

# TRINITY HOUSE STANDARD CONDITIONS OF CONTRACT (CP4)

**These Conditions may only be varied with the written agreement of Trinity House. No conditions put forward by the Contractor shall form any part of the Contract**

## 1. DEFINITIONS

**"Confidential Information"** means any information, which has been designated as confidential by either party in writing or that ought reasonably to be considered as confidential however it is conveyed, including information that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Contractor, including intellectual property rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential;

**"Conditions"** means these conditions of Contract;

**"Contract"** means the contract between Trinity House and the Contractor consisting of the Purchase Order and documents mentioned thereon including these Conditions;

**"Contractor"** means the person, firm or company, to whom the Purchase Order has been issued;

**"Good"** or **"Service"** means the goods and/or services to be provided as specified on the Purchase Order;

**"Premises"** means the location to where the Goods or Services shall be delivered or performed;

**"Purchase Order"** means the Trinity House purchase order specifying that these Conditions apply to it;

**"Trinity House"** means the Corporation of Trinity House of Deptford Strond of Trinity House, Tower Hill, London, EC3N 4DH, in its capacity as a general lighthouse authority.

## 2. TIME OF PERFORMANCE

2.1 Time is of the essence of the Contract and failure to deliver the Goods or Services to the Premises within the time on the Purchase Order shall be a fundamental breach of contract.

2.2 In the event of failure to deliver by the due date Trinity House may at its option release itself from any obligation to accept and pay for the Goods or Services and/or cancel all or part of the Purchase Order, in either case without prejudice to its other rights and remedies herein.

2.3 The Contractor shall provide Trinity House with such reports on progress with the Purchase Order as Trinity House may from time to time require.

## 3. VARIATION

Trinity House reserves the right by notice in writing to modify the quality or quantity of the Goods or Services. Any alteration to the price of the Contract as a result shall be agreed in writing between Trinity House and the Contractor.

## 4. STATUS OF CONTRACTOR

4.1 The relationship between the Contractor and Trinity House shall be deemed for all purposes to be that of an independent contractor.

4.2 In carrying out the Contract the Contractor shall be acting as principal and not as agent of Trinity House. Accordingly:

(a) the Contractor shall not (and procure that his servants and agents do not) say or do anything that might lead any other person to believe that the Contractor is acting as agent of Trinity House;

(b) nothing in this Contract shall impose any liability on Trinity House in respect of any liability incurred by the Contractor to any other person, but this shall not be taken to exclude or limit any liability of Trinity House to the Contractor that may arise by virtue of either a breach of this Contract or any negligence on the part of Trinity House, its staff or agents.

4.3 Notwithstanding Clause 12.1 in the event that Trinity House under current or future legislation is found liable for further income tax, and/or national insurance contributions in respect of payments made by Trinity House under this Contract such income tax, and/or national insurance shall be deducted from any sums due to the Contractor under this Contract. If this Contract has come to an end for any reason by the time Trinity House receives the demand for such income tax, or national insurance contributions the Contractor hereby acknowledges liability in connection with such demand.

## **5. SUB-CONTRACTING**

5.1 The Contractor shall not sub-contract any of his duties or responsibilities under this Contract without the consent of Trinity House.

5.2 Sub-contracting shall not relieve the Contractor of any obligation or duty attributable to him under this Contract.

5.3 Where Trinity House consents to the placing of sub-contracts, a copy of each sub-contract shall be sent by the Contractor to Trinity House immediately it is issued.

## **6. QUALITY & FITNESS FOR PURPOSE**

6.1 Goods shall be of satisfactory quality and free from defects in material or workmanship. If the purpose for which the Goods are required is made known to the Contractor expressly or implicitly the Goods shall be fit for that purpose.

6.2 Goods shall conform to all statutory requirements and in all respects to any particulars specified in the Purchase Order or any variation thereto.

6.3 In the absence of a specification or sample, all Goods shall be within the normal limits of industrial quality.

## **7. DELIVERY**

7.1 Goods shall be delivered to the place named on the Purchase Order. Any access to Premises and any labour and equipment that may be provided by Trinity House in connection with delivery shall be provided without acceptance by Trinity House of any liability whatsoever.

7.2 Where any access to the Premises is necessary in connection with delivery or installation, the Contractor and his sub-contractors shall at all times comply with the reasonable requirements of Trinity House.

## **8. PROPERTY & RISK**

In the case of Goods property and risk shall without prejudice to any other rights or remedies of Trinity House herein contained remain with the Contractor until delivery to the Premises.

## **9. LOSS OR DAMAGE IN TRANSIT**

In the case of Goods the Contractor shall on the day of dispatch of any consignment send Trinity House a goods advice note which shall contain all relevant information about the consignment including a date for delivery. The Contractor shall free of charge and as quickly as possible either repair or replace (as Trinity House shall elect) such of the Goods as may either be damaged in transit or having been placed in transit fail to be delivered to Trinity House provided that:

(a) in the case of damage to such Goods in transit Trinity House shall within 30 days of delivery give notice to the Contractor that the Goods have been damaged;

(b) in the case of non-delivery Trinity House shall within 21 days of the notified date of delivery give notice to the Contractor that the Goods have not been delivered.

## **10. LABELLING & PACKING**

10.1 Goods shall be packed and marked in a proper manner and in accordance with Trinity House instructions and any statutory requirements and any requirements of the carriers. In particular Goods shall be marked with the Purchase Order number and the weight; the name of the contents shall be clearly marked on each container and all containers of hazardous goods (and all documents relating thereto) shall bear prominent and adequate warnings.

10.2 All packaging materials will be considered non-returnable and will be destroyed unless the Contractor's advice note states that such materials will be charged for unless returned. Trinity House accepts no liability in respect of the non-arrival at the Contractor's premises of empty packages returned by Trinity House.

## **11. INSPECTION, REJECTION & GUARANTEE**

11.1 In the case of Goods the Contractor shall permit Trinity House or its authorised representatives to make inspections or tests it may reasonably require and the Contractor shall afford all reasonable facilities and assistance free of charge at his premises. No failure to make complaint at such inspection or tests and no approval given during or after such tests or inspections shall constitute a waiver by Trinity House of any rights or remedies in respect of the Goods.

11.2 Trinity House may by written notice to the Contractor reject any of the Goods which fail to meet the requirements specified by Trinity House. Such notice shall be given within a reasonable time after delivery of the Goods concerned. If Trinity House shall reject any of the Goods pursuant to this Condition Trinity House shall be entitled (without prejudice to his other rights and remedies); either:

- (a) to have the Goods concerned as quickly as possible either repaired by the Contractor or (as Trinity House shall elect) replaced by the Contractor with Goods which comply in all respects with the requirements specified herein; or
- (b) to obtain a refund from the Contractor in respect of the Goods.

11.3 The guarantee period applicable to the Goods shall be 12 months from putting into service or 18 months from delivery whichever shall be the shorter. If Trinity House shall within such guarantee period or within 30 days thereafter give notice in writing to the Contractor of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use or due to erroneous instructions by the Contractor, the Contractor shall (without prejudice to any other rights and remedies which Trinity House may have) as quickly as possible remedy such defects (whether by repair or replacement as Trinity House shall elect) at no cost to Trinity House.

11.4 Any Goods rejected or returned by Trinity House as described in these Conditions shall be returned to the Contractor at his risk and expense.

## **12. PRICE & PAYMENT**

12.1 The price of the Goods or Services shall be as stated on the Purchase Order and may only be varied with the written agreement of Trinity House at its absolute discretion. In the case of individuals the fees for labour shall be paid net of income tax deducted at the standard rate unless the individual provides written proof from the Inland Revenue or the Inland Revenue states that he or she may be paid free of any such deduction.

12.2 Unless otherwise agreed in writing by Trinity House, payment will be made within 30 days of receipt of the Goods or Services or the correct invoice therefor, whichever is the later.

12.3 Value Added Tax, where applicable, shall be shown as a strictly net extra charge.

### **13. AUDIT**

The Contractor shall keep and maintain until two years after completion of the Contract records to the satisfaction of Trinity House of all expenditures, which are reimbursable by Trinity House, and of the hours worked and costs incurred by the Contractor or in connection with any employees of the Contractor paid for by Trinity House on a time charge basis. The Contractor shall on request afford Trinity House such access to those records as required by Trinity House in connection with the Contract.

### **14. HEALTH, SAFETY AND THE ENVIRONMENT**

14.1 The Contractor shall ensure that all necessary tests and examinations are made prior to delivery of the Goods or Services to ensure that they comply with all health and safety laws and are safe and without risk to the health or safety of persons using same and that the Contractor has made available adequate information about the use for which the Goods or Services are intended and about any conditions necessary to ensure that when put to use the Goods or Services will be safe and without risk to health.

14.2 The Contractor shall supply the Goods and Services in such ways as to eliminate risk of harm to the environment and to comply with all relevant environmental laws.

14.3 While on property owned or occupied by Trinity House the Contractor shall comply, and ensure that its officers, employees, servants and/or agents comply, with all relevant health and safety and environmental laws and all other requirements of Trinity House in respect of health, safety and the environment, including (where applicable) the health, safety and environmental policies of Trinity House, which Trinity House will provide to the Contractor on the Contractor's request.

### **15. INDUCEMENTS & REWARDS**

The Contractor shall not offer or give or agree to give, to any employee or representative of Trinity House any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other Contract with Trinity House or for showing or refraining from showing favour or disfavour to any person in relation to this or any such contract. The attention of the Contractor is drawn to the criminal offences created by the Prevention of Corruption Acts 1889 to 1916, as amended, and the Bribery Act 2010 (which is planned to commence in April 2011).

### **16. INDEMNITY & INSURANCE**

16.1 The Contractor shall indemnify Trinity House, its servants and agents against all actions, claims, demands, costs and expenses incurred by or made against Trinity House, its servants or agents in respect of any loss or damage or personal injury (including death) which arises out of or in connection with this Contract.

16.2 Except in the case of loss, damage or personal injury (including death) suffered by an employee of the Contractor (in respect of which the indemnity in Condition 16.1 shall apply whether or not the loss, damage or personal injury was caused by the negligent or wilful act or omission of Trinity House, or any its servants or agents); the indemnity contained in Condition 16.1 shall not apply to the extent that the loss, damage or injury is caused by the negligent or wilful act or omission of Trinity House, its servants or agents.

16.3 The Contractor shall have in force and shall require any sub-contractor to have in force:

- (a) employer's liability insurance in accordance with any legal requirements for the time being in force, and

(b) public liability insurance for such sum and range of cover as the Contractor deems to be appropriate but covering at least all matters which are the subject of indemnities or compensation obligations under these Conditions in the sum of not less than £2,000,000 for any one incident and unlimited in total, unless otherwise agreed by Trinity House in writing.

16.4 The policy or policies of insurance referred to in Condition 16.3 shall be shown to Trinity House whenever requested, together with satisfactory evidence of payment of premiums.

## **17. INTELLECTUAL PROPERTY RIGHTS**

17.1 In the case of Services, all intellectual property rights of any description (including but not limited to patents, design rights (registered or unregistered), database rights, copyrights, trademarks, and know-how) in any data, designs, documents, drawings, inventions, reports, results, software or other materials generated by the Contractor or its sub-contractors in performance of the Contract shall vest in and be the property of Trinity House,

17.2 On termination of the Contract or at any time so requested by Trinity House, the Contractor shall deliver up to Trinity House any data, designs, documents, drawings, inventions, reports, results, software or other materials in the Contractor's possession, custody or control generated by the Contractor or its sub-contractors in performance of the Contract.

17.3 Where the Contractor uses existing intellectual property of which he is the owner in performance of the Contract he hereby grants Trinity House a licence to use the same and shall notify Trinity House in writing of all such rights. The Contractor shall indemnify Trinity House against all losses, costs and expenses, including legal fees on an indemnity basis, incurred by Trinity House in using such rights.

17.4 The Contractor shall indemnify Trinity House against all claims, proceedings, actions, damages, legal costs, expenses and other liabilities arising from or incurred by the use of the Contractor, in the performance of the Contract, or the use by Trinity House following delivery by the Contractor, of any material which involves any infringement or alleged infringement of the intellectual property rights of a third party.

17.5 The Contractor will not use the name of Trinity House or any other name, mark, device or logo identifying or associated with Trinity House without first obtaining the written approval of Trinity House.

17.6 The provisions of this Condition 17 shall apply during the continuance of this Contract and after its termination howsoever arising.

## **18. FORCE MAJEURE**

Neither party shall be liable for failure to perform its obligations under the Contract if such failure results from circumstances which could not have been contemplated and which are beyond the party's reasonable control. Industrial disputes and failures by sub-contractors are not force majeure hereunder.

## **19. INSOLVENCY**

If the Contractor becomes insolvent or bankrupt or (being a company) makes an arrangement with its creditors or has an administrative receiver or administrator appointed or commences to be wound up (other than for the purpose of reconstruction), Trinity House may, without prejudice to any other of its rights, terminate the Contract forthwith by notice to the Contractor or any other person in whom the contract may have become vested.

## **20. RECOVERY OF SUMS DUE**

Wherever under this Contract any sum of money is recoverable from or payable by the Contractor, that sum may be deducted from any sum then due, or which at any later time may become due, to the Contractor under this Contract or under any other agreement or contract with Trinity House.

## **21. EQUALITY**

The Contractor shall comply and shall procure that all servants, employees or agents of the Contractor and all sub-contractors comply with all relevant equality laws for the time being in force and any policies and procedures established by Trinity House in respect of, and to ensure compliance, with such equality laws.

## **22. FREEDOM OF INFORMATION**

The Contractor acknowledges that whilst Trinity House is not designated as a public authority pursuant to the Freedom of Information Act 2000 ("**FOIA**"), Trinity House has elected to act within the spirit of the FOIA where appropriate, and as such will provide such information as requested, with the exception of information of which would be exempt from disclosure in accordance with the provisions of the FOIA.

## **23. CONFIDENTIALITY**

23.1 The Contractor shall keep secret and shall not divulge to any third party (except sub-contractors accepting a like obligation of confidentiality and then only to the extent necessary for the performance of the sub-contract) all information given by Trinity House in connection with the Contract or which becomes known to the Contractor through performance of the Contract.

23.2 The parties acknowledge that, except for any information which would be exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. Trinity House shall be responsible for determining in its absolute discretion whether any of the content of the Contract would be exempt from disclosure in accordance with the provisions of the FOIA.

23.3 Trinity House may be required to publish the Contract to the general public. Notwithstanding any other term or Condition of the Contract, the Contractor hereby gives his consent for Trinity House to publish the Contract in its entirety, (but with any information which would be exempt from disclosure in accordance with the provisions of the FOIA redacted) including from time to time agreed changes to the Contract, to the general public.

23.4 The provision of this Condition 22 shall apply during the continuance of this Contract and after its termination howsoever arising.

## **24. DEFAULT OF CONTRACTOR**

If the Contractor commits a breach of the Contract and fails within 20 days of notice from Trinity House to take such steps as may be necessary to remedy such breach, Trinity House may, without prejudice to any of its other rights terminate the Contract forthwith by notice to the Contractor.

## **25. ARBITRATION**

All disputes, differences or questions between the parties to the Contract with respect to any matter or thing arising out of or relating to the Contract, other than a matter or thing as to which the decision of Trinity House is under the Contract to be final and conclusive, and except to the extent to which special provision for arbitration is made elsewhere in the Contract, shall be referred to the arbitration of two persons one to be appointed by Trinity House and one by the Contractor, in accordance with the provisions of the Arbitration Act 1996 or any statutory modification or re-enactment thereof.

## **26. NOTICES**

Any notice given under or pursuant to the Contract shall be sent to the address of Trinity House or the Contractor given on the Purchase Order, or to such other address as the parties advise the other by notice. Notices may be served personally

or by post or by prepaid registered or recorded delivery post or transmitted by facsimile transmission or other means of telecommunication resulting in the receipt of a written communication in permanent form. Letters shall be deemed served 48 hours after posting and facsimiles on despatch.

**27. WAIVER**

No delay or omission by Trinity House in exercising any of its rights or remedies under this Contract or under any applicable law shall be deemed a waiver of, or bar to, the exercise of such right or remedy or any other right or remedy upon any other occasion.

**28. SEVERANCE**

In the event that any provision of this Contract shall be void and unenforceable by reason of any provision or applicable law, it shall be deleted and the remaining provisions hereof shall continue in full force and effect.

**29. HEADINGS**

The headings in these Conditions are for ease of reference only and shall not affect their interpretation.

**30. GOVERNING LAW**

These Conditions shall be subject to English Law and the parties hereto agree to submit to the jurisdiction of the English Courts.