

## GENERAL CONDITIONS

**These Conditions may be varied only by the written agreement of the Purchaser. No terms or conditions put forward at any time by the Supplier shall form any part of the Contract unless specifically agreed in writing by the Purchaser.**

**1. DEFINITIONS**

In these Conditions:

'Purchaser' means Angus Alive a company limited by guarantee Company Number (SC499155) and having its registered office at Angus House, Orchardbank Business Park, Forfar, DD8 1AX;

'Goods' means any such goods as are to be supplied to the Purchaser by the Supplier (or by any of the Supplier's sub-contractors) pursuant to or in connection with this Contract;

'Contract' means the contract between the Purchaser and the Supplier consisting of the Specification of Requirements, these Conditions and any other documents (or parts thereof) specified in the Specification of Requirements;

'Specification of Requirements' means the document setting out the Purchaser's requirements for the Contract. Where the contract between the Purchaser and Supplier proceeds only on a purchase order and acceptance of that order this phrase means that purchase order and any document incorporated in the purchase order by reference setting out the Purchaser's requirement.

**2. THE GOODS**

- 2.1 The Goods shall be to the reasonable satisfaction of the Purchaser and shall conform in all respects with any particulars specified in the Contract and in any variations thereto.
- 2.2 The Goods shall conform in all respects with the requirements of any statutes, orders, regulations or bye-laws from time to time in force.
- 2.3 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 the Purchaser and the Purchaser relies on the skill and judgement of the Supplier in the supply of the Goods and the execution of the Contract.

**3. THE PRICE**

- 3.1 The price of the goods shall be as stated in the Contract and no increase will be accepted by the Purchaser unless agreed by the Purchaser in writing before the execution of the Contract.
- 3.2 Unless otherwise agreed in writing by the Purchaser, the Supplier shall render a separate invoice in respect of each consignment delivered under the Contract. Payment shall be due 30 days after receipt of the Goods or the correct invoice therefor, whichever is the later.
- 3.3 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.
- 3.4 Notwithstanding Condition 17 of this Contract the Supplier may assign to another person (an "assignee") the right to receive payment of the Price or any part thereof due to the Supplier under this Contract subject to (i) deduction of sums in respect of which the Purchaser exercises the right of recovery under Condition 16 of this Contract and (ii) all the related rights of the Purchaser under this Contract in relation to the recovery of sums due but unpaid. The Supplier shall notify or procure that any assignee notifies the Purchaser of any variations to the arrangements for payment of the Price or for handling invoices, in each case in good time to enable the Purchaser to redirect payments or invoices accordingly. In the absence of such notification the Purchaser shall be under no obligation to vary its arrangements for payment of the Price or for handling invoices.

**4. DELIVERY**

- 4.1 The Goods shall be delivered to the place named in the Contract. Any access to premises and any labour and equipment that may be provided by the Purchaser in connection with delivery shall be provided without acceptance by the Purchaser of any liability whatsoever and the Supplier shall **indemnify** the Purchaser in respect of any actions, suits, claims, demands losses, charges, costs and expenses which the Purchaser or the Crown may suffer or incur as a result of or in connection with any damage or injury (whether fatal or

otherwise) occurring in the course of delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Supplier or any of his sub-contractors.

4.2 Where any access to premises is necessary in connection with delivery or installation the Supplier and the Supplier's sub-contractors shall at all times comply with the reasonable requirements of the Purchaser's facilities manager for those premises.

4.3 The time of delivery shall be of the essence and failure to deliver within the time promised or specified shall enable the Purchaser (at the Purchaser's option) to release themselves from any obligation to accept and pay for the Goods and/or to cancel all or part of the Contract therefor, in either case without prejudice to the Purchaser's other rights and remedies.

## **5. PROPERTY AND RISK**

Property and risk in the Goods shall without prejudice to any of the rights or remedies of the Purchaser (including the Purchaser's rights and remedies under Condition 7 hereof) pass to the Purchaser at the time of delivery.

## **6. DAMAGE IN TRANSIT**

On dispatch of any consignment of the Goods the Supplier shall send to the Purchaser at the address for delivery of the Goods an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. The Supplier shall free of charge and as quickly as possible either repair or replace (as the Purchaser shall elect) such of the Goods as may either be damaged in transit or having been placed in transit fail to be delivered to the Purchaser provided that:

(a) in the case of damage to such Goods in transit the Purchaser shall within 30 days of delivery give notice to the Supplier that the Goods have been damaged;

(b) in the case of non-delivery the Purchaser shall (provided that the Purchaser has been advised of the dispatch of the Goods) within ten days of the notified date of delivery give notice to the Supplier that the Goods have not been delivered.

## **7. INSPECTION, REJECTION AND GUARANTEE**

7.1 The Supplier shall permit the Purchaser or the Purchaser's authorised representatives to make any inspections or tests they may reasonably require and the Supplier shall afford all reasonable facilities and assistance free of charge at the Supplier's premises. No failure to make complaint at the time of such inspection or tests and no approval given during or after such tests or inspections shall constitute a waiver by the Purchaser of any rights or remedies in respect of the Goods.

7.2 The Purchaser may by written notice to the Supplier reject any of the Goods which fail to meet the requirements specified in the contract. Such notice shall be given within a reasonable time after delivery to the Purchaser of Goods concerned. If the Purchaser shall reject any of the Goods pursuant to this Condition the Purchaser shall be entitled (without prejudice to the Purchaser's other rights and remedies) either:

(a) to have the Goods concerned as quickly as possible either repaired by the Supplier or (as the Purchaser shall elect) replaced by the Supplier with Goods which comply in all respects with the requirements specified herein; or

(b) to obtain a refund from the Supplier in respect of the Goods concerned.

7.3 The guarantee period applicable to the Goods shall be 12 months from putting into service or 18 months from delivery, whichever shall be the shorter (subject to any alternative guarantee arrangements stipulated in the Specification of Requirements, the Supplier's Tender or otherwise agreed in writing between the Purchaser and the Supplier). If the Purchaser shall within such guarantee period or within 30 days thereafter give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use the Supplier shall (without prejudice to any other rights and remedies which the Purchaser may have) as quickly as possible remedy such defects (whether by repair or replacement as the Purchaser shall elect) without cost to the Purchaser.

7.4 Any Goods rejected or returned by the Purchaser as described in paragraphs 7.2 or 7.3 shall be returned to the Supplier at the Supplier's risk and expense.

## **8. LABELLING AND PACKAGING**

- 8.1 The Goods shall be packed and marked in a proper manner and in accordance with the Purchaser's instructions and any statutory requirements and any requirements of the carriers. In particular the Goods shall be marked with the purchase order number, the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous goods (and all documents relating thereto) shall bear prominent and adequate warnings. The Supplier shall **indemnify** the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser or the Crown may suffer or incur as a result of or in connection with any breach of this Condition.
- 8.2 All packaging materials will be considered non-returnable and will be destroyed unless the Supplier's delivery advice note states that such materials will be charged for unless returned. The Purchaser accepts no liability in respect of the non-arrival at the Supplier's premises of empty packages returned by the Purchaser unless the Supplier shall within 10 days of receiving notice from the Purchaser that the packages have been dispatched notify the Purchaser of such non-arrival.
- 8.3 The Supplier represents and warrants that the maximum use has been made of recycled materials in the manufacture of crates, pallets, boxes, cartons, cushioning and other forms of packing, where these fulfil other packing specifications.

## **9. CORRUPT PRACTICES**

- 9.1 The parties acknowledge and agree that this Contract is a public contract funded by public funds and therefore that the Supplier will not be involved in corrupt practices either in the performance of the Contract or generally.
- 9.2 Without limitation to the generality of clause 9.1, if the Supplier or a person associated with the Supplier as defined in clause 9.3 has committed any of the following acts (and whether or not the Supplier or that person has been convicted of a criminal offence for that act), then that shall constitute a material breach of this Contract entitling (but not obliging) the Purchaser to take any or all of the steps set out in clause 15 (Termination, Default and Step-in) or otherwise available to the Purchaser by law:
- (a) The Supplier or a person associated with the Supplier has materially misrepresented itself or its offer within the tender documents (including any pre-qualification questionnaire response) or equivalent submitted by it to the Purchaser and on the basis of which the Purchaser awarded the Contract to the Supplier;
  - (b) The Supplier or a person associated with the Supplier has been involved in money laundering through or related to the Contract. "Money laundering" for this purpose has the same meaning as set out in section 340(11) of the Proceeds of Crime Act 2002 (or any statutory modification or re-enactment thereof);
  - (c) The Supplier or a person associated with the Supplier has been convicted of an offence under the Bribery Act 2010;
  - (d) The Supplier or a person associated with the Supplier has acted in a way which would amount to the commission of a serious criminal offence and the circumstances of the act are related to the subject matter of the Contract. A "serious criminal offence" for this purpose is any act which could be tried as a crime under solemn procedure according to the law of Scotland;
  - (e) The Supplier or a person associated with the Supplier promises or gives a financial or other advantage to any employee or representative of the Purchaser who is concerned with the award, management or operation of this Contract;
  - (f) The Supplier or a person associated with the Supplier has been involved in price-fixing, collusion with other parties to distort fair competition, bribery or similar corrupt activity and that whether or not that activity is related to this Contract.
- 9.3 A person associated with the Supplier for the purposes of this clause 9 means any employee, director, agent, owner, funder or other person involved in the control of the Supplier or deriving a financial return from the Supplier's operations.

## **10. PATENTS, INTELLECTUAL PROPERTY AND COPYRIGHT**

- 10.1 It shall be a condition of the Contract, except to the extent that the Goods incorporate designs furnished by the Purchaser, that nothing done by the Supplier in the provision of the Goods shall infringe any patent, trade mark, registered design, copyright or other right in the nature of intellectual property of any third party and

the Supplier shall **indemnify** the Purchaser against all actions, claims, demands, costs and expenses which the Purchaser or the Crown may suffer or incur as a result of or in connection with any breach of this Condition.

10.2 All rights (including ownership and copyright) in any reports, documents, specifications, instructions, plans, drawings, patents, models or designs whether in writing or on magnetic or other media:

(a) furnished to or made available to the Supplier by the Purchaser shall remain vested in the Purchaser absolutely.

(b) prepared by or for the Supplier for use, or intended use, in relation to the performance of this Contract are hereby assigned to and shall vest in the Purchaser absolutely, and (without prejudice to Condition 14.2) the Supplier shall not and shall procure that the Supplier's servants and agents shall not (except to the extent necessary for the implementation of this Contract) without the prior written consent of the Purchaser use or disclose any such reports, documents, specifications, instructions, plans, drawings, patents, models, designs or other material as aforesaid or any other information (whether or not relevant to this Contract) which the Supplier may obtain pursuant to or by reason of this Contract, except information which is in the public domain otherwise than by reason of a breach of this provision, and in particular (but without prejudice to the generality of the foregoing) the Supplier shall not refer to the Purchaser or the contract in any advertisement without the Purchaser's prior written consent.

10.3 The provisions of this Condition 10 shall apply during the continuance of this Contract and after its termination howsoever arising.

## **11. HEALTH AND SAFETY**

The Supplier represents and warrants to the Purchaser that the Supplier is satisfied that all necessary tests and examinations have been made or will be made prior to delivery of the Goods to ensure that the Goods are designed and constructed so as to be safe and without risk to the health or safety of persons using the same, and that the Supplier has made available to the Purchaser adequate information about the use for which the Goods have been designed and have been tested and about any conditions necessary to ensure that when put to use the goods will be safe and without risk to health. The Supplier shall indemnify the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any breach of this Condition.

## **12. INDEMNITY AND INSURANCE**

12.1 Without prejudice to any rights or remedies of the Purchaser (including the Purchaser's rights and remedies under Condition 7 hereof) the Supplier shall indemnify the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser 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 the negligent or wrongful act or omission of the Supplier.

12.2 The Supplier shall have in force and shall require any sub-contractor to have in force:

(a) employer's liability insurance in accordance with any legal requirements for the time being in force but covering at least all employer's liability matters which are the subject of indemnities or compensation obligations under these Conditions in the sum of not less than £10 million for any one incident and unlimited in total, unless otherwise agreed by the Purchaser in writing, and

(b) public liability insurance for such sum and range of cover as the Supplier deems to be appropriate but covering at least all public liability matters which are the subject of indemnities or compensation obligations under these Conditions in the sum of not less than £5 million for any one incident and unlimited in total, unless otherwise agreed by the Purchaser in writing.

(c) Any other special other insurances (if any) for such cover and to such extent as is stipulated in Specification of Requirements, unless otherwise agreed by the Purchaser in writing.

Where an indemnity or compensation obligation falls within more than one of the heads of insurance cover referred to above, the supplier shall secure that the insurance effected to cover that obligation is to the extent of the highest of the indemnity limits stipulated in the clauses of this condition applying to that obligation and shall at the request of the Purchaser produce the relevant policy or policies together with receipts or other evidence of payment of premiums, including the latest premium due thereunder.

### **13. DISCRIMINATION**

The Supplier shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of the Sex Discrimination Act 1975, the Race Relations Act 1976, the Equal Pay Act 1970, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Age) Regulations 2006, the Equality Act 2006, the Equality Act (Sexual Orientation) Regulations 2007, the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof. The Supplier shall take all reasonable steps to secure the observance of this clause by all employees and representatives of the Supplier.

### **14. DATA PROTECTION, ACCESS TO AND PROVISION OF INFORMATION**

14.1 No term of the Contract shall preclude the parties from making public, under the Freedom of Information (Scotland) Act 2002 ("the Act"), and any codes applicable from time to time relating to access to public authorities information, details of any matters relating to the Contract, unless any such details constitute a trade secret; the disclosure of such details would or would be likely to prejudice substantially the commercial interest of any person (including but not limited to the Purchaser or the Supplier or such details fall within such other exemption as may be applicable at the discretion of the Purchaser, in terms of the Act. The Supplier shall facilitate the Purchaser's compliance with the Purchaser's obligations under these provisions and comply with any request from the Purchaser for that purpose. No term of the Contract either shall preclude the Purchaser from sharing pricing and under information under the Contract with other UK public bodies for the purpose of achieving better public procurement and subject to a reciprocal obligation of confidence upon such other public bodies as is imposed on the Purchaser in terms of Condition 14.2(b).

14.2 Subject to Condition 14.1:-

(a) The Supplier shall keep secret and not disclose and shall procure that the Supplier's employees keep secret and do not disclose any information of a confidential nature obtained by the Supplier by reason of this Contract except information which is in the public domain otherwise than by reason of a breach of this provision.

(b) Commercially sensitive information related to the Contract with the Supplier will be treated as commercial in confidence by the Purchaser except insofar as required by law or judicial order to be disclosed.

14.3 Where and insofar as provision of the Services by the Supplier under the Contract does or may involve the Supplier processing personal data on behalf of the Purchaser, the following terms of this Condition 14.3 shall apply during the continuance of this Contract and after its termination, however arising.

1. This Condition 14.3 takes account of paragraph 12 of Part II of Schedule 1 to the Data under the 1998 Act and words and phrases defined in the 1998 Act shall have the same meaning when used in this clause.
2. Both parties warrant to the other that, in terms of the Contract, the Purchaser as data controller and the Supplier as data processor shall comply strictly with all of the requirements of the 1998 Act, together with any subsequent amendment or re-enactment thereof and of all secondary legislation made under the 1998 Act or any subsequent amendment thereto or re-enactment thereof;
3. Without prejudice to the foregoing generality of Condition 14.3.2, the Supplier warrants that it has read and that it shall comply strictly with the seventh principle of the Act, namely that it shall take appropriate technical and organisational measures against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data;
4. No sub-Supplier shall be appointed by the Supplier in connection with the processing of any data relative to the Contract without the prior written approval of the Purchaser. The Supplier will enter into an equivalent agreement to the terms of this Condition 14.3 with any such approved sub-Supplier in terms of paragraph 12 of Part II of schedule 1 of the 1998 Act;
5. The Supplier undertakes to keep all data disclosed to it by the Purchaser under the Contract confidential and to process all such data strictly and only in accordance with the Purchaser's instructions from time to time; all instructions given by the Purchaser will be in accordance with the laws of Scotland;

6. The Supplier shall ensure that only such of its employees who may be required by the Supplier to assist it in meeting its obligations under this contract shall have access to the data. Where the Supplier is providing third party system support to the Purchaser, whether remotely or on site, the Supplier and any sub-contractor appointed in terms of this Contract must act reasonably and must access only such information as is required to enable the Supplier or sub-contractor to carry out the support required. The Supplier also agrees to comply with the Purchaser's Access Procedures for External Support, a copy of which is available on request from the Purchaser's Head of Information Technology (or equivalent post).
  7. The Supplier agrees to assist the Purchaser with any subject information requests related to data processed by the Supplier which may be received by the Purchaser under the 1998 Act within the time limits imposed by the 1998 Act;
  8. The Supplier undertakes not to use the data for a purpose which is inconsistent with the purposes notified to the data subjects by the Purchaser or to disclose the data to a third party other than at the specific request of the Purchaser;
  9. The Supplier confirms that it has a written security policy for the processing of data and that it will allow its data processing facilities, procedures and documentation to be submitted for scrutiny by the Purchaser and to allow the Purchaser to visit the Supplier to ensure that the terms of this condition are being complied with;
  10. Without prejudice to the terms of Condition 16, the Supplier shall indemnify the Purchaser against all losses, costs, expenses, damages, liabilities, demands, claims, actions or proceedings which the Purchaser may incur arising out of any breach of this Condition 14.3 by the Supplier;
  11. In the event of a breach of this Condition 14.3 by the Supplier, the Supplier shall be bound to remedy the breach within five working days of the breach coming to the attention of the Supplier or the breach being notified to the Supplier by the Purchaser, whichever is earlier. In the event that the breach is not resolved timeously, the Purchaser will be entitled to terminate the Contract forthwith.
  12. On termination of the Contract, the Supplier shall cease to process the data and shall arrange for the prompt and safe return of all data belonging to the Purchaser to the Purchaser, together with all copies of the data in its possession or control, including all copies with any approved sub-contractor;
  13. In this Condition 14.3, "data" shall mean all information relating to the Purchaser's service users and prospective service users, current and projected financial and trading situations, business plans, business strategies, developments and all other information relating to the Purchaser's business affairs including all information of a confidential nature or imparted by whatever nature by the Purchaser to the Supplier during the currency of the Contract. All right, title and interest in and to the data shall vest solely in the Purchaser.
- 14.4 The provisions of this Condition 14 shall apply during the continuance of this Contract and after its termination howsoever arising.
- 14.5 The Supplier will provide the Purchaser with such management information on delivery of the Services as the Purchaser may reasonably require from time to time, including in particular summary reports on the detail of each item of supply provided within the Services, when and to whom.
- 14.6 At any time during the existence of this Contract, or for 2 years after its expiry or termination (however arising)), the Supplier shall provide to the Purchaser in writing such information as the Purchaser may require relating to the employees employed by the Supplier in the performance of the services within each reasonable period as may be specified by the Purchaser, including (but not restricted to): the number of such employees, the post in which each such employee is employed, the salary or wages and other remuneration paid to each such employee by the Supplier, the period of notice required to terminate employment of each such employee, the whole terms and conditions of employment of each such employee and the whole terms and conditions of any occupational pension scheme of which any such employee is a member, together with the number of such employees who are members of each such scheme.
- 14.7 The Purchaser may give the information provided to it by the Supplier in accordance with this Condition 14. to any firm, company, person or other legal entity invited or to be invited by the Purchaser to tender in

respect of any contract for the provision of the Services, or any part thereof, for any period commencing after the expiry or earlier termination of the Contract (however arising).

14.8 The Supplier irrevocably consents to the disclosure of the information provided by it in terms of this Condition to the Purchaser in accordance with the provisions hereof, and irrevocably waives the right of confidentiality which it may have in respect of the said information and any other right which it may have in respect of the said information limiting disclosure by it or the Purchaser. The Supplier undertakes that the conditions of employment of the Supplier's employees shall be such that the Supplier shall be entitled to release information which would otherwise be confidential between the Supplier's employees and the Supplier to the Purchaser for the purposes of this Contract.

## **15. TERMINATION, DEFAULT AND STEP-IN**

15.1 The Supplier shall notify the Purchaser in writing immediately upon the occurrence of any of the following events:

(a) where the Supplier is an individual and if a petition is presented for the Supplier's bankruptcy or the sequestration of the Supplier's estate or a criminal bankruptcy order is made against the Supplier, or the Supplier is apparently insolvent, or makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator or trustee is appointed to manage the Supplier's affairs; or

(b) where the Supplier is not an individual but is a firm, or a number of persons acting together in any capacity, if any event in (a) or (c) of this Condition occurs in respect of the firm or any partner in the firm or any of those persons or a petition is presented for the Supplier to be wound up as an unregistered company; or

(c) where the Supplier is a company, if the company passes a resolution for winding-up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrator, administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge.

15.2 On the occurrence of any of the events described in Condition 15.1 or, if the Supplier shall have committed a material breach of this Contract and (if such breach is capable of remedy) shall have failed to remedy such breach within 30 days of being required by the Purchaser in writing to do so or, where the Supplier is an individual if the Supplier shall die or be adjudged incapable of managing his or her affairs within the meaning of the Adults with Incapacity (Scotland) Act 2000, the Purchaser shall be entitled to terminate this Contract by notice to the Supplier with immediate effect. Thereupon, without prejudice to any other of the Purchaser's rights, the Purchaser may complete the Services or have them completed by a third party, using for that purpose (making a fair and proper allowance therefor in any payment subsequently made to the Supplier) all materials, plant and equipment on the Premises belonging to the Supplier, and the Purchaser shall not be liable to make any further payment to the Supplier until the Services have been completed in accordance with the requirements of the Contract, and shall be entitled to deduct from any amount due to the Supplier the costs thereof incurred by the Purchaser (including the Purchaser's own costs). If the total cost to the Purchaser exceeds the amount (if any) due to the Supplier, the difference shall be recoverable by the Purchaser from the Supplier.

15.3 In addition to the Purchaser's rights of termination under Condition 15.2, the Purchaser shall be entitled to terminate this Contract by giving to the Supplier not less than 30 days notice to that effect.

15.4 Termination under Condition 15.2 or 15.3 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Purchaser and shall not affect the continued operation of Conditions 10 and 14.

15.5.1 Without prejudice to any other rights and remedies of the Purchaser under the Contract, including the right of termination on default set out in Condition 15.2, if the Supplier shall have committed a material breach of this Contract and (if such breach is capable of remedy) shall have failed to remedy such breach within 14 days of being required by the Purchaser in writing to do so, the Purchaser may (in its sole discretion) by further notice in writing temporarily suspend performance of the Contract by the Supplier, either wholly or partially, and remedy that breach or have it remedied by a third party, using for that purpose (making a fair and proper allowance therefor in any payment subsequently made to the Supplier) all materials, plant and equipment on the Premises belonging to the Supplier. The terms of clauses 15.5.2 and 15.5.3 shall apply in that event.

15.5.2 The Purchaser shall not be liable to make any further payment to the Supplier until compliance with the requirements of the Contract has been restored, and shall be entitled to deduct from any amount due to the Supplier the costs thereof incurred by the Purchaser (including the Purchaser's own costs). If the total cost to the Purchaser exceeds the amount (if any) due to the Supplier, the difference shall be due as a debt by the Supplier to the Purchaser.

15.5.3 Once compliance with the Contract has been restored to the Purchaser's satisfaction and all sums due by the Supplier to the Purchaser under this Condition paid, the Purchaser may by notice in writing to the Supplier require him to resume performance of the Contract from the date specified in the notice or forthwith from receipt of the notice.

## **16. RECOVERY OF SUMS DUE**

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

## **17. ASSIGNATION AND SUB-CONTRACTING**

17.1 The Supplier shall not without the written consent of the Purchaser assign the benefit or burden of the Contract or any part thereof.

17.2 No sub-contracting by the Supplier shall in any way relieve the Supplier of any of the Supplier's responsibilities under the Contract.

17.3 Where the Supplier enters a sub-contract with a supplier or contractor for the purpose of performing the Contract, the Supplier shall cause a term to be included in such sub-contract which requires payment to be made to the supplier or contractor within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the sub-contract requirements.

## **18. NOTICES**

Any notice given under or pursuant to the Contract may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted by telex, teletext, facsimile transmission or other means of telecommunication resulting in the receipt of a written communication in permanent form and if so sent or transmitted to the address of the party shown on the Specification of Requirements, or to such other address as the party may by notice to the other have substituted therefor, 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.

## **19. ARBITRATION**

20. All disputes, differences or questions between the parties to the Contract with respect to any matter or thing arising out of or relating to the Contract, other than a matter or thing as to which the decision of the Purchaser is under the Contract to be final and conclusive and except to the extent to which special provision for arbitration is made elsewhere in the Contract, shall be referred to a single arbitrator to be mutually chosen by the parties or, failing agreement, nominated by the President of the Law Society of Scotland for the time being on the application of either party. Any such reference to arbitration shall be deemed to be an agreement to refer to arbitration within the meaning of the Arbitration (Scotland) Act 1994.

## **20. HEADINGS**

The headings to Conditions shall not affect their interpretation.

## **21. GOVERNING LAW**

These Conditions shall be governed by and construed in accordance with Scottish law and the Supplier hereby irrevocably submits to the jurisdiction of the Scottish courts. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the Purchaser to take proceedings against the Supplier in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not

## **SPECIAL CONDITIONS OF CONTRACT (IF ANY)**

**Application of Special Conditions: These following Special Conditions of Contract shall only apply to this Contract where that is expressly stated so by the Purchaser in the Contract documents.**

## **22. ANNUAL INDEXATION PRICE REVIEW**

- 22.1 In respect that the Supplier has priced its tender for the Contract at a fixed date in accordance with the Purchaser's instructions for that tender and the Contract is due to endure for longer than 1 year, then there shall be a review of the Supplier's prices for the supply under the Contract in accordance with this Condition 22.
- 22.2 From each anniversary of the date of commencement of the Contract (the "Commencement Date") during its currency, the Supplier's prices for the supply under the Contract shall be increased (or decreased) in proportion with the increase (or decrease) of the Retail Price Index (All Items) published by HM Government between either:
- (a) the Commencement date and the day preceding the first anniversary of the Commencement Date for the second year of the Contract; or
  - (b) each anniversary of the Commencement Date and the day preceding the following anniversary for each subsequent year of the Contract.
- 22.3 Either party may notify the other of the effect of an indexation price review in accordance with Condition 22.2 in writing and, unless disputed, the review prices shall take effect from the date specified in the notice of price review, being a date not earlier than 14 days after the date of dispatch of said notice. The review prices shall have effect for the remaining duration of the Contract unless further reviewed in accordance with this condition 22. or any other Condition of the Contract permitting a price review.
- 22.4 Any dispute over the validity of a price review notice issued under Condition 22.3 shall be notified by counter-notice issued by the other party prior to the date on which the price review is otherwise due to take effect (as stipulated in the price review notice) and shall be determined in accordance with Condition 19 (Arbitration). In the event of the price review notice being upheld in whole or in part upon determination of the dispute, its effect insofar as held shall be back-dated to the date upon which it would have taken effect but for the dispute. In the event, the Supplier may also claim interest on any amount then due to it calculated on the sum outstanding for more than 30 days after receipt and agreement of the invoice to which the unpaid amount relates until payment by the purchasers of the unpaid amount at the base rate from time to time applicable for that period of the Royal Bank of Scotland plc. Any such claim shall be by invoice containing or accompanied by a detailed breakdown of the sum claimed.
- 22.5 If at any time during the currency of the contract the Retail Price index (All Items) ceases to be published then the Purchaser, acting reasonably, may stipulate an alternative method of indexation as nearly equivalent to the Retail Price Index (All Items) as is reasonably practicable, to be applied for the remaining duration of the Contract.

## **23. TAYSIDE PROCUREMENT CONSORTIUM**

- 23.1 In respect that the tender documents preceding the Contract notified that the Contract is for the benefit of not only the Purchaser but also the other partner organisations within the Tayside Procurement Consortium, namely: Dundee City Council, Perth and Kinross Council and Tayside Contracts (any one or more of whom is referred to in this condition 23. as a "TPC Partner" or the "TPC Partners, as the case may be), then the terms of this Condition 23. shall apply to use of the Contract by any TPC Partner.
- 23.2 A TPC Partner may secure supply to it under this Contract from the Supplier by purchase order which shall create a contract for that supply between (and only between) the Supplier and the TPC Partner on the basis of that purchase order but otherwise on the whole terms and conditions of the Contract, mutatis mutandis.
- 23.3 A purchase order under Condition 23.2 shall specify the name, contact address and delivery address for that TPC Partner and refer to the supply being ordered under this Contract.
- 23.4 Payment for a supply so ordered under Conditions 23.3 and 23.4 shall be due by the TPC Partner to the Supplier and all other performance obligations under the Contract for that supply shall be owed exclusively between the TPC Partner and the Supplier. Without prejudice to the terms of this Condition 23.4, however, the Purchaser, the Supplier and the TPC Partners may agree to convene a combined management forum or similar arrangement for the effective and efficient operation of the Contract amongst the parties.

## **24. PROVISION OF PUBLIC SERVICES – HUMAN RIGHTS AND EQUALITIES**

- 24.1 Without prejudice to any other terms of the Contract, insofar as under the Contract the Consultant is providing a service of a public nature on behalf of the Client (which the Consultant acknowledges it is doing), the Consultant shall secure compliance with the duties incumbent on the Client under the Human Rights Act 1998 and also the Client's race, gender, age and disability equality duties under the Race

Relations (Amendment) Act 2000, the Equality Act 2006 and the Disability Discrimination Act 2005 and all related, modifying, amending or re-enacting legislation as if the Consultant was the Client for the purposes of performance of the Contract.

**SUPPLEMENTARY NOTICE**

**1. PROTECTING THE ENVIRONMENT**

Suppliers to Angus Alive are requested to satisfy themselves that no product will be supplied or used in the Supply of Goods to the Purchaser which will endanger the health of the consumers or others, will cause significant damage to the environment during manufacture, use, or disposal, which consumes a disproportionate amount of energy during manufacture, use, or disposal, which causes unnecessary waste because of over-packaging or because of an unusually short shelf life, or which contains materials derived from threatened species or threatened environments.

**2. LATE PAYMENT OF INVOICES**

Suppliers to Angus Alive are requested to address complaints regarding late payment of invoices to, in the first instance, the addressee of the invoice and, in the second instance to the Chief Executive Angus Alive, Angus House, Orchardbank Business Park, Forfar. This procedure is suggested as the best practical way of ensuring problems of late payment are resolved, and is not intended to interfere with Suppliers' legal rights.

**THIS NOTICE DOES NOT FORM PART OF THE CONDITIONS OF CONTRACT**

Document4