

CONDITIONS OF CONTRACT - GOODS

These Conditions may be varied only by 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.

1. DEFINITIONS

In these Conditions:

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

'Council' Means Argyll and Bute Council, its statutory successors and any relevant organisation delegated to carry out the function of the Council, the employer and Council.

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

GDPR" CLAUSE DEFINITIONS:

"Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer" take the meaning given in the GDPR.

"Data Loss Event": any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

"Data Protection Legislation": (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent]to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

"Data Protection Impact Assessment": an assessment by the Controller of the impact of the

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envisaged processing on the protection of Personal Data.

“Data Subject Access Request”: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

“DPA 2018”: Data Protection Act 2018

“GDPR”: the General Data Protection Regulation (*Regulation (EU) 2016/679*)

“LED”: Law Enforcement Directive (*Directive (EU) 2016/680*)

“Protective Measures”: appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

“Sub-processor”: any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement

'Goods' means any such 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;

'Purchase Order' Means the document setting out the Council's requirements for the Contract.

2. THE GOODS

- 2.1 The Goods shall conform to the detailed specification provided by the Council and no variation will be accepted unless approved in writing by the Council. Where specified goods shall be supplied with a Certificate of Conformity and/or other legally required information.
- 2.2 The Goods shall conform in all respects with the requirements of any statutes, orders, regulations or bye-laws in force.

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3. THE PRICE

- 3.1 The price of the goods shall be as stated in the Contract and no increase will be accepted by the Council unless agreed in writing before the execution of the Contract.
- 3.2 All prices shall be inclusive of delivery, carriage and packaging unless agreed in advance with the Council.
- 3.3 Unless otherwise agreed in writing by the Council, the Supplier shall render a separate invoice in respect of each purchase order under the Contract. Payment shall be due 30 days after receipt of the correct invoice.
- 3.4 Value Added Tax, where applicable, shall be shown separately on all invoices.
- 3.5 All prices shall be in sterling.

4. DELIVERY

- 4.1 The Goods shall be delivered to the place named in the Purchase Order. 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 losses which the Council may suffer or incur as a result of or in connection with any damage or injury 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.
- 4.2 Where any access to the premises is necessary in connection with delivery or installation the Supplier and his sub-contractors shall at all times comply with the reasonable requirements of the Council.
- 4.3 The time of delivery shall be of the essence and failure to deliver within the time promised or specified shall enable the Council (at their option) to release themselves from any obligation to accept and pay for the Goods and/or to cancel all or part of the Contract therefore, in either case without prejudice to his other rights and remedies.
- 4.4 Any deliveries out with normal working hours or the need for specialist equipment must be agreed in advance with the Council.

5. PURCHASE ORDERS & INVOICING

- 5.1 No goods shall be delivered to the Council without the Supplier receiving an authorised Council purchase order. All documentation relating to the order must state the purchase order number.

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- 5.2 All goods must be accompanied by a delivery note. The delivery note must state the Council's order number, full description of the goods, quantity, delivery address details and delivery date. Where a carrier/courier is used the delivery note should include the above details and also the name of carrier, date of dispatch and the total number of packages. Delivery notes must be signed by an authorised member of the Council's staff at point of delivery and a copy left with the employee as proof of delivery.
- 5.3 Invoices must be emailed/posted to the address stated on the purchase order and state the purchase order number, description of the goods, actual quantity delivered, date of delivery and the correct prices both by unit and totals.

6. 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 8 hereof) pass to the Council after practical completion including installation, testing and commissioning.

7. DAMAGE IN TRANSIT

On dispatch of any consignment of the Goods the Supplier shall send to the Council at the address for delivery of the Goods an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. 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:

- (a) in the case of damage to such Goods in transit the Council shall within 30 days of delivery give notice to the Supplier that the Goods have been damaged;
- (b) in the case of non-delivery the Council shall (provided that the Council has been advised of the dispatch of the Goods) within ten days of the notified date of delivery give notice to the Supplier that the Goods have not been delivered.

8. INSPECTION, REJECTION, GUARANTEE AND WARRANTIES

- 8.1 The Supplier shall permit the Council or his authorised representatives to make any inspections or tests he may reasonably require and the Supplier shall afford all reasonable facilities and assistance free of charge at his 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.
- 8.2 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

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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 the Council shall be entitled (without prejudice to his other rights and remedies) either:

- (a) 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
- (b) to obtain a refund from the Supplier in respect of the Goods concerned.

8.3 The Supplier shall guarantee the Goods supplied against faulty workmanship or design and for satisfactory quality and functioning for a minimum period of 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).

8.4 Any Goods rejected or returned by the Council as described in paragraphs 8.2 or 8.3 shall be returned to the Supplier at the Supplier's risk and expense.

9. LABELLING AND PACKAGING

9.1 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, 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 losses and expenses which the Council may suffer or incur as a result of or in connection with any breach of this Condition.

9.2 The Supplier shall where possible be required to take away packaging for re-use, recycling or appropriate disposal.

9.3 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 the packing specifications.

9.4 With reference to the Waste Electrical and Electronic Equipment Regulations 2013 the Supplier will be required to arrange collection of any goods that are being replaced under the contract which are of an equivalent type or are to fulfil the same function, at no cost to the Council, for re-use, recycling or appropriate disposal

10. PREVENTION OF CORRUPTION

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The Supplier warrants to the Council that it has not and that its employees, agents or sub-contractors have not offered, given, or agreed to give to any person any gift, or consideration of any kind as an inducement or reward for doing, or refraining from doing, or having done or refrained from having done any action in relation to the obtaining or execution of this Contract, or for showing or refraining from showing favour, or disfavour, to any person in relation to this Contract or any other contract with the Council, nor committed any offence under the Bribery Act 2010 nor given any fee or reward the receipt of which is an offence under Section 68 of the Local Government (Scotland) Act 1973. Breach of this warranty shall be deemed an irredeemable breach and entitle the Council to terminate the Contract with immediate effect in terms of Clause 21.

11. PATENTS, INFORMATION AND COPYRIGHT

- 11.1 It shall be a condition of the Contract, except to the extent that the Goods incorporate designs furnished by the Council, that nothing done by the Supplier in the provision of the Goods shall infringe any patent, trade mark, registered design, copyright or other right in the nature of intellectual property of any third party and the Supplier shall indemnify the Council against any losses which the Council may suffer or incur as a result of or in connection with any breach of this Condition.
- 11.2 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 Supplier by the Council shall remain vested in the Council absolutely.
 - (b) 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 the Council absolutely, and (without prejudice to Condition 16.2) the Supplier shall not and shall procure that his servants and agents shall not (except to the extent necessary for the implementation of this Contract) without the prior written consent of the Council 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 Supplier 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 Supplier shall not refer to the Council or the contract in any advertisement without the Council's prior written consent.
- 11.3 The provisions of this Condition 11 shall apply during the continuance of this Contract and after its termination howsoever arising.

12. HEALTH AND SAFETY

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The Supplier represents and warrants to the Council that the Supplier has satisfied himself 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 he has made available to the Council adequate information about the use for which the Goods have been designed and have been tested (and any subsequent revisions to that information) 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 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.

13. ENVIRONMENTAL AND SUSTAINABLE DEVELOPMENT

The Council is endeavouring to manage the environmental and social impacts of its activities and that of its suppliers. Both the Council and its suppliers must meet all relevant statutory regulations and official codes of practice. Suppliers will be required to work with the Council in conserving resources, reducing waste through re-use and recycling and in developing environmentally preferable goods and services at competitive prices.

14. INDEMNITY AND INSURANCE

14.1. The Supplier shall indemnify and keep indemnified the Council against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of, or in any way arising out of the provision or non-provision of the Service in relation to:

- 14.1.1. the injury to, or death of, any person;
- 14.1.2. loss of, or damage to, any property including property belonging to the Council;
- 14.1.3. breach of statutory duty; and
- 14.1.4. third party actions, claims or demands and costs, charges and expenses (including legal expenses on an indemnity basis) except and to the extent that any of the foregoing may arise out of the act, default or negligence of the Council, its employees or agents not being the Supplier or employed by the Supplier.

14.2. Without thereby limiting its responsibilities under this Clause 14 the Supplier shall maintain throughout the Contract Period insurance, with a reputable insurance company approved by the Council, covering all matters which are the subject of indemnities under these conditions and shall at the request of the Council produce the relevant policy or policies together with receipts or other evidence of payments of premiums

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15. EQUAL OPPORTUNITIES

The Supplier hereby confirms to the best of their knowledge and belief they have complied with the Equality Act 2010 (referred to in this condition as “The Act”) and hereby agrees to continue to comply with the Act in a manner which is proportionate and relevant to the nature of the contract.

16. CONFIDENTIALITY

The parties to this contract shall treat the information obtained in connection with this contract as confidential. Neither party shall disclose any information or any supplementary information obtained in carrying out the contract to any third party without prior written consent of the other party

DATA PROTECTION AND INFORMATION SECURITY

17.1 The Contractor undertakes to comply with the provisions of the Law relating to data protection and in particular, warrants that appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data. Each party undertakes to comply with the Law relating to data protection including, for the avoidance of doubt, the provisions of the Data Protection Act 1998 and, as of 25 May 2018, Regulation (EU) 2016/679 on the protection of the natural persons with regard to the processing of personal data and on the free movement of such data (the “**EU General Data Protection Regulation**” or “**GDPR**”) and any enactments thereunder or amendments thereto.

17.2 The Contractor undertakes to ensure that its staff are aware of their obligations under the Law relating to data protection.

17.3 The Contractor may be acting as a Data Controller in its own right, where the Contractor acts a Controller they undertake to comply with the provisions of the law relating to data protection and shall enter into a separate Data Sharing Agreement which shall be in accordance with current ICO Guidance

Where the Council is the Controller and the Contractor is the Processor- the only processing that the Contractor is authorised to do is listed in Schedule of Processing attached as Schedule by the Council and may not be determined by the Contractor

Where the Contractor is acting as a Data Processor on behalf of Council, the Contractor undertakes to comply with the provisions of the Law relating to data protection.

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- 17.4 In any event, the Contractor agrees to indemnify and keep Council indemnified from and against all costs, claims, demands, damages, expenses, losses and liabilities which may be incurred directly or indirectly in connection with a breach of the provisions of this Condition 17 including, but not limited to, the imposition of any monetary penalty by the Information Commissioner.
- 17.5 The Contractor undertakes to have formal policies and procedures in place addressing information security awareness, training of staff, security management of systems, both manual and electronic where Council data may be held, as well as the physical security of buildings where information is held.
- 17.6 Access to Council data, provided under the Contract, must be restricted by the Contractor and only provided where their staff have a direct requirement to process it in connection with the purpose of the Contract.
- 17.7 Council reserves the right to visit Contractor sites which are involved in receiving, storing or processing Council data to ensure that security controls continue to meet Council standards.
- 17.8 The Contractor must notify Council immediately of any risks or compromise to Council data or any incidents or concerns which may impact on the confidentiality, integrity or availability of Council data. Where risks are identified which are considered to have been ignored or an inappropriate response provided, Council reserves the right to suspend the provision of information to the Contractor until appropriate remedial action has been taken.

17. FREEDOM OF INFORMATION (SCOTLAND) ACT 2002

All information submitted to the Council may need to be disclosed and/or published by the Council. Without prejudice to the foregoing generally, the Council may disclose information in compliance with the FOI Legislation and the decisions of the Council in the interpretation thereof shall be final and conclusive in any dispute, difference or question arising in respect of disclosure under its terms, any other law or as a consequence of judicial order or order by any court, tribunal or body with the authority to order disclosure (including the Scottish Information Commissioner).

18. TERMINATION ON SUPPLIER'S INSOLVENCY

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:

- (a) 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 he is apparently insolvent, or he makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the

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benefit of creditors, or if an administrator or trustee is appointed to manage his affairs; or

- (b) 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 (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 Supplier to be wound up as an unregistered company; or
- (c) 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.

19. RECOVERY OF SUMS DUE

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 or with any department, agency or authority of the Council.

20. TERMINATION GENERAL

Either party shall have the right to terminate the Contract if the other party is in breach of any of the conditions of the Contract and such breach shall not have been remedied to the satisfaction of the injured party within a period of thirty days of written notification of such breach to the other party. Notice of termination shall be given to the offending party in writing with immediate effect and such termination shall be without prejudice to the rights of the parties accrued to the date of determination.

21. ASSIGNATION AND SUB-CONTRACTING

The Supplier shall not without the written consent of the Council assign or subcontract the Contract or any part thereof without prior written consent.

22. 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 by facsimile transmission or other means of telecommunication 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 Purchase Order, or to such other address as the party may by notice to the other have substituted

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therefore, 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.

23. DISPUTE RESOLUTION AND ARBITRATION

24.1 The parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this contract within 20 working days of either party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the Executive Director (or equivalent) of each party. In the event that the parties are unable to negotiate a settlement, all disputes, differences or questions which arise between the Council and the Supplier relating to the Contract or interpretation thereof or any matter arising under or out of the Contract, shall be referred to a single arbitrator to be agreed between the parties or failing agreement to be nominated by a Sheriff of the Sheriffdom of North Strathclyde whose decision shall be final, binding and conclusive. Any such arbitration conducted in relation to the Contract shall be conducted in accordance with the Arbitration (Scotland) Act 2010.

24.2 The Supplier shall fully indemnify the Council against any payments which the Council is required or recommended to make to any third party and any other costs, claims, liabilities and expenses arising wholly or partly from a finding of maladministration and/or injustice to a complainant as a direct result or failure by the Supplier in performing its duties under the terms of the Contract. Such indemnity shall cover any payments made by the Council under the terms of any early settlement of any complaint without there having been a formal investigation and report.

24.3 Should any payments which become due under this Clause remain unpaid after completion of the Contract they shall be recoverable by the Council as a Contract debt.

24. HEADINGS

The headings to Conditions shall not affect their interpretation.

25. GOVERNING LAW

All contracts with Argyll and Bute Council will be governed by the Law of Scotland and subject to the jurisdiction of the Scottish Courts.

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