

**HERTFORDSHIRE COUNTY COUNCIL  
COUNTY SUPPLIES & CONTRACT SERVICES  
ON BEHALF OF THE CENTRAL BUYING CONSORTIUM**

**THE PROVISION OF**

**2. GENERAL CONDITION OF CONTRACT FOR THE PROVISION OF SERVICES**

**INCORPORATION**

These Conditions shall be incorporated in any Contract made by any Customer for the purchase of services unless they are specifically excluded and shall apply to the extent that they are not inconsistent with any special Conditions of Contract.

**2.1 DEFINITIONS**

In these Conditions unless the context otherwise requires the following definitions shall apply.

“The Consortium” means the Central Buying Consortium (including any successors or assigns).

“The Central Buying Consortium” means the buying consortium for the time being consisting of Coventry, Portsmouth and Southampton City Councils, Luton and Northampton Borough Councils, Milton Keynes Council and the County Councils of Bedfordshire, Buckinghamshire, Dorset, Essex, Hampshire, Hertfordshire, Kent, Northamptonshire, Oxfordshire, Suffolk and West Sussex (including all successors or assigns).

“The Contracting Authority” means the Council that invites tenders or quotations on behalf of the Consortium for the supply of particular goods to Customers.

“The Agreement” means the agreement between the Contracting Authority and the Contractor that allows for Customer’s to place orders for goods with the Contractor.

“The Authorised Officer” means the Contracting Authority’s representative duly authorised to act in the administration of the Agreement.

“The Customer” means any member authority of the Consortium or any individual properly authorised to place orders under this Agreement.

“The Contractor” means the person, firm or company whose tender has been accepted by the Contracting Authority.

“The Order” means an official order issued by the Customer to the Contractor.

“The Contract” means the Contract arising from the Contractor’s receipt of the Customer’s official order.

“The Services” means the services described and defined in this agreement and referred to in the Order.

## **2.2 SPECIAL CONDITIONS**

If Special Conditions are incorporated in this Agreement, they shall be read together with these General Conditions and to the extent that they conflict with these General Conditions then the Special Conditions shall prevail. The General and any Special Conditions shall override any Conditions that may be printed on notepaper invoices, delivery notes and the like which may be submitted by the Contractor.

## **2.3 QUANTITIES AND MANAGEMENT INFORMATION**

- 2.3.1 Where an estimated quantity is stated in the Schedule this is intended to convey the anticipated requirement for the period in question. However, members of the Consortium give no guarantee and do not bind themselves to order the quantity stated.
- 2.3.2 The Contractor shall be required to provide accurate and up to date management information at the required frequency to the participating members of the Consortium throughout the duration of the Agreement. Such information shall include but not be limited to volume and turnover figures.

## **2.4 SUPPLY OF SERVICES**

All Services to be the subject of a properly authorised Order issued by the Customer. The Contractor shall supply to the Customer and shall deliver at the place specified on the Order the Services named in accordance with the terms of this Agreement. The Customer shall not be responsible for any Services that are delivered by the Contractor and are not the subject of an Order.

## **2.5 QUALITY**

- 2.5.1 The Services shall conform in every respect with the standards specified or given to either party and shall be capable of meeting any standard or performance specified in the Agreement and where the purpose for which they are required is indicated in the Order either expressly or by implication be fit for that purpose
- 2.5.2 The Contractor shall provide the Services (and any modifications thereof under these Conditions) in a proper, skilful and workmanlike manner to the standard required by the Contract and to the entire satisfaction of the Customer.
- 2.5.3 The Contractor shall at all times during the Contract Period allow such persons as may be nominated from time to time by the Authorised Officer access to all locations for the purpose of inspecting work being performed pursuant to the Contract, records and documents in the possession of the Contractor in connection with the performance of such work and materials stores and spare parts in order to ensure that such items comply with manufacturer's' or other relevant specifications and have been obtained from such suppliers as may be specified in the Services.
- 2.5.4 The Contractor shall use his best endeavours to provide, for the purposes of this Agreement, materials whose manufacture, use and disposal have the least practicable harmful impact on the environment.

## **2.6 EQUIPMENT AND MATERIALS**

- 2.6.1 Except as otherwise specified in the Schedule or elsewhere in the contract documents, the Contractor shall provide all materials and equipment necessary for the provision of the Services.
- 2.6.2 The Contractor shall maintain a safe, serviceable and clean condition and shall replace as necessary all equipment used by the Contractor's employees in the provision of the Services at any location or stored by the Contractor therein.
- 2.6.3 The Contractor shall ensure that all materials and equipment comply with the requirements of the Control of Substances Hazardous to Health (COSHH) Regulations 1994 and shall be kept when on Customers' premises, under proper control and safe-keeping.
- 2.6.4 The contractor shall be responsible for the scrutiny of all materials and equipment used by the Contractor in connection with the provision of the Services and the Customer shall be under no liability in respect thereof.
- 2.6.5 At the end of the contract period or upon earlier termination of the Contractor's employment, the Contractor shall remove from each location any materials and equipment belonging to the Contractor and shall leave at each location in a secure, safe, serviceable and clean condition all materials and equipment belonging to the Customer.

## **2.7 DELIVERY OF THE SERVICES**

Proof of delivery shall only be considered by the Customer on production by the Contractor of a copy of the delivery note signed by an Authorised Officer of the Customer.

The Contractor or the Contractor's servants and agents shall comply with all reasonable requirements of the Customer at the place of delivery and in particular shall ensure that their vehicles are not reversed or manoeuvred at any establishment where children or vulnerable people are or are likely to be present, without assistance from a responsible adult.

All deliveries shall be agreed with the Customer. The timing of deliveries must coincide with normal working hours otherwise agreed between the Contractor and the Customer.

## **2.8 VARIATION TO SERVICE**

- 2.8.1 The Authorised Officer shall be entitled to issue the Contract instruction in writing requiring the Contractor to do all or any of the following;
- 2.8.1.1 to omit or cease to provide any part of the Services for such period or periods as the Authorised Officer may determine, which period or periods may be of either a temporary or permanent nature; or
- 2.8.1.2 to provide such services or any part thereof in such a manner as the Authorised Officer may reasonable require; or
- 2.8.1.3 to provide such services additional to the Services as the Authorised Officer may reasonably require that such additional services shall be the same or similar to the Services in which case the appropriate contract rate shall apply to such additional services; or

2.8.1.4 to meet the changing needs in the performance of the Contract to vary the Services to be provided at any location.

2.8.2 The value of modifications pursuant to this condition shall be ascertained by the Authorised Officer in accordance with the following provisions. These provisions shall however not apply regarding any requirement to provide work to the Contract Standard;

2.8.2.1 where work is omitted from the Services specification or other documents constituting the contract the rates and prices contained in the Contract Price Schedule shall determine the ascertainment of the work omitted; or

2.8.2.2 where work is a similar nature to and is executed under similar conditions as work in the Specification or other Contract Document the rates and prices for the work contained in the Contract Price Schedule shall determine the ascertainment; or

2.8.2.3 where work is not of a similar nature to or not expected under similar conditions to work set out in the specification or other Contract Documents the ascertainment shall be made having due regard where applicable to the rates and prices contained in the Contract Price Schedule.

## **2.9 VARIATION OF CONTRACT PRICE**

No variation in the price of the Services will be accepted for any reason whatsoever unless the Authorised Officer of the Contracting Authority shall have already accepted a price variation in writing as being justified or as may be required in the Special Conditions.

## **2.10 PAYMENT AND RISK, PROPERTY AND TITLE**

2.10.1 The Contractor shall render an account to the Customer by an invoice quoting the relevant order number and if approved in accordance with this Agreement the Customer shall pay the invoice in accordance with their usual payment terms unless any other terms of payment have been so required in the Special Conditions, or otherwise agreed.

2.10.2 Risk, property and title in the Service shall pass to the Customer when delivery has been made in accordance with the Order unless the Services is subsequently rejected.

## **2.11 VALUE ADDED TAX**

All Value Added Tax payable on Services supplied to the Customer will be paid by the Customer at the appropriate rate.

## **2.12 SECURITY**

2.12.1 The Contractor shall ensure that its employees maintain security of the Customer's premises.

2.12.2 The Contractor shall hold access keys as required by the Customer and particularly where any part of any Services is to be provided outside normal working hours. In such circumstances the Contractor shall be responsible for the security of any location owned or occupied by the Customer and shall ensure that the location is properly secure, both while the Services is being provided and after any part of the Services has been provided.

- 2.12.3 The Contractor shall issue to its employees who shall at any time have access to any location owned or occupied by the Customer security passes in such form as the Customer may from time to time determine and issue to the Contractor.
- 2.12.4 The Contractor shall be responsible for the safekeeping of any keys, passes and other means of access provided to the Contractor by the Customer and shall only permit such keys, passes and other means of access shall have been supplied to the Customer and then only to the extent require for the purposes of providing the Services. In addition, the Contractor shall ensure that the Customer is advised immediately of the loss of any keys, passes or other means of access and shall reimburse the customer any cost of replacement and any reasonable security measures implemented as a result of such loss.

## **2.13 INDEMNITY AND INSURANCE**

- 2.13.1 The Contractor shall fully indemnify the Customer and the Contracting Authority against all actions, claims, demands, costs, charges and expenses arising from or incurred by reason of any infringement of any copyright, intellectual property rights, patents or patents pending arising out of the performance of this Contract.
- 2.13.2 The Contractor shall indemnify and keep indemnified the Customer and the Contracting Authority against the injury to or death of any persons, or loss of or damage to any property, all actions, claims, demands, proceedings, damages, costs charges and expenses whatsoever (including the Services themselves) which may arise out of or in consequence of the performance of the Contract including (for the avoidance of doubt) all claims by purchasers from the Customer.
- 2.13.3 Without prejudice to his liability to indemnify the Customer the Contractor shall maintain and shall cause any Sub-Contractor to maintain such insurance's as are necessary to cover the liability of the Contractor or, as the case may be, of such Sub-Contractor in respect o personnel injury or death arising out of or in the course of or caused by the performance of the Contract by the Contract and in respect of injury or damage to property, real or personal, arising out of or in the course of or by reason of the performance of the Contract by the Contractor.
- 2.13.4 The Contractor shall take out public liability insurance of not less than a minimum of £5,000,000 (£10,000,000 dependant on Authority) for any one claim, without limit to the number of claims. The Contractor shall, if so required by the Contracting Authority, before the delivery of any Services produce to the Authorised Officer any such insurance policy or policies of insurance required to be effected together with the receipt for the payment of the last premium in respect of each policy.

## **2.14 DEFAULT BY CONTRACTOR IN THE PROVISION OF SERVICES**

- 2.14.1 If the Services to be provided under the Contract shall not:
- (i) be duly delivered by the Contractor to the Customer within the delivery period for which time shall be of the essence; or
  - (ii) be of the quality and specification ordered; or
  - (iii) be in the quantity or number required by the Order; or

(iv) be delivered with a delivery or advice note containing correct and sufficient particulars of the name, quality, specification, rate, order number, quantity and numbers of such Services;

then the Customer may, without prejudice to any other remedy, by written notice served on the Contractor, reject those Services and in every such case the Customer may purchase at such prices, and on such terms as the Customer thinks fit, the same or similar Services from any other person and in such event the Contractor shall pay to the Customer or the Customer may deduct from any sum that is due, or may become due, to the Contractor all excess costs, charges and expenses of acquiring the Services due to the Contractor's failure to perform the Contract.

2.14.2 The Customer shall be entitled to deduct all damages costs, charges and expenses from the Contractor arising out of negligence by the Contractor, its Employees or its Agents in or about the performance or non-performance of this Agreement from any sums due or to become due to the Contractor, or to recover the same from the Contractor as liquidated damages by action at law or otherwise as the Customer may determine.

2.14.3 Neither the Customer nor the Contracting Authority accepts any responsibility for rejected Services which remain at the Contractor's sole risk.

## **2.15 REMOVAL OF REJECTED GOODS**

Rejected Services shall be removed by and at the expense of the Contractor within 14 days or such other period as may be agreed with the Customer. If the Contractor fails to remove the Services within the time specified, the Customer or the Contracting Authority may arrange for the Services to be removed and charge the Contractor with all expenses incurred in such removal.

## **2.16 CONFIDENTIALITY**

2.16.1 The Contractor or the Contractor's employees shall not divulge to any third party any information which comes into their possession and neither dispose of nor part with possession of any confidential material provided to the Contractor by the Customer pursuant to the Contract without the express permission of the Authorised Officer. The provisions of this condition shall apply notwithstanding termination of this Contract.

2.16.2 The Contractor shall not without the prior written consent of the Authorised Officer divulge the existence of a contract or disclose any information relating to or contained in this Agreement to any person who is not engaged in the performance of the Agreement. The provisions of this condition shall apply notwithstanding the termination of this Agreement.

## **2.17 FORCE MAJEURE**

Neither party shall be liable to the other for any failure to perform its obligations under the Contract where such performance is rendered impossible by circumstances beyond its control but nothing in this condition shall limit the obligations of the Contractor to use its best endeavours to fulfil its obligations under the Contract or this Agreement.

## **2.18 WAR AND/OR DISASTER**

Where an emergency or disaster occurs and any of the members of the Central Buying Consortium have a duty to carry out plans made by them within the meaning of the Civil Defence Act 1948 or any modification or re-enactment thereof being in force then the Contractor shall so far as is physically possible continue to perform the Contract.

## **2.19 SUB-LETTING**

The Contractor shall not sub-contract the whole or any part of the provision of the Services to any person without the previous written consent of the Contracting Authority. Whilst consent shall not unreasonably be withheld it shall be at the discretion of the Contracting Authority and if given shall not relieve the Contractor from any liability or obligation under the Agreement.

## **2.20 TERMINATION**

2.20.1 The Contracting Authority may by notice in writing forthwith (or at such later date as it may specify) terminate the Agreement in whole or in part, if any one of the events set out in condition 2.20.2 occurs. Upon such termination the contract period shall be deemed to have expired but such termination to be without prejudice to any right of action or remedy which shall have accrued or shall thereupon accrue to members of the Consortium and where appropriate the Consortium shall be entitled to recover from the Contractor the reasonable and proper amount of any resultant loss.

2.20.2 The events referred to in Clause 2.20.1. are:

2.20.2.1 if the Contractor has offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the Agreement or any other Contract with the Consortium or for showing or forbearing to show favour or disfavour to any person in relation to the Agreement or any other contract with the Consortium or if the like acts shall have been done by any person employed by it or acting on its behalf (whether with or without the knowledge of the Contractor) or if in relation to any contract with the Consortium the Contractor or any person employed by it or acting on its behalf appears to have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or to have given any fee or reward contrary to Section 117(2) of the Local Government Act 1972; or

2.20.2.2 if the Contractor commits persistent breaches or a substantial breach of any of the terms of the Agreement and the Contracting Authority reasonably regards such a substantial breach as incapable of being remedied; or

2.20.2.3 if it is discovered by the Contracting Authority at any time that the Contractor;

- (i) has fixed or adjusted the amount of his tender for the Agreement by or in accordance with any agreement or arrangement with any other person; or
- (ii) communicated to any person other than the Contracting Authority the amount or approximate amount of his proposed tender (except where such disclosure is made in confidence in order to obtain quotations necessary for the preparation of the tender); or
- (iii) entered into any agreement or arrangement with any other person that he would refrain from tendering or as to the amount of any tender to be submitted; or
- (iv) offered or agreed to pay or gave or did pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person in respect of an act or omission, in relation to any other tenderer or proposed tenderer for the Agreement.

If any of the events referred to in this clause 2.20.2.3 occur the Contracting Authority shall be entitled to terminate the Agreement forthwith and to recover from the Contractor the amount of any loss resulting from such termination and the Contractor may be disqualified from tendering for any future Agreement with the Consortium.

2.20.2.4 if the Contractor, being an individual, or a partner in the case of the Contractor being a partnership any partner, becomes bankrupt or makes a composition or arrangement with creditors or has a proposal made for the voluntary arrangements for a composition of debts or scheme or arrangement approved in accordance with the Insolvency Act 1986; or

2.20.2.5 if the Contractor being a company;

- (i) has an application made under the Insolvency Act 1986 in its respect to the Court for the appointment of an administrative receiver (save for a frivolous or vexatious application which is not disposed of within 28 days); or
- (ii) has a winding-up order made or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding-up passed; or
- (iii) has a provisional liquidator, receiver or manager of its business or undertaking duly appointed; or
- (iv) has an administrative receiver as defined in the Insolvency Act 1986 appointed; or
- (v) has possession taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the floating charge; or

(vi) is in circumstances which entitle the court or a creditor to appoint or have appointed a receiver, a manager or administrative receiver or which entitles the court to make a winding-up order; or

2.20.2.6 if the Contractor ceases to carry on the whole or a substantial part of its business or disposes of the whole or a substantial part of its assets which, in the reasonable opinion of the Contracting Authority, would adversely affect the Agreement; or

2.20.2.7 if the Contractor is a company and the majority of shares carrying a right to vote in the Contractor or its Holding Company are acquired by a person who is not at the date hereof a majority shareholder; or

2.20.2.8 if the Contractor is a partnership, and the senior equity partners at the date hereof or a substantial number thereof leave the partnership.

## **2.21 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

Nothing in the Agreement confers or purports to confer any third party benefit or any right to enforce any term of the Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

## **2.22 EQUAL OPPORTUNITIES**

2.22.1 The Contractor shall observe as far as possible the Commission for Racial Equality's Code of Practice, the Disability Rights Commission's Code of Practice and the Equal Opportunities Commission's Code of Practice which aim to eliminate racial discrimination, discrimination against disabled persons or persons who have a disability, and discrimination on the grounds of sex and marriage, and to promote equality of opportunity in employment.

2.22.2 The Contractor shall provide such information as the Contracting Authority may reasonably request for the purpose of assessing the Contractor's compliance with Clause 2.22.1.

## **2.23 NOTICE TO CONTRACTOR**

Any notice or other document to be served on the Contractor shall be deemed to have been sufficiently served if served personally on the addressee or if sent there by pre-paid first class recorded delivery or facsimile transmission or electronic mail to the Contractor's registered office or last known address and shall, subject to proof to the contrary, be deemed to have been received on the second business day after the posting date or on the successful transmission as the case may be.

## **2.24 NOTICES TO CONTRACTING AUTHORITY**

Any notice or other document to be served on the Contracting Authority shall be deemed to be sufficiently served if served personally on the addressee or if sent by prepaid first class or recorded delivery post or facsimile transmission or electronic mail to the address stated in the letter of acceptance of the Contracting Authority and shall subject to proof to the contrary shall be deemed received on the second business day after the posting date or on the successful transmission as the case may be.

## **2.25 ARBITRATION**

Save in respect of Termination or any other condition where the discretion of the Contracting Authority is stated to be absolute any dispute or difference which may arise between the Contracting Authority and the Contractor in connection with or arising out of the Contract may, by agreement of both parties, be resolved by arbitration, in which event such dispute or difference shall be referred to a single arbitrator to be agreed between the Contracting Authority and the Contractor or failing such agreement within fourteen days to be nominated by the President at the time being of the British Chartered Institute of Arbitrators in accordance with the Arbitration Act 1996 or any statutory modifications or re-enactment of it.

## **2.26 LAW**

The Agreement and any resulting Contract shall be construed in accordance with English law.

## **2.27 MONETARY UNION**

Should the United Kingdom enter into European Monetary Union during the duration of this Contract, any additional costs, duties and responsibilities falling directly on the Contractor will be at his own expense.

## **2.28 PROHIBITED USE OF THE CBC LOGO**

The Contractor shall not use the logo of the Consortium or any representation thereof, nor cause it to be used other than in accordance with the protocol agreed with the Contracting Authority or with the written consent of the Contracting Authority acting on behalf of the Consortium.

**HERTFORDSHIRE COUNTY COUNCIL  
COUNTY SUPPLIES & CONTRACT SERVICES  
ON BEHALF OF THE CENTRAL BUYING CONSORTIUM**

**THE PROVISION OF**

**3. SERVICE CONDITIONS**

**3.1 Staffing of Contract**

The Contractor will employ or cause to be employed in and about the performance of the Service and in the superintendence thereof only such persons as are careful, skilled, experienced and suitable for the work. The Contracting Authority shall be at liberty to object to and require the Contractor to remove forthwith any person employed in connection with this Contract. Such persons must not again be employed in the performance of the Service without written permission of the Contracting Authority.

**3.2 Liaison Officer**

The Contractor will be required to nominate a named individual to act as Liaison Officer for the Contract and who will be the main contact point for all communications between the Contracting Authority and the Contractor. Any change in this arrangement must be agreed between the Contracting Authority and the Contractor.

**3.3 Failure to Provide the Service**

If the Contractor fails to provide the Service or any part thereof to the Contract standard:

- (a) the Contracting Authority may itself provide or may employ and pay other persons to provide the Service or any part thereof and all costs incurred thereby including additional administration and supervision costs may be deducted from any sums due or to become due to the Contractor under the Contract and shall be recoverable from the Contractor as a debt.
- (b) the rights of the Contracting Authority under this condition shall be without prejudice to its rights under all other conditions of this Contract.

**3.4 Misrepresentation**

The Contracting Authority has relied on the information given in the Contractor's presentation prior to its acceptance of its offer and any material misrepresentation contained therein shall entitle the Contracting Authority to terminate this Contract immediately.

**3.5 Provision of Equipment and Materials**

The Contractor shall provide all materials as may be necessary for the provision of the Service.

### **3.6 Confidentiality**

The Contractor or the Contractor's employees shall neither dispose of nor part with possessions of any confidential material provided to the Contractor by the Contracting Authority pursuant to the Contract other than in accordance with the express written instructions of the Contracting Authority. The provisions of this clause shall remain in force notwithstanding the termination of the Contract.

### **3.7 Default by Contractor**

In the event that the Contractor fails to complete the work on the agreed completion date then the Contracting Authority shall have the right to terminate the Contract and in the event that the Contracting Authority has incurred additional and consequential costs which resulted from such delay and termination then these shall be payable by the Contractor to the Contracting Authority unless the completion date has been extended and mutually agreed in writing whereupon this condition will apply to the revised completion date.

### **3.8 Access to the Site**

Tenderers shall be allowed access to the premises for the purpose of inspection and the Contractor for the execution of the Service during the Contracting Authority's normal working hours. In exceptional circumstances and only by agreement with the Contracting Authority arrangements may be made for work outside normal working hours.

### **3.9 Use of Council's facilities**

The Contracting Authority shall make available to the Contractor a supply of electricity and such other services as are reasonably required and available for the provision of the works. The Contractor shall be permitted to use these services at his own risk.

The Contractor shall take reasonable care to ensure that in the provision of the Service, it does not interfere with the operations of the Contracting Authority, its employees, or any other Contractor employed on the premises whether or not the Contractor is provided with sole access to the premises.

### **3.10 Clearance of the Site on completion of the Works**

On completion of the works, the Contractor shall clear away and remove from the site all surplus materials and equipment (except any such materials which are the property of the Contracting Authority) and shall leave the site clean and tidy to the satisfaction of the Contracting Authority. Any property owned by the Contractor not removed with 48 hours after the end of the Contract shall be deemed to become the property of the Contracting Authority, and may be disposed of by the Contracting Authority at the Contractor's expense.