CONDITIONS OF CONTRACT – GOODS PURCHASED UNDER A PURCHASE ORDER FORM

This Contract applies where the Council has placed an order under a Purchase Order Form with the Supplier and there is no pre-existing valid contract in relation to the Goods. The Purchase Order Form further elaborates on the situations where this Contract shall be incorporated.

**CONTRACT DETAILS**

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| **Supplier’s Name:** | Being the party listed under the “Supplier” section in the Purchase Order Form. |
| **Supplier’s address:** | Being the address listed under the “Supplier” section in the Purchase Order Form. |
| **Contract Period** | Shall be from the Contract Start Date until all obligations are complete under Condition 2, unless terminated earlier in accordance with this Contract. |
| **Contract Start Date:** | Being the “Order Date” on the Purchase Order Form. |
| **Delivery Date:** | The Delivery Dates shall be as specified in the Purchase Order or separate correspondence between the Parties. |
| **Delivery Location:** | The Delivery Location shall be as specified in the Purchase Order or separate correspondence between the Parties. |
| **Guarantee Period:** | The Guarantee Period shall be 12 months from putting into service or 18 months from delivery, whichever shall be the shorter (subject to any alternative guarantee arrangements agreed in writing between the Council and the Supplier). |
| **Goods:** | The Goods as set out in the Purchase Order. |
| **Notices:** | The addresses for notices to be served under this contract are as follows:  For the Supplier: the Supplier’s address; and  For the Council: the contact details listed in the “Order Contact” section of the Purchase Order Form. |
| **Price:** | The Price shall be as set out in the Purchase Order Form. |
| **Required Insurance:** | The Required Insurances shall be as follows   1. Employer’s liability insurance in the sum of not less than £5 million and all in accordance with any legal requirements for the time being in force; 2. Public liability insurance for such sum and range of cover as the Supplier deems to be appropriate but covering at least all matters which are the subject of indemnities or compensation obligations under the Contract in the sum of not less than £5 million for any one incident and unlimited in total, unless otherwise agreed by the Council in writing; and 3. professional indemnity insurance with a limit of indemnity of not less than £1 million in relation to any one claim or series of claims and shall ensure that all professional consultants or sub-contractors involved in the supply of the Goods hold and maintain appropriate cover. |
| **Specification:** | The Specification may be specified in the Purchase Order. |

1. This Contract is made up of the following:
2. the Contract Details; and
3. the Conditions.

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| **EAST LOTHIAN COUNCIL**  **CONDITIONS OF CONTRACT FOR THE PURCHASE OF GOODS** |

**These Conditions are the Conditions referred to in the Contract Details. They may only be varied with the written agreement of the Council. No terms or conditions put forward at any time by the Supplier shall form any part of the Contract unless spessscifically agreed in writing by the Council.**

1. **DEFINITIONS**
   1. In these Conditions:

2011 Act: means Public Records (Scotland) Act 2011;

Arrangements: the Supplier’s approach to the management of Public Records agreed with the Council pursuant to Condition 17;

Business Day: a day, other than a Saturday, Sunday or public holiday in Scotland, when banks in Edinburgh are open for business;

Contract: means the contract between the Council and Supplier consisting of the Contract Details and these conditions;

**Contract Period**: is as set out in the Contract Details;

Council: East Lothian Council incorporated under the Local Government etc. (Scotland) Act 1994 and have its principal office at John Muir House, Brewery Park, Haddington, East Lothian EH41 3HA;

**Data Protection Laws**: means all applicable data protection and privacy legislation in force from time to time in the UK including: (i) the UK GDPR; (ii) the Data Protection Act 2018 (and regulations made thereunder) to the extent that it relates to processing of personal data and privacy; (iii) the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; (iv) the EU GDPR (to the extent applicable); and (v) all other legislation and regulatory requirements in force from time to time which apply to the Supplier or the Council relating to the use of Personal Data (including, without limitation, the privacy of electronic communications) and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to the Suppler or the Council;

Delivery Date: is as set out in the Contract Details;

Delivery Location: is as set out in the Contract Details;

**EU GDPR:** means the General Data Protection Regulation (Regulation (EU) 2016/679);

**EIRs**: means the Environmental Information (Scotland) Regulations 2004 together with any guidance and/or codes of practice issued by the relevant government department in relation to such legislation;

FOISA: means the Freedom of Information (Scotland) Act 2002 together with any guidance and/or codes of practice issued by the Scottish Information Commissioner or relevant government department in relation to such legislation;

Goods: is as set out in the Contract Details;

**Information Legislation**: has the meaning in Condition 16.3;

Parties: the Council and the Supplier; “Party” shall be construed accordingly;

**Personal Data:** has the meaning given in the Data Protection Laws;

**Processing:** has the meaning given in the Data Protection Laws and cognate expressions shall be construed accordingly;

Price: the price for the Goods, as set out in the Contract Details;

Public Records: shall have the meaning ascribed to it in section 3 of the Public Records (Scotland) Act 2011;

Purchase Order: the Council’s order for the Goods submitted by the Council using the Professional Electronic Commerce Online System or any other system used by the Council and in accordance with Condition 4;

**Supplier**: the body identified in the Contract as supplier of the Goods to the Council;

**UK GDPR**: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018; and

VAT: value added tax chargeable in the UK.

* 1. Any items set out in the Contract Details shall have the same meanings if used in these conditions.

THE GOODS

* 1. The Supplier shall ensure that the Goods:
     1. correspond with their description and any applicable Specification and to the reasonable satisfaction of the Council;
     2. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Council expressly or by implication, and in this respect the Council relies on the Supplier's skill and judgement;
     3. in respect of their manufacture, supply, use, or disposal (and in respect of any product used in such manufacture, supply, use or disposal) do not cause significant damage to the environment;
     4. in respect of their manufacture, use or disposal (and in respect of any product used in such manufacture, supply, use or disposal) do not consume a disproportionate amount of energy;
     5. in respect of their manufacture, use or disposal (and in respect of any product used in such manufacture, supply, use or disposal) do not cause unnecessary waste because of over-packaging and/or because of an unusually short shelf life; and
     6. do not contain materials derived from threatened species and/or threatened environments.
  2. Suppliers to the Council are requested to satisfy themselves that no product will be supplied or used in the Supply of Goods to the Council (and any product used in the manufacture and/or supply of the Goods to the Council) shall pose a danger to health.
  3. The Goods shall be guaranteed for the Guarantee Period.
  4. If the Council gives notice in writing to the Supplier within such Guarantee Period or within 30 days thereafter of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use the Supplier shall (without prejudice to any other rights and remedies which the Council may have) as quickly as possible remedy such defects (whether by repair or replacement as the Council shall elect) without cost to the Council.
  5. The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.
  6. The Council has the right to inspect and test the Goods at any time before delivery.
  7. If following such inspection or testing the Council considers that the Goods do not conform with the Contract or are unlikely to comply with the Supplier's undertakings at Condition 2.1, the Council shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
  8. Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and the Council shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions on a number of occasions until such time as the Goods are accepted.

COMMENCEMENT AND TERM

* 1. The Supplier shall supply the Goods for the Contract Period unless this Contract is terminated earlier in accordance with any of its terms.
  2. In the event that the Council elects to extend the Contract Period as provided for in the Contract Details, it may do so by serving written notice to that effect upon the Supplier no less than one month prior to the expiry of the initial Contract Period.

PURCHASE ORDERS

* 1. The Council may submit Purchase Orders for Goods at any time.
  2. The Supplier shall supply the Goods in accordance with the Purchase Orders on the Delivery Date(s) at the Delivery Location.
  3. The Council may amend or cancel a Purchase Order in whole or in part at any time before delivery by giving the Supplier reasonable notice, in writing.

DELIVERY

* 1. The Supplier shall ensure that:
     1. the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
     2. each delivery of Goods is accompanied by a delivery note which shows the order number, the type and quantity of Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the relevant Purchase Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered;
     3. if the Supplier requires the Council to return any packaging material to the Supplier, that fact is clearly stated on the delivery note (with any such packaging material to be returned to the Supplier at the cost of the Supplier); and
     4. where the Council requires, the Supplier shall remove packaging.
  2. The Supplier shall deliver the Goods:
     1. on its relevant Delivery Date;
     2. at the Delivery Location; and
     3. during the Council’s normal business hours, or as instructed by the Council.
  3. Delivery of Goods is completed on the completion of unloading of those Goods at the Delivery Location.
  4. If the Supplier delivers more or less than the quantity of Goods ordered, then the Council may at its discretion reject the Goods in whole or in part. If the Supplier delivers more or less than the quantity of Goods ordered, and the Council accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.
  5. If the Council rejects any Goods they are returnable at the Supplier's risk and expense.
  6. Further to Condition 5.5, if the Supplier fails to collect rejected Goods within a reasonable period after notification of the rejection, the Council may charge the Supplier storage costs and sell or dispose of the rejected Goods; in such circumstances, the Council will account to the Supplier for the proceeds of sale (if any) after deducting the purchase price paid for the Goods, storage costs and its reasonable costs and expenses in connection with the sale.
  7. The Supplier shall not deliver Purchase Orders in instalments without the Council's prior written consent.
  8. Further to Condition 5.7, where it is agreed that Purchase Orders may be delivered by instalments, such instalments shall be invoiced separately; however, failure by the Supplier to deliver any one instalment on time or at all, or any defect in an instalment, shall entitle the Council to the remedies set out in Condition 6.1.

COUNCIL REMEDIES

* 1. If the Goods are not delivered on the relevant Delivery Date, or do not comply with the undertakings set out in Condition 2.1, then, without limiting any of its other rights or remedies, and whether or not it has accepted the Goods, the Council may exercise any one of more of the following remedies:
     1. to terminate the Contract;
     2. to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
     3. to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
     4. to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
     5. to recover from the Supplier any costs incurred by the Council in obtaining substitute goods from a third party; and
     6. to claim damages for any other costs, loss or expenses incurred by the Council which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.
  2. If the Goods are not delivered on the Delivery Date, the Council may at its option claim liquidated damages as set out in the Contract Details. If the Council exercises its rights under this Condition 6.2, it may not exercise any of the remedies set out in Condition 6.1 in respect of the Good’s late delivery (but such remedies shall be available in respect of the Goods’ condition).
  3. These Conditions shall apply to any repaired or replaced Goods supplied by the Supplier.
  4. The Council’s rights and remedies under these Conditions are in addition to the rights and remedies implied by statute and common law.

THE PRICE

* 1. The Price of the Goods shall be as stated in the Contract Details and no increase will be accepted by the Council unless agreed in writing.
  2. The Price includes the costs of packaging, insurance and carriage of the Goods.
  3. Unless otherwise agreed in writing by the Council, payment shall be due 30 days after receipt by the Council of the correct invoice, submitted monthly in arrears, for Goods delivered to the satisfaction of the council.
  4. Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.
  5. The Council may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to the Council against any liability of the Council to the Supplier.

TITLE AND RISK

Title in the Goods shall pass to the Council on the earlier of completion of delivery or payment in accordance with this agreement. Risk shall not pass to the Council until the time of delivery.

CHANGE TO CONTRACT REQUIREMENTS

No variation of the Contract shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

COUNCIL MATERIALS

* 1. The Supplier acknowledges that all materials, equipment and tools, drawings, specifications, and data supplied by the Council to the Supplier (**Council Materials**) and all rights in the Council Materials are and shall remain the exclusive property of the Council.
  2. The Supplier shall keep the Council Materials in safe custody at its own risk, maintain them in good condition until returned to the Council, and not dispose or use the same other than in accordance with the Council's written instructions or authorisation.

ACCESS

* 1. Where any access to the Delivery Location is necessary in connection with delivery of the Goods, the Supplier shall at all times comply with the reasonable requirements of the Council.
  2. Access to the Delivery Location shall not be exclusive to the Supplier but only such as shall enable it to carry out the Contract. The Supplier shall co-operate with such other parties as the Council may reasonably require.

AUDIT

The Supplier shall keep and maintain records to the satisfaction of the Council of all Public Records and expenditures which are reimbursable by the Council and of the hours worked and costs incurred in connection with any employees of the Supplier paid for by the Council on a time charge basis. Such records shall be maintained for the longer of (i) the time period set out in the Council’s records management plan or (ii) six years after the Contract has been completed. The Supplier shall on request afford the Council or its representatives such access to those records as may reasonably be required by the Council. The provisions of this Condition 12 shall apply during the continuance of the Contract and after its termination howsoever arising.

CORRUPT GIFTS OR PAYMENTS

The Supplier shall not offer or give, or agree to give, to any employee or representative of the Council any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other contract with the Council or for showing or refraining from showing favour or disfavour to any person in relation to this or any such Contract including an offence under the Bribery Act 2010.

INDEMNITY AND INSURANCE

* 1. The Supplier shall indemnify the Council against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Council arising out of or in connection with:
     1. any claim made against the Council for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the supply or use of the Goods, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
     2. any claim made against the Council by a third party for death, personal injury or damage to property arising out of or in connection with defects in the Goods, to the extent that the defects in the Goods are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and
     3. any claim made against the Council by a third party arising out of or in connection with the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.
  2. The Supplier shall have in force and shall require any sub-contractor to have in force the Required Insurances. The cover shall be in respect of all risks which may be incurred by the Supplier, arising out of the Supplier’s performance of the agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.
  3. The policy or policies of the Required Insurances shall be shown to the Council on request, together with satisfactory evidence of payment of premiums and annual renewals.
  4. If, for whatever reason, the Supplier fails to give effect to and maintain the Required Insurances, the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
  5. The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the agreement.

DISCRIMINATION

The Supplier shall not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2010 or any statutory modification or re‑enactment thereof relating to discrimination in employment. The Supplier shall take all reasonable steps to secure the observance of these provisions by all servants, employees or agents of the Supplier and all sub‑contractors employed in the execution of the Contract.

CONFIDENTIALITY AND FREEDOM OF INFORMATION

* 1. The Supplier shall keep secret and not disclose and shall procure that its employees, agents and sub-contractors keep secret and do not disclose any information of a confidential nature obtained by the Supplier by reason of the Contract except information which is in the public domain otherwise than by reason of a breach of this provision.
  2. All information related to the Contract will be treated as commercial in confidence by the parties except that.
     1. either Party may disclose such confidential information to its employees, officers, representatives, contractors, sub-contractors or advisers who need to know such information for the purposes of exercising the Party's rights or carrying out its obligations under or in connection with the Contract; and each Party shall ensure that its employees, officers, representatives, contractors, sub-contractors or advisers to whom it discloses the confidential information comply with this Condition 16;
     2. the Supplier may disclose any information as required by law or judicial order to be disclosed; and
     3. the Council may disclose any information as required by law, a court of competent jurisdiction or any governmental or regulatory authority.
  3. The Supplier acknowledges that all information submitted to the Council may need to be disclosed and/or published by the Council. Without prejudice to the foregoing generality, the Council may disclose information in compliance with FOISA and/or EIRs (together the “**Information Legislation**”), any other law, or, as a consequence of judicial order, or order by any court, tribunal or body with the authority to order disclosure (including the Scottish Information Commissioner). The Council’s decision as to what should be disclosed or the interpretation of FOISA or the EIRs shall be final and conclusive in any dispute, difference or question arising in respect of disclosure.
  4. The Supplier shall assist and cooperate as reasonably requested by the Council to enable the Council to comply with its obligations under the Information Legislation.
  5. Where the Supplier has indicated in its response that it considers certain information should be treated as commercially confidential, the Council shall not release such information other than where a valid request is received in terms of the Information Legislation for such information and the Council shall have regard to the Supplier’s view when considering any request to release the information in terms of the Information Legislation.
  6. Notwithstanding Condition 16.5, the Supplier acknowledges that the Council may be required under the Information Legislation to disclose information without consulting or obtaining consent from the Supplier. The Council shall take reasonable steps to notify the Supplier of a request for information to the extent that it is permissible and reasonably practicable for it to do so but the Council shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the Information Legislation.
  7. The parties agree that, notwithstanding the terms of Condition 16.2, disclosure may be made by the Council of such information relating to the outcome of the procurement process as may be required to be published by domestic policy on the disclosure of information regarding local government contracts. This disclosure may include the number of tenders received, the identity of the successful Supplier, the winning contract price, the specification of goods to be provided, terms and conditions of contract, quality and performance standards, and subsequent performance against those quality and performance standards.
  8. The provisions of this Condition 16 shall apply during the continuance of the Contract and after its termination howsoever arising.

RECORDS MANAGEMENT, MONITORING AND RECORDS AUDIT

* 1. The Supplier shall (and shall procure that any sub-contractor(s) and/or agent(s) shall) provide the Council with all assistance (including in respect of monitoring and audit) reasonably requested by the Council to assist the Council in complying with its obligations under the 2011 Act and with the Council’s records management plan in terms of the 2011 Act.
  2. The Supplier shall (and shall procure that any sub-contractor(s) and/or agent(s) shall) (i) manage all Public Records in respect of the supply of the Goods in accordance with the 2011 Act and the Council’s records management plan (ii) provide the Council on request any copies of the Arrangements in force from time to time and (iii) make such alterations to the Arrangements as the Council may from time to time require.
  3. The Supplier (and shall procure that any sub-contractor(s) and/or agent(s) shall) shall ensure that none of its actions in the delivery of the Goods to the Council cause the Council to (i) be in breach of its obligations under the 2011 Act; or (ii) receive an action notice in terms of section 7 of the 2011 Act.
  4. On termination of the Contract for whatever reason, the Public Records held by the Supplier, any sub-contractor(s) and/or agents, which are to be delivered to the Council in terms of the Council’s record management plan in terms of the 2011 Act and the Arrangements shall be delivered to the Council in a form agreed with the Council and in a widely accessible format, forthwith at no cost to the Council including full ownership of the records with all intellectual property in relation thereto and all information reasonably required to locate individual items within the records, and shall be included with the data and other material belonging to the Council. Where the Public Records are not delivered to the Council on termination of the Contract, the Supplier shall comply with this Condition 17, where applicable, and any additional instructions of the Council.
  5. Provided that if the Supplier any sub-contractor(s) and/or agents suffers an insolvency event then immediately upon the occurrence of an Insolvency Event, the Public Records held by the Supplier and due to be transferred to the Council pursuant to this Condition 17.5 shall be deemed to be held in trust for the Council and the Supplier shall thereafter transfer such Public Records to the Council on the same terms as contained herein.
  6. The Council may require the proper disposal or transfer of Public Records from the Supplier to the Council during the Contract Period where such Public Records are no longer required for the supply of Goods under the Contract (whether such Public Records are so required shall be determined by the Council at its sole discretion, acting reasonably), and the Supplier shall (and shall procure that any sub-contractor(s) and/or agent(s) shall) securely destroy or provide such Public Records as agreed in writing with the Council forthwith. Where the Supplier is required to dispose of the Public Records, the Supplier shall (and shall procure that any sub-contractor(s) and/or agent(s) shall) certify in writing to the Council that it has deleted or destroyed the Public Records and that the Public Records cannot be reconstituted or restored, within 3 Business Days after it completes the deletion or destruction.
  7. Upon request of the Council, the Supplier shall (and shall procure that any sub-contractor(s) and/or agent(s) shall) rectify, provide access and/or produce to the Council or another organisation (as authorised by the Council) the Public Records during the Contract Period and after termination of the Contract (if applicable). Where providing access and/or producing the Public Records, the Supplier shall (and shall procure that any sub-contractor(s) and/or agent(s) shall) do so in a widely accessible format and in a form capable of being read and interpreted by the Council.
  8. The Supplier shall (and shall procure that any sub-contractor(s) and/or agent(s) shall) allow the Council, its employees, auditors, authorised agents or advisers reasonable access to any relevant premises, during normal business hours, to inspect the procedures, measures and records referred to in this Condition 17 and contribute as is reasonable to those audits and inspections.
  9. Any assistance or requirements under this Condition 17 shall be at no cost to the Council. The provisions of this Condition 17 shall apply during the Contract Period and after its termination howsoever arising.
  10. Where the Supplier enters a sub-contract with a supplier for the purpose of performing the Contract, the Supplier shall cause a term to be included in such sub-contract which is in the same terms as that set out in this Condition 17 subject only to modification to refer to the correct designation of the Supplier and supplier as the case may be.

The Supplier shall act on the Council’s instructions without unreasonable delay in respect of any changes as regards to the Public Records including without prejudice to the foregoing generality, securely destroying any Public Records, rectifying any Public Records, securely producing and transferring the Public Records to the Council or to another organisation as per the Council’s instructions in a widely accessible format.

TERMINATION

* 1. Without limiting its other rights or remedies, the Council may terminate the Contract with immediate effect by giving written notice to the Supplier if:
     1. the Supplier commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days (or such longer date as may be agreed between the parties in writing) of the Supplier being notified in writing to do so;
     2. the Supplier takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
     3. the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
     4. the Supplier’s financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
  2. The Council may terminate the Contract in the event that:
     1. the Contract has been subject to substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) (modification of contracts during their term) of the Public Contracts (Scotland) Regulations 2015; or
     2. the Supplier has, at the time of contract award, been in one of the situations referred to in regulation 58(1) (exclusion grounds) of the Public Contracts (Scotland) Regulations 2015, including as a result of the application of regulation 58(2) of those regulations, and should therefore have been excluded from the procurement procedure.
  3. The Council may also terminate the Contract in the event of a failure by the Supplier to comply in the performance of the Contract with legal obligations in the fields of environmental, social and employment law.
  4. In addition to the Council’s rights of termination under Conditions 18.1 to 18.3, the Council shall be entitled to terminate this Contract immediately by giving to the Supplier notice to that effect.
  5. Termination of the Contract shall not affect either of the Parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract which existed at or before the date of termination.
  6. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

RECOVERY OF SUMS DUE

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

ASSIGNATION AND SUB-CONTRACTING

* 1. The Supplier shall not, without the written consent of the Council, assign the benefit or burden of the Contract or any part thereof.
  2. No sub-contracting by the Supplier shall in any way relieve the Supplier of any of its responsibilities under the Contract. If the Council consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all acts and omissions of its subcontractors as if they were its own.
  3. Where the Supplier enters a sub-contract with a supplier for the purpose of performing the Contract, the Supplier shall cause a term to be included in such sub-contract which
     1. requires payment to be made of all sums due by the Supplier to the supplier within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the sub-contract requirements and provided that, where the Council has made payment to the Supplier in respect of the Contract then to that extent, the invoice must be treated as valid and, provided the Supplier is not exercising a right of retention or set-off in respect of a breach of contract by the supplier or in respect of a sum otherwise due by the supplier to the Supplier, payment must be made to the supplier without deduction;
     2. notifies the supplier that the sub-contract forms part of a larger contract for the benefit of the Council and that should the supplier have any difficulty in securing a timely payment of an invoice, that matter may be referred by the supplier to the Council; and
     3. in the same terms as that set out in this Condition 20 (including for the avoidance of doubt this Condition 20.3.3 subject only to modification to refer to the correct designation of the Supplier and supplier as the case may be.
  4. The Supplier shall also include in every sub-contract:
     1. a right for the Supplier to terminate that sub-contract if the relevant sub-contractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or employment law or if any of the termination events specified in Condition 18.2 occur; and
     2. a requirement that the sub-contractor includes a provision having the same effect as 20.4.1 in any sub-contract which it awards.

In this Condition 20.4, ‘sub-contract’ means a contract between two or more contractors, at any stage of remoteness from the Council in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of the Contract.

NOTICES

* 1. Any notice given under or pursuant to the Contract shall be in writing and shall be:
     1. delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
     2. sent by email to the addresses specified in the Contract Details.
  2. Any notice shall be deemed to have been received:
     1. if delivered by hand, at the time the notice is left at the proper address; or
     2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00am on the second Business Day after posting; or
     3. if sent by email, at the time of transmission.
  3. If deemed receipt under Condition 21.2 would occur outside business hours in the place of receipt, it shall be deferred until business hours resume. In this Condition 21.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
  4. This Condition does not apply to the services of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

DISPUTE RESOLUTION

All disputes, differences or questions between the Council and the Supplier with respect to any matter or thing arising out of or relating to the Contract or the supply of the Goods may be referred for decision to a single arbiter to be mutually agreed and chosen by the Council and the Supplier for that purpose, or, if they are unable to agree as to the appointment of an arbiter, chosen by the President of the Law Society of Scotland for the time being on the application of either party. The decision of the arbiter shall be binding on the parties as to the matter in dispute.

HEADINGS

The headings to Conditions shall not affect their interpretation.

ANTI-SLAVERY AND HUMAN TRAFFICKING

In performing its obligations under the Contract, the Supplier shall comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including the Modern Slavery Act. The Supplier represents and warrants that it has not been convicted of any offence involving slavery and human trafficking or been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

HUMAN RIGHTS

The Supplier shall (and shall procure that its personnel and any sub-contractor(s) shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of the Contract. The Supplier shall (and shall procure that its personnel and any sub-contractor(s) shall) undertake, or refrain from undertaking, such acts as the Council requires to enable the Council to comply with its obligations under the Human Rights Act 1998.

ENTIRE AGREEMENT

* 1. The Contract constitutes the entire agreement between the Supplier and the Council and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
  2. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for any innocent or negligent misrepresentation based on any statement in this Contract.

THIRD PARTY RIGHTS

* 1. This agreement does not give rise to any rights under the Contract (Third Part Rights) (Scotland) Act 2017 for any third party to enforce or otherwise invoke any term of this agreement.

FORCE MAJEURE

* 1. “**Force Majeure Event**” means any circumstance not within a party’s reasonable control including, without limitation:
     1. acts of Gods, flood, drought, earthquake or other natural disaster;
     2. epidemic or pandemic;
     3. terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
     4. nuclear, chemical or biological contamination or sonic boom;
     5. any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition[, or failing to grant a necessary licence or consent;
     6. collapse of buildings, fire, explosion or accident;
     7. interruption of utility service; and
     8. non-performance by suppliers or subcontractors.
  2. Neither Party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event.
  3. If there is any dispute arising as to whether a situation or circumstances constitutes a Force Majeure Event, it shall be determined by the Council acting reasonably.
  4. If the Force Majeure Event continues for the period set out in the Contract Details, the Party not affected may terminate this Contract by giving 30 days’ written notice to the affected party.
  5. If both Parties are affected by the Force Majeure Event, then either Party may terminate the Contract in accordance with Condition 28.4.

BLACKLISTING

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

DATA PROTECTION

* 1. Where the supply of Goods:
     1. does not involve the processing of any Personal Data by the Supplier on behalf of the Council; or
     2. the processing is limited to the sharing of names and contact details **only** of employees of the Parties for the purposes of co-ordinating and managing the Contract and provision of the Goods,

then each Party will observe its respective obligations under the Data Protection Laws.

COMPLIANCE WITH RELEVANT LAWS AND POLICIES

* 1. In performing its obligations under the Contract, the Supplier shall:
     1. comply with all applicable laws, statutes, regulations and codes from time to time in force; and
     2. comply with the Mandatory Policies.
     3. The Council may immediately terminate the Contract for any breach of Condition 31.1 by the Supplier.

WAIVER

* 1. No failure or delay by a Party to exercise any right or remedy provided under the Contract or by law shall constitute a waver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
  2. No single or partial exercise of such right or remedy, as is referred to in Condition 32.1, shall prevent or restrict the further exercise of that or any other right or remedy.

SEVERANCE

* 1. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable; and if such modification is not possible, the relevant provision or part-provision shall be deemed deleted.
  2. Any modification to or deletion of a provision or part-provision under this Condition 33 shall not affect the validity and enforceability of the rest of the Contract.

GOVERNING LAW

* 1. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with the law of Scotland.

JURISDICTION

* 1. Each Party irrevocably agrees that the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

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| **SUPPLEMENTARY NOTICE** | | | | | | |
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|  | 1. **PROTECTING THE ENVIRONMENT**   Suppliers to the East Lothian Council are requested to satisfy themselves that no product will be supplied or used in the Supply of Goods to the Council which will endanger the health of the consumers or others, will cause significant damage to the environment during manufacture, use, or disposal, which consumes a disproportionate amount of energy during manufacture, use, or disposal, which causes unnecessary waste because of over-packaging or because of an unusually short shelf life, or which contains materials derived from threatened species or threatened environments.  **3. FAIR WORK FIRST**  Suppliers to East Lothian Council are expected to be aware of and committed to promoting through its own employment policies and practices the Scottish Government’s Fair Work First policy and the [Fair Work Framework 2016](https://www.fairworkconvention.scot/wp-content/uploads/2018/12/Fair-Work-Convention-Framework-PDF-Full-Version.pdf). The Supplier is expected to adopt, as far as it is reasonable and commercially viable in the circumstances to do so, the seven Fair Work First criteria. This includes providing workers with payment of the real Living Wage. |  | |  | | 1. **LATE PAYMENT OF INVOICES**   Suppliers to the East Lothian Council are requested to address complaints regarding late payment of invoices to, in the first instance, the addressee of the invoice and, in the second instance to the Director of Scottish Procurement Directorate, 3rd Floor Meridian Court, Glasgow, G2 6AT. Telephone 0131-244-3878. This procedure is suggested as the best practical way of ensuring problems of late payment are resolved, and is not intended to interfere with Suppliers’ legal rights.  **4. SCOTLAND INNOVATES**  Suppliers to East Lothian Council are encouraged and invited to submit any innovative proposals. East Lothian Council are committed to supporting the provision of new ideas and will provide feedback and a response on any innovative proposals. |
| THIS NOTICE DOES NOT FORM PART OF THE CONDITIONS OF CONTRACT | | | | | | | |