

LIVERPOOL CITY COUNCIL (LCC)

**GENERAL TERMS & CONDITIONS OF CONTRACT FOR THE SUPPLY OF
GOODS**

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LIVERPOOL CITY COUNCIL (LCC)

TERMS AND CONDITIONS OF CONTRACT FOR THE SUPPLY OF GOODS

VARIATION

1. These Terms and Conditions may only be varied with the prior written agreement of Liverpool City Council (LCC)

DEFINITIONS

2. In these Conditions:

“the Contract” means the contract between LCC and the Supplier consisting of these Conditions the Specification Instructions to Tenderers the Suppliers tender response Purchase Order and any other documents (or parts thereof) specified by LCC

“Contracting Authority” as defined in Regulation 3(1) of the Public Supply Contracts Regulations 1995

“Contract Period” means the period stated in the Contract documents starting on the commencement date

“Contract Price” means the price of the goods stated in the Purchase Order exclusive of VAT and the Contract Price also includes delivery

'the Supplier' means the person, firm or company whose tender has been accepted or to whom an LCC Purchase Order is issued;

'the Goods' means any such goods as to be supplied by the Supplier (or by the Supplier's sub-contractors) under the Contract

“Invitation to Tender” means an invitation for Suppliers to bid for goods required by LCC

“the Specification” means the full description in objective and measurable terms of the characteristics of the goods

'Purchase Order' means the formal request from LCC to supply Goods

INTERPRETATION

3. The interpretation and construction of this Contract shall be subject to the following provisions:

Words importing the singular meaning include were the contents of notes plural meaning and vice versa;

References to any enactment order regulation or other similar instrument shall be construed as a reference to the enactment order regulation or instrument as amended by any subsequent enactment modification order regulation or instrument

The headings to Conditions shall not effect their interpretation

The headings in these Conditions are solely for convenience of reference and shall not affect their construction or interpretation

ENTIRE AGREEMENT

4. The Contract constitutes the entire agreement between the parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations and undertakings whether written or oral except that this Condition shall not exclude liability in respect of any fraudulent misrepresentation

NOTICES

5. Any notice or communication which is to be given by either party to the other shall be given by letter (sent by hand or post or by registered post or by the recorded delivery service) or transmitted by telex telemessage or facsimile transmission or other means of telecommunications confirmed by a written letter. Such notices or communication shall be deemed effectively given on the day when in the ordinary course the means of transmission will first be received by the addressee in normal business hours

INSTRUCTION TO SUPPLY GOODS

6. The supplier will only provide goods against a hard copy of an official Liverpool City Council purchase order. This purchase order may be sent by post, fax, e-mail or other electronic method.
Goods must **not** be supplied against a verbal order, verbal instruction of any form of communication other than an official purchase order.
Liverpool City Council will not accept liability for the payment of any invoice submitted that does not quote an official Liverpool City Council purchase order number.

THE GOODS

7. If required by LCC samples of the Goods shall be submitted for evaluation and approval and all subsequent deliveries of Goods shall be equal in quality to approved samples
8. The Goods shall be to the reasonable satisfaction of LCC and shall conform in all respects with any sample approved by LCC and with any particulars specified in this Contract and in any variations thereto

9. The Goods shall conform in all respect with the requirements of any statutes, orders, regulations or by-laws from time to time in force
10. 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 LCC and LCC relies on the skill and judgement of the Supplier in the supply of the Goods and the execution of the contract

DELIVERY

11. The Goods shall be delivered to the delivery address or addresses set out on the Purchase Order
12. Except as otherwise provided in the Contract delivery shall include the unloading and stacking of the goods by the suppliers employees, contractors or carriers at such place as LCC or duly authorised person in charge reasonably direct
13. Any access to premises and any labour and equipment which may be provided by LCC in connection with the delivery shall be provided without acceptance by LCC of any liability whatsoever and the Supplier shall indemnify LCC in respect of any actions, suits, claims, demands, losses, charges, costs and expenses which LCC 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 where any such damage or injury is attributable to any act or omission of the Supplier or any of their sub-contractors
14. Where any access to the premises is necessary in connection with delivery or installation the Supplier and their sub-contractors shall comply with all reasonable requirements of LCC at all times
15. The time for delivery stated on the Purchase Order, or agreed between LCC and the Supplier, shall be of the essence. In the event that delivery is not achieved on time due to the default of the Supplier LCC shall be entitled to:

claim liquidated damages of 0.5% of the Purchase Order value for each complete day of delay up to a maximum of 5%;

release itself from any obligation to accept and pay for the goods and/or cancel all or part of the Purchase Order, in either case without prejudice to its other rights or remedies

16. The provisions of Clause 14 shall not be invoked where failure to deliver on time is due to circumstances outside the control of the Supplier

PROPERTY AND RISK

17. Without prejudice to any of the rights or remedies of LCC, including those rights and remedies under Clauses 21 to 24, Property and Risk in the Goods shall pass to LCC at the time of acceptance of delivery

DAMAGE IN TRANSIT or NON DELIVERY

18. On despatch of any consignment of Goods, the Supplier shall send an advice note to LCC at the delivery address shown on the Purchase Order. The advice note shall specify the means of transport, the place and date of despatch, the number of packages and their weight and volume
19. Where any Goods have been damaged in transit LCC shall inform the Supplier of the damage in writing within thirty (30) days of delivery and shall require the Supplier to either repair or replace the Goods as soon as possible without charge
- 20 .Where LCC has been advised of the despatch of Goods, but the Goods fail to be delivered, LCC shall inform the Supplier that the Goods have not been delivered within ten days of the notified date of delivery

INSPECTION, REJECTIONS AND GUARANTEE

21. The Supplier shall permit authorised officers of LCC or authorised representatives to inspect premises where goods are being manufactured or work is being carried out for the purposes of the Contract, and shall ensure that a specification in respect of the work being done shall be prominently displayed on the job
22. LCC may reject any of the Goods which fail to conform to the approved sample or fail to meet the requirements specified herein by giving written notice to the Supplier. Such notice shall be given to the Supplier concerned within a reasonable time after delivery. Where any of the Goods are rejected under this Condition LCC shall have the option, without prejudice to its other rights and remedies:
 - to have the Goods concerned repaired as quickly as possible by the Supplier;
 - or
 - to have the goods concerned replaced by the Supplier with Goods which comply in all respects with the requirements specified in the Purchase Order;
 - or
 - to obtain a full refund from the Supplier in respect of the Goods concerned
- 23 .Unless stated otherwise in Schedule C, 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. Where LCC gives written notice to the Supplier within the guaranteed period, or within 30 days thereafter, of any defect in any of the Goods which may have arisen during the guarantee period under proper and normal use then LCC shall require the Supplier to either repair or replace the defective Good(s) as quickly as possible without cost to LCC. This remedy is without prejudice to any other rights and remedies which LCC may have

24. Any goods rejected or returned by LCC as described in Clauses 21 and 22 shall be returned to the Supplier at the Supplier's risk and expense

LABELLING AND PACKAGING

25. The Goods shall be packed and marked in a proper manner in accordance with any LCC instructions, any statutory requirement and any requirements of the carriers. In particular the Goods shall be marked with the Purchase Order number and the net and gross weights. The name of the contents shall be clearly marked on each container or package. The full delivery address including section and contact (if known) **must** appear on all delivery notes, including those of a carrier. Delivery notes must be attached to the outer packaging and be available for inspection at the delivery point. LCC reserve the right to reject any package not correctly labelled. Aborted deliveries will not be charged to LCC
26. Any containers of hazardous goods, and all documents relating to them, shall bear prominent and adequate warnings. The Supplier shall indemnify LCC against all actions, suits, claims, demands, losses, charges, costs and expenses which LCC may suffer or incur as a result of or in connection with any breach of this Condition
27. All packaging materials will be considered non-returnable and will be destroyed unless the Supplier stated that such materials will be charged for unless returned. LCC accepts no liability in respect of the non-arrival at the Supplier's premises of empty packages returned by LCC unless the Supplier notifies LCC of such non-arrival within ten days of receiving notice from LCC that the packages have been dispatched

VARIATION OF REQUIREMENT CLAUSE

28. The Supplier shall not alter any of the Goods except as directed by LCC but LCC shall have the right from time to time during the execution of the Contract, by written notice to direct the Supplier to add to or omit, or otherwise vary, the Goods, and the Supplier shall carry out such variations and be bound by the same Conditions so far as is applicable, as though the said variations were stated in the Contract
29. In the event of any variation of the contractual requirement in accordance with clause 28 above which would occasion an amendment to the Contract Price, the Supplier shall, within 7 days of receipt of such notification of variation, advise the Client in writing of the amount of any such amendment. Any such amendment shall be ascertained and determined at the same level of pricing as that contained in the Suppliers tender
30. If, in the opinion of the Supplier, any such variation in accordance with Clause 28 above is likely to prevent the Supplier from fulfilling any of their obligations under the Contract, the Supplier shall notify LCC immediately, whereupon LCC shall inform the Supplier within 14 days whether or not the said variations shall be

carried out. Until LCC confirms such instructions in writing they shall be deemed not to have been given

TRAINING

31. Where appropriate, the Contract price shall include the cost of instruction of LCC personnel in the use of the Goods, such instructions shall be in accordance with the requirements of the Contract

MANNER OF CARRYING OUT THE INSTALLATION WORK

32. The Supplier shall make no delivery of materials, plant or other things nor commence any work on the LCC's premises without obtaining the LCC's prior consent
- 33 .Access to the LCC's premises shall not be exclusive to the Supplier but only such as shall enable the performance of the Contract concurrently with the execution of work by others. The Supplier shall co-operate with such others as LCC may reasonably require.
- 34 .LCC shall have the power at any time during the progress of the Contract to order in writing:

the removal from the LCC's premises of any materials which in the opinion of LCC are either hazardous, noxious or not in accordance with the Contract, and/or;

the substitution of proper and suitable materials, and/or;

the removal and proper re-execution notwithstanding any previous test thereof or interim payment therefore of any work or Goods which, in respect of material or workmanship, is not in the opinion of the LCC in accordance with the Contract

35. On completion of the Contract the Supplier shall remove the Supplier's plant, equipment and unused materials and shall clear away from the LCC 's premises all rubbish arising out of the Contract and leave the LCC's premises in a neat and tidy condition

INDEMNITY AND INSURANCE

36. Without prejudice to any rights or remedies of LCC, including the rights and remedies under Clauses 20 to 24 of the Conditions, the Supplier shall be liable for and shall indemnify LCC against any liability, loss, claim or proceedings whatsoever arising under any statute or at common law in respect of personal injury to or the death of any person or damage to property of any person whomsoever arising out of or in the course of or caused by carrying out of the works. Without prejudice to his liability to indemnify the LCC as aforesaid the Supplier shall effect and maintain the necessary arrangements with the liability insurers to ensure the implementation of this indemnity with single accidents limits

of not less than Five Million Pounds (£5,000,000.00) (Public Liability) and Employers Liability unlimited. The Supplier shall indemnify LCC against loss of or damage to the LCC's property or property for which the LCC is responsible or any consequential or indirect loss attributable to any negligence, omission or defect of the contractor, his servants or agents

37. The Supplier shall effect a policy or policies of insurance, with a reputable insurance company, covering all the matters which are the subject of indemnities under these Conditions. Where requested the Supplier shall produce the relevant policy or policies, together with receipts or other evidence of payment of the latest premium due

THE PRICE

38. The price of the Goods shall be as stated in the Purchase Order. No prices should be disclosed to any third party without the written permission of the LCC's Procurement Unit.

INVOICING AND PAYMENT

39. The Supplier shall submit invoices only when the goods have been delivered, in a format that has been agreed by LCC's Procurement Unit.
40. The invoice must be sent to the invoicing address as shown on the official purchase order. Whilst Liverpool City Council endeavours to pay all agreed invoices within 30 days of receipt the supplier's failure to submit the invoice to the correct invoicing address will inhibit the Council's ability to pay the supplier within this period and render the council not liable for the payment of any additional monies under the terms of the Late Payment Act.
41. The invoice submitted must quote the Liverpool City Council official purchase order number. Any invoice not quoting the official purchase order number will be rejected by Liverpool City Council and payment will not be made until the invoice containing the correct information has been represented and its content agreed by Liverpool City Council's Payment Team.
42. Payment will be made within 30 days of receipt and agreement of invoices for Goods delivered to the satisfaction of LCC
43. Any complaints which may arise concerning the late payment of invoices should be addressed in the first instance to the Payment Team Manager at the invoicing address shown on the purchase order.
44. Where a Supplier is not satisfied with the response, they may write to the Procurement Unit Manager at 4th Floor Venture Place, Sir Thomas Street, Liverpool L1 6BN who will see that their complaint is followed up promptly and fairly. LCC aims to reply to complaints within 10 working days.
45. Should the Supplier contemplate cessation of supply due to any dispute with any Individual department included in this contract, cessation will apply **only** to the department which is the subject of the dispute and **not** the remaining users of the

Contract. Any such action may only be implemented after 7 days notice in writing to the Procurement Unit and the department concerned.

RECOVERY OF SUMS DUE

46. Whenever under the Contract any sum of money is recoverable from or payable by the Supplier that sum may be deducted from any money due or which at any later time become due to the Supplier under the Contract or under any other agreement or Contract with LCC

VALUE ADDED TAX (VAT)

47. Where applicable the prevailing rate and total of Value Added Tax (VAT) shall be shown separately on all invoices

EURO

48. Any legislative requirement to account for goods in Euro instead of and/or a addition to Sterling shall be implemented by the Supplier at nil charge to LCC

PATENTS AND INFORMATION

49. It is a condition of the Contract that the Goods will not infringe any patent, trade mark, registered design, copyright or other right in the nature of industrial property of any third party, except to the extent that the Goods incorporate designs furnished by LCC, and the Supplier shall indemnify LCC against all actions, claims, demands, costs and expenses which LCC may suffer or incur as a result of or in connection with any breach of this Condition

50. All rights, including ownership and copyright in any specifications, instructions, plans, drawings, patents, models designs, documents or other materials:

furnished or made available to the Supplier by LCC are hereby assigned to and shall vest in LCC absolutely;

prepared by or for the Supplier for use or intended use, in relation to the performance of this contract are hereby assigned to and shall vest in LCC absolutely, the Supplier shall not and shall ensure that their servants and agents shall not (except to the extent necessary for the implementation of this contract) without prior written consent of LCC use or disclose any such specifications, instructions, plans, drawings, patents, models, designs, documents or other material or any other information (whether or not relevant to this contract) which the Supplier may obtain through the execution of this contract except information which is in the public domain otherwise than by reason of a breach of this provision, and in particular the Supplier shall not refer to LCC or the contract in any advertisement without the prior written consent of LCC

51. The provision of Clause 46 shall apply during the continuance of this contract and after its termination howsoever arising

52 **EQUAL OPPORTUNITIES CLAUSE**

In discharging its obligations under this Contract, the Contractor will comply with all applicable Acts of Parliament, Regulations, Orders, Directives, Statutory Guidance, Codes of Practice and Byelaws that are in force or may come into force during this Contract.

the Contractor will comply with the following requirements in discharging its obligations under this Contract.

- a) The Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the Race Relations Act 1976 as amended 2000 Sex Discrimination Act 1975 as amended 1986, the Equal Pay Acts 1970 and 1983, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, Employment Equality (Age) Regulations 2006, the Human Rights Act 1998, the Employment Equality Act 2006 or other relevant legislation, or any statutory modification or re-enactment thereof.
- b) The Contractor shall not treat a person less favourably for a reason relating to that persons disability (as defined by the Disability Discrimination Act 2005) nor fail to comply with a duty under that Act to make reasonable adjustments in relation to the disabled person.
- c) The contractor will ensure that it complies with the Commission for Racial Equality's Code of Practice in Employment, the Equal Opportunity Commission's Codes of Practice on Sex Discrimination and Equal Pay and the Disability Rights Commission's Code of Practice for the elimination of discrimination against disabled persons in the field of employment, together with any future Codes of Practice in respect of Equality Issues.
- d) The Contractor shall take all reasonable steps to secure the observance of clause 52 by all servants, employees or agents of the Contractor and all suppliers and sub-contractors employed in the execution of the Contract.
- e) Where in connection with this agreement the Contractor, its agents or Sub-contractors or the Contractor staff are required to carry out work on the Authority's premises or on any other premises where the Authorities employees are required to carry out work, the Contractor shall, to the extent required to comply with Clause 52 comply with the Authority's own employment policy and codes of practice relating to discrimination and equal opportunities.
- f) 12 months from the date of this agreement and annually thereafter submit a report statement to the Authority demonstrating compliance with clause 52

- g) in addition to the report statement referred to above, the Contractor shall provide such additional information as the Authority may reasonably require for the purpose of assessing the Contractor's compliance with clause 52
- h) The Contractor shall notify the Authorised Officer forthwith in writing as soon as it becomes aware of any complaint, or proceedings or any investigation against the Contractor alleging unlawful discrimination in the performance of this contract. In the event of any such complaint, proceedings or investigation the Contractor will co-operate fully and promptly with the body undertaking the investigation or bringing the proceedings, and will indemnify the Council against all costs, charges and expenses (including legal and administrative expenses and any compensation that the Council is required to pay) arising out of such investigation of proceedings.
- i) Where any investigation is undertaken by a person or body empowered to conduct such investigations and/or proceedings are instituted in connection with matters referred to in this agreement being in contravention of the above named Acts, the Contractor shall free of charge
- Provide any information requested in the timescales allotted
 - Attend any meetings as required and permit Contractor staff to attend
 - Promptly allow access to and investigation of any documents or data deemed to be relevant
 - Allow itself and any Contractor staff to appear as witness in any ensuing proceedings; and
 - Cooperate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation
- j) Where any investigation is conducted or proceedings are brought which arise directly or indirectly out of any act or omission of the Contractor, its agents or Sub-contractors, or the Contractor's staff, and where there is a finding against the Contractor in such investigation or proceedings, the Contractor shall indemnify the Authority with respect to all costs, charges and expenses (including legal and administrative expenses) arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the Authority may have been ordered or required to pay to a third party.
- k) In the event that the Contractor enters into any sub-contract in connection with this agreement, it shall impose obligations on its Sub-contractors in terms substantially similar to those imposed on it pursuant to clause 52.
- l) The Council reserves the right to require the Contractor, by written request, to remove any person involved in the performance of the Contract where in the

Council's reasonable opinion such person is acting contrary to the requirements of this Clause.

- m) The Contractor will discharge its obligations under this Contract without infringing the human rights of any person, as defined by the Human Rights Act 1998.

The Supplier shall

- a) At all times provide the service in accordance with the council's commitment to equal access to services for all sections of the community.
- b) Make sure that no section of the community is denied access or receive a poorer service on the grounds of race, gender, sexuality, religion and belief, nationality, national or ethnic origin, age or disability.
- c) Establish adequate managerial and supervisory arrangements for staff to be made aware of and to comply with the council's service delivery objectives.
- d) Ensure that sufficient, instructed and competent staff are available to provide services to all sections of the community including those who do not have English as their first language.
- e) If required, attend regular meetings with equal opportunities staff and local community groups to discuss the service and improvements to it.
- f) Support and co-operate with council initiatives aimed at improving services (and/ or access to services) to different groups in the community.

CORRUPT GIFTS AND PAYMENTS OF COMMISSION

53. The Supplier shall not give, provide or offer any loan, fee, reward or gift or any emolument or advantage whatsoever to any Member, Officer or Servant of the LCC and in the event of any breach of this condition LCC may, without prejudice to any other right it may possess, forthwith cancel the Contract and recover from the Supplier any loss or damage consequent upon such cancellation. Provided that this clause shall not operate in any case in which a Member of LCC has disclosed his/her interest in accordance with the provisions of Sections 94-98 inclusive and Section 117 of the Local Government Act 1972 or Section 106 of the Local Government Finance Act, 1992 and has declared the extent of any offer or provision of loan, fee, reward, gift, emolument or advantage, and this was considered by the Committee when awarding the contract

54 .Any breach of Clause 53 by the Supplier or by anyone employed by them or acting on their behalf (whether with or without the knowledge of the Supplier) shall entitle LCC to terminate this contract summarily and recover from the Supplier the amount of any loss resulting from such termination. (Note. The attention of the

Supplier is drawn to the criminal offences under the Prevention of Corruption Acts 1889 to 1916)

(**Note:** Nothing contained in Clauses 53 & 54 prevents the Supplier paying such commissions or bonuses to their own staff as are within their agreed Contract of Employment)

DATA PROTECTION ACT

55. The Supplier (and any of his sub-contractors involved in the provision of this Contract) shall be registered under the relevant parts of the Data Protection Act 1998 and shall ensure that the applicable provisions of the Data Protection Act and any subsequent amendments thereto or other relevant Act of Parliament are strictly adhered
56. The provisions of this Condition shall apply during the continuance of this Contract and indefinitely after its expiry or termination

PUBLICITY MEDIA AND OFFICIAL ENQUIRIES

57. Neither the Supplier nor its sub-contractor(s), agents, servants, suppliers, employees and consultants shall make any public statement relating to the existence of or performance of the Contract without the prior written consent of LCC, which shall not be unreasonably withheld.
58. The provisions of this Condition shall apply during the continuance of this Contract and indefinitely after its expiry or termination

COMPLIANCE WITH VALUE ADDED TAX AND OTHER TAX REQUIREMENTS

59. The Supplier shall at all times comply with the Value Added Tax Act 1994 and all other statutes relating to direct or indirect taxes
60. Failure to comply may constitute a material breach of this Contract and LCC may exercise the rights and provisions conferred by clause 86 Termination hereof
61. The Supplier shall furnish to LCC the name, and if applicable, the added tax registration number of any agent, supplier or sub-contractor of the Supplier prior to the commencement of any work under this contract by that agent, supplier or sub-contractor. Upon a request by LCC, the Supplier shall not employ or will cease to employ any agent, supplier or sub-contractor

THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

62. No person who is not a party to the Contract (including without limitation any employee, officer, agent, representative, or sub-contractor of either the LCC or the Supplier) shall have any right to enforce any term of the contract, which expressly or by implication, confers a benefit on him without the prior agreement in writing of both parties, which agreement should refer to this clause 57

FREEDOM OF INFORMATION ACT 2000

63. The Contractor recognises that the Council is subject to legal duties which may require the release of information under FOIA or the Environmental Information Regulations 2004 or any other applicable legislation or codes governing access to information and that the Council may be under an obligation to provide information on request. Such information may include matters relating to, arising out of or under this Agreement in any way. Notwithstanding anything in this Agreement to the contrary

in the event that the Council receives a request for information under the FOIA or any other applicable legislation governing access to information, the Council shall be entitled to disclose all information and documentation (in whatever form) as necessary to respond to that request in accordance with the FOIA or other applicable legislation governing access to information, save that in relation to any such information that is Exempted Information, the Council shall use reasonable endeavours to consult [the Contractor as soon as reasonably practicable and shall not:

(a) confirm or deny that the information in question is held by the Council, or

disclose the information requested, to the extent that in the Council opinion (having taken into account the views of the Contractor) that exemption is or may be applicable in accordance with the relevant section of the FOIA in the circumstances.

In the event that the Council incurs any costs, including but not limited to external legal costs, in seeking to maintain the withholding of the information, including but not limited to responding to information notices or lodging appeals against a decision of the Information Commissioner in relation to the disclosure, the Contractor shall indemnify the Council.

In the event, the Council shall not be liable for any loss, damage, harm or other detriment however caused arising from the disclosure of any Exempted Information or other information relating to this Agreement under FOIA or other applicable legislation governing access to information.

The Contractor will assist the Council to enable the Council to comply with its obligations under FOIA or other applicable legislation governing access to information. In particular it acknowledges that the Council is entitled to any and all information relating to the performance of this Agreement or arising in the course of performing this Agreement. In the event that the Council receives a request for information under the FOIA or any other applicable legislation governing access to information, and requires the Contractor assistance in obtaining the information that is the subject of such request or otherwise, the Contractor will respond to any such request for assistance from the Council] at its own cost and promptly and in any event within **5 working days** of receiving the Council request.

The Council agrees that it will consult the contractor, following its receipt of a request for information under the FOIA where:-

disclosure of information in response to a request might prejudice the legal rights or commercial interests of the contractor

the views of the contractor may assist the Council in determining whether an exemption under the FOIA would apply to the information requested

the views of the contractor may assist the Council to determine where the public interest lies under section 2 of the FOIA

The contractor agrees to respond to any consultation from the Council under 12.6 above, within 5 working days and notes...

that the Council may be obliged, in pursuance of its duties under the FOIA, to release information in any event if the Contractor does not respond.

that the decision to disclose information in response to a request is that of the Council alone, having regard to the provisions of the FOIA

NATIONAL MINIMUM WAGE

64. The Supplier shall ensure that, where appropriate, staff employed by him are paid at least the national minimum wage in accordance with the National Minimum Wage Act 1998

ENVIRONMENTAL REQUIREMENTS

65. The Supplier shall perform the Contract in accordance with LCC's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment

HUMAN RIGHTS ACT

66. The Supplier, its sub-contractors, agents and employees shall at all times comply with the provisions of the Human Rights Act 1998 in the execution of this Contract. Failure to do so may constitute a material breach of the Contract and the LCC may exercise its rights under clause 86

HEALTH AND SAFETY

67. The Supplier shall promptly notify LCC of any health and safety hazards which may arise in connection with the performance of the contract

68. LCC shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the LCC's premises and which may affect the Supplier in the performance of the Contract
69. While on LCC's premises the Supplier shall comply with any health and safety measures implemented by LCC in respect of personnel and other persons working on those premises
70. The Supplier shall notify the LCC immediately in the event of any incident occurring in the performance of the Contract on LCC's premises where that incident causes any personal injury or damage to property which could give rise to personal injury
71. The Supplier shall take all necessary measures to comply with the requirements of the Health and Safety at Work etc Act 1974 and any other Acts, orders, regulations and Codes of Practice relating to health and safety, which may apply to staff in the performance of the Contract
72. The Supplier shall ensure that his health and safety policy statement (as required by the Health and Safety at Work Act 1974) is made available to LCC on request
73. The Supplier shall keep and maintain until two years after the Contract has been completed, or as long a period as may be agreed between the parties, full and accurate records of the contract, all expenditure reimbursed by LCC and all payments made by the LCC. The Supplier shall on request afford LCC or the LCC's representatives such access to those records as may be required by LCC in connection with the Contract

ASSIGNMENT AND SUB-CONTRACTING

74. The Supplier shall not assign or sub-contract any portion of the Contract without the prior written consent of LCC. Sub-contracting any part of the Supplier shall not relieve the Supplier of any obligation or duty attributable to the Supplier under the Contract or these Conditions
75. Where LCC has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Supplier to LCC immediately it is issued
76. LCC is entitled to assign any or all of its rights under the Contract to any contracting authority as defined in Regulation 3(1) of the Public Supply Contracts Regulations 1995, provided that such assignment shall not materially increase the burden of the Supplier's obligations under the contract
77. The Supplier shall be responsible for the acts and omissions of his sub-contractors as though they were his own
78. The Supplier shall not use the services of self-employed individuals without prior approval

WAIVER

79. The failure of either Party to exercise any right of remedy shall not constitute a waiver of that right or remedy
80. No waiver shall be effective unless it is communicated to the other Party in writing
81. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract

SEVERABILITY

82. If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the parties shall immediately commence negotiations in good faith to remedy the invalidity

REMEDIES CUMULATIVE

83. Except as otherwise expressly provided by the Contract, all remedies available to either party for breach of this Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies

MONITORING OF CONTRACT PERFORMANCES

84. Before the commencement date the LCC will agree in consultation with the Supplier the arrangements required for the purpose of monitoring the performance by the Supplier of its obligations under the Contract
85. As part of the Tender the Supplier will submit proposals for the monitoring of Supplier performance for consideration by the Client
86. Such arrangements may include (without limitation) random inspections

NOVATION

87. (a) LCC shall be entitled subject to Clause 83 to:-
- assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof to any Contracting Authority provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier's obligations pursuant to this Contract; or
- novate this Contract to any other body (including but not limited to any

private sector body) which substantially performs any of the functions that previously had been performed by any Contracting Authority

Any change in the legal status of LCC such that it ceases to be a Contracting Authority shall not, subject to Clause 83 affect the validity of this Contract. In such circumstances, this Contract shall bind and inure to the benefit of any successor body to LCC

88. If the Contract is novated to a body which is not a Contracting Authority pursuant to Clause 87 or if a successor body is not a Contracting Authority under Clause 87 (in the remainder of this Clause both such bodies are referred to as the “transferee”):

the rights of termination of LCC in Clauses 89 & 91 shall be available to the Supplier in the event of the bankruptcy, insolvency or Default of the transferee;

the transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof with the previous consent in writing of the Supplier

TERMINATION ON CHANGE OF CONTROL AND INSOLVENCY

89. The Supplier shall notify LCC in writing immediately upon the occurrence of any of the following events:

The Supplier undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, which impacts adversely and materially on the performance of the Contract; or

Where the Supplier is an individual or a firm and a petition is presented for the Supplier’s bankruptcy or a criminal bankruptcy order is made against the Supplier or any partner in the firm, or the Supplier or any partner in the firm 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 is appointed to manage the Supplier’s or firm’s affairs; or

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 administrative receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge

Where the Supplier is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or any similar event occurs under the law of any other jurisdiction within the United Kingdom

90. LCC may only exercise its right under clause 89 within 6 months after a change of control occurs and shall not be permitted to do so where it has agreed in advance

to the particular change of control that occurs. The Supplier shall notify the Client immediately when any change of control occurs

TERMINATION ON DEFAULT

91. LCC may terminate the contract or terminate the provision of any part of the Contract by written notice to the Supplier with immediate effect if the Supplier is in default of any obligation under the Contract and:

the Supplier has not remedied the default to the satisfaction of LCC within 30 days, or such other period as may be specified by LCC, after issue of a written notice specifying the default and requesting it to be remedied; or
the default is not capable of remedy; or
the default is a fundamental breach of the contract

92. If the Supplier shall die or be adjudged incapable of managing his or her affairs within the meaning of Part VII of the Mental Health Act 1983, LCC shall be entitled to terminate this Contract by notice to the Supplier or the Supplier's representative with immediate effect

BREAK

93. LCC shall have the right to terminate the Contract, or to terminate the provision of any part of the Contract at any time by giving three months written notice to the Supplier. LCC may extend the period of notice at any time before it expires subject to agreement on the level of performance to be provided by the Contractor during the period of extension

CONSEQUENCES OF TERMINATION

94. Where LCC terminates the Contract under Clause 91, or terminates the provision of any part of the Contract under those Clauses, and then makes other arrangements for the provision of the Contract, LCC shall be entitled to recover from the Supplier the cost of making those other arrangements and any additional expenditure incurred by LCC throughout the remainder of the Contract period. Where the Contract is terminated under Clause 91 no further payments shall be payable by LCC until LCC has established the final cost of making those other arrangements

95. Where LCC terminates the Contract under Clause 89, LCC shall indemnify the Supplier against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Supplier by reason of the determination of the Contract. The Supplier shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses incurred by the Supplier as a result of termination under Clause 89

DISRUPTION

96. The Supplier must take reasonable care to ensure that in the execution of the Contract it does not disrupt the operations of LCC, their employees or any other Supplier employed by LCC
97. The Supplier shall immediately inform the LCC of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect their ability at any time to deliver the Goods in accordance with the requirements of the Contract
98. In the event of industrial action by the Supplier's staff, suppliers or sub-contractors the Supplier shall seek LCC's written approval to their proposals to deliver the Goods
99. If the Supplier's proposals referred to in Clause 93 are considered insufficient or unacceptable by LCC then the Contract may be terminated
100. If the Supplier is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of LCC an appropriate allowance by way of extension of time will be approved by LCC. In addition, LCC will reimburse any additional expense incurred by the Supplier in fulfilling the provisions of the Contract as a result of such disruption

RECOVERY UPON TERMINATION

101. Termination or expiry of the Contract shall be without prejudice to any rights and remedies of the Supplier and LCC accrued before such termination or expiration and nothing in the Contract shall prejudice the right of either party to recover any amount outstanding at such termination or expiry
102. At the end of the Contract Period (and howsoever arising) the Supplier shall forthwith deliver to LCC upon request all LCC's equipment, materials, documents, information, access keys and other materials relating to the Contract in its possession or under its control or in the possession or under the control of any permitted suppliers or sub-contractors and in default of compliance with this provision LCC may recover possession thereof and the Supplier grants licence to LCC or its appointed agents to enter for the purposes of such recovering any premises of the Supplier or its permitted suppliers or sub-contractors where any such items may be held
103. The provisions of Clauses 91 and 92 shall survive the continuance of this Contract and indefinitely after its termination

FORCE MAJEURE

104. Neither party shall be liable to the other party for any delay in or failure to perform its obligations under the Contract (other than a payment of money) if such delay or failure results from circumstances beyond the party's reasonable control known as Force Majeure

105. For the purpose of this condition, "Force Majeure" means any event or occurrence which is outside the reasonable control of the Party concerned, and which is not attributable to any act or failure to take preventive action by the Party concerned. It does not include any industrial action occurring within the Supplier's organisation or within any sub-contractor's organisation

GOVERNING LAW

106. This Contract shall be governed by and interpreted in accordance with English Law and shall be subject to the exclusive jurisdiction of the Courts of England and Wales

DISPUTE RESOLUTION

107. The parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract

108. If the dispute cannot be resolved by the parties pursuant to Clause 107 the dispute may, by agreement between the parties, be referred to mediation

109. The procedure for mediation and consequential provisions relating to mediation are as follows:

a neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the parties or, if they are unable to agree upon a Mediator within 14 days after a request by one party to the other, or if the Mediator agreed upon is unable or unwilling to act either party shall within 14 days from the date of the proposal to appoint a Mediator or within 14 days of notice to either party that they are unable or unwilling to act, apply to the Centre for Dispute Resolution ("CEDR") to appoint a Mediator

The parties shall within 14 days of the appointment of the Mediator meet with them in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure

Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings

If the parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the parties once it is signed by their duly authorised representatives

Failing agreement, either of the parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both parties

If the parties fail to reach agreement in the structured negotiations within 40 days of the Mediator being appointed, or such longer period as may be agreed by the parties, then any dispute or difference between them may be referred to the courts

ARBITRATION

110. 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 LCC is final and conclusive, which cannot be resolved in accordance with Condition 107, shall be referred to the arbitration of two persons, one appointed by LCC and one by the Supplier, in accordance with the provisions of the Arbitration Act 1996 or any statutory modification or enactment thereof

NATIONAL FRAUD INITIATIVE

111. This authority is under a duty to protect the public funds it administers, and to this end may use the information you have provided on this form for the prevention and detection of fraud. It may also share this information with other bodies responsible for auditing or administering public funds for these purposes.

For further information, see:

<http://www.gov.uk/government/collections/national-fraud-initiative>