

These Conditions may only be varied with the written agreement of the Commission. No terms or conditions put forward at any time by the Supplier/Contractor shall form any part of the Contract unless specifically referred to in the Contract.

1 Definitions

1.1 In these Conditions the following expressions shall have the meanings set out opposite them, unless the context requires otherwise:

Commission The Forestry Commissioners, acting in exercise of the powers contained in the Forestry Act 1967 and having a principal place of business at 231 Corstorphine Road, Edinburgh, EH12 7AT;

Supplier/Contractor The Supplier/Contractor named in the Contract;

Services The services to be provided and performed by the Supplier/Contractor as described in the Contract and shall, where the context so admits, include any materials, articles and goods to be supplied thereunder;

Premises The location where the Services are to be performed, as specified in the Contract;

Contract The contract between the Commission and the Supplier/Contractor incorporating these Conditions;

Authorised Access Routes The roads which may be used by the Supplier/Contractor pursuant to the Contract (if any) as may be identified in the Contract.

Force Majeure In relation to either party, any circumstances beyond the reasonable control of that party (including without limitation any fire (other than fire damage caused by the Supplier/Contractor), explosion, flood, wind throw, Act of God, strike, lock-out or other industrial action).

1.2 References to a statute or statutory provision shall be construed as a reference to that statute or provision as respectively amended, consolidated, modified, extended, re-enacted or replaced from time to time and shall include the corresponding provisions of any earlier legislation and any orders, regulations, instruments or other subordinate legislation made from time to time under the relevant statute.

1.3 Unless the context otherwise requires, any reference to a clause followed by a number shall be a reference to the clause bearing that number in this Contract.

1.4 Expressions in the singular shall include the plural and vice versa and one gender shall include all other genders and reference to a person shall include a reference to a firm, body corporate or an unincorporated association and vice versa.

1.5 References to any legal term of any action, remedy, proceeding, legal document, legal status, court official or any other legal concept or thing in any jurisdiction shall be deemed to include the legal terms most nearly approximating or analogous thereto in other relevant jurisdictions.

1.6 The headings of the Conditions shall not affect their interpretation.

2 Services

2.1 The Supplier/Contractor shall provide the Services in a diligent and professional manner to the satisfaction of the Commission, and shall at all times perform the Services dutifully, timeously and in good faith.

2.2 The Supplier/Contractor shall procure that its employees and representatives make themselves available to the Commission for the purposes of consultation and advice relating to the provision of the Services and, at the expense of the Supplier/Contractor, attend meetings with representatives of the Commission and such other parties as may be reasonably necessary for the performance of the Services.

2.3 The Supplier/Contractor shall begin performing the Services on the date stated in the Contract and shall complete them by the date stated in the Contract or continue to perform them for the period stated in the Contract (whichever is applicable). The time(s) and date(s) of performance of the Services shall be of the essence.

3 Price and Payment

3.1 The price payable to the Supplier/Contractor shall be as stated in the Contract and, unless otherwise so stated, shall be exclusive of any applicable VAT (which shall be payable by the Commission subject to receipt of a valid VAT invoice).

- 3.2 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 Commission.
- 3.3 No increase in the price may be made (whether on account of increased material, labour or other costs or otherwise) without the prior written consent of the Commission.
- 3.4 The Supplier/Contractor shall pay all taxes and other outgoings or expenses payable in consequence of the Contract and the Supplier/Contractor shall indemnify the Commission in respect of any demand, costs or expense suffered by the Commission, whether during the period of the Contract or following termination of the Contract (howsoever caused) or otherwise in relation to any tax or employer's national insurance contributions or other expenses payable in respect of the Supplier/Contractor, its employees, agents or sub-contractors or in relation to the provision of the Services.
- 3.5 Without prejudice to any other right or remedy the Commission reserves the right to set off any amount owing at any time from the Supplier/Contractor to the Commission against any amount payable by the Commission to the Supplier/Contractor under the Contract.

4 **Access, Premises and Materials**

- 4.1 Where the provision of the Services requires the Supplier/Contractor to enter onto Commission forest areas, the Contractor shall use the Authorised Access Routes only and shall take every reasonable precaution to minimise damage to such Authorised Access Routes and restore all actual damage occasioned thereto. The use of such routes shall be at the Supplier/Contractor's own risk and (save to the extent occasioned by the negligence of the Commission or its employees) the Commission shall not be liable for any damage or injury arising out of the Contractor's use of such routes. The Commission gives no warranty that any such Authorised Access Routes will be useable by vehicles at any specified time.
- 4.2 The Commission's policy is to allow public access on foot to all Commission forests where possible. However, access is not allowed where this would infringe upon any agreements, covenants or undertakings and is controlled where it conflicts with the management and protection of the forest. The Supplier/Contractor shall observe the Commission's policy on public access at all times and shall be responsible for informing all employees and subcontractors of the same. In particular, the Contractor shall observe any specific permissions and consents relating to other activities occurring on or near any location where the services are being performed and shall obey the written or verbal instructions of any Commission officer.
- 4.3 The Supplier/Contractor is deemed to have inspected the Premises 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. The Commission shall, at the request of the Supplier/Contractor, grant such access as may be reasonable for this purpose. The Supplier/Contractor shall, except as specifically provided in the Contract, provide all materials, equipment, goods and consumables to be used when carrying out the Services. The Commission may store or hold large items of equipment on behalf of the Supplier/Contractor but such items are stored at the Supplier/Contractor's risk. The Supplier/Contractor should ensure all items are stored appropriately in the correct conditions and ensure storage of such items does not cause a hazard or health and safety risk.
- 4.4 The Supplier/Contractor shall make no delivery of materials, plant or other things nor commence any work at the Premises without obtaining the Commission's prior consent.
- 4.5 Access to the Premises shall not be exclusive to the Supplier/Contractor but only such as shall enable him to carry out the Services concurrently with the occupation by and execution of work by others. The Supplier/Contractor shall co-operate with such others as the Commission may reasonably require and comply with all applicable regulations and Commission policies.
- 4.6 The Commission shall have the power at any time during the progress of the Services to order in writing:
- 4.6.1 the removal from the Premises of any materials which in the opinion of the Commission are either hazardous or not in accordance with the Contract, and/or
- 4.6.2 the substitution of proper and suitable materials, and/or
- 4.6.3 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 Commission in accordance with the Contract.

5 Health and Safety at Work

5.1 The Supplier/Contractor shall ensure full compliance with all health and safety related laws, regulations, codes of practice, circulars, guidance notes and the like in force or issued from time to time, and shall comply with any other safety standards that may be stipulated from time to time by the Commission.

6 Environment

6.1 The Supplier/Contractor shall comply at all times with all environmental law and other regulation affecting the conduct of the Supplier/Contractor's business. The Supplier/Contractor will ensure that no harm to any person, property, any living organisms or the environment may result from the Contractor's acts or omissions in relation to this Agreement. The Contractor will ensure that no harm to any person, property, any living organisms or the environment may result from the acts or omissions of the Contractor's employees, subcontractors and agents or the employees of any of them in relation to the Agreement.

7 **(Not Used)**

8 **(Not used)**

9 Audit

9.1 The Supplier/Contractor shall keep and maintain records to the satisfaction of the Commission of all expenditures which are reimbursable by the Commission and of the hours worked and costs incurred in connection with any employees of the Supplier/Contractor paid for by the Commission on a time charge basis. The Supplier/Contractor shall on request afford the Commission, its representatives, the National Audit Office or the Commission for the European Communities such access to those records and such other documentation in its possession relating to the Contract as may be required in connection with the Contract.

10 Liability/Indemnity

10.1 Without prejudice to any rights or remedies of the Commission, the Supplier/Contractor shall indemnify the Commission against any loss, costs, liability, injury, damage or expense occasioned by the act, default or omission of the Supplier/Contractor or its sub-contractors or agents or the employees of any of them, in the performance of the Contract or arising out of any breach of the Contract by the Supplier/Contractor or out of any claim by a third party based on any facts which, if substantiated, would constitute such a breach.

10.2 The Supplier/Contractor shall cause no damage or injury to the property of the Commission or third parties, or injury to the Commission's employees or third parties. Without prejudice to any other rights or remedies of the Commission, the Contractor shall be liable for any wilful, reckless or negligent damage due to any act or default of the Contractor or its sub-contractors or agents, or the employees of any of them, arising in any way in connection with the performance of the Contract and shall make good the same to the satisfaction of the Commission within 14 days of its occurrence.

11 Force Majeure

11.1 Where the other party is unable to perform all or any of its obligations under the Contract by reason of Force Majeure, then the affected party shall give written notice to the other. The notice must be given within 7 days of the event or circumstances giving rise to Force Majeure. The affected party shall use all reasonable endeavours to mitigate the effect of the Force Majeure, to carry out its obligations under the Contract in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible. Subject to compliance with the terms of this condition, the affected party shall not be in breach of the Contract as a result of a failure to perform its obligations by reason of Force Majeure.

11.2 If the event or circumstances giving rise to Force Majeure prevails for a continued period of more than 6 months, either party may terminate the Contract by giving 14 days' written notice to the other party. On the expiry of the notice period, the Contract will terminate, without prejudice to the rights of the parties in respect of any breach of the Contract occurring prior to such termination.

12 Rewards

- 12.1 The Supplier/Contractor shall not offer any reward, perquisite or emolument whatsoever to any person in the employment of the Commission.
- 13 **Assignability**
- 13.1 The Supplier/Contractor shall not assign sub-contract or sub-let its rights or obligations under this Agreement except with the written consent of the Commission and upon such terms as the Commission may require.
- 14 **Termination**
- 14.1 The Supplier/Contractor shall notify the Commission in writing immediately upon the occurrence of any of the following events:
- 14.1.1 where the Supplier/Contractor is an individual: if a petition is presented for the Supplier/Contractor's bankruptcy or the sequestration of his estate or a criminal bankruptcy order is made against the Supplier/Contractor, or he is apparently insolvent, or he makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator or trustee is appointed to manage his affairs; or
- 14.1.2 where the Supplier/Contractor is not an individual but is a firm, or a number of persons acting together in any capacity: if any event in 14.1.1 or 14.1.3 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/Contractor to be wound up as an unregistered company; or
- 14.1.3 where the Supplier/Contractor is a company, if the company passes a resolution for winding-up or 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.
- 14.2 The Commission may terminate the Contract by notice to the Supplier/Contractor with immediate effect:-
- 14.2.1 on the occurrence of any of the events described in Condition 14.1; or
- 14.2.2 if the Supplier/Contractor commits a material breach of the Contract and (if such breach is capable of remedy) fails to remedy such breach within 30 days of being required by the Commission in writing to do so; or
- 14.2.3 the Supplier/Contractor ceases to carry on business; or
- 14.2.4 the Supplier/Contractor or its sub-contractors or agents, or the employees of any of them, does or fails to do anything which brings or might reasonably be expected to bring into disrepute the Commission, its officers, employees, clients or suppliers (including, but not limited to, committing an act of fraud or dishonesty or violence whether or not connected with the provision of the Services).
- 14.3 Upon termination pursuant to Condition 14.2, without prejudice to any other of its rights, the Commission may 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/Contractor) all materials, plant and equipment on the Premises belonging to the Supplier/Contractor, and the Commission shall not be liable to make any further payment to the Supplier/Contractor 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/Contractor the costs thereof incurred by the Commission (including the Commission's own costs). If the total cost to the Commission exceeds the amount (if any) due to the Supplier/Contractor, the difference shall be recoverable by the Commission from the Supplier/Contractor.
- 14.4 In addition to the rights of termination under Condition 14.2, the Commission may terminate this Contract by giving to the Supplier/Contractor not less than 90 days notice in writing to that effect.
- 14.5 Termination under Conditions 14.2 or 14.4 shall not prejudice or affect any right of action or remedy which have accrued or shall thereupon accrue to the Commission and shall not affect the continued operation of Conditions 3.4, 4.1, 5, 6, 9, 10, 12, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25 and 28.
- 15 **Removal from Site**

15.1 The Supplier/Contractor shall within one month of the termination of the Contract or completion of the Services, whichever is the earlier, remove his plant, equipment, erections 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.

15.2 Should the Supplier/Contractor fail to remove such plant, equipment, erections or unused materials within the time specified, it shall be regarded as having abandoned such items (but so that the Supplier/Contractor shall remain liable for all injury or damage caused by such items) and the Commission shall be entitled to retain or remove them as it thinks fit. The Supplier/Contractor shall on demand reimburse the Commission for all costs incurred in removing or disposing of any such items so abandoned and making good any damage resulting therefrom.

16 **Compliance with Law and Regulations**

16.1 The Supplier/Contractor shall ensure that, in the course of and in connection with the performance of the Contract, it and its sub-contractors and agents, and their respective employees, comply with all applicable requirements of European Community, national and local laws, regulations, statutory instruments, orders or legislative provisions in force from time to time and all codes of practice, circulars and guidance notes relevant to the provision of the Services or the Supplier/Contractor's role as an employer.

17 **Insurance**

17.1 Throughout the term of the Contract, the Supplier/Contractor shall have in force and shall require any sub-contractor to have in force:

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

17.1.2 public liability insurance for such sum and range of cover as the Supplier/Contractor 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 £5 million for any one incident and unlimited in total, unless otherwise agreed by the Commission in writing.

17.2 The policy or policies of insurance referred to in Condition 17.1 shall be shown to the Commission whenever requested, together with satisfactory evidence of payment of premiums.

18 **Settlement of Disputes/Arbitration**

If any dispute or difference of any kind shall arise out of any of the provisions of the Contract upon which agreement cannot be reached between the Commission and the Supplier/Contractor, the dispute or difference shall be referred to an independent arbiter/arbitrator agreed upon between the parties for a decision which decision shall be final and binding upon the parties.

19 **Waiver**

The failure by the Commission to enforce at any time or for any period any one or more of the terms and conditions of the Contract shall not be a waiver of its rights at any time subsequently to enforce all terms and conditions of the Contract.

20 **Supplier/Contractor's Status and Personnel**

20.1 In carrying out the Services the Supplier/Contractor shall be acting as principal and not as the agent of the Commission. Accordingly:-

20.1.1 the Supplier/Contractor shall not (and shall procure that its agents, employees and representatives do not) say or do anything that might lead any other person to believe that the Supplier/Contractor is acting as the agent of the Commission, and

20.1.2 nothing in this Contract shall impose any liability on the Commission in respect of any liability incurred by the Supplier/Contractor to any other person but this shall not be taken to exclude or limit any liability on the Commission to the Supplier/Contractor that may arise by virtue of either a breach of this Contract or any negligence on the part of the Commission, its employees or agents.

20.2 Nothing in the Contract shall have the effect of making the Supplier/Contractor (or any of its employees or representatives) an employee of the Commission or the Crown.

20.3 The Supplier/Contractor shall:

20.3.1 only provide personnel who are employees of the Supplier/Contractor and who possess the appropriate experience, skills and qualifications necessary for the Services to be performed in accordance with the Contract; and

20.3.2 be responsible for ensuring that such personnel are legally entitled to work in the United Kingdom and to provide services of the nature of the Services, and shall act as a responsible employer in its recruitment policies and comply with all current employer good practice, including in relation to equality and diversity.

20.4 The Supplier/Contractor shall take the steps reasonably required by the Commission to prevent unauthorised persons being admitted to the Premises. If the Commission gives the Supplier/Contractor notice that any person is not to be admitted to or is to be removed from the Premises or is to be removed from involvement in the performance of the Contract, the Supplier/Contractor shall take all reasonable steps to comply with such notice and if required by the Commission the Supplier/Contractor shall replace any person removed under this Condition with another suitably qualified person in accordance with Condition 20.3 and procure that any pass issued to the person removed is surrendered.

20.5 The decision of the Commission 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/Contractor has furnished the information or taken the steps required of him by this Condition shall be final and conclusive.

21 **Sub-Contractors**

21.1 The Supplier/Contractor shall remain liable for the performance of all its obligations under the Contract notwithstanding its employment of any authorised sub-contractor. Any act or omission of any sub-contractor (or agent or employee of the Contractor or of any such sub-contractor or employee) shall be deemed to be the act or omission of the Contractor, who shall be responsible therefor.

22 **Notices**

22.1 Any notice given under the Contract may be given by hand or sent by first class recorded delivery post to the other party at their last known address or such other address as may from time to time be notified in writing to the party giving such notice by the party to whom such notice is given.

22.2 Any notice given or served by post will be deemed given on the second Business Day (meaning any day on which clearing banks are open for general banking business in that part of the United Kingdom in which the Services are being performed) after the date of posting and in proving that any notice was so given, it will be necessary only to prove that the same was properly addressed and posted.

23 **Confidentiality**

During the period of the Contract and after termination, the Supplier/Contractor shall treat as confidential all information of a confidential nature (including personal data) that may be in or come into its possession by reason of the Contract and which relates to the Commission or the activities, affairs, business or customers of the Commission or the terms of the Contract. The Supplier/Contractor shall not make use of such information for any purpose other than the performance of its obligations under this Contract nor (except where required by law) disclose such information to any third party other than to its employees or its authorised sub-contractors or agents, and then only to the extent that it is necessary to do so for the proper performance of the Supplier/Contractor's obligations under this Contract. The Supplier/Contractor shall ensure that any employee or authorised sub-contractor or agent to whom such confidential information is so disclosed shall maintain its confidentiality and not make use of it for any purpose other than performance of the Supplier/Contractor's obligations under this Contract. The provisions of this Condition shall cease to apply to any such confidential information which becomes public knowledge other than by reason of a breach of this Condition and through no fault of the Supplier/Contractor.

24 **Intellectual Property**

24.1 It shall be a condition of the Contract that, except to the extent that the Services incorporate designs furnished by the Commission that nothing done by the Supplier/Contractor in the performance of the Services shall infringe any patent, trade mark, registered design, copyright or other right in the nature of intellectual property ("Intellectual Property") of any third party and the Supplier/Contractor shall indemnify the

Commission against all actions, claims, demands, costs and expenses which the Commission may suffer or incur as a result of or in connection with any breach of this Condition.

- 24.2 All rights (including ownership and Intellectual Property) in any discoveries, inventions, processes, reports, documents, specifications, software, instructions, plans, drawings, patents, models or designs, or other materials, whether in writing or on magnetic or other media ("materials"):
- 24.2.1 furnished to or made available to the Supplier/Contractor by the Commission shall remain vested in the Commission or the Crown (as the case may be);
- 24.2.2 prepared by or for the Supplier/Contractor for use, or intended use, in relation to, or made in the course of, the performance of this Contract are hereby assigned to and shall vest in the Commission (or at its option, the Crown) absolutely and (without prejudice to Condition 23) the Supplier/Contractor shall not and shall procure that his agents, employees and representatives shall not (except to the extent necessary for the implementation of this Contract), without the prior written consent of the Commission, use or disclose any such materials.
- 24.3 The Supplier/Contractor shall execute any document and do any thing as may be required to ensure that all rights referred to in Condition 24.2 above are vested in the Commission (or at the Commission's option, the Crown).
- 24.4 The Supplier/Contractor hereby irrevocably waives in favour of the Commission any moral rights it may have in terms of the Copyright, Designs and Patents Act 1988, and any similar rights available in any part of the world, and shall procure that all employees, third parties and sub-contractors used in the performance of these Services shall similarly waive such moral rights.

25 **Data Protection and Freedom of Information**

- 25.1 The Supplier/Contractor warrants that it will at all times comply with the provisions of the Data Protection Act 1998 ("1998 Act") and any subordinate legislation pursuant thereto in connection with the performance of the Services and shall only undertake such processing of Personal Data (as defined in the 1998 Act) reasonably required in connection with the performance of the Services.
- 25.2 The Supplier/Contractor hereby undertakes in its role as data processor to comply with the obligations imposed by the data controller under the Seventh Data Protection Principle as set out in Part 1 of Schedule 1 of the 1998 Act in respect of all Personal Data processed by the Supplier/Contractor pursuant to the Contract.
- 25.3 The Supplier/Contractor will, at the request of the Commission, promptly provide to the Commission such information and such access to its premises as the Commission may require in order to ensure compliance with the provisions of this Condition.
- 25.4 The Supplier/Contractor shall assist the Commission at no additional charge in meeting any reasonable request for information in relation to the Contract which are made to the Commission in connection with the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 or any related guidelines or codes of practice. The Commission may from time to time, serve on the Supplier/Contractor an information notice requiring the Supplier/Contractor within such time and in such form as is specified in the Information notice, to furnish to the Commission such information as the Commission may reasonably require relating to such request for information. The Supplier/Contractor acknowledges that in responding to such request for information, the Commission shall be entitled to provide information relating to the Contract.

26 **Severance**

- 26.1 If a court or an appropriate authority decide that any part of the Contract is invalid or unenforceable the remaining parts will still apply.

27 **Entire Agreement and Amendment**

- 27.1 The Contract contains the whole agreement between the parties in respect of the subject matter and supersedes and replaces all prior proposals, agreements, representations and negotiations relating thereto, whether written or oral or implied between the parties or their respective advisers, unless otherwise provided herein. No modification or alteration of this Agreement shall be validly made unless in writing and signed by or on behalf of both parties hereto.

28 **Warranties**

28.1 The Supplier/Contractor warrants and undertakes that:

28.1.1 the Supplier/Contractor has full capacity and authority and all necessary licences, permits and consents to enter into and to perform the Contract;

28.1.2 the Services shall be performed in compliance with all applicable laws, orders, regulations, codes of practice and other similar instruments; and

28.1.3 the Services shall be performed and delivered in accordance with the Contract.

28.2 Each of the parties warrants and undertakes that:

28.2.1 it has power and authority to enter into the Contract; and

28.2.2 it is not aware, as at the date of this Agreement, of anything within its reasonable control that might or would adversely affect its ability to fulfil its obligations under the Contract.