



BRACKNELL FOREST BOROUGH COUNCIL

**CONDITIONS OF CONTRACT: GENERAL
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CONDITIONS OF CONTRACT:

These conditions may only be varied with the written agreement of the Council. No terms or conditions put forward at any time by the Contractor shall form any part of the Contract.

1 Definitions

In these conditions:-

- “Contract” means the Contract between the Council and the Contractor consisting of the Order, these conditions, the Specifications and any other documents or parts thereof specified in the Order
- “Contractor” means the person firm or company detailed in the Order to whom this contract is issued
- “Council” means Bracknell Forest Borough Council
- “Goods” means any goods that are to be supplied by the Contractor detailed in the Order
- “Order” means the order placed by the Council with the Contractor that incorporate these terms and conditions
- “Premises” means the location where the Services are to be performed or the Goods are to be delivered as specified in the Order
- “Price” means the price for the Services and/or Goods detailed on the Order
- “Services” means the services to be provided as specified in the Order and shall, where the context so admits, include any materials articles and Goods to be supplied thereunder
- “Specifications” means the technical and other specifications, plans, drawings, examples,
patterns and any other document or material issued or agreed by the Council relating to the Services and/or goods as may be specified in the Order.

A reference to any Act Statute or statutory provision shall include a reference to that Act Statute or statutory provision as amended re-enacted or replaced from time to time whether before or after the date hereof and any former Act Statute or statutory provision replaced (with or without modification) by the Act Statute or statutory provision referred to and any subordinate legislation made thereunder respectively

Part A

In the event that Services are to be supplied by the Contractor in accordance with the Specifications and Order the following conditions shall apply:-

2 Variations of the Services

2.1 The Council reserves the right by notice to the Contractor to modify the quality or quantity of the Services and any alteration to the Specifications, Price or the completion date arising by reason of such modification shall be agreed between the parties

3 Inspection of Premises and nature of Services

3.1 The Contractor is deemed to have inspected the Premises before giving his quotation or tender so as to have understood the nature and extent of the Services to be carried out and satisfied himself in relation to all matters connected with the Services and Premises

3.2 The Council shall at the request of the Contractor grant such access as may be reasonable for this purpose

4 Contractor status

In carrying out the Services the Contractor shall be acting as principal and not as the agent of the Council. Accordingly:-

4.1 the Contractor 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 Contractor is acting as the agent of the Council; and

4.2 nothing in this Contract shall impose any liability on the Council in respect of any liability incurred by the Contractor to any other person but this shall not be taken to exclude or limit any liability of the Council to the Contractor that may arise by virtue of either a breach of this Contract or any negligence on the part of the Council its staff or agents

5 Contractors personnel

5.1 The Contractor shall take the steps reasonably required by the Council to prevent unauthorised persons being admitted to the Premises. If the Council gives the Contractor 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 the involvement in the performance of the Contract, the Contractor shall take all reasonable steps to comply with such notice and, if required by the Council, the Contractor shall replace any person moved under this condition with another suitably qualified person and procure that any pass issued to the person removed is surrendered

5.2 If and when instructed by the Council the Contractor shall give to the Council a list of names and addresses of all persons who are or may be at any time concerned with the Services or any part of them, specifying the capacities in which they are so concerned, and giving such other particulars and evidence of identity and other supporting evidence as the Council may reasonably require

5.3 The decision of the Council 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 Contractor has furnished the information or taken the steps required by him under this condition shall be final and conclusive

5.4 The Contractor shall bear the cost of any notice instruction or decision of the Council under this condition

5.5 In the event that the Premises are school premises then the Protection of Children Act 1999 will apply to staff employed in the performance of the Services at the Premises:-

- 5.5.1 the Contractor undertakes to make an application pursuant to Section 8 of the Protection of Children Act 1999 and Section 113 of the Police Act 1997 and will become (if not already so) a “registered person” as defined by the Police Act 1997
- 5.5.2 the Contractor shall not employ any person in the provision of the Services at the Premises if the person is included in the list kept under Section 1 of the Protection of Children Act 1999 or Section 218(6) of the Education Reform Act 1988
- 5.5.3 the Contractor shall ensure that a CRB disclosure (enhanced level) is effected for all staff to be employed at the Premises during the term of the Contract. The Contractor shall ensure that all such staff have given their written permission for such a check and that they are made aware that any spent convictions and matters of concern falling short of criminal convictions will be disclosed on such a check. If the Contractor wishes to employ any member of staff in the provision of the Services who does not have a clean check then he will first disclose the matter of concern or spent convictions to the Council. The decision of the Council regarding the suitability of any such member of staff shall be final

6 Manner of carrying out the Services

6.1 The Contractor shall make no delivery of materials plant or other things nor commence any work on the Premises without obtaining the Council’s prior consent

6.2 Access to the Premises shall not be exclusive to the Contractor but only such as shall enable him to carry out the Services concurrently with the execution of work by others. The Contractor shall co-operate with such others as the Council may reasonably require

6.3 The Council shall have the power at any time during the progress of the Services to order in writing:-

- 6.3.1 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, and/or
- 6.3.2 the substitution of proper and suitable materials, and/or
- 6.3.3 the removal and proper re-execution of any work which in respect of material or workmanship is not in the opinion of the Council in accordance with the Contract

6.4 On completion of the Services the Contractor shall remove his plant equipment and unused materials and shall clear away from the Premises all rubbish arising out of the Services and leave the Premises in a neat and tidy condition

7 Time of performance

7.1 The Contractor shall begin performing the Services on the date stated in the Order and shall complete them by the date stated in the Order or continue to perform them for the period stated in the Order (whichever is applicable). Time is of the essence of the Contract. The Council may by written notice require the Contractor to execute the Services in such order as the Council may decide. In the absence of such notice the Contractor shall submit any detailed programs of work and progress reports as the Council may from time to time require

8 Free issue materials

8.1 Where the Council for the purposes of the Contract issues materials free of charge to the Contractor such materials shall be and remain the property of the Council. The Contractor shall maintain all such materials in good order and condition and shall use such materials solely in connection with the Contract. The Contractor shall notify the Council of any surplus materials remaining after the completion of the Services and shall dispose of them as the Council may direct. Waste of such materials arising from bad workmanship or negligence of the Contractor or any of his servants agents or sub-contractors shall be made good at the Contractor's expense. Without prejudice to any other of the rights of the Council the Contractor shall deliver up such materials whether processed or not to the Council on demand

Part B

In the event that Goods are to be supplied by the Contractor in accordance with the Order the following conditions shall apply:-

9 The Goods

9.1 The Goods to be provided shall be to the reasonable satisfaction of the Council and shall conform in all respects with the Specifications, with any particulars described in the Order or any agreed variations thereto confirmed in writing between the parties

9.2 The Goods shall conform in all respects with the requirements of any statutes orders regulations or bylaws from time to time in force

9.3 The Goods shall be suitable and sufficient for the purpose for which such Goods are ordinarily used and for any particular purpose made known to the Contractor by the Council. The Goods shall comply with any performance criteria or specification published by the Contractor and the Council relies on the skill and judgment of the Contractor in the supply of the Goods and the execution of the Order

10 Delivery

10.1 The Goods shall be delivered to the Premises named on the Order

10.2 The time of delivery shall be of the essence and failure to deliver within the time promised or specified shall enable the Council (at its option) to release itself from any obligation to accept and pay for the Goods and/or to cancel all or part of the Order therefore in either case without prejudice to its rights and remedies

11 Property and risk

11.1 The property in Goods shall pass to the Council upon delivery but without prejudice to the Council's right to reject them and all other rights the Council may

have under the Contract in relation to those Goods. Risk of loss of, damage to or deterioration of the Goods shall be borne by the Contractor until the Goods have been accepted in accordance with the Contract and, if required by the Council, installed and/ or passed their acceptance tests, whichever is the later.

12 Damage in transit

12.1 On despatch of any consignment of the Goods the Contractor shall send to the Council at the address for delivery of the Goods an advice note specifying the means of transport a place and date of despatch the number of packages and their weight and volume. The Contractor shall free of charge and as quickly as possible either replace or repair (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:-

12.1.1 in the case of damage to such Goods in transit the Council shall within 30 days of delivery give notice to the Contractor that the Goods have been damaged

12.1.2 in the case of non delivery the Council shall (provided that the Council has been advised of the despatch of the Goods) within 10 days of the notified date of delivery give notice to the Contractor that the Goods have not been delivered

13 Inspection rejection acceptance and guarantee

13.1 The Contractor shall permit the Council or its duly authorised officer to make any inspections or acceptance tests it may reasonably require either after delivery of the Goods to the Premises or at the Contractor's premises prior to delivery. In the latter case, the Contractor shall afford the Council all reasonable facilities and assistance free of charge at his premises. Acceptance of the Goods shall take place when the Council confirms its acceptance in writing following satisfactory completion of any inspections or acceptance tests. No failure to make complaint at the time of such inspection or test 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

13.2 The Council may by written notice to the Contractor 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 the Goods concerned. If the Council shall reject any of the Goods pursuant to this condition the Council shall be entitled (without prejudice to its other rights and remedies) either:-

13.2.1 to have the Goods concerned either repaired by the Contractor or (as the Council shall elect) replaced by the Contractor with Goods which comply in all respects with the requirements specified herein; or

13.2.2 to obtain a refund from the Contractor in respect of the Goods concerned

13.3 The guarantee period applicable to the Goods shall be 12 months from putting into service or 12 months from acceptance in accordance with condition 13.1 whichever shall be the earlier (subject to any alternative guarantee arrangements agreed between the Council and the Contractor and detailed on the Order). If the Council shall within such guarantee period or within 30 days thereafter give notice in writing to the Contractor of any defect in any of the Goods as may have arisen during

such guarantee period under proper and normal use the Contractor shall (without prejudice to any other rights and remedies which the Council may have) remedy such defects (whether by repair or replacement as the Council shall elect) without cost to the Council

13.4 Any Goods rejected or returned by the Council as described in condition 13.2 or 13.3 shall be returned to the Contractor at the Contractor's risk and expense

13.5 Without prejudice to the provisions of this condition, the Contractor undertakes and guarantees to the Council that all Goods are date compliant to the extent that neither performance nor functionality is or will be affected by any change of date either prior to, during or after the Contract and in particular (but without limiting the generality of the foregoing) that:-

13.5.1 no value for current date will cause any interruption in operation;

13.5.2 date-base functionality must have behaved and will continue to behave consistently for any and all changes in date prior to and after the Contract; and

13.5.3 in all interfaces and data storage the century in any date must be specified explicitly or by unambiguous algorithms or inferencing rules

14 **Labelling and packaging**

14.1 The Goods shall be packed and marked in a proper manner and in accordance with the Council's instructions and any statutory requirements and any requirements of the carriers. In particular the Goods shall be marked with any Order number detailed on the Order the net gross and tare weights the name of the contents shall be clearly marked on each container and all containers of hazardous goods (and all documents relating thereto) shall bear prominent and adequate warnings. The Contractor shall indemnify the Council against all actions 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 condition

14.2 All packaging materials will be considered non-returnable and will be destroyed unless the Contractor's advice note states that such materials will be charged for unless returned. The Council accepts no liability in respect of the non-arrival at the Contractor's premises of empty packages returned by the Council unless the Contractor shall within 10 days of receiving notice from the Council that the packages have not been despatched notify the Council of such non-arrival

15 **Examination of Goods**

15.1 The Contractor represents and warrants to the Council that the Contractor has satisfied himself that all necessary tests and examinations have been made or will be made prior to the 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 he 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. The Contractor shall indemnify the Council against all actions 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 condition

Part C - General Provisions Applicable to all Contracts

16 Patents and information

16.1 It shall be a condition of this Contract that, except to the extent that the Goods or Services incorporate designs furnished by the Council, the Goods or Services will not infringe any patent trademark registered design copyright or other right of the nature of industrial property of any third party and the Contractor 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 condition

16.2 All rights (including ownership and copyright) in any specifications instructions plans drawings patents models designs reports or other materials:-

16.2.1 furnished to produced by or made available to the Contractor by the Council are hereby assigned to and shall vest in the Council absolutely

16.2.2 prepared by or for the Contractor 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 the Contractor shall not and shall procure that his servants and agents shall not (except to the extent necessary for the implementation of this Contract) without prior written consent of the Council use or disclose any such specifications instructions plans drawings patents models designs reports or other materials as aforesaid or any other information (whether or not relevant to this Contract) which the Contractor may obtain pursuant to or by reason of the Contract except information which is in the public domain otherwise than by reason a breach of this provision, and in particular (but without prejudice to the generality of the foregoing) the Contractor shall not refer to the Council or the Contract of any advertisement without the Council's prior written consent

16.3 The provisions of this condition 16 shall apply during the continuance of this Contract and after its termination howsoever arising

17 Payment Provisions

17.1 Unless otherwise stated in the Order payment will be made within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed to the satisfaction of the Council. Where Goods are to be delivered unless otherwise stated in the Order payment will be made within 30 days of correct invoice which invoice shall be issued following acceptance of the Goods in accordance with clause 13.1

17.2 If the Council fails to pay any amount payable by it under this Contract, the Contractor shall be entitled but not obliged to charge the Council interest on the overdue amount from the due date up to the date of actual payment at the rate of two percent above the base rate for the time being of Lloyds TSB Bank plc

17.3 Value Added Tax where applicable will be shown separately on all invoices as a net extra charge

17.4 No increase in the Price will be accepted by the Council unless agreed by the Council in writing before the execution of the Order and detailed therein

18 **Access to Premises**

18.1 Any access to Premises and any labour and equipment that may be provided by the Council in connection with delivery of Goods or provision of Services shall be provided without acceptance by the Council of any liability whatsoever and the Contractor shall indemnify the Council in respect of any actions claims demands charges losses costs and expenses which the Council may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Contractor or any of his sub-contractors

18.2 Where any access to the Premises is necessary in connection with delivery or installation or the provision of Services the Contractor and his sub-contractors shall at all times comply with the reasonable security requirements of the Council

18.3 The time of delivery in respect of both Goods and the completion of Services shall be of the essence and failure to deliver within the time promised or specified shall enable the Council (at its option) to release itself from any obligation to accept and pay for the Goods or Services and/or to cancel all or part of the Order therefore in either case without prejudice to its rights and remedies

19 **Health and Safety**

19.1 The Contractor shall in performing the Contract adopt safe methods of work in order to protect the health and safety of his own employees the employees of the Council and of all other persons including members of the public and shall comply with the requirements of the Health & Safety at Work Act 1974, the Management of Health & Safety Regulations 1992, the Control of Substances Hazardous to Health (COSHH) Regulations 1988 and 1994 and the Road Traffic Act 1988, HSE guidance notes and approved Code of Practice and of any other Acts Regulations Orders or any European Directive pertaining to the health and safety of persons and shall have regard to the Council's health and safety policy

19.2 The Contractor shall, prior to the commencement date of this Contract provide to the Council on request with a written copy of his health and safety working procedures relating to the performance of the Contract.

19.3 The Contractor shall review his health and safety policy and safe working procedures as often as may be necessary and in the light of changing legislation or working practices and shall notify the Council in writing of any such revisions if required by the Council. The Council may require the Contractor to amend its health and safety policy and safe working procedures to comply with any change in legislation or working practices.

19.4 The Contractor shall advise the Council of the name address and telephone number of the person within his organisation responsible for health and safety and welfare matters.

19.5 The Contractor shall be responsible for ensuring compliance (and that of any sub-contractor) with aforementioned safety policies.

20 **Indemnity Insurance**

20.1 Without prejudice to any rights or remedies of the Council (including the Council's rights and indemnities pursuant to the Contract the Contractor shall indemnify the Council against all actions 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 from the performance of the Contractor of the Services or the negligent or wrongful act or omission of the Contractor

20.2 The Contractor shall have in force and shall require any sub-contractor to have in force:-

20.2.1 employers liability insurance in accordance with any legal requirements for the time being in force; and

20.2.2 public liability insurance for such sum and range of cover as the Contractor deems to be appropriate but covering at least all matters which are the subject of indemnities or compensation obligations under these conditions in the sum of not less than £5 million for any one instant and unlimited in total, unless otherwise agreed by the Council in writing and detailed in the Order.

20.3 In the event that as part of the provision of the Services the Contractor is providing professional advice to the Council then the Contractor shall for the term of the Contract and for a period of three years from the date of satisfactory completion of the Services have and keep in force professional indemnity insurance in the sum of no less than £1,000,000 or such other sum as shall be detailed on the Order

20.4 The policy or policies of insurance referred to in condition 20.2 shall be shown to the Council whenever it requests together with satisfactory evidence of payment of premiums

21 **Equal Opportunities**

21.1 The Contractor shall ensure that its Terms and Conditions of Employment and its policies and procedures relating to employment comply with all current legislation other legal requirements and codes of practice published by all relevant recognised bodies including but not limited to:-

ACAS

The Equalities and Human Rights Commission

The Department of Communities and Local Government

The Department for Business, Enterprise and Regulatory Reform

and shall upon request furnish the Council with such evidence of compliance with the same as the Council shall specify and require

21.2 The Contractor shall not discriminate or permit any employee or agent of the Contractor to discriminate in any way against any person on the basis of race gender disability age religion belief or sexual orientation or in any other way prohibited by law and shall comply at all times at its own expense with any requirements made by the Council to be observed by contractors in its policies to promote equality and diversity.

21.3 The Contractor shall comply with the Council's policies made pursuant to the Race Relations (Amendment) Act 2000 the Disability Discrimination Act 1995 the Equality Act 2006 and for the promotion of equality and diversity published from time to time and shall if required to do so produce evidence satisfactory to the Council that the performance of the contract is consistent with and in accordance with those policies

21.4 The Contractor shall be able to demonstrate that where appropriate (bearing in mind the nature of the Goods or Services to be provided) that those Goods or Services are accessible and delivered in a way that is appropriate to meet the needs of those people that the Goods or Services are intended to benefit

21.5 If required by the Council the Contractor shall prepare and monitor a plan to deliver fair and equal access to the Goods or Services to ensure delivery of the Goods or Services in accordance with condition 21.4 above and shall make this plan available to the Council upon request. The Contractor shall make such reasonable changes to his plan as may reasonably be required by the Council to ensure compliance with condition 21.4 above. Where relevant to the contract and as agreed between the contractor and the Council, the Contractor shall also be expected to monitor the representation within its workforce and provide the Council with a breakdown of job applicants and workforce on the basis of race gender disability age religion or belief

21.6 The Contractor shall ensure that its staff are properly trained in respect of the matters detailed in this clause to ensure compliance with the Contractor's duties relating to equality and diversity and fair access in the Contract

22 **Termination**

22.1 The Council may terminate the Contract by giving the Contractor at least 30 days prior written notice and such termination shall not affect the Council's obligation to pay for any Goods to be delivered or Services to be performed up to the date of termination. The Council shall indemnify the Contractor against any direct, verifiable and non-recoverable costs which the Contractor has reasonably and properly incurred in connection with the Contract to the extent to which they would represent an unavoidable loss by the Contractor by reason of the termination of the Contract under this condition 22.1.

22.2 The Contractor shall notify the Council in writing immediately upon the occurrence of any of the following events:-

22.2.1 where the Contractor is an individual and if a petition is presented for the Contractor's bankruptcy or a criminal bankruptcy order is made against the Contractor 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 is appointed to manage his affairs; or

22.2.2 where the Contractor is not an individual but is a firm or a number of persons acting together in any capacity if any event in (22.2.1) or (22.2.3) of this condition occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Contractor to be wound up as an unregistered company; or

22.2.3 where the Contractor is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an 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 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

22.3 On the occurrence of any of the events described in condition 22.2 or if the Contractor 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 Contractor is an individual if he shall die or be adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983 the Council shall be entitled to terminate this Contract by notice to the Contractor with immediate effect

22.4 Termination under this condition 22 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Council

23 **Default**

23.1 If the Contractor fails to deliver the Goods or Services or any portion thereof within the time specified in the Specifications, the Order or otherwise in accordance with the requirements of the Contract the Council shall be at liberty without prejudice to any other remedy for breach of contract and without prejudice to any further conditions detailed herein to determine the Order either wholly or to the extent of such default and to purchase other Goods or Services as the case may be of the same or similar description to make good:-

23.1.1 such default; or

23.1.2 in the event of the Order being wholly determined the Goods or Services remaining to be delivered

23.2 If the amount by which the costs of purchasing such other goods or services exceeds the amount which would have been payable to the Contractor for them if they had been delivered in accordance with the Order will be recoverable from the Contractor

24 **Recovery of sums due**

24.1 Wherever under this Contract any sum of money is recoverable from or payable by the Contractor that sum may be deducted from any sum then due or which at any later time may become due to the Contractor under this Contract or under any other agreement or contract with the Council

25 **Notices**

25.1 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 service or transmitted by telex telemessage facsimile transmission or other means of telecommunication resulting in the receipt of a written communication in permanent form and if so sent or transmitted to the address of the party shown in the Order or to such other address as the party may by notice to the other have substituted therefore shall be deemed effectively to be 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

26 **Assignment and sub-contracting**

26.1 The Contractor is prohibited from transferring or assigning directly or indirectly to any person or persons whatsoever any portion of the Contract without written

permission given on behalf of the Council by the Council's responsible director. Sub-letting is prohibited without the consent of the Council

26.2 The Contractor shall be responsible for the observance of this requirement by sub-contractors employed in the execution of the Contract

27 **Data Protection**

27.1 The Contractor shall comply in all respects with the provisions of the Data Protection Act 1998 and all subsequent and supporting legislation made pursuant thereto and will indemnify the Council against all actions costs expenses claims proceedings and demands which may be brought or made against the Council for breach of statutory duty under the Act which arises from the use disclosure or transfer of personal data by the Contractor and his servants and agents

28 **Liability for Sub-contractors**

28.1 In the event that the Council permits the Contractor to sub-contract all or part of the provision of the Services or Goods the Contractor shall remain and continue to remain liable for the work of the sub-contractor

29 **Standards**

29.1 In the event that the Services or the provision of the Goods require compliance with an appropriate British Standard then the Council shall accept any equivalent European Standard

30 **Bribery and corruption**

The Council shall be entitled to terminate the Contract forthwith and to recover from the Contractor the amount of any loss resulting from such termination if:-

30.1 the Contractor shall have 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 having done or forborne to do any action in relation to the Contract or any other contract with the Council; or

30.2 the like acts shall have been done by any person employed by the Contractor or acting on his behalf (whether with or without the knowledge of the Contractor); or

30.3 in relation to any contract with the Council the Contractor or any person employed by him or acting on his behalf shall:-

30.3.1 have committed any offence under the Prevention of Corruption Acts 1889 to 1916, or

30.3.2 have given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972, or

30.3.3 where collusion has taken place between two or more tenderers or parties in fixing or adjusting the bids submitted for the Contract

31 **Human Rights**

31.1 The Contractor confirms that he will perform his obligations pursuant to the Contract in all respects in conformance with the Human Rights Act 1998

31.2 The Contractor hereby indemnifies the Council from and against all losses costs expenses liabilities damages and claims arising from the failure of the Contractor his servants or agents to duly perform his obligations pursuant to sub condition 31.1 above and arising further from any act or omission of the Contractor his servants or agents in respect of the non performance of the said obligations

31.3 The Contractor ensures the compliance of any sub contractor of his in the performance of the Contract with the provisions of this condition and shall indemnify the Council accordingly in respect of any breach of the same by the sub contractor

32 **No rights of third parties**

32.1 The parties hereby declare that no term of the Contract is intended by the parties to confer a benefit on any third party (as defined by the Contracts (Rights of Third Parties) Act 1999) nor is intended to be enforceable by any third party. The provisions of the said Act are hereby excluded

33 **Waiver**

33.1 The failure of either party to insist upon the 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 hereunder shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by the Contract

33.2 A waiver of any breach of contract shall not constitute a waiver of any such subsequent breaches

33.3 No waiver of any of the provisions of the Contract shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing

34 **Freedom of Information**

34.1 The Council is under a statutory duty which may require the release of information under the Freedom of Information Act 2000. Such information may include matters relating to or arising out of or under this Contract. The Council shall be entitled to disclose such information in the event that it receives a request to do so. In this event the Council shall inform the Contractor of the request and give the Contractor details of the information that the Council intends to disclose. The Council will not usually disclose information which is subject to an exemption under the Freedom of Information Act 2000 save where such disclosure is agreed by the Contractor or required by the Information Commissioner

35 **TUPE**

35.1 Prior to or after the termination of the Contract the Council may require the Contractor to supply to the Council such reasonable information in respect of the Contractors staff performing the Contract so as to establish whether or not the Transfer of Undertakings Protection of Employment Regulations 2006 (and all subsequent legislation in respect of protection of employment) might apply to the transfer of the Contract to another undertaking and to the extent of any liability deriving therefrom

35.2 The Contractor shall promptly supply such information as may be required by the Council in respect of the Contractors staff and their terms and conditions of employment to any potential tenderer for any new agreement for the Goods and/or Services and shall promptly inform the Council or any such tenderer (as the case may be) of any change to such information

36 **Contractor's Property**

36.1 All property of the Contractor shall be at the sole risk of the Contractor while on the Premises and the Council shall not be liable for any loss or damage to such property unless this results from the wilful act of default of the Council.

37 **Headings**

37.1 The headings to these conditions shall not affect their interpretation

38 **Governing Law**

38.1 These conditions shall be governed by and construed in accordance with English Law and the Contractor hereby irrevocably submits to the jurisdiction of the English Courts

39. **Confidentiality**

39.1 For the purposes of this condition "Confidential Information" means all information (whether commercial, financial, technical, personal or otherwise) relating to the disclosing party its employees, sub-contractors, servants or agents disclosed to or otherwise obtained by the recipient party under or in connection with the Contract and which is designated as being confidential or which is by its nature clearly confidential

39.2 Each party undertakes in respect of Confidential Information for which it is the recipient:-

39.2.1 to treat such information as confidential;

39.2.2 not without the disclosing parties proper written consent to communicate or disclose any part of such information to any person except:-

39.2.2.1 only to those employees agents sub-contractors and other suppliers on a need to know basis who are directly involved in the Contract

39.2.2.2 the recipient's auditors, professional advisers and any other persons or bodies having a legal right or duty to have access to the knowledge of the Confidential Information in connection with the business of the recipient

39.2.2.3 to ensure that all persons and bodies mentioned in sub condition 39.2.2.2 are made aware, prior to disclosure, of

the confidential nature of the Confidential Information and that they owe a duty of confidence to the disclosing party and to use all reasonable endeavours to ensure that such persons and bodies comply with the provisions of this sub condition

39.2.2.4 not to use or circulate such information within its own organisation except to the extent necessary for the purposes of the Contract

39.3 The obligations in this condition will not apply to the Confidential Information:-

39.3.1 in the recipient's possession (with full right to disclose) before receiving it; or

39.3.2 which is or becomes public knowledge other than by breach of this condition; or

39.3.3 independently developed by the recipient without access to or use of the Confidential Information; or

39.3.4 lawfully received from a third party (with full right to disclosure)

39.4 The Contractor shall indemnify the Council from and against all claims losses expenses damages and costs arising from the breach of this condition by the Contractor its employees, servants agents and sub-contractors

39.5 Notwithstanding early termination of the Contract for any reason this condition shall continue in force for a period of three years following the date of such early termination or the expiry date of the Contract.