

General Terms and Conditions of Contract for the Supply of Goods or Services procured for the benefit of Anglian Water Services Limited (and the relevant IOS Delivery Route Partner) ("AW")

**1. Definitions**

1.1. In these terms and conditions:

- a) "Contract" means these terms and conditions and the purchase order to which these terms and conditions apply.
- b) "Force Majeure Event" means an event or occurrence which could not be prevented or foreseen and which is beyond the reasonable control of the party and without its fault or negligence (excluding any industrial disputes such as lockouts, strikes)
- c) "Goods" means the items (if any) which are the subject of the contract.
- d) "Intellectual Property" means any patent registered design, copyright, database right, design right, topography right, trade mark, service mark, application to register any of the aforementioned rights, trade secret, right in unpatented know-how, right of confidence and any other intellectual or industrial property right of any nature whatsoever in any part of the world.
- e) "Partner" means any of the following organisations who are currently contracted to AW to participate in the Integrated Operational Solutions ("IOS") Delivery Route, being Morrison Utility Services Limited, Kier Integrated Services Limited and Barhale Plc
- f) "Services" means the services to be supplied by the Supplier (if any), which are the subject of the Contract.
- g) "Supplier" means the person, firm or company with whom the Contract is made.
- h) "Works" means the works to be carried out by the Supplier detailed in the AW purchase order

**2. Terms and Conditions**

- 2.1. These terms shall prevail over the Supplier's terms and conditions. No terms or conditions endorsed upon, delivered with or contained in any quotation, acknowledgement acceptance of order, invoice or similar document will form part of any contract for the sale and purchase of any Goods Services or Works. For the avoidance of doubt, where the Supplier has entered into a framework agreement with AW for the Goods, Services or Works, out in the purchase order, then the terms set out in the framework agreement shall apply to the Goods, Services or Works ordered to the exclusion of these terms and conditions
- 2.2. All quotations or estimates given by the Supplier verbally or in writing shall constitute an offer. Acceptance may be made by AW issuing a purchase order number.

**3. Time of Delivery or Performance**

- 3.1. Any time for delivery or despatch of Goods or completion of Services / Works agreed between the parties in writing shall be of the essence.
- 3.2. AW (acting reasonably) may alter the order upon giving the Supplier reasonable notice in writing. If any such alteration affects the price agreed for the Goods Services / Works the Supplier shall promptly notify AW and will be allowed a reasonable and equitable adjustment to the price.

**4. Statutory Obligations**

- 4.1. The Supplier shall comply with all relevant UK and EU legislation, rules, regulations, by-laws, codes of practice and directives.
- 4.2. The Supplier shall be responsible for the safety of all its staff on AW premises or sites. The Supplier shall co-operate with AW staff and comply with all reasonable instructions whilst at AW sites.

**5. Price and Payment**

- 5.1. The prices quoted shall be in pounds sterling, net of VAT. All Goods shall be delivered carriage and duty paid and customs cleared to the relevant delivery address.
- 5.2. The Supplier shall submit an invoice for the Goods upon receipt of the Goods and for the Services upon proper completion of the Services. Where Works are provided, the Supplier can raise a payment application at the end of each month in respect of work completed. AW shall notify the Supplier of any intention to withhold any sums, and the reason for doing so. The invoice shall include all necessary information including the purchase order number.
- 5.3. AW shall have no liability to pay for the Goods, Services or Works supplied unless the Supplier shall invoice AW within 12 months of the date set out in clause 5.2.
- 5.4. Payment is due to the Supplier on the date AW receives a correctly raised invoice at Anglian Water Services Ltd, Thorpe Wood House, Peterborough, Cambs, PE3 6WT (marked for the attention of the payments section) ("Payment Due Date")
- 5.5. Subject to the Supplier complying with all the terms and conditions of the Contract, payment will be made on or before the final date for payment which is by the end of the calendar month following the calendar month in which the Payment Due Date arose
- 5.6. Payment shall not operate as a waiver of any of the rights of AW hereunder.

**6. Termination**

6.1. Any order hereunder may be terminated by written notice forthwith:

- a) by either party if the other commits any material or persistent breach of these terms and, where capable of remedy fails to remedy the same within 28 days;
  - b) by either party if the other becomes bankrupt or insolvent or any receiver or administrator or similar person is appointed in respect of that party or enters into any arrangement with its creditors;
  - c) by either party if they reasonably believe that any of the events mentioned in Clause 6.1 (b) above is about to occur and notifies the other party accordingly;
  - d) by AW if the Supplier ceases or threatens to cease to carry on business; or
  - e) by AW, if the Supplier fails to deliver or despatch the Goods or complete the Services / Works in accordance with the contract; or
  - f) by AW where the performance or existence of the Contract may breach a legal or regulatory requirement.
- 6.2. AW shall have the right at any time and for any reason to terminate any order in whole or in part by giving the Supplier not less than 28 days written notice whereupon all work shall be discontinued and AW shall pay to the Supplier fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of profits or any indirect or consequential loss.

**7. Consequences of Termination**

- 7.1. Termination is without prejudice to the rights, duties and liabilities of either party accrued prior to termination.
- 7.2. In the event of termination, AW shall have the right to enter upon the Supplier's premises and remove any items that are the property of AW.
- 7.3. Any terms which expressly or impliedly have effect upon or after expiration or termination shall continue to be enforceable notwithstanding expiration or termination.
- 7.4. Within 7 days of any termination hereunder, both parties shall return all documents, information, computer disks and material (and all copies thereof) provided to or prepared by it pursuant to this Contract and shall certify in writing that they have complied with this clause.

**8. Indemnities and Liabilities**

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- 8.1. Neither party shall have any liability to the other party in contract, tort or otherwise in respect of any indirect or consequential loss or damage that may be suffered by that party.
- 8.2. Subject to Clause 8.1 above the Supplier shall at its own expense keep AW and any of its staff or agents fully indemnified against any claim, demand, loss or liability arising by reason of any negligent act/or omission of the Supplier his employees or agents which is:
  - a) caused either to (i) any property of AW or its staff or agents or (ii) any injury or death sustained by the staff or agents of AW;
  - b) made against or incurred by AW or any agent of AW in respect of any loss, damage, injury or death sustained by any third party; or
  - c) made against or incurred by AW or its agents in respect of any loss of or damage to (i) any property of or (ii) any injury or death sustained by the Supplier or its personnel,unless such loss, damage of injury is solely caused by the negligent act or omission of AW or any of its staff or agents.

**9. Confidentiality and Publicity**

- 9.1. Each party shall treat as confidential all information obtained from the other pursuant to this Contract and shall not divulge such information to any person (except to such party's own employees, agents or advisers and then only to those who need to know the same) without the other party's prior written consent provided that this clause shall not extend to (i) information which was rightfully in the possession of such party prior to the commencement of the negotiations leading to this Contract; or (ii) which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this clause); or (iii) which is required it to be disclosed by any governmental or regulatory body or by law.
- 9.2. The obligations as to confidentiality shall remain in full force and effect notwithstanding the termination of the Contract for a period of 5 years from the date of supply.
- 9.3. The Supplier shall not use AW's name for advertisements or publicity without its consent

**10. Intellectual Property Rights**

- 10.1. The Supplier shall indemnify AW in full against any claim for infringement (or alleged infringement) of any Intellectual Property rights brought by a third party as a result of the use of any Goods, the results of any Services / Works or any materials supplied by the Supplier.
- 10.2. Subject to any prior rights and to the rights of third parties, all Intellectual Property rights and copyright in all reports, documents and things produced under the Contract shall be vested in AW. The Supplier hereby assigns (by way of present and future assignment and with full title guarantee) all such Intellectual Property rights. All moral rights relating to the work under the Contract are hereby waived by the Supplier.
- 10.3. Any right of use in or over property which is acquired by the Supplier or by its staff pursuant to or for the purposes of the Contract shall be acquired by the Supplier upon terms which shall enable such rights to use to vest in AW to the full extent enjoyed by the Supplier without need for any or further authorisation, consent or payment.

**11. Force Majeure**

- 11.1. Any delay or failure of the Supplier to perform its obligations hereunder shall be excused if due to a Force Majeure Event, provided that (a) the Supplier has not caused or contributed to the Force Majeure Event and (b) written notice of such delay is given to AW.
- 11.2. During such period (a) AW at its option may extend the period of time for completing the order and / or reduce or cancel any unfulfilled orders without liability to the Supplier and (b) the Supplier shall do all such things as may be reasonable to mitigate the effects of the Force Majeure Event.

**12. Insurance**

- 12.1. The Supplier shall procure and maintain insurance(s) in amounts and with coverages acceptable to AW, with reputable insurance companies which shall, as a minimum, include public and products liability cover of £5,000,000 per event and where relevant, professional indemnity insurance of £2,000,000 per event and in the aggregate. At AW's request, the Supplier shall furnish to AW certificates and other satisfactory evidence of such insurances. The obligations to procure and maintain insurance however shall not modify or relieve the Supplier of its obligations and liabilities under this Contract.

**13. General**

- 13.1. None of the work covered by the Contract shall be assigned or sub-contracted by the Supplier.
- 13.2. The Supplier acknowledges that the IOS Partner shall be entitled to issue an order on behalf of AW, and each Partner shall remain responsible for the performance of the Supplier under this Contract, and the Partner shall be entitled to enforce the provisions of this Contract.
- 13.3. Except as otherwise provided herein, the rights of either party under the Contract shall not be prejudiced or restricted by any indulgence or forbearance extended by one party to the other and no waiver by one party of its rights in relations to any breach of the Contract shall affect its rights in respect of any subsequent breach.
- 13.4. All notices, demands or other communication shall be in writing and deemed properly served if delivered in person or sent by fax or first class post to its registered office or principle place of business. A notice sent by fax will be deemed to have been served at the time of successful transmission, provided a confirmatory copy is also sent by first class post. A notice sent by first class post shall be deemed served two working days after posting.
- 13.5. The Supplier and AW are independent contracting parties and nothing in this Contract shall make either party the agent or representative of the other.
- 13.6. If any provision herein is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions and the remainder of the provisions in question shall not be affected thereby.
- 13.7. This Contract constitutes the entire agreement between the Supplier and AW with respect to the matters contained herein and supersedes all prior oral or written representations and agreements.
- 13.8. To the extent that the parties are entitled to refer a dispute under this Contract to adjudication by virtue of the Housing Grants Construction and Regeneration Act 1996 (as amended) ("1996 Act"), either of the parties may refer such dispute to adjudication at any time. In such circumstances:
  - a) the dispute shall be referred to adjudication in accordance with the Technology and Construction Solicitors Association ("TeCSA") Adjudication Rules current at the date of the referral; and
  - b) the adjudicator shall be a member of and be appointed by the Technology and Construction Solicitors Association.
- 13.9. If, after an adjudicator notifies his decision (whether or not within the time provided by this Contract), a party is dissatisfied, he may refer the relevant dispute to the English Courts. Unless the relevant dispute is referred to the English Courts either before, or within ten weeks after, notification of the adjudicator's decision, that decision becomes final, conclusive and unchallengeable

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13.10. The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English Courts.

**14. Water Supply Compliance Requirements**

14.1. Without prejudice to any other provisions of this Contract, the Supplier shall:

- a) ensure that (i) all materials or equipment supplied or any work undertaken that introduces any product, substance, or material in contact with treated or untreated water that is intended for potable use, and (ii) all Goods supplied hereunder, shall comply with the current water supply regulations including without limit the Water Supply (Water Quality) Regulations 2000 and Water Supply (Water Fittings) Regulations 1999 ("Regulations"); and
- b) upon request at any time by AW, provide evidence that such any such work, products or materials comply with such Regulations; and
- c) maintain at all times during this Contract all relevant and appropriate accreditations demonstrating that such products and materials supplied hereunder comply with the Regulations; and
- d) where the Goods supplied hereunder are chemicals used in the water treatment process, comply with Anglian Water's Chemicals in Contact Assurance document as amended from time to time (which has been supplied to the Supplier).

14.2. A failure to comply with this clause shall be deemed to be a material breach of this Contract

**15. Additional Standard Terms and Conditions for the supply of Goods only:**

15.1. At time of delivery the Supplier shall provide an advice note detailing the AW purchase order number, description code number (if any) and quantity of the Goods consigned.

15.2. All Goods must be adequately packaged and protected against damage and deterioration in transit. Any returnable packaging and other containers shall be supplied by the Supplier free of charge.

15.3. The Supplier shall furnish the necessary information for AW to comply with the EC Intrastat regime where applicable.

15.4. Title to the Goods shall not pass to AW until the price for those Goods has been paid but AW shall be entitled to resell or use the Goods in the ordinary course of business.

15.5. The risk in the Goods shall pass upon the delivery of the Goods provided that a duly authorised representative of AW signs for the receipt of the Goods.

15.6. Where advance or progress payments are made, title but no risk shall pass to AW as soon as items are allocated to the Contract. All items so allocated shall be adequately marked and recorded as being the property of AW.

15.7. AW may reject any Goods which on inspection are found not to conform with the requirements of the Contract and the Supplier shall at its own expense remove the rejected Goods and shall do so within 7 working days receipt of notification of rejection.

15.8. If the Supplier fails to remove the Goods in accordance with Clause 13.7, AW may return the rejected Goods to the Supplier at the Supplier's risk, the cost of carriage being recoverable from the Supplier.

15.9. When AW rejects any Goods after delivery, AW at its sole discretion shall either (i) obtain a full refund of the Goods or (ii) require that the Supplier (at its own expense) delivers Goods which conform with the requirements of the Contract as soon as reasonably practicable.

15.10. Unless otherwise agreed in writing by AW all Goods supplied shall:

- a) conform as to quality and description stated in the purchase order and correspond to any sample pattern or specification specified in the Contract;
- b) comply with any relevant British or European equivalent standard specification;
- c) be of sound materials and workmanship;
- d) be fit for the purpose for which they are supplied and any purpose that the Supplier is made aware of; and
- e) be new, or be provided using new materials.

15.11. Without prejudice to any other rights or remedies, the Supplier shall expeditiously repair or replace all Goods which are or become defective during the period of 12 months (or during any other longer agreed period) from using the Goods where such defects occur under proper usage and are due to faulty design, materials or workmanship or erroneous or inadequate instructions as to use or any other breach of the Supplier's obligations, whether express or implied.

15.12. Repairs and replacements shall themselves be subject to the foregoing obligations for a period of 12 months (or any extended agreed period) from the date of reinstallation or supply.

15.13. Prior to delivery the Supplier shall give AW written notice of any Goods and/or other items accompanying the Goods or associated with their delivery as having toxic or other hazards to the safety or health of persons or property. The Supplier shall identify those hazards and give clear and full details of all precautions which the Supplier and AW should take

**16. Additional Standard Terms and Conditions for Services or Works only:**

16.1. All Services / Works shall be performed by appropriately qualified and trained personnel with due care and diligence and the Supplier shall provide all labour, materials, equipment temporary works or anything else required for the completion of the Services / Works (unless otherwise expressly agreed in writing).

16.2. The Supplier shall carry out and complete the Services / Works to the satisfaction of AW and shall comply with all reasonable instructions issued in writing by AW (or on its behalf) to ensure their performance complies with the terms set out herein

16.3. The Supplier shall take all steps to protect the Services / Works against loss or damage from any cause until the Services / Works have been completed to the reasonable satisfaction of AW; and the Supplier shall make good any loss or damage arising.

16.4. Without prejudice to any other rights or remedies of AW, the Supplier shall make good any defects notified to him by AW and which arise from any breach or failure of the Supplier to comply with these terms, whether such defects are notified before completion of the Services / Works or within 12 months of such completion.