

**Sheffield City Council**  
**Standard Terms and Conditions - Supply of**  
**Goods, Works and/or Services**

**1 Definitions**

**"Best Industry Practice"** the standards, practices, methods and procedures, and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking to that of the Supplier under the same or similar circumstances;

**"Commercially Sensitive Information"** means the information comprising the information of a commercially sensitive nature relating to the pricing of the Goods, Works or Services, the Supplier's intellectual property rights or the Supplier's business operations which the Supplier has indicated to the Council that, if disclosed by the Council, would cause the Supplier significant commercial disadvantage or material financial loss;

**"Confidential Information"** means all confidential information (however recorded or preserved) disclosed by a party to the other party in connection with the Contract, including but not limited to:

- a) any information that would be regarded as confidential by a reasonable person relating to: i) the business affairs, customers, suppliers or plans of the disclosing party; and ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;
- b) any information developed by the parties in the course of carrying out the Contract;
- c) any Commercially Sensitive Information;

**"Contract"** means the agreement between the Council and the Supplier for the supply of Goods, Works and/or Services incorporating these Terms and Conditions (including any Contract Schedule/s if applicable) together with (if issued by the Council) the Instructions for Tendering, Form of Tender, Price Schedule and Specification and any other documents stated in the Contract Schedule and the Council's Purchase Order or letter of acceptance;

**"Contract Schedule/s"** means, if issued by the Council, details of particular goods, works or services to be delivered where applicable;

**"Council"** means Sheffield City Council;

**"Data Protection Legislation"** all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party;

**"Delivery Address"** means the address stated on the Purchase Order or if not stated, any of the Council offices as instructed by the Council at any time during the term of the Contract;

**"Form of Tender"** means, where applicable, the tender submitted by the Supplier in response to the Instructions for Tendering;

**"Goods" "Works" or "Services"** means the goods, works or services to be delivered by or on behalf of the Supplier under the Contract, as more particularly described, if applicable, in the Contract Schedule/s;

**"Instructions for Tendering"** means, where applicable, the Council's invitation and instructions to tender as part of a request for bids process;

**"IPR"** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**"Law"** means the laws of England and Wales and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Goods, Works or Services or with which the Supplier is bound to comply;

**"Party/Parties"** means individually or collectively as applicable either the Council and/or the Supplier;

**"Pre-existing IPR"** means any IPR (embedded in any work or materials arising from the provision of the Goods, Works or Services supplied under the Contract) vested in or licensed to the Supplier by the third-party

owner of any IPR prior to or independently of performance by the Supplier of its obligations under the Contract;  
"Price" the charges which shall become due and payable by the Council to the Supplier in respect of the Goods, Works or Services in accordance with the provisions of the Contract, or as such charges as set out in the Contract Schedule/s;

"Price Schedule" means, where applicable, the price for the Goods, Works and/or Services as submitted by the Supplier and agreed by the Council;

**Prohibited Act:** the following constitute Prohibited Acts:

- a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage as an inducement or reward for any improper performance of a relevant function or activity;
- b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;
- c) committing any offence: i) under the Bribery Act 2010; ii) under Law concerning fraudulent acts; or iii) of defrauding, attempting to defraud or conspiring to defraud the Council;
- d) any activity, practice or conduct which would constitute one of the offences listed under (c) above, if such activity, practice or conduct had been carried out in the UK;

"Purchase Order" means the Council's purchase order issued in relation to the Goods, Works or Services;

"Special Conditions" means additional conditions that may be incorporated into the Contract by way of Contract Schedule/s;

"Specification" means the Council's requirements in relation to the Goods, Works or Services including any plans, drawings, data or other information as set out in the Contract Schedule/s where issued;

"Staff" all employees, staff, other workers, agents and consultants of the Supplier and of any sub-contractors who are engaged in the provision of the Goods, Works or Services from time to time;

"Supplier" means the person or entity supplying the Goods, Works and/or Services;

"Terms and Conditions" means the standard terms and conditions of purchase set out in this document, and including any applicable Special Conditions;

"UK GDPR" has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

## 2 Basis of Purchase

- 2.1 On issue of a Purchase Order by the Council further to a request for Goods, Works or Services to be provided by the Supplier, these Terms and Conditions shall automatically apply and shall be binding on the Supplier, unless the Supplier has been notified of and issued with other terms and conditions of the Council, or the Council has agreed in writing to alternative terms and conditions.
- 2.2 Subject to clause 2.1 above, the Supplier's terms and conditions, whether referenced, attached, or implied in any quotation, delivery or correspondence, are expressly excluded and shall have no effect. Only the terms and conditions expressly set forth in these Terms and Conditions shall govern the relationship between the parties.
- 2.3 The Contract comprises of the following:
  - (i) the Terms and Conditions;
  - (ii) any Special Conditions set out in a Contract Schedule;
  - (iii) Instructions for Tendering
  - (iv) Specification
  - (v) Form of Tender
  - (vi) Price Schedule
  - (vii) the Contract Schedule/s;
- 2.4 If there is any conflict or ambiguity between the terms of the above, they are to have the following order of priority:
  - (i) the Terms and Conditions;
  - (ii) any Special Conditions set out in a Contract Schedule;

- (iii) the Instructions for Tendering;
- (iv) the Specification;
- (v) Form of Tender;
- (vi) Price Schedule.
- (vii) the Contract Schedule/s;

### **3 Supply of Goods / Services**

- 3.1 The Supplier shall comply with all applicable Law concerning the manufacture, packaging, and delivery of the Goods and/or performance of the Works or Services.
- 3.2 Any Goods supplied by the Supplier that do not correspond with: i) the Council's Specification or ii) the provisions of this Contract or iii) applicable Law, may be returned by the Council to the Supplier at the Supplier's expense.
- 3.3 In providing the Works or Services, the Supplier shall at all times, perform the Works or Services with the highest level of care, skill and diligence and in accordance with Best Industry Practice.
- 3.4 The Supplier and its Staff shall only undertake processing of Personal Data (as defined under the Data Protection Legislation) if instructed by the Council to act as "Data Processor" within the meaning of the Data Protection Legislation as part of the performance of the Supplier's obligations under the Contract. As Data Processor, the Supplier shall perform its obligations in accordance with Data Protection Legislation. The Supplier shall take appropriate technical and organisational measures to ensure that any Personal Data is processed securely.
- 3.5 The Supplier and its Staff involved in the supply of Goods or Works or Services under the Contract shall comply with the Council policies relevant to the performance of the Supplier's obligations under the Contract as notified to the Supplier from time to time. Such policies shall include without limitation the Council health and safety and security policies that are effective at any time during the term of the Contract.

### **4 Delivery**

- 4.1 The prices tendered/quoted for any Goods shall be deemed to include supply, delivery, installation, packaging and unloading, for which the Supplier will be responsible. The Supplier shall ensure that delivery notes are provided to the Council at the time of delivery.
- 4.2 The Goods shall be delivered to and/or the Works or Services shall be performed within business hours at the Delivery Address on the date or within the period specified in the Specification or as otherwise specified or agreed by the Council in writing.
- 4.3 Where the date of delivery of the Goods and/or performance of the Services is to be specified after the placing of the Purchase Order, the Supplier shall give the Council reasonable notice of the specified date.
- 4.4 A delivery note which specifies the number of the Purchase Order must accompany each delivery or consignment of the Goods and must be displayed prominently.
- 4.5 If the Goods are to be delivered and/or the Works or Services are to be performed by instalments, the Contract will be treated as a single contract and will not be severable.
- 4.6 The Council shall be entitled to reject any Goods delivered which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods until the Council has had reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.
- 4.7 The Supplier shall supply the Council in good time with any instructions or other information required to enable the Council to accept delivery of the Goods and/or performance of the Works or Services.

- 4.8 The Council shall not be required to return to the Supplier any packaging or packaging materials for the Goods, whether or not the Goods are accepted by the Council.
- 4.9 All Goods must be properly packed and secured and delivered by the Supplier or dispatched for delivery to the place(s) and at the time and in the manner specified in this Contract and at the Supplier's risk and expense.
- 4.10 The Supplier shall comply with the reasonable instructions of the Council in connection with the provision of the Goods, Works or Services.
- 4.11 Time is of the essence in the performance of each party's obligations under the Contract. Failure to perform any obligation within the time stipulated in the Contract Schedule/s will be considered a material breach of the Contract.
- 4.12 Without prejudice to the Council's rights to terminate this Contract the Supplier shall, at the Council's request, remedy any failure to comply with the Contract in accordance with the Council's reasonable instructions, at no additional cost to the Council.

## 5 Price and Payment

- 5.1 The Price of the Goods, Works or Services shall be as offered by the Supplier to the Council and shall be inclusive of all labour costs, equipment, materials, charges for packaging, shipping, carriage, insurance and delivery, and any duties or levies other than Value Added Tax, unless otherwise expressly stated and in the Supplier's quoted prices as accepted by the Council.
- 5.2 No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Council in writing.
- 5.3 Following compliant delivery of the Goods, and/or performance of Works or Services, the Supplier shall invoice the Council for payment of the Price no later than 3 months after the delivery of the Goods and/or performance of the Works or Services, and such invoice shall contain such information as the Council may inform the Supplier from time to time. All invoices shall be sent by e-mail to [CreditorInvoices@sheffield.gov.uk](mailto:CreditorInvoices@sheffield.gov.uk), provided that the Council may by notice direct a change in the method of, or address for delivery.
- 5.4 Subject to clause 5.5 below, where the Supplier submits an invoice to the Council in accordance with clause 5.3, the Council shall pay the Supplier any charges due under that invoice:
  - a) within 30 days of receipt; or
  - b) if the invoice specifies a due date later than the date of receipt, within 30 days of the due date specified in the invoice.
- 5.5 The 30-day payment obligation in clause 5.4 above shall not apply where:
  - a) the Council considers the invoice is invalid; and/or
  - b) the Council disputes the invoice,

and in such cases, the Council shall notify the Supplier without undue delay.

- 5.6 The Council shall not be held responsible for delays in payment caused by the Supplier's failure to comply with invoicing instructions. **Failure by the Supplier to submit invoices to the Council within three months of delivery of the Goods and/or performance of the Services or Works as required in clause 5.3 above, may result in the sums due under such invoices (referred to below as "Late Invoices"), not being recoverable from the Council by the Supplier, if and to the extent that the Council has incurred any loss as a direct consequence of the late submission of invoices by the Supplier.** Such loss may arise in circumstances (including but not limited to) where the Council has forfeited any right it has to recover the sums

due in the Late Invoice(s) from a third party that has an arrangement with the Council entitling the Council to submit a claim (“a **Claim**”) to that third party in order to be reimbursed for payments made by the Council to the Supplier in consideration of the Goods, Services or Works supplied by the Supplier under this Contract and a precondition for reimbursement is that the Council submits the Claim within a specified time. If the Council under such arrangement loses the right to be reimbursed because it submits a Claim late and the reason for the late Claim is because the Supplier has submitted a Late Invoice to the Council, then the Council’s inability to obtain reimbursement would be a loss to the Council which may be remedied in accordance with this Contract, without prejudice to any other rights or remedies that the Council may have. If the Council has forfeited its right to recover from the above mentioned third party, sums specified in Late Invoice as a result of the Supplier’s submission of Late Invoice(s) to the Council, the Council may: (i) refuse to pay the sums due on the Late Invoice to the extent that the sum not paid by the Council cannot be claimed back by the Council from the third party under the arrangements between the Council and the third party referred to above in this condition, (ii) set off the sums the Council is unable to claim back from the third party (as a result of the Supplier’s late submission of any invoice) against any sums that may become payable from the Council to the Supplier for the supply of the Goods, Services or Works.

- 5.7 The Council shall be entitled to set-off against any invoice, any amount due from the Supplier under this Purchase Order or under any other contractual arrangement with the Council.
- 5.8 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly extra charge. All invoices containing Value Added Tax must conform to the requirements of HM Revenue and Customs.
- 5.9 The Supplier shall at the request of the Council provide all information necessary to support the invoiced amount including all relevant time sheets, details of expenses incurred and invoices paid. The Supplier shall be wholly responsible for all applicable taxes including income tax and national insurance and other similar contributions or taxes (together “Taxes”) which may be payable out of, or as a result of the receipt of, any monies paid or payable by the Council under this Contract. No payment of or on account of the Price shall constitute any admission by the Council as to the Supplier’s proper provision of the Goods, Works or Services. If the Goods are not delivered and/or the Works or Services are not performed on the due date then, without prejudice to any other remedy, the Council shall be entitled to deduct from the Price or, if the Council has already paid the Price, to claim from the Supplier an amount equal to the additional costs incurred by the Council as a result of the delay.
- 5.10 Risk of damage to or loss of the Goods shall pass to the Council upon delivery to the Delivery Address in accordance with the Contract. The property in the Goods shall pass to the Council upon delivery to the Delivery Address, unless payment for the Goods is made prior to delivery, where it shall pass to the Council once payment has been made and the Goods have been appropriated to the Contract.
- 5.11 The Supplier shall ensure that when visiting or using the Delivery Address, the Supplier and its personnel comply with the Council’s policies relating to health and safety and security.

## **6 Quality Assurance**

- 6.1 The Supplier shall operate a self-regulatory system of quality assurance and quality measures relating to the Contract in addition to any quality requirements in the Specification which ensures that the Goods, Works or Services are provided in accordance with Best Industry Practice and the requirements of the Contract and as part of this requirement, the Supplier shall check that information, data or software supplied pursuant to the Contract is fit for the purpose for which the Council intends to use it.

## **7 Warranties and Liability**

- 7.1 The Supplier warrants to the Council that the Goods supplied under the Contract shall: a) conform to the Specification where issued b) be free from defects in design, material and workmanship and remain so for 12 months after delivery c) equal in all respects to the samples, patterns, description or specification provided or given by either Party; d) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); e) comply with all Law relating to the sale of the Goods.

- 7.2 The Supplier warrants to the Council that the Services or Works will be performed by appropriately trained and qualified personnel, with due care and diligence, and to the standards which would reasonably be expected from a skilled and experienced Supplier engaged in the provision of services similar to the Services under the same or similar circumstances.
- 7.3 The Supplier warrants and undertakes that the staff engaged in performing the Contract shall have satisfactorily completed the Baseline Personnel Security Standard (BPSS) which requires verification of (i) identity (ii) employment history (iii) nationality and immigration status and (iv) unspent criminal convictions. If the Supplier is a sole trader the Supplier will co-operate with the Council in providing the verification information which the Council may require to ensure that the Supplier meets the BPSS.
- 7.4 The Supplier represents and warrants that neither it, nor its personnel has committed, or to the best of its knowledge, been subject to an investigation regarding a Prohibited Act or alleged Prohibited Act.
- 7.5 The Supplier shall not commit a Prohibited Act during the term of the Contract and shall maintain in place its own policies and procedures to prevent occurrence of a Prohibited Act.
- 7.6 The Supplier shall indemnify and keep indemnified the Council against all liabilities, costs, expenses, damages and losses incurred by the Council arising out of or in connection with:
- a) the Supplier's breach or negligent performance or non-performance of the Contract;
  - b) any claim made against the Council arising out of or in connection with the provision of the Works or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier.
- 7.7 Without prejudice to any other remedy, if any of the Goods, Works or Services are not supplied or performed in accordance with the Contract, then the Council shall be entitled:
- a) to require the Supplier to repair the Goods or to supply replacement Goods and/or remedy any failure to perform the Works or Services in compliance with the Contract within 7 days or such other period specified by the Council; or
  - b) at the Council's sole option and whether or not the Council has exercised its right in clause 7.4(a), to treat the Contract as discharged by the Supplier's breach and require repayment of any part of the Price which has been paid.
- 7.8 Unless otherwise agreed between the Parties in writing, each Party's total liability under this Contract shall be limited to £1m (one million pounds).
- 7.9 Neither Party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

## **8 Termination**

- 8.1 The Council shall be entitled to immediately terminate the Contract without liability to the Supplier by giving written notice to the Supplier at any time if:
- a) the Supplier makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
  - b) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Supplier; or
  - c) the Supplier dies, or ceases, or threatens to cease to carry on business; or the Supplier does anything improper to influence the Council to give the Supplier any contract or commits an offence under the Bribery Act 2010; or
  - d) the Supplier is in material breach of the Contract which is irremediable;
  - e) the Supplier has been notified of remediable breach of the Contract and fails to remedy such breach

- within 15 working days;
- f) if there is a change of control of the Supplier within the meaning of section 1124 of the Corporation Tax Act 2010 to which the Council reasonably objects;
- g) the Council reasonably believes that any of the events mentioned above is about to occur in relation to the Supplier and notifies the Supplier immediately.

8.2 Where the Council terminates the Contract in accordance with the provisions of clause 8.1, the Supplier shall compensate the Council for any losses suffered as a result of termination.

8.3 The Council may terminate the Contract at any time on giving the Supplier not less than one month's notice.

8.4 On the expiry or termination of this Contract (however arising), the Supplier shall deliver up to the Council all documents, formulae, papers, drawings, software, data, specifications, reports, notes, programs, portfolios, equipment, materials of any sort, identity cards and keys which were furnished by the Council to the Supplier, or which were prepared by or on behalf of the Supplier for the Council in the course of providing Goods, Works or Services under this Contract.

## 9 Intellectual Property Rights

9.1 With the exception of Pre-Existing IPR, and in the absence of prior written agreement by the Council to the contrary, all IPR a) created by the Supplier in the course of producing or delivering the Goods or performing the Works or Services; b) or exclusively for the purpose of performing the Services, shall vest in the Council on creation.

9.2 The Supplier hereby grants to the Council a perpetual, royalty-free, irrevocable, non-exclusive, assignable, global licence for use, sub-licence and/or commercial exploitation of any Pre-Existing IPR in the Goods, Works or and/or Services.

9.3 The Supplier agrees to indemnify and keep indemnified the Council against any costs, claims, proceedings, expenses and demands arising from the use, application, supply or delivery of any process article, matter or thing supplied under the Contract that would constitute or is alleged to constitute any infringement of any IPR including third party's IPR.

## 10 Confidentiality

10.1 The provisions of this clause do not apply to any Confidential information which:

- a) is or becomes available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause);
- b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
- c) was, is, or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;
- d) the parties agree in writing is not confidential or may be disclosed;
- e) which is disclosed by the Council on a confidential basis to any central government or regulatory body.

10.2 Each party shall keep the other party's Confidential Information secret and confidential and shall not:

- a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with this agreement (**Permitted Purpose**); or
- b) disclose such Confidential information in whole or in part to any third party, except as expressly permitted by this clause 10.

10.3 A party may disclose Confidential Information to the extent such Confidential Information is required to be

disclosed by law (including under the FOIA or EIRs), by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of the disclosure as possible.

- 10.4 The provisions of this clause 10 shall survive for a period of 6 years from the date that the Contract expires or is terminated.

## **11 General**

- 11.1 The Supplier shall be prohibited from transferring, assigning or sub-letting, directly or indirectly, to any person or persons whatever, the whole or any portion of this Contract without the prior written permission of the Council.
- 11.2 No waiver by the Council of any breach of the Contract by the Supplier shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 11.3 If any provision of these Terms and Conditions is held to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Terms and Conditions and the remainder of the provision in question shall not be affected.
- 11.4 Neither the Supplier nor the Council shall be liable to the other for any failure to fulfil its obligations under the Contract if such a failure is caused by circumstances beyond its reasonable control provided that the party failing has (i) used its best endeavours to exert such control and (ii) has not itself caused the circumstances concerned.
- 11.5 The Supplier shall not issue any press release or make any public statement concerning the Council, its employees, agents, commissioners, of Goods, Work or Services without the prior written consent of the Council, nor shall the Supplier without the prior written consent of the Council, advertise or disclose to third parties that it is providing Goods, Works or Services to the Council.
- 11.6 The Supplier shall, and shall use reasonable endeavours to ensure that its Staff shall, at all times, act in a way which is compatible with all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise).
- 11.7 Acceptance of this Purchase Order will be deemed to bind the Supplier to these Terms and Conditions and no Goods, Works or Services shall be supplied or performed by the Supplier, its employees, agents or representatives, except in accordance therewith.
- 11.8 This Contract constitutes the entire understanding between the Parties relating to the subject matter of the Contract and, save as may be expressly referred to or referenced herein, supersedes all prior representations, writings, negotiations or understandings with respect hereto, except in respect of any fraudulent misrepresentation made by either party.
- 11.9 The Supplier shall effect and maintain an adequate level of insurance cover in respect of all risks that may be incurred by them in the performance of this Contract.
- 11.10 Notices given under the Contract shall be given in writing (which shall include email but not fax) and shall be served i) by hand or pre-paid first-class post to other next working day delivery service at its registered address or its principal place of business or (ii) sent by email to the address notified to it. Any notice shall be deemed to have been received iii) if delivered by hand, at the time the notice is left at the proper address or iv) if sent by pre-paid first class post or other next working day delivery service, at 09:00am on the second working day after posting or v) if sent by email, at the time of transmission, or if this time falls outside of business hours, when business hours resume.
- 11.11 Both Parties agree to submit to the jurisdiction of the English courts and agree that the Contract is to be



governed and construed by English law.

- 11.12 Nothing in this Contract shall be construed as creating any partnership, contract of employment or a relationship of principal and agent between the Council and the Supplier.
- 11.13 No variation to the Contract shall be binding unless agreed in writing between the parties.
- 11.14 Any person who is not a party to the Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.
- 11.15 The following shall survive the termination or expiry of this Contract; conditions 1, 7, 8, 9, 10, 11 and without limitation to the foregoing, any provisions of the Contract which either implied or express are to be performed or observed notwithstanding termination or expiry of the contract.