

## **CONTRACT CONDITIONS: SUPPLY OF MATERIALS**

### **1. Performance of Contract**

- a. The Contractor agrees that at all times it will supply the Material and perform the Contract in compliance with the following conditions:
  - i. The Contractor shall perform his obligations and functions in compliance with these Conditions (and any authorised modifications) and supply the Material in a manner consistent with the Contract Documents and to the entire satisfaction of the Authority and in any event with all the reasonable skill care and diligence that would be expected of a qualified competent and experienced person supplying the Material.
  - ii. The Contractor shall notify the Authority as soon as practicable and in any event within 24 hours if the Contractor is unable to supply the Material or perform any of its obligations under the Contract.
  - iii. The Contractor shall be responsible for any loss or damage caused by the Contractor's negligence or lack of care.
  - iv. Except where specified to the contrary in the Contract Documents all materials are to comply with the latest British Standard Specification and shall be fit for purpose.

### **2. Equipment**

- a. The Contractor shall at all times at its own cost provide in good and serviceable repair, such equipment, vehicles and materials as is necessary for the proper performance of the Contract and the supply of the Material and shall at all times be fully responsible for licensing fees, taxes and insurances required in connection with such equipment.

### **3. Variation of Contract**

- a. No variation of Contract shall be valid or have any effect unless it is agreed in writing and signed by the Authority. No other variations to the Contract shall be accepted or paid by the Authority.

### **4. Payment**

- a. On completion of the Contract pursuant to a Purchase Order Form (and provided that the Contractor shall have performed his duties, obligations and functions under the Contract to the satisfaction of the Authority) the Contractor may submit to an invoice ('Invoice') for the sum due to him in respect of that Order.
- b. Subject to **Clause 4(a)**, the invoice shall be paid within thirty (30) days of its receipt.

### **5. Value Added Tax**

- a. All sums payable under this Contract unless otherwise stated are exclusive of VAT and other duties or taxes.

### **6. Assignment**

- a. The Authority shall be entitled to assign or transfer the benefit of the Contract.
- b. The Contractor shall not assign the Contract or any part or it or any benefit or interest within in (including subcontracting) without the written consent of the Authority. Such consent does not relieve the Contractor from liability or obligation under the Contract and it shall be responsible for the acts defaults omissions and neglects of any sub-contractor, its agents, servants or workmen as fully as if they were acts defects or neglects of the Contractor and the Contractor shall indemnify and keep indemnified the Authority from and against any costs claims demands and liabilities howsoever arising out of or in respect of any breach by any sub-contractor its agents servants or workmen.

### **7. Health and Safety**

- a. The Contractor will be required to comply with the Health and Safety at Work etc Act 1974 and all other regulations made under the Act and all other legislation and regulations relevant to the performance of the Contract.

### **8. Agency**

- a. The Contractor is not and shall not in any circumstance hold itself out as being the agent of the Authority.

#### 9. Liability of the Contractor

- a. The Contractor hereby indemnifies and shall keep indemnified the Authority from and against any liability to any person whatsoever arising directly or indirectly out of or connected with the performance, non performance or breach of the Contract or any act neglect default or omission of any employee, agent, servant invitee or visitor of the Contractor or any sub-contractor including, without limitation:
  - i. any and all losses, costs, expenses, (including professional and legal fees) liabilities and damages;
  - ii. any and all proceedings, claims (including any claim for infringement of copyright), demands, penalties, statutory charges and fines;
  - iii. death, illness or injury to any third party or for any loss of or damage to any property belonging to the Authority or to any third party and against all losses, costs, expenses, liabilities, damages, claims, demands or causes of action resulting therefrom;in each case to the extent arising out the Contractor's or any of its sub-contractors' breach or failure in performance of the Contractor's obligations in the Contract whether arising from breach of contract, negligence or default or otherwise, except and to the extent that such losses, costs, expenses, liabilities, damages, claims, demands were wholly and directly caused by the negligence or wilful misconduct of the Authority or its officers, agents or employees.

#### 10. Insurance

- a. The Contractor shall at all times effect and maintain in force such policies of insurance with reputable insurers approved by the Authority in respect of its liabilities hereunder and shall fully insure and indemnify the Authority against liability:
  1. To the Authority and to any of their employees,
  2. To the employees of the Contractor,
  3. To any other person (including for the avoidance of doubt a Landowner or Tenant)in the sum of at least £5,000,000 (FIVE MILLION POUNDS) in respect of any single claim.
- b. The Contractor shall be liable for and indemnify the Authority against and insure and procure any sub-contractor to insure against any expense, liability, loss, claim, action, or proceedings in respect of any damage whatsoever (whether directly or indirectly) to private property real or personal in so far as such damage arises out of or in the course of or by reason of carrying out the Contract and which is due to any negligence, omission or default of the Contractor or person for whom the sub-contractor is responsible.
- c. The Contractor shall also maintain public liability insurance arising out of or in connection with any matter involving or relating to the supply of the Material.
- d. The Contractor shall, prior to the commencement of the Contract supply the Authority with copies of all insurance policies, cover notes, premium receipts if required.
- e. In the event that the Contractor is in breach of this **Clause 10** the Authority shall be at liberty to obtain such insurance as is required at the cost of the Contractor (payable on demand).

#### 11. Bribery and Corruption

- a. The Contractor warrants and undertakes to the Authority that:
  - i. it will comply with applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("Anti-Bribery Law");
  - ii. it has not and shall not give any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972;
  - iii. it will comply with the Authority's anti-bribery policy as may be amended from time to time, a copy of which will be provided to Contractor on written request;
  - iv. it will procure that any person who supplies any Materials for or on its behalf ("Associated Person") in connection with this Agreement complies with this **Clause 11**;

- v. it will not enter into any agreement with any Associated Person in connection with this Agreement, unless such agreement contains undertakings on the same terms as contained in this **Clause 11**;
  - vi. it has and will maintain in place effective accounting procedures and internal controls necessary to record all expenditure in connection with the Agreement;
  - vii. from time to time, at the reasonable request of the Authority, it will confirm in writing that it has complied with its undertakings under this **Clause 11** and will provide any information reasonably requested by the Authority in support of such compliance;
  - viii. it shall notify the Authority as soon as practicable of any breach of any of the undertakings contained within this clause of which it becomes aware.
- b. Breach of any undertakings in this clause shall be deemed to be a material breach of the Contract for the purposes of **Clause 12**.

## 12. Termination

- a. The Authority shall be entitled immediately upon the happening of any of the following events to terminate this Contract by the service of a notice (a "Termination Notice"), such events being:
  - i. The failure to perform the obligations under **Clause 1** of this Section;
  - ii. Any breach by the Contractor of any other provision of the Contract;
  - iii. The Contractor having failed to perform a material part of the Contract for a period of 3 consecutive days;
  - iv. The Contractor being treated as insolvent.
- b. A Termination Notice shall be in writing and may be given by the Authority.
- c. Upon receipt of a Termination Notice, in addition to such consequences as are set out in other provisions of the Contract:
  - i. The Contractor shall fully and promptly indemnify the Authority in respect of:
    - a. all losses damages and costs (including professional costs) and expenses incurred or suffered by the Authority from such termination; and
    - b. the cost of obtaining a replacement Material.
  - ii. The Authority shall be under no obligation to make any further payments to the Contractor and shall be entitled to retain any payments which may have fallen due to the Contractor before termination until the Contractor has paid to the Authority all sums due under this Contract.

## 13. Notices

- a. Notices should be served upon the Authority for the attention of the Head of Law, Aldern Aldern House, Baslow Road, Bakewell, Derbyshire DE45 1AE.

## 14. Arbitration

- a. All disputes under this Contract shall be settled by arbitration under the Arbitration Act 1996 (or any statutory modification or re-enactment thereof for the time being in force) by a single Arbitrator to be appointed in default of agreement between the parties by the President of the Institute of Arbitrators.

## 15. Observation of Statutory Requirements

- a. The Contractor shall at all times observe and comply with all the relevant Acts of Parliament, regulations and codes of practice (the Statutory Requirements) relating to the performance of the Contract including (but not limited to) compliance with any obligations that may be imposed upon the Authority resulting from the Material (where the same are within the power and control of the Contractor) and the Contractor shall indemnify the Authority accordingly.
- b. The Consultant will comply with the requirements of the Data Protection Act 1998 as both data processor and data controller, with any relevant ICO Guidance and with the Market Research Society Code of Conduct (if applicable).

## 16. Equality

- a. As a local authority the PDNPA is subject to the Public Sector Equality Duty which requires us, in our work and decision making, have due regard to the need to:

- i. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010;
  - ii. Advance equality of opportunity between people who share a protected characteristic and those who do not;
  - iii. Foster good relations between people who share a protected characteristic and those who do not.
- b. The Authority's statutory responsibility is outlined in its Equality Policy (available on the Authority's website). Contractors are expected to work to the Authority's high standards of equality and inclusivity.

**17. Warranty**

The Contractor and the Authority warrant their power to enter into this Contract and have obtained all necessary approvals to do so.

**18. Freedom of Information Act 2000**

- a. The Contractor acknowledges that the Authority is subject to the requirements of the Freedom of Information Act 2000 ("FOIA"), the Environmental Information Regulations 2004 ("EIR") and the Local Government Transparency Code 2014 ("the Transparency Code"). The Contractor shall assist and co-operate with the Authority as necessary to comply with these requirements and acknowledge that the Authority may be required to disclose information pursuant to the FOIA, the EIR or the Transparency Code. The Contractor shall provide all necessary assistance reasonably requested to enable the Authority to respond to a request for information within the time for compliance and permit the Authority to inspect such records as requested from time to time.
- b. The Contractor acknowledges that all payments over £250 are published in the public domain in accordance with guidelines issued by the Department of Communities and Local Government.

**19. Rights and Duties Reserved**

- a. For the avoidance of doubt nothing herein contained or implied shall prejudice or affect the Authority's rights or powers duties and obligations in the exercise of its functions as a local authority for the enforcement of or pursuance of any enactment by-law or regulation for the time being in force.

**20. Conditions**

- a. In the event of any contradiction between the conditions provided by the Contractor then these Conditions shall take precedence.