

CONDITIONS OF CONTRACT FOR HIRE OF WORKMEN/PLANT/VEHICLES



These Conditions may only be varied with the written agreement of the Purchaser. No terms or conditions put forward at any time by the Contractor shall form any part of the Contract unless specifically agreed in writing by the Purchaser.

1. DEFINITIONS

In these Conditions:

'Purchaser' means the Scottish Ministers acting through Historic Scotland;

'Contractor' means the person, firm or company to whom the Contract is issued;

'Services' means the services to be provided as specified in the Purchase Order and shall, where the context so admits, include any materials, articles and goods to be supplied thereunder;

'Premises' means the location where the services are to be performed, as specified in the Purchase Order;

'Contract' means the contract between the Purchaser and the Contractor consisting of the Purchase Order, these Conditions and other documents (or parts thereof) specified in the Purchase Order;

'Purchase Order' means the document setting out the Purchaser's requirements for the Contract.

2. PERIOD OF CONTRACT

The contract period shall be the period stated in the Contract, subject to the due performance by the Contractor of his obligations under the contract and without prejudice to the specific rights of the parties of determination hereunder.

3. DETERMINATION

3.1 The Contract may be determined:

a) by the Purchaser at any time, by giving to the contractor one month's prior written notice of termination, or
b) by the Contractor giving to the Purchaser written notice of determination expressed to expire on the last day of the month following that in which such notice is given.

3.2 The Purchaser may, but not unreasonably or vexatiously, by notice by registered post or recorded delivery to the Contractor, forthwith determine the employment of the Contractor under this contract if the Contractor shall make default in any one or more of the following respects, that is to say:

a) if the Contractor without reasonable cause fails to proceed diligently with the works or wholly suspends the carrying out of the works before completion or does not comply with the requirements of health and safety or any other aspect of the contract;
b) if the contractor becomes bankrupt or makes a composition or arrangement with his creditors or has his estate sequestrated or is rendered notour bankrupt or enters into a Trust Deed for his creditors or has a winding up order made or (except for the purposes of reconstruction) a Resolution for voluntary winding up passed or a Receiver or Manager of his business or undertaking appointed or possession taken by or on behalf of the holders of any Debenture secured by a Floating Charge, provided always that the right of determination shall be without prejudice to any other rights or remedies which the Purchaser may possess.

4. SUPPLY OF WORKMEN/PLANT AND VEHICLES

4.1 Subject to the provisions of sub-clause 4.2 hereof, the Contractor shall supply Workmen, Plant and Vehicles as described in the Specification and such workmen, plant and vehicles shall, for the period required by the Purchaser, be entirely under the direction, control and supervision of the Purchaser's officers but shall nevertheless be and remain the servants/property of the Contractor and the Contractor shall be and remain their Purchaser/owner and shall be liable to the Purchaser in every respect as if such workmen, plant and vehicles were acting directly under the control of the Contractor.

4.2 If the Purchaser shall consider any workman incompetent or otherwise objectionable the Contractor shall upon request by the Purchaser, immediately remove such workman and, if desired by the Purchaser, substitute another, at the expense of the Contractor.

4.3 All workmanship carried out shall be of the highest standard and shall conform to appropriate Codes of Practice as applicable.

5. ASSIGNATION AND SUB-CONTRACTING

5.1 The Contractor shall not assign or sub-contract any portion of the Contract without the prior written consent of the Purchaser. Sub-contracting any part of the Contract shall not relieve the Contractor of any obligation or duty attributable to the Contractor under the Contract or these Conditions.

5.2 Where the Purchaser has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Contractor to the Purchaser immediately it is issued.

5.3 Where the Contractor enters into a sub-contract for the purpose of performing the Contract, the Contractor shall cause a term to be included in such sub-contract:

5.3.1 which requires payment to be made to the sub-contractor within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the sub-contract requirements and provides that, for the purpose of payment alone, where the Purchaser has made payment to the Contractor and the sub-contractor's invoice includes Services in relation to which payment has been made by the Purchaser then, to the extent that it relates to such Services, the invoice shall be treated as valid and payment shall be made to the sub-contractor without deduction.

5.3.2 which notifies the sub-contractor that the contract forms part of a larger contract for the benefit of the Scottish Government and that should the sub-contractor have any difficulty in securing the timely payment of an invoice that matter may be referred by the sub-contractor to the Historic Scotland Procurement Unit and

5.3.3 in the same terms as that set out in this clause 5.3 (including for the avoidance of doubt this clause 5.3.3) subject only to modification to refer to the correct designation of the equivalent party as the Contractor and sub-contractor as the case may be.

6. INJURY TO OR DEATH OF PERSONS

The Contractor shall be liable for and shall indemnify the Purchaser against any liability, loss, claim or proceedings whatsoever arising under any statute or at common law in respect of personal injury to or death of any persons whatsoever arising out of or in the course of or caused by the carrying out of the works unless due to any act or neglect of the Purchaser, or of any person for whom the Purchaser is responsible. Without prejudice to his liability to indemnify the Purchaser the Contractor shall maintain and cause any sub-contractor to maintain such insurances as are necessary to cover the liability of the Contractor or, as the case may be, of such sub-contractor, in respect of personal injuries or deaths arising out of or in the course of or caused by the carrying out of the works.

Provided that nothing contained in this sub-clause shall impose any liability on the sub-contractor in respect of negligence or breach of duty on the part of the Purchaser, the Contractor, his other sub-contractors or their respective servants or agents.

7. DAMAGE TO PROPERTY

The Contractor shall, subject to Clause 9, be liable for and indemnify the Purchaser against and insure and cause any sub-contractor to insure against any expense, liability, loss claim or proceedings in respect of any damage whatsoever to any heritable or moveable property (including the Works) to the amount stated in the Abstract of Contract Particulars for any one occurrence insofar as such damage arises out of or in the course of or by reason of the carrying out of the Works and is due to any negligence, omission or default of the Contractor or any person for whom the Contractor is responsible or of any sub-contractor or person for whom the sub-contractor is responsible.

8. INSURANCES - PERSONS AND PROPERTY

The Contractor shall produce, and shall cause any sub-contractor to produce, such evidence as the Purchaser may reasonably require that the insurances referred to in Clauses 6 and 7 hereof have been taken out and are in force at all material times.

9. INSURANCE OF THE WORKS - EXISTING STRUCTURES - FIRE ETC

The Works (and the existing structures together with the contents thereof owned by him and for which he is responsible) and all unfixed materials and goods delivered to, placed on or adjacent thereto and intended therefor (except temporary buildings, plant, tools and equipment owned or hired by the Contractor or any sub-contractor) shall be at the sole risk of the Purchaser as regards loss or damage by fire, lightning, explosion, storm, tempest, flood, bursting or overflowing water tanks apparatus or pipes, earthquake, aircraft and other aerial devices or articles dropped therefrom, riot and civil commotion, provided that such loss or damage is not due to or caused by any negligence, the breach or negligent performance or failure in performance of any obligation incumbent upon the Contractor in terms of the contract, breach of duty (whether statutory, contractual or otherwise) or other wrongful act or omission of the Contractor, or any of his servants or agents.

10. PAYMENT

10.1 The Contract Administrator shall:
a) arrange payment to the Contractor on satisfactory completion of the work,
b) monitor the performance of the Contractor during the contract period.
c) monitor the standard of work and performance by the Contractor accordingly.

10.2 The Contractor shall submit a written detailed account for each item of work, in accordance with the Schedule of rates submitted with the tender, which shall include:
a) date(s) of visit(s),
b) description of work carried out, showing for each day the hours actually worked,
c) any other information the Contract Administrator may reasonably require.

10.3 The Contractor shall be paid monthly, within 30 days following receipt and approval by the Purchaser of a valid invoice. Where, with the agreement of the Purchaser, the Contractor has entered into a sub-contract for the purposes of performing the contract, the Contractor will cause a term to be included in such sub-contract which requires payment to be made to the Contractor or sub-contractor within 30 days from receipt of a valid invoice as defined by the sub-contract requirements.

11. PREVENTION OF CORRUPTION

The Purchaser shall be entitled to cancel this contract and to recover from the Contractor the amount of any loss resulting from such cancellation if the Contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind or if the Contractor shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or shall have given any fee or reward the receipt of which is an offence under Section 68 Local Government (Scotland) Act 1973 or any re-enactment thereof.

12. ARBITRATION

12.1 If any dispute or difference concerning this contract shall arise between the Purchaser or the Contract Administrator acting on his behalf and the Contractor, such dispute or difference shall be and is hereby referred to the arbitration and final decision of a person to be agreed between the parties or, failing agreement within 14 days after either party has given to the other a written request to concur in the appointment of an arbiter, a person to be appointed on the request of either party by the Sheriff of any Sheriffdom in which the works or any part thereof are situated.

12.2 The Arbiter shall have power to award compensation or damages and expenses to or against any of the parties to the arbitration and the Arbiter shall be entitled to remuneration and reimbursement of his outlays.

13. VALUE ADDED TAX

The Purchaser shall pay to the Contractor any Value Added Tax, introduced by the Finance Act 1972 and any subsequent amendments thereof during the contract period, properly chargeable by the Commissioners of Customs and Excise on the supply

to the Purchaser of any goods and services by the Contractor under this contract.

14. STANDARD FIRE PRECAUTIONS

- 14.1 The Contractor's operations will be restricted by the requirement to comply where appropriate with the 'Crown Fire Standards' published by PACE Central Advice Unit, and the conditions specified in the HMSO booklet 'Standard Fire Precautions for Contractors Engaged on Crown Works' (published 1995). Copies of this booklet are available from HMSO bookshops or a copy can be examined at the Historic Scotland Regional Office. Note that the following amendments are deemed to operate:
- for 'DoE' read 'Historic Scotland'.
 - for 'Fire Officer' read 'Scottish Executive Fire Officer'.
 - for 'Project Manager' or 'Job Officer read 'Contract Administrator or his authorised representative'.
 - for 'General Conditions of Government Contracts for Building and Civil Engineering Work' read 'the defined conditions of contract'.
- The Contractor should note particularly para 1.11 and arrange with the Historic Scotland Regional Office to obtain in advance any necessary Hot Work permits and to agree the correct procedures.
- 14.2 In addition the Contractor shall comply where appropriate with the Joint Code of Practice on the Protection from Fire of Construction Sites and Buildings Undergoing Restoration titled "Fire Prevention on Construction Sites", as published by the Building Purchasers' Confederation, the Loss Prevention Council and the National Contractors' Group (Fourth Edition: June 1997).

15. SAFETY, HEALTH AND WELFARE

The Contractor is required to carry out the works in strict accordance with the Health and Safety at Work etc Act 1974, Food and Environment Protection Act 1985, Environmental Protection Act 1990 and all other laws, rules and regulations including safety procedures operated by Historic Scotland and those applicable to the Work activities.

The successful Contractor shall supply a copy of their safety policy statement with evidence of back-up procedures and practices to the Purchaser prior to the commencement of the contract and shall nominate one of his employees as the person to be responsible for the health and safety matters required by the Health and Safety at Work Act 1974. He shall ensure that the Contractor and his employees observe the terms of his safety policy statement and take into account the Health and Safety requirements specified in the contract documents. The Contractor shall familiarise himself and his personnel with the work site and any hazards which may be encountered. The Contractor shall perform the work or services in accordance with safe practices, taking precautions to protect the work site, Historic Scotland employees, members of the public and his own employees.

The Contractor shall (at his own expense) provide its employees with personal protective equipment. The Contractor shall provide risk and COSHH assessments for the works contemplated. The Contractor will be responsible for monitoring his own Health and Safety performance, and providing additional information on various assessments as the need arises. Historic Scotland's Health and Safety Adviser and Supervisory Staff will also be monitoring their Health and Safety performance at regular intervals throughout the duration of the contract.

16. SITE VISIT

The Contractor shall be deemed to have visited the site(s) prior to submission of his tender to acquaint himself with the requirements of the contract.

17. PURCHASER SUPPLIED EQUIPMENT

In the event that the Purchaser hires, loans or otherwise supplies to the Contractor any equipment or plant of whatsoever nature for any purpose connected with the Works, then:

a) the Contractor shall use such equipment or plant in a skillful and proper manner and in accordance with any operating instructions issued to them and to ensure that they are operated and used only by properly skilled and trained personnel;

b) the Contractor shall make no alteration to such equipment or plant without the prior written consent of the Purchaser;

c) during the period of the hire or loan or other supply, or otherwise when the equipment or plant is in the custody or possession of the Contractor, the Contractor shall keep the equipment or plant safe and shall be liable for any damage to or loss of such equipment or plant irrespective of the cause of such damage or loss, and shall at its own expense repair any such damage or make good any such loss, all to the reasonable satisfaction of the Purchaser and not later than 21 days after receipt of a notice from the Purchaser calling on it to do so, unless the cause of such damage or loss is the negligence of any employee of the Purchaser, in which case the foregoing provision shall not apply; and

d) without prejudice to the generality of Clauses 6 and 7, the contractor shall indemnify the Purchaser against all actions, claims, demands, costs and expenses incurred by or made against the Purchaser by any person in respect of any loss or damage to any property or any personal injury (including death) which arises out of or in connection with the possession, operation, use or misuse of the equipment or plant by the Contractor, or the condition of or any defect or fault in such equipment or plant (whether latent or otherwise), in all cases whether arising by reason of the negligence of the Contractor or otherwise, and expressly declaring for the avoidance of doubt that such indemnity shall apply irrespective of the condition of or any fault or defect in such equipment at the time when it was handed over to the Contractor by the Purchaser, the Contractor being deemed to have satisfied himself as to the condition of and the nature of any defect or fault in such equipment or plant.

18. GOVERNING LAW

These Conditions shall be governed by and construed in accordance with Scottish law and the Contractor hereby irrevocably submits to the jurisdiction of the Scottish courts. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the Purchaser to take proceedings against the Contractor in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.

19. TUPE

The Contractor recognises that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) may apply in respect of the Contract, and that for the purposes of those Regulations, the undertaking concerned (or any relevant part of the undertaking) shall (a) transfer to the Contractor on the commencement of the Contract; (b) transfer to another Contractor on the expiry of the Contract.

During the period of six months preceding the expiry of the Contract or after the Purchaser has given notice to terminate the Contract or the Contractor stops trading, and within 20 working days of being so requested by the Purchaser, the Contractor shall fully and accurately disclose to the Purchaser or to any person nominated by the Purchaser information relating to employees engaged in providing the Services in relation to the Contract in particular, but not necessarily restricted to, the following:

(a) the total number of personnel whose employment with the Contractor is liable to be terminated at the expiry of this Contract but for any operation of law; and

(b) for each person, age and gender, details of their salary, date of commencement of continuous employment and pay settlements covering that person which relate to future dates but which have already been agreed and their redundancy entitlements (the names of individual members of staff do not have to be given); and

(c) information about the other terms and conditions on which the affected staff are employed, or about where that information can be found; and

(d) details of pensions entitlements, if any.

The Contractor shall permit the Purchaser to use the information for the purposes of TUPE and of re-tendering, which shall include such disclosure to potential Contractors as the Purchaser considers appropriate in connection with any re-tendering. The Contractor will co-operate with the re-tendering of the contract by allowing the transferee to communicate with and meet the affected employees and/or their representatives.

The Contractor agrees to indemnify the Purchaser fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision or disclosure of information permitted under this Clause.

In the event that the information provided by the Contractor in accordance with this Clause becomes inaccurate, whether due to changes to the employment and personnel details of the affected employees made subsequent to the original provision of such information or by reason of the Contractor becoming aware that the information originally given was inaccurate, the Contractor shall notify the Purchaser of the inaccuracies and provide the amended information. The Contractor shall be liable for any increase in costs the Purchaser may incur as a result of the inaccurate or late production of data.

The provisions of this Condition 19 shall apply during the continuance of this Contract and after its termination howsoever arising.

20. OFFICIAL SECRETS ACT, CONFIDENTIALITY, AND ACCESS TO GOVERNMENT INFORMATION

20.1 The Contractor undertakes to abide and procure that the Contractor's employees abide by the provisions of the Official Secrets Acts 1911 to 1989.

20.2 The Contractor shall keep secret and not disclose and shall procure that the Contractor's employees keep secret and do not disclose any information of a confidential nature obtained by the Contractor by reason of this Contract except information which is in the public domain otherwise than by reason of a breach of this provision.

20.3 All information related to the Contract will be treated as commercial in confidence by the parties except that:

(a) The Contractor may disclose any information as required by law or judicial order to be disclosed.

(b) The Purchaser may disclose any information as required by law or judicial order to be disclosed, further the Purchaser may disclose all information obtained by the Purchaser by virtue of the Contract to the Scottish or United Kingdom Parliament or any other department, office or agency of Her Majesty's Government in Scotland or the United Kingdom, and their servants or agents, when disclosing such information to either the Scottish Parliament or the United Kingdom Parliament it is recognised and agreed by both parties that the Purchaser shall if the Purchaser sees fit disclose such information but is unable to impose any restrictions upon the information that the Purchaser provides to Members of the Scottish Parliament, (MSP's) or Members of the United Kingdom Parliament (MPs). Such disclosure shall not be treated as a breach of this agreement.

20.4 The provisions of this Condition 20 shall apply during the continuance of this Contract and after its termination howsoever arising.

SUPPLEMENTARY NOTICE - THIS NOTICE DOES NOT FORM PART OF THE CONTRACT

1. PROTECTING THE ENVIRONMENT

Contractors to Historic Scotland are requested to satisfy themselves that no product will be supplied or used in the Supply of Goods to the Purchaser which will endanger the health of the consumers or others, will cause significant damage to the environment during manufacture, use, or disposal, which consumes a disproportionate amount of energy during manufacture, use, or disposal, which causes unnecessary waste because of over-packaging or because of an unusually short shelf life, or which contains materials derived from threatened species or threatened environments.

2. LATE PAYMENT OF INVOICES

Contractors to Historic Scotland are requested to address complaints regarding late payment of invoices to, in the first instance, the addressee of the invoice, and in the second instance to the Historic Scotland Procurement Unit, Room 3.14, Longmore House, Salisbury Place, Edinburgh, EH9 1SH, telephone 0131 668 8860. This procedure is suggested as the best practical way of ensuring problems of late payment are resolved, and is not intended to interfere with Contractors' legal rights.