Council and in its own right and in respect of the Contract, make all necessary preparations to ensure it will be compliant with the Data Protection Laws. |
|  | The Supplier will provide the Council with the contact details of its data protection officer or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations under the Data Protection Laws. |
|  | The Supplier must:   1. Process Personal Data only as necessary in accordance with its obligations under the Contract and any written instructions given by the Council (which may be specific or of a general nature), including with regard to transfers of Personal Data outside the European Economic Area unless required to do so by European Union or Member state law or Regulatory Body to which the Supplier is subject; in which case the Supplier must, unless prohibited by that law, inform the Council of that legal requirement before Processing the Personal Data only to the extent, and in such manner as is necessary for the performance of the Supplier’s obligations under this Contract or as is required by the Law; |
|  | 1. subject to Condition 28.5(a) only Process or otherwise transfer any Personal Data in or to any country outside the European Economic Area with the Council’s prior written consent; |
|  | 1. take all reasonable steps to ensure the reliability and integrity of any Supplier Representatives who have access to the Personal Data and ensure that the Supplier Representatives: |
|  | * + 1. are aware of and comply with the Supplier’s duties under this Condition;     2. are subject to appropriate confidentiality undertakings with the Supplier or the relevant sub-contractor;     3. are informed of the confidential nature of the Personal Data and do not publish, disclose, or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council or as otherwise permitted by this Contract; and     4. have undergone adequate training in the use, care, protection, and handling of Personal Data. |
|  | 1. implement appropriate technical and organisational measures including those in accordance with Article 32 of the GDPR to protect Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration, or disclosure, such measures being appropriate to the harm which might result from any unauthorised or unlawful Processing accidental loss, destruction, or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected. |
|  | The Supplier shall not engage a sub-contractor to carry out Processing in connection with the Services without prior specific or general written authorisation from the Council. In the case of general written authorisation, the Supplier must inform the Council of any intended changes concerning the addition or replacement of any other sub-contractor and give the Council an opportunity to object to such changes. |
|  | If the Supplier engages a sub-contractor for carrying out Processing activities on behalf of the Council, the Supplier must ensure that the same data protection obligations as set out in this Contract are imposed on the sub-contractor by way of a written and legally binding contract, in particular providing sufficient guarantees to implement appropriate technical and organisational measures to protect the Personal Data. The Supplier shall remain fully liable to the Council for the performance of the sub-contractor’s performance of the obligations. |
|  | The Supplier must provide to the Council reasonable assistance including such technical and organisational measures as may be appropriate in complying with Articles 12-23 of the GDPR. The Supplier must notify the Council if it:   1. receives a Data Subject Access Request (or purported Data Subject Access Request); 2. receives a request to rectify, block, or erase any Personal Data; 3. receives any other request, complaint, or communication relating to either party's obligations under the Data Protection Laws; 4. receives any communication from the Supervisory Authority or any other regulatory authority in connection with Personal Data Processed under this Contract; or 5. receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by law or regulatory order;   and such notification must take place as soon as is possible but in any event within three (3) business days of receipt of the request or any other period as agreed in writing with the Council from time to time. |
|  | Taking into account the nature of the Processing and the information available, the Supplier must assist the Council in complying with the Council’s obligations concerning the security of Personal Data, reporting requirements for data breaches, data protection impact assessments, and prior consultations in accordance with Articles 32 to 36 of the GDPR. These obligations include:   1. ensuring an appropriate level of protection through technical and organisational measures that take into account the circumstances and purposes of the Processing as well as the projected probability and severity of a possible infringement of the law as a result of security vulnerabilities and that enable an immediate detection of relevant infringement events; 2. notifying a Personal Data breach to the Council and to the Council’s information management team (at [dataprotection@scotborders.gov.uk](mailto:dataprotection@scotborders.gov.uk)) without undue delay and in any event no later than twenty-four (24) hours after becoming aware of a Personal Data breach; 3. assisting the Council with communication of a Personal Data breach to a Data Subject; 4. supporting the Council with preparation of a data protection impact assessment; 5. supporting the Council with regard to consulting the Supervisory Authority on various data protection matters including any Personal Data breaches. |
|  | At the expiry or termination of the Contract the Supplier must, on written instruction of the Council, delete or return to the Council all Personal Data and delete existing copies unless EU or Member State law requires storage of the Personal Data and provide the Council with confirmation of deletion within two (2) working days of the deletion. |
|  | The Supplier must:   1. provide such information as is necessary to enable the Council to satisfy itself of the Supplier’s compliance with this Condition 28; 2. allow the Council, its employees, auditors, authorised agents, or advisers reasonable access to any relevant premises, during normal business hours, to inspect the procedures, measures, and records referred to in this Condition 28 and contribute as is reasonable to those audits and inspections; and 3. inform the Council if, in its opinion, an instruction from the Council infringes any obligation under the Data Protection Laws. |
|  | The Supplier must maintain written records including in electronic form, of all Processing activities carried out in performance of the Contract or otherwise on behalf of the Council containing the information set out in Article 30(2) of the GDPR. |
|  | If requested, the Supplier must make such records referred to Condition 28.12 available to the Supervisory Authority on request and co-operate with the Supervisory Authority in the performance of its tasks. |
|  | Parties acknowledge that the inspecting party will use reasonable endeavours to carry out any audit or inspection under Condition 28.13 with minimum disruption to the Supplier’s day to day business. |

|  |  |
| --- | --- |
|  | MEDIA DISCLOSURE |
|  | In the event that any aspect of this Contract, including the termination of this Contract and any subsequent de-commissioning of a Supplier or service, becomes a matter of media speculation the Council and the Supplier shall issue an agreed media release. The Supplier shall not make any statement to the media without first consulting with the Council. This Condition shall survive the termination of this Contract. |

|  |  |
| --- | --- |
|  | SOCIAL MEDIA USE |
|  | The Supplier shall not make any statements about any aspect of this contract without first consulting with the Council. This Condition shall survive the termination of this Contract. |
|  | Suppliers including their staff and agents using social media **must not**:   1. Post comments electronically or distribute by e-mail, anything which could cause offence or that may be considered discriminatory or anything that may be considered as bullying and harassment. 2. Post statements which are bigoted, hateful or discriminatory. 3. Post or distribute images, video or messages that may bring the Council into disrepute. For example, anything that might be considered indecent, pornographic, obscene or illegal. 4. Post or send confidential client or service user information which may breach the Data Protection Act 2018 or the General Data Protection Regulation. |

|  |  |
| --- | --- |
|  | TUPE |
|  | The Supplier recognises that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”) may apply in respect of the Contract, and that for the purposes of those Regulations, the undertaking concerned (or any relevant part of the undertaking) shall (a) transfer to the Supplier on the commencement of the Contract; and (b) transfer to another supplier on the expiry of the Contract. |
|  | During the period of six (6) months preceding the expiry of the Contract or after the Council has given notice to terminate the Contract or the Supplier stops trading, and within twenty (20) working days of being so requested by the Council, the Supplier shall fully and accurately disclose to the Council or to any person nominated by the Council information relating to employees engaged in relation to the Contract in particular, but not necessarily restricted to, the following:   1. the total number of personnel whose employment with the Supplier is liable to be terminated at the expiry of this Contract but for any operation of law; 2. for each person, age, details of their salary, date of commencement of continuous employment, and pay settlements covering that person which relate to future dates, but which have already been agreed and their redundancy entitlements (the names of individual members of staff do not have to be given); 3. information about the other terms and conditions on which the affected staff are employed, or about where that information can be found; and 4. details of pensions entitlements, if any. |
|  | The Supplier shall permit the Council to use the information for the purposes of TUPE and of re-tendering, which shall include such disclosure to potential suppliers as the Council considers appropriate in connection with any re-tendering. The Supplier will co-operate with the re-tendering of the contract by allowing the transferee to communicate with and meet the affected employees and/or their representatives. |
|  | The Supplier agrees to indemnify the Council fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs, and all other liabilities whatsoever in any way connected with or arising from or relating to the provision or disclosure of information permitted under this Condition 31. |
|  | In the event that the information provided by the Supplier in accordance with this Condition 31 becomes inaccurate, whether due to changes to the employment and personnel details of the affected employees made subsequent to the original provision of such information or by reason of the Supplier becoming aware that the information originally given was inaccurate, the Supplier shall notify the Council if the inaccuracies and provide the amended information. The Supplier shall be liable for any increase in costs the Council may incur as a result of the inaccurate or late production of data. |
|  | The provisions of this Condition 31 shall apply during the continuance of this Contract and after its termination howsoever arising. |

|  |  |
| --- | --- |
|  | LIABILITY |
|  | Without prejudice to any rights or remedies of the Council, 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 damage to property or in respect of any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any defect in the Goods and/or Services or the negligent or wrongful act or omission of the Supplier. |
|  | Except in the case of loss, damage or personal injury (including death) suffered by an employee of the Supplier (in respect of which the indemnity in Condition 32.1 shall apply whether or not the loss, damage or personal injury was caused by the negligent or wilful act or omission of the Council) the indemnity contained in Condition 32.1 shall not apply to the extent that the loss, damage or injury is caused by the negligent or wilful act or omission of the Council. |
|  | Subject to Condition 32.4 the Supplier shall indemnify the Council in respect of all claims, proceedings, actions, damages, fines, costs, expenses, or other liabilities which the Council may incur arising out of, or in consequence of, a breach of the Data Protection Laws by the Supplier, its employees or sub-contractors. |
|  | The Council shall indemnify the Supplier in respect of all claims, proceedings, actions, damages, fines, costs, expenses, or other liabilities which may arise out of, or in consequence of, a breach of the Data Protection Laws where the breach is the direct result of the Supplier acting in accordance with the Council’s specific written instructions. This indemnity provision shall not apply if the Supplier:   1. acts on the Council’s specific written instructions but fails to notify the Council in accordance with Condition 28; 2. fails to comply with any other obligation under the Contract. |
|  | Subject to Condition 32.8, neither party shall be liable to the other party (as far as permitted by law) for indirect, special or consequential loss or damage in connection with the Contract which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect. |
|  | Subject to Condition 32.8, the Council's total aggregate liability in respect of all claims, losses or damages, whether arising from delict (including without limitation negligence), breach of contract or otherwise under or in connection with this Contract (other than a failure to pay any of the Price that is properly due and payable and for which the Council shall remain fully liable), shall in no event exceed £250,000 in each calendar year or, if lower, 50% of the aggregate Price paid under or pursuant to this Contract in the calendar year in respect of which the claim arises. |
|  | Subject to Condition 32.8, the Supplier’s total aggregate liability:   1. in respect of Conditions 7.1, 8.1, 20.3, 21.3, 29.4 and 32.10 is unlimited; 2. for all loss of or damage to the Council’s premises, property or assets (including technical infrastructure, assets or equipment but excluding any loss or damage to the Council’s data or any other data) of the Council caused by the Provider’s default or breach of this Contract shall in no event exceed £10,000,000 in any calendar year; and 3. for all loss, destruction, corruption, degradation, inaccuracy or damage to data caused by the Supplier’s default or breach of this Contract shall be £1,000,000 in any calendar year; 4. in respect of all other claims, losses or damages, whether arising from delict (including negligence), breach of contract or otherwise under or in connection with this Contract, shall in no event exceed £5,000,000 in each calendar year or, if greater, 200% of the aggregate Price paid under or pursuant to this Contract in the calendar year in respect of which the claim arises. |
|  | Notwithstanding any other provision of this Contract neither party limits or excludes its liability for:   1. fraud or fraudulent misrepresentation; 2. death or personal injury caused by its negligence; 3. breach of any obligation as to title implied by statute; or 4. any other act or omission, liability for which may not be limited under any applicable law. |
|  | Subject to the financial limits of liability contained in Condition 32.7, the Council may, amongst other things, recover as a direct loss:   1. any additional operational and/or administrative costs and expenses arising from the Provider’s default or breach of this Contract; 2. any wasted expenditure or charges rendered unnecessary and/or incurred by the Council arising from the Provider’s default or breach of this Contract; and 3. the additional cost incurred by the Council of procuring replacement Goods or Services for the remainder of the term of the Contract. |
|  | The Supplier (if an individual) represents that the Supplier is regarded by both Her Majesty’s Revenue and Customs and the Department for Work and Pensions as self employed and accordingly shall indemnify the Council against any tax, national insurance contributions or similar impost for which the Council may be liable in respect of the Supplier by reason of this Contract. |
|  | In providing the Services, the Supplier will ensure that the correct amount of tax and National Insurance contributions are paid and/or deducted in respect of workers engaged via the Contract and the Supplier will comply and procure compliance with all applicable requirements relating to tax and National Insurance, including without limitation, those relating to intermediaries (including those known as "IR35"), and any other legislation in force from time to time relating to any payments made to such workers. The Supplier will upon request specifically advise the Council of compliance in this regard. |

|  |  |
| --- | --- |
|  | INSURANCE |
|  | For the term of the Contract and for five (5) years thereafter the Supplier shall have in force and shall require any sub-contractor to have in force with an insurance company or companies acceptable to the Council and with a scope of cover and level of uninsured excess acceptable to the Council:   1. employer's liability insurance in accordance with any legal requirements for the time being in force, and 2. public liability insurance covering at least all matters which are the subject of indemnities or compensation obligations under these Conditions in the sum of not less than £5 million per claim, unless otherwise agreed by the Council in writing; and 3. professional indemnity risk insurance where relevant and covering at least all matters which are the subject of indemnities or compensation obligations under these Conditions in the sum of not less than £2 million per claim, unless otherwise agreed by the Council in writing; and 4. such additional insurance and such other insurance as may be required by the Council as part of the Contract. |
|  | The policy or policies of insurance referred to in Condition 33.1 shall be shown to the Council whenever the Council requests, together with satisfactory evidence of payment of premiums, including the latest premium due. |

|  |  |
| --- | --- |
|  | TERMINATION |
|  | Without prejudice to any other rights or remedies of the Council under the Contract the Council shall have the right forthwith to terminate the Contract by written notice to the Supplier or the appropriate trustee in bankruptcy or sequestration, receiver, liquidator, or administrator: |
|  | 1. where the Supplier is an individual and if a petition is presented for the Supplier's bankruptcy or the sequestration of his estate or a criminal bankruptcy order is made against the Supplier, or the Supplier is apparently insolvent, or makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator or trustee is appointed to manage the Supplier’s affairs; |
|  | 1. where the Supplier is not an individual but is a firm or a number of persons acting together in any capacity, if any event in Conditions 34.1(a) or 34.1(c) occurs in respect of the firm or any partner in the firm or any of those persons or a petition is presented for the Supplier to be wound up as an unregistered company; or 2. where the Supplier is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or the court makes an administration order or a winding up order, or the company makes a composition or arrangement with its creditors, or an administrator, administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge. |
|  | On the occurrence of any of the events described in Condition 34.1 or, if the Supplier shall have committed a material breach of this Contract and (if such breach is capable of remedy) shall have failed to remedy such breach within 30 days of being required by the Council in writing to do so or, where the Supplier is an individual if the Supplier shall die or be adjudged incapable of managing his affairs within the meaning of the Adults with Incapacity (Scotland) Act 2000 or the Mental Health (Care and Treatment)(Scotland) Act 2003, the Council shall be entitled to terminate this Contract by notice to the Supplier with immediate effect. |
|  | The Council may terminate the Contract in the event that:   1. the Contract has been subject to substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) (modification of contracts during their term) of the Public Contracts (Scotland) Regulations 2015; 2. the Supplier has, at the time of contract award, been in one of the situations referred to in regulation 58(1) (exclusion grounds) of the Public Contracts (Scotland) Regulations 2015, including as a result of the application of regulation 58(2) of those regulations, and should therefore have been excluded from the procurement procedure; or 3. the Contract should not have been awarded to the Supplier in view of a serious infringement of the obligations under the Treaties and the Directive 2014/24/EU that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union.   In this Condition, ‘the Treaties’ has the meaning given in the European Communities Act 1972. |
|  | The Council may also terminate the Contract in the event of a failure by the Supplier to comply in the performance of the Contract with legal obligations in the fields of environmental, social, and employment law. |
|  | In addition to the Council’s rights of termination under Conditions 34.2, 34.3, or 34.4 the Council shall be entitled to terminate this Contract by giving to the Supplier not less than Thirty (30) days’ notice to that effect. |
|  | Termination under Conditions 34.2, 34.3, 34.4, or 34.5 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Council and shall not affect the continued operation of Conditions 16, 17, 19, 25, 26, 27, or 29. |

|  |  |
| --- | --- |
|  | ASSIGNATION AND SUB-CONTRACTING |
|  | The Supplier shall not, without the written consent of the Council, assign the benefit or burden of the Contract or any part thereof. |
|  | No sub-contracting by the Supplier shall in any way relieve the Supplier of any of the Supplier’s responsibilities under the Contract. |
|  | Where the Supplier enters into a sub-contract must ensure that a provision is included which:   1. requires payment to be made of all sums due by the Supplier to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice as defined by the sub-contract requirements and provides that, where the Council has made payment to the Supplier, then, to that extent, the invoice must be treated as valid and, provided the Supplier is not exercising a right of retention or set-off in respect of a breach of contract by the sub-contractor or in respect of a sum otherwise due by the sub-contractor to the Supplier, payment must be made to the sub-contractor without deduction; 2. notifies the sub-contractor that the sub-contract forms part of a larger contract for the benefit of the Council and that should the sub-contractor have any difficulty in securing the timely payment of an invoice, that matter may be referred by the sub-contractor to the Council; and 3. in the same terms as that set out in this Condition 34 (including for the avoidance of doubt this Condition 34.3(c)) subject only to modification to refer to the correct designation of the equivalent party as the Supplier and sub-contractor as the case may be. |
|  | The Supplier shall also include in every sub-contract:   1. a right for the Supplier to terminate that sub-contract if the relevant sub-contractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social, or employment law or if any of the termination events (involving substantial modification of the Contract, contract award despite the existence of exclusion grounds or a serious infringement of EU legal obligations) specified in the Condition 34.3 occur; and 2. a requirement that the sub-contractor includes a provision having the same effect as Condition 35.4(a) in any sub-contract which it awards.   In this Condition 35, ‘sub-contract’ means a contract between two or more suppliers, at any stage of remoteness from the Council in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract. |

|  |  |
| --- | --- |
|  | NOTICES |
|  | Any notice given under or pursuant to the Contract may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted electronically resulting in the receipt of a written communication in permanent form and if so sent or transmitted to the address of the party shown on the Contract, or to such other address as the party may by notice to the other have substituted therefor, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours. |

|  |  |
| --- | --- |
|  | DISPUTE RESOLUTION |
|  | In the event of any dispute between the parties relating to the terms and conditions of this Contract or the provision of Goods and/or Services either party may serve notice on the other outlining the terms of the dispute. Such notice shall propose a time and place for a meeting between the Council and the Supplier’s Representatives where the parties shall attempt to resolve the dispute. The other party shall respond to such a notice within five (5) working days of receipt. |
|  | If the matter is not resolved within ten (10) working days of the serving of a notice, the matter may be referred by either party to the appropriate senior officer of the Council and the appropriate senior officer in the Supplier’s organisation for resolution. If the dispute is not resolved within a further ten (10) working days, the matter may be referred by either party to a mutually acceptable third party whom failing a third party appointed by the President of the Law Society of Scotland on the application of either party. The decision of any such third party shall be final and binding on the Council and the Supplier. The expenses of the arbitration shall be a matter for determination by the arbiter whose decision on the matter shall be final. |

|  |  |
| --- | --- |
|  | NOVATION ETC. |
|  | The Council shall be entitled to assign, novate, delegate, or otherwise dispose of its rights and obligations under this Contract or any part thereof to any contracting authority, private sector body, charitable or third sector body, or any other body established under statute (the “Transferee”) provided that any such assignment, novation, delegation, or other disposal shall not unreasonably increase the burden of the Supplier’s obligations under this Contract. |
|  | Each party shall at its own cost and expense carry out or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other party reasonably requires from time to time for the purpose of giving that other party the full benefit of the provisions of this Contract. |
|  | The Council shall be entitled to disclose to any Transferee any confidential information of the Supplier which relates to the performance of the Contract by the Supplier. In such circumstances the Council shall authorise the Transferee to use such confidential information only for purposes relating to the performance of the Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee accepts an obligation of confidence. |

|  |  |
| --- | --- |
|  | FORCE MAJEURE |
|  | Neither the Council nor Supplier shall be liable to the other party by reason of any failure or delay in performing its obligations under the Contract which is due to Force Majeure, where there is no practicable means available to the party concerned to avoid such failure or delay. |
|  | If either party becomes aware of any circumstances of Force Majeure which give rise to any such failure or delay, or which appear likely to do so, that party shall promptly give notice of those circumstances as soon as practicable after becoming aware of them and shall inform the other party of the period for which it estimates that the failure or delay will continue. |
|  | For the purposes of this Condition 39 “Force Majeure” means any event or occurrence which is outside the control of the party and which is not attributable to any act or failure to take preventive action by the party concerned, but shall not include any industrial action occurring within the Supplier’s organisation or within any sub-contractor’s organisation. |
|  | Any failure or delay by the Supplier in performing its obligations under the Contract which results from any failure or delay by an agent, sub-contractor, or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded in complying with an obligation to the Supplier by Force Majeure. |

|  |  |
| --- | --- |
|  | ENTIRE AGREEMENT |
|  | The Contract constitutes the entire agreement between the parties. The Contract supersedes all prior negotiations between the parties and all representations and undertakings made by one party to the other, whether written or oral, except that this condition shall not exclude liability in respect of any fraud or fraudulent misrepresentation. |

|  |  |
| --- | --- |
|  | WAIVER |
|  | No failure or delay by either party to enforce any right or remedy to which it is entitled, or to require performance by the other party of any of the terms of the Contract shall be a waiver of any such right or remedy nor shall it in any way affect its right subsequently to enforce such provisions. |

|  |  |
| --- | --- |
|  | SEVERABILITY |
|  | If any Condition of the Contract to any extent becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining Conditions of the Contract shall not in any way be affected. |

|  |  |
| --- | --- |
|  | HEADINGS |
|  | The headings to Conditions shall not affect their interpretation. |

|  |  |
| --- | --- |
|  | GOVERNING LAW |
|  | These Conditions shall be governed by and construed in accordance with Scots law and the Supplier hereby irrevocably submits to the jurisdiction of the Scottish courts. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the Council to take proceedings against the Supplier in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not. |

|  |  |
| --- | --- |
| **SCHEDULE - DATA PROTECTION** | |
| Data Processing provision as required by Article 28(3) GDPR.  This Schedule includes certain details of the Processing of Personal Data in connection with the supply of Goods and/or Services under this Contract: | |
| *The subject matter and duration of the Processing of Personal Data are:* | Information held in connection with the management and delivery of the Contact. This will be held for the duration of the Contract and retained thereafter in line with the Council’s retention policies. |
| *The nature and purpose of the Processing of Personal Data:* | Recording and storage of any personal data required to deliver the Contract. |
| *The type of Personal Data to be Processed:* | Personal information such as names, telephone numbers, email contact details and addresses. |
| *The categories of Data Subject to whom Personal Data relates:* | Staff members of the Council and Supplier involved in delivery of the Contract. |
| *The obligations and rights of the Purchaser:* | The obligations and rights of the Purchaser as the Data Controller are set out in Condition 28 of the Contract. |

**SUPPLEMENTARY NOTICES** - DO NOT FORM PART OF THE CONDITIONS OF CONTRACT

|  |  |
| --- | --- |
|  | CONSULTATIONS, COMPLAINTS & COMPLIMENTS |
|  | We like praise and understand the need to complain. We know that communicating is important and enables us to listen to your suggestions and make improvements. |
| [Scottish Borders Council - Comments, suggestions and compliments](https://www.scotborders.gov.uk/info/20016/have_your_say/479/comments_suggestions_and_compliments) | |

|  |  |
| --- | --- |
|  | LATE PAYMENT OF INVOICES |
|  | Suppliers to Scottish Borders Council are requested to address complaints regarding late payment of invoices to [apqueries@scotborders.gov.uk](mailto:apqueries@scotborders.gov.uk). This procedure is suggested as the best practical way of ensuring problems of late payment are resolved and is not intended to interfere with Suppliers’ legal rights. |