

## **Scotland Excel**

# **Appendix 1 (Standard Terms of Supply) to the General Conditions of Contract for Supply**

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## **1. Definitions and Interpretation**

The definitions and rules of interpretations contained in the Schedule: Definitions and Interpretations of the Contract apply to these Standard Terms of Supply, except where the context otherwise requires.

## **2. Variation of Conditions**

Unless otherwise provided, these Standard Terms of Supply may not be varied by either party or by both parties save for any necessary information required to complete any Call-off or Purchase Order.

## **3. Capacity and Eligibility to Contract**

3.1. The Contractor confirms that to the best of its knowledge that there are no restrictions of any kind which in any way affect its capacity to contract. If any such restrictions exist or arise, the Council will have the option to terminate any Call-off or other agreement or contract which purports to have been entered into with the Contractor and the Contractor shall indemnify the Council in full for any resulting loss.

3.2. Without prejudice to the immediately preceding paragraph, the Contractor confirms that, to the best of its knowledge,

3.2.1. it has not been convicted of any of the offences detailed in Regulation 58(1),

3.2.2. none of the grounds detailed in Regulation 58(3) or 58(8) of the Public Contracts (Scotland) Regulations 2015 apply to it; and

3.2.3. it has not committed 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 the Data Protection Act 1998 by unlawfully processing personal data in connection with any blacklisting activities, as at the date of submission of its Tender Documents and undertakes to advise the Council if, at any time, subsequently during the term of the Call-off, conviction of any said offence or the occurrence of any such ground or the committing of any such breach happens.

3.3. In the event of any breach of this Condition by virtue of such conviction, such occurrence or such committing, the Council shall have the option to terminate the Call-off and the Contractor shall indemnify the Council in full for any resulting loss.

## **4. Mistakes in Information by Contractor**

The Contractor shall be responsible for the accuracy of all documentation and information supplied to the Council by the Contractor in connection with the supply of the Goods and shall pay the Council any extra costs occasioned by any discrepancies, errors or omissions therein.

## **5. Price, Payment and VAT**

5.1. In consideration of the Contractor's performance of its obligations under each Call-off, the Council shall pay the Price.

5.2. The Council shall, in addition to the Price and following evidence of a valid VAT invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Goods supplied in accordance with each Call-off.

5.3. The Council shall pay all sums due to the Contractor within 30 days of receipt of a valid invoice in respect of each Purchase Order, submitted monthly in arrears. For the avoidance of doubt the Contractor shall accept payment by any procurement card specified by the Council.

5.4. The Contractor shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Goods supplied and that it is supported by any other documentation reasonably required by the Council to substantiate the invoice.

5.5. Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under a Call-off, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.

5.6. The Contractor shall indemnify the Council on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Council at any time or times in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under any Call-off. Any amounts due under this Condition shall be paid by the Contractor to the Council not less than 5 Working Days before the date upon which the tax or other liability is payable by the Council. The Contractor shall not suspend the supply of the Goods unless the Contractor is entitled to terminate the Call-off under these Standard Terms of Supply for failure to pay undisputed sums of money.

## **6. Recovery of Sums Due**

6.1. If under any Call-off any sum of money is recoverable from or payable by the Contractor, that sum may be deducted from any sum due to the Contractor under the Call-off or any other agreement or contract with the Council.

## **7. Unauthorised Supply or Provision of Goods**

The Contractor shall neither supply nor provide any Goods without first receiving a Purchase Order for such Goods. Neither Scotland Excel nor a Council shall be liable for the cost of any Goods delivered, supplied or provided if the Goods are not covered by the prior issue of a Purchase Order.

## **8. Delivery of Goods**

8.1. Goods must be properly packed and secured and shall be delivered by the Contractor at the time or times and place or places and in the manner specified in the Contract or, if not so specified, as specified in the Purchase Order. Any Goods shall remain at the sole risk of the Contractor until delivered to and accepted by an authorised officer on behalf of the Council.

8.2. No mechanical offloading, lifting, moving or other equipment nor any other form of assistance will be supplied to the Contractor for the purposes of offloading and placing Goods in the Premises.

8.3. Every employee of the Contractor and any subcontractor must clearly display an identity card showing the name and address of the Contractor and bearing the name and a photograph of the employee. Identity cards must be shown before access to Premises will be permitted.

8.4. Where deliveries are made to schools, the Contractor's employees must report first to the school office and vehicles may be driven through school playgrounds only on the approval and direction of an authorised person.

8.5. The Goods shall be packed and marked in a proper manner, with particular Purchase Orders packed and labelled separately, and in accordance with the Council's instructions and any statutory requirements and any requirements of the carriers. The Goods shall be accompanied by a delivery note with the name of the person who placed the Purchase Order, the delivery address, any Purchase Order number (or other reference number if appropriate), the product code and description, the quantity of parcels made up for each Purchase Order and the net, gross and tare weights. Corresponding invoices must also contain this information. The Contractor shall ensure that all packaging is of adequate size and of suitable quality to prevent damage to the Goods and the name of the contents shall be clearly marked on each container and all containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.

8.6. If any of the Goods are not delivered within the time or times specified in the Contract or, where not so specified, in the Purchase Order, the Council may, without prejudice to any other remedies, give notice to the Contractor and terminate the Call-off either in respect of these Goods or in respect of all Goods to

which the Call-off relates other than those delivered in accordance with the Call-off before the date of termination.

## **9. Contractor's Staff**

9.1. The Council may, by notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Premises:

9.1.1. any member of the Contractor's staff; or

9.1.2. any person employed or engaged by any member of the Contractor's staff, whose admission or continued presence would, in the reasonable opinion of the Council, be undesirable.

9.2. The Contractor shall be obliged to comply and ensure that its staff comply immediately with any requirement of the Council under Condition 9.1.

9.3. At the Council's written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission to the Premises in connection with a Call-off, specifying the capacities in which they are concerned with the Call-off and giving such other particulars as the Council may reasonably request.

9.4. If the Contractor fails to comply with a request under Condition 9.3 as soon as possible and, in any event, within one week of receipt of the date of the request and in the reasonable opinion of the Council such failure may be prejudicial to the interests of the Council then the Council may terminate each Call-off, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

9.5. The Contractor's staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Premises.

9.6. The decision of the Council as to whether any person is to be refused access to the Premises and as to whether the Contractor has failed to comply with the terms of this Condition shall be final and conclusive.

## **10. Protection of Vulnerable Groups (Scotland) Act 2007**

10.1. Where a Call-off requires the Contractor, his employees or agents to undertake regulated work as defined in Section 91 of the Protection of Vulnerable Groups (Scotland) Act 2007 ("the PVG Act") the Contractor shall ensure that he

complies with all of the relevant requirements, including the establishment of and adherence to effective procedures, of the PVG Act.

10.2. For the supply of the Goods which fall outside of the scope of Regulated Work under the PVG Act, the Contractor shall obtain the appropriate level of Disclosure directly from Disclosure Scotland:

10.2.1. The appropriate level of Disclosure shall be determined by reference to Part V of the Police Act 1997 (as amended) and, for the avoidance of doubt, by reference to any regulations made under that Act and Guidance issued by Disclosure Scotland;

10.2.2. The Contractor shall use the findings of the Disclosure as part of the process to make recruitment decisions and such suitable arrangements as are necessary for the safeguarding and protection of the interests of all persons falling within the definition of a child or protected adult as set down in Section 97 and 94 respectively of the PVG Act. Where the Disclosure shows that the subject of the Disclosure has convictions, reprimands, warnings, cautions or any other relevant information, the Contractor shall conduct a risk assessment and use that assessment to protect the interests of all persons falling within the definition of a child or protected adult as set down in Sections 97 and 94 respectively of the PVG Act, including, without prejudice to the foregoing generality, prohibiting the subject of the Disclosure from being involved in the supply of the Goods to all persons falling within the definition of a child or protected adult as set down in Sections 97 and 94 respectively of the PVG Act.

10.2.3. The Contractor shall recheck the status of their existing employees, agents and anyone else involved in the supply of the Goods not less than every three (3) years in order to ensure that their Disclosure is up-to-date;

10.2.4. To ensure compliance with the requirements of this Condition and subject to the written consent of the subject of the Disclosure, the Contractor will share the findings of the Disclosure with the Council on request.

10.3. If the Council takes the view that the Contractor's staff providing the service by delivering and uplifting the Goods, in part or in entirety, require clearance under the PVG Act, the Contractor shall be obliged to submit the necessary applications to Disclosure Scotland, whose views on whether the applications fall within the terms of the Law and, therefore, are to be processed, shall be final and binding on both the Council and the Contractor.

## **11. Guarantee**



11.1. Except where otherwise specified within the terms of the Contract, the Contractor hereby guarantees the Goods for a period no less than that running from the date of delivery to the date 12 Months thereafter against faulty materials or workmanship. If the Council shall within such guarantee period or within 25 working days thereafter give notice to the Contractor of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use, the Contractor shall (without prejudice to any other rights and remedies which the Council may have) promptly, and in any event within 5 working days, replace the defective Goods free of charge.

11.2. Any Goods rejected by the Council under this Condition shall be returned to the Contractor at the Contractor's risk and expense. The Council shall make reasonable efforts to facilitate the collection of the Goods by the Contractor.

## **12. Warranties and Representations**

12.1. The Contractor warrants and represents that:

12.1.1. it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under any Call-off;

12.1.2. in entering any Call-off it has not committed any fraud or offence under the Bribery Act 2010;

12.1.3. no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under any Call-off;

12.1.4. it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under any Call-off;

12.1.5. no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;

12.1.6. it owns, has obtained or is able to obtain, valid licenses for all Intellectual Property Rights that are necessary for the performance of its obligations under any Call-off;

12.1.7. in the 3 years prior to the date of any Call-off it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;

12.1.8. in the 3 years prior to the date of any Call-off it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established;

12.1.9. it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfill its obligations under any Call-off; and

12.1.10. each Call-off is established on these Standard Terms of Supply, as amended by the Special Conditions of Contract, where appropriate, without amendment thereto save for the necessary information to complete the Call-off and the Purchase Order.

### **13. Contract Performance.**

13.1. The Contractor shall perform its obligations under each Call-off.

13.1.1. in accordance with the terms of the Contract and each Call-off

13.1.2. with appropriately experienced, qualified and trained personnel

13.1.3. in complete and continuous compliance with the obligations relating to Insurance.

13.1.4. in accordance with Good Industry Practice; and

13.1.5. in compliance with the Law, Good Industry Practice and the Standards relevant to the Goods

13.2. Further, the Contractor shall ensure that:

13.2.1. the Goods conform in all respects with the Contract and the Purchase Order and, where applicable, with any sample approved by the Council;

13.2.2. the Goods meet the requirements of the Contract and any particulars specified in the Contract and the Purchase Order;

13.2.3. the Goods conform in all respects with the Laws, Good Industry Practice and the Standards relevant to the Goods and

13.2.4. the Goods are free from defects in design, materials and workmanship and fit and sufficient for all the purposes for which such Goods are ordinarily used and all the purposes for which such Goods purport to be used.

#### **14. Monitoring**

The Contractor shall comply with the monitoring arrangements set out in the Contract and additional requirements of the Purchase Order. Furthermore, the Contractor shall provide Scotland Excel and the Council with all such information as may reasonably be requested and in particular regarding any Call-off, the Contractor's compliance with the service levels stipulated in the Contract and the Purchase Order in respect of the Contractor's performance of its obligations and/or any dispute between the parties.

#### **15. Failure to Conform**

If the Contractor fails to conform to any terms and conditions of the Call-off, the Council may terminate the Call-off with immediate effect by giving the Contractor notice in writing and may enter into another contract with some other Person. All losses, expenses, costs and charges incurred in this connection shall be a debt due by the original Contractor to the Council and may be deducted from any monies due to the Contractor from the Council or may be recoverable by legal action.

#### **16. Failure to Meet Specification**

16.1. All Goods supplied to the Council must conform to the agreed specification under the Contract or may be rejected by the Council.

16.2. Unless the specification states otherwise, the Goods shall be strictly in accordance with the Law, Good Industry Practice and the Standards including without limitation the latest relevant British Standards Institution or EU specification where such exists and to the satisfaction of the Council. Goods rejected under this condition shall be removed by the Contractor at its own expense within seven days (7 days) of the date of receipt of notification of rejection. If the Contractor fails to remove them within this period, the Council shall be entitled to return the rejected Goods or any of them at the Contractor's risk, and recover all costs incurred from the Contractor.

16.3. Goods rejected under this condition will not have been delivered under the Call-off and the Contractor shall, within the time for delivery stipulated in the

Contract or Purchase Order or such other time as the Council may allow, deliver, at the Contractor's expense, satisfactory Goods in place of those rejected.

16.4. Nothing in these conditions, or any amendment agreed thereto, will exclude the terms of the Sale of Goods Act 1979 and the Sale and Supply of Goods Act 1994. If the Goods or any part thereof are unsatisfactory in the opinion of the Council then the Council may, at its own discretion, determine the Call-off as a whole or only in respect of the Goods which are unsatisfactory.

## **17. Contractor's Liabilities**

17.1. Without prejudice to the terms of Condition 38 of the Contract applying to the Contract, for the avoidance of doubt, the Contractor agrees to indemnify the Council against death of or bodily injury to any person and loss of or damage to any property belonging to the Council or any third party arising through or in consequence of its operations in supplying and delivering or providing Goods to the Council and as a result of any act of negligence or omission on the part of the Contractor, employees or contractors employed by it.

17.2. For the avoidance of doubt, the Contractor's liability is to indemnify the Council from any claims from employees of the Contractor and any third party as a result of bodily injury, loss of or damage to any property of any nature whatsoever, and includes an indemnity to the Council in respect of all claims and in respect of costs and expenses reasonably incurred by the Council in the reinstatement of any property lost or damaged.

## **18. Return of Goods**

18.1. The Council may at any time return any of the Goods where the Goods to be returned are in a re-saleable condition and if the Council has paid the Price, or any part of the Price, the Council shall be entitled to obtain a full refund in respect of the Goods concerned. The Council shall be under no obligation to give any reason for returning any of the Goods.

18.2. Any Goods returned by the Council under this Condition shall be returned to the Contractor at the Contractor's risk and expense. The Council shall make reasonable efforts to facilitate the collection of the Goods by the Contractor.

## **19. Discontinued Goods**

19.1. Without prejudice to the terms of Condition 17 of the General Conditions of Contract as it applies to discontinued Goods in the event that any particular item or model of the Goods is discontinued by the manufacturer or becomes obsolete during the term of the Call-off either:

19.1.1. the Contractor may make a request in writing to the Council to specify an alternative item or model. Such written request shall contain a statement confirming that the manufacturer has discontinued the item or model together with such other supporting information as may reasonably be required by the Council; or

19.1.2. the Council may require that any discontinued item or model be replaced by the Contractor in accordance with the Council's alternative specification.

19.2. Any alternative item or model of the Goods must be equal to or better than the discontinued Goods and be compatible with the original specification. The alternative Goods shall be supplied at either the same price as the discontinued Goods or a reduced price, unless otherwise agreed in accordance with the terms of the Framework Contract.

## **20. Suspension**

20.1. The Council may suspend the Contractor's participation in a Call-off where:

20.1.1. in the reasonable opinion of the Council, a breach or material breach by the Contractor creates an immediate or serious diminution of quality in the performance of the Contractor's obligations to below the requirements set out in the Tender Documents and relevant Purchase Order;

20.1.2. in the reasonable opinion of the Council, the Contractor has failed to timeously implement any remedial action plan agreed with the Council;

20.1.3. a Contractor has failed to provide a notice of assignment, disposal, sub-contracting or change of Control;

20.1.4. a Contractor has provided a notice of assignment, disposal, sub-contracting or change of Control and the Council has serious concerns about the viability of the arrangement;

20.1.5. the Contractor or the Council has given notice of termination;  
or,

20.1.6. in the reasonable opinion of the Council, the Contractor is in material breach in accordance with Condition 34 (Breach and Termination) herein.

20.2. Once a decision has been taken to exercise suspension, the Council will:

20.2.1. notify the Contractor in writing of the reason for the suspension and the date the suspension takes effect; and,

20.2.2. notify Scotland Excel of the suspension.

20.3. During any period of suspension:

20.3.1. the Contractor must continue to co-operate with and comply promptly with any reasonable requirements of the Council;

20.3.2. any other current Purchase Orders with the Contractor may continue subject to the Council being satisfied that the Contractor has and will continue to perform the obligations stipulated in the relevant Purchase Order;

20.3.3. the Council shall ensure that no further Purchase Orders are referred to the Contractor; and,

20.3.4. following receipt of notification in accordance with this clause the Contractor will notify Scotland Excel of the Council's suspension of the Call-off, of the other current Purchase Orders made by the Councils with the Contractor and any such further information as may be reasonably required by Scotland Excel.

20.4. The relevant Councils and Scotland Excel will work together with the Contractor to ensure there is no interruption to current Purchase Orders with the Contractor, and to address the issues that led to the suspension, and the Contractor shall co-operate fully with the Councils and Scotland Excel.

20.5. During the period of suspension, the Council will keep the Contractor informed of its assessment of what progress the Contractor has made in addressing the issues that led to suspension and the likely duration of the suspension.

20.6. Withdrawal of the notice issued in accordance with this clause will be confirmed by the Council if and at such time as it becomes reasonably satisfied that the Contractor is able to and will perform its obligations under the Call-off to the required standard.

20.7. Notwithstanding the use of the Council's powers of suspension under this clause the Council shall be entitled to take into account the occurrence and the resolution of the circumstances falling within this clause in its assessment of the Contractor's overall performance and to exercise its powers to terminate the Call-off under clause 21.

## **21. Determination of Call-off**

## **Determination by the Council**

21.1. If the Council at any time wishes to determine a Call-off, notice in writing shall be given to the Contractor and twenty eight days (28 days) after delivery of such notice, the Call-off, shall in all respects cease and determine.

21.2. The Council may also terminate the Call-off in the event of a failure by the Contractor to comply in the performance of the Call-off with all applicable Laws, including in particular, legal obligations under environmental, social and employment law.

## **Determination under Regulation 73**

21.3. In addition to any of its other rights to terminate the Call-off, the Council shall have the right to terminate the Call-off where:-

21.3.1. The Call-off has been subject to a substantial modification which would have required a new procurement procedure in accordance with Regulation 72(9) (modification of contracts during their term);

21.3.2. The Contractor has, at the time of being awarded a Framework Contract, been in one of the situations referred to in Regulation 58(1) (exclusion grounds), including as a result of the application of Regulation 58(2), and should therefore have been excluded from the Framework Contract procurement procedure; or,

21.3.3. The Call-off should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and the Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU.

21.3.4. The Council shall give notice of termination to the Contractor in writing and termination shall take effect as follows:

21.3.4.1. Where in the opinion of the Council, the issue giving rise to the exercise of the right to terminate under this Condition is sufficiently serious, with immediate effect; and

21.3.4.2. In any other case, on the date specified in the notice which shall be no less than twenty eight (28) days from the date on which the notice was given.

21.3.5. The Contractor shall include in any sub-contract arising out of or in connection with the Call-off a right for it to terminate any such sub-

contract where the Call-off is terminated by the Council under Regulation 73.

21.3.6. Where the Council has terminated the Call-off under clause 21.3, the Contractor shall have no right of compensation except where it is established that the Council has acted or omitted to act negligently and this shall be the Contractor's only remedy.

### **General provisions applying to termination of the Call-off**

21.4. The Contractor agrees that upon termination by the Council acting reasonably or expiry of the Call-off it shall not be entitled to make a claim against the Council in relation to costs howsoever incurred by the Contractor in securing the award of the Call-off or providing the Goods under the Call-off nor in relation to the loss of expected profits from the provision of Goods under the Call-off.

21.5. Where the Council has determined a Call-off under the Standard Terms of Supply, without prejudice to any other rights available to it, the Council may replace all or any of the Goods in respect of which the Call-off was so determined. There shall be recoverable from the Contractor the amount by which the cost of replacing these Goods exceeds the amount which would have been payable to the Contractor in respect of these Goods if they had been delivered in accordance with the Call-off.

21.6. Where the Contractor receives notice of termination of its participation in the Call-off, it must take the following action as soon as possible and no later than the expiry date of said notice:

21.6.1. all information provided to the Contractor by the Council must be returned in whatever format the parties to the Call-off shall agree, or destroyed by the Contractor which shall certify its destruction to the Council at the request of the Council; and,

21.6.2. the Contractor must provide to the Council an updated report relative to the monitoring information sought in accordance with clause 14 (Monitoring) in such format as Scotland Excel may determine.

21.7. The termination of the Call-off howsoever arising is without prejudice to the rights, duties and liabilities of any party accrued prior to termination (subject as otherwise expressly provided in the Call-off). Those rights shall include the right of the Council or the Contractor or Scotland Excel as the case may be to claim damages against the other party arising out of that party's material breach of the Call-off. The clauses of the Call-off which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.



21.8. Nothing in this clause shall limit the nature and extent of acts considered by a court of law or otherwise to be material breaches of the Call-off. No granting of time or period of notice under this clause shall be deemed to be a waiver of any right the party granting time or giving notice may have against the other party in respect of the other party's material breach of this Call-off.

## **22. Intellectual Property Rights**

22.1. All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material:

22.1.1. furnished to or made available to the Contractor by or on behalf of the Council shall remain the property of the Council; or

22.1.2. prepared by or for the Contractor on behalf of the Council for use, or intended use, in relation to the performance by the Contractor of its obligations under any Call-off shall belong to the Council,

and the Contractor shall not, and shall ensure that the staff shall not, (except when necessary for the performance of any Call-off) without prior approval, use or disclose any such Intellectual Property Rights.

22.2. The Contractor shall obtain approval before using any material, in relation to the performance of its obligations under any Call-off which is or may be subject to any third party Intellectual property rights.

22.3. The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Goods and the Contractor shall indemnify and keep indemnified and hold the Council and Scotland Excel harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Council or Scotland Excel may suffer or incur as a result of or in connection with any breach of this condition, except where any such claim arises from:

22.3.1. items or materials based upon designs supplied by the Council; or

22.3.2. the use of data supplied by the Council which is not required to be verified by the Contractor under any provision of any Call-off.

22.4. The Contractor shall not make any admissions which may be prejudicial to the defense or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Council or the Contractor in connection with the performance of its obligations under any Call-off.

## **23. Health and safety**

23.1. The Contractor must operate health and safety policies and must perform every Call-off in accordance with the Law relating to health and safety, it being declared for the avoidance of doubt that Condition 1.7 shall not apply to this Condition. If requested by the Council the Contractor shall provide the Council with a copy of its health and safety policy statement.

23.2. Scotland Excel and the Council must be notified immediately by the Contractor of any risks to health or safety which are identified or arise during the Call-off including any known misuse of any Goods supplied.

23.3. While on the Premises, the Contractor shall comply with any health and safety measures implemented by the Council in respect of the Premises and shall notify the Council immediately of any incident occurring while the Contractor is on the Premises which causes or is likely to cause any personal injury or damage to property.

23.4. The Council shall notify the Contractor of any health and safety hazards which may exist or arise at the Premises and which may affect the Contractor in the performance of its duties under any Call-off.

## **24. Equalities**

24.1. The Contractor hereby confirms that to the best of its knowledge and belief it has complied with the Law and Guidance relating to equalities, including without limitation the Equality Act 2010 (referred to in this Condition as the "Act") and hereby agrees to continue to comply with this Act in a manner which is proportionate and relevant to the nature of the contract.

24.2. The Contractor agrees to perform its obligations under the Call-off in a non discriminatory manner and shall promote equality and work towards reflecting best practice as identified in Guidance including the relevant statutory Codes of Practice issued by the Equality and Human Rights Commission.

24.3. The Contractor may be subject to the requirements of the equality duty under the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 in respect of the Call-off being provided to the Council. Where the requirement to comply with this equality duty exists, compliance with the requirements of Conditions 24.1 to 24.4 and Condition 24.8 will be evidence to the Council of the Contractor meeting this requirement.

24.4. The Contractor recognises that the Council has a responsibility to monitor the extent to which the performance of the Call-off extends to socially excluded groups. In recognition of this, the Contractor agrees, where appropriate and practicable, to provide monitoring information to the Council in relation to

employment and performance of the Call-off in respect of the protected characteristics as detailed in the Act, Part 2 chapter 1.

24.5. The Contractor shall not discriminate, directly or indirectly or by way of victimisation or harassment against any person on grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation contrary to the Act.

24.6. The Contractor shall notify the Council forthwith in writing as soon as it becomes aware of any investigation of, or proceedings brought against, the Contractor and any decision or outcome being made from any proceedings under the Act in respect of a Call-off made by the Council; for the avoidance of doubt this is in addition to the reporting requirements under Condition 42 (Equalities) of the Framework Contract.

24.7. Where any investigation is undertaken by a person or body empowered to conduct such investigation, and/or proceedings are instituted in connection with any matter relating to the Contractor's performance of the Call-off being in contravention of the Act, the Contractor shall free of charge:

24.7.1. Provide any information requested in the timescales allotted unless to do so would be contrary to the Law;

24.7.2. Attend any meetings as required and permit the Contractor's staff to attend;

24.7.3. Promptly allow access to and investigation of any document or data deemed to be relevant;

24.7.4. Allow itself and any Contractor's Staff to appear as witness in any ensuing proceedings; and

24.7.5. Co-operate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.

24.8. Where any such investigation is conducted or proceedings are brought under the Act which arise directly or indirectly out of any act or omission of the Contractor, its agents or staff, and where there is a finding against the Contractor in such investigation or proceedings, the Contractor shall indemnify the Council with respect to all costs, charges and expenses arising out of or in connection with any such investigation or which the Council may have been ordered or required to pay to a third party.

24.9. In recognition of the Council's legal obligation to tackle discrimination and promote equalities and diversity in all its functions and policies, under the Act the

Contractor may be subject to the requirement from time to time to complete a questionnaire and/or provide information to the Council on the extent and quality of the Contractor's equalities and diversity policies. Good practice in this regard will be recognized by the Council, however, poor practice may result in the Council issuing a mind to comply letter describing the nature of improvement required and the associated timescales. If the Contractor fails to improve practice in this regard the Council may take further action, up to and including the termination of the Call-off.

24.10. The Contractor will extend the obligations under this Condition 24 to any arrangements with subcontractors.

## **25. Environmental Policy**

The Contractor shall not supply any Goods which will endanger the health of any person, will cause significant damage to the environment during manufacture, disposal or use, will consume a disproportionate amount of energy during manufacture, use or disposal, will cause unnecessary waste, or will contain materials derived from threatened species or environments. If requested the Contractor shall provide the Council with a copy of its environmental policy.

## **26. Ethical Requirements**

The Contractor shall perform its obligations under each Call-off in accordance with the Council's ethical procurement and sourcing policy (which is to promote appropriate standards regarding legal, ethical and social issues including, for example, the prohibition of modern slavery (as provided for in the Modern Slavery Act 2015), health and safety, security of employment rights, equality, corruption and fair trade, in particular in low cost or developing countries). If requested by the Council, the Contractor shall provide the Council with a copy of its ethical procurement and sourcing policy (or equivalent).

## **27. Public Access to Information**

27.1. No term of this contract, whether express or implied, shall preclude the Council from making public, if required under the Freedom of Information (Scotland) Act 2002 (referred to in this Condition as "the Act") or the Environmental Information (Scotland) Regulations 2004 (referred to in this Condition as "the Regulations") or both details of all matters relating to the Call-off. The Council's interpretation of the Act and any exemptions therein will be final and conclusive. The Contractor will facilitate the Council's compliance with its obligations under the Act and the Regulations and comply with any requests from the Council for that purpose.

27.2. Further, the Council may share any information regarding any Call-off or Purchase Order with the Competition and Markets Authority or any other relevant regulators.

## **28. Prevention of Corruption**

28.1. Each party shall be entitled to terminate the Call-off and recover any loss resulting if

28.1.1. the other party has offered or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or refraining from doing any action in relation to the obtaining or execution of the Call-off or any other contract with the first party or for showing or refraining from showing favour or disfavour to any person in relation to the Call-off or any other contract with the first party; or

28.1.2. in relation to any contract with the first party, the other party has committed an offence under the Prevention of Corruption Acts 1889 to 1916; or

28.1.3. the other party shall have given any fee or reward, the receipt of which is an offence under subsection (2) of section 68 of the Local Government (Scotland) Act 1973.

28.2. Each party shall comply with all the requirements of the Bribery Act 2010 and any form of guidance issued in respect of the Bribery Act 2010.

28.3. Each party reserves the right to terminate the Call-off without incurring any penalty whatsoever and to recover from the other party the amount of any loss resulting from such termination if the other party shall have acted in a manner contrary to the requirements of the Bribery Act 2010 in respect of any direct or indirect business carried out for the purposes of the Call-off.

28.4. The terms of this Condition 28 shall apply in full in any circumstance where the action or act described has been done by any person employed by, acting on behalf of or representing a party to the Call-off, whether or not with that party's knowledge.

## **29. Prevention of Fraud**

29.1. Without prejudice to the terms of Condition 12 above, the Contractor shall take all reasonable steps, in accordance with Good Industry Practice, to prevent fraud by staff and the Contractor (including its shareholders, members and directors) in connection with the receipt of monies from the Council.

29.2. The Contractor shall notify the Council immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

29.3. If the Contractor or its staff commits fraud in relation to the Call-off or any contract with the Council, the Council may:

29.3.1. terminate the Call-off and recover from the Contractor the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the supply of the Goods and any additional expenditure incurred by the Council as a result of the Contractor's fraud. or

29.3.2. recover in full from the Contractor any loss sustained in consequence of any such fraud.

### **30. Data Protection and Information Security**

30.1. The Contractor undertakes to comply with the provisions of the Law relating to data protection and in particular warrants that appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data. Each party undertakes to comply with the Law relating to data protection including, for the avoidance of doubt, the provisions of the Data Protection Act 1998 and, as of 25 May 2018, Regulation (EU) 2016/679 on the protection of the natural persons with regard to the processing of personal data and on the free movement of such data (the **"EU General Data Protection Regulation" or "GDPR"**) and any enactments thereunder or amendments thereto.

30.2. The Contractor undertakes to ensure that its staff are aware of their obligations under the Data Protection Act 1998.

30.3. The Contractor may be acting as a Data Controller in its own right, but where the Contractor is acting as a Data Processor on behalf of the Council, the Contractor undertakes to comply with the provisions of the Data Protection Act 1998 (and any amendments thereto or Regulations) thereunder as though it were a Data Controller of the Council data, and will be expected by the Council to enter into a separate Data Processing Agreement where appropriate.

30.4. In any event, the Contractor agrees to indemnify and keep the Council indemnified from and against all costs, claims, demands, damages, expenses, losses and liabilities which may be incurred directly or indirectly in connection with a breach of the provisions of this clause 30 including, but not limited to, the imposition of any monetary penalty by the Information Commissioner.

30.5. The Contractor undertakes to have formal policies and procedures in place addressing information security awareness, training of staff, security management of systems, both manual and electronic where Council data may be held, as well as the physical security of buildings where information is held.

30.6. Access to Council data, provided under this Call-off, must be restricted by the Contractor and only provided where their staff have a direct requirement to process it in connection with the purpose of this Call-off.

30.7. The Council reserve the right to visit Contractor sites which are involved in receiving, storing or processing Council data to ensure that security controls continue to meet Council standards.

30.8. The Contractor must notify the Council immediately of any risks or compromise to Council data or any incidents or concerns which may impact on the confidentiality, integrity or availability of Council data. Where risks are identified which are considered to have been ignored or an inappropriate response provided, the Council reserves the right to suspend the provision of information to the Contractor until appropriate remedial action has been taken.

### **31. Disruption**

31.1. The Contractor shall take reasonable care to ensure that in the performance of its obligations under any Call-off it does not disrupt the operations of the Council, its employees or any other contractor employed by the Council.

31.2. The Contractor shall immediately inform the Council of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under any Call-off.

31.3. In the event of industrial action by the staff, the Contractor shall seek approval to its proposals to continue to perform its obligations under each Call-off.

31.4. If the Contractor's proposals are considered insufficient or unacceptable by the Council acting reasonably, then, depending on the specific circumstances of any Call-off, a Call-off may be suspended or terminated with immediate effect by the Council by notice.

### **32. Publicity**

The Contractor must not use the Council logo nor disclose any details of any relationship with the Council to any other party without the Council's prior written consent.

### **33. Company Profile**

The Council may, at any time, give the Contractor seven days' (7 days') notice in writing requiring the Contractor to provide to the Council the Contractor's company profile to include a complete list of all companies and organisations affiliated to the Contractor or engaged by the Contractor for the purposes of the Call-off.

### **34. Change of Legislation**

34.1. The Contractor shall bear the cost of ensuring that the Goods shall comply with all applicable statutes, enactments, orders, regulations or other similar instruments and any amendments thereto, except where any such amendment could not reasonably have been foreseen by the Contractor at the date when the Call-off was concluded being the date on which the Council awarded the Call-off to the Contractor.

34.2. Where such reasonably unforeseeable amendments are necessary, the Council and the Contractor shall use all reasonable endeavours to agree upon reasonable adjustments to the prices affected by the amendment or amendments as may be necessary to compensate the Contractor for such additional costs as are both reasonably and necessarily incurred by the Contractor in accommodating such amendments.

34.3. Where agreement between the Council and the Contractor cannot be achieved under the immediately preceding paragraph the Council reserves the right not to purchase the affected Goods as part of the Call-off.

### **35. Force Majeure**

35.1. Neither party shall be liable to the other party for any delay in performing, or failure to perform, its obligations under any Call-off to the extent that such delay or failure is a result of force majeure. Notwithstanding the foregoing, each party shall use all reasonable endeavours to continue to perform its obligations under each Call-off for the duration of such force majeure. However, if such force majeure prevents either party from performing its material obligations under any Call-off for a period in excess of 28 days, either party may terminate the Call-off with immediate effect by notice.

35.2. For the avoidance of doubt, no payment shall be made during the period when force majeure applies except in return for any Goods delivered under the Call-off by the Contractor.

35.3. Any failure or delay by the Contractor in performing its obligations under any Call-off which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to force majeure only if that agent, sub-contractor or supplier is itself impeded by force majeure from complying with an obligation to the Contractor.



35.4. If either party becomes aware of force majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described herein it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

### **36. Insolvency**

36.1. Without prejudice to any other rights, the Council shall have the right to terminate the Call-off by written notice immediately if the Contractor is:

36.1.1. a company and passes a resolution for winding-up or dissolution (other than for, and followed by, an amalgamation or reconstruction), or an administrator, administrative receiver, receiver or manager, liquidator or provisional liquidator is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge, or the company makes a composition or arrangement with its creditors, or the court makes an administration order or a winding-up order, or; or the company is made subject of a Debt Arrangement Scheme or the company is struck off in accordance with the Law;

36.1.2. an individual and is apparently insolvent or a petition is appointed for the Contractor's bankruptcy or the sequestration of his estate or the Contractor, makes a composition, conveyance or assignment or any arrangement with or for the benefit of creditors, or a trustee or administrator is appointed to manage his affairs;

36.1.3. a firm or a number of persons acting together in any capacity and a petition is presented for the Contractor to be wound up as an unregistered company, or if any of the events in (a) and (b) of this Condition occur in respect of the firm or any partner or any of those persons; or,

36.1.4. any event similar to those listed in (a), (b) or (c) above occurs under the Law of this or any other jurisdiction.

### **37. Assignment, Subcontracting etc.**

37.1. No part of a Call-off will be subcontracted or assigned by the Contractor without the prior written consent of the Council. Any breach hereof shall entitle the Council to determine the whole Call-off or that part to which the breach relates or take any other remedies available. The agreement by the Council to any assignment or subcontracting of the Call-off whether in whole or in part shall not relieve the Contractor of the Contractor's liabilities under the Call-off.

37.2. Notwithstanding the terms of the immediately preceding paragraph the Contractor may assign to another person (an “assignee”) (i) the right to receive payment of the price or any part thereof due to the Contractor under this Call-off subject to deduction of sums in respect of which the Council exercises its right of recovery under Clauses 6, 18 and 21 of the Call-off and (ii) all the related rights of the Council under the Call-off in relation to the recovery of sums due but unpaid. The Contractor shall notify or procure that any assignee notifies the Council of any variations to the arrangements for payment of the Price or for handling invoices, in each case in good time to enable the Council to redirect payments or invoices accordingly. In the absence of such notification the Council shall be under no obligation to vary its arrangements for payment of the Price or for handling invoices.

37.3. If the Contractor wishes to subcontract, assign or otherwise dispose of the benefit or the burden of the Call-off or any part thereof, the Contractor shall intimate to the Council no later than 60 days before the change in status is to take effect the name of the proposed party or parties involved and the nature of the change and thereafter shall provide all information that the Council may need to consider the Contractor’s request.

37.4. Where a change in the Control of a Contractor occurs, the Council shall be entitled to consider whether the Contractor remains suitable and eligible to perform the obligations under the Call-off and whether its consent to the change in Control may be given so that the Call-off and the Contractor remain compliant with the Law. The Council shall not withhold or delay its consent unreasonably subject to:-

37.4.1. The Contractor’s compliance with the obligations noted below arising from its compliance with the Companies’ Act 2006

37.4.2. The Council’s compliance with its procedural requirements permitting assignation;

37.4.3. Compliance by all parties to the change in Control with the Law.

37.5. The Contractor shall promptly notify the Council in writing:

37.5.1. of any material detrimental change in the financial standing or credit rating or both of the Contractor; and/or

37.5.2. of any circumstances suggesting that a change in the Control of the Contractor is planned or in contemplation, provided such notification does not contravene the Law.

37.6. Where the Contractor is subject to Part 28 of the Companies Act 2006 and this restricts the ability of the Contractor to comply with the requirements of this

Condition, the relevant provisions in this Condition will not apply subject to the Contractor's compliance with the following requirements:

37.6.1. The Contractor must notify the Council promptly of the position in writing and provide such further information as may be reasonably required by the Council;

37.6.2. In disclosing information in accordance with this Condition, the Contractor must adhere to the requirements of all applicable legislation including without limitation the Companies Act 2006 and the City Code on Takeovers and Mergers ("the City Code"); and

37.6.3. Copies of any disclosures made in accordance with the requirements of the aforementioned Part 28 of the Companies Act 2006, the Takeover Code and all applicable law and guidance must be provided to the Council at the time of issue.

37.7. Where the Contractor has failed to comply with the requirements of this Condition 37 or the Council has decided that it cannot give its consent to the proposed assignment or subcontracting or the continuation of the Call-off following the change in Control, the Council shall be entitled, acting reasonably, to terminate the Contract under Condition 20

37.8. No consent shall be given under this Condition 37 if the change proposed by the Contractor does not comply with the requirements of the Regulations, particularly Regulation 72.

### **38. Serving of Notices**

38.1. Any notice or other communication to be given from one party to the other under these Standard Terms of Supply shall be valid only if it is made in writing.

38.2. Further any such notice or other communication which is to be given by either party to the other, except for the purpose of court proceedings, or to Scotland Excel shall be given by letter (sent by hand, post or by a signed for or special delivery service). Such letters shall be addressed to the other party or to Scotland Excel in the following manner -

38.2.1. For the Contractor – [to be completed]

38.2.2. For the Council – to the address set out in the Purchase Order

38.2.3. For Scotland Excel – The Director, Scotland Excel,  
Renfrewshire House, Cotton Street, Paisley, PA1 1AR

38.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted or sooner where the other party or Scotland Excel acknowledges receipt of such letters.

38.4. The Contractor shall advise the Council and Scotland Excel, as soon as practicable and in any event no later than seven days after the change, of a change of address for service by sending a notice in accordance with this condition.

38.5. The Council or Scotland Excel may change its address for service by sending a notice in accordance with this condition.

### **39. Audit**

The Contractor shall keep and maintain until the date falling 7 years after the date of acceptance of the Goods, or as long a period as may be agreed between the parties, full and accurate records of each Call-off including the Goods supplied under it and all payments made by the Council. The Contractor shall on request afford the Council or the Council's representatives such access to those records as may be requested by the Council in connection with any Call-off.

### **40. Waiver**

No failure or delay by either party to enforce any right or remedy to which it is entitled, or to require performance by the other party of any of the terms of the Call-off shall be a waiver of any such right or remedy nor shall it in any way affect its right subsequently to enforce such provisions.

### **41. Severability of Conditions**

If any provision of a Call-off to any extent becomes, or is held to be, invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of the Call-off shall not in any way be affected.

### **42. Remedies Cumulative**

Except as otherwise expressly provided by these Standard Terms of Supply, all remedies available to either party for breach of any Call-off are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

### **43. Conflict in interpretation**

43.1. In the event of, and only to the extent of, any conflict in interpretation between the Conditions of the Framework Contract, these Standard Terms of Supply, the Purchase Order and/or any document referred to in these Standard Terms of Supply, the conflict shall be resolved in accordance with the following order of precedence.

- 43.1.1. the Conditions of the Framework Contract;
- 43.1.2. these Standard Terms of Supply;
- 43.1.3. the Purchase Order; and
- 43.1.4. any other document referred to in these Standard Terms of Supply.

#### **44. Application of Regulation 72**

No change shall be made to any Call-off if the intended change does not comply with the requirements of the Regulations, in particular Regulation 72.

#### **45. Headings**

Headings to these Standard Terms of Supply are for convenience only and shall not affect their interpretation.

#### **46. Dispute Resolution**

46.1. The parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with any Call-off within 20 working days of either party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director (or equivalent) of each party.

46.2. Nothing in this dispute resolution procedure shall prevent the parties from seeking from any court of competent jurisdiction an interim order restraining the other party from doing any act or compelling the other party to do any act.

#### **47. The Contract (Third Party Rights) (Scotland) Act 2017**

Unless otherwise explicitly provided for, the Contract shall not create any rights in favour of third parties under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce or otherwise invoke any provision of the Contract.

#### **48. Law of Scotland**

The Standard Terms of Supply and each Call-off will be governed by the Law of Scotland and subject to the exclusive jurisdiction of the Scottish Courts.