Wexford County Council

Public Procurement Policy and Procedures

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Approved by Management Team:

[1. What is the purpose of this document? 4](#_Toc56414107)

[1.1 What is public procurement? 4](#_Toc56414108)

[1.2 What is the role of the Procurement Section? 4](#_Toc56414109)

[2. Key information 5](#_Toc56414110)

[2.1 What is the difference between a quotation and a tender? 5](#_Toc56414111)

[2.2 How many quotes do I have to get? 5](#_Toc56414112)

[3.1 Contract value thresholds and procedures 8](#_Toc56414113)

[3.2 Guidelines for quotations 8](#_Toc56414114)

[3.3 Guidelines for advertising tenders 8](#_Toc56414115)

[4. What are the key procurement principles I should follow? 9](#_Toc56414116)

[4.1 EU Treaty principles 9](#_Toc56414117)

[4.2 Accountability 9](#_Toc56414118)

[4.3 Separation of duties 9](#_Toc56414119)

[4.4 Accessibility requirements 9](#_Toc56414120)

[4.5 Risk assessment 10](#_Toc56414121)

[4.6 Record keeping 10](#_Toc56414122)

[4.7 Conflicts of interest 10](#_Toc56414123)

[4.8 Collusive tendering 10](#_Toc56414124)

[4.9 Encourage SMEs to participate 10](#_Toc56414125)

[5. Who is responsible for the tender process? 11](#_Toc56414126)

[6. What are the main phases in the tender procurement process? 11](#_Toc56414127)

[6.1 Preparation phase 11](#_Toc56414128)

[6.2 Pre-tendering phase 11](#_Toc56414129)

[6.3 Tendering phase 12](#_Toc56414130)

[6.4 Opening of tenders in Wexford County Council – online and hard copies 12](#_Toc56414131)

[7. What tendering procedures can I use? 17](#_Toc56414132)

[7.1 Open procedure 17](#_Toc56414133)

[7.2 Restricted procedure 17](#_Toc56414134)

[7.3 Competitive dialogue procedure 17](#_Toc56414135)

[7.4 Competitive procedure with negotiation 17](#_Toc56414136)

[7.5 Innovation partnership procedure 17](#_Toc56414137)

[7.6 Negotiated procedure without prior publication 18](#_Toc56414138)

[8. Council obligations 18](#_Toc56414139)

[9. What is a framework agreement? 19](#_Toc56414140)

[10. What are the rules for using panels and approved lists? 20](#_Toc56414141)

[11. Green procurement? 20](#_Toc56414142)

[12. Credit Cards 21](#_Toc56414143)

[Appendices 22](#_Toc56414144)

[Appendix A Freedom of Information (FOI) 22](#_Toc56414145)

[Appendix B – Guidelines on record keeping 23](#_Toc56414146)

[Appendix C – Fourth Schedule services 24](#_Toc56414147)

[Appendix D – Implications of the EU ‘Remedies Directive’ 25](#_Toc56414148)

[Appendix E – Goods and Services Contract 29](#_Toc56414149)

[Appendices F – Other legislative considerations 49](#_Toc56414183)

# 1. What is the purpose of this document?

The purpose of this document is to provide you with the public procurement policies and procedures set down by Wexford County Council’s management. It is published by the Procurement Section and gives you information on the following:

* Key procurement principles to follow
* Number of quotations required
* Responsibility for the tender process
* Main phases of the procurement process
* Tendering procedure options
* Evaluating tenders
* Framework agreements
* Panels and approved lists
* Timescales involved in tendering
* Guidelines on green procurement

## 1.1 What is public procurement?

Public procurement is the purchase of works, supplies and services by public bodies. It is funded by the taxpayer. A competitive process must be carried out in most cases. This applies to all procurement, including that of an emergency or urgent nature, except where approval has been received from the director of service.

## 1.2 What is the role of the Procurement Section?

In the Procurement Section our role is to:

* improve compliance with local and national guidelines and with EU procurement rules (we do this by improving Wexford County Council’s policies and procedures)
* advise staff involved in procurement activities
* assist staff to follow the correct procedures and develop guidelines to ensure compliance with policies (it is the responsibility of each section head to ensure that procurement is carried out correctly)
* act as an intermediary between the Office of Government Procurement and the Local Government Operational Procurement Centre ([SupplyGov.ie](https://www.laquotes.ie/)) and Wexford County Council to get the most out of centralised procurement
* report progress in procurement reform to management
* apply government circulars relating to procurement

# 2. Key information

## 2.1 What is the difference between a quotation and a tender?

* The word **tender** is used for contracts that must be advertised on eTenders and in the OJEU.
* The word **quotation** is used for all other contracts.

## 2.2 How many quotes do I have to get?

The number of quotes required will depend on the value of the contract (see table below). The ‘contract value’ means the cost of the works, supplies or services over any 4 year period.

|  |  |
| --- | --- |
| **Contract value limits ex VAT** | **Procedure** |
| Under €1000  (supplies, services and works) | Invite **1** verbalquotation |
| €1,000 – €25,000  (supplies and services) | Invite at least **3** quotations |
| € 1000 – € 5,000  (works only) | Invite at least **3** quotations |
| € 5,000 – €50,000  (works only) | Invite at least **5** quotations |
| €25,000 – €214,000  (supplies and services) | Invite tenders by advertising publicly on **eTenders** |
| €50,000 – €5.3 million  (works) | Invite tenders by advertising publicly on **eTenders** |
| Over €214,000  (supplies and services) | Invite tenders by advertising publicly in the **OJEU**\* |
| Over €5.3 million  (works) | Invite tenders by advertising publicly in the **OJEU\*** |

*\* Official Journal of the European Union*

**Exemptions** to following procurement procedures are only granted in emergency situations and have to be approved by the Director of Services/Chief Executive. Definition of an emergency is where there is a situation that poses an immediate risk to health, life, property, or environment.

* 2.3 What are the timescales involved?
* **Quotations:** If you are inviting quotations, you can specify timescale involved (but you have to allow reasonable time for suppliers to provide the quote)
* **Tendering:** Please see following page:

|  |  |  |
| --- | --- | --- |
| **Procedure** | **Receipt of expressions of interest** | **Receipt of tenders**  **(public sector)** |
| **Wexford County Council’s Policy and Irish Regulations apply to spending below:**  **Supplies €214,000**  **Services €214,000**  **Works €5,350,000** | | |
| Open (national) | n/a | 14–21 days |
| Restricted (national) | 14–21 days | 14–21 days |
| **European Procurement Law applies to spending above (must be published on OJEU)**  **Supplies €214,000**  **Services €214,000**  **Work €5,350,000** | | |
| Open – using eTenders for notices | n/a | 35 days |
| Open – using eTenders for notices and tender documents | n/a | 35 days |
| Restricted using eTenders for notice | 30 days | 30 days |
| Restricted using eTenders for tender documents | 30 days | 30 days |
| Competitive procedure with negotiation using eTenders for notice | 30 days | At least 30 days |
| Negotiated Procedure with call for competition using eTenders | 30 days | At least 30 days |
| Accelerated restricted/negotiated procedure using eTenders for notice | 10 days | 15 days |
| Contracts awarded within framework agreements (mini competition) | n/a | At least 10 days |

**2.4 Who Can Authorise my Quotation / Tender?**

|  |  |  |
| --- | --- | --- |
| **Values (Incl. of VAT)** | **Authorisation Authorities** | |
| **Up to €10,000** | Staff Officer (Grade V) | |
| Senior Staff Officer (Grade VI) | |
| Assistant Engineer | |
| Executive Engineer | |
| *Plus Analogous Grades* | |
| **Up to €25,000** | Administrative Officer (Grade VII) | |
| Senior Executive Engineer | |
| *Plus Analogous Grades* | |
| **Up to €50,000** | District Administrators (Grade VII) | |
| Senior Executive Engineer (MD Offices) | |
| Executive Engineer (MD Offices) | |
| Fleet Manager (Machinery Yard) | |
| Property Manager (Grade VII) - EO Required in excess of €25k as backup | |
| **Up To €75,000** | Senior Executive Officer (Grade VIII) | |
| Senior Engineer | |
| *Plus Analogous Grades* | |
| **Greater than €75,000 with EO** | Senior Executive Officer (Grade VIII) | |
| Senior Engineer | |
| *Plus Analogous Grades* | |
| **Sections with no Grade 8 - Authorisation will go to DOS** | Property Management | As above. On-line authorisation will go to the DOS in excess of €50k |
| Insurance Risk Management | Channelled through Finance Hierarchy |
| Civil Defence | On-line authorisation will go to DOS in excess of €25k |
| Internal Audit | Channelled through Finance Hierarchy |
| Health & Safety | On-line authorisation will go to DOS in excess of €25k |
| **Grade 8 level on holidays / absences** | Where absences / holidays are covered by a formal EO, the acting person will acquire all signing authorities of the Grade VIII. In non-formal instances, on-line signing of PO's will go to the DOS. | |

3. Quotation or Tender?

Whether you invite quotations or tenders, and how you do this, depends on the value of the procurement contract. In the table at 2.1 we set out the procedure you must follow depending on the value of the contract.

## 3.1 Contract value thresholds and procedures

Note that the ‘contract value’ means the cost of the works, supplies or services over any 4 years. If you estimate that over 4 years these costs will go above a specific threshold value in the table at 2.2, then you must use the relevant procedure.

## 3.2 Guidelines for quotations

Quotation requests must contain:

* full name and postal address of company
* deadline and method for submission
* full details of goods/services/works required
* requirements for tax, insurance and other statutory requirements
* award criteria (price or quality and price)

All suppliers have to receive the same information.

## 3.3 Guidelines for advertising tenders

**Tenders over €25,000**

For tenders for supplies and services valued over €25,000 advertised on eTenders, you must use the standard Request for Tender (RFT) templates. Please contact the Procurement Section at [procurement@wexfordcoco.ie](mailto:procurement@wexfordcoco.ie) for further guidance.

**Tenders under €25,000**

You can also advertise tenders valued under €25,000 on eTenders if required, for example if you need to reach a larger audience. You must use the standard Request for Tender (RFT) templates. You should email all completed documents to the Procurement Section at [procurement@wexfordcoco.ie](mailto:procurement@wexfordcoco.ie).

**Tenders over €50,000**

You must advertise tenders for works valued **over €50,000** on eTenders. You must use the correct templates from the Capital Works Management Framework [www.constructionprocurement.ie](http://www.constructionprocurement.ie).

**OJEU tenders**

All tenders that are also over the higher threshold have to be advertised in the Official Journal of the European Union (OJEU). This is done through the etenders website and needs additional information and time for advertising.

# 4. What are the key procurement principles I should follow?

Wexford County Council uses the government’s [*Public Procurement Guidelines for Goods and Services*](https://ogp.gov.ie/public-procurement-guidelines-for-goods-and-services/) and the [*Capital Works Management Framework*](https://constructionprocurement.gov.ie/capital-works-management-framework/). The key principles you should follow when procuring goods / services / works are described below.

## 4.1 EU Treaty principles

When carrying out procurement duties, you must follow the EU Treaty principles. This means that you must ensure:

* the free movement of goods, services and works within the EU
* that the rules of non-discrimination, equal treatment, transparency, mutual recognition and proportionality are followed.

## 4.2 Accountability

Procurement decisions must be fair, equitable and ensure value for money. Procurement activities may be audited and you must be able to justify the decisions you make and the actions you take.

## 4.3 Separation of duties

There must be a separation of duties in the procurement cycle. This means that the person who orders goods or services should not be the same person who receives or makes payment for them.

## 4.4 Accessibility requirements

All staff involved in public procurement exercises (quotations and tenders for specific items/projects/services/capital works) **shall ensure** that the legislative regulations, standards and guidelines are meet with regard to access and usability in all procurement scenarios (whether equipment purchase, goods and services sought, building works etc.). These legislative regulations, standards and guidelines, as relevant, shall be demonstrated throughout the entire tendering process, from drawing up and running tender competitions through tender evaluation, issue of contracts and contract conclusion procedures and review.

The objective of Wexford County Council is to ensure we are meeting the necessary regulatory compliance for all relevant legislation (e.g. Section 27 of the Disability Act 2005, Equality legislations, Building Control Act 1990-2007 and associated regulations and the Health Safety and Welfare at Work Act 2005) and where practicable to achieve best practice standards for Universal Design, accessibility and usability for all.

We promote equality of opportunity, eliminate discrimination and protect human rights. We use Arial font size 12 for all written communications, larger font size available on request. In relation to training, presentations, etc. that we offer we will accommodate anyone that has additional accessibility requirements. See Appendix F

## 4.5 Risk assessment

You should carry out a risk assessment of your procurement if:

* the value of the purchase is high
* the procurement process is complex
* adverse consequences would significantly affect Wexford County Council’s operation
* delivering Wexford County Council’s core services is significantly affected.

## 4.6 Record keeping

You must save all the relevant records throughout the procurement process, and after that for a minimum of 3 years. (See Appendix C for further details.)

## 4.7 Conflicts of interest

A conflict of interest is any situation where a staff member has a financial, economic or personal interest that may be seen to weaken their impartiality in the procurement process.

You must take measures to prevent, identify and solve conflicts of interest. All members of evaluation boards must sign a conflict of interest declaration. We provide these conflict of interest forms in the Procurement Section.

## 4.8 Collusive tendering

Collusive tendering is where two or more competitors cooperate to undermine the competitive tendering process in order to gain an unfair advantage. If you suspect collusive tendering, you must report it to the Procurement Officer.

## 4.9 Encourage SMEs to participate

You should encourage SMEs (small to medium enterprises) to participate in the procurement process. The following are ways you can do this:

* Sub-divide the contracts into lots.
* Allow consortium bids.
* Use open tendering where possible.
* Set the maximum turnover at less than twice the estimated contract value.
* Use framework agreements.
* Set insurance types and levels that are proportionate in the context of the tender.
* Give feedback to unsuccessful tenderers.

## 5. Who is responsible for the tender process?

The section requesting the tender is responsible for all the tender documents and queries and for evaluating the tenders.

The Procurement Section acts as a support service by providing the documents for the process and also in giving general advice to assist in completing the documents. The procurement section does not provide expert advice on specifications within a tender. Procurement will upload all tender documents to extenders and when queries are received on tender documents**,** they will be forwarded to the contact person in the relevant section for reply and procurement will then upload this reply to the etenders website. The Procurement Section will advise on the evaluation process and also what data needs to be retained on the file for future audit if needed. The signing of the contract and the responsibility for ongoing management of this contract will remain with the section requesting the tender.

# 6. What are the main phases in the tender procurement process?

Wexford County Council may award contracts or framework agreements when we need to purchase supplies, works or services.

There are four main phases of public procurement.

## 6.1 Preparation phase

* Identify the need for this purchase.
* Get approval for the project from the budget holder. (See Section 2.4 signing authority limits).
* Prepare the details of the project.
* A file needs to be maintained on the project and contain all details required by legislation. (see appendix C for full details)

## 6.2 Pre-tendering phase

* Select the tendering procedure you will use (see Section 7).
* Consult the market if necessary (e.g. talk to suppliers and expert bodies – this can help improve the specification).

## 6.3 Tendering phase

* Prepare the tender documents, including the specification and the selection and award criteria. Use the standard Request for Tender (RFT) templates. The Procurement Section will provide the relevant documents.
* When you have finished preparing the documents, email them to the Procurement Section for publishing on eTenders.
* Queries from tenderers can only be received via eTenders to ensure transparency. Any queries received will be sent to relevant section for response and this must be sent to all interested tenderers via eTenders.
* After the tender deadline two staff from the Procurement Section will open the tender submissions. The Procurement will prepare a tender opening record. The Contraction Section will receive an email with the tender opening record via email which will include a link to the tender submissions. We will also send a copy to the director of service. The receiving section will be responsible for removing the documents from this location immediately.

## 6.4 Opening of tenders in Wexford County Council – online and hard copies

### eTenders

* When the date and time for submission has passed, the tenders may be accessed.
* Two staff members must open the box.
* A ‘tender opening record’ of the tenders received will be produced with the name of the tendering company and price if that is relevant. This is to be saved in the tender folder.
* All the files submitted by the tenders have to be downloaded and saved into the W drive.

### The ‘tender opening record’ must be forwarded to the person responsible for the tender and also the relevant Director of Service. They are also provided with a link to the documents and advised to move these into their own folder immediately.

### Hardcopies

* When the date and time for submission has passed, all the tenders received into the office will be opened by two staff members.
* A schedule of the tenders received will be produced with the name of the tendering company and price if that is relevant.
* Inform the person responsible for the tender that the documents are available for collection and get them to sign the ‘tender opening record’ document and file this on hard file in office.

**6.5 Evaluation phase**

* Tenders must be evaluated on a **fair, transparent and equitable** basis.
* Tenders must offer **value for money**. When you evaluate the contract’s value for money, you should consider the cost over the life cycle of the contract and not just the initial purchase price. The following should be included:
  + - initial purchase price
    - cost of consumables
    - maintenance costs
    - disposal costs
    - costs associated with poor quality/poor performance
    - cost of tendering.
* At least two members of the evaluation board should be **competent** in the nature of the goods /services / works being evaluated.
* **Conflict of interest** declarations must be signed by every member of the board and these must be kept on the tender file.
* **Feedback** must be given to unsuccessful tenderers, and so you should keep detailed notes of the evaluation meeting.
* Tenders should be evaluated only on the **tender submission received** and not, for example, on previous work or knowledge of a supplier.
* The assessment process should be **authorised** and **evidence** kept on file for audit purposes ( Regulation 84 (1) report required for above threshold procurement)

**6.6 Contract management phase**

You **must not** sign a supplier’s contract under any circumstances without consultation with our legal representatives.

* Wexford County Council **contract templates** are available from the Procurement Section and should include the following:
  + Terms and conditions
  + Prices/rates
  + Timescales
  + Specification
  + Payment terms
  + Any penalties
  + Review of contract
* The project is handed over to the **supplier**.
* The contract should be **managed and monitored** as follows:
  + The supplier should nominate a contract manager who will be the point of contact with Council. It may be necessary to nominate an administrative contract manager and a technical contract manager.
  + Check all goods and services against the contract specification.
  + Ensure that worksheets are received before payment is made.
  + Ensure that procedures are in place for identifying and reporting poor performance.
  + Keep a record of supplier performance.
* Carry out **regular reviews**, including meeting with the contract manager.
* **When the contract is finished,** you should carry out a full review. At this stage, examine what mistakes were made and how you can improve any future contracts.

**6.7 What document templates do I use to write a tender?**

Request for tender (RFT) and Tender response document (TRD) are required to be fully complete for a standard tender. These are available from the procurement section.

### 6.8 Consultants

Consultants are a service engaged to provide intellectual or knowledge-based information (e.g. expert analysis and advice) through delivering reports, studies, assessments, recommendations, proposals, etc. that contribute to decision or policy-making in a contracting authority. The engagement should be for a limited time period to carry out a specific finite task or set of tasks that involve expert skills or capabilities that would not normally be expected to reside within the contracting authority.

Quotations are sought for consultancy contracts with a value less than €25,000. Invitations to tender by way of public advertisement on eTenders are sought for consultancy contracts where the contract value exceeds €25,000. All tendering is presumed to be on an open basis.

The procurement of consultancy services must comply with Wexford County Council Procurement Policies and Procedures and the Department of Finance Guidelines for the Engagement of Consultants (2006).

[*GUIDELINES FOR THE ENGAGEMENT OF CONSULTANTS AND OTHER EXTERNAL SUPPORT BY THE CIVIL SERVICE*](http://etenders.gov.ie/Media/Default/SiteContent/LegislationGuides/6.%20Guidelines%20for%20the%20Engagement%20of%20Consultants%20by%20the%20Civil%20Service.pdf)

**Subject to the above, all consultants with contracts valued in excess of €25,000 incl. of expenses and excl. V.A.T. will be appointed solely by the Chief Executive.**

Consultants with contracts valued under the above threshold will be appointed by the relevant Director of Service. The procedure for the procurement of consultancy services may be divided into four parts as follows:

1. When to engage consultants
2. Procuring and selecting consultants
3. Management of Consultants
4. Project result evaluation

### 6.8.1 When to engage consultants

* When it is considered that there is a lack of capacity or technical expertise in-­house.
* The need must be evaluated and documented to establish whether the appointment of a consultant is appropriate or necessary. Assessment must set out the objectives, expected benefits and estimated cost of the consultancy.

### 6.8.2 Procurement and Selection of Consultants

* Criteria must be determined prior to advertising.
* All tenders must be fully evaluated in accordance with any selection criteria, which must include consideration of the proposed fee.
  + The level of fee should be determined by reference to any nationally agreed scale of fees.
  + Any additional costs must be adequately vouched and reasonable. Where additional costs for travelling and subsistence cannot be avoided, the rates charged must not exceed those currently applicable in the public service.
  + Clear terms of reference must be drawn up to ensure that all consultancies are project specific.
  + A timeframe for the completion of the work must also be agreed at the outset.

### 6.8.3 Management of Consultancies.

Contracts for consultancy work must not be extended beyond their original agreed terms of reference.

* Performance must be monitored by regular minuted meetings.
* A consultancy not achieving its objectives can be terminated according to the conditions of engagement.
* All communications with consultants regarding changes made to the original terms of reference, which do not materially affect the terms of reference or objectives of the consultancy e.g. telephone conversations, emails etc., should be clearly documented and retained on file.
* If a project does not require a formal Project Team, a designated contact person must be appointed to liaise with the consultant.
* Invoices must be submitted for payment on a regular basis budget management and the timely drawdown of funds where applicable.

### 6.8.4 Project Result Evaluation

A documented post project review must be carried out to enable the effectiveness of consultants to be evaluated. This should include measuring the actual deliverables against expected outcome and should include the following:

(a) The actual cost of the consultancy versus originally agreed cost.

(b) Any savings or improvements realised as a result of the engagement of the

Consultant.

(c) Whether project objectives have been achieved.

(d) Whether the project has been completed in a timely manner and within

Budget.

(e) The quality of the work.

(f) Ownership of outputs arising from the consultancy.

(g) Any appropriate transfer of expertise or skills from the consultant to the

relevant staff of Wexford Co. Council.

The documented project review should be retained on file for audit and other purposes and should feed forward to any future projects.

# 7. What tendering procedures can I use?

There are six procedures you can use when tendering. Whichever procedure you use, you must make sure that the specification is as open and generic as possible. This is to prevent the favouring of one solution or one supplier.

## 7.1 Open procedure

This procedure should be used whenever possible to allow the maximum number of suppliers to participate. It is a single-stage tender and any interested supplier can submit a tender.

## 7.2 Restricted procedure

This is a two-stage tender process. Any interested parties can participate in the first stage. Those who meet the necessary criteria are then invited to submit a tender for the second stage. This procedure may be used where there may be a lot of interest in the competition or if confidential information will be released in the tender documents.

## 7.3 Competitive dialogue procedure

This procedure should only be used if:

* Wexford County Council’s needs cannot be met without adapting readily available solutions
* the contract includes design or innovative solutions
* the technical specifications cannot be established with sufficient precision
* there are specific circumstances related to the nature, complexity or legal and financial make-up of the contract
* there are large risks attached to the works, goods or services
* only irregular or unacceptable tenders were submitted in response to an open or restricted tender.

## 7.4 Competitive procedure with negotiation

This procedure may also be used if the criteria for competitive dialogue apply.

## 7.5 Innovation partnership procedure

This procedure can be used if there are no existing goods or services available that meet Wexford County Council’s needs.

## 7.6 Negotiated procedure without prior publication

This procedure can be used only in a very limited set of circumstances. Please discuss with the procurement officer.

# 8. Council obligations

Before you evaluate a tender or quotation you should be aware that the following obligations apply to all public works contracts:

**Capital Works Management Framework**

All public works contracts must be awarded under the Public Works Contracts as defined by the government.

It is Wexford County Council’s policy to follow government direction to use the [Capital Works Management Framework](https://constructionprocurement.gov.ie/capital-works-management-framework/). (Guidance notes are available on [www.constructionprocurement.ie](http://www.constructionprocurement.ie/).) This framework explains the public works construction procedures, and provides the contracts and templates to be used.

The Capital Works Management Framework (CWMF) was developed to deliver the government’s objective to reform public sector construction procurement. It consists of a suite of best practice guidance, standard contracts and generic template documents that form the four pillars supporting the framework.

**Agreement with SIPTU**

Before a contract is signed, Wexford County Council (relevant section purchasing) must inform SIPTU that it intends to award the contract and submit evidence that the contractor is compliant with all registered employment agreements. Failure to provide this information before the works begin will result in an objection under the 1997 Analogue Agreement from SIPTU to the use of the external contractor.

The above obligations apply to all public works contracts including all those referred to in the Small Works/Macadam Works Programme.

Please forward a copy of all relevant contracts to gmalone@siptu.ie

**Procurement legislation:**

[European Union (Award of Public Authority Contracts) Regulations 2016](http://wex-ls5/intranet2/wp-content/uploads/2013/12/European-Union-Award-of-Public-Authority-Contracts-Regulations-2016.pdf)

[2014 Directive](http://wex-ls5/intranet2/wp-content/uploads/2013/12/2014-Directive.pdf)  [2004/18/EC of the European Parliament and of the Council (31 March 2004)](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:134:0114:0240:EN:PDF) [Remedies Directive](http://wex-ls5/intranet2/wp-content/uploads/2013/12/Remedies-Directive.pdf) [Implications of the new EU Remedies Directive May10](http://wex-ls5/intranet2/wp-content/uploads/2013/12/More-Implications-of-the-new-EU-Remedies-Directive-May10.ppt) [Summary of implications of the EU Remedies Directive](http://wex-ls5/intranet2/wp-content/uploads/2013/12/Implications-of-the-New-EU-Remedies-Directive-May10.doc) [Council Directive 89/665/EEC of 21 December 1989](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31989L0665:en:HTML)

[Circular 10-10 Facilitating SME Participation in Public Procurement](http://wex-ls5/intranet2/wp-content/uploads/2013/12/Circular-10-10.doc)

[Circular 6/10- the new Capital Works Management Framework](http://wex-ls5/intranet2/wp-content/uploads/2013/12/Circ-6-10.pdf)

[Circular 01/16 Construction Procurement revision of arrangements](http://wex-ls5/intranet2/wp-content/uploads/2013/12/Circular-01-2016-Construction-Procurement-revision-of-arrangements.pdf)

[Circular\_20\_16](http://wex-ls5/intranet2/wp-content/uploads/2013/12/Circular_20_16.pdf)

[DPER Circular 20-2019 – Green Procurement](http://wex-ls5/intranet2/wp-content/uploads/2013/12/DPER-Circular-20-2019.pdf)

[Circular 16/13 – arrangements concerning the use of Central Contracts put in place by the National Procurement Service](http://wex-ls5/intranet2/wp-content/uploads/2013/12/Circular-16-13.pdf)

[European Communities (Award of Public Authorities’ Contracts) Regulations 2006](http://www.irishstatutebook.ie/2006/en/si/0329.html)

[Regulations SI230 of 2010 EC Public Authorities Contract Review Procedures Regulations 2010](http://www.irishstatutebook.ie/2010/en/si/0130.html)

[Commission Regulations (EC) No 1177/2009 of 30th November 2009 amending Directive 2004/17/EC, 2004/EC/18/EC and 200981/EC in respect of thresholds for the procedures for the award of contracts](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:314:0064:0065:EN:PDF)

[Commission Regulations (EC) 1150/2009 of 10th November 2009 amending Regulation EC No 1564/2005 as regards the standard forms for the publication of notices in the framework of public procurement in accordance with Council Directives 89/665/EEC and 92/13/EEC](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:313:0003:0035:EN:PDF)

# 9. What is a framework agreement?

A framework agreement is a contract between Wexford County Council and one or more suppliers. It can be used where you have a repeated need for a good or service. The terms of the framework agreement are stated in the contract, such as the:

* price
* quantity
* type of goods/service
* drawdown method

There are two main ways that you can draw down from a framework. The method you are going to use must be stated in the original tender specification.

* direct drawdown
* mini-competition

**Centralised frameworks**

The Office of Government Procurement and [SupplyGov.ie](https://www.laquotes.ie/) have a number of frameworks agreements available. This list of framework agreements can be found on the Wexford County Council staff intranet. You should check this list for a relevant framework before you prepare a tender. Under Government Circular 16/13 you must use these frameworks if they are suitable for what you want to procure.

# 10. What are the rules for using panels and approved lists?

In Wexford County Council we use panels (also known as approved lists) of suppliers. Panels may be used by other sections within the Council as long as this has been stated when establishing the panel.

The rules for operating a panel are as follows:

* New applications to the panel must be accepted and assessed throughout the life of the panel
* The panel must be advertised on an annual basis
* The panel should be kept up to date on financial and technical qualifying information
* The number invited to a mini-competition should ensure adequate competition and include at least five where available
* Procedures for choosing from the panel should be documented and be objective, transparent and proportionate
* Rules regarding ‘call-off’ or awarding of contracts must be set out up front and adhered to at all time. These can include:
  + application of specific criteria based on information available
  + by random selection
  + by rotation
  + a combination of the above three
* Applicants who fail to qualify must be allowed to re-apply at any time and ‘self-clean’, i.e. put right the issues that caused them to fail the qualification

# 11. Green procurement?

### Green procurement – maximising Wexford County Council’s energy efficiency

Green procurement is ‘a process whereby public and semi-public authorities meet their needs for goods, services, works and utilities by choosing solutions that have a reduced impact on the environment throughout their life-cycle as compared to alternative products/solutions’.

Source: *Green Procurement – Guidance for the Public Sector*, Environmental Protection Agency <http://www.epa.ie/pubs/reports/other/corporate/olg/greenprocurementguidanceforthepublicsector.html>.

The Irish government has committed to achieving a 20% reduction in energy demand across the whole of the economy through energy efficiency measure by 2020 and is challenging the public sector to achieve a 33% reduction in public sector energy usage over the same period.

In accordance with departmental circular letters, purchasers in the public sector should consistently specify environmentally advantageous criteria in their specifications to encourage the economic provision of environmentally superior goods and services.

# 12. Credit Cards

The procurement section is responsible for the administration of the low value purchase cards on behalf of Wexford County Council. The application form for a LVPC can be found on the procurement page of the intranet or by contacting the procurement section. The application form has the full terms and conditions for the card and this has to be signed prior to any card being issued. Also you need to get approval for all new cards from section head/directors. This form should then be returned to procurement and they will complete the application and forward to the bank. When a card is no longer required it should be returned to the procurement section for destruction and to complete the paperwork for cancelling card.

Procurement complete regular audits of all cards for any unusual spends which will be notified to the management team.

## Appendices

## Appendix A Freedom of Information (FOI)

**(a) Suggested wording for inclusion in public advertising seeking quotations**

We are an FOI body. When quoting, please indicate which parts of the quotation are commercially sensitive and should be kept confidential if we receive an FOI request relating to the quotation.

Please note that unless you identify information as sensitive, with supporting reasons, then it is likely we will release it in response to a request under the Freedom of Information Acts.

**(b) Suggested wording for inclusion in public advertising for tenders where full details are supplied in the tender documents**

We are an FOI body. When tendering, you should indicate which parts of your tender are commercially sensitive and which parts you consider should be kept confidential if we receive an FOI request relating to the tender. Further information on FOI is contained in the tender documentation.

**(c) Suggested wording for inclusion in public advertising for tenders where full details are not supplied in the tender documents or where FOI is not included as part of any standard contract tendering documentation.**

We aim to keep any information you provide in this tender confidential subject to our obligations under law, including the Freedom of Information Acts 1997 and 2003. If you do not want us to disclose any of the information you supply in this tender because of its sensitivity, you should, when providing the information, identify it and explain the reasons for its sensitivity. We will consult with you about this sensitive information before making any decision on any Freedom of Information request we receive. If we decide to release any particular information you provide, you can appeal our decision to the Information Commissioner.

Please note that unless you identify information as sensitive, with supporting reasons, then it is likely we will release it in response to a request under the Freedom of Information Acts.

## Appendix B – Guidelines on record ­keeping

Records are more than just data or information. They are created and retained for specific business reasons (e.g. to provide evidence of business activities, to record an organisation’s policies and how they evolved, and to comply with regulations). Records are also inextricably linked with the business functions and activities that they document, and the organisational units that create and maintain them.

Under Regulation 84(1) of the Public Contracts Regulations 2015, there is an obligation to create a report on every over-threshold public contract and framework agreement entered into by Wexford County Council.

Regulation 84 (1) checklist is available from procurement and shows all the information that has to be retained on a tender file by the section carrying out he tender for audit purposes. It includes:

* Always maintain sufficient records to show how the different options were evaluated, including rejected options
* Language should be clear, factual and objective
* Conclusions, decisions and judgements should always be explained and justified in terms of facts
* Where a final decision is taken, record the reasons for the decision and include references to any other material used in reaching the decision
* Be careful when placing Post-it notes on files, and never use them to record important information. If you do use Post-its, make sure you attach them securely to the relevant file. Please note that a Post-it note once retained is a record for the purposes of Freedom of Information

## Appendix C – Fourth Schedule services

Fourth Schedule services are so­ called because they are listed in the Fourth Schedule to the VAT Act 1972 (as amended). The general rule for services is that they are taxable at the place where the supplier is established, or where the work is actually carried out. Where Fourth Schedule services are supplied to a VAT registered customer established in another Member State of the EU, the customer must account for VAT on the supply. Fourth Schedule services are generally intellectual or intangible by nature, i.e. consultancy services, banking, financial and insurance services.

A number of services, all of which are listed in the Fourth Schedule to the VAT Act, are deemed to be supplied in the place where the customer is located, provided that they are supplied for business purposes within the EU, or for any purpose outside the EU.

The services affected are:

* transfers and assignments of copyrights, patents, licences, trademarks and similar rights
* hiring out of movable goods other than means of transport
* advertising services
* services of consultants, engineers, consultancy bureaux, lawyers, accountants and other similar services, data processing and provision of information (but excluding services connected with immovable goods)
* telecommunications services
* radio and television broadcasting services
* electronically supplied services
* the provision of access to, and of transport or transmission through, natural gas and electricity distribution systems and the provision of other directly linked services
* acceptance of any obligation to refrain from pursuing or exercising, in whole or in part, any business activity or any such rights as are referred to in the first bullet point above
* banking, financial and insurance services (including re­insurance and financial fund management functions, but not including the provision of safe deposit facilities)
* the provision of staff
* the services of intermediaries who act in the name and for the account of a principal when procuring for him or her any services specified above

**Please see VAT Information Leaflet ‘Fourth Schedule Services’ for further information at** [**www.revenue.ie**](https://www.revenue.ie/)**.**

## Appendix D – Implications of the EU ‘Remedies Directive’

The following is a guide to the EU ‘Remedies Directive’ and should not be considered a legal interpretation. Staff involved in procurement where the EU ‘Remedies Directive’ is relevant should ensure that they are fully aware of any legal implications in respect of their particular procurement exercise.

A standstill period is now formally imposed by the New Directive at European level, legislating for the Alcatel decision, European Court of Justice Case C­81/98 Judgement dated 28 October 1999, implemented into Irish law in December 2009.

Those who tender on a regular basis for public contracts will be familiar with the ‘standstill’ or ‘Alcatel’ period between notification of the decision to award a contract and contract signing.

The Remedies Directive requires Member States to provide a minimum standstill period from the day after the contract award decision is sent to tenderers.

**Some important considerations in relation to the directive include:**

* The objective of the standstill period is to allow for effective pre-contractual remedies. Irish Regulations require a minimum 14 day period where electronically transmitted (16 days otherwise) from the day following publication of a valid standstill notice

**Note:** Contracting authorities can impose a longer period or can extend the standstill period to take account of particular circumstances

* A contract **must not** be concluded with the successful tenderer during the standstill period nor must the contracting authority negotiate contract terms in that period nor allow any work to commence
* The standstill period will not commence until the day after the award decision (referred to as the ‘standstill notice’) issues to tenderers and candidates concerned
* Therefore the service of a valid standstill notice, compliant with the obligations imposed by the legislation, is critical
* The standstill notice must give sufficient information to enable an unsuccessful bidder to decide whether there are grounds for seeking a review
* The standstill period should be specified in date form (e.g. the contract will not be concluded until after the XX day of XXXX 20XX )
* Article 41 of the Procurement Directive applies, and thus concerned tenderers and concerned candidates must be informed of the:
  + decisions reached (Art 41.1)
  + summary of reasons for rejection (Art 41.2)

Article 2a of the Remedies Directive and Regulation 6 of the Irish Regulations provide for this obligation.

For concerned tenderers who have submitted an admissible tender the reasons for rejection (Art 41.2) to include the characteristics and relative advantages of the tender selected, the name of the successful tenderer or parties to the framework agreement, and a statement why the works, supplies or services do not meet performance or functional requirements. The key difference between the old obligations and those of the New Directive is that the information required to be furnished [pursuant to Art 41(2)] must now to be given **to allow the standstill period to commence**. This is in contrast to the Procurement Directive requirement that the information pursuant to Art 41(2) be furnished on request from the party concerned.

New remedies available to the courts for breaches of the Procurement Rules include:

* ineffectiveness of the contract
* alternative remedies or penalties including monetary fines
* ancillary remedies

‘Ineffectiveness’ is a mandatory setting aside of contracts and is available in respect of the following types of improperly awarded contracts:

* illegal direct awards
* failure to comply with the standstill obligations
* concluding contract while internal review pending
* concluding contract following application to the court but before court has made its decision
* breaches of the rules pertaining to permissible call-off or drawdown contracts

The court **must** make a Declaration of Ineffectiveness where there is:

* an unjustified award of contract without OJEU contract notice
* a breach of the standstill/suspension obligations combined with another infringement and
* a breach of the rules for awarding ‘call-offs’ (above thresholds) under a framework agreement or dynamic purchasing system

Unless there are overriding reasons relating to the General Interest.

The court has discretion to make a Declaration of Ineffectiveness where:

* there has been a breach of the standstill/suspension obligations without another infringement [alternative penalties must be applied pursuant to Regulation 13(1)(a)] and
* notice was given to unsuccessful tenderers in the case of ‘call-offs’

Regulation 12 of the Irish Regulations provides for prospective (into the future) ineffectiveness. Therefore, where a contract is entered into following an illegal or non-compliant procurement process, the high court will have jurisdiction to declare that the contract in question is void as of the date of the order.

Where a court considers that there are overriding reasons for allowing a contract to continue the court may:

* impose ‘alternative remedies’ by way of monetary fine (up to lesser of 20% of the contract value or €1 million) or
* terminate the contract illegally awarded or
* shorten the duration of an illegally awarded contract

Regulation 9(1) of the Irish Regulations provides that the high court may:

* set aside, vary or affirm a decision to which the regulations apply
* declare a reviewable public contract ineffective
* impose alternative penalties on a contracting authority and make any necessary consequential order

**Damages will not constitute an alternative penalty.**

The Irish Regulations provide that the high court is the body charged with reviewing challenged decisions of contracting authorities.

The time limit for taking action for an Order of Ineffectiveness is 30 days from the date following the date of publication of the award notice or from the date of issuing the standstill notice.

There is a provision that, in all other cases, there is a six month limitation period from the day following the date of the conclusion of the contract.

Application [subject to any order of the court made under Regulation 10(2)] for review of a decision of a contracting authority under the Irish Regulations shall be made:

* within 30 calendar days after notification to the applicant of the decision or
* within 30 calendar days after the applicant knew or ought to have known of the alleged infringement.

\*\*This time limit is provided for at Regulation 5 in the Irish Regulations.

## Appendix E – Goods and Services Contract

# Wexford County Council

# SAMPLE GENERAL TERMS AND CONDITIONS FOR THE PURCHASE OF SUB-THRESHOLD SUPPLIES

**THIS AGREEMENT**, made the [Insert Date] day of [Insert Month] 201[Insert Year]

**BETWEEN:**

(i) Wexford County Council, of Carricklawn, Wexford, (hereinafter called “the Contracting Authority”) of the one part; and

(ii) [Insert Supplier Name] of [Insert Supplier Address] (hereinafter called “the Supplier”) of the other part

each “a Party” together “the Parties” (which expression shall include each of its successors in title and permitted assigns).

**WHEREAS:**

**IT IS HEREBY AGREED** that the Contracting Authority shall procure and the Supplier shall provide the Goods (as hereinafter defined) on the terms and conditions as hereinafter set forth.

The Supplier warrants that it is duly authorised and competent to satisfactorily provide the Goods (as hereinafter defined) on the terms and conditions as hereinafter set forth and to enter into and complete this Agreement.

# 1. DEFINITIONS AND INTERPRETATION

1.1 In these conditions:

“Agreement” means these terms and Conditions including the Specification and any Order given hereunder together with any, appendices, schedules and attachments referred to herein or attached hereto.

“Conditions” means these conditions of purchase set out in this Agreement and, unless the context otherwise requires, includes any other special terms and conditions agreed in writing between the Contracting Authority and the Supplier in the Tender or otherwise.

“Delivery Address” means the address/es stated as such on the Order or such other address as may be agreed in Writing.

“Delivery Date” means the date or dates stated on the Order as the date or dates upon which the Goods are to be delivered or completed by the Supplier or as otherwise agreed by the Parties.

“Goods” means the goods (including any instalment of the goods or any part of them) to be supplied (and, where appropriate, installed and commissioned) in accordance with this Agreement pursuant to Orders made hereunder.

“Invoice” means a written document from the Supplier to the Contracting Authority detailing the Goods sold and delivered to the Contracting Authority hereunder and requesting payment for such Goods.

“Incoterms” means the version of the international rules for the interpretation of trade terms of the International Chamber of Commerce as specified in the Order or if not so stated then the version which is in force at the date when the Agreement is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in this Agreement, but if there is any conflict between the provisions of Incoterms and the Agreement, the latter shall prevail.

“Order” means the Contracting Authority's purchase order to which these Conditions are annexed.

“Price” means the price of Goods as set out in the Order.

“Purchase Order” means the number stated as such on the Order and to be quote on the invoice.

“Purchasing Manager” means the Contracting Authority’s purchasing manager having his/her address at Carricklawn, Wexford or as otherwise advised in writing by the Contracting Authority to the Supplier from time to time.

“Special Conditions” means any special terms and conditions agreed in Writing between the Contracting Authority and the Supplier from time to time.

“Specifications” means the plans, drawings, specifications, data or other information relating to the Goods contained in the Order, or as otherwise advised and/or approved by the Contracting Authority, and either set out in the Schedule hereto or annexed to the Special Conditions or as otherwise agreed by the Parties in Writing from time to time.

“Writing” includes cable, e-mail, facsimile transmission and comparable means of communication.

1.2 Any reference in this Agreement to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, consolidated, replaced, re-enacted or extended at the relevant time.

1.3 The headings in this Agreement are for convenience only and shall not affect their interpretation.

1.4 Save where the express wording or the context otherwise requires, the definitions contained herein shall apply to any Special Conditions agreed between the Parties.

# 2. SUPPLIER’S STATUS AND COMPLIANCE

2.1 The Supplier acknowledges that its status under this Agreement is that of an independent Supplier [and further agrees that it is self-employed for all purposes and that it is in business on its own account]. Nothing in the Agreement shall constitute or shall be deemed to constitute a partnership between the Parties hereto or constitute or be deemed to constitute the Supplier as agent of the Contracting Authority for any purpose whatsoever.

2.2 The Supplier shall have no authority or power to bind the Contracting Authority or to contract in the name of or create a liability against the Contracting Authority in any way or for any purpose.

2.3 The Supplier warrants that it has complied with the requirements of the Revenue Commissioners in respect of its status as an independent Supplier.

2.4 The Supplier shall be in a position to produce, as appropriate, either a valid C2 Tax Certificate, a Tax Clearance Certificate or, in the case of Suppliers having their principal place of business outside Ireland, a statement from the Revenue Commissioners that it has satisfied them as to its suitability on tax grounds to be awarded the contract. Where a Tax Clearance Certificate expires within the course of the Contract, the Contracting Authority shall be entitled to seek and the Supplier shall provide a renewed certificate. All payments under the Contract will be conditional on the Supplier being in possession of a valid Tax Clearance Certificate at all times.

2.5 The Supplier will ensure that any persons it engages or employs to undertake the work and provide the Services on its behalf will be duly competent to do so and it further agrees that all such persons will be its servants, agents or employees. The Supplier further agrees to be responsible for making all lawful deductions in respect of income tax or PRSI or similar deductions from the wages of such persons as it may engage or employ from time to time and undertakes to transmit such deductions to the Revenue Commissioners or other relevant authorities.

2.6 The Supplier agrees to comply in all respects and at all times with the relevant statutory and legal requirements in and about the performance of this Agreement and will conform fully with the Contracting Authority’s general work practice arrangements and safety requirements as advised from time to time.

2.7 The Supplier shall comply with all requirements and/or obligations of any statute, statutory instrument, rule, order, regulation, directive and/or byelaws or other legislative measure in the fulfilment of this Agreement, in particular (but not limited to) in relation to the manufacture, packaging, packing, distribution, importation, pricing or sales of the Goods. In particular, but without limitation to the generality of the foregoing, any patented articles supplied hereunder shall be marked in accordance with the provisions of the Patents Act, 1992.

2.8 The Supplier shall be responsible for obtaining any import licences, permits or other consents necessary for the importation and delivery of Goods and shall produce evidence of same if requested to do so by the Contracting Authority.

2.9 The Supplier agrees on request to supply the Contracting Authority with any necessary declarations, certificates and other documents stating the origin of the Goods.

# 3. BASIS OF PURCHASE

3.1 The Order constitutes an offer by the Contracting Authority to purchase the Goods subject to these Conditions which shall apply to the exclusion of any other terms and conditions, expressed or implied by trade, custom, practice or course of dealing.

3.2 Acceptance by the Supplier of an Order, whether expressly or implied by delivery, shall result in a contract for the sale of the Goods which are the subject of such Order.

3.3 No terms or conditions endorsed upon, delivered with or contained in the Supplier’s quotation, acknowledgement or acceptance of Order, Specification, delivery docket, Invoice or similar document will form part of the Conditions and the Supplier waives any right which it otherwise might have to rely on such terms and conditions.

3.4 Subject to variation or cancellation permitted by Conditions 4.6, no variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of both Parties.

3.5 The Supplier shall not unreasonably refuse any request by the Contracting Authority to inspect and test the Goods during manufacture, processing or storage at the premises of the Supplier or any third party prior to despatch, and the Supplier shall provide the Contracting Authority with all facilities reasonably required for such inspection and testing.

3.6 If, as a result of inspection or testing, the Contracting Authority is not satisfied that the Goods will comply in all respects with the Agreement and the Contracting Authority so informs the Supplier within seven (7) days of inspection or testing, the Supplier shall take such steps as are necessary to ensure compliance.

3.7 The Goods shall be marked, packed and secured in accordance with the Contracting Authority’s instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition.

3.8 The Supplier shall supply, without charge, such reasonable quantity of operation and maintenance manuals in English relating to the Goods which the Contracting Authority may require and/or which are necessary for the proper installation, operation and maintenance of the Goods.

3.9 In selecting packaging, the Supplier shall take into consideration environmental concerns and shall use packing material of sufficient strength and quality to protect the Goods against all transport risks and shall be responsible for any damage to the Goods resulting from the inadequacy of such packaging in accordance with the indemnity provisions of this Agreement.

3.10 The Contracting Authority may (unless otherwise agreed in Writing) require the Supplier to dispose, at the Supplier’s cost, of all packaging materials. Failure by the Supplier to effect disposal within 14 days of the relevant delivery shall entitle the Contracting Authority to arrange disposal with another supplier and any money paid by the Contracting Authority in effecting disposal of packaging shall be paid by the Supplier to the Contracting Authority or set off against any monies owed to the Supplier pursuant to Clause 6.

3.11 Where this Contract is for the supply of equipment, it will, unless otherwise stated, also cover the delivery, installation and commissioning (to include any necessary start-up, calibration and testing) of the equipment, operator training and supply of manuals.

# 4. DELIVERY AND ACCEPTANCE

4.1 The Delivery Date, as stated on the Order, is binding upon the Supplier unless otherwise agreed to in writing by the Contracting Authority. Where the Contracting Authority has agreed that the Delivery Date is to be specified by the Supplier after the placing of an Order, the Supplier shall give the Contracting Authority reasonable notice of such Delivery Date and the Contracting Authority shall be entitled to cancel the relevant Order without penalty or other obligation at any time within seven (7) days following receipt of such notice.

4.2 The Goods shall be delivered to the Delivery Address by the Supplier on or by the relevant Delivery Date during the Contracting Authority's usual business hours and off-loaded by the Supplier unless the Contracting Authority requests otherwise.

4.3 No consignment of Materials shall be deemed to have been delivered unless a delivery note has been signed by a duly authorised representative of the Contracting Authority.

4.4 Time of delivery of Goods is of the essence of this Agreement.

4.5 The Supplier shall supply the Contracting Authority in good time with any instructions or other information required enabling the Contracting Authority to accept delivery of the Services and/or the Materials.

4.6 If a Delivery Date cannot be met by the Supplier, the Supplier shall promptly notify the Contracting Authority of the earliest possible date for delivery. Notwithstanding such notice, and unless a substitute delivery date for the Goods has been expressly agreed by the Contracting Authority in writing, the Supplier's failure to effect delivery of the Goods on the Delivery Date shall entitle the Contracting Authority, without prejudice to any other remedy it may have to:

4.6.1 deduct from the Price or (if the Contracting Authority has paid the Price) to claim from the Supplier by way of liquidated damages for delay 2 per cent of the price for every week's or part week's delay, up to a maximum of 15 per cent of the Price; and/or

4.6.2 cancel the Agreement in whole or in part, whereupon if requested by the Contracting Authority the Supplier shall refund any part of the Price which has been paid in respect of such Goods and the Contracting Authority shall, on receipt of the refund, at the Supplier's risk and expense, return any Materials already supplied under the Agreement; and/or

4.6.3 (where delivery is by instalments) cancel that instalment and (at the Contracting Authority's option) purchase substitute Goods elsewhere;

and in each case in paragraphs 4.6.1, 4.6.2 and 4.6.3 inclusive recover from the Supplier any costs and liabilities incurred by the Contracting Authority (including, without limitation, the costs of any replacement Goods).

4.7 A packing note quoting the number of the Order, the Supplier’s name and the Delivery Address must accompany each delivery or consignment of the Goods and must be displayed prominently.

4.8 The Contracting Authority shall be entitled to reject any Goods delivered which are not in accordance with the Agreement, and shall not be deemed to have accepted any Goods until:

(a) the Contracting Authority has had a reasonable time to inspect them following delivery of the Goods; and

(b) the Goods have passed any acceptance tests which the Contracting Authority deems appropriate, such tests to be carried out by the Contracting Authority within a reasonable period after the date of actual delivery of such Goods; or, if later,

(c) the lapse of a reasonable period after any latent defect in the Goods has become apparent.

In particular, the giving of a receipt or signature of a delivery note by the Contracting Authority, its servants or agents, on delivery to the Supplier, its servants or agents, shall be proof only of delivery notwithstanding the terms of any such receipt or delivery note. It is the Supplier’s responsibility to retrieve at no extra cost to the Contracting Authority any defective or damaged Goods within seven days of notification being issued. Any rejected articles not removed within the prescribed time may be re-consigned to the Supplier, who shall repay to the Contracting Authority any expense thereby incurred or occasioned.

4.9 The Supplier shall supply the Contracting Authority in good time with any instructions or other information required to enable the Contracting Authority to accept delivery of the Goods.

4.10 The Contracting Authority shall not be obliged to return to the Supplier any packaging or packing materials for the Goods, whether or not such Goods are accepted by the Contracting Authority.

4.11 Where access to the Contracting Authority’s premises is necessary in connection with delivery or installation of the Goods, the Supplier shall comply with all reasonable security and health and safety requirements of the Contracting Authority while on the Contracting Authority’s premises, and shall procure that all of its employees, agents, servants and sub-contractors shall likewise comply with such requirements.

# 5. SPECIFICATIONS

5.1 The quantity, quality and description of the Goods shall, subject as provided in these Conditions, shall be as specified in the Specifications.

5.2 Any Specifications supplied by the Contracting Authority to the Supplier in connection with this Agreement, or any Specifications specifically produced or used or modified or amended by the Supplier in connection with the Agreement shall be and remain the exclusive property of the Contracting Authority. Furthermore, any and all copyright, design rights or any other intellectual property rights in the Specifications shall at all times be and remain the exclusive property of the Contracting Authority.

5.3 The Supplier shall not disclose to any third party any such Specifications except to the extent that it is or becomes public knowledge through no fault of the Supplier or such disclosure is required under law. Furthermore, the Supplier shall not use any such Specifications (or any modifications or amendments thereof) other than as required for the purpose of this Agreement.

# 6. PRICE AND PAYMENT

6.1 The Price of Goods shall be as stated on the Order [and must be in accordance with Incoterms] and subject to no variation or extra charges except with the prior written consent of the Contracting Authority.

6.2 Unless otherwise stated in the applicable Incoterms and/or specifically agreed by the Contracting Authority in writing, the Price shall be:

6.2.1 exclusive of any applicable VAT (which shall be payable by the Contracting Authority subject to receipt of a VAT invoice);

6.2.2 inclusive of all charges for packaging, packing, loading, unloading, shipping, carriage, insurance and delivery of the Goods to the Delivery Address and any duties, taxes or levies other than VAT; and

6.2.3 Payable in Euro; and

6.2.4 inclusive of all royalties, licence fees or similar expenses in respect of the making, use or exercise by the Supplier of any work, invention or design for the purpose of performing its obligations under this Agreement, and

6.2.5 No less favourable than the price at which the Supplier supplies the same Goods to other purchasers in Ireland.

6.3 The Contracting Authority shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Supplier, whether or not shown on its own terms and conditions of sale or set out in the Special Conditions or any Order.

6.4 The Price of the Goods shall be fixed for the first year of the Agreement and not subject to review but may be reviewed in each successive year for the duration of the Agreement. The Price of the Goods for each successive year shall be agreed by the Contracting Authority and the Supplier and recorded in Writing. In the event of a failure to agree a new price for the Goods, the existing Price shall be deemed to be the Price of the Goods as increased by the percentage rate of inflation in the previous twelve months, as calculated by the consumer price index (“CPI”) published by the Consumer Association of Ireland, provided that either party shall thereafter be entitled to terminate the Contract on three months’ prior written notice.

6.5 In the event that the cost to the Supplier of any raw materials used by the Supplier in the manufacture of the Goods should increase at an annual rate materially in excess of the applicable CPI over any twelve-month period, at the request of the Supplier the parties will review the Price of the relevant Goods. In the event of a failure to agree on a new Price for the relevant Goods, the existing Price of such Goods will remain unchanged provided that the Supplier in such circumstances shall have the right upon three months’ prior written notice to terminate the supply of such Goods to the Contracting Authority and the Contracting Authority shall thereupon have no obligation to purchase or pay for such Goods, but the Contract shall otherwise remain in full force and effect.

6.6 Subject as hereinafter provided, the Supplier shall be entitled to invoice the Contracting Authority on or at any time after delivery of the Goods and all invoices must be sent to the address specified on the Order. Where a Supplier has not accompanied its invoice with an appropriate delivery note and there is difficulty in establishing proof of delivery, the Supplier shall supply the Contracting Authority with the relevant delivery note signed by a duly authorised representative of the Contracting Authority, immediately upon request. The relevant invoice will be held “in dispute” until proof of delivery is established.

6.7 Each Invoice shall quote the Contracting Authority’s product codes (as stated on the relevant Order) together with the applicable Price rate for each code, the Price as stated on the Order and the Delivery Address. VAT shall be itemised separately on each Invoice. All Invoices shall include the Supplier’s VAT Registration Number. A separate Invoice must be rendered for each individual delivery of Goods, unless otherwise agreed in Writing between the parties. In the event that the Supplier makes a partial delivery of Goods the Supplier shall not be entitled to invoice for such partial delivery until all outstanding Goods have been delivered, unless the Contracting Authority has consented to such partial delivery.

6.8 Unless otherwise stated in the Order, the Contracting Authority shall pay for the Goods within 30 business days after receipt by the Contracting Authority of a proper invoice or, if later, after acceptance of the Goods by the Contracting Authority.

6.9 The Contracting Authority shall be entitled at its sole discretion to set off against the Price or any retention in respect thereof any sums owed to the Contracting Authority by the Supplier.

6.10 The Contracting Authority shall be entitled to retain such percentage part of the Price (if any) as is specified in the Order as retention monies against any defects or delays in the Goods being supplied.

6.11 Where no price is stipulated on the Order, the Order must not be filled at higher prices than those last charged or quoted by the Supplier to the Contracting Authority without the prior consent of the Contracting Authority in writing.

6.12 If the Supplier does not receive payment in accordance with this Condition 6, the Supplier shall be entitled, upon making a written claim to the Contracting Authority during or within a reasonable period after the end of the delay in payment to receive financing charges compounded monthly on the amount unpaid during the period of the delay. This period shall be deemed to commence on the date for payment specified in Sub-Condition 6.5. The financing charges referred to herein shall be calculated at the annual rate of interest applicable for late payment (“late payment interest”) which shall be the rate applied by the European Central Bank published in the Official Journal of the European Communities at the due date plus one (1) percentage point and shall be payable in Euro. Accordingly, to the extent that they are otherwise agreed and specified in this Condition 6 each of the provisions of the European Communities (Late Payment in Commercial Transactions) Regulations 2002 which imply certain terms into a contract unless they are otherwise agreed or specified, shall not apply to the Contract.

6.13 The Contracting Authority shall be entitled to deduct or withhold from the Price before payment thereof, any taxes or other charges which it is obliged to deduct or otherwise withhold in accordance with the applicable laws and to pay any such deductions or withholdings to the relevant authority. It shall be the sole responsibility and liability of the Supplier to apply to the relevant authority for or to seek any applicable refunds or rebates in respect thereof. Any currency conversion costs and/or other currency risks on any amounts deducted or set off under these Conditions shall be borne by the Supplier.

6.14 All costs (legal or otherwise) borne by the Supplier in connection with the preparation of the Tender or in connection with this Agreement shall be borne by the Supplier and not the Contracting Authority.

6.15 The Supplier shall provide the Contracting Authority within thirty (30) days of each anniversary of the date of this Contract and within thirty (30) days of termination of this Contract with a statement giving accurate and complete details of the amount and value of the Goods sold by the Supplier to the Contracting Authority under this Contract during the year ending on the date of such anniversary or, in the event of termination of this Contract, during the period from the date of this Contract or the date of the last such statement submitted by the Supplier to the Contracting Authority (as appropriate) to the date of termination of this Contract.

6.16 The Supplier shall keep at its normal place of business detailed, accurate and up to date records of the amount and value of all Goods sold by it to the Contracting Authority hereunder. The Contracting Authority shall be entitled on reasonable notice to enter the Supplier’s premises during normal office hours and to inspect such records in order to verify whether any statement supplied by the Supplier to the Contracting Authority pursuant to Clause 5.8 above is accurate and complete.

6.17 On request from the Contracting Authority, the Supplier shall, at its own expense, ensure that its external auditors provide the Contracting Authority with an annual audit certificate as soon as reasonably practicable after the end of the Supplier’s financial year. In the annual audit certificate the auditors shall confirm that any statement supplied by the Supplier to the Contracting Authority, pursuant to Clauses 6.15 or 6.16 above, during that financial year is complete and accurate.

# 7. RISK AND PROPERTY

7.1 Title in the Goods shall pass to the Contracting Authority on delivery to and acceptance by the Contracting Authority unless payment is made prior to delivery, in which event title shall pass to the Contracting Authority once payment has been made. Where title in the Goods has passed to the Contracting Authority prior to delivery pursuant to this clause the Supplier shall keep such Goods separate from other Goods and shall clearly mark the Goods as the property of the Contracting Authority.

7.2 Nothing in this Contract shall be deemed to give the Supplier any right, title, licence, trade name, trade mark, patent, packaging design, intellectual property right or other interest of the Contracting Authority. The Supplier agrees that all the foregoing are and shall remain the exclusive property of the Contracting Authority unless otherwise agreed in Writing between the parties.

7.3 Notwithstanding the provisions of Clause 7.1 above, risk of damage to or loss of the Goods shall, unless, otherwise agreed between the parties, remain with the Supplier until delivery, acceptance and commissioning of the Goods to the Contracting Authority in accordance with the provisions of this Contract and, in particular, Clause 6 hereof.

# 8. WARRANTIES

8.1 The Supplier warrants to the Contracting Authority and it is a condition of the Agreement that the Goods:-

8.1.1 will be of merchantable quality and fit for any purpose held out by the Supplier or made known to the Supplier by the Contracting Authority in writing at any time up to and including the time the Order is placed and for use by the Contracting Authority in the ordinary course of its business;

8.1.2 will be free from defects;

8.1.3 will correspond in all respects with the Order, Specifications and/or any sample supplied or advised to the Contracting Authority; and

8.1.4 will comply with all statutory requirements and regulations relating to the provision of the Goods.

8.2 Without prejudice to any other remedy, if any Goods are not supplied in accordance with the Contract, then the Contracting Authority shall be entitled:

(a) to require the Supplier to repair the Goods or to supply replacement goods of a type and specification approved in Writing by the Contracting Authority and to reimburse the Contracting Authority in respect of all losses incurred in recovering and returning such Goods in accordance with the Contract within fourteen (14) working days unless otherwise specified; or

(b) at the Contracting Authority’s sole option, and whether or not the Contracting Authority has previously required the Supplier to repair the Goods or to supply any replacement goods, to treat the Contract as discharged by the Supplier’s breach and require the repayment of any part of the Price which has been paid.

8.3 The Supplier shall comply with all applicable regulations or other legal requirements concerning waste management, manufacture, labelling, packaging, packing and delivery of Goods according to tender as may be amended by the Parties in writing [by the Service Level Agreement] or otherwise.

8.4 The warranties and remedies provided for in this Condition 8 and Conditions 4.6, and Condition 14 shall be in addition to those implied by or available at law or in equity and shall continue in force notwithstanding acceptance by the Contracting Authority of all or part of the Goods in respect of which such warranties and remedies are available.

8.5 Without prejudice to the generality of Clause [15.1], the Supplier shall indemnify the Contracting Authority in full against all liability, including, without limitation, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the Contracting Authority as a result of or in connection with:

(a) breach of any warranty given by the Supplier in relation to the Goods;

(b) any claim that the Goods infringe or that their importation, use or re-sale, infringes the patent, copyright, design, right, trade mark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any Specification supplied by the Contracting Authority;

(c) any liability under the Liability for Defective Products Act, 1991 in respect of the Goods; and

(d) any act or omission of the Supplier or its employees, agents or sub-contractors in supplying, delivering and installing the Goods.

8.6 The Supplier shall make good all damage that may be caused by an act or default of the Supplier, the Supplier’s agents or servants, to any property of the Contracting Authority. The Contracting Authority shall retain the option to have the damage otherwise made good and to charge the Supplier with the expense.

# 9. NOTICES

9.1 Any notice or other communication whether required or permitted to be given by one Party hereto to the other shall be in writing and shall be deemed to have been duly given if signed by or on behalf of a duly authorised officer of the party giving the notice and:-

9.1.1 if delivered, at the time of delivery to the addressee or its duly authorised agent;

9.1.2 if sent by pre-paid post, four days after posting if addressed to the party to whom such notice is to be given at the address set forth for such party in this Agreement (or such other address as is from time to time notified to the other Party hereto);

9.1.3 if transmitted by facsimile, on a receipt of an error free transmission report to such facsimile number or numbers from time to time notified to the other Party; and

9.1.4 if transmitted electronically on receipt of a “read receipt” or equivalent.

9.2 All notices to the Contracting Authority under the Contract shall be in writing and sent to the Contracting Authority’s buying entity specified on the Order.

9.3 All notices to the Supplier under the Contract shall be in writing and sent to the address specified on the Order.

# 10. VALIDITY

10.1 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

# 11. TUPE

11.1 In the event that the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (the “TUPE Regulations”) apply in relation to or in connection with this Agreement, the Supplier shall indemnify the Contracting Authority fully (without limitation) in respect of any losses, damages, costs or expenses of any kind incurred arising from its compliance with the TUPE Regulations.

11.2 The Supplier shall be responsible for satisfying itself as to the applicability of the TUPE Regulations and shall bear all costs and expenses associated with same.

# 12. FORCE MAJEURE

12.1 Neither the Contracting Authority nor the Supplier shall be liable to the other or be deemed to be in breach of this Agreement by reason of any delay in performing, or any failure to perform, any of its obligations under this Agreement if the delay or failure was beyond that Party's reasonable control including in such cases but not by way of limitation of any law, order, regulation, directive or request of any Government or legal authority; war or threat of war, insurrection, national emergency, riots, acts of public enemies, fire, floods, or other catastrophe, strikes, lock-outs or any industrial disputes of the Contracting Authority or any similar cause beyond the control of the Party (hereinafter referred to as a “Force Majeure Event”).

12.2 Upon the happening of any Force Majeure Event, the Party who is in breach as a result of the circumstances outlined in Condition 12.1 above shall give notice thereof in writing to the other as soon as reasonably practicable and shall nevertheless constantly use all reasonable endeavours to prevent any delay in completion of the Agreement.

12.3 On the occurrence of Force Majeure Event, both Parties shall allow a fair and reasonable extension of the time for completion of this Agreement.

12.4 If the Force Majeure Event continues for 30 days then either Party may terminate at 14 days written notice.

# 13. PAY AND CONDITIONS

13.1 The Supplier shall ensure that the terms and conditions of employment in respect of work persons employed by, or otherwise working for, the Supplier in the performance of this Agreement [including in relation to pension contributions] comply with terms of the Employment Regulation Order applicable [to the relevant sector] registered under the Industrial Relations Acts 1946 to 2004. The Supplier shall ensure that the rates of pay and conditions are no less favourable than those for the relevant category of work person set out in the Employment Regulation Order.

13.2 To monitor compliance with 13.1 above, the Contracting Authority shall be entitled to make random checks requiring production of records if necessary. If the Contracting Authority so requests, the Supplier shall within 5 working days after the receipt of the request, give to the Contracting Authority a statement showing the amount of wages and other payments due at the date of the request to and in respect of each working person, or, in respect of work persons not employed by or otherwise working for the Supplier, ensure that their employer or the person for whom they are working does the same.

13.3 If the Supplier has not complied with 13.1 above, the Contracting Authority shall [without limiting its other rights or remedies] be entitled to estimate the amount that should have been paid to work persons and contributions that should have been made on their behalf, and the Contracting Authority may deduct the estimated amount from any payment due to the Supplier, until the Contracting Authority is satisfied that all proper amounts have been paid.

# 14. SAFETY AND INSURANCE

14.1 The Supplier shall in so far as same apply to the sale, delivery and performance of Goods:-

(a) comply and ensure that each of its employees, sub-contractors, agents or representatives complies with all Irish safety and equality legislation including, without limitation, The Safety, Health & Welfare at Work Act, 2005, The Safety, Health & Welfare at Work (Construction) Regulations, 2007 and 2013 (the “Regulations”), The Safety, Health & Welfare at Work (General Application) Regulations 2007, The Safety, Health and Welfare at Work (General Application) (Amendment) Regulations 2012, The Employment Equality Act 1998 and the Equal Status Act 2000 as may be amended from time to time and any subordinate legislation made thereunder together with the most recent versions of the following safety requirements (as applicable):-

(b) at the Contracting Authority’s request, provide to the Contracting Authority with two copies of:-

(i) the Safety Statement as defined in and pursuant to Section 20, Part 3 of the Safety, Health & Welfare at Work Act, 2005 and

(ii) the developed Safety Plan as defined in the Regulations.

(c) provide or procure the provision of all necessary documents for inclusion in the Safety File as defined in the Regulations to be furnished to the Employer and/or Contracting Authority on and as a condition to the achievement of taking over; and

(d) indemnify and hold harmless the Contracting Authority in the event of any claims, losses, costs, damages, expenses, fines and/or penalties arising from the failure by the Supplier, its employees, sub-Suppliers, agents or representatives to comply with the provisions of this sub-condition.

14.2 The Supplier shall at all times insure and keep itself insured with a reputable insurance company against all insurable liability set out in the Order in respect of the Goods, and without prejudice to the generality of the foregoing, against all the Supplier's liabilities under Condition 15.

14.3 The Supplier shall provide the Contracting Authority with proof of its insurance cover no later than the time stated in a written request to supply same from the Contracting Authority. The Supplier agrees to provide and maintain for the duration of this Agreement all appropriate policies of insurance in respect of public and employers liability that may be stipulated by the Contracting Authority and the Supplier will furnish such insurance policies to the Contracting Authority prior to the commencement of this Agreement and will provide the Contracting Authority with copies thereof on request at any time.

14.4 The Supplier shall provide all facilities, assistance and advice required by the Contracting Authority or the Contracting Authority's insurers for the purpose of contesting or dealing with any action, claim or matter arising out of or in connection with the Supplier's performance of this Agreement.

14.5 The Supplier shall be responsible for compliance with the safety and insurance obligations set out in this Condition 14 without reliance on the Contracting Authority.

# [Insert Insurance Requirements – if necessary consult with IPB Insurances Ltd]

# 15. INDEMNITIES AND LIABILITY

15.1 The Contracting Authority is relying wholly and exclusively upon the Supplier’s skill, judgement and expertise in supplying the Goods and accordingly the Supplier shall be liable to the Contracting Authority for any loss or damage whatsoever, or howsoever or wherever caused arising directly or indirectly in connection with this Agreement save to the extent that such loss or damage arises as a direct result of the negligence or default of the Contracting Authority. Any approval, testing or acceptance by the Contracting Authority in accordance with this Agreement shall not in any way limit the Supplier’s liability and obligations under this Agreement.

15.2 The Supplier agrees to indemnify the Contracting Authority against any acts or omissions or breaches of this Agreement (and whether negligent or otherwise) on its part or on the part of any of its servants or agents or employees which may result in any loss, injury, damage or expense whatsoever either to itself or to such servants or agents or employees or to members of the public including the employees, agents and servants of the Contracting Authority, and agrees to indemnify the Contracting Authority in respect of any claim by its servants or agents or employees or members of the public including the employees, agents and servants of the Contracting Authority for compensation in respect of any accident arising in the course of the performance of this Agreement howsoever caused save where the accident is caused by the negligence or breach of contract and or duty of the Contracting Authority, its servants and or agents.

# [Insert Indemnity Requirements – if necessary consult with IPB Insurances Ltd]

# 16. COMMENCEMENT AND TERMINATION

16.1 The Parties agree that this Agreement shall commence on the date set out in the Order.

16.2 The Parties agree that this Agreement shall terminate forthwith in the following circumstances unless otherwise stated:

16.2.1 on the date set out in the Order;

16.2.2 the Supplier makes any voluntary arrangement with its creditors or becomes insolvent or bankrupt or goes into liquidation; or

16.2.3 an encumbrancer takes possession of, or a receiver is appointed to, the Supplier or any of its property or assets; or

16.2.4 the Supplier ceases, or threatens to cease, to carry on business; or

16.2.5 the Supplier commits a material breach of any term or condition of this Agreement or fails to perform any obligation, responsibility hereunder and if such breach is capable of being remedied fails to remedy the breach within thirty (30) days of notice given by the Contracting Authority requiring the Supplier to do so; or

16.2.6 the Supplier is unable to pay its debts within the meaning of Section 214 of the Companies Act, 1963 or any analogous provision of law; or

16.2.7 an order is made or an effective resolution is passed for the winding up of the Supplier other than for the purpose of an amalgamation or reconstruction the terms of which have been agreed by the Contracting Authority, or

16.2.8 a petition is presented or an order is made or a resolution passed or any analogous proceedings or action is taken for the appointment of an examiner, administrator, administrative receiver, trustee or any similar officer over the Supplier or any part of its assets; or

16.2.9 at any time before delivery of the Goods on [30 days’ notice] from the Contracting Authority.

16.3 In the event that this Agreement is terminated by the Contracting Authority in accordance with Clause 16.2.9, the Contracting Authority shall pay the Supplier the portion of the Price for any Services and /or Materials delivered up to the date of termination of the Agreement and for its reasonable and vouched costs incurred in connection with the Agreement up to the date of termination of this Agreement.

# 17. ASSIGNMENT

17.1 This Agreement is personal to the Supplier who shall not assign, charge or transfer any right or obligation under this Agreement to any other person without the Contracting Authority’s written consent. The Contracting Authority is entitled to assign and transfer all or part of its rights and obligations under this Agreement and shall provide the Supplier with written notice of any such assignment or transfer.

# 18. SUB-CONTRACTING

18.1 The Supplier shall not delegate, sub-contract or transfer the performance of the whole of this Agreement to any other person without the written consent of the Contracting Authority, and shall ensure that any permitted subcontractor shall not delegate, sub-contract or transfer the performance of the whole of its obligations, without the consent of the Contracting Authority.

18.2 The Supplier shall not be relieved or excused of responsibility or liability under this Agreement nor shall performance of its obligations be affected by the appointment of any sub-Supplier or any other delegation of its duties under this Agreement.

18.3 Unless the Parties otherwise agree, the Supplier shall be responsible for the acts, omissions and neglect of the sub-Supplier whether employed directly or indirectly by it, and the agents or employees of any of them as fully as if they were the acts, omissions or neglect of the Supplier, its agents or employees.

# 19. CONFIDENTIALITY

19.1 Save as provided for in Sub Condition 19.2, the Supplier shall treat the details of this Agreement and any information made available in relation thereto and all information concerning the Agreement as private and confidential and shall not publish or disclose details of same or any particulars thereof (save insofar as may be necessary for the purposes of the Agreement) without the previous written consent of the other Party.

19.2 The undertaking in Sub Condition 19.1 does not apply to confidential information which (i) comes into the public domain through no fault of the Supplier; (ii) was lawfully in the possession of the Supplier prior to the disclosure by the Contracting Authority; (iii) at any time is required by an applicable law or an applicable regulatory authority to be disclosed; or (iv) at any time after the Agreement commences comes lawfully into the Supplier’s possession from a third party.

19.3 The provisions of this Condition shall survive two years following the termination of the Agreement.

19.4 The Supplier shall comply fully with the Data Protection Acts, 1988 and 2003 and the requirements of the General Data Protection Regulations (GDPR).

19.5 The Supplier shall not advertise or publicly announce that it is supplying the Services to the Contracting Authority without the prior written consent of the Contracting Authority, such consent not to be unreasonably withheld.

19.6 The Contracting Authority shall endeavour to hold confidential any information relating to the Supplier, its business and operations which is not already in the public domain, subject to the Contracting Authority’s obligations under law, including the Freedom of Information Acts 1997 and 2003 (“The FOI Acts”) and the European Communities (Access to Information on the Environment)Regulations 2007 and 2011 (“AIE Regulations”), and to the remaining provisions of this Clause 18.6. In the event that the Supplier considers that any information supplied by it should not be disclosed by the Contracting Authority because of its sensitivity, the Supplier shall, when providing such information, identify the same and specify the reasons for its sensitivity. In the absence of such identified sensitivity, the Contracting Authority may release such information, in the exercise of its lawful discretion, pursuant to its obligations under law, including in response to a request made under the FOI Acts or the AIE Regulations. The Contracting Authority accepts no liability whatsoever in respect of any information provided by the Supplier which is subsequently released or in respect of any loss or damage suffered as a result of the Contracting Authority’s complying with its obligations under law, including the FOI Acts and the AIE Regulations.

# 20. WAIVER

20.1 A failure by either Party to exercise any right or remedy arising out of this Agreement shall not constitute a waiver of the right or remedy. No waiver shall be effective unless written notice of the waiver is given to the other Party. A waiver of any right or remedy shall not constitute a waiver of any other right or remedy arising out of this Agreement.

# 21. SEVERANCE

21.1 If at any time any one or more of the provisions in this Agreement is or becomes invalid, illegal or otherwise unenforceable in any respect under any law or regulation, the validity, legality and enforceability of the remaining provisions of this Agreement shall not be in any way affected or impaired.

# 22. DISPUTE RESOLUTION

22.1 Any dispute or difference arising out of or in connection with this Agreement shall be referred in the first instance to a Conciliator to be agreed between the Parties, or failing such agreement within fourteen days after either Party has given to the other a written request to concur in the appointment of a Conciliator, to be appointed on the request of either Party by the Chairman of the time being of the Chartered Institute of Arbitrators (Irish Branch) or failing his or her availability the Vice Chairman of the Institute.

22.2 In the event that the matter cannot be resolved by conciliation it shall be referred to a single Arbitrator to be agreed between the Parties, or failing such agreement within fourteen days after either Party has given to the other a written request to concur in the appointment of an Arbitrator, to be appointed on the request of either Party by the Chairman of the time being of the Chartered Institute of Arbitrators (Irish Branch) or failing his or her availability the Vice Chairman of the Institute.

22.3 The decision of the Arbitrator appointed under this Condition 21 shall be final and binding on the Parties.

22.4 Such arbitration shall be governed by the Arbitration Acts 2010 or any statutory variation, modification or re-enactment thereof for the time being in force.

22.5 For the avoidance of doubt, the performance of this Agreement shall not stop by reason of such dispute-resolution proceedings unless termination is directed by the Conciliator or Arbitrator

# 23. LAW AND JURISDICTION

23.1 This Agreement shall be governed by, and construed in accordance with the Law of Ireland and the Courts of Ireland shall have exclusive jurisdiction.

# 24 ENTIRE AGREEMENT

24.1 Unless it is otherwise specifically stated in or on the Order, this Agreement supersedes any arrangements, understandings, promises or agreements made or existing between the Parties thereto prior to or simultaneously with the Agreement and constitutes the entire agreement between the Parties thereto.

24.2 Except as otherwise provided herein, no addition, amendment to or modification of this Agreement shall be effective unless it is made in writing and signed by and on behalf of both Parties.

# Execution Page

**SIGNED** for and on behalf of the **SIGNED** for and on behalf of the Purchaser Supplier

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# PRESENT when the Corporate Seal of PRESENT when the Common seal of

# [Insert Name of Contracting [Insert Name of Supplier]

# Authority]

# was affixed hereto:- was affixed hereto:-

## Appendices F – Other legislative considerations

### Disability Act 2005

Part 3 of the Disability Act 2005 places significant responsibilities on public bodies to make their services accessible to people with disabilities. The overall objective is that each local authority will ensure that, as far as practicable, any new service or built facilities provided by it after the commencement of the act is/are accessible to persons with disabilities. Under Section 27 of the act each public body is required to ensure that both the goods supplied and services provided to it are accessible to persons with disabilities, **unless** it would not be practicable or justifiable on cost grounds or would cause an unreasonable delay in making the goods or services available. This will relate to a wide range of goods and services including equipment, materials, information technology, etc.

Section 27 of the Disability Act 2005 came into operation on 31 December 2005 and all procurement exercises on behalf of Wexford County Council must have regard to the legal obligations under the terms of this legislation.

### Safety, Health and Welfare at Work Act 2005

Section 8 of the Safety, Health and Welfare at Work Act 2005 requires every employer to ensure, so far as is reasonably practicable, the safety, health and welfare at work of all of their employees. The obligations, among other things, cover:

* ensuring safety and prevention of risk from the use of any substances or articles
* providing safe systems of work
* provision of adequate instruction, training and supervision and any necessary information, the design, provision and maintenance of:
  + safe workplaces
  + safe means of access to and egress from the workplace
  + safe plant and machinery
* obtaining, where necessary, the services of a competent person to assist in ensuring the safety, health and welfare of their employees

All staff involved in public procurement exercises (quotations, annual tenders and tenders for specific items/projects) shall take notice of the relevant health and safety requirements throughout the entire procurement process.

### Data protection

Data protection is the means by which the privacy rights of individuals are safeguarded in relation to the processing of their personal data.

The General Data Protection Regulation (GDPR) came into force on the 25th May 2018. It has general application to the processing of personal data in the EU, setting out extensive obligations on data controllers and processors, and providing strengthened protections for data subjects. Although the GDPR is directly applicable as a law in all Member States, it allows for certain issues to be given further effect in national law. In Ireland, the national law, which, amongst other things, gives further effect to the GDPR, is the Data Protection Act 2018.

The Data Protection Acts 1988 - 2018 confer rights on individuals as well as placing responsibilities on those persons processing personal data. All staff involved in the procurement process should have regard to data protection requirements, where applicable. Further details on data protection can be accessed at [www.dataprotection.ie](http://www.dataprotection.ie)

### Equal status

The Equal Status Acts 2000 to 2008 promote equality of opportunity and prohibit discrimination in the provision of goods and services, accommodation and educational establishments in terms of age, disability, family status, gender, marital status, membership of the Traveller community, race (including nationality), religion and sexual orientation.

The Equal Status Acts apply to people who:

* buy and sell a wide variety of goods
* use or provide a wide range of services
* obtain or dispose of accommodation
* attend or are in charge of educational establishments.

Discrimination is particularly prohibited in relation to the area of advertising and publicity materials. )

Details on the Equal Status Acts 2000 to 2008 including exemptions are available in an information booklet on the acts published by the Equality Authority ([www.equality.ie](http://www.equality.ie)).

### Waste Electrical and Electronic Equipment (WEEE) Regulations and Procurement of Electrical and Electronic Equipment (EEE)

Obligations under the Waste Management (Waste Electrical and Electronic Equipment) Regulations 2005 came into force in August 2005. The regulations require government departments, state bodies and local authorities to ensure that they source from registered suppliers only.

It is suggested that all requests for tender for the supply of EEE should include a requirement for compliance with the WEEE Regulations as a pre­requisite for submission of a tender application.

**National Disability Inclusion Strategy 2017-2021 Goods Services or Works Section**

**Action 27**

## We will ensure that public procurement of buildings, facilities, goods and services complies with the accessibility requirements of planning regulations including the relevant legislation in relation to the Planning Code and relevant EU Law and the EU Web Directive 2016.

## We will ensure that commissioning or other funding of public services also comply with these accessibility requirements.