

# **DERBYSHIRE FIRE & RESCUE AUTHORITY**

## **GENERAL TERMS & CONDITIONS FOR THE PURCHASE OF GOODS & SERVICES**

### **1. GENERAL CONDITIONS**

- 1.1. These General Conditions shall apply to all aspects of the Contract to the exclusion of all other terms and conditions (including any printed conditions appearing on any acceptance form, delivery form, invoice or other documents received from the Contractor) except by variation as set out in Clause 2.2 below.
- 1.2. The Parties shall not be bound by any change, relaxation of, or addition to these General Conditions except as agreed in writing by the Authority and the Contractor.
- 1.3. Each Purchase Order shall be treated as an offer by the Authority to enter into a Contract for the Goods and/or Services offered, subject to these General Conditions.

### **2. PURCHASE ORDER AND RECEIPT**

- 2.1. Subject to Clause 2.2 below the Authority shall not be responsible for receiving any Goods and/or Services and the Contractor shall not be entitled to invoice the Authority for the Goods and/or Services offered unless and until an official Purchase Order has been issued by the Authority or such other confirmation, certificate or declaration as is deemed as appropriate and applicable to the Contract in connection with the performance of the Services and a delivery note or written receipt has been produced by the Contractor signed on behalf of the Authority by its Authorised Signatory.
- 2.2. If more Goods are delivered to the Authority than the quantity ordered the excess Goods delivered will reside with the Authority at the Contractor's risk and the Authority shall not be responsible for payment or return.

### **3. PASSING OF PROPERTY AND RISK**

- 3.1. The Contractor shall retain ownership and risk of the Goods until the goods are delivered to the Authority during their normal business hours. If the Authority rejects any Goods under Clauses 5 or 6 of these General Conditions, ownership of and risk of the Goods shall not pass from the Contractor on delivery.

#### **4. DEFECTIVE GOODS**

- 4.1. If the Goods or any part of them are proved to be defective, damaged in transit or fail to be delivered to the Authority the Contractor shall free of charge, and as quickly as possible, either repair or replace the Goods, at its own cost and expense.

#### **5. STATEMENT OF SERVICES**

- 5.1. The Contractor guarantees that the Services will be performed with all reasonable skill, care and diligence in a good and workmanship manner in accordance with the Contract and in particular, any requirements laid down in the Specification.

#### **6. QUALITY, FITNESS AND STANDARDS**

- 6.1. On the date of the commencement of the Contract, the Goods and/or Services supplied and all workmanship supplied shall, without prejudice to any other obligations in the Contract be in accordance with the relevant industry standards and statutory requirements if no set standard is specified or offered, the Services shall be provided in a professional and workmanlike manner to the highest standards applicable to the particular nature of Services in question and with all due care and skill.
- 6.2. The Contractor confirms that the Goods and the Materials used will be of satisfactory quality; fit for the purpose for which they are supplied including any purpose specified in the Contract, or which the Authority has advised the Contractor they will be used for and be free from defects in design, material and workmanship.

#### **7. DELIVERY AND PERFORMANCE**

- 7.1. The Goods are to be delivered to the correct delivery address as stated on the Purchase order and at reasonable times and on the day and to the Premises specified in the Contract and at the risk of the Contractor.
- 7.2. If the Contractor does not complete delivery of the Goods and/or performance of the Services within the times or on the date(s) set out in the Contract, the Authority shall have the right to refuse any further deliveries or attempted deliveries of Goods and/or Services and/or terminate the Contract immediately without penalty to the Authority.
- 7.3. If Goods are incorrectly delivered, the Contractor will be responsible for any additional expense incurred in delivering them to their correct destination.

## **8. VARIATION OF REQUIREMENTS**

- 8.1. The Contractor shall not alter the design, Specification and quantity of the Goods or alter the location and/or nature of or vary the Services except as directed by the Authority. The Authority shall have the right from time to time during the continuation of the Contract, by written notice, to direct the Contractor to add to or omit, or otherwise vary the design, Specification and quantity of the Goods or alter the location and/or nature of or vary the Services.
- 8.2. If the contractual requirement is varied leading to an amendment of the Contract Price, the Contractor shall, within seven days of receipt of the notification, advise the Authority in writing of the amount of any amendment. Any such amendment shall be calculated and decided at the same level of pricing as already in the Contractor's Tender or quotation.

## **9. PRICE AND PAYMENT**

- 9.1. The price of the Goods and Services shall be as set out in the Contract and no increases or other costs will apply (either before the signing of the Contract or subsequently) unless otherwise first accepted and agreed to in writing by the appropriate Authorised Officer of the Authority.
- 9.2. Invoices shall quote the relevant order numbers and shall be issued and paid in pounds sterling unless otherwise set out in the Contract. Please note Derbyshire Fire & Rescue Service operates a no Purchase Order No Payment Policy.
- 9.3. The Purchaser will pay for the Goods or Services within such time period as may be agreed, but not earlier than 30 days after the end of the month in which a correct invoice is received.
- 9.4. Value Added Tax (if appropriate), shall be shown separately on all invoices as a strict net extra charge and shall only be payable on receipt of a valid VAT invoice, setting out the percentage rate being charged.
- 9.5. Unless otherwise agreed in writing, the Supplier shall only be entitled to invoice the Purchaser after delivery of the Goods or performance of the Services.

## **10. INDEMNITY AND INSURANCE**

- 10.1. The Contractor shall indemnify and keep indemnified the Authority against injury to or death to any persons or loss of or damage to the property of the Authority which may arise out of any act or omission, default or negligence of the Contractor or its employees, servants, agents or Subcontractors, and against all actions, suits, claims, demands, losses, charges, costs, expenses (including legal costs on a full indemnity basis) and judgments whatever incurred by the Authority, provided always that the Contractor shall not be liable for, nor be required to indemnify the Authority against any compensation or damages for or in respect of injuries, loss or damage resulting entirely from any act, default or

negligence on the Authority's part or that of its employees or agents not being the Contractor or employed by the Contractor.

- 10.2. Without prejudice to its liability to indemnify the Authority in line with Clause 10.1 above the Contractor shall, at its own expense and with a reputable insurance company, have in force and require any Subcontractor to have in force:
  - 10.2.1. Employer's Liability Insurance in line with any legal requirement for the time being in force; and
  - 10.2.2. Public Liability Insurance for an amount and range of cover as the Contractor considers appropriate but not less than £2,000,000 for any one incident unless otherwise agreed by the Authority in writing.
- 10.3. The Contractor shall on demand produce evidence to the Authority in the form of certificates, policies and cover notes to show the insurances mentioned in Clause 10.2 above are properly effected and in force at all times during the Contract.
- 10.4. The Contractor warrants that neither the Goods and/or the provision of the Services nor the Authority's use of the Goods for the purposes intended or made known will infringe any patent, registered design, trademark, copyright or other protected right and the Contractor shall indemnify the Authority against all actions, claims, demands, costs, proceedings, charges and expenses of whatsoever nature arising from or incurred by reason of any infringement or alleged infringement of any such right.

## **11. HEALTH AND SAFETY**

- 11.1. The Contractor shall comply and ensure its Subcontractors comply with the Health and Safety at Work Act 1974, all relevant UK legislation, environmental requirements and any regulations of the Authority relevant to the Premises to which the Goods are being delivered and/or the Services are being provided.
- 11.2. The Contractor shall be responsible for the absolute suitability and safety of the Materials or equipment used by him including any Materials temporarily stored on the Authority's Premises in connection with the performance of the Services and for which prior express permission to do so has been given beforehand by an Authorised Officer of the Authority. Where such materials are present on the Authority's Premises such Materials shall be removed immediately upon the Contractor being given an instruction to do so by an appropriate Authorised Officer of the Authority. Without lessening the Contractor's level of responsibility for the Materials and equipment the Authority shall have the right to inspect Materials or equipment and if in the Authority's opinion they are unsuitable they shall not be used and no extra time or payment shall be given to the Contractor to replace them.

## **12. HAZARDOUS GOODS AND DANGEROUS SUBSTANCES**

- 12.1. The Contractor shall be responsible for complying with the requirements of COSHH Regulations 1999 and all other relevant UK and International Agreements, statutory regulations and Codes of Practice relating to the packaging, labelling and carriage of hazardous goods.
- 12.2. 7 days after the Contract has been agreed all information held by or reasonably available to the Contractor shall be promptly communicated to the Authority with regard to any potential hazards known or believed to exist in the transport, handling or use of the Goods or Materials supplied.

## **13. TERMINATION**

- 13.1. The Authority reserves the right to postpone the date of delivery or payment or to cancel all or part of the Contract or reduce the volume of the Goods and Services ordered if it is prevented from or delayed in the carrying on of its business through any circumstances beyond its reasonable control.
- 13.2. The Authority shall have the right to terminate the Contract immediately at any time by giving notice in writing to the Contractor and recover the amount of any loss which results from cancellation which can be deducted from any sum due from the Authority to the Contractor if:
  - 13.2.1. The Contractor commits a breach of any of the terms and conditions of the Contract and has failed to remedy the breach within the time allowed should any procedure be agreed between the Parties as part of the Contract for the remedying of faults which amount to potential breach of Contract before the Authority applying its normal rights and remedies under the terms of these General Conditions and any other conditions forming part of the Contract;
  - 13.2.2. Any distress, execution or other legal process is imposed upon any of the Contractor's assets;
  - 13.2.3. The Contractor enters into any arrangement or composition with its creditors, commits any act of bankruptcy or (if it is a corporation) an order is made or an effective resolution is passed for its winding up (except for the purposes of amalgamation or reconstruction with the consent of the Authority) or a receiver and manager, receiver, administrative receiver or administrator is appointed in respect of the whole or any part of the Contractor's undertaking or assets;
  - 13.2.4. An encumbrance takes possession of any of the Contractor's property or assets;

- 13.2.5. The Contractor ceases or threatens to cease to carry on its business;
- 13.2.6. The financial position of the Contractor deteriorates so far that in the Authority's opinion the ability of the Contractor to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- 13.2.7. The Authority reasonably considers that any of the above events is about to occur in relation to the Contractor.

#### **14. RECOVERY OF SUMS DUE**

- 14.1. If under this Contract any money is recoverable from or payable by the Contractor it may be deducted from or reduced by the amount of any sum due, or which may become due to the Contractor under the Contract, or under any other agreement or Contract with the Authority.

#### **15. PATENTS AND INFORMATION**

- 15.1. It shall be a condition of the Contract that except for the Goods and/or Services which incorporate designs given by the Authority, the Goods and/or Services will not be in breach of any patent, trade mark, registered design, copyright or other right in the nature of industrial property of any third party and the Contractor shall indemnify the Authority against all actions, suits, claims, demands, losses, charges, costs and expenses which the Authority may suffer or be liable for as a result of or in connection with any breach of this Condition. If any court order is obtained against the use of the relevant Goods the Contractor shall immediately replace the Goods with other similar Goods to the satisfaction of the Authority. The Authority gives no warranty as to the intellectual property rights in any material or specification supplied by them and the Contractor must satisfy itself as to the ownership of them.

15.2. The provisions of this Clause 15

15.3. shall apply whilst the Contract is in force and after it is terminated for whatever reason.

#### **16. ADVERTISEMENTS AND ENDORSEMENTS**

- 16.1. This Contract shall not entitle the Contractor to endorse its goods (including the Goods) or services (including the Services) with any reference to the Authority and the Contractor shall not exhibit for advertising or any other reason any goods (including the Goods) or services (including the Services) or equipment supplied under the Contract which can be identified with the Authority (whether the ownership of such Goods or equipment shall have passed to the Authority or not) without the written consent of the Authority.

## **17. SUB-CONTRACTING, ASSIGNMENT OR TRANSFER OF CONTRACT**

- 17.1. The Contractor must not assign, transfer or sub-let the Contract or any part, share or interest in it either directly or indirectly to any person and shall not sub-contract except with the written consent of the Authority.
- 17.2. The Contractor will be liable under this Contract irrespective of any sub-contracting.
- 17.3. The Contractor shall be fully responsible for the acts and defaults of any Subcontractor as if they were his own.
- 17.4. If there is a breach of the provisions of this condition, the Authority shall be entitled to cancel the Contract immediately and Clause 15 of these General Conditions will still apply.

## **18. CONTRACTOR'S STATUS**

- 18.1. In carrying out this Contract the Contractor shall be acting as principal and not as the agent of the Authority and therefore:
  - 18.1.1. The Contractor or any Subcontractor shall not in any circumstances, hold itself or themselves out as being a servant or agent of the Authority and shall not (and shall ensure that his agents and servants do not) say or do anything that might lead any other person to believe that he is acting as the agent of the Authority, otherwise than in the circumstances expressly allowed by these conditions.
  - 18.1.2. The Contractor or any Subcontractor shall not in any circumstances hold itself or themselves out as being authorised to enter into any Contract or bind the Authority to the performance, variation, release or discharge of any of its obligations.
- 18.2. The Authority shall not be responsible for any liability incurred by the Contractor to any other person but this shall not be taken to exclude or limit any liability of the Authority to the Contractor that may arise by virtue of either a breach of Contract or any negligence on the part of the Authority's staff or agents.

## **19. THIRD PARTY RIGHTS**

- 19.1. The Parties agree that a person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any Condition of Contract but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

## **20. BRIBERY AND CORRUPTION**

20.1. The Authority may terminate this contract by written notice with immediate effect, and recover from the contractor all losses resulting from such termination, if the contractor, or any of its employees, agents or subcontractors (in all cases whether or not acting with the contractor's knowledge):

20.1.1. Directly or indirectly offers, promises or gives any person working for or engaged by the Service a financial or other advantage to:

- (i) induce that person to perform improperly a relevant function or activity; or
- (ii) reward that person for improper performance of a relevant function or activity;

20.1.2. Directly or indirectly requests, agrees to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this contract;

20.1.3. Commits any offence:

- (i) under Section 117(2) of the Local Government Act 1972;
- (ii) under the Bribery Act 2010;
- (iii) under legislation creating offences concerning fraudulent acts;
- (iv) at common law concerning fraudulent acts relating to this contract; or any other contract with the Service;
- (v) defrauds, attempts to defraud or conspires to defraud the Service.

## **21. GENERAL DATA PROTECTION REGULATION**

21.1. The Contractor and his Subcontractors shall comply with all the provisions of the General Data Protection Regulation 2018 and associated legislation and Data Protection Regulations 2016 relating to the disclosure of information and will indemnify the Authority against all actions, costs, expenses, claims, proceedings and demands which may be brought against the Authority for breach of statutory duty under the Act which arises from the use, disclosure or transfer of personal data by the Contractor.

## **22. EQUAL OPPORTUNITIES**

22.1. The Contractor shall not unlawfully discriminate as set out in the provisions of the Equality Act 2010 or any Act of Parliament or statutory modification or re-enactment relating to discrimination in employment. The Contractor shall take all reasonable steps to ensure this clause is observed by all servants, employees or

agents of the Contractor and all Subcontractors employed in the execution of the Contract.

**23. ETHICAL POLICY**

The contractor shall adopt our Ethical Policy which sets out what DFRS consider best practice to conduct all business relationships with respect, honesty and integrity and avoid causing harm to others and commit to eradicating unethical business practices including bribery, fraud, corruption, human and animal rights abuses such as modern slavery, child labour and animal cruelty.

**24. CONTRACTOR'S UNDERSTANDING OF NATURE AND DETAILS OF THE AUTHORITY'S REQUIREMENTS**

24.1. It is the responsibility of the Contractor to fulfil the requirements of the Contract and any Purchase Order raised against the Contract, to follow any reasonable instructions and requests for management information, to ensure that all Goods and Services are supplied to the required standard and to meet itself any additional costs where necessary in order to rectify poor quality or performance.

**25. CONFLICT OF INTEREST**

25.1. The Contractor shall not be involved in any negotiation of whatever nature between the Authority and any company, project or business in which it is or may be engaged or interested directly or indirectly and it is the Contractor's sole responsibility to notify the Authority immediately of any such conflict or potential conflict which may arise.

**26. DISPUTES/ARBITRATION**

26.1. Any dispute, difference or question between the Parties relating to the Contract which cannot be resolved by negotiation, shall after written notice by either Party, be referred to arbitration under the provisions of the Arbitration Act 1996, except that the place of any arbitration shall be the headquarters of the Authority.

**27. GOVERNING LAW**

27.1. This Contract shall be governed by the laws of England and for the benefit of the Authority the Contractor agrees that the courts of England are to have jurisdiction to settle disputes in connection with this Contract and submits to the jurisdiction of the courts of England. Nothing in this clause limits the right of the Authority to bring proceedings against the Contractor in connection with this Contract in any other court of competent jurisdiction or at the same time in more than one jurisdiction.

**28. FORCE MAJEURE**

If the performance of this Agreement or any obligations hereunder is prevented, restricted or interfered with by reason of earthquake, fire, flood or other casualty

or due to strikes, riot, storms, explosions, acts of God, war, terrorism, or a similar occurrence or condition beyond the reasonable control of the Parties, the Party so affected shall, upon giving prompt notice to the other Parties, be excused from such performance during such prevention, restriction or interference, and any failure or delay resulting therefrom shall not be considered a breach of this Agreement.

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