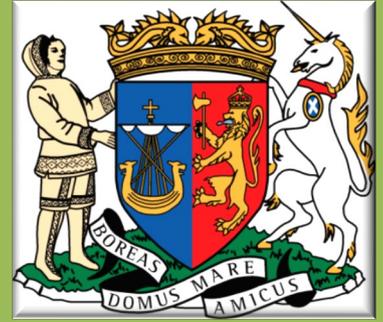


# Terms and Conditions Dynamic Purchasing System



Development & Infrastructure  
Orkney Island Council,  
School Place,  
Kirkwall,  
KW15 1NY

# **AGREEMENT FOR JOBBING / MAINTENANCE WORKS**

## **(MINOR NON CONTACT WORKS)**

The following terms and conditions will apply to orders issued by the OIC for small jobbing and maintenance works where no other formal contract exists.

Acceptance onto the DPS will be subject to acceptance of these T & Cs.

### **GENERAL CONDITIONS**

#### **1.0 The Contractor's Obligation**

The contractor shall with due diligence and in a good and workmanlike manner carry out and complete the Works in accordance with this agreement and instructions issued and shall reasonably satisfy the Employer that he has fulfilled this obligation. The Contractor shall not assign or sub-contract the works without the Employers consent.

#### **2.0 The Employer's Duties**

The Employer shall issue in writing any further information necessary for the proper carrying out of the Works by the completion date given in the Agreement/the Works Order and forthwith confirm in writing any instruction given orally.

The Works may be commenced on, and shall be completed by, the dates given in the Works Order.

Should the Contractor be delayed by the Employer or for any reason beyond the Contractor's control, the Employer shall fix a fair and reasonable revised date for completion.

#### **3.0 Orders**

Orders will be emailed via the 'Concerto' property management system. On receipt, contractors should assess the works, materials and resources required to minimise delays. Where delays are anticipated, advise Development & Infrastructure (D & I) of the impact to allow the order to be varied.

Contractors have the option of updating order completion dates either directly back into Concerto, or via traditional means. D & I should be made aware of completion dates immediately on completion of the works, and no later than 7 days after completion.

#### **4.0 Value Added Tax**

Sums certified for payment are exclusive of VAT and in relation to any payment to the Contractor under this agreement, the Employer shall in addition pay the amount of any VAT properly chargeable in respect of it.

#### **5.0 Construction Industry Scheme (CIS).**

The Employer is a Contractor for the purpose of the Construction Industry Scheme or if at any time up to the final payment in respect of the last order outstanding under

this agreement, the Employer becomes such a Contractor, his obligations to make any payment under this agreement is subject to the provision of the CIS.

## **6.0 Invoicing and payments**

Within 28 days of completing, an invoice should be submitted either electronically or via the traditional route. Delays, particularly around the year end create accounting complications, and so every effort should be made to invoice and close off works timeously.

Regular reports will be issued to contractors detailing outstanding orders / invoices. Overtime payments will not entertained unless agreed in advance in respect of each order.

## **7.0 Priority response times.**

Response times will be detailed within the issued order. Contractors are required to comply with these, as the information is reported upon via 'statutory performance indicator' returns and Scottish Quality Standards returns, and used to rate the services provided by the Council.

Emergency: respond within 4 hrs, complete within 24 hrs:

Urgent: respond within 2 and complete within 3 working days:

Routine: respond within 5 and complete within 20 working days:

'By agreement;' other such as works that are to be done on a planned basis.

*Note: All times to include the day the works are instructed;  
Public Holidays are excluded;*

## **INSURANCE**

### **8.0 Liability of Contractor – Personal injury or death**

The Contractor shall be liable for, and shall indemnify the Employer against, any expenses, liability, loss, claim or proceedings whatsoever in respect of personal injury to or the death of any person arising out of or in the course of or caused by the carrying out of an Order, except to the extent that the same is due to any act or neglect of the Employer, of any of the Employers Persons or of any Statutory Undertaker.

### **9.0 Liability of Contractor – Injury or damage to property**

The contractor shall be liable for, and shall indemnify the Employer against, any expense, liability, loss, claim or proceedings in respect of any loss, injury or damage whatsoever to any property real or personal in so far as such loss, injury or damage arises out of or in the course of or by reason of the carrying out of an order and to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Contractor or of any of the Contractors Persons.

### **10.0 Injury or damage to property- work and site materials excluded**

The reference in clause 9.0 to 'property real or personal' does not include the work comprised in an order, work executed and/ or site materials up to and including whichever is the earlier of:

1. The order completion date; or
2. The date of termination of the contractors employment.

#### **11.0 Contractors insurance of his liability**

11.1 Without prejudice to the indemnity given to the Employer under clauses 8.0 and 9.0 the Contractor shall take out and maintain insurance in respect of claims arising out of his liability referred to in clauses 8.0 and 9.0 which:

- in respect of claims for personal injury to, or the death of any employee of the Contractor arising out of and in the course of such person's employment, shall comply with all relevant legislation; and
- for all other claims to which clause 11.1 applies, shall indemnify the Employer in like manner to the Contractor (but only to the extent that the contractor may be liable to indemnify the Employer under the terms of this agreement and shall be in a sum not less than that stated in the ESPD for any one occurrence or series of occurrences arising out of one event.

#### **12.0 Insurance of the Existing Structure**

The employer shall take out (unless he has already done so) and shall maintain a policy of insurance in respect of the existing structure for which orders may be issued, together with the contents thereof owned by him or for which he is responsible, for the full cost of the reinstatement, repair or replacement of loss or damage due to any of the specified perils up to and including;

1. the end of the order completion date
2. the termination of the contractors employment

#### **13.0 Evidence of insurance**

The Contractor shall produce such evidence to demonstrate that continuation of insurance cover from year to year.

## **DEFINITION OF PRIME COST OF BUILDING WORKS OF A JOBBING OR MAINTENANCE CHARACTER (2010 EDITION)**

### **SECTION 1 – APPLICATION**

- 1.1 This agreement provides a basis for the management of work of a jobbing or maintenance character executed when orders are issued by OIC. It covers how and when invoices will be managed, basis for valuation and insurances amongst other things.
- 1.2 Acceptance on to the DPS will be subject to maintaining satisfactory insurances, updating OIC of organisations changes, and changes to charge out rates.

### **SECTION 2 – COMPOSITION OF TOTAL CHARGES**

- 2.1 The prime cost of jobbing work comprises the sum of the following costs:
  - (a) Labour as defined in Section 3.
  - (b) Materials and goods as defined in Section 4.
  - (c) Plant, consumable stores and services as defined in Section 5.
  - (d) Subcontracts as defined in Section 6.
- 2.2 Incidental costs, overhead and profit as defined in Section 7 and expressed as a percentage adjustments are applicable to each of 2.1 (a)-(d).

### **SECTION 3 – LABOUR**

#### **Option A – Percentage addition**

- 3.1 The prime cost of labour is defined in 3.5. Incidental costs, overheads and profit should be added as defined in Section 6.
- 3.2 The standard wage rates, payments and expenses referred to below and the standard working hours referred to in 3.3 are those laid down for the time being in the rules or decisions of the Construction Industry Joint Council (CIJCI and the terms of the Building and Civil Engineering Benefits Scheme managed by Building and Civil Engineering Holidays Scheme Management Ltd) applicable to the works, or the rules or decisions or agreements of such body, other than the CIJC, as may be applicable relating to the grade and type of operative concerned at the time when and in the area where the daywork is executed.
- 3.3 Hourly base rates for labour are computed by dividing the annual prime cost of labour, based upon standard working hours and as defined in 3.5, by the number of standard working hours per annum,
- 3.4 The hourly rates computed in accordance with 3.3 shall be applied in respect of the time actually spent by operatives directly engaged on daywork, including those operating mechanical plant and transport and erecting and dismantling other plant (unless otherwise expressly provided in the building contract) and handling and distributing the materials and goods used in the daywork.
- 3.5 The annual prime cost of labour comprises the following:
  - a. Standard or guaranteed minimum weekly earnings.\*
  - b. All other guaranteed minimum payments (unless included in Section 6).\*

- c. Differentials or extra payments in respect of skill, responsibility, discomfort, inconvenience or risk (excluding those in respect of supervisory responsibility - see 3.6).\*
- d. Payments in respect of public holidays.
- e. Any amounts which may become payable by the Contractor to or in respect of operatives arising from the operation of the rules or decisions referred to in 3.2 which are not provided for in 3.5 (a) - or in Section 6.\*
- f. Employer's contributions to industry's annual holiday with pay scheme or payment in lieu thereof.
- g. Employer's contributions to industry's welfare benefits scheme or payments in lieu thereof.
- h. Employer's National Insurance contributions applicable to 3.5 (a)-(g).\*
- i. Any contribution, levy or tax imposed by statute, payable by the Contractor in his capacity as an employer, or compliance with any Legislation which has a direct effect on the cost of labour.\*

3.6 Differentials or extra payments in respect of supervisory responsibility are excluded from the annual prime cost [see Section 6]. The time of supervisory staff such as principals, foremen, gangers, Leading hands and the Like, when working manually, is admissible under this Section only at the appropriate standard/normal rates for the grade of operative suitable for the operation concerned.

3.7 An example calculation of a typical standard hourly base rate is provided in Example 1 on page 15.

#### **Non-Productive Overtime**

3.8 \* The prime cost for non-productive overtime should be based only on the hourly payments for items marked with an asterisk in 3.5. #

3.9 An example calculation of a typical non-productive overtime rate is provided in Example 2 on page 16.

#### **Option B - All-Inclusive Rates**

3.10 The prime cost of Labour is based on the all-inclusive rates for Labour provided for in the building contract. The all-inclusive rates are to include all costs associated with employing the Labour including all items listed in 3.5.

3.11 The all-inclusive hourly rates are also to include all costs, fixed and time related charges, overheads and profit [as defined in Section 6] in connection with labour.

3.12 The all-inclusive hourly rates shall be applied in respect of the time actually spent by operatives directly engaged on daywork, including those operating mechanical plant and transport and erecting and dismantling other plant [unless otherwise expressly provided in the building contract] and handling and distributing the materials and goods used in the daywork.

3.13 The time of supervisory staff, such as principals, foremen, gangers, leading hands and the like, when working manually, is admissible under this Section only at the appropriate all-inclusive hourly rates for the grade of operative suitable for the operation concerned. Any extra payment in respect of supervisory responsibility is not allowable.

3.14 The all-inclusive rates are deemed to be fixed for the period of the contract. However, where a fluctuating price contract is used, or where the rates in the contract are to be

index-linked, the all-inclusive rates shall be adjusted by a suitable index in accordance with the contract conditions.

### **Non-Productive Overtime**

- 3.15 Allowance for non-productive overtime should be made in accordance with the Model Documentation included in Appendix A.

### **SECTION 4 – MATERIALS AND GOODS**

- 4.1 The prime cost of materials and goods obtained specifically for the daywork is the invoice cost after deducting all trade discounts and any portion of cash discounts in excess of 5%, plus any appropriate handling and delivery charges.
- 4.2 The prime cost of materials and goods supplied from the Contractor's stock is based upon current market prices after deducting all trade discounts and any portion of cash discounts in excess of 5%, plus any appropriate handling charges.
- 4.3 Any Value Added Tax which is treated, or is capable of being treated, as input tax [as defined in the Finance Act, 1972, or any re-enactment or amendment thereof or substitution therefor] by the Contractor is excluded, for the purposes of calculation.

### **SECTION 5 – PLANT, CONSUMABLE STORES AND SERVICES**

- 5.1 Unless otherwise stated in the building contract, the prime cost of plant comprises the cost of the following:
- a) Use or hire of mechanically operated plant and transport for the time employed/engaged for the daywork.
  - b) Use of non-mechanical plant [excluding non-mechanical hand tools) for the time employed/engaged for the daywork.
  - c) Transport/delivery to and from site and erection and dismantling where applicable.
  - d) Qualified professional operators [e.g. crane drivers] not employed by the contractor [see 5.5 below].
- 5.2 Where plant is hired, the prime cost of plant shall be the invoice cost after deducting all trade discounts and any portion of cash discount in excess of 5%.
- 5.3 Where plant is not hired, the prime cost of plant shall be calculated in accordance with the latest edition of the Royal Institution of Chartered Surveyors [RICS] Schedule of Basic Plant Charges for Use in Connection with Daywork Under a Building Contract.
- 5.4 The use of non-mechanical hand tools and of erected scaffolding, staging, trestles or the like is excluded [see Section 61].
- 5.5 Where hired or other plant is operated by the Contractor's operatives, the operative's time is to be included under Section 3 unless otherwise provided in the contract.
- 5.6 Any Value Added Tax which is treated, or is capable of being treated, as input tax [as defined in the Finance Act, 1972, or any re-enactment or amendment thereof or substitution therefor] by the Contractor is excluded, for the purposes of calculation.

### **SECTION 6 -Incidental Costs, Overheads and Profit**

- 6.1 The percentage adjustments provided in the building contract, which are applicable to each of the totals of Sections 3 [Option A], 4 and 5, include the following: ##
- a) Head Office charges.
  - b) Site staff including site supervision.
  - c) The additional cost of overtime [other than that referred to in # #].

- d) Time lost due to inclement weather.
- e) The additional cost of bonuses and all other incentive payments in excess of any guaranteed minimum included in 3.5 (a).
- f) Apprentices study time.
- g) Subsistence, lodging and periodic allowances.
- h) Fares and travelling allowances. I
- i) Sick pay or insurance in respect thereof.
- j) Third party and employer's liability insurance.
- k) Liability in respect of redundancy payments to employees.
- l) Employer's National Insurance contributions not included in Section 3.5.
- m) Tool allowances.
- n) Use and maintenance of non-mechanical hand tools.
- o) Use of erected scaffolding, staging, trestles or the like.
- p) Use of tarpaulins, plastic sheeting or the like, all necessary protective clothing, artificial lighting, safety and welfare facilities, storage and the like that may be available on the site.
- q) Any variation to basic rates required by the Contractor in cases where the building contract provides for the use of a specified schedule of basic plant charges [to the extent that no other provision is made for such variation - see Section 5).
- r) All other Liabilities and obligations whatsoever not specifically referred to in this Section nor chargeable under any other section.
- s) Any variation in welfare/pension payments from industry standard.
- t) Profit [including main contractor's profit as appropriate].

### **Non-Productive Overtime**

- 6.2 When calculating the percentage adjustment for incidental costs, overheads and profit, if the Option A calculation of the prime cost of Labour is prescribed in the contract, it should be borne in mind that not all items listed in 6.1 are necessarily applicable to non-productive overtime. When Option B is prescribed, non-productive overtime should be shown separately in the contract documents as detailed in the Model Documentation in Appendix A.

**DAYWORKS**

**OPTION A DAYWORK CHARGES**

The Contractor will be paid as defined below for the cost of works carried out as daywork in accordance with the building contract.

For building works, the prime cost of daywork will be calculated in accordance with the Latest Definition of Prime Cost of Daywork Carried Out Under a Building Contract, (State edition ) published by the Royal Institution of Chartered Surveyors and the Construction Confederation.

For electrical works, the prime cost of daywork will be calculated in accordance with the Latest: Definition of Prime Cost of Daywork Carried Out Under an Electrical Contract, (State edition ) published by the Royal Institution of Chartered Surveyors, the Electrical Contractors ' Association and 'SELECT' the Electrical Contractors Association of Scotland.

For heating and ventilating work etc, the prime cost of daywork will be calculated in accordance with the latest Definition of Prime Cost of Daywork Carried Out Under a Heating, Ventilating, Air Conditioning, Refrigeration, Pipework and/or Domestic Engineering Contract, (State edition ) published by the Royal Institution of Chartered Surveyors and the Heating and Ventilating Contractors Association.

For plumbing work, the prime cost of daywork will be calculated in accordance with the latest Definition of Prime Cost of Daywork Carried Out Under a Plumbing Contract, (State edition ) published by the Royal Institution of Chartered Surveyors, the Association of Plumbing and Heating Contractors and the Scottish and Northern Ireland Plumbing Employers Federation.\*

**Labour**

Building Operatives

Add for Incidental Costs, Overheads & Profit ..... %

Electrical Operatives

..... %

Add for Incidental Costs, Overheads & Profit

Heating and Ventilating Operatives

..... %

Add for Incidental Costs, Overheads & Profit

Plumbing Operatives

..... %

Add for Incidental Costs, Overheads & Profit



**We have read and understood the above, and will abide by the terms of this agreement as a condition of our acceptance onto the DPS.**

**We will ensure that OIC have current up to date copies of our insurances, failure will result in our approval being temporarily suspended.**

Contractors Signature .....

Address .....

.....

.....

.....

Date .....

Return to :- [gwyn.evans@orkney.gov.uk](mailto:gwyn.evans@orkney.gov.uk)

Prepared; April 2017  
Amended; April 18