

SCOTTISH WATER

Conditions of Contract For the Purchase of Goods and Services

Document Reference	FIN/PROC/COC/CC Goods & Services	Author	Rahul Gindha
Version Number	Version 4	Date	April 2008
Confidentiality	Unclassified – for anyone inside or outwith Scottish Water		

CONDITIONS OF CONTRACT FOR THE PURCHASE OF GOODS AND SERVICES

TABLE OF CLAUSES

<u>CLAUSE NO.</u>	<u>TITLE</u>
1	DEFINITIONS
2	THE GOODS
3	LABELLING AND PACKAGING
4	DELIVERY
5	EXCESS DELIVERIES
6	FREE ISSUE MATERIALS
7	INSPECTION AND TESTING
8	PRICE AND PAYMENT
9	TITLE AND ACCEPTANCE
10	RISK
11	HEALTH AND SAFETY
12	PRODUCT LIABILITY
13	WATER INDUSTRY HYGIENE REQUIREMENTS
14	FORCE MAJEURE
15	VARIATIONS
16	TERMINATION
17	ASSIGNNATION AND SUB-CONTRACTING
18	INDEMNITY AND INSURANCE
19	WARRANTY
20	INTELLECTUAL PROPERTY RIGHTS
21	CONFIDENTIALITY AND FREEDOM OF INFORMATION
22	INSOLVENCY
23	DEFAULT
24	RECOVERY OF SUMS DUE
25	WAIVER
26	PREVENTION OF CORRUPTION
27	UNENFORCEABILITY
28	ARBITRATION
29	STATUTES
30	NOTICES
31	AUDIT
32	DATE CHANGE DISRUPTION
33	GOVERNING LAW

ADDITIONAL CONDITIONS FOR THE PURCHASE OF SERVICES

34	DEFINITIONS
35	RESPONSIBILITY FOR INFORMATION
36	QUALITY OF SERVICE
37	MANNER OF CARRYING OUT THE SERVICE
38	ACCESS TO THE PREMISES
39	SUPPLIERS PERSONNEL
40	NOTIFICATION PROCEDURE
41	COMPLETION TESTS
42	TUPE

1. DEFINITIONS

- 1.1 "SW" means Scottish Water established in terms of the Water Industry (Scotland) Act 2002 and having its principal place of business at Castle House, 6 Castle Drive, Carnegie Campus, Dunfermline KY11 8GG and if applicable, references to SW shall include Scottish Water Horizons Limited (SC264806), having its principal place of business at Castle House, 6 Castle Drive, Carnegie Campus, Dunfermline KY11 8GG.
- 1.2 "Contract" means the contract between SW and the Supplier consisting of the contract, these general conditions and any other documents (or parts thereof) specified in the Contract or expressly incorporating these general conditions.
- 1.3 "Goods" means any goods, articles or materials supplied or to be supplied to SW by the Supplier pursuant to or in connection with the Contract.
- 1.4 "Acceptance" means the acceptance of the Goods in terms of clause nine (9).
- 1.5 "IPR" means all patents, designs and registered trade marks, and any applications for any of the foregoing and the right to apply for same, copyright, design rights, database rights, rights in the nature of copyright, trade marks, trade names and business names, moral rights, topography rights, utility model rights, rights in confidential and proprietary information, rights in inventions and discoveries, know how and any and all other industrial or intellectual property rights whatsoever which exist or arise anywhere in the world.
- 1.6 "Supplier" means the company or individual named in the Contract and where the context so requires shall include any sub-contractor.
- 1.7 "Statute" has the meaning set out in clause 29.2.
- 1.8 The condition and paragraph headings used herein are for purposes of convenience or reference only. They shall not be used to explain, limit or extend the meaning of any part of the Contract.
- 1.9 In these conditions the masculine includes the feminine and the singular includes the plural and vice versa unless the context otherwise requires.

2. THE GOODS

- 2.1 The Goods shall be to the entire satisfaction of SW and shall conform in all respects with the Contract.
- 2.2 The Goods shall be fit and sufficient for the purpose for which such goods are ordinarily used and for any particular purpose made known to the Supplier by SW. The Supplier acknowledges that SW has relied and shall rely on the skill, care and judgement of the Supplier in the supply of the Goods and the execution of the Contract.

3. LABELLING AND PACKAGING

- 3.1 The Goods shall be packaged and as necessary palletised in a safe and secure manner and in accordance with SW's instructions. The contents shall be clearly marked on each container and/or pallet and all containers of hazardous goods (and all documents relating thereto) shall bear prominent and adequate warnings. The Supplier shall indemnify SW in full against all actions, proceedings, claims, demands, losses, damages, charges, costs and/or expenses (including legal fees) which SW may suffer or incur as a result of or in connection with any breach of this condition.
- 3.2 Each container or pallet shall have delivery or advice notes securely attached detailing SW's Contract reference number, description of the contents, quantity, weight and information for the safe handling of the Goods.
- 3.3 All packaging materials will be considered non-returnable unless otherwise agreed in writing.

4. DELIVERY

- 4.1 Time is of the essence and the date of completion for the Contract or in the case of the Contract being performed at regular or defined times shall be that specified in the Contract.
- 4.2 The Supplier is responsible for ensuring that intended delivery times are acceptable to SW.

4.3 Unless otherwise agreed with SW, the Supplier is responsible for the off-loading of the Goods at no additional charge at the place of delivery stated in the Contract. Any access to premises and any labour and equipment that may be provided by SW in connection with delivery or off-loading shall be provided without liability on SW.

4.4 Where any access to SW's premises is necessary in connection with delivery the Supplier shall at all times comply with SW's site regulations and all safety and hygiene requirements applicable to the premises and shall ensure that his employees and all for whom he is legally liable so comply.

5. EXCESS DELIVERIES

5.1 If the Supplier delivers quantities in excess of the quantity due, SW shall have the right to accept at a reduced price or to reject the quantity in excess of that due. SW shall not be obliged to accept delivery of the Goods prior to SW's specified delivery date and if SW shall do so;

5.1.1 SW shall be entitled to charge storage to the Supplier, and

5.1.2 the date for payment shall be calculated according to the due delivery date and such payment terms as are specified in the Contract.

6. FREE-ISSUE MATERIALS

6.1 Any free-issued materials, tools and components used directly or indirectly in the performance of the Contract or any other assets of SW in the possession of the Supplier or the subject of the Contract shall remain at all times the property of SW and shall be identified and clearly marked by the Supplier and recorded as such in all documentation. The Supplier shall maintain all such articles in good order and condition and shall use such materials solely in connection with the Contract. The Supplier shall notify SW of any surplus materials remaining after completion of the Contract and shall dispose of them as SW may direct. Waste of materials arising from bad workmanship or negligence of the Supplier shall be made good at the Supplier's expense.

6.2 Without prejudice to any other rights of SW, the Supplier shall deliver up such materials, tools, components and assets, whether processed or not to SW on demand.

6.3 In the event of SW's termination or cancellation of the Contract for any reason, all free-issued materials, tools and components used directly or indirectly in the Contract and any other assets of SW in possession of the Supplier shall be returned immediately to SW who shall be granted unencumbered free rights of access to the Supplier's premises for such purposes as SW may decide are appropriate.

7. INSPECTION AND TESTING

7.1 SW may at any reasonable time inspect or test or arrange for the inspection or testing of the Goods, or any part of them, in the course of production and/or upon completion at the Supplier's premises and/or those of his sub-contractor. No failure to make complaint at the time of such inspection or test and no approval given during or after such inspection or test shall constitute a waiver by SW of any rights or remedies in respect of the Goods.

7.2 SW may by notice to the Supplier reject any of the Goods that fail to comply with the Contract. Such notice shall generally be given within thirty (30) days after delivery to SW or such longer period as may be reasonable in all the circumstances or within a reasonable time after any latent defect in the Goods has become apparent. Should SW reject any of the Goods pursuant to this condition SW shall be entitled without prejudice to its other rights and remedies to;

7.2.1 require that the Goods be either replaced or repaired by the Supplier (as SW may elect) within the time specified at the time of rejection, with Goods which comply in all respects with the Contract, or

7.2.2 obtain a refund from the Supplier in respect of the Goods rejected, or

7.2.3 obtain the Goods elsewhere and recover from the Supplier any additional costs thereby incurred, and

7.2.4 recover from the Supplier the full cost of inspection and/or testing from time to time.

8. PRICE AND PAYMENT

- 8.1 The price shall be as stated in the Contract and shall be firm and unchangeable for the duration of the Contract and shall include all the requirements referred to in the Contract and no variation shall be allowed unless agreed in writing with SW. Unless otherwise agreed in writing the price shall be a delivered price, including packing, carriage, and insurance to the specified delivery point.
- 8.2 All prices shall be in Pounds Sterling.
- 8.3 Unless otherwise agreed in writing by SW, the Supplier shall render an invoice retrospective to the delivery of the Goods to the satisfaction of SW. Value Added Tax where applicable will be shown separately as a strictly net extra. SW's Contract reference number must be quoted on all invoices and SW will accept no liability whatsoever for invoices which do not comply with this condition.
- 8.4 Payment shall be made within thirty (30) days following the receipt of an invoice with which SW has no dispute.
- 8.5 All invoices clearly marked with the purchase order number shall be sent to Scottish Water Accounts Payable, Houston Industrial Estate, Muir Road, Livingston, West Lothian, EH54 5DR.

9. TITLE AND ACCEPTANCE

- 9.1 Title in the Goods and in the materials, components and equipment to be incorporated in the Goods shall pass to SW either;
- 9.1.1 upon delivery or incorporation in accordance with the Contract, or
- 9.1.2 when payment or part payment in respect thereof is made to the Supplier, whichever is the earlier.
- 9.2 Where title to the Goods passes to SW upon acceptance at the Supplier's premises or under clause 9.1.2, the Goods their component parts and equipment so far incorporated therein shall be identified and clearly marked by the Supplier as being the property of SW and recorded as such in all documentation.
- 9.3 Acceptance of the Goods shall take place if upon the lapsing of, 30 days from the delivery date at the place of delivery stated in the Contract or a longer period of time from the delivery date at the place of delivery stated in the Contract as may be reasonable in the circumstances or such reasonable time from the delivery date at the place of delivery stated in the Contract within which any latent defects in the Goods would become apparent, SW does not issue a notice informing the Supplier that the Goods fail to comply with the Contract.

10. RISK

- 10.1 The risk in the Goods shall pass to SW upon delivery to SW at the place of delivery stated in the Contract.

11. HEALTH AND SAFETY

- 11.1 The Supplier warrants that at all times the Contract shall be performed in strict accordance with the requirements of the Health and Safety at Work Act etc 1974 and in accordance with any regulations made under the said Act and the Goods shall be designed, tested and constructed so as to be safe and without risks to health and safety and all necessary information and instructions for the safe and proper use of the Goods must be supplied to SW prior to delivery of the Goods.
- 11.2 The Supplier must specify as soon as identified any operational or health risk which may arise during the handling, storage, use or disposal after use, including known mis-uses of the Goods.

12. PRODUCT LIABILITY

- 12.1 The Supplier shall at all times indemnify SW in full against any and all actions, claims, proceedings, demands, damages, charges, judgements, costs, expenses (including legal fees) and/or losses wherever made or incurred in respect of damage to property and/or injury, or death of persons arising directly or indirectly out of any actions or alleged defect in design, material and or workmanship, or the failure to provide adequate, complete and proper warnings and instructions in respect of the Goods. This undertaking shall apply whether the claim, proceedings or judgement is grounded on breach of warranty, negligence or strict liability. Declaring that the Supplier's liability in terms of this clause shall not exceed £5,000,000.

13. WATER INDUSTRY HYGIENE REQUIREMENTS

13.1 The Supplier shall at all times comply with all water supply hygiene and site working requirements of SW.

13.2 The Supplier warrants that, if appropriate, the Goods comply in all respects with the requirements of The Water Supply (Water Quality) (Scotland) Regulations 2001 as amended from time to time and the Water Bylaws and indemnifies SW in full against all actions, proceedings, claims, demands, losses, damages, charges, costs and/or expenses (including legal fees) which SW may suffer or incur as a result of or in connection with any breach of this condition.

14. FORCE MAJEURE

14.1 Neither SW nor the Supplier shall be liable or deemed to be in default on account of delaying any delivery or the performance of any other act under the Contract due to circumstances which could not have been reasonably contemplated or which are beyond the parties reasonable control.

14.2 The delaying party shall notify the other party immediately they become aware of a potential or actual force majeure situation. The delaying party shall provide the reasons for the delay and the likely duration of the delay and they shall be entitled to a reasonable extension of time for the performance of their contractual obligations.

15. VARIATIONS

15.1 SW reserves the right at any time by written notice to the Supplier to modify the quality and quantity of the Goods and any alteration in the price or the completion date arising by reason of such change shall be agreed between the parties. A failure to agree shall not be a reason for the Supplier failing to undertake and complete the Contract. Failing agreement the matter shall be determined in accordance with the provisions of clause 28.

16. TERMINATION

16.1 In addition to their rights of termination under clause 23, SW shall be entitled to terminate or suspend the Contract for any reason in whole or in part at any time by giving written notice to the Supplier. SW shall pay a fair and reasonable price for Goods supplied satisfactorily at the time of termination or suspension, provided that SW has accepted and acquired title to such Goods.

16.2 Termination of the Contract shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to SW.

17. ASSIGNNATION AND SUB-CONTRACTING

17.1 SW may assign the Contract at any time without approval or consent of the Supplier.

17.2 The Supplier shall not without the prior written consent of SW assign or sub-contract the benefit or burden of the Contract or any part thereof.

17.3 Sub-contracting any part of the Contract shall not relieve the Supplier of any obligation or duty incumbent on him under the Contract.

18 INDEMNITY AND INSURANCE

18.1 Without prejudice to any rights or remedies of SW (including SW's rights under clause 23) the Supplier shall indemnify SW in full against all actions, claims, proceedings, demands, losses, damages, charges, costs and expenses (including legal fees) which SW may suffer or incur as a result of or in connection with any damage to property or in respect of any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any defect in the Goods or any negligent or wrongful act or omission of the Supplier.

18.2 The Supplier shall effect with a reputable insurance company policies of insurance covering all matters which are the subject of indemnities under the Contract including Product Liability insurance to a minimum of the value of the Contract, Public Liability insurance to a minimum sum of £5,000,000 and Employers Liability insurance to a minimum sum of £10,000,000 in each case in respect of any one incident and unlimited to the number of incidents unless otherwise agreed by SW in writing. SW reserves the right to require adjustments to such insurance cover if they consider that to be necessary.

18.3 At the request of SW, the Supplier shall produce within forty-eight (48) hours, the policies required under clause 18.2 together with receipts or other evidence of payment of the latest premium due thereunder.

19. WARRANTY

19.1 The Supplier warrants that the Goods shall conform to the Contract, are of good material and workmanship, are free from defects, are of satisfactory quality and are fit for purpose.

19.2 The warranty given under clause 19.1 shall be in effect for a period of two (2) years after date of Acceptance of the Goods by SW and this and any additional warranties and guarantees given to SW by the Supplier shall survive inspection, test, Acceptance and payment, and shall benefit SW, its successors, assignees and customers.

19.3 The Supplier warrants that the Goods shall be free from any liens and encumbrances.

20. INTELLECTUAL PROPERTY RIGHTS

20.1 Except to the extent that the Goods are made in accordance with designs furnished by SW, the Supplier warrants, represents and undertakes that none of the Goods will infringe any patent, trade mark, registered design, copyright or other IPR of any third party and the Supplier shall indemnify SW in full against all actions, claims, proceedings, demands, losses, damages, charges, costs and expenses (including legal fees) which SW may suffer or incur as a result of or in connection with any breach of this clause.

20.2 All rights (including ownership and copyright) in any specification, instruction, plan, drawing, pattern, model, design or information or any material similar to any of the foregoing furnished to or commissioned by SW or made available to the Supplier by SW (including by any person acting on SW's behalf) shall remain vested in SW and the Supplier shall not (except to the extent necessary for the performance of the Contract) without the prior written consent of SW use or disclose any such specification, instruction, plan, drawing, pattern, model, design or information or other materials (whether or not relevant to the Contract) which the Supplier may obtain in the performance of the Contract.

20.3 All inventions, designs, methods, processes, know how, data and software discovered or generated as a result of or in the course of the Contract and all IPR arising therein or relating thereto and/or in anything produced in the course of the performance of the Contract shall with immediate effect from its or their creation vest in and belong to SW and the Supplier assigns to SW, by way of present assignment of future rights, its entire right, title and interest in and to all copyright and other IPR which exists and/or which may hereafter exist or arise in the same which is capable of being assigned to the fullest extent permitted at law, without charge. The Supplier shall from time to time at the reasonable request of SW take such action and execute such documents, forms, deeds and authorisations as reasonably requested by SW to give effect to the rights granted to SW pursuant to this Agreement.

21. CONFIDENTIALITY

21.1 The Contract and the subject matter thereof and any samples and information supplied by SW (including the items referred to in Clause 20.2) and/or relating in any way to SW's business, processes, research or property shall be used for the exclusive purpose of performing the Contract and be treated as and kept confidential by the Supplier who shall not use such for its own benefit or the benefit of any third party or disclose such or any details thereof for any purpose whatsoever (including advertisements, display or publication) without SW's prior consent in writing.

21.2 Scottish Water may require to disclose information in compliance with the Freedom of Information (Scotland) Act 2002, (the decisions of Scottish Water in the interpretation thereof shall be final and conclusive in any dispute, difference or question arising in respect of disclosure under its terms), any other law, or, as a consequence of judicial order, or order by any court or tribunal with the authority to order disclosure.

21.3 When disclosing such information it is recognised and agreed by both parties that Scottish Water are unable to impose any restriction upon the information that they provide. Such disclosure shall not be treated as a breach of this agreement.

21.4 The Contractor acknowledges that Scottish Water:

- is subject to the requirements of the Freedom of Information (Scotland) Act 2002 ("FOISA") and the Environmental Information Regulations (Scotland) 2004 ("EIRS");

- may be obliged under FOISA or the EIRS to disclose Information without consulting with the Contractor;
- shall be responsible for determining at its absolute discretion any Information held by it is exempt from disclosure in accordance with the provisions of the FOISA or the EIRS and/or is to be disclosed in response to a request for information.

22. INSOLVENCY

- 22.1 Without prejudice to any other rights or remedies of SW, SW shall have the right forthwith to terminate the Contract by written notice if the Supplier (if a company) shall have an administrator or administrative receiver or receiver or manager or trustee or provisional liquidator or similar officer appointed in respect of the Supplier or any part of its undertaking or assets or shall go into liquidation (other than for the purposes of solvent reconstruction or amalgamation) or shall enter into a composition or a voluntary arrangement with its creditors or shall be subject to any notice of intention to appoint or any application for the appointment of an administrator or (if an individual) shall be declared bankrupt or sequestrated or shall enter into a composition with his/her creditors or a trust deed for the benefit of creditors.

23. DEFAULT

- 23.1 Failure by the Supplier to comply with any of the Contract conditions shall enable SW (at their option) to release themselves from any obligation to accept and pay for the Goods and/or to cancel all or part of the Contract, in either case without prejudice to their other rights and remedies.
- 23.2 Where SW has so released themselves and/or cancelled all or part of the Contract under clause 23.1 SW shall be entitled to replace all or any of the Goods by purchasing other goods of the same or similar description or allocate other goods to the purposes for which the Contract was required and all costs in excess of the price stated in the Contract shall be recoverable from the Supplier.

24. RECOVERY OF SUMS DUE

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

25. WAIVER

- 25.1 The failure of either party to seek redress for breach, or to insist upon strict performance of any term, condition or provision of the Contract, or the failure of either party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by the Contract. A waiver of any default shall not constitute a waiver of any subsequent default. No waiver of any of the terms, conditions or provisions of the Contract shall be effective unless it is expressly stated in writing and communicated to the other party.

26. PREVENTION OF CORRUPTION

- 26.1 SW shall be entitled to cancel the Contract and to recover from the Supplier all costs and losses resulting from such cancellation, where the Supplier or any person acting on behalf of the Supplier;
- 26.1.1 shall have offered, given, or agreed to give any person any gift or consideration of any kind in connection with the Contract, or
- 26.1.2 shall have committed an offence under the Prevention of Corruption Acts 1889 to 1916, or
- 26.1.3 shall have offered, given, or agreed to give any fee or reward, the receipt of which is an offence under Sub-Section (2) of Section 68 of the Local Government (Scotland) Act 1973.

27. UNENFORCEABILITY

- 27.1 If any provision of the Contract is held by any competent authority to be invalid or unenforceable in whole or part, the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected thereby.

28. ARBITRATION

- 28.1 All disputes, differences or questions at any time arising between the parties as to the construction of the Contract, or as to any matter or thing arising out of the Contract shall be referred to the arbitration of a single arbiter who shall be agreed between the two parties. Failing such agreement, a

single arbiter shall be appointed at the request of either party by the then President of the Law Society of Scotland.

28.2 In any arbitration to follow hereon the Parties exclude reference to a Stated Case in terms of the Administration of Justice (Scotland) Act 1972 Section 3 (1).

29. STATUTES

29.1 The Supplier warrants that at all times in the performance of the Contract he shall comply with all Statutes, statutory requirements and obligations.

29.2 All references to Statutes in the Contract shall include any directly applicable provisions of the EC Treaty, any EC directive, regulations or any Act of Parliament, including those made by the Scottish Parliament or Scottish Executive as the case may be, any subordinate legislation, any codes of practice, guidelines, recommendations or safety procedures published or approved from time to time including but not limited to those published by the Health & Safety Executive or approved by the Health & Safety Commission, any regulation, bylaw or decision or permission of any local authority or of any statutory undertaking, public body or company any of which relate to the Contract and any future amendments and re-enactments of the same.

30. NOTICES

30.1 Any notice given under or pursuant to the Contract may be sent by hand or by post or by registered post or by recorded delivery service or transmitted by telex, facsimile transmission or other means of telecommunication resulting in the receipt of a written communication in permanent form and if so sent or transmitted to the address of the Supplier shown on the face of the Contract, or to such other address as the Supplier may by notice to SW have substituted, or to SW at the address shown on the face of the Contract and to the address and for the attention of the SW employee to which invoices are rendered under clause 8, quoting SW Contract reference number, or such other address as SW may by notice to the Supplier have substituted, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

31. AUDIT

31.1 The Supplier shall keep and maintain, until five (5) years after the Contract has been completed, records, to the satisfaction of SW, of all expenditures which are reimbursable by SW and of the hours worked and costs incurred in connection with any employees of the Supplier on a time charge basis. The Supplier shall on request afford SW or its representative such access to those records as may be required by SW in connection with the Contract.

32. DATE CHANGE DISRUPTION

32.1 The Supplier warrants that the Goods conform in all respects to the requirements of BSI-Disc PD 2000-1 and shall include design, functionality and performance so that SW shall not experience any abnormality in the performance or results returned from the Goods prior to, during or after any date change.

32.2 All date references and markings on the Goods, associated documentation or electronic communications shall state the calendar year as a four-digit number unless otherwise previously agreed in writing by SW.

33. GOVERNING LAW

33.1 The Contract shall be governed by and construed in accordance with Scots Law and any disputes arising shall be subject to the exclusive jurisdiction of the Scottish Courts.

ADDITIONAL CONDITIONS FOR THE PURCHASE OF SERVICES

Where the Contract comprises or includes for the purchase of services the following additional conditions shall also apply: -

34. DEFINITIONS

- 34.1 "Premises" means the location where the Service is to be performed, as specified in the Contract.
- 34.2 "Service" means the service or minor works to be provided as specified in the Contract and shall where the content so specifies, include any goods, articles and materials to be supplied thereunder.
- 34.3 "Specification" means the description (if any) of the Service contained in or referred to in the Contract.

35. RESPONSIBILITY FOR INFORMATION

- 35.1 The Supplier shall be responsible for any errors or omissions in any drawings, calculations, or other particulars supplied by him whether such information has been approved by SW or not provided that such errors or omissions are not due to inaccurate information furnished in writing and certified by SW.

36. QUALITY OF SERVICE

- 36.1 The Service shall comply in all respects with the Contract or any authorised modification thereto that may have been agreed and confirmed in writing by SW.
- 36.2 The Service shall be completed in a proper manner to the standards of best technical and commercial practices using competent and appropriately trained staff taking due and diligent care and attention at all times.
- 36.3 All materials and workmanship shall be to the entire satisfaction of SW and shall conform in all respects with the Contract, be of satisfactory quality, fitness for purpose and any other particulars specified in the Contract.

37. MANNER OF CARRYING OUT THE SERVICE

- 37.1 The Supplier shall comply with SW's then current "Site Regulations" and all safety and security requirements applicable to the Premises and shall ensure that his employees and sub-contractors so comply.
- 37.2 When required by SW a "Permit to Work" duly approved by SW shall be obtained by the Supplier prior to the commencement of the Contract. Such approval shall not relieve the Supplier from any of his obligations under the Contract or Statute.
- 37.3 The Supplier shall not unreasonably interfere with or interrupt the normal day to day activities of SW in the performance of the Contract.
- 37.4 The Supplier shall not interfere with the operation of any plant or equipment not included in the Contract without the prior approval in writing of SW.

38. ACCESS TO THE PREMISES

- 38.1 SW shall have the right to require the removal from the Premises of any of the Supplier's personnel and as required by SW, the Supplier shall immediately remove any of his personnel from the Premises.
- 38.2 The decision of SW as to whether any of the Supplier's personnel are to be admitted to the Premises and as to whether the Supplier has furnished the information or taken the steps required under clause 39 shall be final and conclusive.
- 38.3 The Supplier shall have access (but not exclusive access) only to such parts of the Premises as are reasonably necessary for the purpose of carrying out the Contract and to such other parts as SW may from time to time authorise. The Supplier shall be responsible for ensuring that his employees do not enter any other part of the Premises and that they make use only of such roads, routes and facilities as SW may authorise.

39. SUPPLIER'S PERSONNEL

- 39.1 When requested by SW, the Supplier shall provide a list of the names of all persons who are or may be at any time concerned with the Contract or any part thereof. That list shall specify the capacities in which they are so concerned and shall give such other particulars as SW may require.
- 39.2 The Supplier's personnel shall in no sense be regarded as employees of SW, and the Supplier shall be liable for all necessary arrangements and the payment of income tax, National Insurance contributions and other expenses associated with their employment that may become due as a result of the Contract.

40. NOTIFICATION PROCEDURE

- 40.1 The Supplier shall give immediate notice to SW in the event of any accident or damage that is likely to form the subject of a claim under SW's insurance. The Supplier shall give all the information and assistance in respect thereof that SW's insurers may require and shall not negotiate, pay, settle, admit or repudiate any claim without their express written consent. The Supplier shall permit SW's insurers to take proceedings in the name of the Supplier to recover compensation or secure an indemnity from any third party in respect of any of the matters covered by the said insurance.

41. COMPLETION TESTS

- 41.1 Where applicable, completion tests, which shall be in accordance with the Contract, shall be made upon completion of the Service and at a time to be agreed with SW.
- 41.2 When the Service is complete and all tests to be carried out by the Supplier have been passed to the entire satisfaction of SW, SW shall accept the Service.
- 41.3 In the event of the Service or any part of it failing to meet the tests specified in the Contract, SW may;
- 41.3.1 require rectification at the Supplier's expense, or
 - 41.3.2 accept the Service, conditional upon the Supplier accepting a reduction in the Contract price, acceptable to SW, or
 - 41.3.3 reject the Service and recover from the Supplier all costs incurred directly or indirectly as a result of the Supplier's failure to complete the Service to SW's entire satisfaction.

42 TUPE.

The Supplier agrees that, if applicable, the provision of the Service shall be provided in a manner so that no one employee will spend more than 50% of their time on the Contract and accordingly the Parties agree that the Transfer of Undertakings (Protection of Employment) Regulations 2006 shall not apply on termination of the Contract.