

Somerset County Council Terms and Conditions of Contract

1 Interpretations

'The Council' means Somerset County Council.

'The Contractor' means the person or company that submitted the winning Tender and was awarded the Contract by the Council.

The 'Goods and Services' means the Goods, articles, materials, Services or things or any of them described in the Tender and supplied or to be supplied as part of the Contract.

'The Tender' means the Tender submitted by the Contractor.

'The Order' means the Order placed by the Council with the Contractor pursuant to the Tender.

'The Contract' means and includes the terms embodied in these conditions, in the Tender conditions, and in the relevant Order and in any documents referred to in any of them. For the avoidance of doubt, the terms and conditions herein shall take precedent should contention occur between any of the above.

'The Contracted Period' means the Period specified in the Tender during which the Contractor will supply agreed goods and services.

'The Schedule' is a list of Goods, prices and delivery dates contained in the Tender and bound by the terms and conditions of the Contract.

'Fit for Purpose' is the condition that all goods and services must meet in order to be accepted by the Council as satisfying contracted obligations of quality, reliability and overall performance.

'Authorised Officer' indicates a Council employee who is afforded the authority and responsibility for making decisions on the quality of Goods and Services delivered as meeting Fit for Purpose criteria.

2 Entire Agreement

This Contract and Tender and Schedule sets out the entire agreement and understanding between the parties in respect of the subject matter of this Contract and supersedes all prior agreements discussions and understandings between parties and or their agents. No variation of this Contract or Tender or Schedule shall be effective unless it is agreed in writing and signed by authorised officers for each party.

3 Supply of Goods and Property Transfer

The Contractor shall supply to the Council the Goods and related Services as stated in the Tender and Schedule as agreed by the Council. The property in such Goods shall not pass to the Council until they have been delivered to and accepted by an authorised officer of the Council and deemed to meet quality and Fit for Purpose criteria.

4 Quality Control

All Goods and Services supplied shall in all respects be in accordance with the specification contained in the Tender and Schedule and be deemed Fit for Purpose by authorised officers of the council without which acceptance shall not be deemed to have taken place.

5 Rejected Goods

Where Goods or Services do not meet agreed specifications or qualify as Fit for Purpose in the opinion of an authorised officer then the Council reserves the right to reject the Goods or Services and shall notify the Contractor in writing immediately of this decision.

Rejected Goods and Services shall constitute a breach of contract and shall be remedied by, and at the expense of, the Contractor upon seven days notice being given to the Contractor that the Goods are rejected by the Council for the reason set out in clause 4. Any remedy offered by the Contractor must be agreed with the Council in advance and must fully satisfy the conditions in clause 4.

6 Termination and Cancellation

Either Party may terminate the Contract for any reason by giving the other party two month's notice in writing to the other Party's registered address as given in the Tender.

The Council reserves the right to terminate the Contract forthwith where the Contractor causes a material breach of the terms and conditions of the Contract as in clause 5 and fails to remedy the breach in an agreed time or to a satisfactory standard as set out in clause 4, or where the Contractor becomes subject to the conditions in Clause 11.

7 Notice

Notice shall be deemed to have been given when made in writing and sent by registered mail or telefax but not e-mail and directed to the named contacts in the Tender and shall be considered effective from the date of receipt and not the date of despatch.

8 Prices

Prices shall remain fixed and firm as detailed in the Schedule for the duration of the Contract.

9 Payments

The Contractor will submit accounts for the amounts due to him as detailed within the agreed Schedule of delivery of Goods and Services as part of the Tender. The Council will settle invoices within 30 days of receipt unless there is a dispute as to the correctness or validity of said invoice.

10 Bankruptcy, Insolvency and Liquidation

Without prejudice to any accrued rights or remedies of the Council under this Contract, the employment of the Contractor under this Contract shall be automatically and immediately terminated in the event that the Contractor:

Becomes bankrupt, or makes a composition or arrangement with its creditors, or has a proposal in respect of its company for voluntary arrangement for a composition of debts, or scheme or arrangement approved in accordance with the Insolvency Act 1986.

Has an application made under the Insolvency Act 1986, to the court for an appointment of an administrative receiver.

Has a winding-up order made, or (except for the purposes of amalgamation or reconstruction) a resolution of voluntary winding-up passed.

Has a provisional liquidator, receiver, or manager of its business or undertaking duly appointed.

Has an administrative receiver, as defined in the Insolvency Act 1986, appointed.

Has possession taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in, or subject to, the floating charge.

Is in circumstances which entitle the court or a creditor to appoint, or have appointed, a receiver, manager, or administrative receiver, or which entitle the court to make a winding-up order.

11 Transferring, Assigning or Sub-Letting

The Contractor shall not assign any benefit under this contract or transfer, delegate or sub-contract any of its duties or obligations without the prior written consent of the Council.

12 Liability, Indemnities and Insurance

The Contractor shall indemnify and keep indemnified the Council from and 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 whomsoever arising out of or in the course of or caused by the execution of this Contract, and from and against any action, claims, demands, damages, loss, costs or expenses whatsoever or howsoever which may be brought against the Council or which the Council may be called upon to pay arising out of or in connection with the Contract unless caused by the negligence of the Council or its employees.

In compliance with this and before commencing the execution of any work under this Contract the Contractor shall effect a Policy of Insurance against liability to pay compensation under the Fatal Accidents Act 1976 or the Employer's Liability (Compulsory Insurance) Act 1969 or Common Law in respect of all workmen or other persons who may be employed by him and engaged on the works provided for by this Contract and shall also effect a Policy of Insurance against all claims which may be made by a third person arising out of or occasioned by the negligent or improper performance of this Contract by the Contractor or his employees or his agents.

13 Gifts and Inducements

The Council shall be entitled to terminate the Contract and to recover from the Contractor the amount of any loss resulting from such cancellation if the Contractor shall have offered, or given, or agreed to give to any person any gift, or consideration of any kind as an inducement or reward for doing, or forbearing to do, or having done or forborne to do any action in relation to the obtaining or execution of the Contract, or any other Contract with the Council, or for showing or forbearing to show favour, or disfavour, to any person in relation to the Contract, or any other Contract with the Council, or if the like acts shall have been done by any person employed by the Contractor, or acting on the Contractors behalf (whether with or without the knowledge of the Contractor), or if in relation to the Contract, or any other Contract with the Council, the Contractor or any person employed by the Contractor, or acting on the Contractor's behalf, shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or shall have given any fee or reward to any member or officer of the Council, which shall have been exacted or accepted by such officer by virtue of office or employment and is otherwise than such officer's proper remuneration.

14 Publicity

If the contract relates to the procurement of a service which is delivered to the public or supports services delivered to the public, the following provisions apply:

Service delivery

The Council wishes to increase public awareness of the services which it provides and will take every opportunity to ensure that its corporate identity is associated with service delivery.

The Contractor is required to:

- (i) take all reasonable steps to ensure that the Council is identified as the provider of the service including the use the Council's corporate logo
- (ii) shall make available, if required, all appropriate Contractor logos, including version updates in "jpg" format to the Council within 21 working days of the date of this contract

If the provision of the service involves the production and distribution of information, promotional literature, press releases or other material including the publication of material, publication of material for use on web sites, to submit proofs of any such material to the Council for approval before publication and the Council will use its best endeavours to notify the Contractor of its approval or otherwise within 21 working days of its receipt

Media coverage

The Contractor is required to observe the Council's protocol relating to media coverage the purpose of which is to avoid the publication of information which is inaccurate or which is presented in a way which is misleading or damaging to the Council.

The Contractor shall not:

- (i) take any action or make any statement or representation which might lead to inaccurate or misleading reporting, mislead the public or adversely affect the good name, goodwill, reputation or image of the Council or the Contractor
- (ii) disclose personal or sensitive information received in connection with the services provided which must be kept confidential at all times whether during the term of the contract or after its termination
- (iii) publish any unlawful, defamatory, obscene or scandalous material nor any material the publication of which is a criminal offence or which encourages conduct which might constitute a criminal offence

15 Equal opportunities

The Council is an equal opportunities employer and is committed to promoting equality of opportunity for all people irrespective of sex, age, race or disability. The Council is obligated to ensure that its suppliers abide by the law and are working to best practice in this area. All suppliers, as part of the tender process, will thus be required to provide evidence that they have equal opportunities policies in place and are committed to them. Failure to abide to such conditions shall constitute a material breach of Contract.

16 Sustainability

The Council is committed to using the resources entrusted to it to ensure best value for money at the least possible cost to the environment. As part of this commitment to the environment, the Council's procurement policy will, wherever practicable, focus on:

- Specifying less environmentally damaging products.
- Promoting greater use of renewable sources.
- Encouraging suppliers to use environmentally friendly practices throughout the production process.

Contractors shall provide on demand evidence of your practices and procedures as they relate to the protection of the environment.

17 Health & Safety

The Contractor shall be responsible for the suitability and safety of equipment used by the Contractor or the Contractor's staff and agents and no equipment shall be used on the Council's premises that may be deemed unsuitable, unsafe or liable to cause damage. The Council reserves the right, without lessening the absolute responsibility of the Contractor in this regard, to inspect such equipment and, if deemed unsuitable by an authorised officer of the Council, to prevent its use on Council property. In such circumstances the Contractor shall replace the equipment at his own expense and without claim to compensation in time or money for any consequent delays to the Schedule.

18 Severability

If any part of this Contract is found by a court of competent jurisdiction or other competent authority to be invalid, unlawful or unenforceable then such part will be severed from the remainder of this Contract which will continue to be valid and enforceable to the fullest extent permitted by law.

19 Governing Law

This Agreement shall in all respects be governed by English Law.

20 Arbitration

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 Council is final shall be referred to the arbitration of two persons (one appointed by the Council and one by the Contractor) or their umpire in accordance with the provisions of the Arbitration Act 1996. The arbitration shall be held in London, England and the decision of the arbitration shall be final and binding upon both parties.