

ANNEX C1 - CAPABILITY SCOTLAND STANDARD CONDITIONS OF CONTRACT FOR THE PURCHASE OF GOODS - CSCC1

1 Definitions

In these conditions:-

"We" means Capability Scotland (a company limited by guarantee, registered in Scotland, number SC011330, and is recognised by the Inland Revenue as a Scottish Charity, number SC36524), and "us" and "our" are also used in relation to Capability Scotland Limited;

"You" means you, the person, partnership or company who supplies us with Goods under a Purchase Order;

"Goods" means the goods to be supplied to us by you under a Purchase Order;

"Purchase Order" means our form headed "Purchase Order" or a contract award letter sent to you by us, and any accompanying specification or documentation setting out our requirements for the Goods such as the price, quantity and description;

"Contract" means the contract between you and us for the supply of the Goods which is made up of the Purchase Order and these Conditions. When "Contract" is referred to in these Conditions, it means the Conditions and the Purchase Order read together;

"Rules and Regulations" means all applicable legislation and regulations, including those that are in draft form or are out for consultation, and legal standards or requirements set down under such legislation and regulations.

2 The Goods

2.1 The Goods must be to our reasonable satisfaction and they must conform in full with the requirements we set out in the Purchase Order. They must also be of sound materials, workmanship and design.

2.2 If you provided us with a sample of the Goods, the Goods must match this sample.

2.3 You will make sure that the Goods comply with all relevant requirements of any law in force when the Goods are delivered.

2.4 The Goods must be suitable for the purpose to which they would normally be put and for any particular purpose mentioned in the Purchase Order.

3 Payment

3.1 We will pay you the price for the Goods which is set out in the Purchase Order.

3.2 You will address your invoice to Finance, Capability Scotland, Vantage Point, 24 St John's Road, Edinburgh, EH12 6NZ and e-mail to Finance@Capability.scot. Each invoice must clearly identify the Purchase Order to which it relates. If a Purchase Order number is not clearly identified on each invoice, the invoice may be returned to you without payment.

3.3 If there is more than one delivery of the Goods under the Purchase Order, you will send the Finance Office a separate invoice for each delivery, and each invoice must identify the items to which that invoice relates. The last invoice in respect of a Purchase Order must be clearly marked to show that it is the last.

3.4 Unless otherwise stated in the Purchase Order we will pay you 60 days after we receive the Goods or, if the invoice arrives after the Goods, 60 days after we receive a valid invoice, in each case provided that we are satisfied with the Goods.

3.5 If any Value Added Tax is to be paid, you will show this separately on your invoices.

3.6 If we are late in paying an invoice please write to Finance, Capability

Scotland, Vantage Point, 24 St John's Road, Edinburgh, EH12 6NZ or e-mail Finance@Capability.scot.

This procedure is suggested as the best practical way of ensuring problems of late payment are resolved, and is not intended to interfere with your legal rights or our legal rights to dispute the sum due.

4 Changes to the Order

4.1 Before you deliver the Goods we may change any of the requirements set out in the Purchase Order including any of the following:-

4.1.1 the quantity of the Goods required;

4.1.2 the delivery date; and/or

4.1.3 the location to which the Goods must be delivered.

We will only be able to do this if we tell you a reasonable time before the Goods were originally due to be delivered and we have been able to agree with you any change to the price which may be caused by the change. In reaching agreement with us on any change to the price, you will not be unreasonable.

5 Delivery

5.1 You will deliver the Goods to us at the address set out in the Purchase Order between 0900 and 1700 hours, unless a specific time is mentioned in the Purchase Order.

5.2 You must tell us if you need to enter our premises to deliver the Goods. If we allow you to enter our premises you will comply with any instructions we issue to you relating to the premises, including instructions relating to security, access, and health and safety.

5.3 If you enter our premises to deliver the Goods and cause any damage or injure someone, you will pay to us the

RESTRICTED - COMMERCIAL

amount of money we have to pay to fix or repair the damage (which may involve the buying of a replacement) or to compensate for the injury. You will also pay us any costs and expenses we may have which are related to our having to deal with the incident.

5.4 The date of delivery set out in the Purchase Order is critical to us. If you fail to deliver on that date (and at the time (if any) set out in the Purchase Order), we may refuse to accept the Goods by telling you in writing. If we do so, we will not have to pay you and we will also be able to cancel some parts of the Contract, or the whole Contract. If you still deliver the goods after you have been told by us that we will refuse to accept them, you must remove them within any timescale that we set you, and if you do not we will be able to dispose of them or destroy them. If we do any of these things, any other rights we have to take action against you for the failure to deliver on time will not be affected.

5.5 If we sign a delivery note for the Goods, that does not mean that we accept the Goods or that all the correct Goods have been delivered.

5.6 If for any reason we cannot take delivery of the Goods on the date of delivery, you must keep the Goods safely until we can take delivery of them, and have told you to deliver them to us. We will pay you for the amount you have had to pay to store them, provided this is a reasonable amount. We may require evidence of the amount you have to pay to store the Goods, and if you do not have this evidence, we may not pay you these storage costs.

5.7 If Goods have been damaged in transit, we will have a reasonable time from delivery to tell you, and we can choose whether you must repair or replace them. You will do this free of charge, and as quickly as possible. Alternatively, we can choose to cancel the Contract, and if we do this you must arrange to take the damaged Goods

away free of charge and as quickly as possible.

5.8 If there is more than one delivery of the Goods under a Purchase Order, the delivery note for the last delivery under a Purchase Order must be clearly marked to show that it is the last.

6 Ownership and Risk

6.1 Ownership of the Goods and the risk of their damage or destruction will transfer from you to us at the time you deliver the Goods to us. That does not affect any right we may have against you in relation to the Goods.

7 Inspection, Rejection and Guarantee

7.1 Before you deliver the Goods to us, you will let us examine and carry out tests on the Goods, if we ask. You will give us access to your premises to do this. If we do not make a complaint at the time of examining or testing the Goods, that will not mean that we have approved or accepted the Goods as suitable. We may tell you that we do not accept the Goods after an examination or test if we consider that they do not meet the requirements of the Contract or because they are (or some of them are) defective. If we do this, you must replace the Goods with other goods which comply fully with the requirements of the Contract. Alternatively, if we think that any problems we have identified will not be resolved, we may cancel the Contract altogether by telling you in writing. We will act reasonably in making this decision.

7.2 After you have delivered the Goods to us, we may tell you that we are not accepting the Goods if they do not meet the requirements set out in the Contract or because they are (or some of them are) defective. We will only be able to reject Goods within a reasonable time after delivery. We can also choose to

accept some of the Goods and reject the rest. If we reject the Goods, we can choose whether:-

7.2.1 you must repair the Goods; or

7.2.2 you must replace the Goods with other goods which comply fully with the requirements of the Contract; or

7.2.3 we will return the Goods to you. If we do this, you must pay us a full refund.

You must do as we choose as quickly as possible and free of charge. If we choose for you to repair or replace the Goods, and we are not satisfied with the repair or replacement, we can tell you that we are rejecting the Goods (or some of them) and you must pay us a full refund as quickly as possible.

7.3 You will guarantee the Goods from defects for 18 months from acceptance.

7.4 If a defect is noticed by us during the guarantee period of 18 months we will have until the end of 30 days after the guarantee period to choose whether:-

7.4.1 you must fix the defect; or

7.4.2 you must replace the defective Goods.

You must do as we choose as quickly as possible and free of charge. If we do either of these things, any other rights we may have to take action against you for supplying us with defective Goods or to reject the Goods will not be affected.

7.5 If we have to return any Goods to you, you will pay us the delivery costs. We will not be responsible if the Goods are damaged or destroyed in transit to you.

8 Labelling and Packaging

8.1 You must pack and mark the Goods in a suitable manner and must avoid unnecessary packaging. If we ask you to pack the Goods in a certain way you

RESTRICTED - COMMERCIAL

must do so. You must comply with relevant European and other packaging Rules and Regulations, the requirements of the carrier you use, and any relevant Rules and Regulations that deal with the transportation of the Goods.

8.2 As well as your other obligations in relation to packaging, you must try and use packaging made from recycled materials, and use packaging materials which can in turn be recycled or re-used or incinerated for energy recovery.

8.3 You will mark the package with the number of the Purchase Order. You will also mark the package with the name of the contents.

8.4 You will mark each package in a consignment with the total number of packages in the consignment, and the number of that package, e.g. 3 of 7. You will do this even if there is only one package in a consignment.

8.5 You will make sure that all containers of hazardous goods (and any documents that relate to hazardous goods) have prominent and suitable warnings.

8.6 If someone takes action against us or we incur any loss because you have not complied with Conditions 8.1 to 8.5 you will pay to us the amount of money we have to pay because of that action and the amount of our loss. You will also pay us any costs and expenses we may have relating to the action or loss.

8.7 Immediately after delivery, you will take away with you all packaging relating to the Goods and which we tell you are no longer needed by us. If you leave any packaging materials behind, we may re-cycle, re-use or dispose of these, but if we ask you to, you will arrange for these to be uplifted free of charge and as quickly as possible. You will try to re-use or re-cycle any packaging materials which you take away, or use them for energy recovery through incineration.

9 Corrupt Gifts or Payments

9.1 You must not do anything that gives or offers any kind of inducement or reward to any of our employees in relation to this Contract or any other contract. It may be a criminal offence to do any of those things. You must not offer any of our employees any kind of corporate hospitality.

10 Environment

10.1 You will ensure that the production and supply of the Goods complies with all relevant environmental Rules and Regulations.

10.2 If the Goods include any products derived from natural sources such as trees, other plants or animal sources then you must make sure that the natural resources used are from sustainable sources, and comply with EU and other applicable international trading Rules and Regulations, such as CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora).

10.3 Where possible, the Goods should incorporate materials that can be re-used, re-cycled or incinerated for energy recovery and all processes used in the production and supply of the Goods should minimise the impact on the environment.

10.4 Prior to delivery, if you think that a change to the Contract or to the specification of the Goods would reduce the overall environmental impact of the Contract or the Goods (for example by the increased use of re-cycled or re-furnished or otherwise environmentally friendly materials, or by the production of Goods with increased energy efficiency or with a longer life span) then you will tell us (whether or not this change would affect the price of the Goods). We will consider the proposed change and may ask for a change on the basis set out in Condition 4.

11 Health and Safety

11.1 You will carry out appropriate tests and checks before the Goods are delivered to us to make sure that the Goods are safe, that they meet all relevant health & safety Rules and Regulations, and that they will not put the health and safety of people who will be using them at risk.

11.2 If we find that Goods you have delivered to us are dangerous or unsafe, we will tell you and you must **immediately** do everything you can to make the Goods as safe as possible and, if we ask, remove the Goods from our premises. You will pay us a full refund of the price we paid for the Goods if this happens.

11.3 You will tell us everything we need to do to make sure that when the Goods are being used, they can be used correctly and in a safe manner and will not put the health and safety of the people who will be using them at risk.

11.4 If any action is taken against us or we incur any loss because the Goods are not safe or because you have not told us how to use them correctly or in a safe manner, you will pay to us whatever money we have to pay out in connection with that action and/or the amount of our loss. You will also pay us any costs and expenses that we may have in relation to the action or loss.

12 Indemnity and Insurance

12.1 You will pay us the amount of any loss which we incur as a result of any defect in the Goods or as a result of your negligence or as a result of any breach by you of the Contract. This includes losses which we have because of damage to property or because of injury or death. You will also pay us any costs and expenses we may have in relation to the loss.

12.2 You will pay us the amount of any losses which we have as a result of any

RESTRICTED - COMMERCIAL

other person making a claim against us that the Goods or their use or their resale or their packaging breaches any intellectual property rights such as patents or copyrights which that other person is entitled to. You will also pay us any costs and expenses we may have in connection with that claim.

12.3 You must insure yourself (and make sure that any sub-contractor insures itself) against all the potential liabilities there may be to us under the Contract, at an appropriate level of cover and with a reputable insurance company. You must maintain (and make sure that any sub-contractor maintains) public liability insurance and employers' liability insurance with reputable insurance companies at levels which are appropriate and which comply with all legal requirements. If we ask, you will immediately show us the insurance policies, and evidence that the most recent premiums have been paid.

13 Equalities Considerations

13.1 We are an equal opportunities employer and service provider. You must also be an equal opportunities employer and service provider and comply fully with equal opportunities legislation.

13.2 You will ensure that you do not discriminate against anyone unlawfully, or treat anyone unfairly, on the grounds of their sex, racial group (including colour, race, nationality, national or ethnic origin), disability, sexual orientation, religion, gender identity, age, trade union membership/non-membership/activities or marital, family or part-time status. You will also make sure that anyone acting on your behalf, your employees and sub-contractors involved in the Contract do not do so either, and that those involved in the management or operation of the Contract receive appropriate training on equal opportunities legislation and associated good practice.

13.3 You should carry out appropriate

monitoring of your equal opportunities policies and employment practices and provide us with evidence of this, if we ask.

13.4 You will take all reasonable steps ensure that all Goods supplied under this Contract are produced in accordance with the employment legislation of, and all International Labour Organisation (ILO) conventions that have been ratified by the country of their origin, in particular in relation to working conditions and the use of child labour.

13.5 Should part or all of the services be performed at your premises, you will ensure that the premises comply fully with the requirements of the Disability Discrimination Act 1995.

14 Confidentiality

14.1 Unless we agree, all information which you obtain from us or becomes known to you in connection with this Contract must be kept secret. This does not apply to information which is already known to the public.

14.2 We may seek references from your Bank, from your current or past clients, or other referees which you give us;

14.3 We may disclose information in relation to any tender or competition process which we have followed in relation to the Contract. This information could be published in the Official Journal of the European Union or in other similar publications. Information we might disclose includes the number of tenders which we received, the name of the successful tenderer, the winning contract price, the specification of the goods or requirement, the terms and conditions of contract, the quality and performance standards which we set, and your performance against these standards;

14.4 We may disclose information

relating to the Contract (including price information) to other charitable bodies. We may want to do this for the purpose of collaborative discussions with such bodies, to ensure for example that best value for money is being obtained.

14.7 This Condition applies during the Contract and after it has ended.

15 Publicity

15.1 You will not mention our name in connection with the Contract or disclose the existence of the Contract in any publicity material or any other publication unless we have previously agreed to this, and our Head of Fundraising & Communications has approved what you want to do in writing.

15.2 This Condition will apply during the Contract and after it has ended.

16 Termination on Insolvency

16.1 We may immediately terminate the Contract by telling you in writing,:-

16.1.1 if someone takes action against you which could lead to you being made bankrupt or insolvent or if you make any arrangement with people who you owe money to which could be regarded as an "arrangement with creditors"; or

16.1.2 if you are a company, if you are insolvent or any action is taken to wind up the company, or any official (such as an administrator, liquidator or receiver) is appointed to manage any of the affairs or assets of the company or you make any arrangement with people who you owe money to which could be regarded as an "arrangement with creditors".

16.2 If we do take any of the above action it will not affect any other rights we may have against you in relation to the Contract.

17 Termination

RESTRICTED - COMMERCIAL

17.1 If we think that you have breached this Contract in any way, we will tell you and you must, if possible, take steps to remedy that breach to our satisfaction.

17.2 If you do not do this within 7 days of us telling you that you have breached the Contract (or if we do not think that you will be able to do this), we can terminate the Contract immediately by telling you in writing.

17.3 If you incapable of completing the Contract, either through illness or for some other reason, we can terminate the Contract immediately by telling you in writing.

17.4 If we terminate the Contract under Conditions 17.2 or 17.3, we may instruct somebody else to complete the Contract.

17.5 If we do instruct somebody else to complete the Contract, we will not pay you any money until the Contract has been completed. We will deduct what we have had to pay somebody else to complete the Contract from the money we are due to pay to you. If the money we pay to somebody else to complete the Contract is more than we would have paid to you under the Contract, we will not pay you anything further and if this is the case, you will pay us the difference.

17.6 We may cancel the Contract at any

time for any reason by giving you 30 days' notice in writing.

18 Recovery of Sums Due

18.1 If you owe us any money under the Contract, and at the same time we owe or are due to pay you money, either under this Contract or for any other reason, we can deduct the money you owe us from the money we owe or are due to pay you.

19 Assignment and Sub-Contracting

19.1 Unless we agree, you are not allowed to sub-contract, transfer or assign the Contract or any part of it.

19.2 If you sub-contract any work under the Contract, you will still be responsible to us for carrying out the Contract. We can take action against you if your sub-contractor does not do what it is meant to do.

19.3 Where you sub-contract any work under the Contract, that sub-contract must contain a clause requiring you to pay your sub-contractor within 30 days of you receiving a valid invoice from your sub-contractor.

20 General Legal Obligations

In addition to the obligations referred to in Conditions 2.3, 5.1, 8.1, 10.1, 10.2, 11.1 and 13, you will comply with all

other relevant Rules and Regulations and hold any licence, permit and/or certificate required by law for the performance of the Contract

21 Notices

21.1 Any notice to be sent by you or by us in connection with the Contract can be sent by letter or by e-mail. Notices should be sent to the addresses shown on the Purchase Order. Either of us can change the address for notices by telling the other in writing the new address, but the previous address will continue to remain valid for 7 days after the change is notified.

21.2 If sent to the correct address, a notice will be treated as received 48 hours after sending if a letter or 24 hours if an e-mail even if it is not actually received.

22 Governing Law

22.1 The Contract is made under the law of Scotland and the Scottish courts will have authority to settle any dispute. You will only take court action against us in the Scottish courts but we are free to take action against you either in the Scottish courts or the courts of any other country.