

**CARMARTHENSHIRE COUNTY COUNCIL
STANDARD GENERAL CONDITIONS OF CONTRACT**

**APPENDIX B – STANDARD GENERAL CONDITIONS
RELATING TO THE PROVISION OF A SERVICE**

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STANDARD GENERAL CONDITIONS RELATING TO THE PROVISION OF A SERVICE

Interpretation

The Conditions contained herein shall be incorporated into and interpreted in accordance with Carmarthenshire County Council's Standard General Conditions of Contract.

B1. Performance

B1.2 The Contractor shall perform the Services with all reasonable skill, care and diligence and in accordance with all relevant legislative and statutory requirements.

B1.2 The Contractor shall properly manage and monitor performance of the Services and immediately inform the Contract Manager if any aspect of the Contract is not being or is unable to be performed.

B2. Time of Essence

B2.1 Time is of the essence as regards every obligation of the Contractor under the Contract.

B3. Goods Supplied During Provision of Service

B3.1 Except in so far as may otherwise be indicated by such descriptions, specifications, patterns or Contractor's samples, any goods supplied shall be strictly in compliance with the latest relevant International, European or British Statutory requirements (governing sale and/or delivery) and Standards, where such exist.

B3.2 All goods, which customarily bear any mark, tab, brand, label or other device indicating place of origin, inspection by a Government or other body or standard of quality must be delivered with all the said marks, tabs, brands, labels or other devices intact.

B3.3 All goods shall be securely packed in trade packages of a type normally used by the Contractor for commercial deliveries of the same or similar goods either in retail or in bulk quantities within the United Kingdom.

B3.4 The Council shall not be responsible for having received any goods, articles, materials or services unless an Official Order and a Delivery Note be produced by the Contractor(s) signed on behalf of the Council by their duly Authorised Officer.

B3.5 The Council disclaims all responsibility for the security of any goods delivered and left on its premises by the Contractor(s) if he should fail to obtain receipt for their acceptance from a person authorised to receive them. Under no circumstances shall goods be left at any premises unattended.

B3.6 In delivering goods and/or service and at all times when on Council premises or premises of which any part is used by the Council in connection with this Contract the Contractor(s) shall take all reasonable care to avoid injury to persons thereon and damage to the property of the Council or property wherein the Council has any interest and shall indemnify the Council against all claims, demands expenses, proceedings, actions, damages and costs occasioned by or arising out of any breach of this Condition.

B3.7 The property and risk in the Goods shall pass to the Council when the Goods have been delivered to the Council and unloaded.

B4. Staff

B4.1 The Contractor must employ sufficient staff to ensure that the Services are provided at all times and in all respects to the Service Specification. The Contractor must ensure that a sufficient reserve of staff is available to provide the Services to the Service Specification during holidays or absences.

B4.2 All Contractor's staff shall report to the Council's authorised officer on arrival and departure from the premises. Visits to the location of the equipment are not permitted without the consent of the Council's authorised officer.

B4.3 The Contractor shall cause as little interference as possible with other activities on the premises.

B4.4 The Contractor shall instruct its staff about fire risks and require them not to smoke on the Council's premises except where it is expressly permitted to do so.

B4.5 The Contractor shall take all reasonable steps to avoid changes to any of the staff designated in the Contract as Key Personnel. The Contractor shall give at least one month's notice to the Contract Manager of any proposals to change Key Personnel.

B4.6 The Contractor must employ for the purposes of this Contract only such persons as are careful skilled and experienced in the duties required of them, and must ensure that every such person is properly and sufficiently trained and instructed and carries out the Services with regard to:

- (a) the task that person has to perform;
- (b) all relevant provisions of the Contract;
- (c) all relevant rules, policies, procedures and standards of the Council;
- (d) fire risks and fire precautions;
- (e) the need for those working on behalf of the Council to observe the highest standards of hygiene, courtesy and consideration;
- (f) the requirements of the Health and Safety at Work etc. Act 1974 and all other relevant legislation and codes or practice.

B4.7 The Contractor must provide its staff with a form of identity acceptable to the Council and must ensure that they display that identity on their clothing at all times when they are on the Council's premises.

B4.8 The Contractor must remove any of its staff from the Council's premises if on grounds of efficiency or public interest the Council requests it to do so.

B5. Contract

B5.1 During the period for which any Contract is accepted the Contractor(s) shall supply and deliver to the Council and the Council shall accept such goods, services, articles or materials (subject to condition B3 above) of the description and at the prices mentioned in the tender annexed hereto in such quantities and at such prices as may be ordered by the Council.

B5.2 In the event that a different organisation is required to take over the Services at the expiry or termination of the Contract, the Contractor shall co-operate in the transfer, under arrangements to be notified to him by the Council. The transfer shall be arranged between the Council and the Contractor so as to reduce to a minimum any interruption in the Services.

B6. Default by Contractor

B6.1 Without prejudice to any other right or remedy if the Contractor does not carry out the Services in accordance with the Service Specification or at the time specified in the Contract the Council may:

- (a) require the Contractor to remedy the default within such time as the Council may specify by providing or providing again (as the case may be) without further charge to the Council those Services or such part of the Services to the Specification;
- (b) without terminating the whole of the Contract terminate the Contract in respect of that part of the Services only and thereafter provide or procure the provision of such part of the Services itself;
- (c) itself provide or procure the provision of the Services until the Council shall be satisfied that the Contractor is again able to carry out the Services in accordance with these Conditions;
- (d) terminate the Contract in accordance with Clause 31;
- (e) deduct from any amount then due or to become due to the Contractor such amount as is reasonable having regard to the value of the Services which has not been properly performed;
- (f) If the cost to the Council of executing or procuring such Services or part of them exceeds the amount which would have been payable to the Contractor for executing or procuring such Services, the excess shall be paid by the Contractor to the Council in addition to any other sums payable by the Contractor the Council in respect of the breach of contract.

B7. The Services

B7.1 The Contractor shall provide the Services during the Term in accordance with the Council's requirements as set out in the Specification and the terms of the Contract. The Council shall have the power to inspect and examine the performance of the Services at the Council's Premises at any reasonable time or, provided that the Council gives reasonable notice to the Contractor, at any other premises where any part of the Services is being performed.

B7.2 If the Council informs the Contractor that the Council considers that any part of the Services do not meet the requirements of the Contract or differ in any way from those requirements, and this is other than as a result of default or negligence on the part of the Council, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Council.

B8. Manner of Carrying Out the Services

B8.1 The Contractor shall provide all the Equipment necessary for the provision of the Services.

B8.2 The Contractor shall make no delivery of Equipment nor commence any work on the Council's Premises without obtaining the Council's prior Approval.

B8.3 All Equipment brought onto the Council's Premises shall be at the Contractor's own risk. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Council's Premises will remain the property of the Contractor.

B8.4 The Contractor shall maintain all items of Equipment within the Council's Premises in a safe, serviceable and clean condition.

B8.5 All Equipment shall be at the risk of the Contractor and the Council shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the negligence or default of the Council.

B8.6 The Council shall have the power at any time during the performance of the Services to order in writing that the Contractor:

- (a) remove from the Council's Premises any Equipment which in the opinion of the Council is either hazardous, noxious or not in accordance with the Contract; and
- (b) if the Council has ordered the Contractor to remove any item of Equipment in accordance with clause S8.6 (a) above, to replace such item with a suitable substitute item of Equipment.

B8.7 On completion of the Services the Contractor shall remove the Equipment together with any other materials used by the Contractor to

provide the services in order to leave the Council's Premises in a clean, safe and tidy condition. For the avoidance of doubt the Contractor is solely responsible for making good any damage to the Council's premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any of the Contractor's employees, servants, agents, suppliers or sub-contractors.

B8.8 Access to the Council's Premises shall not be exclusive to the Contractor but shall be limited to such Staff and the Contractor's suppliers as are necessary to perform of the Services concurrently with the execution of work by others. The Contractor shall co-operate free of charge with such others on the Council's Premises as the Council may reasonably require.

B9. Standard of Work

B9.1 The Contractor shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent the standard of Services has not been specified in the Contract, the Contractor shall agree the relevant standard of Services with the Contract Manager prior to execution, and shall execute the Contract with reasonable care and skill and in accordance with good industry practice.

B9.2 The signing by the Contract Manager (or his representative) of time sheets or other similar documents shall not be construed as implying the Contractor's compliance with the Contract.

B10. Inspection of Premises

B10.1 Save as the Council may otherwise direct, the Contractor is deemed to have inspected the Premises before tendering so as to have understood the nature and extent of the Contract to be carried out and be satisfied in relation to all matters connected with the performance of the Contract.

B10.2 The Council shall, at the request of the Contractor, grant such access as may be reasonable for the purpose referred to in clause B10.1.

B11. Licence to occupy Council's Premises

B11.1 Any land or Premises (including temporary buildings) made available to the Contractor by the Council in connection with the Contract, shall be made available to the Contractor free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Contract. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.

B11.2 The Contractor shall not use the Council's Premises for any purpose or activity other than the provision of the Services.

B11.3 Should the Contractor require modifications to the Council's Premises, such modifications shall be subject to prior Approval and shall be carried out by the Council at the Contractor's expense. The Council shall undertake Approved modification work without undue delay. Ownership of such modifications shall rest with the Council.

B11.4 The Contractor shall (and shall ensure that their employees, servants, agents, suppliers or sub-contractors) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Council, and the Contractor shall pay for the cost of making good any damage caused by the Contractor, his employees, servants, agents, suppliers or subcontractors other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

B11.5 The Parties agree that there is no intention on the part of the Council to create a tenancy of whatsoever nature in favour of the Contractor or its employees, servants, agents, suppliers or sub-contractors and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Council retains the right at any time to use in any manner the Council sees fit any premises owned or occupied by it.

B12. Council Property

B12.1 Where the Council for the purpose of the Contract issues Council Property free of charge to the Contractor such property shall be and remain the property of the Council. The Contractor shall not in any circumstances have a lien on the Council Property and the Contractor shall take all reasonable steps to ensure that the title of the Council to such Council Property and the exclusion of any such lien are brought to the notice of all sub-contractors and other persons dealing with the Contract.

B12.2 Any Council Property made available or otherwise received by the Contractor shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Council otherwise within 5 Working Days of receipt.

B12.3 The Contractor shall maintain all Council Property in good order and condition, excluding fair wear and tear, and shall use Council Property solely in connection with the Contract and for no other purpose without prior approval.

B12.4 The Contractor shall notify the Contract Manager of any surplus Council Property remaining after the expiry, termination and/or partial termination (as appropriate) the Contract and shall dispose of it as the Council may direct. Waste of such Council Property arising from bad workmanship or negligence of the Contractor or any of the Contractor's employees, servants,

agents, suppliers or subcontractors shall be made good at the Contractor's expense. Without prejudice to any other rights of the Council, the Contractor shall deliver up Council Property whether processed or not to the Council on demand.

B12.5 The Contractor shall ensure the security of all Council Property, whilst in the Contractor's possession, either on its premises or elsewhere during the performance of the Contract, in accordance with the Council's reasonable security requirements as required from time to time.

B12.6 The Contractor shall be liable for any and all loss of or damage (excluding fair wear and tear) to any Council Property, unless the Contractor is able to demonstrate that such loss or damage was caused by the negligence or default of the Council. The Contractor's liability set out in this clause shall be reduced to the extent that such loss or damage was contributed to by the negligence or default of the Council. The Contractor shall inform the Contract Manager within 2 Working Days of becoming aware of any defects appearing in or losses or damage occurring to Council Property made available for the purposes of the Contract.

B13. Sub-Contracting for the delivery of the Services

B13.1 Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing the Contract, it shall cause a term to be included in such a sub-contract which requires payment to be made of undisputed sums by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the sub-contract requirements.

B14. Offers of Employment

B14.1 For the duration of the Contract and for a period of 12 months thereafter the Contractor shall not employ or offer employment to any of the Council's staff who have been associated with the procurement and/or the contract management of the Services without the Council's prior Approval.

Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)

B14.2 If required to do so by the Council, the Supplier shall provide at no cost to the Council with any and all relevant information regarding its employees to comply with the requirements of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE"), within fourteen (14) days of request by the Council.

B14.3 The Council may disclose such TUPE information to any third party who may potentially become an employer of any employees of the Supplier who are potentially affected by TUPE.

B14.4 Where TUPE information has been provided, the Supplier shall:

14.4.1 inform the Council of any change to the information provided or provide any new TUPE information not previously provided;

14.4.2 use its best endeavours to clarify any matter upon which clarification is requested by the Council; and

14.4.3 use its best endeavours to co-operate with any other reasonable request made by the Council regarding TUPE information or the Supplier's employees within fourteen (14) days of any such change, discovery of new information, or receipt of such request.

B14.5 For the purposes of this clause "TUPE information" shall mean written details of:

14.5.1 the total number of employees employed by the Supplier whose work or any part thereof is undertaken for the purposes of this Agreement;

14.5.2 the employees' age and gender;

14.5.3 the employees' salary, length of service, contractual period of notice, any pay settlement covering future dates which has already been agreed by the Supplier and any redundancy entitlement;

14.5.4 those particulars of employment that an employer is obliged to give to an employee pursuant to Section 1 of the Employment Rights Act 1996;

14.5.5 entitlement to pensions, paid holidays and any other benefits;

14.5.6 terms incorporated from any collective agreement;

14.5.7 and any outstanding or potential liability for past breaches of such contracts;

14.5.8 information regarding any:

14.5.8.1 disciplinary procedure taken against an employee within the previous two (2) years;

14.5.8.2 grievance procedure taken by an employee, within the previous two (2) years;

14.5.8.3 any Court or Tribunal case, claim or action brought by an employee against the Supplier, within the previous two (2) years; and

14.5.8.4 any potential claim the Supplier has reasonable grounds to believe that an employee may bring against the Supplier, arising out of the employee's employment with the Supplier.

B14.6 The Supplier shall indemnify the Council fully and hold it harmless at all times from and against all actions proceedings claims expenses awards costs and all other liabilities howsoever in any way connected with or arising from

claims by its employees (or former employees) affected by, or claiming to be affected by, TUPE.

B14.7 The provisions of this condition shall apply during the continuance of this Agreement and indefinitely after its termination.

B15. Remedies in the event of inadequate performance

B15.1 Where a complaint is received or a problem indicated in any Customer Satisfaction Survey about the standard of Services or about the way any Services have been delivered or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Contract, then the Contract Manager shall take all reasonable steps to ascertain whether the complaint is valid. If the Contract Manager so decides, he may uphold the complaint, or take further action in accordance with the provisions of Part 4 of the Contract.

B15.2 In the event that the Council is of the reasonable opinion that there has been a material breach of the Contract by the Contractor, or the Contractor's performance of its obligations under the Contract has failed to meet the requirement set out in the Specification Schedule, then the Council may, without prejudice to its rights under Part 4 of the Contract, do any of the following:

- (a) make such deduction from the Price to be paid to the Contractor as the Council shall reasonably determine to reflect sums paid or sums which would otherwise be payable in respect of such of the Services as the Contractor shall have failed to provide or performed inadequately;
- (b) without terminating the Contract, itself provide or procure the provision of part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Council that the Contractor will be able to perform such part of the Services in accordance with the Contract;
- (c) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Price shall be made) and thereafter itself provide or procure a third party to provide such part of the relevant Services; and/or
- (d) terminate, in accordance with Part 4, the whole of the Contract.

B15.3 The Council may charge to the Contractor any cost reasonably incurred by the Council and any reasonable administration costs in respect of the provision of such part of the relevant Services by the Council or by a third party to the extent that such costs exceed the Price which would otherwise have been payable to the Contractor for such part of the relevant Services.

B15.4 If the Contractor fails to perform any of the Services to the reasonable satisfaction of the Council and such failure is capable of remedy, then the Council shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as the Council may direct.

B15.5. In the event that:

- (a) the Contractor fails to comply with clause B15.4. above and the failure, is materially adverse to the commercial interests of the Council or prevent the Council from discharging a statutory duty; or
- (b) the Contractor persistently fails to comply with clause B15.4 above, the Council reserves the right to terminate the Contract by notice in writing with immediate effect.

B15.6 The remedies of the Council under this clause may be exercised successively in respect of any one or more failures by the Contractor.

B16. Professional Indemnity

B16.1 The Contractor shall hold and maintain professional indemnity insurance cover and shall ensure that all professional consultants or sub-contractors involved in the provision of the Services hold and maintain appropriate cover. To comply with its obligations under this clause S16.1, and as a minimum, the Contractor shall ensure professional indemnity insurance held by the Contractor and by any agent, sub-contractor or consultant involved in the performance of Services has a limit of indemnity of not less than [] for any occurrences arising out of each and every event. Such insurance shall be maintained for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.
