

## **CAPABILITY SCOTLAND STANDARD CONDITIONS OF CONTRACT FOR THE HIRE OF WORKMEN/PLANT/VEHICLES – CSCC13**

**These Conditions may only be varied with the written agreement of the Employer. 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 Employer.**

### **1. SCOPE OF CONTRACT**

The Contractor shall carry out the work and/or services of the nature described in the specification of Work /Workmen/ Plant/ Vehicles.

### **2. PERIOD OF CONTRACT**

The contract period shall be the period stated in the Abstract of Contract Particulars, 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 Employer at any time, by giving to the contractor one month's prior written notice of termination, or
- b) by the Contractor giving to the Employer 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 Employer 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 Employer 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 Employer, be entirely under the direction, control and supervision of the Employer's officers but shall nevertheless be and remain the servants/property of the Contractor and the Contractor shall be and remain their employer/owner and shall be liable to the Employer in every respect as if such workmen, plant and vehicles were acting directly under the control of the Contractor.

4.2 If the Employer shall consider any workman incompetent or otherwise objectionable the Contractor shall upon request by the Employer, immediately remove such workman and, if desired by the Employer, 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. SUB-CONTRACTING**

The Contractor shall not sub-contract the Works or any part thereof without the written consent of the Employer which consent shall not unreasonably be withheld.

## **6. INJURY TO OR DEATH OF PERSONS**

The Contractor shall be liable for and shall indemnify the Employer 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 whomsoever 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 Employer, or of any person for whom the Employer is responsible. Without prejudice to his liability to indemnify the Employer 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 Employer, 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 Employer 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 Employer 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 Employer 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 60 days following receipt and approval by the Employer of a valid invoice. Where, with the agreement of the Employer, 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 supplier or sub-contractor within 60 days from receipt of a valid invoice as defined by the sub-contract requirements.

#### **11. PREVENTION OF CORRUPTION**

The employer 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.

#### **12. ARBITRATION**

12.1 If any dispute or difference concerning this contract shall arise between the Employer 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 Employer 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 Employer of any goods and services by the Contractor under this contract.

#### **14. STANDARD FIRE PRECAUTIONS**

14.1 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 Employers' 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 Capability 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 Client 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, Capability Scotland employees and Service users, 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. Capability 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. EMPLOYER SUPPLIED EQUIPMENT**

In the event that the Employer 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 Employer;
- 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 Employer and not later than 21 days after receipt of a notice from the Employer calling on it to do so, unless the cause of such damage or loss is the negligence of any employee of the Employer, 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 Employer against all actions, claims, demands, costs and expenses incurred by or made against the Employer 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 Employer, 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.