

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

1. DEFINITIONS

In these Conditions:

'Purchaser' means VisitScotland;

'Supplier' 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 Supplier 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. CHANGE TO CONTRACT REQUIREMENTS

2.1 The Purchaser may order any variation to any part of the Services that for any other reason shall in its opinion be desirable. Any such variation may include (but shall not be restricted to) additions, omissions, alterations, substitutions to the Services and changes in quality, form, character, kind, timing, method or sequence of the Services.

2.2 Save as otherwise provided herein, no variation of the Services as provided for in Clause 2.1 hereof shall be valid unless given or confirmed in the form of an order given by the Purchaser. All such orders shall be given in writing provided that if for any reason the Purchaser shall find it necessary to give any such order orally in the first instance the Supplier shall comply with such oral order which must be confirmed in writing by the Purchaser within 2 working days of the giving of such oral order by the Purchaser, failing which the variation made by such oral order shall cease to have effect on the expiry of the said 2 working day period.

2.3 Where any such variation of the Services made in accordance with Clause 2.1 and 2.2 has affected or may affect the costs incurred by the Supplier in providing the Services, the Supplier will notify the Purchaser in writing of the effect which it has had or may have on

the said costs and such notification shall be considered by the Purchaser, who shall take all of the facts into account (including such information as may be provided by the Supplier in respect of the effect which such variation has had or may have on the costs incurred by the Supplier in providing the service) and may authorise such alteration to the sums to be paid to the Supplier in accordance with the provisions of the Contract as are, in his opinion, appropriate and reasonable in the circumstances.

3. INSPECTION OF PREMISES AND NATURE OF SERVICES

3.1 The Supplier is deemed to have inspected the Premises before tendering so as to have understood the nature and extent of the Services to be carried out and satisfied himself in relation to all matters connected with the Services and Premises.

3.2 The Purchaser shall, at the request of the Supplier, grant such access as may be reasonable for this purpose.

4. SUPPLIER'S STATUS

In carrying out the Services the Supplier shall be acting as principal and not as the agent of the Purchaser. Accordingly:

(a) the Supplier shall not (and shall procure that his agents and servants do not) say or do anything that might lead any other person to believe that the Supplier is acting as the agent of the Purchaser, and

(b) nothing in this Contract shall impose any liability on the Purchaser in respect of any liability incurred by the Supplier to any other person but this shall not be taken to exclude or limit any liability of the Purchaser to the Supplier that may arise by virtue of either a breach of this Contract or any negligence on the part of the Purchaser, his staff or agents.

5. SUPPLIER'S PERSONNEL

5.1 The Supplier shall take the steps reasonably required by the Purchaser to prevent unauthorised persons being admitted to the Premises. If the Purchaser gives the Supplier notice that any person is not to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the

Contract, the Supplier shall take all reasonable steps to comply with such notice and if required by the Purchaser the Supplier shall replace any person removed under this Condition with another suitably qualified person and procure that any pass issued to the person removed is surrendered.

5.2 If and when instructed by the Purchaser, the Supplier shall give to the Purchaser a list of names and addresses of all persons who are or may be at any time concerned with the Services or any part of them, specifying the capacities in which they are so concerned, and giving such other particulars and evidence of identity and other supporting evidence as the Purchaser may reasonably require.

5.3 The decision of the Purchaser as to whether any person is to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract and as to whether the Supplier has furnished the information or taken the steps required of him by this Condition shall be final and conclusive.

5.4 The Supplier shall bear the cost of any notice, instruction or decision of the Purchaser under this Condition.

6. MANNER OF CARRYING OUT THE SERVICES

6.1 The Supplier shall make no delivery of materials, plant or other things nor commence any work on the Premises without obtaining the Purchaser's prior consent.

6.2 Access to the Premises shall not be exclusive to the Supplier but only such as shall enable him to carry out the Services concurrently with the execution of work by others. The Supplier shall co-operate with such others as the Purchaser may reasonably require.

6.3 The Purchaser shall have the power at any time during the progress of the Services to order in writing:

(a) the removal from the Premises of any materials which in the opinion of the Purchaser are either hazardous, noxious or not in accordance with the Contract, and/or

(b) the substitution of proper and suitable materials, and/or

(c) the removal and proper re-execution notwithstanding any previous test thereof or interim payment therefor of any work which, in respect of material or workmanship is not in

the opinion of the Purchaser in accordance with the Contract.

6.4 On completion of the Services the Supplier shall remove his plant, equipment and unused materials and shall clear away from the Premises all rubbish arising out of the Services and leave the Premises in a neat and tidy condition.

7. TIME OF PERFORMANCE

The Supplier shall begin performing the Services on the date stated in the Purchase Order and shall complete them by the date stated in the Purchase Order or continue to perform them for the period stated in the Purchase Order (whichever is applicable). Time is of the essence of the Contract. The Purchaser may by written notice require the Supplier to execute the Services in such order as the Purchaser may decide. In the absence of such notice the Supplier shall submit such detailed programmes of work and progress reports as the Purchaser may from time to time require.

8. PAYMENT

8.1 Unless otherwise stated in the Contract, payment will be made within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed to the satisfaction of the Purchaser.

8.2 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.

9. FREE-ISSUE MATERIALS

Where the Purchaser for the purpose of the Contract issues materials free of charge to the Supplier such materials shall be and remain the property of the Purchaser. The Supplier shall maintain all such materials in good order and condition and shall use such materials solely in connection with the Contract. The Supplier shall notify the Purchaser of any surplus materials remaining after completion of the Services and shall dispose of them as the Purchaser may direct. Waste of such materials arising from bad workmanship or negligence of the Supplier or any of his servants, agents or sub-Contractors shall be made good at the Supplier's expense. Without prejudice to any other of the rights of the Purchaser, the Supplier shall deliver up such materials whether processed or not to the Purchaser on demand.

10. AUDIT

The Supplier shall keep and maintain until 2 years after the Contract has been

completed records to the satisfaction of the Purchaser of all expenditures which are reimbursable by the Purchaser and of the hours worked and costs incurred in connection with any employees of the Supplier paid for by the Purchaser on a time charge basis. The Supplier shall on request afford the Purchaser or his representatives such access to those records as may be required by the Purchaser in connection with the Contract.

11. FRAUD, CORRUPTION, CORRUPT GIFTS OR PAYMENTS

The Purchaser is opposed to all forms of fraud and corruption and has an anti-fraud strategy designed to prevent and detect both. The Supplier, is expected to act with integrity and without intention to commit fraud or corruption against the Purchaser. Fraud is defined as the intentional distortion of financial statements or other records which is carried out to conceal the misappropriation of assets or otherwise for gain. Corruption is defined as the offering, giving, soliciting or acceptance of an inducement or reward which may influence the action of any person.

The Supplier shall not offer or give, or agree to give, to any employee or representative of the Purchaser any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other contract with the Purchaser or for showing or refraining from showing favour or disfavour to any person in relation to this or any such Contract. The attention of the Supplier is drawn to the criminal offences created by the Prevention of Corruption Acts 1889 to 1916.

12. PATENTS, INFORMATION AND COPYRIGHT

12.1 It shall be a condition of the Contract that, except to the extent that the Services incorporate designs furnished by the Purchaser, that nothing done by the Supplier in the performance of the Services shall infringe any patent, trade mark, registered design, copyright or other right in the nature of intellectual property of any third party and the Supplier shall **indemnify** the Purchaser against all actions, claims, demands, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any breach of this Condition.

12.2 All rights (including ownership and copyright) in any reports, documents, specifications, instructions, plans, drawings, patents, models or designs whether in writing or on magnetic or other media:

(a) furnished to or made available to the Supplier by the Purchaser shall remain vested in the Purchaser absolutely.

(b) prepared by or for the Supplier for use, or intended use, in relation to the performance of this Contract are hereby assigned to and shall vest in the Purchaser absolutely, and (without prejudice to Condition 15.2) the Supplier shall not and shall procure that his servants and agents shall not (except to the extent necessary for the implementation of this Contract) without the prior written consent of the Purchaser use or disclose any such reports, documents, specifications, instructions, plans, drawings, patents, models, designs or other material as aforesaid or any other information (whether or not relevant to this Contract) which the Supplier may obtain pursuant to or by reason of this Contract, except information which is in the public domain otherwise than by reason of a breach of this provision, and in particular (but without prejudice to the generality of the foregoing) the Supplier shall not refer to the Purchaser or the contract in any advertisement without the Purchaser's prior written consent.

12.3 The provisions of this Condition 12 shall apply during the continuance of this Contract and after its termination howsoever arising.

13. INDEMNITY AND INSURANCE

13.1 Without prejudice to any rights or remedies of the Purchaser the Supplier shall **indemnify** the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses which the purchaser may suffer or incur as a result of or in connection with any damage to property or in respect of any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any negligent or wrongful act or omission of the Supplier, his servants or agents.

13.2 Except in the case of loss, damage or personal injury (including death) suffered by an employee of the Supplier (in respect of which the **indemnity** in Condition 13.1 shall apply whether or not the loss, damage or personal injury was caused by the negligent or wilful act or omission of the Purchaser) the **indemnity** contained in Condition 13.1 **shall not** apply to the extent that the loss, damage or injury is caused by the negligent or wilful act or omission of the Purchaser.

13.3 The Supplier shall have in force and shall require any sub-Contractor to have in force:

(a) employer's liability insurance in accordance with any legal requirements for the time being in force, and

(b) public liability insurance for such sum and range of cover as the Supplier deems to be appropriate but covering at least all matters which are the subject of indemnities or compensation obligations under these Conditions in the sum of not less than £1 million for any one incident and unlimited in total, unless otherwise agreed by the Purchaser in writing.

13.4 The policy or policies of insurance referred to in paragraph 13.3 shall be shown to the Purchaser whenever he requests, together with satisfactory evidence of payment of premiums.

14. RACIAL DISCRIMINATION

The Supplier shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976 or any statutory modification or re-enactment thereof relating to discrimination in employment. The Supplier shall take all reasonable steps to secure the observance of these provisions by all servants, employees or agents of the Supplier and all sub-Contractors employed in the execution of the Contract.

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

15.1 The Supplier undertakes to abide and procure that his employees abide by the provisions of the Official Secrets Acts 1911 to 1989.

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

15.3 All information related to the Contract with the Supplier will be treated as commercial in confidence by the Purchaser except that:

(a) references may be sought from banks, existing or past clients, or other referees proposed by the Supplier, and

(b) disclosure may be made of such information relating to the outcome of the procurement process as may be required to be published in the Official Journal of the European Communities or elsewhere in

accordance with EC Directives or UK Government policy on the disclosure of information regarding government contracts. This disclosure may include the number of tenders received the identity of the successful tenderer, the winning contract price, the specification of goods or services to be supplied, terms and conditions of contract, quality and performance standards and subsequent performance against those quality and performance standards.

15.4 The provisions of this Condition 15 shall apply during the continuance of this Contract and after its termination howsoever arising.

16. TERMINATION

16.1 The Supplier shall notify the Purchaser in writing immediately upon the occurrence of any of the following events:

(a) where the Supplier is an individual and if a petition is presented for the Supplier's bankruptcy or the sequestration of his estate or a criminal bankruptcy order is made against the Supplier, or he is apparently insolvent, or he makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignation for the benefit of creditors, or if an administrator or trustee is appointed to manage his affairs; or

(b) where the Supplier is not an individual but is a firm, or a number of persons acting together in any capacity, if any event in (a) or (c) of this Condition occurs in respect of the firm or any partner in the firm or any of those persons or a petition is presented for the Supplier to be wound up as an unregistered company; or

(c) where the Supplier is a company, if the company passes a resolution for winding-up of dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrator, administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge.

16.2 On the occurrence of any of the events described in paragraph 16.1 or, if the Supplier shall have committed a material breach of this Contract and (if such breach is capable of remedy) shall have failed to remedy such breach within 30 days of being required by the Purchaser in writing to do so or, where

the Supplier is an individual if he shall die or be adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983 or of Part V of the Mental Health (Scotland) Act 1984, the Purchaser shall be entitled to terminate this Contract by notice to the Supplier with immediate effect. Thereupon, without prejudice to any other of his rights, the Purchaser may himself complete the Services or have them completed by a third party, using for that purpose (making a fair and proper allowance therefor in any payment subsequently made to the Supplier) all materials, plant and equipment on the Premises belonging to the Supplier, and the Purchaser shall not be liable to make any further payment to the Supplier until the Services have been completed in accordance with the requirements of the Contract, and shall be entitled to deduct from any amount due to the Supplier the costs thereof incurred by the Purchaser (including the Purchaser's own costs). If the total cost to the Purchaser exceeds the amount (if any) due to the Supplier, the difference shall be recoverable by the Purchaser from the Supplier.

16.3 In addition to his rights of termination under paragraph 16.2, the Purchaser shall be entitled to terminate this Contract by giving to the Supplier not less than 30 days notice to that effect.

16.4 Termination under paragraphs 16.2 or 16.3 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Purchaser and shall not affect the continued operation of Conditions 12 and 15.

17. RECOVERY OF SUMS DUE

Wherever under this Contract any sum of money is recoverable from or payable by the Supplier, that sum may be deducted from any sum then due, or which at any later time may become due, to the Supplier under this Contract or under any other agreement or contract with the Purchaser.

18. ASSIGNATION AND SUB-CONTRACTING

18.1 The Supplier 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 Supplier of any obligation or duty attributable to him under the Contract or these Conditions.

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

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

19. NOTICES

Any notice given under or pursuant to the Contract may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted by telex, teletext, facsimile transmission or other means of telecommunication resulting in the receipt of a written communication in permanent form and if so sent or transmitted to the address of the party shown on the Purchase Order, or to such other address as the party may by notice to the other have substituted therefor, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

20. ARBITRATION

All disputes, differences or questions between the parties to the Contract with respect to any matter or thing arising out of or relating to the Contract, other than a matter or thing as to which the decision of the Purchaser is under the Contract to be final and conclusive, and except to the extent to which special provision for arbitration is made elsewhere in the Contract, shall be referred to a single arbiter to be mutually chosen by the parties or, failing agreement, nominated by the President of the Law Society of Scotland for the time being on the application of either party. Any such reference to arbitration shall be deemed to be an agreement to refer to arbitration within the meaning of the Arbitration (Scotland) Act 1894.

21. HEADINGS

The headings to Conditions shall not affect their interpretation.

22. GOVERNING LAW

These Conditions shall be governed by and construed in accordance with Scottish law and the Supplier 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 Supplier 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.

SUPPLEMENTARY NOTICE

1. PROTECTING THE ENVIRONMENT

Suppliers to VisitScotland 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

Suppliers to the VisitScotland are requested to address complaints regarding late payment of invoices to the Head of Finance, Ocean Point One, 94 Ocean Drive, Edinburgh EH6 6JH. Telephone 0131-472-2222. This procedure is suggested as the best practical way of ensuring problems of late payment are resolved, and is not intended to interfere with Suppliers' legal rights.

THIS NOTICE DOES NOT FORM PART OF THE CONDITIONS OF CONTRACT

OPTIONAL ADDITIONAL CLAUSE FOR USE IN CONJUNCTION WITH STBTC2

At any time during the existence of this Contract, or for 2 years after its expiry or termination (however arising), the Contractor shall provide to the Client in writing such information as the Client may require relating to the employees employed by the Contractor in the performance of the services within each reasonable period as may be specified by the Client, including (but not restricted to): the number of such employees, the post in which each such employee is employed, the salary or wages and other remuneration paid to each such employee by the Contractor, the period of notice required to terminate employment of each such employee, the whole terms and conditions of employment of each such employee and the whole terms and conditions of any occupational pension scheme of which any such employee is a member, together with the number of such employees who are members of each such scheme.

The Client may give the information provided to it by the Contractor in accordance with Clause (variable) hereof to any firm, company, person or other legal entity invited or to be invited by the Client to tender in respect of any contract for the provision of the Services, or any part thereof, for any period commencing after the expiry or earlier termination of the Contract (however arising).

The Contractor irrevocably consents to the disclosure of the information provided by it in terms of Clause (variable) hereof by the Client in accordance with the provision of Clause (variable) hereof, and irrevocably waives the right of confidentiality which it may have in respect of the said information and

any other right which it may have in respect of the said information by it or the Client in accordance with the provisions of Clause (variable) and (variable) hereof. And the Contractor undertakes that the conditions of employment of the Contractor's employees shall be such that the Contractor shall be entitled to release to the Client for the purposes of this Contract information which would otherwise be confidential between the Contractor's employees and the Contractor.

The provisions of Clause (variable) to (variable) shall apply during the existence of this Contract and after its expiry or termination, however arising.

