



Elmbridge

Borough Council

... bridging the communities ...

Conditions of Contract – Supplies

Index

Index	2
1. Definitions	3
2. Authorised Officer	4
3. Assignment	4
4. Contract Period	4
5. Property	4
6. Security	5
7. Variations	5
10. Force Majeure	5
11. Property and Risk	5
12. Damage or Loss in Transit	5
13. Rejection of Goods	6
14. Default	6
15. Termination	7
16. Consequences of Termination	7
17. Determination	8
18. Termination by the Contractor	8
18A Exiting the Contract	8
19. Liability of the Contractor and Indemnity to the Council	8
20. Insurance	9
21. Dispute Resolution	9
22. Monitoring and Audit	10
23. Contract Price	10
24. Invoicing and Payment	10
25. Intellectual Property Rights	11
26. Data Protection and Information Security	11
27. Warranty	12
29. Equality and Diversity	12
30. Environment	12
31. Publicity	12
32. Freedom of Information	13
32A Business Continuity	13
33. British Standards	14
34. Observance of Statutory Requirements	14
35. Rights and Duties Reserved	14
36. Fees	14
36. Whole Contract	14
37. Waiver	14
38. Severance	15
39. Inconsistency	15
40. Condition Headings	15
41. Law	15

1. Definitions

1.1 In the Contract, unless the context otherwise requires the following words and expressions shall have the following meanings assigned to them.

Term	Meaning
'Authorised Officer'	The duly authorised representative of the Council notified in writing to Tenderers for all purposes connected with the Contract. Any Notice or other written instruction given by or made to the Authorised Officer, shall be taken as given by or made to the Council.
'Conditions of Contract'	These conditions
'Conditions of Tender'	The conditions set out in the Instructions to Tenders relating to the preparation, submission and evaluation of Tenders.
'The Contract'	These conditions, any special conditions, specification, drawings, pricing schedule, Contractor's tender, acceptance letter and any relevant documents agreeing modifications exchanged before the Contract is awarded, and any subsequent amendments or variations agreed in writing. The term 'Contract Documents' shall be construed accordingly. These Conditions for the supply of Goods shall be deemed incorporated into each and every order placed by the Council for the Goods.
'Contract Price'	The price stipulated in the Contract, exclusive of VAT, at which the Contractor has agreed to provide the Goods as set out in the Pricing Schedule
'Contract Period'	The time period provided in the Contract for the provision of the Supply.
'Contractor'	The person, company or other body named in the Contract, who undertakes to supply the Goods to the Council.
'Council Property'	All property issued or made available for use by the Council to the Contractor in connection with the Contract.
'The Council'	Elmbridge Borough Council.
'Intellectual Property Rights'	All Intellectual Property Rights including, without limitation, patents, patent applications, design rights, registered designs, utility models, trade and service marks and applications for the same, copyright know-how, rights in semi-conductor chip topography, and in each case, whether protectable in law or not, and if protectable, whether an application has been made for such protection or not, and all similar industrial, commercial, monopoly or other intellectual property rights, whether present or future, vested or contingent wherever protected.
'Invitation to Tender' and 'Tender Documents'	This document and any related documents published by the Council and made available to Tenderers.
'Notice'	Any written instruction or notice given to the Contractor by the Authorised Officer.
'Permission'	Express permission given in writing before the act being permitted.
'Pricing Schedule' and 'Price Schedule'	The completed Pricing Schedule submitted by the Contractor and agreed by the Council.

Term	Meaning
'Goods'	All goods detailed in the Specification, including any additions or substitutions as may be requested by the Authorised Officer. Where the Contract is for the provision of goods and services, the words 'the Goods' shall be taken to include, where the context allows, the services the Contractor has agreed to provide.
'Specification'	The document/s forming part of the Invitation to Tender detailing the Goods to be provided (including any amendments agreed by the Council).
'Tenderers'	Anyone being invited to respond to this Invitation to Tender.

1.2 All headings in these Conditions are for ease of reference only, and shall not affect the construction of the Contract.

1.3 Any reference in these Conditions to a statutory provision will include all subsequent modification, re-enactments or replacement.

1.4 References to the singular include the plural and vice versa and references to one gender include the other gender. References to a person include any individual, firm, unincorporated association or body corporate.

2. Authorised Officer

2.1 The functions, rights and powers conferred by this Contract shall be exercised by the Authorised Officer. The Contractor shall comply with any instruction given by the Authorised Officer concerning or about, the Contract. All such instructions shall be in writing.

3. Assignment

3.1 The Contractor shall not assign, transfer or sub-contract the Contract, or any part of it, without the Permission of the Authorised Officer.

3.2 The Council shall be entitled to assign, transfer or sub contract the Contract or any part of it and shall give written notice of any assignment to the Contractor.

3.3 Any assignment, transfer or sub-contract entered into, shall not relieve the Contractor of any of his obligations or duties under the Contract.

4. Contract Period

4.1 The Contractor shall supply the Goods within the time and for the period states stated in the Specification and/or by the Authorised Officer, subject to any changes arising from Condition 9 (Variations).

5. Property

5.1 All property issued by the Council to the Contractor in connection with the Contract shall remain the property of the Council, and shall be used in the

execution of the Contract, and for no other purpose whatsoever without the prior approval of the Authorised Officer.

- 5.2 The Contractor shall keep all Council Property in safe custody and good condition, set aside and clearly marked as the property of the Council.
- 5.3 On expiry or earlier termination of the Contract the Contractor shall, if so required, either surrender such property to the Council or otherwise dispose of it as instructed by the Authorised Officer.

6. Security

- 8.1 The Contractor shall be responsible for the security of all goods and equipment belonging to the Council and used by the Contractor, belonging to the Contractor, or Contractor's staff, or sub-contractors whilst on Council premises.

7. Variations

- 9.1 The Authorised Officer may vary the Contract by adding to, deleting or otherwise modifying the Goods to be supplied, by written order to the Contractor.
- 9.2 The value of any such variation, shall be determined by reference to the rates contained in the Pricing Schedule.
- 9.3 Where a variation is the result of some default or breach of the Contract by the Contractor or some other cause for which he is solely responsible, any additional cost attributable to the variation shall be borne by the Contractor.
- 9.4 The Contractor may also propose a variation to the Goods but no such variation shall take effect unless agreed and confirmed in writing by the Authorised Officer.

10. Force Majeure

- 10.1 The Contractor shall not be liable to the Council or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of the Contractor's obligations under the Contract if the delay or failure was due to circumstances beyond the Contractor's reasonable control.
- 10.2 Without prejudice to the generality of Condition 10.1, circumstances beyond the Contractor's reasonable control shall include act of God, server crashes, virus attach on equipment, fire or accident, war or threat of war, sabotage, insurrection, civil disturbance or requisition, acts, restrictions.

11. Property and Risk

- 11.1 The Contractor shall maintain suitable insurance for the Goods whilst in transit to the Council. Whilst situated at the premises of the Council prior to acceptance the Council shall insure the Goods. However, this does not constitute acceptance of the Goods by the Council. Risk in the Goods shall pass to the Council upon acceptance and title shall pass to the Council when paid for in full.

12. Damage or Loss in Transit

- 12.1 The Council shall not be liable to pay, nor shall it be charged for any packages, bottles, casks, drums or other containers in which Goods are supplied nor shall the Council be responsible for their return or for making any payment for them or for any damage or loss caused to them whilst in the custody of the Council.
- 12.2 The Contractor shall replace free of charge the Goods or any part thereof damaged in transit and in the event of such damage delivery shall not be deemed to have taken place until replacement Goods have been delivered.

13. Rejection of Goods

- 13.1 Without prejudice to the operation of Condition 11.5 the Goods shall be inspected on behalf of the Council within a reasonable period of time after delivery and may be rejected if the Goods—
- 13.1.1 are found to be defective, inferior in quality to or differing in form or material from the requirements of the Contract; or
- 13.1.2 do not comply with any term (express or implied) of the Contract.
- 13.2 Without prejudice to the operation of Condition 11.5, the Council shall notify the Contractor of the discovery of any defect within fourteen days and shall give the Contractor all reasonable opportunities to investigate such defect.
- 13.3 The whole of any consignment may be rejected if a reasonable random sample of the Goods taken from the consignment is found not to conform in every respect with the requirements of the Contract.
- 13.4 Goods so rejected after delivery shall be removed by the Contractor within 14 days of receipt of the Council's notification of rejection. If the Contractor fails to remove the rejected Goods within this time period, the Council may return the rejected Goods at the Contractor's risk and expense.
- 13.5 The Council's right of rejection shall continue irrespective of whether the Council has accepted the Goods. In particular, taking delivery, inspection, use or payment for the Goods, or part of them shall not constitute acceptance, waiver or approval and shall be without prejudice to any right or remedy the Council may have against the Contractor.

14. Default

- 14.1 The Contractor shall be in default if he—
- 14.1.1 fails to perform the Contract with due skill, care, diligence and timeliness;
- 14.1.2 refuses or neglects to comply with any reasonable written instruction given by the Authorised Officer;
- 14.1.3 is in breach of the Contract.
- 14.2 Where in the opinion of the Authorised Officer, the Contractor is in default, the Authorised Officer may serve a Notice giving at least seven days in which to remedy the default.
- 14.3 If the Contractor fails to comply with such a Notice the Authorised Officer may, without prejudice to any other rights or remedies under the Contract, take over for as such a period as is necessary the performance of the relevant part of the

Contract and make other arrangements for its completion. Any extra costs arising from this action, will be paid by the Contractor or deducted from any monies owing to him.

15. Termination

- 15.1 The Council may immediately, without prejudice to any other rights and remedies under the Contract, terminate all or any part of the Contract by Notice in writing to the Contractor, Receiver, Liquidator or to any other person in whom the Contract may become vested, and recover all its loss if the Contractor—
- 15.1.1 fails in the opinion of the Authorised Officer to comply with (or take reasonable steps to comply with) a Notice under Condition 14.2;
- 15.1.2 becomes bankrupt or insolvent, or has a receiving order made against him, or makes an arrangement with his creditors or (being a corporation) commences to be wound up, not being a voluntary winding up for the purpose of reconstruction or amalgamation, or has a receiver, administrator, or administrative receiver appointed by a Court;
- 15.1.3 has offered or given or agreed to give any person any gift or a consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this Contract or any other Contract with the Council or for showing or forbearing to show favour or disfavour to any person in relation to this Contract or any other Contract with the Council or if the like acts shall have been done by any person employed by it or acting on its behalf (whether with or without the knowledge of the Contractor) or if in relation to any Contract with the Council the Contractor or any person employed by him or acting on his behalf has committed any offence under the Bribery Act 2010 or under Section 117 of the Local Government Act 1972; or committed any fraud in connection with this or any other Council Contract; or
- 15.1.4 undergoes a change of control.

16. Consequences of Termination

- 16.1 In the event of termination of this Contract (in whole or in part) for any of the reasons specified in Condition 15 the Council may exercise any or all of the following rights—
- 16.1.1 the Council may require the Contractor to perform any of its obligations existing at the date of termination;
- 16.1.2 the Council shall cease to be under any obligation to make any further payments under this Contract;
- 16.1.3 the Council shall be entitled to recover from the Contractor and the Contractor shall fully indemnify the Council in respect of any loss, damages, costs or expenses to the Council resulting from or arising out of the termination of this Contract (in whole or in part) including the reasonable cost to the Council of time spent by its officers in terminating this Contract (in whole or in part) and, without limitation, the costs of procuring suitable alternative Goods in accordance with the procedures laid down by the Council's Contract Procedure Rules and relevant legislation;
- 16.1.4 the termination (in whole or in part) or expiration of this Contract shall be without prejudice to the rights and remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or the continuance in force of any provision hereof which is expressly

or by implication intended to come into or continue in force on or after such termination or expiration.

17. Determination

- 17.1 Without prejudice to any other rights or remedies under the Contract, the Council reserves the right to determine the Contract at any time by giving not less than one month's Notice, (or such other time period as may be appropriate).
- 17.2 The Council shall pay the Contractor such amounts as may be necessary to cover his reasonable costs and outstanding and unavoidable commitments necessarily and solely incurred in properly performing the Contract prior to determination.
- 17.3 The Council will not pay for any costs or commitments that the Contractor is able to mitigate and shall only pay those costs that the Council has validated to its satisfaction. The Council's total liability under this Condition shall not in any circumstances exceed the Contract Price that would have been payable for the Goods if the Contract had not been determined.

18. Termination by the Contractor

The Contractor may terminate this Contract (in whole or in part) forthwith by written notice having immediate effect if the Council is in breach of any of its obligations under this Contract and if such breach is capable of remedy fails to remedy the breach within 15 working days of a written request by the Contractor to remedy the same.

18A Exiting the Contract

At the end of this Contract or earlier Termination for whatsoever reason, the Contractor shall fully cooperate with the Council to ensure that all outstanding matters are smoothly handed over to the Council or a new Contractor. The Contractor shall ensure all materials, records and information are handed over and where appropriate deleted and destroyed from the Contractor's Information System and data storage facilities. The Council reserves the right to request certification to confirm the information has been so deleted and destroyed

19. Liability of the Contractor and Indemnity to the Council

- 19.1 The Contractor shall be liable for and shall indemnify the Council against any expense, liability, loss, claim or proceedings arising under any statute or at common law in respect of personal injury to or death of any person arising out of or in the course of or caused by the performance of the Contract, except to the extent that the same is due to any act or neglect of the Council or of any person for whom the Council is responsible.
- 19.2 The Contractor shall be liable for and shall indemnify the Council against any expense, liability, loss, claim or proceedings in respect of any loss of or injury or damage to any property, real or personal, in so far as such loss, injury or damage arises out of or in the course of or by reason of the performance of the Contract by the Contractor, its employees or agents or of any person employed or

engaged by the Contractor upon or in connection with the performance of the Contract or any part, its employees or agents.

- 19.3 The Contractor warrants that it has fully satisfied itself as to the scope and nature of the Contract and of its obligations under the Contract and has made all necessary appropriate searches, enquiries and inspections.

20. Insurance

- 20.1 The Contractor shall insure and maintain insurance against liabilities under Condition 19 in the manner and to the values listed in the Contract with a reputable insurance company approved by the Council. If no sum is stated, the value insured shall be five million pounds for any one occurrence and where appropriate, professional indemnity cover in a sum not less than one hundred thousand pounds.
- 20.2 The Contractor shall, upon request, produce to the Authorised Officer documentary evidence that the insurances required are fully paid up and valid for the duration of the Contract.
- 20.3 The Authorised Officer shall be entitled to notify the Contractor in writing that in the opinion of the Authorised Officer any such policy of insurance does not effect sufficient cover to comply with the Contract and to require the Contractor to effect such insurances as will comply. Upon receipt of such notice the Contractor shall immediately procure and effect such insurance as the Authorised Officer shall require and in default the Authorised Officer may himself cause such insurance to be effected, whereupon the Contractor shall pay to the Council such sum as the Authorised Officer shall certify as being the cost to the Council of effecting such insurance

21. Dispute Resolution

- 21.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the [*insert appropriate job title*] for the Contractor and the Head of [*insert appropriate Head of Service*] for the Council.
- 21.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 21.3 If the dispute cannot be resolved by the Parties pursuant to Condition 19.1 the Parties shall refer it to mediation pursuant to the procedure set out in Condition 21.5 unless (a) the Council considers that the dispute is not suitable for resolution by mediation; or (b) the Contractor does not agree to mediation.
- 21.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation and the Contractor and the Staff shall comply fully with the requirements of the Contract at all times.

- 21.5 The procedure for mediation and consequential provisions relating to mediation are as follows—
- 21.5.1 a neutral adviser or mediator (the “Mediator”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the ADR Group to appoint a Mediator.
- 21.5.2 The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the ADR Group to provide guidance on a suitable procedure.
- 21.5.3 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- 21.5.4 If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- 21.5.5 If the Parties fail to reach agreement in the structured negotiations within 30 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.

22. Monitoring and Audit

- 22.1 The Contractor recognises that the Council is a public body and its decisions may be subject to scrutiny. The Contractor therefore agrees, if requested by the Council, to attend any meeting (including scrutiny meetings with Council Members) to discuss the Contract, at the Contractor’s own cost.
- 22.2 The Contractor shall allow persons nominated by the Council access to all management records and documents in the possession of the Contractor in connection with the performance of this Contract, including all accounting records and financial information in the possession, custody or control of the Contractor or the Contractor’s auditor.

23. Contract Price

- 23.1 The Contract Price will be paid by the Council to the Contractor as amended by any Variations ordered under Condition 9.
- 23.2 In addition to the Contract Price, the Council will pay to the Contractor such Value Added Tax (if any) as may properly be chargeable at rates ruling at the time of invoice.

24. Invoicing and Payment

- 24.1 Invoices shall only be submitted for work already satisfactorily completed, and deliveries of goods made and accompanied by such information as the

Authorised Officer may reasonably require to verify the Contractor's entitlement to payment. Such invoices will be paid in 30 days from receipt by the Council.

- 24.2 If any sum is payable under the Contract by the Contractor to the Council, whether by deduction from the Contract or otherwise, it will be deducted from the next available invoice.
- 24.3 The Council reserves the right to withhold or set off payment against any invoice which is not submitted in accordance with the Contract or if the Contractor is in breach of any of its obligations under the Contract or any other contract between the parties until such time as a corrected invoice is submitted or the breach is cured. The Council shall in each case notify the Contractor in writing of the reason for withholding payment.
- 24.4 The Council requires the Contractor to offer equivalent payment terms as in 24.1 to its supply chain sub-contractors and reserves the right to request information to confirm the terms offered to the Sub Contractors

25. Intellectual Property Rights

- 25.1 The Contractor warrants to the Council that the performance of the Contract, shall not in any way infringe any Intellectual Property Rights belonging to any third party and shall fully indemnify the Council against all actions, claims, costs, charges, expenses and liabilities of whatsoever nature arising from or incurred by reason of any infringement, or alleged infringement.
- 25.2 The Contractor shall not be liable under this Condition if such infringement arises from the use of any design, technique or method of working provided by or specified by the Council.
- 25.3 If the Contractor is prevented from carrying out his obligations under the Contract due to any infringement or alleged infringement of any Intellectual Property Rights, the Council may without prejudice to any other rights and remedies under the Contract, exercise the powers and remedies available to it under Conditions 14 and 15, Termination and Determination respectively.

26. Data Protection and Information Security

- 26.1 The Contractor shall comply with all of the provisions of the Data Protection Act 1998, (the 'Act') and other applicable statutory provisions or provision of any European Directive in respect of data and records containing personal information. In particular, the Contractor shall ensure that at all times they have in place appropriate technical and organisational measures to guard against unauthorised or unlawful processing of the Personal data and/or accidental loss, destruction or damage to Personal Data.
- 26.2 The Contractor shall ensure that all data in relation to the Contract is securely stored and managed through effective policies, procedures and training. This will include but will not be limited to ensuring all data is password protected and ensuring all paper files are securely stored in a locked location out of hours.

26.3 The Contractor shall not remove, transmit, or exchange data by any means, unless previously agreed in writing with the Council and ensure that any personal data is not held for longer than required and disposed of properly and securely.

27. Warranty

27.1 The Contractor warrants that the Goods supplied by him are fit for the Council's intended purpose so far as this has been communicated to him, or which he would reasonably be expected to know and that the Goods are of satisfactory quality.

27.2 The Contractor warrants that he has full title in the Goods and is entitled to pass such title onto the Council.

28. Guarantee

28.1 The Contractor shall promptly remedy all defects in the Goods arising from faulty design, materials or workmanship and, without prejudice to the Council's statutory rights, either repair or replace the Goods (as the Council shall elect) at no cost to the Council, for a period of 12 months from putting the Goods into intended service, or 18 months from delivery, whichever is the less, or as otherwise agreed in writing.

29. Equality and Diversity

29.1 The Supplier shall perform its obligations under this Agreement (including those in relation to the Services) in accordance with all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise); the Authority's equality and diversity policy as provided to the Supplier from time to time; and any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law;

29.2 The supplier shall take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

30. Environment

30.1 The Contractor shall in all his operations, including purchase of materials goods and services, adopt a sound proactive environmental approach, designed to minimise harm to the environment and be able to provide proof of so doing to the Authorised Officer on demand.

31. Publicity

31.1 The Contractor shall not advertise or publicly announce that he is supplying Goods to the Council without the Permission of the Authorised Officer.

32. Freedom of Information

- 32.1 The Contractor recognises that the Council is subject to legal duties which may require the release of information under the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004 (EIRs) or any other applicable legislation or codes governing access to information and that the Council may be under an obligation to provide information on request. Such information may include matters relating to, arising out of or under this contract. The Contractor will assist and co-operate with the Council to enable the Council to comply with its obligations under FOIA or EIRs or other applicable legislation governing access to information. The Contractor will respond to any such request for assistance from the Council at its own cost and promptly and in any event within 5 days of receiving the Council's request.
- 32.2 The Contractor shall transfer to the Council all requests for information relating to this Agreement that it receives as soon as practicable and in any event within 2 working days.
- 32.3 The Contractor acknowledges that the Council may be required under FOIA or EIRs to disclose information (including commercially sensitive information) without consulting or obtaining consent from the Contractor. The Council shall take reasonable steps to notify the Contractor of a request for information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Council shall be responsible for determining in its absolute discretion whether any commercially sensitive information and/or any other information is exempt from disclosure in accordance with FOIA and/or EIRs.

32A Business Continuity

In order to support the Employer's Business Continuity and Emergency Planning obligations as defined by the Civil Contingencies Act 2004, the Contractor shall have, on commencement or within six weeks from commencement of the Contract, documented arrangements that meet good practice guidelines to effectively protect the Employer from the consequences of a business interruption (or series of interruptions). Such arrangements must fully integrate with the Employers own business continuity arrangements and include plans for restoring and maintaining the delivery of the goods, services and/or works which are the subject of the Contract and for maintaining communication with the Employer.

The Contractor shall ensure that there is a Business Continuity Plan which is regularly reviewed and updated to ensure continued and uninterrupted service to the Employer.

The Contractor shall undertake to test their business continuity arrangements no less than once per annum; or at other agreed intervals and where appropriate share results of the test(s) with the Employer and agree to support the Council in

testing its own Business Continuity Plan for the specific requirements with in this Contract.

The Contractor shall promptly (and in any case within three months) implement any actions or remedial measures which the Contractor or Client considers to be necessary as a result of audits; tests or exercises; business interruptions; emerging risks; a change to the goods, services and/or works covered by this Contract or any underlying business processes.

33. British Standards

- 33.1 Where an appropriate British Standard Specification or British Standard Code of Practice issued by the British Standards Institution is current, all goods used or supplied and all workmanship shall be in accordance with that Standard or its acceptable equivalent Standard and unless the Contractor's quality assurance so complies the Contractor shall seek to secure that its quality assurance complies with ISO 9000.

34. Observance of Statutory Requirements

- 34.1 The Contractor shall comply with all statutory and other provisions to be observed and performed in connection with the Goods provided under this Contract with particular regard to the health and safety of employees and of the public and shall indemnify and keep indemnified the Council accordingly.

35. Rights and Duties Reserved

- 35.1 Nothing in this Contract shall prejudice or fetter the proper exercise of any function by the Council or its officers.

36. Fees

- 36.1 Each party shall bear its own legal and other fees in relation to the preparation and submission of the Tender documents and this Contract.

36. Whole Contract

- 36.1 This Contract constitutes the whole agreement and understanding of the parties as to the subject matter of this Contract and there are no prior or contemporaneous agreements between the parties.

37. Waiver

- 37.1 Failure by the Council at any time to enforce any provision of this Contract or to require performance by the Contractor of any of the provisions of this Contract shall not be construed as a waiver of any such provisions and shall not affect the validity of this Contract or any part of it or the right of the Council to enforce any provision in accordance with its terms.

38. Severance

38.1 If any provision of this Contract shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way such invalidity or unenforceability shall in no way impair or affect any other provision, all of which shall remain in full force and effect.

39. Inconsistency

39.1 In the event of a conflict between any provision of the Conditions and any provision of the Specification the provision of the Conditions shall prevail.

40. Condition Headings

40.1 The Condition headings shall not be construed as part of these Conditions.

41. Law

41.1 This Contract shall be governed by and construed in accordance with the laws of England and the Contractor irrevocably submits to the jurisdiction of the English courts.

IN WITNESS etc.