

- 3.6.4 Give any instructions and/or explanations and/or variations to the supplier including any relevant advice to assist the supplier to understand the contract documents.
- 3.6.5 Grant or refuse any extension of time requested by the supplier to the period stated in clause 10.
- 3.6.6 Inspect the goods to determine if, in the opinion of the purchaser, it has been delivered in compliance with the contract, alternatively in such a state that it can be properly used for the purpose for which it was intended.
- 3.6.7 Brief the supplier and issue all documents, information, etc. in accordance with the contract.

5. Use of contract documents and information: inspection, copyright, confidentiality, etc.

Add the following after clause 5.4:

- 5.5 Copyright of all documents prepared by the supplier in accordance with the relevant provisions of the copyright Act (Act 98 of 1978) relating to contract shall be vested in the purchaser. Where copyright is vested in the supplier, the purchaser shall be entitled to use the documents or copy them only for the purposes for which they are intended in regard to the contract and need not obtain the supplier's permission to copy for such use. Where copyright is vested in the purchaser, the supplier shall not be liable in any way for the use of any of the information other than as originally intended for the contract and the purchaser hereby indemnifies the supplier against any claim which may be made against him by any party arising from the use of such documentation for other purposes.

The ownership of data and factual information collected by the supplier and paid for by the purchaser shall, after payment, vest with the purchaser

- 5.6 **Publicity and publication**
The supplier shall not release public or media statements or publish material related to the goods/services or contract services without the written approval of the purchaser, which approval shall not be unreasonably withheld.
- 5.7 **Confidentiality**
The Supplier shall keep all information obtained by them in the context of the Contract confidential and shall not divulge it without the written approval of the Purchaser.
- 5.8 **Intellectual Property**
 - 5.8.1 The Seller acknowledges that it shall not acquire any right or interest in or to the Intellectual Property of the Purchaser
 - 5.8.2 The Seller hereby assigns to the Purchaser any Intellectual Property created or developed for or during this Contract, unless agreed otherwise by the Parties in writing.

7. Performance Security

Delete clause 7.1 to 7.4

8. Inspections, tests and analyses

Delete Clause 8.2 and substitute with the following:

- 8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Purchaser or an organisation acting on behalf of the Purchaser.

10. Delivery and documents

Delete clause 10.2

11. Insurance

Add the following after clause 11.1:

- 11.2 Without limiting the obligations of the Supplier in terms of this contract, the Supplier shall effect and maintain the following additional insurances:
- a) Public liability insurances, in the name of the Supplier, covering the Supplier and the Purchaser against liability for the death of or injury to any person, or loss of or damage to any property, arising out of or during this Contract, in an amount not less than R10 million for any single claim;
 - b) Motor Vehicle Liability Insurance, in respect of all vehicles owned and / or leased by the Supplier, comprising (as a minimum) "Balance of Third Party" Risks including Passenger Liability Indemnity;
 - c) Registration / insurance in terms of the Compensation for Occupational Injuries and Disease Act, Act 130 of 1993. This can either take the form of a certified copy of a valid Letter of Good Standing issued by the Compensation Commissioner, or proof of insurance with a licenced compensation insurer, from either the bidder's broker or the insurance company itself (see Proof of Insurance / Insurance Broker's Warranty section in document for a pro forma version).
 - d) Professional indemnity insurance providing cover in an amount of not less than R5 million in respect of each and every claim during the contract period

In the event of under insurance or the insurer's repudiation of any claim for whatever reason, the CTS will retain its right of recourse against the Supplier.

- 11.3 The Supplier shall be obliged to furnish the CTS with proof of such insurance as the CTS may require from time to time for the duration of this Contract. Evidence that the insurances have been effected in terms of this clause, shall be either in the form of an insurance broker's warranty worded precisely as per the pro forma version contained in the Proof of Insurance / Insurance Broker's Warranty section of the document or copies of the insurance policies.

12. Transportation

Delete clause 12 in its entirety

13. Incidental Services

Delete clause 13 in its entirety

14. Spare Parts

Delete clause 14 in its entirety

15. Warranty

Delete clause 15 in its entirety

16. Payment

Delete Clause 16.1 in its entirety and replace with the following:

- 16.1 Payment of invoices will be made within 30 (thirty) calendar days of receiving the relevant invoice. More frequent payment to suppliers is not a right in terms of this policy. A supplier may submit a fully motivated application in this regard to the Chief Financial Officer or their delegated authority for consideration. Requests for more frequent payments will be considered at the sole discretion of the delegated authority.

- 16.1.1 Notwithstanding anything contained above, the CTS shall not be liable for payment of any invoice that pre-dates the date of delivery of any goods or services.

Delete Clause 16.2 in its entirety and replace with the following:

- 16.2 The supplier shall furnish the purchaser's Accounts Payable Department with an original tax invoice, clearly showing the amount due in respect of each and every claim for payment.

Add the following after clause 16.4

- 16.5 Notwithstanding any amount stated on the order, the supplier shall only be entitled to payment for goods/services actually rendered.

17. Prices

Delete clause 17 in its entirety and replace with the following:

- 17.1 Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices tendered by the supplier in his bid, with the exception of any price adjustments authorised in accordance with Schedule 8 of the tender document.

18. Contract Amendments

Delete the heading of clause 18 and replace with the following:

18. Contract Amendments and Variations

Add the following to clause 18.1:

Variations means changes to the goods or any extension of the duration of the contract that the purchaser issues to the supplier as instructions in writing, subject to prior approval by the purchaser's delegated authority as reflected on an authorised amended order. Should the supplier deliver any goods not described in a written instruction from the purchaser, such work will not become due and payable until amended order has been issued by the purchaser.

21. Delays in the supplier's performance

Delete Clause 21.2 in its entirety and replace with the following:

- 21.2 If at any time during the performance of the contract the supplier should encounter conditions beyond their reasonable control which impede the timely delivery of the goods, the supplier shall notify the purchaser in writing, within 7 Days of first having become aware of these conditions, of the facts of the delay, its cause(s) and its probable duration. As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation, and may at its sole discretion extend the time for delivery.

Delete clause 21.4 in its entirety and replace with the following:

- 21.4 The right is reserved to procure outside of the contract to have essential services executed if an emergency arises, due to the supplier's poor performance, or the supplier's proposed service offering is not considered acceptable/cost-effective.

Delete clause 21.6 in its entirety

22. Penalties

Delete clause 22.1 in its entirety and replace with the following:

Should the Supplier fail to deliver any deliverable or perform/render any service by the date agreed upon by the parties, the Purchaser shall, without prejudice to its other remedies under the contract, be entitled to impose a penalty equal to 2.5% of the value of the deliverable for every day following the agreed delivery date until the service has been rendered, unless the parties agree otherwise, the delay is due to a circumstance of force majeure (Clause 25) as defined in this contract, or the Supplier is able to prove that the cause of the delay is beyond the reasonable control of the Supplier.

Add the following after clause 22.1:

- 22.2 The Supplier shall perform all Services and deliver all Deliverables in accordance with the specifications, service levels, and quality standards set out in this Contract. If, at any time during the term of this Contract, the Purchaser determines that the Supplier is failing to meet such standards or is otherwise performing unsatisfactorily, the Purchaser shall notify the Supplier in writing, specifying the nature of the deficiencies.
- 22.3 The Supplier shall, at its own cost, promptly take corrective action and remedy the deficiencies within the period stated in the notice from the Purchaser.

- 22.4 If the Supplier fails to remedy the deficiencies within the period provided, the Purchaser may, without prejudice to any other rights it may have under this Contract:
- 22.4.1 impose a penalty of up to a maximum of 25% of the affected deliverable's value per instance of non-compliance; and
- 22.4.2 withhold payment of amounts due under this Contract until the deficiencies are corrected.
- 22.5 Reports: Reports to be submitted within 5 working days as from the last day of the month or otherwise agreed upon with CTS. The CTS reserves the right to penalize the tenderer R500 penalty per day for the late submission of reports.
- 22.6 Events: The CTS reserves the right to penalize the tenderer with R100 per person for every short staff member as per quotation.
- 22.7 In the case of permanent staff a penalty equal to the tender amount for staff will be charged per day if there is a short fall of staff.
- 22.8 Quotations: Tenderer to submit quotations within 48 hours of request. The CTS reserves the right to penalize the Tenderer with R150 per day for every 24 hours of late submission.
- 22.9 Invoices: Invoices to be submitted within 48 hours of works completed. The CTS reserves the right to penalise the Tenderer with R150 per day for every 24 hours of late submission
- 22.10 In the event that machinery is faulty and it is not repaired within 24h a penalty of R500-00/day will be charged per faulty machine
- 22.11 Penalty of R100-00 per employee will be issued if contractor do not wear the company dress code.

23.Termination for default

Delete the heading of clause 23 and replace with the following:

23.Termination

Add the following to the end of clause 23.1:

if the supplier fails to remedy the breach in terms of such notice

Add the following after clause 23.7:

- 23.8 In addition to the grounds for termination due to default by the supplier, the contract may also be terminated:
- 23.8.1 Upon the death of the supplier who was a Sole Proprietor, or a sole member of a Close Corporation, in which case the contract will terminate forthwith.
- 23.8.2 The parties by mutual agreement terminate the contract.
- 23.8.3 If an Order has been issued incorrectly, or to the incorrect recipient, the resulting contract may be terminated by the purchaser by written notice
- 23.8.4 If a material irregularity vitiates the procurement process leading to the conclusion of the contract, rendering the procurement process and the conclusion of the resulting contract unfair, inequitable, non-transparent, uncompetitive or not cost-effective, provided the Chief Executive Officer follows the processes as described in the purchaser's SCM Policy.
- 23.8.5 After providing notice to the supplier, if the implementation of the contract may result in reputational risk or harm to the CTS as a result of (inter alia):
- 23.8.5.1 reports of poor governance and/or unethical behaviour;
 - 23.8.5.2 association with known family of notorious individuals;
 - 23.8.5.3 poor performance issues, known to the Employer;
 - 23.8.5.4 negative social media reports; or

23.8.5.5 adverse assurance (e.g. due diligence) report outcomes.

23.8.6 Where a conflict of interest has arisen

23.8.7 Where the supplier, in the opinion of the purchaser, is not acting in the best interest of the purchaser

23.9 If the contract is terminated in terms of clause 23.8, all obligations that were due and enforceable prior to the date of the termination must be performed by the relevant party.

25. Force Majeure

Delete clause 25.1 in its entirety and replace with the following:

25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for, damages, or termination for default if, and to the extent that, his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.

27. Settlement of Disputes

Amend clause 27.1 as follows:

27.1 If any dispute or difference of any kind whatsoever, with the exception of termination in terms of clause 23.1(c), arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve such dispute or difference amicably, by mutual consultation.

Delete Clause 27.2 in its entirety and replace with the following:

27.2 Should the parties fail to resolve any dispute by way of mutual consultation, either party shall be entitled to refer the matter for mediation before an independent and impartial person. Such referral shall be done by either party giving written notice to the other of its intention to commence with mediation. No mediation may be commenced unless such notice is given to the other party.

Irrespective of whether the mediation resolves the dispute, the parties shall bear their own costs concerning the mediation and share the costs of the mediator and related costs equally.

The mediator shall agree to the procedures, representation and dates for the mediation process with the parties. The mediator may meet the parties together or individually to enable a settlement.

Where the parties reach settlement of the dispute or any part thereof, the mediator shall record such agreement in writing.

Save for reference to any portion of any settlement or decision which has been agreed to be final and binding on the parties, no reference shall be made by or on behalf of either party in any subsequent arbitration or court proceedings, to any outcome of an amicable settlement by mutual consultation, or the fact that any particular evidence was given, or to any submission, statement or admission made in the course of amicable settlement by mutual consultation or mediation.

Delete clause 27.3 in its entirety and replace with the following:

27.3 in the event of the parties being unable to settle the dispute by way of mediation, either party shall be entitled to refer the matter to arbitration.

The parties shall agree to the identity of the arbitrator and in the event of failing to agree within a period of 10 days after the referral of the matter to arbitration, either party shall be entitled to request the Chairperson of the Cape Bar Council to identify and appoint an arbitrator.

The parties shall each be liable for 50% of the arbitrator's fees, which fees shall include the cost of any venue hire, if necessary.

The arbitration will be conducted in terms of the guidelines set out in the arbitration agreement, failing which the arbitration shall be conducted in terms of the Uniforms Rules of Court.

The arbitrator's award shall be final and binding on the parties.

Delete clause 27.4 in its entirety

28. Limitation of Liability

Delete clause 28.1 (b) and replace with the following:

- 28.1 (b) the aggregate liability of the Supplier to the Purchaser, whether under the contract, in tort or otherwise, shall not exceed the sums insured in terms of clause 11 in respect of insurable events, or where no such amounts are stated, to an amount equal to twice the contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

Add the following after clause 28.1:

- 28.2 Without detracting from, and in addition to, any of the other indemnities in this contract, the Supplier shall be solely liable for and hereby indemnifies and holds harmless the purchaser against all claims, charges, damages, costs, actions, liability, demands and/or proceedings and expense in connection with:
- a) personal injury or loss of life to any individual;
 - b) loss of or damage to property;
- arising from, out of, or in connection with the performance by the supplier in terms of this Contract, save to the extent caused by the gross negligence or wilful misconduct of the purchaser.
- 28.3 The supplier and/or its employees, agents, concessionaires, suppliers, sub-contractors or customers shall not have any claim of any nature against the purchaser for any loss, damage, injury or death which any of them may directly or indirectly suffer, whether such loss, damages, injury or death is caused through negligence of the purchaser or its agents or employees.
- 28.4 Notwithstanding anything to the contrary contained in this Contract, under no circumstances whatsoever, including as a result of its negligent (including grossly negligent) acts or omissions or those of its servants, agents or contractors or other persons for whom in law it may be liable, shall any party or its servants (in whose favour this constitutes a *stipulatio alteri*) be liable for any indirect, extrinsic, special, penal, punitive, exemplary or consequential loss or damage of any kind whatsoever, whether or not the loss was actually foreseen or reasonably foreseeable), sustained by the other party, its directors and/or servants, including but not limited to any loss of profits, loss of operation time, corruption or loss of information and/or loss of contracts.
- 28.5 Each party agrees to waive all claims against the other insofar as the aggregate of compensation which might otherwise be payable exceeds the aforesaid maximum amounts payable.

31. Notices

Delete clauses 31.1 and 31.2 and replace with the following:

- 31.1 Any notice, request, consent, approvals or other communications made between the Parties pursuant to the Contract shall be in writing and forwarded to the addresses specified in the contract and may be given as set out hereunder and shall be deemed to have been received when:
- a) hand delivered – on the working day of delivery
 - b) sent by registered mail – five (5) working days after mailing
 - c) sent by email or telefax – one (1) working day after transmission

32. Taxes and Duties

Delete clause 32.1 in its entirety

Delete clause 32.3 in its entirety

ADDITIONAL CONDITIONS OF CONTRACT

Add the following Clause after Clause 34:

35. Reporting Obligations.

- 35.1 The supplier shall complete, sign and submit with each delivery note, all the documents as required in the Specifications. Any failure in this regard may result in a delay in the processing of any payments.

36. Allocation of matters/instructions.

- 36.1 The allocation of matters/instructions will be in accordance with the allocation methodology as stipulated in the Tender document. It is specifically recorded that this Contract, and the supplier's mandate in respect of any and all matters allocated to the supplier in terms of this Contract, shall end on the termination date.

37. Protection Of Personal Information

- 37.1 The Supplier acknowledges that, for the purposes of this contract, they may come into contact with or have access to personal information and other information that may be classified or deemed as private or confidential and for which Purchaser is responsible in terms of Protection of Personal Information Act ("POPIA"). Such personal information may also be deemed or considered as private and confidential as it relates to POPIA.
- 37.2 The Supplier agrees that they will at all times comply with POPIA and Purchaser's Privacy Notice, and that it shall only collect, use and process personal information it comes into contact with pursuant to this agreement in a lawful manner, and only to the extent required to execute the services, or to provide the goods and to perform their obligations in terms of the service level agreement.
- 37.3 The Supplier agrees that it shall put in place, and at all times maintain, appropriate physical, technological and contractual security measures to ensure the protection and confidentiality of the personal information that it, or its employees, its contractors or other authorised individuals comes into contact in relation to the service level agreement.
- 37.4 The Supplier agrees that it shall notify the Purchaser immediately where there are reasonable grounds to believe that the personal information of a data subject has been accessed or acquired by any unauthorised person.
- 37.5 Unless so required by law, the Supplier agrees that it shall treat the personal information as confidential and further not disclose any personal information as defined in POPIA to any third party without the prior written consent of the Purchaser.
- 37.6 The Supplier hereby indemnifies and holds the Purchaser harmless against all claims, losses, damages and costs of whatsoever nature suffered by the Purchaser arising from or in relation to the Supplier's (and/or its employees', agents' and sub-contractors') non-compliance with applicable data protection laws and/or other legislation.
- 37.7 The Supplier agrees that the Purchaser may conduct regular data protection audits on the Supplier and undertakes to give its full co-operation in this regard.

38. Performance Monitoring

- 38.1 As required by section 116(2)(b) of the Local Government: Municipal Financial Management Act 56 of 2003, the Purchaser shall monitor the performance of the Supplier, and the Supplier agrees to provide the Purchaser with its full cooperation in this regard.

39. Event Fee and Set-Off

- 39.1 Where applicable, in terms of the Pricing Schedule and Instructions, the Supplier shall pay the Purchaser an Event Fee on all revenue received by the Supplier for services rendered to clients under this Contract.
- 39.2 Such Event Fee shall become due and payable within 30 calendar days after receipt of an official invoice issued by the Purchaser.
- 39.3 Without prejudice to any other rights the Purchaser may have under this Contract, the Purchaser shall be entitled to deduct any Event Fee amounts due and payable by the Supplier from any amounts otherwise payable by the Purchaser to the Supplier for services rendered to the Purchaser.
- 39.4 Any balance of Event Fees due after such deduction shall remain payable by the Supplier within the time period specified in clause 39.2 above.
- 39.5 The Supplier shall provide the Purchaser with a detailed statement of all transactions giving rise to the Event Fee, together with any requested supporting documentation, within 7 days after the end of each month.
- 39.6 Failure by the Supplier to pay the Event Fee or provide requested supporting documentation within the specified time frames shall constitute a breach of this Contract and entitle the Purchaser to invoke remedies provided under clauses 21, 22 and 23 and claim any costs or losses incurred.