

**MID AND WEST WALES FIRE AND RESCUE AUTHORITY
GENERAL TERMS AND CONDITIONS FOR
THE PURCHASE OF GOODS**

INDEX

1	GENERAL	2
2	SPECIFICATION	2
3	SUPPLIER PERFORMANCE	2
4	STAFF	3
5	CONTRACT	3
6	THE GOODS	3
7	IDENTIFICATION OF GOODS	4
8	PACKAGING	4
9	CONTAINERS AND PALLETS	4
10	WARRANTY	4
11	DEFAULT BY CONTRACTORS	5
12	PRICE AND PAYMENT	5
13	DELIVERY	6
14	PACKAGING AND TRANSPORTATION	6
15	PROPERTY AND RISK	7
16	DAMAGE IN TRANSIT	7
17	SUB-CONTRACTING FOR THE DELIVERY OF GOODS	7
18	REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE	7
19	MISTAKES IN INFORMATION	8
20	CANCELLATION	8
21	REJECTION	9
22	INDEMNITY	10
23	NON-ASSIGNMENT	10
24	WAIVER	10
25	FRAUD	10
26	FORCE MAJEURE	10
27	TRADING ADDRESS AND NOTICES	11
28	CONFIDENTIALITY	11
29	DATA PROTECTION	13
30	PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES	14
31	AUDIT AND THE WALES AUDIT OFFICE	14
32	HEALTH AND SAFETY	14
33	EQUAL OPPORTUNITIES	15
34	TRAINING	15
35	INDUCEMENTS	16
36	THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999	17
37	MONITORING OF PERFORMANCE	17
38	SEVERABILITY	17
39	WAIVER	17
40	TRANSFER, SUB-CONTRACTING AND CHANGE OF CONTROL	17
41	POSSIBLE EXTENSION OF TERMS	18
42	NOVATION	18
43	SUSTAINABILITY	18
44	PROPER LAW JURISDICTION	19

MID AND WEST WALES FIRE AND RESCUE AUTHORITY
GENERAL TERMS AND CONDITIONS FOR
THE PURCHASE OF GOODS

1 GENERAL

1.1 In these general conditions

- (i) “Authority” means Mid and West Wales Fire and Rescue Authority.
- (ii) “Contractor” means the person who by the Contract undertakes to supply the Goods to the Authority. Where the Contractor is an individual or partnership, the expression shall include the personal representatives of that individual or the partners.
- (iii) “The Contract” means the Contract concluded between the Authority and the Contractor, consisting of these clauses and any attached Appendices or Schedules, and including all specifications and other documents which are incorporated or referred to herein and in the index of the Tender or Contract document. In case of discrepancy between these Conditions and other documents forming part of the Contract, these Conditions shall prevail unless otherwise agreed in writing.

1.2 The Authority shall only be bound by an order placed by the Authority on the Authority’s official Purchase Order form duly authorised by a member of the Authority and subject to these terms and conditions. Any terms and conditions of the Contractor are expressly excluded from this order and any Goods supplied to the Authority shall be deemed to have been supplied in accordance with and subject to these terms and conditions.

1.3 No variation, cancellation or waiver of these conditions shall be valid unless made in writing and signed by an authorised member of the Authority.

2 SPECIFICATION

2.1 The goods shall be new (unless otherwise specified), of the qualities and kinds described and equal in all respects to the descriptions, specifications, patterns and Contractor’s samples which form part of the contract or are otherwise relevant for the purpose of the Contract. Except in so far as may otherwise be indicated by such descriptions, specifications, patterns or Contractor’s samples, the Goods shall be strictly in compliance with the latest relevant International, European or British Statutory Requirements, Laws (governing sale and/or delivery) and Standards, where such exist.

3 SUPPLIER PERFORMANCE

3.1 The Contractor shall deliver the Goods with all reasonable skill, care and diligence in accordance with all relevant legislative and statutory requirements.

- 3.2 The Contractor shall properly manage and monitor performance of the Contract and immediately inform the Contract Manager if any aspect of the Contract is not being or is unable to be performed.

4 STAFF

- 4.1 The Contractor must employ sufficient staff to ensure that the Goods are delivered at all times and in all respects to the Contract Specification. The Contractor must ensure that a sufficient reserve of staff is available to provide the Goods to the Contract Specification during holidays or absences.
- 4.2 All Contractors' staff shall report to the Authority's authorised Manager on arrival and departure from the premises.
- 4.3 The Contractor shall cause as little interference as possible with other activities on the premises. Any interference caused will be agreed with the Contract Manager in advance.
- 4.4 The Contractor shall instruct its staff about fire risks and require them not to smoke on the Authority's premises except where it is expressly permitted to do so.
- 4.5 The Contractor shall take all reasonable steps to avoid changes to any of the staff designated in the Contract as Key Personnel. The Contractor shall give at least one month's notice to the Contract Manager of any proposals to change Key Personnel.
- 4.6 The Contractor must provide its staff with a form of identity acceptable to the Authority and must ensure that they display that identity on their clothing at all times when they are on the Authority's premises.

5 CONTRACT

- 5.1.1 During the period for which any Contract is accepted the Contractor(s) shall supply and deliver to the Authority and the Authority shall accept such goods, articles or materials of the description and at the prices mentioned in the tender annexed hereto in such quantities and at such prices as may be ordered by the Authority.

6 THE GOODS

- 6.1 If required by the Authority, samples of Goods shall be submitted by the Contractor for evaluation and approval at the Contractor's cost and expense and all subsequent deliveries of the Goods shall be equal in quality to or better than approved samples.
- (a) The Goods shall be fully compatible with the Authority's Equipment.

- (b) The Authority relies on the skill and judgement of the Contractor in the supply of the goods and the carrying out of all the Contractor's obligations under this Contract.

7 IDENTIFICATION OF GOODS

- 7.1 All goods which customarily bear any mark, tab, brand, label or other device indicating place of origin, inspection by any Government or other body or standard of quality must be delivered with all the said marks, tabs, brands, labels or other devices intact.

8 PACKAGING

- 8.1 The Goods shall be securely packed with minimal packaging, ideally of a recyclable/re-usable material e.g. cardboard boxes, to protect the contents.

- 8.2 The following details shall be shown on the outside of every package unless otherwise specified in the Contract:

- (i) the Authority's order number;
- (ii) description of the Goods;
- (iii) any special directions for storage;
- (iv) expiry date of contents (where applicable);
- (v) batch number;
- (vi) name of manufacturer.

- 8.3 All containers of hazardous goods (and all documents relating thereto) shall bear prominent and adequate warnings.

- 8.4 The supplier is expected to provide an environmentally friendly disposal service for hazardous goods containers where applicable.

9 CONTAINERS & PALLETS

- 9.1 The Contractor shall collect without any charge any returnable containers (including pallets) within twenty-one days of the date of the relevant delivery note, unless otherwise instructed by the Authority. Empty containers not so removed may be returned by the Authority at the Contractor's expense or otherwise recycled or re-used at the Authority's discretion. Charged containers shall be credited in full by the Contractor upon collection or return.

10 WARRANTY

- 10.1 The Contractor warrants (without prejudice to any rights which the Authority may have under general law) that the goods supplied pursuant to the Authority's order shall:

- (a) conform as to quality, quantity and description with the particulars stated in the order;
- (b) conform to sample;

- (c) be of sound materials and workmanship and be fit for any purpose which is specified in the order or (if no purpose is specified) fit for any purpose for such goods as are usually supplied or for which the Authority might reasonably be expected to use the goods;
- (d) comply with all laws and by-laws of a governmental nature applicable to the supply of the goods;
- (e) be free from any third party right lien or charge and not infringe the right of any third party.

11 DEFAULT BY CONTRACTOR

11.1 Without prejudice to any other right or remedy if the Contractor does not deliver the Goods in accordance with the Contract Specification or at the time specified in the Contract the Authority may:

- (a) require the Contractor to remedy the default within such time as the Authority may specify by providing again (as the case may be) without further charge to the Authority those Goods or such part of the Goods to the Specification;
- (b) itself provide or procure the provision of the Goods until the Authority shall be satisfied that the Contractor is again able to deliver the Goods in accordance with these Conditions;
- (c) deduct from any amount then due or to become due to the Contractor such amount as is reasonable having regard to the value of the Goods which have not been properly delivered;
- (f) if the cost to the Authority of procuring such Goods or part of them exceeds the amount which would have been payable to the Contractor for delivering such Goods, the excess shall be paid by the Contractor to the Authority in addition to any other sums payable by the Contractor to the Authority in respect of the breach of the Contract.

12 PRICE AND PAYMENT

12.1 The Goods will be supplied at prices notified to and agreed by the Authority.

12.2.1 The Contract Price shall be “net”, that is, after deduction of all agreed discounts and vat.

12.3 The Contract Price shall include the cost of packaging, materials, addressing, labelling, loading and delivery to the addresses named in the Contract or orders.

12.4 Payment for the Goods shall be made within thirty days from the date of receipt by the Authority of a correctly submitted invoice from the Contractor.

The invoice must quote the Purchase Order number relating to the supply of Goods. Where possible, the invoice should be in an A4 format. The submission of invoices via e-mail is acceptable.

The Authority will also accept the electronic submission of “invoice data” where the format has been agreed and deemed as suitable in advance. The Authority shall be entitled to set off against the invoice price any sum owing by the Contractor to the Authority in respect of any legal liability whether in contract or in tort.

- 12.5 Payment for the Goods by the Authority shall not be deemed to waive any rights which the Authority might have against the Contractor to reject the Goods or to claim damages in respect of the Goods.

13 DELIVERY

- 13.1 Goods shall be delivered in accordance with the Authority’s instructions, in such manner, at such time and to such places as the Authority may order in writing from time to time, being times and places within the period and localities specified in the Contract.

- 13.2 The time of delivery shall be of the essence where delivery dates are expressly agreed. Failure to deliver on the delivery date shall enable the Authority (as its option) to release itself from any obligation to accept or pay for the Goods and/or to cancel all or part of the Contract therefore, in either case without prejudice to its other rights and remedies.

- 13.3 The Contractor shall notify the Authority immediately if the Contractor is unable to deliver the goods in accordance with sub-clause 13.1

- 13.4 In delivering goods and at all times when on Authority premises the Contractor(s) shall take all reasonable care to avoid injury to persons thereon and damage to the property of the Authority and shall indemnify the Authority against all claims, demands, expenses, proceedings, actions, damages and costs occasioned by or arising out of any breach of this Condition.

- 13.5 The Contractor shall supply a delivery note with a clear description of the goods supplied with each and every delivery of goods.

- 13.6 Before despatching the goods the Contractor shall inspect them carefully; the Authority shall not be responsible for inspecting the goods on delivery.

14 PACKAGING AND TRANSPORTATION

- 14.1 The Contractor shall ensure that the goods are properly packed and secured and are transported in such a manner as to reach their destination in good condition.

- 14.2 The Contractor shall not charge for packaging and transportation of the goods. Any such overheads must be included in the net costs of the product.

15 PROPERTY AND RISK

The property and risk of the goods shall pass to the Authority on delivery but this is without prejudice to any rights which the Authority might have to reject the goods under these terms and conditions or under the general law.

16 DAMAGE IN TRANSIT

16.1 On dispatch of any consignment of the goods, the Supplier shall send to the Authority an advice note specifying the means of transport, the place and date of dispatch, and the number of packages. The Contractor shall free of charge and as quickly as possible, either repair or replace (as the Authority 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 Authority, provided that

- (a) in the case of damage to such goods in transit, the Authority shall within 14 days of delivery give notice to the Contractor that the goods have been damaged;
- (b) in the case of non-delivery the Authority shall (provided that the Authority has been advised of the dispatch of the goods) within ten days of the notified date of delivery give notice to the Contractor that the goods have not been delivered.

17 SUB-CONTRACTING FOR THE DELIVERY OF THE GOODS

17.1 Where the Contractor enters into a sub-contract with a Contractor or contractor for the purpose of performing the Contract, it shall cause a term to be included in such a sub-contract which requires payment to be made of undisputed sums by the Contractor 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.

18 REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE

18.1 Where a complaint is received or a problem indicated in any Customer Satisfaction Survey about the standard of Goods or about the way any Goods have been delivered or about the materials or procedures used or about any other matter connected with the performance of the Contract, then the Contract Manager shall take all reasonable steps to ascertain whether the complaint is valid. If the Contract Manager so decides, he may uphold the complaint, or take further action in accordance with the provisions of Part 28-32 of the Contract.

18.2 In the event that the Authority is of the reasonable opinion that there has been a material breach of the Contract by the Contractor, or the Contractor's performance of its obligations under the Contract has failed to meet the requirement set out in the Specifications Schedule, then the Authority may, without prejudice to its rights under Part 28-32 of the Contract, do any of the following:

- (a) make such a deduction from the Price to be paid to the Contractor as the Authority shall reasonably determine to reflect sums paid or sums which would otherwise be payable in respect of such of the Goods as the Contractor shall have failed to provide;
- (b) terminate, in accordance with Part 28-32, the whole of the Contract.

18.3 The Authority may charge to the Contractor any cost reasonably incurred by the Authority and any reasonable administration costs in respect of the provision of such part of the relevant Goods by the Authority or by a third party to the extent that such costs exceed the Price which would otherwise have been payable to the Contractor for such part of the relevant Goods.

18.4 The Contractor fails to deliver any of the Goods to the reasonable satisfaction of the Authority and such failure is capable of remedy, then the Authority shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as the Authority may direct.

18.6 The remedies of the Authority under this clause may be exercised successively in respect of any one or more failures by the Contractor.

19 MISTAKES IN INFORMATION

19.1 The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Authority by the Contractor in connection with the provision of the Service, and shall pay the Authority any extra costs occasioned by any discrepancies, errors or omissions therein.

20 CANCELLATION

20.1 The Authority reserves the right (without prejudice to any other rights which the Authority might have and without incurring any liability to the Contractor for breach of contract) at any time to cancel an order or any part of any order;

- (a) if the Contractor goes into liquidation either compulsory or voluntarily (save for the purposes of reconstruction or amalgamation) or shall become bankrupt or if a receiver or administrative receiver is appointed in respect of the whole or any part of its assets or if the Contractor makes an assignment for the benefit of or composition of its creditors generally or threatens to do any of these things or any judgement is made against it or any similar occurrence affects the Contractor; or
- (b) if the Contractor shall refuse the Authority the right to inspect any Service or quality assurance system or access to the Contractor's premises;

- (c) if the Contractor fails to deliver the Goods or materials or execute or deliver any portion thereof or deliver the Goods within the time specified in the order, the Authority, without prejudice to any other remedy available for breach of contract, shall be free to determine the contract either wholly, or in part or to the extent of such default and to provide for the execution of the work by other means or to purchase other Service or materials or to make other provisions for the supply of the Goods as the case may be to make good such defect or in the event of the order being wholly determined the unexecuted Goods, or materials remaining to be delivered or the provision of the additional Goods required under the order. The amount by which the cost of providing for the execution of the work by other means or purchasing materials or providing substitute Goods exceeds the amount which would have been payable to the Contractor had he/she executed the order or a portion thereof within the same time or times specified therein shall be payable by the Contractor.

20.2 The Authority shall cancel this order and recover from the Contractor the amount of any loss resulting from such cancellation, if the Contractor or any person on his/her behalf shall have offered or given or agreed to give any person any gift or consideration of any thing as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or the execution of the order or any favour or disfavour to any person in relation to the order or any other order with the Authority or if like acts shall have been done by any person employed by him/her or acting on his/her behalf (with or without the knowledge of the Contractor) or if in relation to any order with the Contractor the Contractor or any person employed by him/her or acting on his/her behalf shall have committed any offence under the Prevention of Corruption Act 1889 to 1916 or shall give any fee or reward the receipt of which is an offence under Sections 117(2) and (3) of the Local Government Act 1972 or any amendment or reactment thereof.

21 REJECTION

21.1 The Authority reserves the right (without prejudice to any other rights which the Authority may have and without incurring any liability to the Contractor for breach of contract) at any time to reject any Service if the Contractor:

- (a) tenders late delivery of the Goods
- (b) tenders delivery of Goods which are defective; or
- (c) attempts to render a different performance of the Contract from that specified in the order placed by the Authority.

22 INDEMNITY

22.1 The Contractor shall indemnify the Authority from and against any injury loss, damage or liability whether criminal or civil suffered and legal fees and costs incurred by the Goods resulting directly or indirectly from:

- (a) a breach of these terms and conditions by the Contractor;
- (b) any breach of any contractual obligation whether express or implied by common law, statute, custom or otherwise by the Contractor;
- (c) any breach of duty in tort by the Contractor; and
- (d) any act, neglect or default of the Contractor, its servants or agents or sub-contractors and breaches resulting in any claim by third parties in respect of any matter including without limitation any infringements of any copyright and claims under the Consumer Protection Act 1987.

23 NON-ASSIGNMENT

23.1 The Contractor shall not without prior written consent of the Authority assign or sub-contract or transfer the order or any part of it to any other person, firm or company.

24 WAIVER

24.1 A failure by the Authority to enforce at any time or for any period any of these terms and conditions shall not be a waiver of them or of the right at any time subsequently to enforce all or any of these terms and conditions.

25 FRAUD

25.1 The Contractor shall take all reasonable steps, in accordance with good industry practice, to prevent any fraudulent activity by the Staff, the Contractor (including its shareholders, members, directors) and/or any of the Contractor's Contractors, in connection with the receipt of monies from the Authority. The Contractor shall notify the Authority immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

26 FORCE MAJEURE

26.1 The Authority reserves the right to cancel any order or part order or to vary any order at any time if the Authority's business is in the Authority's opinion affected adversely as a result of its inability to secure labour, materials or supplies or as a result of any Act of God, war, strike, lock-out or other labour disputes or flood, drought, legislation or other cause beyond the Authority's control.

27 TRADING ADDRESS AND NOTICES

27.1 Unless otherwise requested by the Authority, the Contractor shall direct all Correspondence and Service to the Authority's Headquarters at Carmarthen.

28 CONFIDENTIALITY

28.1 The Contractor and its staff must not disclose to any person other than a person authorised by the Authority any information acquired by them in connection with the Contract.

28.2 Without prejudice to the generality of Condition 28.1, the Contractor and its staff must not disclose to any person other than a person authorised by the Authority any information acquired by them in connection with the provision of the Goods which concerns the Authority, its staff or procedures, or the medical condition of any employee.

28.3 In these Conditions, "Commercially Sensitive Information" means all matters relating to the Contract together with all information designated as such by either party in writing and all other information which relates to the proceedings, business, affairs, products, trade secrets, developments, know-how, personnel, customers and Contractors of either party and information which may reasonably be regarded as the confidential information of the disclosing party.

28.4 Subject to Clause 28.5 and 28.6 below, each Party shall keep confidential all Commercially Sensitive Information disclosed to it. Each Party shall procure that its employees shall not make any disclosure to any person of any Commercially Sensitive Information.

28.5 The Contractor acknowledges the commitment of the Authority to open government and public access to information. Accordingly, the Parties agree that:

- (a) the provisions of this Clause 28 are subject to the respective obligations and commitments of the Authority under the Freedom of Information Act 2000 (for the purposes of this clause the FOIA) (as may be amended from time to time);
- (b) subject to Clause 28.5(c) the decision on whether any exemption applies to a request for disclosure of recorded information is a decision solely for the Authority;
- (c) where the Authority is managing a request as referred to in Clause 28.5(b) then it will consult with the Contractor in relation to any request for disclosure of recorded information to which this Clause applies and in accordance with the guidance referred to in the Code of Practice on the Discharge of Public Authorities' Obligations issued under section 45 of the FOIA.

The Contractor shall co-operate with the Authority making the request and respond within 5 Working Days to any request by it for assistance in determining how to respond to a request for disclosure; and

- (d) the Parties shall each nominate a representative for considering and agreeing matters relating to this Clause 28.5(c).

28.6 Clause 28.3 shall not apply to:

- (a) any disclosure of information to each of the Parties' professional advisors;
- (b) any disclosure of information which is required to ensure the Authority's compliance with the FOIA as set out in Clause 28.5 above;
- (c) any disclosure of information that is reasonably required by, or to, persons engaged in the performance of its obligations under the Contract including the Contractors and subcontractors provided that such subcontractors have entered into undertakings as to confidentiality and as to compliance with the FOIA substantially in the form of this Clause;
- (d) any information which the disclosing party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this Clause 28;
- (e) any disclosure which is required by any law (including any order of a court of competent jurisdiction) or the rules of any stock exchange or governmental or regulatory Authority having the force of law;
- (f) any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party, and which is not subject to an obligation of confidentiality;
- (g) any provision of information to the Contractor's bankers or their professional advisers or insurance advisers or, where it is proposed that a person should or may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to the Contractor to enable it to carry out its obligations under the Contract, to that person but only to the extent reasonably necessary to enable a decision to be taken on the proposal;
- (h) when appropriate, any registration or recording of the consents and property registration required;
- (i) Subject to Clause 28.4 any disclosure by the Authority of any document related to the Contract to which it is a party and which the Contractor (acting reasonably) has agreed in writing with the Party making the request contains no Commercially Sensitive Information; and
- (j) any disclosure for the purpose of:
 - (i) the examination and certification of the Authority's accounts; or

- (ii) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.
 - (k) any disclosure of information which is or was lawfully received by the receiving party from a third party and which is or was not the subject of any obligations of confidentiality; or
 - (l) any information shown to the reasonable satisfaction of the other party to have been independently developed or created by the receiving party or its agents or sub-contractors without access to the Commercially Sensitive Information supplied.
- 28.7 Where disclosure is permitted under Clause 28.6.(b), 28.6.(c), 28.6.(e), 28.6.(g) the disclosing party shall ensure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in these Conditions.
- 28.8 The provisions and obligations set out in this Clause 28 shall survive and remain in force upon and following the termination of the Contract.
- 28.9 Where the Contractor, in carrying out its obligations under the Contract, is provided with Commercially Sensitive Information from or by a third party, the Contractor shall not disclose or make use of any such information otherwise than for the purpose for which it was provided, unless the Contractor has sought the prior written consent of that third party, and has obtained the prior written consent of the Authority.
- 28.10 In entering into the Contract to provide Goods for parties which are all defined as public bodies under the FOIA, the Contractor notes and acknowledges the Freedom of Information Act 2000 and both the respective Codes of Practice on the Discharge of Public Authorities` Functions and on the Management of Records (which are issued under sections 45 and 46 of the FOIA respectively). The Contractor will act in accordance with these provisions to the extent they apply to the Contract and will provide all reasonable assistance to the Authority to facilitate its compliance therewith.
- 28.11 The Parties acknowledge that the Wales Audit Office has the right to publish details of the Contract in its reports.

29 DATA PROTECTION

- 29.1 The Contractor must protect personal data in accordance with the provisions and principles of the Data Protection Act 1998 and must ensure the reliability of its staff that have access to the data.

29.2 The Contractor must indemnify the Authority against all claims and proceedings and all liability, loss, costs and expenses incurred in connection therewith made or brought by any person in respect of any loss, damage or distress caused to that person by the disclosure of any personal data by the Contractor, its staff or agents.

29.3 The provisions of this clause shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

30 PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

30.1 Without prejudice to the Authority's obligations under the Freedom of Information Act, neither Party shall make any press announcements or publicise the Contract or any part thereof in any way, except with the written consent of the other Party. The provisions of this clause shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

31 AUDIT AND THE WALES AUDIT OFFICE

31.1 The Contractor shall keep and maintain until twelve years after the Contract has been completed, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Goods provided under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Contractor shall on request afford the Authority or the Authority's representatives such access to those records as may be required by the Authority in connection with the Contract.

32 HEALTH & SAFETY

32.1 The Contractor represents and warrants to the Authority that the Contractor has satisfied himself that all necessary tests and examinations have been made or will be made prior to delivery of the goods/service to ensure that the goods/service are designed and constructed so as to be safe and without risk to the health or safety of persons using the same, and that he has made available to the Authority adequate information about the use for which the goods/service have been designed and have been tested and about any conditions necessary to ensure that when put to use the goods/service will be safe and without risk to health. The Contractor shall indemnify 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 condition.

32.2 The Contractor warrants that the Contract will be undertaken by appropriately qualified and trained persons with due care and diligence and to such high standards as it is reasonable for the Authority to expect in all circumstances.

- 32.3 The Contractor shall ensure that its safety policy has been drawn to the attention of all its members of staff, and that all of its management and supervisory staff have a detailed knowledge of this policy and that they will observe the policy and require the Contractor's staff to comply fully with its provisions. The Contractor shall also ensure that its staff complies with the Authority's Health & Safety policy (a copy of which is provided) and other relevant policies and procedures at all times, whilst on the Authority's premises.
- 32.4 Where COSHH Regulations or other safety legislation is applicable to the Goods/Service supplied, the Contractor must ensure that the appropriate safety data sheets are made available to the Authority.

33 EQUAL OPPORTUNITIES

- 33.1 The Contractor shall comply with the Authority's statutory obligations under all applicable legislation and, accordingly, will not discriminate directly or indirectly against any person because of his or her sex, marital status, race, colour, nationality ethnic or national origin, disability, Religion or Belief, Age or spent offences in decisions to recruit, train, promote, discipline or dismiss employees.
- 33.2 The Contractor shall observe as far as is practicable the Codes of Practice of the Equal Opportunities Commission and the Commission for Racial Equality, the Code of Good Practice on the Employment of Disabled People and the Code of Practice for the elimination of discrimination in the field of employment against disabled persons or persons who have had a disability.
- 33.3 In the event of any finding of unlawful discrimination being made against the Contractor, during the Contract Period by any court or industrial tribunal, or of an adverse finding in any formal investigation by the Equal Opportunities Commission or the Commission for Racial Equality over the same period, the Contractor shall inform the Authority of this finding and shall take appropriate steps to prevent repetition of such unlawful discriminations.
- (a) The Contractor shall, upon request, provide the Authority with details of any steps taken under the above condition.
- 33.4 The Contractor shall provide such information as the Authority may reasonably request for the purpose of assessing the Contractor's compliance with the above conditions including, if requested, examples of any instructions, recruitment advertisements or other literature and details of monitoring applicants and employees.

34 TRAINING

- 34.1 The Contractor shall provide education and training for the Authority's personnel as set out in the specification.

As a minimum, the combination of training provided hereunder and the Documentation and Materials provided in accordance with Clause 34.2 below shall be sufficient to allow proper use, operation, maintenance and management of the Goods by appropriately qualified personnel who receive such training and who have access to such Documentation and Materials. For the avoidance of doubt, "appropriately qualified" shall mean an accepted level of ability, education and experience required for such tasks as agreed by the supplier and the Authority in advance or, where applicable, to agreed National Standards, and shall not refer to any particular personnel of the Authority. Where applicable, "appropriately qualified" personnel will attain a formal Certificate of Competence.

- 34.2 The Contractor shall supply Documentation and Materials to the Authority as specified in the specification. As a minimum, the combination of Documentation and Materials provided hereunder and the training provided in accordance with Clause 34.1 above shall be sufficient.

35 INDUCEMENTS

- 35.1 The Contractor shall not offer to the Authority or its representatives as a variation of the Conditions of the Contract or as a Contract collateral to it any advantage other than a cash discount against the Contract Price.
- 35.2 The Authority shall be entitled to cancel the Contract and to recover from the Contractor the amount of any loss resulting from such cancellation if:
- (a) the Contractor shall have offered, or given, or agreed to give to any person any gift, consideration, inducement or reward of any kind, for doing or not doing any action in relation to the Contract or any other Contract with the Authority; or
 - (b) the acts referred to in 35.2(a) above shall have been done by any person employed by the Contractor or acting on its behalf (whether with or without the knowledge of the Contractor); or in relation to any Contract with the Authority, the Contractor or person employed by it or acting on its behalf shall:
 - (c) have committed any offence under the Prevention of Corruption Acts 1889 to 1916, or
 - (d) have given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.
- 35.3 Any clause limiting the Contractor's liability does not apply to this clause.

36 THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

36.1 No person who is not a Party to the Contract (including without limitation any employee, Manager, agent, representative, or sub-contractor of either the Authority or the Contractor) 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, which agreement should specifically refer to the clause 36.1. This clause does not affect any right or remedy of any person, which exists or is available otherwise than pursuant to that Act.

37 MONITORING OF PERFORMANCE

37.1 The Contractor shall comply with the monitoring arrangements set out in the Specification including, but not limited to, providing such data and information as the Contractor may be required to produce under the Contract.

37.2 Unless specifically identified in contract documentation monitoring meetings will be held every six months initially.

38 SEVERABILITY

38.1 If any provision of the Contract is or becomes illegal, void or invalid, that shall not affect the legality and validity of its other provisions.

39 WAIVER

39.1 The failure of either party to seek redress for breaches or to insist on strict performance of any provision of the Contract or the failure of either party to exercise any right or remedy to which it is entitled under the Contract shall not constitute a waiver thereof and shall not cause a diminution of the obligations under the Contract.

39.2 No waiver of any provisions of the Contract shall be effective unless it is agreed by both parties in writing.

39.3 No waiver of any default shall constitute a waiver of any subsequent default.

40 TRANSFER, SUB-CONTRACTING AND CHANGE OF CONTROL

40.1 The Contractor(s) shall be prohibited from transferring or assigning directly or indirectly to any person or persons whatsoever, any portion of his contract without the written permission of the Authority. Sub-letting of any part(s) of the work except to the extent permitted in writing by the Chief Manager concerned shall be prohibited.

40.2 The Contractor shall exercise due care and propriety when dealing with third parties in connection with the Contract and ensure that no commitments are entered into (unless expressly required under the Contract), without the Authority's prior written consent.

- 40.3 The Contractor shall ensure that any sub-contractor complies with the terms and conditions of the Contract, so far as they are applicable. Any sub-contract shall not relieve the Contractor of his obligations under the Contract.
- 40.4 The Contractor shall forthwith inform the Authority in writing of any proposal or negotiations which may or will result in a merger, take-over, change of control, change of name or status, or the Contractor (being a company as defined in the Companies Act 1985) shall inform the Authority of any such change as defined in section 416 of the Income and Corporation Taxes Act 1988. The Contractor shall comply with any request by the Authority for information arising from this Condition.

41 POSSIBLE EXTENSION OF TERMS

- 41.1 Subject to satisfactory performance by the Contractor during the Initial Term, the Authority shall be entitled by written notice to the Contractor given not less than one month prior to the last day of the Term to extend the Contract for one further period. The provisions in this Contract will apply throughout any such extended period.

42 NOVATION

- 42.1 The Authority shall be entitled to assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof to any Contracting Authority, private sector body or any other body established under statute (“Transferee”) provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor’s obligations under this Contract.
- 42.2 The Authority shall be entitled to disclose to any Transferee any Confidential Information of the Contractor, which relates to the performance of the Contract by the Contractor. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the Contracts for Goods performance of the Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee accepts an obligation of confidence.

43 SUSTAINABILITY

- 43.1 The Authority is committed to the protection of both the local and the wider environment. The Authority is conscious that its activities affect the environment in which it exists and actively wishes to minimise any environmental and social impacts associated with products and Goods it purchases.
- 43.2 The Authority requests that Contractors from whom it buys goods and/or Goods not only comply with all existing legislation pertaining to the protection of the environment, but that they themselves be pro-active in adopting and implementing environmentally sound business practices in the course of fulfilling this Contract.

Where Contractors have any doubts relating to their capacity to fulfill the Authority's request they should bring these to the attention of the Authority.

- (a) **Social** – Contractors employed by the Authority are expected to make every effort to support fair and ethical working conditions and encourage equality and diversity within the workforce.
- (b) **Economic** – The Authority is signed up to the Value Wales “Opening Doors Charter for SME Friendly Procurement” and is committed to generating sustainable communities by using SME's and third sector contractors where appropriate. Contractors employed by the Authority are expected to commit to similar principles.
- (c) **Environmental** – The Authority is committed to reducing environmental impacts associated with the procurement of goods and services by only purchasing goods and services when necessary, minimising the amount of materials used and recycling whenever possible. Contractors employed by the Authority are expected to show the same commitment to the environment by ensuring that, where possible, minimum packaging is used, materials used are recyclable and vehicles used are energy efficient and less polluting. The Authority operates a sustainable disposal policy for all materials used and Contractors are expected to adopt similar principles, ensuring environmentally friendly disposal at all times. Disposal of all equipment regulated by the WEE regulations should be fully compliant with the legislation.

44 PROPER LAW JURISDICTION

44.1 These terms and conditions shall be governed and construed in accordance with the laws of England and Wales exclusively.

APPENDICES

Health & Safety Information for Visitors and Contractors Leaflet

Contract Document (where applicable)