

SERVICES GENERAL CONDITIONS OF CONTRACT

These Conditions may only be varied by the written agreement of the Purchaser. No terms or conditions put forward at any time by the Provider shall form any part of the Contract unless specifically agreed in writing by the Purchaser.

DEFINITIONS

In these Conditions:

'Purchaser' means on behalf of Dumfries and Galloway Council;

'Provider' means the person, firm or company to whom the Contract is issued;

'Services' means the services to be provided as specified in the Purchase Order and shall, where the context so admits, include any materials, articles and goods to be supplied thereunder;

'Premises' means the location where the services are to be performed, as specified in the Purchase Order;

'Contract' means the contract between the Purchaser and the Provider consisting of the Purchase Order, these Conditions and other documents (or parts thereof) specified in the Purchase Order;

'Purchase Order' means the document setting out the Purchaser's requirements for the Contract.

1. FREEDOM OF INFORMATION

- 1.1 Any items relating to the tender or the contract might have to be disclosed under "Freedom of Information" legislation (Part 1, Clause 22 refer).

2. CHANGE TO CONTRACT REQUIREMENTS

- 2.1 The Purchaser may order any variation to any part of the Services for any reason which shall in its opinion be desirable. Any such variation may include (but shall not be restricted to) additions, omissions, alterations, substitutions to the Services and changes in quality, form, character, kind, timing, method or sequence of the Services.
- 2.2 Save as otherwise provided herein, no variation of the Services as provided for in Clause 2.1 hereof shall be valid unless given or confirmed in the form of a written instruction. All such instructions shall be given in writing provided that if for any reason the Purchaser shall find it necessary to give any such instruction orally in the first instance the Provider shall comply with such oral instructions which must be confirmed in writing by the Purchaser within 2 working days of the giving of such oral instruction by the Purchaser, failing which the variation made by such oral instruction shall cease to have effect on the expiry of the said 2 working day period.

- 2.3 Where any such variation of the Services made in accordance with Clause 2.1 and 2.2. has affected or may affect the costs incurred by the Provider in providing the Services, the Provider will notify the Purchaser in writing of the effect which it has had or may have on the said costs and such notification shall be considered by the Purchaser, who shall take all the facts into account (including such information as may be provided by the Provider in respect of the effect which such variation has had or may have on the costs incurred by the Provider in providing the service) and may authorise such alteration to the sums to be paid to the Provider in accordance with the provisions of the Contract as are, in his opinion, appropriate and reasonable in the circumstances.

3. INSPECTION OF PREMISES AND NATURE OF BUSINESS

- 3.1 Where premises are to be provided by the Provider, these will be inspected by the Purchaser prior to the award of any Contract.
- 3.2 The Provider shall, at the request of the Purchaser, grant such access as may be reasonable for this purpose.
- 3.3 Where premises are to be provided by the Purchaser, the Provider is deemed to have inspected the Premises before tendering, having understood the nature and extent of the Services to be provided and be satisfied themselves in relation to all matters connected with the Services and Premises.
- 3.4 The Purchaser shall, at the request of the Provider, grant such access as may be reasonable for this purpose.

4. PROVIDER'S STATUS

- 4.1 In carrying out the Services the Provider shall be acting as principal and not as the agent of the Purchaser. Accordingly:
- a) the Provider shall not (and shall procure that his agents and servants do not) say or do anything that might lead any other person to believe that the Provider is acting as the agent of the Purchaser, and
 - b) nothing in this Contract shall impose any liability on the Purchaser in respect of any liability incurred by the Provider to any other person but this shall not be taken to exclude or limit any liability of the Purchaser to the Provider that may arise by virtue of either a breach of this Contract or any negligence on the part of the Purchaser, his staff or agents.

5. PROVIDER'S PERSONNEL

- 5.1 The Provider shall take the steps reasonably required by the Purchaser to prevent unauthorised persons being admitted to the Premises. If the Purchaser gives the Provider notice that any person is not to be admitted to or is to be

removed from these Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract, the Provider shall take all reasonable steps to comply with such notice and if required by the Purchaser the Provider shall replace any person removed under this Condition with another suitably qualified person and procure that any pass issued to the person removed is surrendered.

- 5.2 If and when instructed by the Purchaser, the Provider shall give to the Purchaser 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 evidence as the Purchaser may reasonably require.
- 5.3 The decision of the Purchaser as to whether any person is to be admitted to or is to be removed from their Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract and as to whether the Provider has furnished the information or taken the steps required of him by this Condition shall be final and conclusive.
- 5.4 The Provider shall bear the cost of any notice, instruction or decision of the Purchaser under this Condition.

6. PAYMENT

- 6.1 Unless otherwise stated in the Contract, payment will be made within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed to the satisfaction of the Purchaser.
- 6.2 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.

7. AUDIT

- 7.1 The Provider shall keep and maintain until 5 years after the Contract has been completed records to the satisfaction of the Purchaser of all expenditures which are reimbursable by the Purchaser and of the hours worked and costs incurred in connection with any employees of the Provider paid for by the Purchaser on a time charge basis. The Provider shall on request afford the Purchaser or his representatives such access to those records as may be required by the Purchaser in connection with the Contract.
- 7.2 The provisions of this Condition 7 shall apply during the continuance of this Contract and after its termination howsoever arising.

8. CORRUPT GIFTS OR PAYMENTS

- 8.1 The Provider shall not offer or give, or agree to give, to any employee or representative of the Purchaser 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 Purchaser or for showing or refraining from showing favour or disfavour to any person in relation to this or any such Contract.

9. PATENTS, INFORMATION AND COPYRIGHT

9.1 It shall be a condition of the Contract that, except to the extent that the Services incorporate designs furnished by the Purchaser, that nothing done by the Provider in the performance of the Services shall infringe any patent, trade mark, registered design, copyright or other right in the nature of intellectual property of any third party and the Provider shall indemnify the Purchaser against all actions, claims, demands, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any breach of this Condition.

9.2 All rights (including ownership and copyright) in any reports, documents, specifications, instructions, plans, drawings, patents, models or designs whether in writing or on magnetic or other media:

- a) furnished to or made available to the Provider by the Purchaser shall remain vested in the Purchaser absolutely;
- b) prepared by or for the Provider for use, or intended use, in relation to the performance of this Contract are hereby assigned to and shall vest in the Purchaser absolutely, and (without prejudice to Condition 12.2) the Provider shall not and shall procure that his servants and agents shall not (except to the extent necessary for implementation of this Contract) without the prior written consent of the Purchaser use or disclose any such reports, documents, specifications, instructions, plans, drawings, patents, models, designs or other material as aforesaid or any other information (whether or not relevant to this Contract) which the Provider may obtain pursuant to or by reason of this Contract, except information which is in the public domain otherwise than by reason of a breach of this provision, and in particular (but without prejudice to the generality of the foregoing) the Provider shall not refer to the Purchaser or the contract in any advertisement without the Purchaser's prior written consent.

9.3 The provisions of this Condition 9 shall apply during the continuance of this Contract and after its termination howsoever arising.

10. INDEMNITY AND INSURANCE

10.1 Without prejudice to any rights or remedies of the Purchaser the Provider shall indemnify the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses which the purchaser 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 negligent or wrongful act or omission of the Provider.

10.2 Throughout the term of the Contract the Provider shall have in force and shall require any sub-contractor to have in force:

- a) employer's liability insurance in accordance with any legal requirements for the time being in force, and

- b) public liability insurance for such sum and range of cover as the Provider deems to be appropriate but 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 for any one incident and unlimited in total, unless otherwise agreed by the Purchaser in writing, and
 - c) professional indemnity insurance in the sum of not less than £2 million for any one incident
- 10.3 The policy or policies of insurance referred to in paragraph 10.2 shall be shown to the Purchaser whenever he requests, together with satisfactory evidence of payment of premiums.

11. DISCRIMINATION

- 11.1 The Provider shall comply with the Equality Act 2010 and shall take all reasonable steps to secure the observance of this provision by all servants, employees or agents of the Provider and all sub-contractors employed in the execution of the Contract.

12. CONFIDENTIALITY

- 12.1 The Provider shall keep secret and not disclose and shall procure that his employees keep secret and do not disclose any information of a confidential nature obtained by him by reason of this Contract except information which is in the public domain otherwise than by reason of a breach of this provision.
- 12.2 All information related to the Contract with the Provider will be treated as commercial in confidence by the Purchaser except that:
- a) The Provider may disclose any information as required by law or judicial order to be disclosed.
 - b) The Purchaser may disclose any information as required by law or judicial order to be disclosed.
- 12.3 The provisions of this Condition 12 shall apply during the continuance of this Contract and after its termination howsoever arising.

13. DATA PROTECTION

- 13.1 Where the Provider gives any personal data to the Council, the Council will use that personal data to make sure the Provider complies with the terms of the Contract. The Council may share that personal data with other Council Services or appropriate bodies. The Provider agrees to make sure that all people whose personal data are (or are to be) disclosed to the Council are told of this fact.
- 13.2 Where the Provider processes (or will process) personal data it hereby confirms that it has (or will acquire) a valid notification with the Information Commissioner as defined by

section 6 of the Data Protection Act 2018 covering its processing of personal data, including in that notification the disclosure of personal data to the Council.

13.3 The Provider acknowledges that in order for it to perform its duties, the Council may need to disclose personal data to the Provider. This may include sensitive personal data relating to people who use the services, such information being called 'people who use the service information'. The Council is the data controller in respect of the people who use the service information. The Provider shall take all steps necessary to permit this to occur including providing any requested information on its processing and arrangements and shall execute all the required documentation when required to do so.

13.4 The Provider hereby warrants:

- (i) that processing of the person's information will be subject to technical and organisational security measures which, if the Provider were the data controller in respect of the person's information, would satisfy the seventh Data Protection Principle and the General Data Protection Regulations;
- (ii) that it will take reasonable steps to make sure it complies with the measures described in clause 13.4(i) above;
- (iii) that it will comply with all obligations imposed by the seventh Data Protection Principle as though the Provider were the data controller in respect of the person's information.

13.5 In the Contract the expressions "personal data", "data controller", "data processor", "processing" and "process" shall have the meanings assigned to them by the Data Protection Act 2018, and the "Seventh Data Protection Principle".

13.6 Personal information shall be used by the Provider purely to enable the Provider to provide the Service to people in accordance with the Contract and as requested by the Council, and for no other purpose. It must not be processed or disclosed for any other purpose whatsoever apart from when the Provider is required to do so by law; or with the consent of the person or other individual to whom the personal data in question relates. In the case of a person who lacks the mental capacity necessary to consent to the processing in question, this shall mean with the consent of a person entitled in law to make decisions relating to the personal welfare of the person but only to the extent that such processing will be of benefit to the person, and the processing is in accordance with the wishes of the person so far as these can be ascertained. The Provider shall make sure that the recipients of any personal data disclosed under this clause are made aware of the duty of confidentiality which attaches to it.

13.7 The Provider shall not be required to pass information to the Council in relation to a person, member of staff, volunteer or any other person if the same would cause the

Provider to breach the terms of the Data Protection Act 2018. The Provider must supply detailed reasons in terms of the said Act in support of such an assertion within a reasonable timescale specified by the Council. Where the cause of the potential breach of the said Act is lack of consent to disclosure of the information, the Provider agrees to use its best endeavours to obtain the consent required to prevent the potential breach from occurring.

- 13.8 Information provided by the Council to the Provider in connection with the Contract will be treated as confidential by the Provider (and any people employed or engaged by the Provider in connection with the Contract).
- 13.9 The Provider (and any people employed or engaged by the Provider in connection with the Contract) shall only use information obtained from the Council for the purposes of the Contract and shall not tell anyone else this information without the prior written approval of the Council.
- 13.10 Personal or identifiable information developed while delivering the Contract shall be shared with the Council by the Provider and shall be treated as confidential by the Council (and any person employed or engaged by the Council in connection with the Contract). If required a Data Sharing Protocol will be developed.
- 13.11 The duty of confidentiality will continue after the end of the Contract as well as during the life of the Contract.
- 13.12 The Council reserves the right to use information that has been changed to remove personal or identifiable details, where this is considered to be in the public interest.

14. TERMINATION

- 14.1 The Provider shall notify the Purchaser in writing immediately upon the occurrence of any of the following events:
- a) where the Provider is an individual and if a petition is presented for the Provider's bankruptcy or the sequestration of his estate or a criminal bankruptcy order is made against the Provider, or he is apparently insolvent, or he makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignation for the benefit of creditors, or if an administrator or trustee is appointed to manage his affairs; or
 - b) where the Provider is not an individual but is a firm, or a number of persons acting together in any capacity, if any event in (a) or (c) of this Condition occurs in respect of the firm or any partner in the firm or any of those persons or a petition is presented for the Provider to be wound up as an unregistered company; or
 - c) where the Provider 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.

- 14.2 On the occurrence of any of the events described in paragraph 14.1 or, if the Provider 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 Purchaser in writing to do so or, where the Provider is an individual if he shall die or be adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983 or of Part V of the Mental Health (Scotland) Act 1984, the Purchaser shall be entitled to terminate this Contract by notice to the Provider with immediate effect. Thereupon, without prejudice to any other of his rights, the Purchaser may himself complete the Services or have them completed by a third party, using for that purpose (making a fair and proper allowance therefor in any payment subsequently made to the Provider) all materials, plant and equipment on the Premises belonging to the Provider, and the Purchaser shall not be liable to make any further payment to the Provider until the Services have been completed in accordance with the requirements of the Contract, and shall be entitled to deduct from any amount due to the Provider the costs thereof incurred by the Purchaser (including the Purchaser's own costs). If the total cost to the Purchaser exceeds the amount (if any) due to the Provider, the difference shall be recoverable by the Purchaser from the Provider.
- 14.3 In addition to his rights of termination under paragraph 14.2, the Purchaser shall be entitled to terminate this Contract by giving to the Provider not less than 30 days notice to that effect.
- 14.4 Termination under paragraphs 14.2 or 14.3 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Purchaser and shall not affect the continued operation of Conditions 12 and 15.

15. RECOVERY OF SUMS DUE

- 15.1 Wherever under the Contract any sum of money is recoverable from or payable by the Provider, that sum may be deducted from any sum then due, or which at any later time may become due, to the Provider under this Contract or under any other agreement or contract with the Purchaser.

16. ASSIGNATION AND SUB-CONTRACTING

- 16.1 The Provider shall not assign or sub-contract any portion of the Contract without the prior written consent of the Purchaser.

Sub-contracting any part of the Contract shall not relieve the Provider of any obligation or duty attributable to him under the Contract or these Conditions.

- 16.2 Where the Purchaser has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Provider to the Purchaser immediately it is issued.
- 16.3 Where the Provider enters a sub-contract with a supplier or contractor for the purpose of performing the Contract, he shall cause a term to be included in such sub-contract:

- 16.3.1 which requires payment to be made to the supplier or contractor within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the sub-contract requirements and provides that, for the purpose of payment alone, where the Purchaser has made payment to the Provider and the sub-contractor's invoice includes Services in relation to which payment has been made by the Purchaser then, to the extent that it relates to such Services, the invoice shall be treated as valid and payment shall be made to the sub-contractor without deduction.
- 16.3.2 which notifies the sub-contractor that the contract forms part of a larger contract for the benefit of the Dumfries and Galloway 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 **[Contract Manager] at [Contact details]**
- 16.3.3 in the same terms as that set out in this clause 16.3 (including for the avoidance of doubt this clause 16.3.3) subject only to modification to refer to the correct designation of the equivalent party as the Provider and sub-contractor as the case may be.

17. NOTICES

- 17.1 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 sent by e-mail transmission or other means of telecommunication resulting in the receipt of a written communication in a permanent form and if so sent or transmitted to the address of the party shown on the Purchase Order, 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.

18. TUPE

- 18.1 The Parties recognise that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) apply in respect of the award of the Contract, and that for the purposes of those Regulations, the undertaking concerned (or any relevant part of the undertaking) shall transfer to the Provider on the commencement of the Contract.
- 18.2 At any time during the existence of this Contract, or for 2 years after its expiry or termination (however arising), the Provider shall give to the Purchaser in writing such information as the Purchaser may require relating to the employees employed by the Provider in the performance of the services within each reasonable period as may be specified by the Purchaser, including (but not restricted to):
- a) the total number of personnel whose employment with the Provider is liable to be terminated at the expiry of this Contract but for any operation of law; and
 - b) for each person, age and gender, details of their salary, and pay settlements covering that person which relate to future dates but which have already been agreed and their redundancy entitlements; and
 - c) information about the other terms and conditions on which the affected staff are employed, or about where that information can be found; and

- d) details of pension entitlements, if any.
- 18.3 The Provider shall permit Dumfries and Galloway Council to use the information for the purposes of TUPE and of re-tendering. The Provider 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.
- 18.4 The Purchaser may give the information provided to it by the Provider in accordance with Clause (18.2) hereof to any firm, company, person or other legal entity invited or to be invited by the Purchaser to tender in respect of any contract for the provision of the Services, or any part thereof, for any period commencing after the expiry or earlier termination of the Contract (however arising).
- 18.5 The Provider agrees to indemnify Dumfries and Galloway 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 of information under clause (18.2).
- 18.6 In the event that the information provided by the Provider in accordance with clause (18.2) above becomes inaccurate, whether due to changes to the employment and personnel details of affected employees made subsequent to the original provision of such information or by reason of the Provider becoming aware that the information originally given was inaccurate, the Provider shall notify Dumfries and Galloway Council of the inaccuracies and provide the amended information.
- 18.7 The provision of this Condition shall apply during the existence of this Contract and indefinitely after its termination.
- 18.8 The Provider irrevocably consents to the disclosure of the information provided by it in terms of Clause (18.2) hereof by the Purchaser in accordance with the provision of Clause (18.3) hereof, and irrevocably waives the right of confidentiality which it may have in respect of the said information and any other right which it may have in respect of the said information by it or the Purchaser in accordance with the provisions of Clause (18.2) and (18.3) hereof. And the Provider undertakes that the conditions of employment of the Provider's employees shall be entitled to release to the Purchaser for the purposes of this Contract information which would otherwise be confidential between the Provider's employees and the Provider.

19. ARBITRATION

- 19.1 All disputes, differences or questions between the parties to the Contract with respect to any matter or thing arising out of or relating to the Contract, other than a matter or thing as to which the decision of the Purchaser is under the Contract to be final and conclusive and except to the extent to which special provision for arbitration is made elsewhere in the Contract, shall be referred to a single arbiter to be mutually chosen by the parties or, failing agreement, nominated by the President of the Law Society of Scotland for the time being on the application of either party. Any such reference to arbitration shall be deemed to be an

agreement to refer to arbitration within the meaning of the Arbitration (Scotland) Act 2010.

20. HEADINGS

20.1 The headings to Conditions shall not affect their interpretation.

21. GOVERNING LAW

21.1 These Conditions shall be governed by and construed in accordance with Scottish law and the Provider 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 Purchaser to take proceedings against the Provider in any other court of competent jurisdiction, nor shall the takings of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.

22. LIVING WAGE

22.1 Dumfries and Galloway Council encourages suppliers or contractors to pay their employees the living wage.

23. ELECTRONIC PROCUREMENT

23.1 Dumfries and Galloway Council uses PECOS (Professional Electronic Commerce Online System) which is a web-based electronic online ordering system that allows Council departments to place orders to suppliers online and for invoices to be paid electronically.

23.2 Upon award of the contract, the Service Provider will be sent a supplier form together with an electronic catalogue template to complete. These will be returned to the Council timeously to ensure that the Service Provider's catalogue is available for the Operational Date.

23.3 It is a condition of this contract that the Service Provider agrees to accept orders via PECOS and that invoices will be issued on a one order per invoice basis. Invoices and accompanying paperwork can be e-mailed in pdf format to our central Purchase Ledger Team. This has the potential to generate savings for the Council and the Service Provider by reducing administration costs etc.