



**GENERAL CONDITIONS OF
CONTRACT
FOR THE SUPPLY AND
INSTALLATION OF GOODS**

1. INTERPRETATION

1.1 In the Contract (as defined below) the following words and expressions will have the following meanings:-

- (a) "The Authority" means Conwy County Borough Council of Council Offices, Bodlondeb, Conwy
- (b) "The Contractor" means the person or persons, firm or company whose tender or other offer has been accepted by the Authority and includes the Contractor's personal representatives successors permitted assigned servants or agents
- (c) The "Chief Officer" means the Chief Executive, the Corporate Directors or Heads of Services or any other such authorised Officer
- (d) the "Goods" means the materials goods or articles including vehicles and plant being supplied by the Contractor in accordance with the Contract
- (e) The "Contract" means the General Conditions of Contract, the specification, the schedule of prices, the tender or other offer and its acceptance and any other supplemental documents
- (f) The "Tender" means a Contractor's formal proposal submitted in response to an invitation to tender or a Contractor's quotation of price
- (g) "Safety Legislation" means the Health and Safety at Work Act 1974 and the Consumer Protection Act 1987 together with all regulations made under them including but not limited to, the General Product Safety Regulations 1994, the Control of Substances Hazardous to Health Regulations 1999 and all other legislation, codes of practice and guidance from time to time amended (including subordinate legislation and European Community legislation to the effect that it has direct effect in Member State) imposing legal requirements with respect to health and safety at work and/or the safety of the Goods handling storage transportation or disposal of the Goods or goods incorporating the goods and health and safety of the users of the Goods and all work process under this Contract;
- (h) the "Contract Manager" means such persons as are notified from time to time to the Contractor by the Chief Officer in writing. Any Contract Manager shall undertake day to day monitoring of the goods provided within this Contract on behalf of the Chief Officer.

1.2 Words importing the singular also include the plural and vice versa where the context requires and words importing the masculine gender shall likewise include the feminine gender

1.3 The marginal headings and notes in these General Conditions will not be deemed to be part thereof or taken into consideration in the interpretation or construction thereof of the Contract

1.4 All references contained in this document to clauses are references to clauses numbered in these General Conditions and not to those in any other document forming part of the Contract.

1.5 A reference to any statute enactment order or other similar instrument shall be construed as a reference to the statute enactment order regulation or instrument as amended by any subsequent statute enactment order regulation or instrument or as contained in any subsequent re-enactment thereof.

2. TERMS AND CONDITIONS

2.1 The conditions shall apply to all contracts for the purchase of and/or installation of Goods by the Authority from the Contractor to the exclusion of all other terms and conditions including any terms and conditions which the Contractor may purport to apply under any sales offer or similar document or in correspondence. These conditions constitute the entire understanding between the Authority and the Contractor with respect to the subject matter covered by the

contract of purchase and supersede all previous agreements and understandings between the parties.

2.2 Dispatch or delivery of the Goods by the Contractor to the Authority shall be deemed conclusive evidence of the Contractors acceptance of these conditions

2.3 Any variations of these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing in accordance with clause 41 by the Authority.

3. QUALITY

3.1 The Goods shall be to the reasonable satisfaction of the Authority and shall conform in all respects with any sample approved by the Authority and with any description or particulars contained in the specifications and / or schedule, and in any variations thereto.

3.2 Goods will be manufactured in accordance with all applicable British Standard Specifications, British Standard Codes of Practice or the European Equivalent specifications or practices current at the date of the tender and all Goods will be at least of the standard required by the appropriate British Standards Specifications or British Standard Code of Practice or European Equivalent except insofar as it may be varied or supplemented in accordance with these Conditions.

3.3 Where an appropriate British Standard Specifications or British Standard Code of Practice or the European Equivalent specifications is not available, then the Contract will be based on a definite specification supplied by the Chief Officer.

3.4 The Contractor will when requested submit samples for evaluation and approval and all subsequent deliveries of the Goods shall be equal in quality to approved samples.

4 WARRANTIES

4.1 The Contractor warrants that the Goods will at the time of delivery:

4.1.1 Be of satisfactory quality and fit for any purpose held out by the Contractor or indicated in the specification;

4.1.2 Be free from defects in design materials and workmanship;

4.1.3 Correspond to the description given by the Contractor and the requirements of the specification / schedule.

4.1.4 Comply with all statutory requirement and regulations relating to the sale packaging labelling or marking of Goods.

4.2 The Contractor shall comply with the Safety Legislation and all applicable European standards and legal requirements concerning the design, quality, manufacture, storage and testing of the Goods.

4.3 The Goods shall be so designed, constructed, finished and packaged as to be safe and without risks to health and the Goods will, where appropriate, be supplied with full instructions for their use, maintenance and repair and with any necessary warning notices clearly displayed.

4.4 The Contractor agrees before delivery to furnish the Authority in writing with a list of any harmful or potentially harmful properties or ingredients in the Goods supplied whether in use or otherwise together with details of any specialist training required to enable the Goods to be used safely. The Authority will rely on the supply of such information from the Contractor in order to satisfy its own obligations under the Safety Legislation.

5 DELIVERY

- 5.1 The Contractor shall deliver the Goods free of charge to the Authority and at the risk of the Contractor to any place within the geographical confines of the Authority. Such request will be made by the Chief Officer in writing and will specify times and dates of delivery and quantities of Goods as appropriate.
- 5.2 Except where otherwise provided in the Contract, delivery shall include the unloading and stacking of the Goods by the Contractor's employees, suppliers or carriers at such place as the Authority or duly authorised persons shall reasonably direct.
- 5.3 Unless expressly agreed to the contrary the Authority shall not be obliged to return to the Contractor any packaging or packing materials for the Goods.
- 5.4 The time of delivery shall be of the essence and failure to deliver within the time promised or specified shall enable the Chief Officer (at the Authority's option) to release the Authority from any obligation to accept and pay for the Goods and / or cancel all or part of the Contract therefore, in either case without prejudice to other rights and remedies.
- 5.5 The Contractor shall be responsible for all extra costs and charges incurred by or charged to the Authority by reason of his failure to deliver the Goods in accordance with clause 5.1 and the amount will be deducted from any payment due to the Contractor.
- 5.6 Unless expressly agreed to the contrary, the Authority shall not be obliged to accept delivery by instalments. If, however, the Authority does specify or agree to delivery by instalments delivery of any one instalment later than the date so specified or agreed shall, without prejudice to any other rights or remedies of the Authority entitle the Authority to terminate the whole of any unfulfilled part of the Contract without further liability to the Contractor.
- 5.7 In the event of late delivery of the Goods by the Contractor to the Authority in breach of this contract, and subject to clause 5.4, the Contractor shall pay to the Authority and by way of an agreed liquidated damages, the amount as stated in the specification / schedule per week for each Goods not delivered to the Authority in conformity with the time stipulated by the contract.
- 5.8 Unless otherwise agreed in writing between the Contractor and Chief Officer and where access to the Authority's premises is necessary in connection with delivery or installation, the Contractor and the Contractor's sub-contractors or suppliers shall at all times comply with the reasonable requirements of the Chief Officer and shall use all reasonable endeavours to ensure that its operations do not disrupt the orderly running of those premises and that its employees behave with due considerations towards the Authority staff and other present on those premises.
- 5.9 Any access to the Authority's premises and any labour and equipment that may be provided by the Authority in connection with delivery shall be provided without acceptance by the Authority of any liability whatsoever and the Contractor shall indemnify the Authority in respect of any actions, suits, claims demands losses charges a costs and expenses which the Authority may suffer or incur as a result of or in connection with 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 the Contractors' sub-contractors or suppliers.

6 ADVICE AND DELIVERY NOTES

- 6.1 On dispatch of any consignment of the Goods the Contractor shall send to the Chief Officer at the address for delivery of the Goods an advice note specifying the means of transport, the place and date of despatch, and a description net weight or quantity of the Goods to be delivered. The Contractor shall be responsible for all other charges occasioned by any failure to send advice notes.
- 6.2 The Contractor shall free of charge and as quickly as possible either repaid 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

6.2.1 in the case of damage to such Goods in transit the Authority shall within thirty days of delivery give notice to the Contractor that the Goods have been damaged,

6.2.2 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.

7 VERIFICATION AND REJECTION OF GOODS

7.1 If the Chief Officer requires, the Contractor will at his own expense submit the Goods being supplied by him to checks and tests in such manner as will enable the Chief Officer to ascertain or verify the weight, quantities or quality of the Goods being delivered or any other check as the Chief Officer may require. No failure to make a complaint at the time of such inspection or tests and no approval given during or after such tests or inspections shall constitute a waiver by the Authority of any rights or remedies in respect of the Goods and, in particular, the Authority retains the right to reject the Goods.

7.2 The Authority may by written notice to the Contractor reject any of the Goods delivered to the Authority which fail to conform to the approved sample or fail to meet the requirements as set out in the specification / schedule. Such notice shall be given within a reasonable time after delivery to the Authority of the Goods concerns.

7.3 If the Authority shall reject any of the goods pursuant to this Condition the Authority shall be entitled (without prejudice to other rights and remedies) either:-

7.3.1 to have the Goods concerns as quickly as possible either repaired by the Contractor or (as the Authority shall elect) replaced by the contractor with Goods which conform in all respects with the approved sample or with the requirement specified herein; or

7.3.2 to obtain a refund from the Contractor in respect of the Goods concerned and purchase elsewhere.

7.4 Any Goods rejected or to be returned must be removed by the Contractor at his own expense within a time limit set by the Chief Officer. If the Goods are not removed within the prescribed time scale, they may be removed sold or otherwise disposed of by the Authority. The expense of disposing the Goods will be paid to the Authority by the Contractor on a demand in writing.

7.5 The Authority will not be liable in any way for injury to deterioration or loss of rejected Goods

8 PASSING OF PROPERTY

8.1 Risk of damage to or loss of the Goods shall pass to the Authority upon the point of delivery in accordance with the Contract, without prejudice to any rights of rejection which may accrue to the Authority under the Contract or otherwise

8.2 The ownership and title in the Goods shall pass to the Authority upon the delivery unless payment for the Goods is made prior to delivery when it shall pass to the Authority once payment has been made.

9 GUARANTEE

9.1 Without prejudice to any other remedy which the Authority may have for breach of contract, if within the period after delivery named in the Specification or, if no period is named within the period of one year after delivery, the Authority gives notice in writing to the Contractor of any defect in the Goods which shall arise under proper use from faulty design, materials, or workmanship, then the Contractor shall with all possible speed, replace or repair the Goods so as to remedy the defects without cost to the Authority.

9.2 The Authority shall at its sole option as soon as practicable after discovering any defect or failure referred to in clause 9.1 return the defective Goods or part thereof to the Contractor

and at the Contractor's risk and expense for replacement or repair, or request the Contractor to attend the Authority's premises or at the place of installation of the Goods (whether or not installed by or on behalf of the Contractor) for the purpose of removing, repairing and/or replacing and refitting the defective Goods or parts thereof without cost to the Authority.

10 VARIATION OF THE SPECIFICATION

- 10.1 The Authority reserves the right on giving reasonable written notice from time to time to require changes to the Specification of any Goods (whether by way of the removal of Goods, the addition of new Goods, or increasing or decreasing the Goods or locations where the Goods are to be provided) for any reasons whatsoever. Such a change is hereinafter called "a Variation".
- 10.2 In the event of a Variation the Contract Price may also be varied. Such Variation in the Contract Price shall be calculated by the Authority and agreed with the Contractor and shall be such amount as properly and fairly reflects the nature and extent of the Variation in all the circumstances. Failing agreement the matter shall be determined by negotiation or mediation in accordance with the provisions of Clause 41.
- 10.3 The Contractor shall provide such information as may be reasonably required to enable such varied price to be calculated.

11 THE TENDER PRICE

- 11.1 The Contractor shall clearly set out and be bound by the price in his tender in the manner required which unless otherwise agreed between the parties in writing shall be the price for purchasing the Goods.
- 11.2 The Authority does not bind itself to accept the lowest or any tender and reserves the right to accept any tender in whole or in part that the Authority deems appropriate.

12 PRICE

- 12.1 The price for the supply of the Goods will be the price stipulated in the Contractor's tender and unless otherwise so stated shall be:
- 12.1.1 Exclusive of any applicable VAT (which shall be payable by the Authority subject to receipt of a valid VAT invoice); and
- 12.1.2 Inclusive of all charges for packaging packing carriage insurance and delivery of the Goods and any duties or levies other than VAT.
- 12.1.3 Where appropriate the contract price shall include the cost of instruction of the Authority's personnel in the use of the Goods such instructions shall be in accordance with the requirement of the Contract.
- 12.1.4 The sum or sums payable to the Contractor by the Authority under this Contract shall constitute the only remuneration in connection with the Goods and neither the Contractor nor its employees shall accept any commission discount allowance or indirect payment or other consideration in connection with or in relation to the goods this Contract or to the discharge of the Contractor's obligations hereunder.
- 12.2 No increase in the Price may be made (whether on account of increase material labour or transport costs fluctuations in rates of exchange or otherwise) without the prior written consent of the Authority.
- 12.3 Proposals for the revision of prices must be submitted in writing to the Chief Officer at the Authority at least 30 days prior to the effective date of the variation. The Contractor must furnish such evidence as may be reasonably required to satisfy the Authority that the amount of any increase in cost is justified and / or any decrease in cost is adequate.

- 12.4 Any proposed price increases may be subject to the relevant industry price index in force at the time of any contract award. The Authority retains the right to stipulate the appropriate price indices unless otherwise agreed with the contractor.
- 12.5 Revised prices will only be paid after the Contractor has received written confirmation of the new prices from the Chief Officer at the authority.
- 12.6 In no circumstances will the Authority consider themselves under an obligation to pay any increased prices of which they have not received the requisite notice and which they have not agreed in writing to accept.
- 12.7 In the event of failure to reach agreement on the revision of prices, either party shall be at liberty to refer to arbitration.
- 12.8 The Authority may set off against the price (including any applicable VAT payable) amounts due from the Contractor whether under the Contract or any other contract with the Authority.

13 PAYMENTS

- 13.1 Invoices shall be rendered by the Contractor to the Chief Officer in respect of the goods supplied to each order and shall clearly quote the number of the order to which they refer. All invoices must be submitted to the Chief Officer within seven days from date of dispatch of the Goods.
- 13.2 The Authority shall pay the Contract Price to the Contractor, by BACS (Bank Automated Clearing System) if the Authority so chooses, within 30 days of the receipt of the Goods or a valid invoice (rendered in accordance with Clauses 12.1.1 and 12.1.2), whichever is later.
- 13.3 The Authority shall not be responsible for the payment of any charges for the supply of Goods supplied in excess of the Goods required by the Order or any variation of it unless authorised in writing by a further Order.

14 MANNER OF CARRYING OUT THE INSTALLATION WORK

- 14.1 The Contractor shall make no deliveries of materials, plant or other things nor commence any work on the Authority's premises without obtaining the Chief Officer's prior consent.
- 14.2 Access to the Authority's premises shall not be exclusive to the Contractor but only such as shall enable the performance of the Contract concurrently with the execution of work by others. The Contractor shall co-operate with such others as the Chief Officer may reasonably require.
- 14.3 The Chief Officer shall have the power at any time during the progress of the Contract to order in writing:
- 14.3.1 The removal from the Authority's premises of any materials which in the opinion of the Client are either hazardous, noxious or not in accordance with the Contract; and / or
- 14.3.2 The substitution of property and suitable materials; and / or
- 14.3.3 The removal and proper re-execution notwithstanding any previous test thereof or interim payment therefore of any work or Goods which, in respect of material or workmanship is not in the opinion of the Chief Officer in accordance with the Contract
- 14.3.4 On completion of the Contract the Contractor shall remove the Contractor's plant equipment and unused materials and shall clear away from the Authority's premises all rubbish arising out of the contract and leave the Authority's premises in a neat and tidy condition.
- 14.4 The Contractor shall exercise all reasonable skill, care and diligence in the discharge and the carrying out of supplying the Goods and will only employ such persons who have adequate knowledge and are competent to carry out the Contract.

15 INTELLECTUAL PROPERTY

- 15.1 Any specification supplied by the Authority to the Contractor, or specifically produced by the Contractor for the Authority, in connection with the Contract, together with the copyright, design rights or any other intellectual property rights in the specification / schedule, shall be the exclusive property of the Authority, and the Authority shall be free to effect and be responsible for securing such protection of the design whether by registration in the Register of Designs or otherwise as it sees fit.
- 15.2 The Contractor shall lend to the Authority all assistance in securing registration of the design in the Register of Designs if required to do so by the Authority. In addition the Contractor shall if required to do so by the Authority execute any assignment of the copyright in such designs complying with the provisions of the Copyright Designs and Patents Act 1998 (or any subsequent enactment thereof). However the right of the Authority to require such an assignment of copyright shall in no way be construed as indication that the copyright in such designs is not already vested in the Authority in accordance with the terms of this agreement.
- 15.3 All designs, drawing, specifications and information supplied by the Authority in connection with the Contract are confidential, and their use must be strictly confined to the Contractor's own works for the purposes of the Contract. All such designs, drawings, specifications and information and all copies thereof must be returned to the Authority on completion of the Contract.
- 15.4 The Contractor shall indemnify the Authority against all actions, claims and demands, costs charges and expenses awarded against or incurred by the Authority as a result of or in connection with any claim that the Service provided infringes the patent, registered design, trade mark, copyright or other intellectual property rights of any other person except to the extent that the claim arises from compliance with the specification / schedule.
- 15.5 The Authority agrees not without the Contractor's prior written consent to alter modify or vary a design supplied by the contractor to the Authority which is considered by the Contractor to be material to the design or to permit any such design to be altered modified or varied by any other person firm or company.

16 ASSIGNMENT AND SUBLETTING

- 16.1 The Contractor shall not assign the Contract or any part thereof or any benefit in or under the Contract without the written consent of the Chief Officer, such consent not to be unreasonably withheld.
- 16.2 The Authority shall be entitled to assign the benefit of the Contract or any part thereof and shall give written notice of any assignment to the Contractor.
- 16.3 The Contractor shall not sublet the whole of the Contract or any part thereof except where such subletting may be customary to the trade concerned. Any subletting will be notified to the Chief Officer within five (5) working days.
- 16.5 The Contractor acknowledges and agrees that by way of illustration only and without restricting or fettering the Authority's right to withhold its consent on reasonable grounds it shall be reasonable for the Authority to withhold its consent where the sub-contracting of any element of the supply of the Goods would be contrary to law or contrary to public or government policy or contrary to public morality and decency or which it is not in the national interest. If with the Authority's consent the Contractor sub-contracts the provision of the Goods, every act or omission of the sub-contractor shall for the purposes of the Contract deemed to be the act or omission of the Contractor and the Contractor shall be liable to the Authority thereafter as if such act or omission had been committed or omitted by the Contractor itself.

17 LIABILITY OF CONTRACTOR

- 17.1 The Contractor shall indemnify the Authority in full in respect of all damage or injury to any person or to any property (including the Goods themselves) and against all actions, suits,

claims, demands, costs, charges, or expenses awarded against or incurred by the Authority (including the costs of transport, labour, administration and legal expenses on an indemnity basis to the Authority) arising from:

- 17.1.1 breach of any warranty given by the Contractor in relation to the Goods including, without limitation, the warranty set out in clause 4;
 - 17.1.2 any defect or fault in the Goods; or
 - 17.1.3 any act or omission of the Contractor or its employees, agents or sub-contractors in supplying, delivering and, where applicable, installing the Goods.
- 17.2 Without prejudice to any other provision of the Contract, the Contractor shall fully indemnify the Authority against any claims made against it as a result of any failure by the Contractor to comply with any statutory provision to be observed or performed in connection with the supply of the Goods.
- 17.3 Save as provided by clause 17.4 the Authority shall not under any circumstances be liable to the Contractor whether in contract, tort or otherwise, for any loss, damage or injury however caused or arising out of, or in the course of or in connection with, the provision by the contractor or the Contractor's employees of the Goods.
- 17.4 Clause 17.3 shall not apply in relation to:
- 17.4.1 any failure by the Authority to make proper payment to the Contractor in accordance with the terms of the Contract; and
 - 17.4.2 any deliberate or negligent act or omission of the Authority or any of its employees and in particular any negligent act or omission giving rise to death or personal injury.
- 17.5 The Authority shall not in any event be liable to the Contractor for any indirect or consequential loss whatever and however caused.
- 17.6 The Contractor's liability to indemnify the Authority arising under clauses 17.1 and 17.2 above shall be without prejudice to any other right or remedy of the Authority arising under this Contract.

18 INSURANCE

- 18.1 Without prejudice to its liabilities under clause 17 the Contractor shall throughout the Contract term maintain and shall ensure that any sub-contractor engaged for any purpose connected with the supply of the Goods maintains with a reputable insurance company such insurances as are necessary to cover product liability and any liability of the Contractor or, as the case may be, of the sub-contractor, in respect of loss of or damage to property and personal injury to, or death of, any person arising out of or in the course of or caused by the Contractor's carrying out or failing to carry out obligations under the Contract or the sub-contractor carrying out or failing to carry out his sub-contract obligations and against all actions, claims, demands, proceedings, damages, costs, charges and expenses in respect thereof.
- 18.2 The Contractor shall throughout the Contract Period maintain such insurances as are necessary to cover any liability arising under clauses 17 and 18.1. Such insurance cover shall have an indemnity limit of not less than five million pounds in respect of any one incident for public liability and ten million pounds in respect of any one incident for employers liability.
- 18.3 The Contractor shall supply to the Authority upon request a certificate from its insurers or brokers confirming that the Contractor's insurance policies comply with clause 18.2 and the Contractor shall supply to the Authority on request copies of all insurance policies, cover notes, premium receipts and other documents necessary to establish compliance with clause 18.2.

19 SURETIES

- 19.1 The Contractor shall if required give security for the due and faithful performance of the Contract and any order placed in such one of the following ways shall be indicated by the Authority:-
- 19.1.1 By the Contractor executing a Bond in a form to be approved by the Chief Officer in a sum equal to ten per cent of the value or amount of any order placed under the Contract; or
- 19.1.2 By the Contractor obtaining a Guarantee by its holding company or companies (as defined by s.154 of the Companies Act 1985 if the Contractor is a subsidiary company within the meaning of the said act; or
- 19.1.3 by a deposit being made with the Authority of a sum equal to ten per cent of the value or amount of any order placed under the Contract

20 CONTRACT AGREEMENT

- 20.1 The Contractor will when called upon in writing will enter into and execute a Contract Agreement prepared by the Authority in the form as prescribed by the Chief Officer.

21 STATUTORY AND COMMON LAW LIABILITY

- 21.1 Nothing in these General Conditions will be deemed to free the Contractor from any liability placed on the Contractor or manufacturer of Goods of the class or classes included in the Contract by statute or at a common law

22 FORCE MAJEURE

- 22.1 The Contractor and the Authority shall be released from their respective obligations in the event of a national emergency or prohibitive governmental regulation or if any other cause beyond the reasonable control of the parties either renders the performance of this Contract impossible whereupon all monies due under the Contract shall be paid immediately and in particular
- 22.1.1 The Authority shall immediately pay any outstanding money for Goods already delivered
- 22.1.2 The Contractor will repay any monies taken for Goods that have not been delivered

23 TERMINATION

- 23.1 The Authority may terminate the Contract (in whole or in part) with immediate effect by notice in writing to the Contractor on or at any time after the occurrence of any of the following events:
- 23.1.1 The passing by the Contractor of a resolution for its winding up or the making by a court of competent jurisdiction of an order for the winding up of the Contractor or the dissolution of the Contractor;
- 23.1.2 the making of an administration order in relation to the Contractor or the appointment of a receiver or administrative receiver over, or the taking of possession or sale by an encumbrancer of a material part of the Contractor's assets;
- 23.1.3 the Contractor making an arrangement or composition with its creditors generally or making an application to a court of competent jurisdiction for protection from its creditors generally;
- 23.1.4 a breach by the Contractor of its obligations to take out and maintain required insurances;
- 23.1.5 a material and substantial breach by the Contractor of any of its obligations under this Contract;

- 23.1.6 there is a change of ownership or control of the Contractor which, in the reasonable opinion of the Authority will have a material impact on the supply of the Goods or the image of the Authority
- 23.2 In the event of the Authority having the right to terminate under clauses 23.1.1, 23.1.2 or 23.1.3, the Authority may, at its sole discretion, give the receiver, liquidator or other person (as appropriate) the option of carrying out the Contract subject to a guarantee acceptable to the Authority being provided for the due and faithful performance of the Contract.
- 23.3 The Authority shall be entitled to cancel the Contract in respect of all or part only of the Goods by giving notice to the Contractor at any time prior to delivery or performance, in which event the Authority's sole liability shall be to pay the Contractor for the Price of the Goods in respect of which the Authority has exercised its right of cancellation, less the Contractor's net saving of cost arising from the cancellation.
- 23.4 In the event of and upon any termination or expiry of this Contract the Contractor and the Authority shall each carry out their respective responsibilities in accordance with the Contract until termination.
- 23.5 The termination of this Contract shall not prejudice or affect any claim, right, action or remedy that shall have accrued or shall thereafter accrue to either party.
- 23.6 Following the termination of this Contract, neither the Authority nor the Contractor shall have any further obligation or right with respect to the other party provided that termination of this Contract shall not affect the continuing rights and obligations of the parties under the provision of the Contract that is expressed to survive termination or is required to give effect to such termination or the consequences of such termination.
- 23.7 Once a contract has been terminated, the Authority will have the power to enter into a new contract with any other person or persons firm or company for the completion of the Contract.
- 24 PREVENTION OF FRAUD OR CORRUPTION**
- 24.1 The Authority will be entitled to cancel the contract and recover from the Contractor the amount of any loss resulting from such cancellation if:
- 24.1.1 the Contractor shall have offered or given or agreed to give to any person any gift or consideration or 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 Contract; or
- 24.1.2 for showing or forbearing to show favour or disfavour to any person in relation to the Contract; or
- 24.1.3 if the like acts shall have been done by any person employed by him or acting on his behalf (whether with or without the knowledge of the Contractor); or
- 24.1.4 if in relation to the Contract, the Contractor or any other person employed by him or acting on his behalf will have committed any offence under the Prevention of Corruption Acts 1889 to 1916; or
- 24.1.5 will have given any fee or reward the receipt of which is an offence under section 117(2) of the Local Government Act 1972.
- 24.2 For the purposes of this condition the expression 'loss' shall include the reasonable cost to the Authority of the time spent by its officers in terminating the contract and in making alternative arrangement for the provision of the Goods.

25 FAIR WAGES AND CONDITIONS OF SERVICE

- 25.1 The contractor will in respect of all persons employed by him (whether in execution of the Contract or otherwise) in every factory, workshop or place occupied or used by him for the execution of the Contract comply with the following conditions:
- 25.1.1 Pay rates of wages and observe hours and conditions of labour not less favourable than those established for the trade or industry in the district where the work is carried out, by machinery of negotiation or arbitration to which the parties are organisation of employers and trade unions representative respectively of substantial proportions of the employers and workers engaged in the trade or industry in the district;
 - 25.1.2 In the absence of the rates of wages hours or conditions of labour so established pay rates and observe hours and conditions of labour which are not less favourable than the general level of wages hours and conditions observed by other employers whose general circumstances in the trade or industry in which the Contractor is engaged are similar.
- 25.2 The Contractor will recognise the right of his work people to be members of such trade union as they may choose or subject to section 58 of the Employment Protection (Consolidation) Act 1978, as amended, not to be members of a trade union or other organisation of workers to refuse to be a member of any particular trade union or organisation of workers.
- 25.3 The Contractor will at all times during the Contract period display, for the information of his work people in every factory, workshop or place occupied or used by him for the Contract a copy of Clause 25.1.1 and 25.1.2 above
- 25.4 The Contractor will be responsible for the observance of this clause by subcontractors employed under the Contract and will if required notify the Authority of the names and addresses of all such subcontractors
- 25.5 In the event of any question arising as to whether the foregoing conditions are being observed the question will, if not otherwise disposed of, be referred for decision to an independent arbitrator jointly agreed by the Authority and Contractor
- 25.6 The Contractor will keep proper books and time sheets in relation to the wages paid to persons in his employ and engaged in the Contract and such documents will, if required by the Authority, be produces for inspection by the Chief Officer

26 EQUAL OPPORTUNITIES

- 26.1 The Contractor shall:
- 26.1.1 demonstrate effective implementation of its policies in relation to recruitment practices including at least evidence of open recruitment methods such as use of the Job Centre or press advertisements;
 - 26.1.2 regularly review the full range of equality policies and procedures and take specific action to make any necessary changes; and
 - 26.1.3 regularly monitor the ethnic composition of its workforce.
- 26.2 The Contractor shall observe as far as possible the Commission for Racial Equality's Code of Practice in Employment as approved by Parliament in 1983.
- 26.3 The Contractor shall comply with the provisions of the Disability Discrimination Act 1995.
- 26.4 The Contractor shall provide such information as the Authority may reasonably request for the purpose of assessing the Contractor's compliance in respect of equalities.

27 HEALTH AND SAFETY

- 27.1 The Contractor and all persons (including any sub-contractors) employed by it shall throughout the contract term comply fully with the requirements of the Safety Legislation.

- 27.2 The Contractor shall provide to the Chief Officer any information relating to the Contractor's compliance with clause 21.1 that the Authority may reasonably request.
- 27.3 The Contractor shall provide to the Chief Officer, within 7 days of receipt, copies of any communication concerning the health, safety, welfare, environmental or fire safety standards of the Goods, which he receives from any statutory body.

28 HUMAN RIGHTS ACT 1998

- 28.1 The Contractor shall comply with the provisions of the Human Rights Act 1998 as if it were a public body as defined in the Human Rights Act 1998 as appropriate to the supply of the Goods.

29 DATA PROTECTION ACT 1998

- 29.1 The Contractor shall comply with its obligations under the Data Protection Act 1998 (the "1998 Act") and the Computer Misuse Act 1990 insofar as performance of this Contract gives rise to obligations under those Acts.
- 29.2 The Contractor shall ensure that it does nothing knowingly or negligently which places the Authority in breach of the Authority's obligations under the 1998 Act.

30 FREEDOM OF INFORMATION ACT

- 30.1 The contractor acknowledges that the Authority is or may be subject to the Freedom of Information Act 2000 (FOIA) and may be required to disclose information about the contract to ensure the compliance of the Authority with the FOIA. The contractor notes and acknowledges the FOIA and both the respective Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records (which are issued under section 45 and 46 of the FOIA respectively) as may be amended, updated or replaced from time to time. The contractor will act in accordance with the FOIA and these Codes of Practice (and any other applicable codes of practice or guidance notified to the contractor from time to time) to the extent that they apply to the contractor's performance under the contract.
- 30.2 The contractor agrees that the decision on whether any exemption applies as to a request for disclosure of recorded information is a decision solely for the Authority. Where the Authority is managing a request as referred to in this clause, the contractor shall co-operate with the Authority if it so requests and shall respond within five (5) working days of any request by it for assistance in determining how to respond to a request for disclosure.

31 INFORMATION AND CONFIDENTIALITY

- 31.1 Subject to clause 31.2 the parties shall keep confidential all matters relating to the contract and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any matter relating to the contract.
- 31.2 Clause 31.1 shall not apply to:
- 31.2.1 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;
 - 31.2.2 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;
 - 31.2.3 any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
 - 31.2.4 any disclosure by the Authority of information relating to the supply of the Goods and such other information as may be reasonably required for the purpose of conducting a

due diligence exercise to any proposed replacement supplier, its advisers and lenders, should the Authority decide to re-tender the contract; or

31.2.5 any disclosure of information by the Authority to any other department, office or agency of the government;

31.2.6 any disclosure for the purpose of:
(a) the examination and certification of the Authority's accounts; or
(b) 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.

31.3 Where disclosure is permitted under clause 31.2 the disclosing party shall ensure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Contract.

31.4 The Contractor shall not make use of this Contract or any information issued or provided by or on behalf of the Authority in connection with this Contract otherwise than for the purpose of performing its obligations under this Contract, except with the written consent of the Authority.

32 AUDIT

32.1 The Contractor shall at all reasonable times (including following termination for whatsoever reason of this Contract) afford to or procure for any auditor (including any auditor carrying out functions under the Audit Commission Act 1998 or the Local Government Act 1999) conducting an internal audit or an external audit, inspection or an audit of Best Value Performance Plans or to or for the Contractor's Representative (or its nominee) access to any records, information and data in the possession or control of the Contractor which in any way relate to or are or have been used in connection with the supply of the Goods including (but without limitation) Authority data and information stored on a computer system operated by the Contractor and shall include permission to copy and remove any copies and remove the originals of such Documents.

33 DISPUTES

33.1 If any disputes or difference will arise between the parties as to the meaning of the Contract or any matter or thing arising out of or connected with the Contract, then it shall be referred to the determination of an arbitrator to be appointed as sole arbitrator by agreement of the parties whose decision shall be final and conclusive.

33.2 In default of an agreement within 21 days of the service of one party's written request to concur such appointment, it shall be referred to the president or vice president for the time being of the Chartered Institute of Arbitrators.

33.3 Each party shall be liable to pay to the other damages for any breach of the Contract and all expenses and costs incurred by that party in enforcing its right under the Contract under these conditions

34 AUTHORITY MAY PURCHASE ELSEWHERE

34.1 Nothing in these conditions shall restrain or be held to prevent the Authority from purchasing similar Goods from any other person if the Chief Officer shall think fit to do so and the Authority reserve to itself the right of ordering any Goods otherwise than from the Contractor.

35 INFORMATION ON RE-TENDERING

35.1 If requested to do so by the Chief Officer, the Contractor shall provide any and all relevant information relating to the Goods reasonably required by the authority to enable it to prepare the necessary documentation in respect of any subsequent tendering or re-tendering of the Goods. The information required shall be sufficient to enable that Authority to meet its legal obligations and to obtain the best value for money reasonably obtainable in a tendering

exercise . (For the avoidance of doubt, this obligation shall extend to all workforce information necessary to enable the Authority to comply with its duties under the Transfer of undertakings (Protection of Employment) Regulations 1981 as amended, if applicable)

- 35.2 Such information provided pursuant to Clause 35.1 shall be at no cost to the Authority.

36 FORM OF CONTRACT

- 36.1 The Contractor shall be deemed to have satisfied himself before submitting his tender as to the accuracy and sufficiency of the rates and prices dated by the Contractor in his tender which shall accept insofar as it is otherwise provided in the Contract covered all the Contractor's obligations under the Contract.
- 36.2 The Contractor shall be deemed to have obtained for himself all necessary information as to risks contingencies and any other circumstances which may reasonably influence or affect the Contractor's tender.

37 OFFERS OF EMPLOYMENT

- 37.1 For the duration of the Contract and for a period of six (6) months after its termination:
- 37.1.1 The Contractor undertakes not to make offers of employment to or engage any employee or agent of the Authority connected with the Contract without the prior written consent of the Authority: and
- 37.1.2 The Authority shall not make offers of employment to or engage any employee or agent of the Contractor involved in the Contract without the prior written consent of the Contractor.
- 37.2 In the event of the Authority giving a Contractor consent to engage, the Authority will charge the Contractor an introduction fee of 30% of the annual salary of the person(s) appointed.

38 CONTRACT TO PREVAIL

- 38.1 No conditions terms or stipulations
- 38.1.1 contained in any letters forms quotations advice notes delivery notes or other documents submitted or otherwise used by the Contractor or
- 38.1.2 added to the Contract documents by the Contractor no amendments to the Contract documents by the Contractor which are inconsistent with differ from or in any way modify these conditions,
- shall have any effect

39 SERVICE OF NOTICES

- 39.1 Any notice request order or other communication given in accordance with the Contract will be in writing and will be sufficiently served if served personally on the addressee or sent by prepaid first class post recorded delivery post by teletext electronic mail or fax mail transmission to the last known address of the party being served
- 39.2 If a notice request or order of communication is sent in accordance with clause 39.1 above subject to evidence of the contrary it shall be deemed to have been received by the addressee on the second business day after posting or successful transmission as the case may be

40 WAIVER

- 40.1 Failure by the Authority at any time throughout the duration of the Contract to enforce the provisions of the Contract or to require performance by the other party of any of the Contracts provisions shall not be construed as a waiver of any such provision and shall not affect the

validity of the Contract or any part of it or the right of the Authority to enforce any of the Contracts provisions in the future

41 VARIATION

- 41.1 The Goods shall be supplied solely in accordance with these conditions. All other contractual terms which in any way add to, vary or contradict these conditions upon which the contractor may seek to rely or otherwise impose on the authority shall be excluded and not form part of the contract (whether or not such other contractual terms post-date these conditions) unless the Authority has specifically agreed in writing to be bound by any of such other contractual terms. A copy of such written variation shall be affixed to the Contract.

42 SEVERANCE

- 42.1 Whenever and so far as one or more conditions of the Contract are held to be void and unenforceable then the remainder of the conditions of Contract shall continue in force and govern the parties relationship as if the void and unenforceable condition(s) had not formed any part of the Contract

43 THIRD PARTY RIGHTS

- 43.1 The provisions of the Contracts (Rights of Third Parties Act) 1999 shall not apply to this contract and a person who is not a party to the Contract shall have no right under that Act to enforce any term of the contract.

44 PUBLICITY

- 44.1 The contractor shall not advertise or publicly announce that it is supplying Goods or carrying out work for the Authority without the prior written consent of the Authority, such consent not to be unreasonably withheld.

45 WELSH LANGUAGE ACT

- 45.1 The Contractor shall comply with the provisions of the Welsh Language Act 1993 (or as amended from time to time) and all other relevant legislation and statutory requirements.

46 ENVIRONMENTAL CONSIDERATIONS

- 46.1 The contractor shall comply in all material aspects with applicable environmental laws and regulations in force from time to time in relation to the products/services the subject of the contract. Where the provisions of any such legislation are implemented by the use of voluntary agreements or codes of practice, the contractor shall comply with such agreements or codes of practice as if they were incorporated into English and Welsh law subject to those voluntary agreements being cited in the tender documentation. Without prejudice to the generality of the foregoing, the contractor shall:-

46.1.1 comply with all reasonable stipulations of the Authority aimed at minimising the packaging in which the products the subject of the contract, or any products supplied by the contractor to the Authority as part of performance of the services, are supplied:

46.1.2 promptly provide such data as may reasonably be requested by the Authority from time to time regarding the weight and type of packaging according to the material type used in relation to all products supplied to the Authority under or pursuant to the contract;

46.1.3 comply with all obligations imposed on it in relation to the products/services the subject of the contract by the Packaging Waste Regulations 1997 (or any other equivalent legislation giving effect in any part of the European Economic Area to the Packaging and Packaging Waste Directive 94/62/EC);

- 46.1.4 label all products supplied to the Authority under the contract, and the packaging of those products, to highlight environmental and safety information as required by applicable UK and EU legislation;
 - 46.1.5 unless otherwise agreed with the Authority, insofar as any products supplied under the contract comprise or include electrical or electronic equipment, manage the said equipment and associated consumables at end of life to facilitate recovery, treatment and recycling and provide any information which the Authority may reasonably require from time to time regarding the costs of such activity;
 - 46.1.6 promptly provide all such information regarding the environmental impact of any products supplied or used under the contract as may reasonably be required by the Authority to permit informed choices by end users;
 - 46.1.7 where goods are imported into the United Kingdom then for the purposes of the Producer Responsibility Obligations (Packaging Waste) Regulations 1997 (as amended) the Contractor shall assume the rolled-up obligations for all the activities performed outside the United Kingdom in relation to the goods and the packaging which is used for the containment, protection, handling, delivery and presentation of the goods in addition to any other obligations he may have pursuant to the said Regulations.
- 46.2 The contractor shall meet all reasonable requests by the Authority for information evidencing the contractor's compliance with the provisions of this clause.

47 GOVERNING LAW

- 47.1 Each of the parties confirm that by entering into the Contract they agree to be legally bound by its terms and conditions
- 47.2 The terms and conditions contained in the Contract shall be construed in accordance with and be governed by the laws of England and Wales as applied in Wales and all parties agree to submit to the exclusive jurisdiction of the Courts of England and Wales.