**263208 – Supply and delivery of Quarry Materials, Sand, Gravel, Fill, and Topsoil**

**Supplementary Standard Conditions of Contract for Supplies**

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| --- | --- | --- |
| **Clause No** | **Clause Range eg 53.2-53.7** | **Clause Name** |
| **3.0** | **3.2** | **Initial Contract Period** |
| **19.0** | **19.4 – 19.8** | **Indemnity** |
| **60.0** | **60.1 – 60.4** | **Break** |
| **61.0** | **61.1** | **Inspection, Rejection and Guarantee** |
| **62.0** | **62.1** | **Contract Performance** |
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1. **Definitions and Interpretation**

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| --- | --- |
| “Fees Regulations” | Means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. |
| “General Change in Law” | Means a change in Law which comes into effect after the Commencement Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Contractor) or which would affect or relate to a comparable supply of services of the same or a similar nature to the supply of the Goods. |
| “Installation Works” | Means, as the context so requires,  a. collectively, all works which the Contractor is to carry out at the beginning of the Contract Period to install the Goods in accordance with the Specification; or  b. where there are a series of works to be carried out during the Contract Period to install the Goods in accordance with the Specification, each set of installation works. |
| “Receipt” | Means the physical or electronic arrival of the invoice at the address given by the Client to the Contractor for the submission of invoices. |
| “Relevant Conviction” | Means a conviction relevant to the nature of the Goods being provided. |
| “Staff Vetting Procedures” | Means the Client’s procedures for the vetting of personnel as set out in the Security Schedule |
| “TUPE” | Means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006. Contractors shall comply with their obligations under these regulations. |
| “Insolvency Order” | Means the Insolvency (Northern Ireland) Order 1989 as amended by the Insolvency (Northern Ireland) Order 2005. |

**3.0 Initial Contract Period**

3.2 It is anticipated that this Contract will commence on July 2016 for a duration of 4 years. The Client may at any time before the completion of the Contract Period invite the Contractor to agree to extend for any period up to and including 1 year commencing from the termination date of the original Contract Period.

19.0 Indemnity

19.4 Subject always to clause 19.1, the liability of either Party for Defaults shall be subject to the following financial limits:

i. the aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the property of the other under or in connection with this Contract shall in no event exceed five million pounds £5,000,000 and

ii. the annual aggregate liability under this Contract of either Party for all Defaults (other than a Default governed by clauses 19.4(i)) shall in no event exceed the greater of one hundred and fifty per cent (150%) of the Contract Price paid or payable by the Client to the Contractor in the year in which the liability arises.

19.5 Subject always to clause 19.1, in no event shall either Party be liable to the other for any:

1. loss of profits, business, revenue or goodwill; and/or
2. indirect or consequential loss or damage.

19.6 The provisions of clause 19.5 will not limit the Client’s right to recover for;

1. additional operational, administrative costs and/or expenses resulting from the direct Default of the Contractor;
2. wasted expenditure or charges rendered unnecessary and incurred by the Client arising from a Default by the Contractor;
3. additional cost of procuring replacement services for the remainder of the term of the Contract;
4. additional costs to maintain the Services arising from a Default by the Contractor; and
5. anticipated savings.

19.7 The Contractor shall effect and maintain such insurance for the duration of the Contract Period and for a minimum of 6 (six) years following the expiration or earlier termination of the Contract. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor.

19.8 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of this Contract the Client may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

1. **Break**

60.1 The Client shall have the right to terminate the Contract in all or part at any time by giving **3** Months’ written notice to the Contractor.

60.2 Subject to clause 60, where the Client terminates this Contract under clause 60 (Break), the Client shall indemnify the Contractor against any commitments, liabilities or expenditure which represent an unavoidable direct loss to the Contractor by reason of the termination of this Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Client shall only indemnify the Contractor for those unavoidable direct costs that are not covered by the insurance available. The Contractor shall submit a fully itemised and costed list of unavoidable direct loss which it is seeking to recover from the Client, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under clause 60 (Break).

60.3 The Client shall not be liable under clause 62 to pay any sum which:

i. was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy;

ii. when added to any sums paid or due to the Contractor under this Contract, exceeds the total sum that would have been payable to the Contractor if this Contract had not been terminated prior to the expiry of the Contract Period; or

iii. is a claim by the Contractor for loss of profit, due to early termination of this Contract.

60.4 Save as otherwise expressly provided in this Contract:

i. termination or expiry of this Contract shall be without prejudice to any rights, remedies or obligations accrued under this Contract prior to termination or expiration and nothing in this Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

ii. termination of this Contract shall not affect the continuing rights, remedies or obligations of the Client or the Contractor under clauses 9.0 (Payment), 12.0 (Recovery of Sums Due), 18.0 (Insurance), 19.0 (Indemnity) 20.0 (Intellectual Property Rights), 23.0 (Termination), 26.0 (Bribery Act 2010), 38.0 (Confidentiality), 31.0 (Data Protection Act), 32.0 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), 33.0 (Freedom of Information), 40.0 (Audit), 46.0 (Remedies Cumulative), and 48.0 (Governing Law and Jurisdiction).

61.0 Inspection, Rejection and Guarantee

61.1 The Client or its authorised representatives may inspect or test the Goods either complete or in the process of manufacture during normal business hours on reasonable notice at the Contractor’s premises and the Contractor shall provide all reasonable assistance in relation to any such inspection or test free of charge. No failure to make a complaint at the time of any such inspection or test and no approval given during or after such inspection or test shall constitute a waiver by the Client of any rights or remedies in respect of the Goods and the Client reserves the right to reject the Goods in accordance with clause 5.1.6.

###### **62.0 Contract Performance**

62.1 The Contractor shall perform its obligations under the Contract:

i. with appropriately experienced, qualified and trained personnel with all due skill, care and diligence;

ii. in accordance with Good Industry Practice; and

iii. in compliance with all applicable Laws.