

Swindon Borough Council Conditions of Contract for Works projects under £25,000

These terms and conditions shall apply to each Contract between the Authority and the Contractor for minor works projects with a total value of less than £25,000 and are to the exclusion of the Contractor's terms and conditions. On agreeing to these conditions, the Contractor waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Contractor that is inconsistent with these conditions.

Complete all sections in yellow before issuing.

Definitions:

'Authority' means Swindon Borough Council, Civic Offices, Euclid Street, Swindon SN1 2JH

'Commencement Date' means [.....] the start date of the Contract.

'Contract' means the agreement between the Authority and the Contractor comprising the Authority's request for quotation and/or the specification, the Contractor's quotation, these short form conditions of contract, the purchase order, and any documents referred to therein

'Contractor' means [.....] of [.....]

'Contract Price' means [.....] the total cost of the Works

'Default' means any non-completion of the Works by the Expiry Date or any non-conformation to the specification of the Works by the Contractor as decided in the reasonable discretion of the Authority

'Data Protection Laws' means (i) the GDPR, the LED and any applicable national implementing laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable law about the processing of personal data and privacy including European Union regulation relating to data protection and privacy for so long as and to the extent that the law of the European Union has legal effect in the UK.

'Expiry Date' means [.....] the end date of the Contract.

'Premises' means [.....]

'Staff' means all personnel who are undertaking the Works including the Contractor's employees, volunteers, staff and sub-contractors.

'Works' means [.....]

1. Performance

- 1.1 The Contractor shall carry out and complete the Works in consideration of the Contract Price, from the Commencement Date to the Expiry Date (including if any later Works completion date if agreed by the Authority) at the Premises, in a proper and workmanlike manner using the standard of skill, care and diligence which a competent and suitably qualified person performing such Works is reasonably expected to exercise.
- 1.2 The Contractor shall comply with all relevant statutory requirements and shall meet all relevant industry standards in its performance of the Contract.
- 1.3 The Contractor shall provide the labour, plant and machinery necessary to carry out the Works.
- 1.4 The Authority grants the Contractor a licence to occupy the Premises for the sole purpose of undertaking the Works.
- 1.5 The Contractor may not sub-contract any part of the Works without the prior written consent of the Authority.
- 1.6 If it becomes apparent that the Works will not be completed by the Expiry Date (or any later date agreed with the Authority) for reasons beyond the control of the Contractor then the Contractor shall, in writing, notify the Authority who shall endeavour to make, in writing, such extension of time for completion as the Authority feels, at its absolute discretion, may be fair and reasonable in the circumstances.
- 1.7 Where the Contract is a construction contract under the Housing Grants, Construction and Regeneration Act 1996 but it is not fully compliant, the Schedule for the Scheme for Construction Contracts (England and Wales) Regulations 1998 ("the Scheme") shall supplement these conditions of contract.

- 1.8 *[Without prejudice to any other deductions which are permitted to be made by the Authority under the Contract, the Contractor shall be liable to pay to the Authority delay damages at a rate of [.....] per day for any delay in completing the Works beyond the Expiry Date.] – [Use if Delay Damages are required]*
- 2. Payment**
- 2.1 If the Authority is or becomes a 'contractor' for the purposes of the Construction Industry Scheme (CIS) under the Finance Act 2004, its obligation to make any payments under the Agreement is subject to the provisions of the CIS.
- 2.2 The Contractor shall submit an invoice within 28 days of meeting any milestone agreed in writing with the Authority, to the satisfaction of the Authority or otherwise within 28 days of completing the Works to the satisfaction of the Authority. The invoice shall show the amount of VAT payable and bear the purchase order number. Save where an invoice is disputed, the Authority shall pay the Contractor within 30 days of receipt of invoice.
- 3. Quality and Defects**
- 3.1 If the Contractor commits a Default then, without prejudice to any other right or remedy available to the Authority under the Contract or otherwise, the Authority may elect one or more of the following remedies:
- 3.1.1 require the Contractor, at the Contractor's own expense, to promptly make good any defect or re-perform any non-conforming Works or complete any outstanding Works;
- 3.1.2 without determining the Contract in whole or in part, itself provide or hire another person or persons to undertake all or any part of the Works until the Works are completed in accordance with the terms of the Contract to the reasonable satisfaction of the Authority, and the Contractor shall pay all necessary costs incurred by the Authority;
- 3.1.3 without determining the Contract in whole or in part, withhold from payment to the Contractor or recover as a sum of money due from the Contractor the Contract Price or any portion thereof that is allocated to the Default.
- 3.2 Without prejudice to clause 3.1, the Contractor shall (subject to the Authority providing necessary access) make good any defects directly attributable to workmanship or materials not in accordance with the Contract (but excluding normal wear and tear arising through normal usage) which may appear within 6 (six) months of the Expiry Date or any later Works completion date as agreed with the Authority. Such Works shall be at the Contractor's own cost and subject to the Authority's reasonable satisfaction.
- 3.3 All materials and goods used in relation to the Works shall be of good quality and shall meet the relevant British Standards or equivalent. All vehicles used on this Contract shall comply with the Supply of Machinery Regulations 1992 and be of a design, which is entirely suitable for the performance of this Contract.
- 3.4 During the Contract duration (including any extension of the same as agreed between the parties) the Contractor shall keep the Premises clear of any rubbish, debris and surplus materials produced in connection with the Works and shall keep access at and to the Premises clear at all times.
- 3.5 On completion of the Works the Contractor shall immediately clear the Premises of any rubbish, debris or surplus materials produced in connection with the Works so as to leave the Premises in a clean and tidy condition to the satisfaction of the Authority.
- 3.6 **CDM Regulation**
- The Contractor is the Principal Contractor in terms of The Construction (Design and Management) Regulations 2015.
- 4. Risk / Property**
- 4.1 The Contractor shall be liable for any loss of or damage to any property, materials or goods of the Authority, unless the Contractor is able to demonstrate that the Authority is liable.
- 4.2 Unless agreed otherwise with the Authority, all plant and machinery brought onto the

Premises shall be at the Contractor's own risk.

5. Termination and Consequences of Termination

- 5.1 If the Contractor fails to fulfil its obligations under the Contract and has not remedied the breach within 10 working days or other time period specified by the Authority after issue of a notice specifying the breach the Authority may terminate the Contract forthwith by written notice.
- 5.2 Following termination of this Agreement the Authority may employ another contractor to complete the Works and or to remedy any Default. The Authority shall be entitled to recover all costs incurred in connection with the completion and any remedial works associated with the Works and the Contractor shall indemnify the Authority in respect of the same (without prejudice to clause 3.2).

6. Dispute Resolution

- 6.1 In the first instance of a dispute or difference, the parties shall negotiate in good faith to reach a solution. If they do not reach a solution within 10 working days of issue being raised, either party may refer to adjudication, the Scheme shall apply and the adjudicator shall be nominated by the President or Vice President of the Royal Institution of Chartered Surveyors (RICS).

7. Exclusion from the Works

- 7.1 The Authority may (but shall not unreasonably) issue instructions requiring the exclusion from the Premises of any employee, sub-contractor or agent of the Contractor.

8. Indemnity

- 8.1 The Contractor shall fully and promptly indemnify the Authority against all direct and indirect losses, injury, damages, costs, liabilities or proceedings incurred by the Authority as a result of any act, default or negligence of the Contractor or any Staff in carrying out its obligations under the Contract except and to the extent it is due to the act, default, or negligence of the Authority or any of its employees.

9. Insurance

- 9.1 The Contractor shall effect and maintain an adequate level of insurance cover in respect of all risks that may be incurred by it in the performance of this Contract or as the Authority may from time to time require.

10. Data Protection and Freedom of Information Act

- 10.1 The Contractor shall assist and cooperate with the Authority to enable the Authority to comply with its obligations under the Freedom of Information Act 2000, the Environmental Information Regulations 2004, or any statutory re-enactment, amendment or modification thereto which may be in force throughout the term of this Contract.
- 10.2 Each Party shall comply with their respective obligations under Data Protection Law including any notification requirements (for avoidance of doubt, the Authority shall be the Data Controller and the Contractor is the Data Processor as defined therein), and in accordance with Annex A (Part 1 & 2) of the Procurement Policy Note 02/18 which shall be deemed to be incorporated into this Contract (mutatis mutandis). In particular, the Contractor shall fully comply with its obligations (and shall ensure that any of its personnel, consultants and sub-contractors shall comply), and provide the Works in such a manner that allows the Authority to be compliant with Data Protection Law.

[NOTE: if further details of processing of Personal Data is required- please contact legal for advice]

11. Health and Safety

- 11.1 The Contractor shall promptly notify the Authority of any health and safety hazards, which may arise in connection with the performance of the Contract. The Authority shall

promptly notify the Contractor of any health and safety hazards which may exist or arise at the Premises and which may affect the Contractor in the performance of the Contract.

- 11.2 While on Premises, the Contractor shall comply with any health and safety measures implemented by the Authority in respect of Staff and other persons working on those premises.
- 11.3 The Contractor shall notify the Authority immediately in the event of any incident occurring in the performance of the Contract on the premises of the Authority where that incident causes any personal injury, damage to property which could give rise to personal injury or any incident falling into scope of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013.
- 11.4 The Contractor shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on premises in the performance of the Contract

12. Law and Jurisdiction

- 12.1 The Contract shall be governed by and interpreted in accordance with the law of England and Wales. The parties hereby submit to the exclusive jurisdiction of the English Courts.

13. Variations to the Contract

- 13.1 No variation to the Contract will be effective unless agreed in writing by and signed by both the Authority and the Contractor.

14. Third Parties

- 14.1 Nothing in this Contract confers or purports to confer on any third party any right to enforce the terms of this Contract. The provisions of the Contracts (Rights of Third Parties) Act 1999 are expressly excluded from this Contract.

15. Entire Agreement

- 15.1 This Contract constitutes the entire agreement between the parties relating to the subject matter of the Contract