



Version 4.0

**Perth & Kinross Council
Standard Terms and Conditions
Purchase of Goods**

Guidance Note to Users

These terms and conditions should be selected where the purchasing officer is seeking offers **for the purchase of goods**. These terms and conditions should be used in un-amended form, unless otherwise approved by the Head of Legal Services and the Corporate Procurement Manager.

These conditions are not suitable for use for:

1. The purchase of services, being any services from consultancy, ongoing service provision or one for which registration is required with the Care Inspectorate;
2. The purchase of IT services;
3. The supply and fit of goods in respect of or ancillary to a public works contract;
4. Any public works contract; or
5. Any services contract that would fall within the meaning of construction operations in terms of section 104 and 105 of the Housing Grants, Construction and Regeneration Act 1996.

This contract is not regulated by the Sale of Goods Act 1979 (as amended) therefore the goods must be delivered and completed prior to payment being made.

These guidance notes are for the assistance of internal Council officers and do not form part of the Contract between the Council and the Supplier.

**Perth & Kinross Council
Standard Terms and Conditions
Purchase of Goods**

These terms and conditions shall govern the relationship between the Council and the Supplier, and no other terms and conditions shall be accepted.

1. Definitions

In these terms and conditions, unless otherwise stated, the following terms shall have the following meanings:

"Award Letter" means the formal acceptance letter signed by the authorised officer of the Council accepting the Tender by the Supplier;

"Commencement Date" means the date specified in the Award Letter, failing which, the date falling 2 weeks after the Date of the Award letter issued by the Council to the Supplier, or such other date as the Council and the Supplier may agree in writing;

"Community Benefit Provision" means, without prejudice to the generality, the provision of paid or unpaid work placements, modern or vocational apprenticeships or training and educational training to persons within the local government area of the Council;

"Completion Date" means the date for delivery of the Goods by the Supplier, which date shall be set out in the Specification and/or Invitation to Tender, or failing which, set out in the Award Letter (which date may be extended by the agreement of the Council and the Supplier), or where the Goods are to be provided for on a call off basis, the earlier of (i) the date specified in that specific order or (ii) the Termination Date;

"Contract" means these terms and conditions and any supplementary conditions set out in the Invitation to Tender;

"Contract Notice" means the contract notice in respect of the proposed requirement, published by the Employer on the Public Contracts Scotland Portal;

"Council" means Perth & Kinross Council, a local authority constituted under section 2 of the Local Government etc (Scotland) Act 1994 and having its principal offices at 2 High Street, Perth, PH1 5PH;

"Data Controller" has the meaning given in the Data Protection Laws

"Data Processor" has the meaning given in the Data Protection Laws.

"Data Protection Laws" means any law, statute, subordinate legislation regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body

which relates to the protection of individuals with regards to the processing of Personal Data to which a Party is subject including the Data Protection Act 1998 and any statutory modification or re-enactment thereof and the GDPR.

"GDPR" means the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

"Delivery Requirements" means the marking of any packaging containing Goods with the following information:

- (a) the net, gross and tare weights;
- (b) the name of the contents;
- (c) the number of the Purchase Order;
- (d) where appropriate, any containers of hazardous goods shall bear prominent and adequate warnings.

"Good Industry Practice" means that degree of skill, care, prudence and foresight and operating practice or generally recognised industry or service standard which:

- (a) would reasonably and ordinarily be expected from time to time of a skilled and experienced operator (engaged in the same type of undertaking as that of the Supplier; or
- (b) where there is no equivalent type of undertaking, would be expected from a prudent and experienced person in order to implement the specific task set out in the Contract.

"Goods" means the items set out in the Specification and the Invitation to Tender, and includes any additional items ordered by the Council under this Contract;

"Interest Rate" means a rate of 2% above the official dealing rate of the Bank of England current at the date that a payment due under this Contract becomes overdue;

"Invitation to Tender" means the invitation to tender either (i) sent out by the Council to the Contractor (and such other candidates) or (ii) downloaded from the Public Contracts Scotland Portal and completed by the Supplier, and in each case such invitation which includes the Specification;

"Personal Data" has the meaning given in the Data Protection Laws.

"Processing" has the meaning given in the Data Protection Laws and cognate expressions shall be construed accordingly.

"Procurement Regulations" means The Procurement (Scotland) Regulations 2016, The Public Contracts (Scotland) Regulations 2015, the Local Government (Scotland) Act 1973 and any other legislation governing or regulating the purchase of goods, supplies and services by local authorities constituted under the Local Government etc (Scotland) Act 1994;

"Public Contracts Scotland Portal" means the national advertising portal maintained by the Scottish Government on behalf of (amongst others) the Council;

"Public Holiday" means Christmas Day, Good Friday, a day which under the Banking and Financial Dealings Act 1971 is a Bank Holiday in Scotland and any week day being a local holiday which the principal offices of the Council are closed for business to the public;

"Purchase Order" means the purchase order referred to and/or enclosed with the Award Letter (which sum specified therein represents the Council's maximum expenditure under the Contract and is not a guarantee of any orders for the Services);

"Specification" means the written description of the goods to be supplied by the Supplier under the Contract as set out in the Invitation to Tender;

"Services" means the installation of the Goods and any other ancillary requirements as set out in the Specification;

"Supplier" means the contractor selected by the Council following a response to the Invitation to Tender advertised by a Contract Notice in the Public Contracts Scotland Portal and being the entity set out in the Invitation to Tender and as identified in the Award Letter;

"Supervisory Authority" has the meaning given in the Data Protection Laws

"Tender" means the formal offer to carry out the works by the Supplier to the Council in accordance with the requirements set out in the Invitation to Tender (and including any derogations as approved in accordance with clauses 7 and 8);

"Termination Date" means the date falling 4 years after the Commencement Date, or such earlier date as is specified in terms of the Contract;

2. The Goods

- 2.1 The Supplier shall supply the Goods to the Council by no later than the Completion Date.
- 2.2 The Goods shall be to the reasonable satisfaction of the Council and shall conform in all respects with any particulars specified in the Contract and in any variations thereto.

- 2.3 Where specified in the Invitation to Tender, the Council has made the Supplier aware of the Council's requirements, and that the Council is relying on the skill and judgement of the Supplier in supplying the Goods.
- 2.4 Notwithstanding the terms of clauses 2.1, 2.2 and 2.3, the Supplier in supplying the Goods shall comply with:
- (a) all relevant law;
 - (b) all applicable statutory consents;
 - (c) the applicable provisions of this Contract;
 - (d) Good Industry Practice; and
 - (e) any applicable requirement of regulatory bodies

3. The Price

- 3.1 The price payable by the Council shall be the price set out in the Suppliers Tender, as adjusted by the Award Letter and the Purchase Order and shall be payable in accordance with clause 3.2 below. No increases in the price shall be permissible except in accordance with this Contract. Where the Contract Notice, Specification and/or Invitation to Tender specify that the Contract is made on a call off or as required basis, the Supplier expressly acknowledges that there is no guarantee of any orders for the Goods being instructed by the Council.
- 3.2 Subject to clause 3.3 below, the Supplier shall invoice the Council on or after the Goods have been delivered to the Council in accordance with clause 4, setting out the price for the Goods as set out in the Tender. All invoices must quote the Purchase Order number. The Council reserves the right to reject or withhold payment where the Supplier fails to comply with the terms of this clause. At no time shall the Supplier be entitled to payment in advance under this Contract.
- 3.3 Where the Contract requires that the Supplier supply the Goods and thereafter carry out the Services, the Supplier shall invoice the Council on or after the Services have been delivered in accordance with the terms of this Contract. The remaining terms of clause 3.2 shall apply *mutatis mutandis*.
- 3.4 Where the Supplier is VAT registered, the invoice must comply with the requirements of the Value Added Tax Act 1994 or such other legislation that may be enacted in relation to input tax from time to time. Any VAT must be shown as a separate item on all invoices submitted.
- 3.5 Providing that the Goods conform to the terms of the Contract, and the Supplier has complied with the invoice requirements of this clause, payment shall be made to the Supplier by the Council within 30 days of the later of receipt of the Goods or receipt of the Suppliers invoice.

- 3.6 Where the Council has specified within the Invitation to Tender that they can place multiple orders with the Supplier under this Contract, the terms of the Contract shall apply mutatis mutandis to each order placed with the Supplier, and the terms of the Contract shall be construed accordingly.
- 3.7 Notwithstanding Clause 22 (Assignment and sub-contracting) of this Contract the Supplier may assign to another person (an "assignee") the right to receive payment of the Price or any part thereof due to the Supplier under this Contract subject to (i) deduction of sums in respect of which the Purchaser exercises its right of recovery under Clause 19 (Set off and Retention of Sums Due) of this Contract and (ii) all the related rights of the Council under this Contract in relation to the recovery of sums due but unpaid. The Supplier shall notify or procure that any assignee notifies the Council of any variations to the arrangements for payment of the Price or for handling invoices, in each case in good time to enable the Council to redirect payments or invoices accordingly. In the absence of such notification the Council shall be under no obligation to vary the arrangements for payment of the Price or for handling invoices.

4. Delivery and Performance

- 4.1 The Goods shall be delivered to the place specified within the Specification, or failing which the Award Letter. If neither is specified, the Goods shall be delivered to such address is specified in writing by the Council to the Supplier.
- 4.1A Where any access to the premises is necessary in connection with delivery or installation the Supplier and the Supplier's sub-contractors shall at all times comply with reasonable requirements made by the Council.
- 4.2 Title to and risk in the Goods (subject to the provisions of clause 6) shall pass on delivery of the Goods by the Supplier to the Council.
- 4.3 The time of delivery shall be of the essence and failure to deliver the Goods by the date set out in the Award Letter and/or Specification shall be a material breach of contract where the Supplier fails to deliver the Goods by the above date. Such failure shall entitle the Council to terminate the contract without compensation (or payment or acceptance of the Goods being required) being payable to the Supplier, and such right is without prejudice to any other such remedy as the Council may have under this Contract.
- 4.4 The Supplier represents and warrants to the Council that the Supplier has satisfied himself that all necessary tests, inspections 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 the Supplier has made available to the Council adequate information about the use for which the Goods have been designed and have been tested and about any conditions necessary to ensure that when put to use the goods will be safe and without risk to health.

- 4.5 Without prejudice to the generality of clause 4.4 hereof, the Supplier shall indemnify the Council against all actions, suits, 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 clause 4.4.

4A. Health & Safety

- 4A.1 The Supplier operates appropriate health and safety policies and must perform the contract in accordance with all current health and safety legislation. If requested by the Council, the Supplier provides the Council with a copy of his current health and safety policy statement.
- 4A.2 The Council must be notified immediately by the Supplier of any risks to health or safety that is identified or arises during the performance of the Contract.
- 4A.3 While on the Council's premises, the Supplier shall comply at all times with any health and safety measures implemented by the Council in respect of the premises and notifies the Council immediately of any incident occurring while the Supplier is on the premises which causes or is likely to cause any personal injury or damage to property.
- 4A.4 If work is to be carried out at the Council's premises, the Council will notify the Supplier of any health and safety hazards which may exist or arise at the premises and which may affect the Supplier in the performance of his duties under this contract.
- 4A.5 Where any goods to be supplied to Council which are classed as hazardous, dangerous or are subject to regulatory compliance regimes (for example and without prejudice to the generality, the Control of Substances Hazardous to Health Regulations 2002), the Supplier shall comply with all necessary legislation, consents and permissions and supply any documents that are required to the Council in order to comply with any such provision.

4ZA. Access to the Council's premises

- 4ZA.1 Any access to, or occupation of, the Council's premises which the Council may grant the Supplier from time to time is on a non-exclusive licence basis free of charge. The Supplier must use the Council's premises solely for the purpose of performing its obligations under the Contract and must limit access to the Council's premises to such individuals as are necessary for that purpose.

- 4ZA.2 Where any access to the premises is necessary to perform the obligations under the Contract, the Supplier shall at all times comply with the policies of the Council for the premises in question and such modifications to those policies or replacement policies as are notified to the Supplier from time to time.
- 4ZA.3 Access to the premises shall not be exclusive to the supplier but only such as shall enable the supplier to carry out his obligations under the contract concurrently with the execution of work by others. The supplier shall co-operate with such others as the Council may reasonably require.
- 4ZA.4 The Supplier shall take the steps reasonably required by the Council to prevent unauthorised persons being admitted to the Premises. If the Council gives the Supplier notice that any person is not to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract, the Supplier shall take all reasonable steps to comply with such notice and if required by the Council the Supplier shall replace any person removed under this Condition with another suitably qualified person and procure that any pass issued to the person removed is surrendered. The giving of such notice by the Council to the Supplier as aforesaid shall not entitle the Supplier to delay, suspend, terminate or withhold the performance of any of its obligation in terms of the Contract and it shall remain bound to timeously implement its obligations in full, whether or not it complies with the terms of the said notice or otherwise.
- 4ZA.5 At the Council's written request, the Supplier must provide a list of the names and addresses of all persons who may require admission to the Council's premises in connection with the Contract, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Council may reasonably request.
- 4ZA.6 The decision of the Council shall be final and conclusive as to whether any person is to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract and as to whether the Supplier has furnished the information or taken the steps required of the Supplier by the Council.
- 4ZA.7 The Supplier shall bear the cost of any notice, instruction or decision of the Council under clauses 4ZA.4, 4ZA.5 and 4ZA.6.
- 4ZA.8 The Council shall have the power at any time during the performance of the Contract to instruct either verbally or in writing the removal from the premises of any materials which in the opinion of the Council are either hazardous, noxious or not in accordance with the Contract.

- 4ZA.9 The Supplier shall comply forthwith with the terms of any such instructions as given in clause 4ZA.8. Such instruction shall not be treated as a variation to the Specification for the purposes of clause 8 below and the cost of compliance shall be borne solely by the Supplier.
- 4ZA.10 On completion of their performance under the Contract the Supplier shall remove the supplier's plant, equipment and unused materials and shall clear away from the premises all rubbish arising out of the performance of the contract and leave the premises in a neat and tidy condition.
- 4ZA.11 For the avoidance of doubt all decisions of the Council under this clause are final and conclusive.
- 4ZA.12 Breach of this clause by the Supplier is a material breach for the purposes of condition 9 (Termination).

5. Damage in Transit

- 5.1 On dispatch of any consignment of the Goods the Supplier shall send to the Council at the address for delivery of the Goods as specified in clause 4.1, 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 (either verbally or in writing) to the Supplier that the Goods have been damaged;
 - (b) In the case of non-delivery the Council shall (provided always that the Council has been advised of the dispatch of the Goods in accordance with this clause 5) within ten days of the notified date of delivery give notice to the Supplier that the Goods have not been delivered.

6. Inspection, Rejection and Guarantee

- 6.1 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.
- 6.2 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 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.

6.3 The guarantee period applicable to the Goods shall be 12 months from the date that the Council puts the goods into service or 18 months from the actual date of delivery, whichever shall be the shorter (subject to any alternative guarantee arrangements agreed in writing between the Council and the Supplier). If the Council shall within such guarantee period or within 30 days thereafter of the expiry of such period give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use the Supplier shall (without prejudice to any other rights and remedies which the Council may have) as quickly as possible remedy such defects (whether by repair or replacement as the Council shall elect) without cost to the Council.

6.4 Any Goods rejected or returned by the Council as described in paragraphs 6.2 or 6.3 shall be returned to the Supplier at the Supplier's risk and expense.

6A. Labelling and Packaging

6A.1 The Goods shall be packed and marked in a proper manner and in accordance with the Specification, any further instructions of the Council, any statutory requirements and any requirements of the carriers. Without prejudice to the generality, the Goods shall comply with the Delivery Requirements.

6A.2 The Supplier shall indemnify the Council against all actions, claims, demands, losses, charges, costs and expenses with the Council may suffer or incur as a result of a breach of paragraph 6A.1 above.

6A.3 All packaging materials will be considered non-returnable and will be destroyed unless the Supplier advises the Council not less than 48 hours prior to delivery that such materials will be charged for unless returned. The Council accepts no liability in respect of the non-arrival at the Suppliers premises of empty packages returned by the Council.

6A.4 To ensure compliance with the Council's obligations under the Procurement Regulations, 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 form of packing used in meeting the Delivery Requirements.

6ZA Supplier's Status

6ZA.1 In carrying out any Services associated with the Contract the Supplier shall be acting as principal and not as the agent of the Council. Accordingly:

- (a) the Supplier shall not (and shall procure that his agents and servants do not) say or do anything that might lead any other person to believe that the Supplier is acting as the agent of the Council, and
- (b) nothing in this Contract shall impose any liability on the Council in respect of any liability incurred by the Supplier to any other person but this shall not be taken to exclude or limit any liability of the Council to the Supplier that may arise by virtue of either a breach of this Contract or any negligence on the part of the Council, or the Council's staff or agents.

7. Variations - Contract Terms

- 7.1 No variations to these contract terms shall be accepted by the Council except where the variation procedure detailed in this clause 7 has been complied with.
- 7.2 Any request for variations or alterations to these terms and conditions must be sent in writing to (i) the Head of Legal Services, Perth & Kinross Council 2 High Street, Perth, PH1 5PH; (ii) by enclosing a Schedule of Derogations with the Tender; or (iii) by email to: procurement@pkc.gov.uk. Providing that the supplier provides a copy of the proposed variation(s) or replacement terms, the Head of Legal Services will consider any such request and will advise the Supplier accordingly.
- 7.3 No variation, replacement, alternative or substitute terms and conditions shall apply to the contract unless such terms are subscribed by the Head of Legal Services and in accordance with section 3 of the Requirements of Writing (Scotland) Act 1995 and any attempt by the Supplier to impose any alternative conditions (including the imposition of any clause superseding or constituting an entire agreement clause) shall be null and void and shall not be binding on the Council.

8. Variations - Specification

- 8.1 The Council may order any variation to any quantity or specification of goods or to any part of the Services that for any other reason shall in the Council's opinion be desirable. Any such variation may include (but

shall not be restricted to) additions, omissions, alterations, substitutions to the Goods or Services and changes in quality, form, character, kind, timing, method or sequence of the delivery of Goods or provision of Services.

- 8.2 Save as otherwise provided herein, no variation of the specification of Goods or of the Services as provided for in Clause 8.1 hereof shall be valid unless given or confirmed in the form of an order given by the Council. All such orders shall be given in writing provided that if for any reason the Council shall find it necessary to give any such order orally in the first instance the Supplier shall comply with such oral order which must be confirmed in writing by the Council within 2 working days of the giving of such oral order by the Council, failing which the variation made by such oral order shall cease to have effect on the expiry of the said 2 working day period.
- 8.3 Where any such change in quality or specifications of Goods or variation of the Services made in accordance with Clauses 8.1 and 8.2 has affected or may affect the costs incurred by the Supplier delivering the Goods or providing the Services, the Supplier will notify the Council in writing of the effect which it has had or may have on the said costs and such notification shall be considered by the Council, who shall take all of the facts into account (including such information as may be provided by the Supplier in respect of the effect which such variation has had or may have on the costs incurred by the Supplier in providing the Goods or Service) and may authorise such alteration to the sums to be paid to the Supplier in accordance with the provisions of the Contract as are, in the Council's opinion, appropriate and reasonable in the circumstances.
- 8.4 Where the Goods and/or Services are priced within the Tender, the additional Goods and/or Services shall be supplied at no greater cost than is specified for such item(s) in the Suppliers Tender. Where the Goods to be supplied are reduced in number then the applicable deduction shall be made from the final price payable.

9. Termination of the Contract

- 9.1 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 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 a solvent 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.
- 9.2 On the occurrence of any of the events described in Condition 9.1 or, if the Supplier shall have committed a material breach of this Contract and (if such breach is capable of remedy) shall have failed to remedy such breach within 30 days of being required by the Council in writing to do so or, where the Supplier is an individual if the Supplier shall die or be adjudged incapable of managing his or her affairs within the meaning of the Adults with Incapacity (Scotland) Act 2000 or the Mental Health (Care and Treatment) (Scotland) Act 2003, the Council shall be entitled to terminate this Contract by notice to the Supplier with immediate effect.
- 9.3 The Council may terminate the Contract in the event that:
 - (a) the Contract has been subject to substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) (modification of contracts during their term) of The Public Contracts (Scotland) Regulations 2015;
 - (b) the Supplier has, at the time of contract award, been in one of the situations referred to in regulation 58(1) (exclusion grounds) of The Public Contracts (Scotland) Regulations 2015, including as a result of the application of regulation 58(2) of those regulations, and should therefore have been excluded from the procurement procedure; or
 - (c) the Contract should not have been awarded to the Supplier in view of a serious infringement of the obligations under the Treaties and the Directive 2014/24/EU that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union.

In this Condition, 'the Treaties' has the meaning given in the European Communities Act 1972.

- 9.4 The Purchaser may also terminate the Contract in the event of a failure by the Supplier to comply in the performance of the Contract with legal obligations in the fields of environmental, social and employment law.
- 9.5 In addition to the Council's rights of termination under Clauses 9.2, 9.3 and 9.4 the Council may terminate the Contract, in whole or in part, or reduce the scope or amount of Goods to be supplied under the Contract, (and without penalty) at any time by giving you at least 30 days' notice in writing.
- 9.6 Termination under Clauses 9.2, 9.3, 9.4 or 9.5 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Purchaser and shall not affect the continued operation of Clause 18A (Patents, information and copyright), 16 and 19 (Audit).
- 9.7 In the event that the Council receives notification by an economic operator (within the meaning of the Procurement Regulations) that they intend to challenge the award of this Contract by the Council to the Supplier, the Council may on giving immediate written notice to the Supplier, either (i) suspend the operation of the Contract; or (ii) terminate the Contract in its entirety.
- 9.8 In the event of termination or suspension pursuant to this section 9.7, no compensation, damages or other monetary payment shall be due by the Employer to the Contractor.
- 9.9 In the event that the Council does not exercise its rights under clauses 9.1 to 9.7, this Contract (subject to the any of the parties accrued rights herein) shall terminate on the Termination Date.
- 9.10 On or before the Termination Date, the Supplier shall (if requested) return all documents and other information supplied by the Council in relation to this Contract (unless the Council requires the Supplier to destroy or securely dispose of such documents).

9A. Corrupt gifts or Payments

- 9A.1 The Supplier shall not offer or give, or agree to give, to any employee or representative of the Council any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other contract with the Council indemnity or for showing or refraining from showing favour or disfavour to any person in relation to this or any such Contract. The attention of the Supplier is drawn to the criminal offences created by the Bribery Act 2010.

10. Governing Law and Jurisdiction

- 10.1 This Contract shall be considered as a contract made in Scotland and shall be subject to the Laws of Scotland.
- 10.2 The Supplier and the Council agree that the courts of Scotland shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Contract and irrevocably submit to the jurisdiction of those courts.

11. Notices

- 11.1 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 and if so sent 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 therefor, 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, or in the case of the Council, in accordance with the relevant provisions of the Local Government (Scotland) Act 1973. All notices to be served on the Council must be served on the Head of Legal Services, Perth & Kinross Council, 2 High Street, Perth, PH1 5PH

12. Severability

- 12.1 If any provision of this Contract shall be declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Contract.

13. Third Party Rights

- 13.1 Save to the extent expressly provided in this Contract and, to avoid doubt, without prejudice to the rights of any permitted successor to the rights of the Supplier or of any permitted assignee, it is expressly declared that no rights shall be conferred under and arising out of this Contract upon any person other than the Council and the Supplier and without prejudice to the generality of the foregoing, there shall not be created by this Contract a *jus quaesitum tertio* in favour of any person whatsoever or an undertaking in favour of any party all in terms of the Contract (Third Party Rights) Scotland Act 2017.

14. Limitation of Liability

- 14.1 Nothing in this Contract shall exclude or limit liability of the Council or the Supplier in respect of any death or personal injury to any party caused by the negligence of that party.

- 14.2 in respect of any sanctions or fines imposed due to the breach or breaches of the Data Protection Act 1998 and the Data Protection Laws by the Information Commissioners Office, £500,000 on an each and every occurrence basis;
- 14.3 in respect of any losses, damage or destruction caused by the default of the Supplier under this Agreement for which there is a policy of insurance in place, the sum specified in the Specification, Invitation to Tender or such other document which states the requisite insurance level, or failing which, the limits set out in clause 20; or
- 14.4 in respect of any losses, damage or destruction caused by the default of the Council under this Agreement for which the Council is required by law to have in place a policy of insurance, the sum of £1million pounds sterling (or such higher sum that the Council may notify in writing to the Supplier); or
- 14.5 in respect of any other losses howsoever arising as a result of that party's breach of contract, the total amount payable under the Contract. Where the Contract is a call off arrangement, then such sum shall be limited to the value of any orders placed with the Supplier under the Contract.
- 14.6 Notwithstanding the above provisions, nothing in this clause shall allow for the Supplier to claim for any special or indirect, consequential or indirect losses, loss of profit, turnover, additional business or damage to goodwill.
- 14.7 Nothing in this clause 14 shall affect the parties general duty to mitigate any losses incurred.

15. Freedom of Information & Data Protection

- 15.1 The Supplier acknowledges that Personal Data described in the scope of the Schedule (Data Protection) will be processed in connection with the Services under this Contract. For the purposes of any such Processing, Parties agree that the Consultant acts as the Data Processor and the Council acts as the Data Controller.
- 15.2 Both Parties agree to negotiate in good faith any such amendments to this Contract that may be required to ensure that both Parties meet all their obligations under Data Protection Laws. The provisions of this Clause 15 are without prejudice to any obligations and duties imposed directly on the Consultant under Data Protection Laws and the Consultant hereby agrees to comply with those obligations and duties.
- 15.3 The Consultant will, in conjunction with the Council and in its own right and in respect of the Services, make all necessary preparations to ensure it will be compliant with Data Protection Laws.

- 15.4 The Supplier will provide the Council with the contact details of its data protection officer or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations under the Data Protection Laws.
- 15.5 The Supplier must:
- 15.5.1 agree and comply with the terms of the data processing provisions set out in the Schedule (Data Protection);
 - 15.5.2 process Personal Data only as necessary in accordance with obligations under the Contract and any written instructions given by the Council (which may be specific or of a general nature), including with regard to transfers of Personal Data outside the European Economic Area unless required to do so by European Union or Member state law or Regulatory Body to which the Supplier is subject; in which case the Supplier must inform the Council of that legal requirement before processing unless prohibited by that law the Personal Data only to the extent, and in such manner as is necessary for the performance of the Supplier's obligations under this Contract or as is required by the Law;
 - 15.5.3 subject to Clause 15.5.2 only process or otherwise transfer any Personal Data in or to any country outside the European Economic Area with the Council's prior written consent;
 - 15.5.4 take all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that the Supplier's Personnel:
 - 15.5.4.1 are aware of and comply with the Supplier's duties under this Clause;
 - 15.5.4.2 are subject to appropriate confidentiality undertakings with the Supplier or the relevant Sub-contractor;
 - 15.5.4.3 are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council or as otherwise permitted by this Contract; and
 - 15.5.4.4 have undergone adequate training in the use, care, protection and handling of Personal Data.
 - 15.5.5 implement appropriate technical and organisational measures including those set out in the Schedule (Data Protection) and in accordance with Article 32 of the GDPR to protect Personal Data against unauthorised or unlawful Processing and against

accidental loss, destruction, damage, alteration or disclosure, such measures being appropriate to the harm which might result from any unauthorised or unlawful Processing accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected.

- 15.6 The Supplier shall not engage a sub-contractor to carry out Processing in connection with the Services without prior specific or general written authorisation from the Council. In the case of general written authorisation, the Supplier must inform the Council of any intended changes concerning the addition or replacement of any other sub-contractor and give the Council an opportunity to object to such changes.
- 15.7 If the Supplier engages a sub-contractor for carrying out processing activities on behalf of the Council, the Supplier must ensure that same data protection obligations as set out in this Contract are imposed on the sub-contractor by way of a written and legally binding contract, in particular providing sufficient guarantees to implement appropriate technical and organisational measures. The Supplier shall remain fully liable to the Council for the performance of the sub-contractor's performance of the obligations.
- 15.8 The Supplier must provide to the Council reasonable assistance including by such technical and organisational measures as may be appropriate in complying with Articles 12-23, including any subject access request and/or responding to any enquiry made, or investigation or assessment of processing initiated by the Information Commissioner in respect of the Data as soon as is possible but in any event within 3 business days of receipt of the request or any other period as agreed in writing with the Data Controller from time to time.
- 15.9 Taking into account the nature of the Processing and the information available, the Supplier must assist the Council in complying with the Council's obligations concerning the security of personal data, reporting requirements for data breaches, data protection impact assessments and prior consultations in accordance with Articles 32 to 36 of the GDPR. These obligations include:
- (a) ensuring an appropriate level of protection through technical and organisational measures that take into account the circumstances and purposes of the processing as well as the projected probability and severity of a possible infringement of the law as a result of security vulnerabilities and that enable an immediate detection of relevant infringement events.
 - (b) notifying a Personal Data breach to the Council without undue delay and in any event no later than 24 hours after becoming aware of a Personal Data breach;

- (c) assisting the Council with communication of a personal data breach to a Data Subject;
- (d) supporting the Council with preparation of a data protection impact assessment;
- (e) supporting the Council with regard to prior consultation of the Supervisory Authority.

15.10 At the end of the provision of Services relating to processing the Supplier the Supplier must, on written instruction of the Council, delete or return to the Council all Personal Data and delete existing copies unless EU or Member State law requires storage of the Personal Data.

15.11 The Supplier must:

- (a) provide such information as is necessary to enable the Council to satisfy itself of the Supplier's compliance with this Clause 15;
- (b) allow the Council, its employees, auditors, authorised agents or advisers reasonable access to any relevant premises, during normal business hours, to inspect the procedures, measures and records referred to in this Clause 15 and contribute as is reasonable to those audits and inspections;
- (c) inform the Council if in its opinion an instruction from the Council infringes any obligation under the Data Protection Laws.

15.12 Parties acknowledge that the inspecting party will use reasonable endeavours to carry out any audit or inspection under Clause 15.14 with minimum disruption to the Supplier's day to day business.

15.13 The Supplier must maintain written records including in electronic form, of all Processing activities carried out in performance of the Services or otherwise on behalf of the Council containing the information set out in Article 30(2) of the GDPR.

15.14 If requested, the Supplier must make such records referred to Clause 15.12 available to the Supervisory Authority on request and cooperate with the Supervisory Authority in the performance of its tasks.

15.15 The Supplier acknowledges the Council's obligations under the Freedom of Information (Scotland) Act 2002 ("the 2002 Act") and acknowledges in particular that the Council may be required to provide information relating to the Contract or the Supplier to any person on request in order to comply with the 2002 Act. The Council will presume the information submitted by the Supplier to the Council is not

commercially sensitive unless specifically drawn to the Council's attention. The Council must act in accordance with the 2002 Act but in deciding whether to release any information in response to a request for information shall where practicable take into account any opinion of the Supplier as regards commercial confidentiality and, in particular, any reasons given to support such exemption

15.16 Where the Council seeks to consult the Supplier in connection with a request for information made under the 2002 Act the Supplier will facilitate the Council's compliance with the 2002 Act by consulting timeously with the Council.

15.17 The Supplier shall keep secret and not disclose (and shall procure that his employees, agents, sub-contractors or any party that the Supplier is legally responsible for, keep secret and not disclose) any information of a confidential nature obtained by the Supplier by reason of the Contract, except information which is in the public domain otherwise than by reason of a breach of this Clause 15.

16. Unlawful Discrimination

16.1 The Supplier shall not discriminate directly or indirectly, or by way of victimisation or harassment, against any person on grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation contrary to the Equality Act 2010 (the "Act").

16.2 The Supplier shall monitor its own staff and sub-contractors and provide such information on request to the Council. The Supplier shall provide such information as the Council requires about its policies and practices concerning the prevention of unlawful discrimination and the promotion of equality and diversity and equality both in terms of employment and customer service. The Council and the Supplier shall continue to monitor the performance and objectives of the Contract throughout the duration of the Contract and to make any amendments or changes necessary to the Contract or its performance or objectives in order further to promote equality.

16.3 The Supplier shall notify the Council immediately in writing as soon as it becomes aware of any investigation or proceedings brought against the Supplier under the Act.

16.4 Where any investigation is undertaken by a person or body empowered to conduct such an investigation and/or proceedings are instituted following such an investigation against the Supplier or against the Council either in connection with the performance of the Contract or otherwise, the Supplier shall at its own expense:

- i) provide any information requested in the timescale allotted;

- ii) attend any meetings as required and permit its staff and sub-contractors to attend any meetings as required;
- iii) promptly allow access to and investigation of any documents or data deemed to be relevant to the investigation;
- iv) allow itself and any of its Staff and sub-contractors to appear as witnesses in any proceedings; and
- v) co-operate fully and promptly with the person or body conducting the investigation during the course of the investigation.

16.5 Where any investigation is conducted, or proceedings are brought which arise directly or indirectly out of any act or omission of the Supplier, its Staff or sub-contractors and where there is a finding against the Supplier in any such investigation or proceedings, the Supplier shall, without prejudice to indemnify the Council with respect proceedings, costs, expenses (including legal and administrative expenses), liabilities, injury, loss or damages arising from or incurred by the Council during or in connection with any such investigation or proceedings and further indemnify the Council for any compensation, loss or damages, costs, expenses (including legal and administrative expenses) or other award the Council may be ordered or required to pay to a third party.

16.6 If a finding of unlawful discrimination or breach of equality and diversity legislation is made against the Supplier or against the Council arising from the conduct of the Supplier, the Supplier shall take such immediate remedial steps, as the Council may reasonably require, to prevent any further unlawful discrimination or breaches of equality and diversity legislation.

16.7 If the Supplier enters into any sub-contract in connection with this Contract, the Supplier shall impose obligations on its sub-contractors terms which are identical to those imposed on it in this clause 16. The Council expects that the Supplier will not subcontract to any business, service or group which has a poor history of discrimination in employment or service delivery.

16.8 In recognition of the Council's legal obligation to tackle discrimination and promote equalities and diversity in all its functions and policies under the Act, the Council may from time to time require the Supplier complete a questionnaire and/or provide information to the Council on the extent and quality of the Supplier's equalities and diversity policies and practice.

17. Entire Agreement

17.1 Except where expressly provided otherwise in this Contract, this Contract constitutes the entire agreement between the Council and the Supplier in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement.

18. Waiver

18.1 Any relaxation, forbearance, indulgence or delay (together "indulgence") of any party in exercising any right shall not be construed as a waiver of the right and shall not affect the ability of that party subsequently to exercise that right or to pursue any remedy, nor shall any indulgence constitute a waiver of any other right (whether against that party or any other person).

18.2 Notwithstanding any breach of this Contract by either party, and without prejudice to any other rights which the party may have in relation to it, the other party may elect to continue to treat this Contract as being in full force and effect and to enforce its rights under this Contract. The failure of any party to exercise any right under this Contract, including any right to terminate this Contract and any right to claim damages, shall not be deemed a waiver of such right for any continuing or subsequent breach.

18A. Patents, Information and Copyright

18A.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 all actions, claims, demands, costs and expenses which the Council may suffer or incur as a result of or in connection with any breach of this clause.

18A.2 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:

18A.2.1Furnished to or made available to the Supplier by the Council shall remain vested in the Council absolutely.

18A.2.2Prepared 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 clause 15.10) the Supplier shall not and shall procure that the Supplier's 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.

18A.3 The provisions of this clause 18A shall apply during the continuance of this Contract and after its termination howsoever arising.

19. Set Off and Retention of Sums Due

19.1 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.

19.2 Without prejudice to the terms of clause 19.1 above, where the Supplier has offered within the Tender to provide Community Benefit Provision to the Council (pursuant to the Council's statutory powers under the Local Government in Scotland Act 2003), the Supplier shall be obliged to deliver the Community Benefit Provision in accordance with the Tender and any further requirements of the Council and at no cost to the Council as more particularly specified in the Specification and Invitation to Tender.

19.3 In the event that the Supplier fails to provide the Community Benefit Provision in accordance with their Tender, the Council reserves the right, on giving the Supplier not less than 7 days written notice, to either (i) provide the Community Benefit Provision directly; or (ii) employ others to carry out the Community Benefit Provision.

19.4 The Supplier shall be liable for all additional costs incurred by the Council in connection with such employment and such costs may be withheld or deducted by the Council from any monies due or to become due to the Supplier under this Contract or shall be recoverable from the Supplier as a debt.

20. Indemnity & Insurance

20.1 Without prejudice to any rights or remedies of the Council the Supplier shall indemnify the Council against all actions, suits, claims, demands, losses, charges, costs and expenses which the Council may suffer or incur as a result of or in connection with any damage to property or in

respect of any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any defect in the Goods or the negligent or wrongful act or omission of the Supplier.

- 20.2 The Supplier shall effect with a reputable insurance company a policy or policies of insurance covering all the 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 payment of premiums, including the latest premium due thereunder.

21. Dispute Resolution

- 21.1 The parties must attempt in good faith to resolve any dispute between them arising out of or in connection with the Contract.
- 21.2 Any dispute or difference arising out of or in connection with the Contract, including any question regarding its existence, validity or termination which cannot be resolved in good faith, shall be determined by the appointment of a single arbitrator to be agreed between the parties, and failing agreement within 14 days after either party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the Scottish Arbitration Centre on the written application of either party. The seat of the arbitration shall be in Scotland. The language used in the arbitral proceedings shall be in English.
- 21.3 Any arbitration under 23.2 is subject to the Arbitration (Scotland) Act 2010.

22. Assignment and Sub-contracting

- 22.1 The Supplier shall not without the written consent of the Council assign the benefit or burden of the Contract or any part thereof.
- 22.2 The Council shall be free to assign its benefits or burdens under the Contract without the consent of the Supplier to any other local authority constituted in terms of the Local Government etc (Scotland) Act 1994, providing that the Council gives the Supplier not less than 7 days written notice of its intention to do so.
- 22.3 The Supplier may not subcontract its interests and/or obligations under the Contract to any other person without the prior written consent of the Council which consent shall not be unreasonably withheld. Such consent shall not be required where the Supplier has stated their intention to subcontract part or the whole of the Contract in the Tender.
- 22.4 No sub-contracting by the Supplier shall in any way relieve the Supplier of any of his responsibilities under the Contract.

22.5 Where there is agreement to sub-contract any part of the performance of the Supplier's obligations, the Supplier shall be responsible for the acts and/or omissions of their sub-contractors as though they were their own and shall ensure that the terms of the Contract are reflected mutatis mutandis to any sub-contractor.

22.6 Where the Supplier enters into a sub-contract the Supplier must ensure that a provision is included which:

22.6.1 requires payment to be made of all sums due by the Supplier to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice as defined by the sub-contract requirements and provides that, where the Council has made payment to the Supplier in respect of Services and the sub-contractor's invoice relates to such Services then, to that extent, the invoice must be treated as valid and, provided the Supplier is not exercising a right of retention or set-off in respect of a breach of contract by the sub-contractor or in respect of a sum otherwise due by the sub-contractor to the Supplier, payment must be made to the sub-contractor without deduction;

22.6.2 notifies the sub-contractor that the sub-contract forms part of a larger contract for the benefit of the Council and that should the sub-contractor have any difficulty in securing the timely payment of an invoice, that matter may be referred by the sub-contractor to the Council; and

22.6.3 in the same terms as that set out in this clause 22.6 (including for the avoidance of doubt this clause 22.6.3) subject only to modification to refer to the correct designation of the equivalent party as the Supplier and sub-contractor as the case may be.

22.7 The Supplier shall also include in every sub-contract:

22.7.1 a right for the Supplier to terminate that sub-contract if the relevant sub-contractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or employment law or if any of the termination events (involving substantial modification of the Contract, contract award despite the existence of exclusion grounds or a serious infringement of EU legal obligations) specified in condition 9.3 occur; and:

22.7.2 a requirement that the sub-contractor includes a provision having the same effect as 22.7.1 in any sub-contract which it awards.

In this condition 22.7, 'sub-contract' means a contract between two or more suppliers, at any stage of remoteness from the Council in a sub-

contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract.

23. Audit

23.1 The Supplier shall keep and maintain until 5 years after the Contract has been completed records to the satisfaction of the Council of all expenditures which are reimbursable by the Council and of the hours worked and costs incurred in connection with any employees of the Supplier paid for by the Council on a time charge basis. The Supplier shall on request afford the Council or his representatives such access to those records as may be required by the Council in connection with the Contract.

24. Blacklisting

24.1 The Supplier must not commit any breach of the Employment Relations Act 1999 (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or commit any breach of the Data Protection Act 1998 and the Data Protection Laws by unlawfully processing personal data in connection with any blacklisting activities. Breach of this clause is a material default which shall entitle the Purchaser to terminate the Contract.

25. Headings

25.1 The headings to the Conditions shall not affect their interpretation.

Schedule Data (Protection)

Data Processing provision as required by Article 28(3) GDPR.

This Schedule includes certain details of the Processing of Personal Data in connection with the Services:

Subject matter and duration of the Processing of Personal Data

The subject matter and duration of the Processing of Personal Data are [insert description here].

The nature and purpose of the Processing of Personal Data

[Include description here]

The type of Personal Data to be Processed

[Include list of data types here]

The categories of Data Subject to whom Personal Data relates

[Include categories of data subjects here]

The obligations and rights of the Purchaser

The obligations and rights of the Purchaser as the Data Controller are set out in Clause 15 of the Contract.