



## **Terms and Conditions of Contract of Stratford On Avon District Council for XXXXXXX**

### **1. Definitions**

**"Authority"** means Stratford On Avon District Council of Elizabeth House Church Street Stratford Upon Avon CV37 6HX.

**"Contract"** means the agreement between the Authority and the Supplier consisting of the documents together referred to in the Invitation to Tender as "the Contract Documents" including these conditions of contract but excluding any terms and conditions of sale and/or supply of the Supplier

**"Contract Price"** means the price for the Goods and/or Services set out on the Purchase Order

**"Default"** means any breach of the obligations of the Supplier under the Contract

**"Goods"** means the goods, if any, to be supplied by the Supplier and identified in the Purchase Order

**"Purchase Order"** means either the purchase order used by the Authority to place an order with Supplier for Goods and/or Services or, as the case may be, the Contract Documents governing the same.

**"Services"** means the services, if any, to be provided by the Supplier as identified in the Purchase Order

**"Supplier"** means the person, firm or company with whom the Authority enters into the Contract.

**"Tax"** means Value Added Tax, customs duties and any other taxes or duties.

### **2. Supply of Goods and/or Services.**

**2.1** The Supplier shall provide the Goods and/or Services on the terms and conditions set out in the Contract. Subject to the Supplier fulfilling its obligations under the Contract the Authority shall pay the Supplier in accordance with the terms of the Contract.

**2.2** In providing the Goods and/or Services, the Supplier shall comply with and take into account all applicable laws, enactments, orders, regulations and other similar instruments, the requirements of any court with relevant jurisdiction and any local, national or supranational agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union.

### **3. Contracts for Goods**

**3.1** The Goods shall be to the reasonable satisfaction of the Authority, shall confirm to any particulars specified in the Purchase Order, shall be free from defects and be fit and sufficient for all the purposes for which such Goods are ordinarily used and for any particular purpose made known to the Supplier by the Authority.

**3.2** The Goods shall be delivered to the location(s), and at the times and dates specified in the Purchase Order, and time of delivery shall be of the essence. If no times and dates are specified, the Goods shall be delivered promptly following the Supplier's receipt of the Purchase Order. Except where otherwise provided in the Purchase Order, delivery shall include the unloading, stacking or installation of the Goods by Supplier at such place as the Authority shall reasonably direct.

**3.3** Property and risk in the Goods shall without prejudice to any other rights or remedies of the Authority pass to the Authority at the time of acceptance. The Goods shall be packed and marked in a proper manner and in accordance with the

Authority's instructions and any statutory requirements and any requirements of carriers.

**3.4** The Authority may by reasonable written notice to the Supplier reject any of the Goods which fail to meet the requirements specified herein, and shall be entitled (without prejudice to other rights and remedies) either to have the Goods repaired or replaced (at the option of the Authority) or to treat the Contract as discharged and seek damages from the Supplier. The issue by the Authority of a receipt note for the Goods shall not constitute any acknowledgement of the condition or nature of those Goods.

#### **4. Contracts for Services**

**4.1** Supplier shall provide the Services for the period specified in the Purchase Order in accordance with the Authority's requirements as set out in the Purchase Order. Timely provision of the Services shall be of the essence of the Contract, including in relation to commencing the provision of the Services.

**4.2** Supplier shall perform the Services with all reasonable care, skill and diligence, and in accordance with good industry practice. Supplier warrants and represents that all persons engaged by Supplier for performance of the Services have the qualifications, skill and experience necessary for the proper performance of the Services.

**4.3** If the Authority informs the Supplier that the Authority considers any part of the Services to be inadequate, without prejudice to Clause 4.5 below, the Supplier shall at its own expense re-schedule and perform the work correctly within such reasonable time as may be specified by the Authority.

**4.4** Without prejudice to the Authority's other rights and remedies, the Supplier shall reimburse the Authority for all reasonable costs incurred by the Authority which have arisen as a direct consequence of the Supplier's delay in the performance of the Contract.

**4.5** In the event that the Authority is of the opinion that there has been a Default by the Supplier in respect to the Services, then the Authority may, without prejudice to its other rights herein: (a) make such deduction from the Contract Price as the Authority shall reasonably determine in respect of such of the Services as the Supplier shall have failed to provide; or (b) provide or procure the provision of part of the Services; or (c) terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself provide or procure a third party to provide such part of the Services; and/or (d) terminate, in accordance with Clause 18.

**4.6** The Authority may charge to the Supplier any cost reasonably incurred by the Authority and any reasonable administration costs in respect of the provision of any part of the Services by the Authority or by a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Services.

#### **5. Contract Price**

**5.1** In consideration of the satisfactory performance of the Supplier's obligations under the Contract by the Supplier, the Authority shall pay the Contract Price.

**5.2** The Authority shall pay the Supplier, in addition to the Contract Price, a sum equal to the Tax chargeable on the value of the Goods and/or Services provided in accordance with the Contract.

**5.3** Payment of invoices accepted by the Authority will be made in cleared funds within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed to the satisfaction of the Authority.

**5.4** Wherever under the Contract any sum of money is recoverable from or payable by the Supplier, the Authority may unilaterally deduct that sum 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 Authority

**6. Notices.** Any notice which is to be given by either party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail (confirmed in either case by letter), to the addresses/numbers set out on the Purchase Order, and such notice or communication shall be deemed to have been given 2 working days after the day on which the letter was posted, or four hours, in the case of electronic mail or facsimile transmission or sooner where the other party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

**7. The Contracts (Rights of Third Parties) Act 1999.** No person who is not a party to the Contract 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.

**8. Information sharing and confidentiality**

**8.1** When required to do so by the Authority, the supplier shall assist the Authority at no additional charge in meeting its obligations under the Freedom of Information Act 2000 or any statutory modification or re-enactment thereof of any related guidelines or codes of practice.

**8.2** The Supplier shall comply in all respects with the provisions of the Data Protection Act 1998 as amended and will indemnify the Authority against all actions, costs, claims proceedings or demands that may be brought or made against the Authority under the Act which arises from the improper use, disclosure or transfer of personal data by the Supplier.

**8.3** The Supplier shall take appropriate technical and organisational measures against the unauthorised or unlawful processing of personal data provided by or on behalf of the Authority in connection with this contract and against the accidental loss or destruction of, or damage to, such personal data.

**8.4** The Supplier shall keep confidential all information belonging to or provided by the Authority in connection with this contract and shall not further use or disclose it to any third party without the express consent of the Authority or except to the extent permitted by law.

**9. Security.**

The Supplier shall comply with all reasonable security requirements of the Authority while on the Authority's premises, and shall procure that all of its employees, agents, servants and sub-contractors shall likewise comply with such requirements. The Authority shall provide the Supplier upon request copies of its written security procedures. The Authority reserves the right to refuse to admit to, or to withdraw permission to remain on, any of its premises, the Supplier or any sub-contractor, agent or servant of the Supplier.

**10. Intellectual Property Rights**

**10.1** It shall be a condition of the Contract that the Goods and/or Services will not infringe any Intellectual Property Rights of any third party and the Supplier shall fully indemnify and keep indemnified the Authority against all actions, suits, claims, demands, losses, charges, costs and expenses which the Authority may suffer or incur as a result of or in connection with any breach of this Clause.

**10.2** All Intellectual Property Rights in any specifications, instructions, plans, drawings, patents, patterns, models, designs or other material prepared by or for the Supplier for use, or intended use, in relation to the performance of the Contract shall belong to the Authority.

**11. Assignment and Sub-Contracting.**

The Supplier shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without prior written consent of the Authority.

**12. Waiver.**

The failure to insist upon strict performance of any provision of the Contract or to exercise any right or remedy shall not constitute a waiver of that right or remedy, no waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing, and a waiver of any right or remedy shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

**13. Variation.**

(a) Save as provided by sub-paragraph (b) the Contract shall not be varied or amended unless such variation or amendment is agreed in writing by the Authority and the Supplier.

(b) The Authority may issue and the Supplier shall comply with instructions in writing requiring the consultant to modify the Service or any part thereof, and/ or requiring the Supplier to omit or postpone any part of the Service.

The valuation of modifications made pursuant to this condition shall be determined by the Authority acting reasonably and ascertained where it is reasonable to do so on the basis of rates and prices contained in the Pricing Schedule within the Contract Documents.

**14. Severability.**

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.

**15. Remedies Cumulative.**

Except as otherwise expressly provided by the Contract, all remedies available to either party for breach of the 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.

## **16. Indemnity and Insurance**

**16.1** Neither party excludes or limits liability to the other party for death or personal injury caused by its negligence or for any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.

**16.2** The Supplier shall indemnify and keep indemnified the Authority against injury (including death) to any persons or loss of or damage to any property which may arise out of the act default or negligence of the Supplier, any sub-contractor or their respective employees or agents, and against all claims demands proceedings damages costs charges and expenses whatsoever in respect thereof or in relation thereto arising from the provision of the Goods and/or Services.

**16.3** Without thereby limiting his responsibilities under Clause 16.2 the Supplier shall before commencing the execution of the Contract insure with a reputable insurance company against all loss of and damage to property and injury to persons (including death) arising out of or in the consequence of the Supplier's obligations under the Contract and against all actions claims demands costs and expenses in respect thereof.

**16.4** Such insurance in respect of Clause 16.3 shall be for a minimum of £5,000,000 (five million pounds) in respect of any one act or default and the said insurance policy or policies shall be extended for the purpose of the Contract by endorsement or otherwise so as effectually to indemnify the Authority against all claims aforesaid and shall be produced to the Contract Manager together with the receipt or receipts for the premiums at such times as may be required by the Authority.

**16.5** If so required the Supplier shall procure and maintain Employers Liability insurance with a minimum level of £5,000,000 per claim or series of claims.

**16.6** If so required the Supplier shall procure and maintain during the currency of the Contract a policy of professional indemnity insurance to cover its liability under the Contract in respect to the Services with a minimum level of indemnity of £2,000,000 per claim or series of claims. The Supplier shall maintain insurance at this level for a period of six years after the end of this Contract and shall notify the Authority in writing immediately should such insurance cover cease.

**16.7** If so required the Supplier shall procure and maintain during the currency of this Contract a policy of product liability insurance to cover its liability under the Contract in respect to the Goods with a minimum level of indemnity of £2,000,000 per claim or series of claims. The Supplier shall maintain insurance at this level for a period of six years after the end of this Contract and shall notify the Authority in writing immediately should such insurance cover cease.

**16.8** If so required the Supplier will procure and maintain during the currency of this Contract a policy of motor insurance to cover its liability arising out of the use of any vehicle in relation to the Contract and in respect of damage to property and injury to persons. With respect to damage to property there shall be a minimum policy limit of £5,000,000 per claim or series of claims arising from any one incident. With respect to injury to persons the level of cover shall be unlimited.

**16.9** If so required the Supplier shall furnish the Authority with Certificates of Insurance together with the receipt or receipts for premiums evidencing that the relevant insurances are in force.

## **17. Termination on bankruptcy or insolvency.**

The Authority may terminate the Contract by notice in writing with immediate effect where:- a petition is presented for the Supplier's bankruptcy, or a bankruptcy order is made against the Supplier, or the Supplier makes any composition or arrangement with or for the benefit of creditors, or if the Supplier passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for an administration order in relation to it, or any party gives or files notice of intention to appoint an administrator of it or such

an administrator is appointed, or the court makes a winding-up order, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or 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.

#### **18. Termination on Default**

The Authority 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 commits a Default and if: (a) the Supplier has not remedied the Default within 30 days after issue of a written notice specifying the Default and requesting it to be remedied; or (b) the Default is not capable of remedy; or (c) the Default is a fundamental breach of the Contract.

#### **19. Consequences of Termination.**

Where the Authority terminates all or part of the Contract under Clause 18, and makes other arrangements for the provision of Goods and/or Services, the Authority shall be entitled to recover from the Supplier the cost of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the contract period, and no further payments shall be payable by the Authority to the Supplier until the Authority has established the final cost of making those other arrangements.

#### **20. Force Majeure.**

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 an event beyond the reasonable control of such party.

#### **21. Governing Law.**

This Contract shall be governed by and interpreted in accordance with English law and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

#### **22. Entire Agreement.**

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 Clause shall not exclude liability in respect of any fraudulent misrepresentation.

#### **23. Anti-bribery and Corruption.**

The Authority may cancel the contract and recover from the Supplier the amount of any loss resulting from the cancellation if at any time it becomes known to the Authority that the Supplier or any person employed by the Supplier or acting on his behalf whether with or without the knowledge of the Supplier has:

**23.1** Offered, given or agreed to give any inducement or reward to any person or body in relation to the obtaining or execution of this Contract or any other contract with the Authority;

**23.2** Favoured or discriminated against any person in relation to this Contract or any other contract with the Authority.

**23.3** Committed an offence in relation to any contract with the Authority under the prevention of Corruption Acts 1889 to 1916 or section 117(3) Local Government Act 1972;

**23.4** Communicated to any person other than the Authority the details of the Supplier's proposed tender (other than in confidence in order to obtain quotations necessary for the preparation of the Supplier's tender)

**23.5** entered into any agreement or arrangement with any person or body that he shall refrain from tendering or as to the amount of any proposed tender.

## **24. Criminal Records Bureau.**

The Supplier shall ensure that in respect of any its servants employees agents or subcontractors whom in performing Services for the Authority under this Contract may come into contact with children or vulnerable adults:

**24.1** Wherever possible prior to such a person commencing the performance of the Services, the Supplier shall undertake a check of the person's previous convictions and criminal records history of the most extensive available kind made with the Criminal Records Bureau ('CRB') provided always that:

**24.1.1** The Authority shall provide reasonable assistance where necessary to secure the obtaining of such CRB checks where the Supplier is unable to obtain such checks. The Supplier shall reimburse the Authority's reasonable costs in providing such assistance;

**24.1.2** A copy of the results of such checks are notified to the Authority

**24.2** Where it is not possible to obtain the results of a check of the most extensive kind made with the CRB prior to such person commencing the performance of the Services, the Supplier shall promptly notify the Authority of this fact and shall:

**24.2.1** Procure that at all times such person referred to in clause 24.2 is accompanied by a member of the Suppliers or the Authority's staff who has already passed a check of the most extensive kind available with the CRB; and

**24.2.2** If so requested by the Authority conduct a check of the most extensive available kind with the CRB as soon as reasonably practicable and deliver a copy the results of such check to the Authority immediately it is received by the Authority

**24.3** In the event that such a person discloses or as a result of a CRB check is found to have a conviction, caution, pending prosecution, binding over order or other criminal record ('conviction') or refuses to complete a CRB check of the most extensive kind, the Supplier shall not engage such a person in the performance of the Services without the prior written approval of the Authority.

**24.5** The Supplier shall indemnify and keep indemnified the Authority against any loss arising out of any claim by any person in respect of whom the Authority does not consent to being engaged in the performance of Services as a result of such a person disclosing or receiving a Conviction in accordance with any of the provisions of this clause.

## **25 Equality in Contracting**

**25.1** Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Supplier being in contravention of any equalities legislation, the Supplier shall, free of charge:

**25.1.1** provide to the Authority any information requested by it within the prescribed timescale;

**25.1.2** attend any meetings as required and permit any servants employees agents or sub-contractors to attend the same;

**25.1.3** promptly allow access to and investigation of any documents or data deemed to be relevant;

**25.1.4** allow any servants employees agents or sub-contractors to appear as witnesses in any ensuing proceedings; and

**25.1.5** cooperate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.

**25.2** Where any investigation is conducted or proceedings are brought under equalities legislation which arise directly or indirectly out of any act or omission of the Supplier, its servants employees agents or sub-contractors, and where there is a finding against the Supplier in such investigation or proceedings, the Supplier 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 related loss the Authority may suffer including the payment of costs, expenses or compensation to any third party.

**25.3** The Authority may cancel this Contract and any other contracts entered into with the Supplier or discount the Supplier from any ongoing procurement process involving the Authority if at any time the Supplier is found to be in contravention of any equalities legislation.

**25.4** The Supplier warrants that the information, representations and other information provided to the Authority by the Supplier in connection with or arising out of this Contract are true and complete in all material respects.