

Rights of Way Good Practice Guide

MANDATORY CLAUSES FOR INCLUSION IN ALL CONTRACTS

1	<p>The Council may terminate a Contract on the grounds of :</p> <ul style="list-style-type: none"> <li>• Bankruptcy of the Contractor</li> <li>• Corruption</li> <li>• Collusive tendering</li> <li>• A material breach</li> </ul>	
1a	<p>If the Contractor shall become bankrupt or insolvent or have a receiving order made against them or compound with their creditors or being a corporation commence to be wound up not being a members' voluntary winding up for the purposes of the reconstruction or amalgamation or carry on its business under a receiver for a benefit of its creditors or any of them or have an administrative receiver appointed over its assets the Council shall be at liberty</p> <p>a) to terminate the contract forthwith by notice in writing to the Contractor or the receiver or the administrative receiver or liquidator or to any person in whom the Contract may become vested or</p> <p>b) to give such receiver, liquidator or other person the option of carrying out the Contract subject to his providing a guarantee for the due and faithful performance of the Contractor up to an amount to be agreed.</p>	<b>Bankruptcy</b>
1b	<p>The Council shall be entitled to terminate the Contract and to recover from the Contractor the amount of any loss resulting from such cancellation if the Contractor or any person employed by the Contractor or acting on behalf of the Contractor has offered, paid or given, directly or indirectly, any gift in money or any other form to any employee or agent of the Council as an inducement or reward in connection with their behaviour in relation to the Contract, or has offered or sold to any employee, or agent of the council any product or service on the terms specified under the Contract or similar thereto, or appears to have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or to have paid or offered any fee or reward contrary to Section 117 (2) of the Local Government Act 1972.</p>	<b>Corruption</b>
1c	<p>If it is discovered by the Council at any time that the Contractor:</p> <p>(i) has fixed or adjusted the amount of his tender for the Contract by or in any accordance with any agreement or arrangement with any other person, or</p> <p>(ii) communicated to any person other than the Council the amount or approximate amount of his proposed tender (except where such disclosure is made in confidence in order to obtain quotations necessary for the preparation of the tender), or</p> <p>(iii) entered into any agreement or arrangement with any other person that he would refrain from tendering or as to the amount of any tender to be submitted, or</p> <p>(iv) offered or agreed to pay or gave or did pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person in respect of an act or omission, in relation to any other Tenderer or proposed tenderer for the Service.</p>	<b>Collusive Tendering</b>

	The Council shall be entitled to terminate the Contract forthwith and to recover from the Contractor the amount of any loss resulting from such termination and the Contractor may be disqualified from tendering for any contract with the Council.	
1d	<p>Examples:</p> <p>The Contract may be terminated by the Council, for any of the following reasons, in the manner referred to in connection with each reason;</p> <p>(i) serious and blatant breach of the terms and conditions or non-performance, summary determination of the Contract;</p> <p>(ii) continuous default and unsatisfactory performance after due warning, determination after 28 days' notice in writing.</p>	<b>Material Breach</b>
2	<p>If the Contract is terminated as provided above (check ref:) the Council shall;</p> <p>Cease to be under any obligation to make further payment in respect of the period up to the date of termination until the cost, loss and or damage resulting from or arising out of the termination of the Contract shall have been calculated and provided such calculation shows a sum or sums due to the Contractor.</p> <p>Be entitled to repossess any of its materials, clothing, equipment, vehicles or other goods loaned or hired to the Contractor and to exercise a lien over any of the materials, clothing, equipment, vehicles or other goods belonging to the Contractor for any sum due from the Contractor to the Council;</p> <p>Be entitled to employ and pay other persons to provide and complete the provision of the Service or any part thereof and to use all the Contractor's materials, clothing, equipment, vehicles or other goods for the purpose thereof.</p>	<b>The consequences of any termination are provided for</b>
3		<b>There is provision for the recovery of sums due</b>
4	The Contractor shall not without the written consent of the Council assign this Contract or sub-let any portion of the Service.	<b>Assignment and Sub Contracting</b>
5		<b>The arrangements for payments are properly defined</b>
6	<p>The failure of the Council to seek redress for breaches, or to insist on strict performance of any provision of this Contract, or to exercise any right or remedy to which it is entitled under this Contract shall not constitute a waiver thereof and shall not cause a diminution of the obligations under this Contract.</p> <p>No waiver of any provision of this Contract shall be effective unless it is agreed by both parties in writing.</p> <p>No waiver of any default shall constitute a waiver of any subsequent default.</p>	<b>Waivers</b>
7	Subject as mentioned in clause (check ref) any notice to be given to the Contractor under the terms of the Contract shall be served by either sending the same by recorded delivery post to or leaving the same at the Contractor's principal place of business (or in the event of the Contractor being a Company) to or at its registered office. The use of facsimile	<b>Notices to the Contractor</b>

	equipment for this purpose may be made providing written confirmation is served within 7 days after the facsimile transmission.	
8	All information given to the Contractor by the Council shall be treated as confidential, as will anything produced under the Contract. The Contractor shall not disclose information to any other party unless agreed in writing by the Supervising Officer. The provisions of this clause shall remain in force Notwithstanding the termination of the Contract. While the Council will treat all information provided by the Contractor in the strictest confidence, such information may be made available to Trading Standards Departments, the Office of Fair Trading and other appropriate regulators.	<b>Confidentiality</b>
9	The contract may only be amended or altered if such Amendment or alteration is in writing and signed by the Council's Contract Manager.	<b>Amendments to Contracts</b>
10	The Contractor will not create, or allow any other person to Create, any lien or encumbrance on any property of the Council.	<b>Lien and Encumbrance</b>
11		<b>Continuous Improvement</b>
12		<b>Complaints procedure</b>
13	(i) Injury to Persons (Public liability) £5,000,000 (ii) Damage to Property (Products liability) £5,000,000 (iii) Employers liability £5,000,000 (iv) Professional indemnity £5,000,000	<b>Insurance and Indemnity</b>
14		<b>Race relations, Sex discrimination and discrimination on the grounds of disability</b>
15		<b>Whistleblowing clause (service contracts)</b>
16	The Contractor shall ensure that the Contractor's staff do not solicit gifts or gratuities from the public or employees of the Council.	<b>Soliciting of gifts</b>
17		<b>The Council is not committed to accept the lowest, or any, tender</b>
18		<b>Implementation of the Euro</b>

19	Liability for environmental impacts where they were included within the EMS and appropriate remedial action was not followed.	<b>EMS</b>
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