**MINI-COMPETITION CONDITIONS**

**MINI-COMPETITION CONDITIONS FOR PRODUCTS**

**ORDER FORM TEMPLATE**

To: [Insert Supplier’s Details]

|  |  |
| --- | --- |
| **Issue Date:** | **Purchase Order Number:** |
| Description of the Products  Unit/ number/ unit price  VAT |  |
| Indicate if any of the Terms and Conditions are not applicable |  |
| Relevant documents  Specification  Proposal |  |
| Optional information e.g. quarry source |  |
| Delivery location |  |
| Delivery date |  |
| Price breakdown including any discounts |  |
| Approver |  |

In accordance with the provisions of the Conditions, you are instructed to proceed with the delivery of the Products as identified above. The Products must be delivered on or before the Delivery Date.

In delivering the Products, as required under this Purchase Order, you are to comply with all requirements and the mini-competition terms and conditions for the supply of road making materials (supply only) and ancillary products contained at Appendix 1.

**APPENDIX 1**

TERMS AND CONDITIONS

FOR THE SUPPLY OF ROAD MAKING MATERIALS (SUPPLY ONLY) AND ANCILLARY PRODUCTS

**SCOPE**

These terms and conditions (the “**Conditions**”) (together with any Purchase Order) shall govern the provision of any Products by the Supplier pursuant to the Framework Agreement from time to time.

1. DEFINITIONS

The **Conditions** means these conditions as defined in clause 2.1;

The **Framework Agreement** means the multi-party framework to provide the Products for Local Authorities issued by the LGOPC and dated [Insert date];

The **LGOPC** means the Local Government Operational Procurement Centre of The Reeks Gateway, Killarney, County Kerry as Central Purchasing Body (CPB) under the auspices of Kerry County Council, County Buildings, Rathass, Tralee, Co. Kerry;

The **Mini-Competition Request for Tender or Request for Tender (RFT)** means an invitation to submit a Proposal issued by the Employer;

The **Proposal** means the proposal submitted by the Supplier to the Employer in response to a Mini-Competition Request for Tender;

The **Products** means the road making materials and ancillary products the Supplier is to provide as described in the Specification and the Purchase Order(s);

The **Specification** means the document identified as Schedule 1 of the Framework Agreement;

A **Purchase Order** means a written order given to the Supplier in the form included in this document;

The **Term** means the period delimited in clause 3.

1. INTERPRETATION
   1. These Conditions are the entire agreement between the parties about the Products and consists of, in order of precedence:
      1. the Purchase Order; and
      2. these Conditions.
   2. The Supplier must deliver the Products at its own expense, complying with these Conditions, the Specification, each Purchase Order, the Employer’s instructions, and the law.
   3. If any provision of these Conditions is held by any competent authority to be invalid, unlawful 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.
   4. It is acknowledged by all parties that the Supplier will at all times be an independent contractor, and nothing in these Conditions will be construed (and the Supplier will not hold out its relationship) as constituting a partnership, joint the Employer and the Supplier.
2. DURATION OF TERM
   1. The Term starts on the date the Employer accepts the Supplier’s Proposal or issues a Purchase Order and ends on the delivery of the Products specified in a Purchase Order to the reasonable satisfaction of the Employer unless otherwise terminated in accordance with these Conditions.
   2. Each Purchase Order shall constitute a separate contract for the Products and default by the Employer in relation to any one Purchase Order shall not entitle the Supplier to treat such as a breach of the Framework Agreement and/or these Conditions.
   3. By signing and returning or otherwise acknowledging a Purchase Order, the Supplier acknowledges and agrees that it shall have entered into a legally binding contract with the Employer to provide the Products specified in the relevant Purchase Order to the Employer incorporating these Conditions. In any circumstances where the Supplier does not formally accept a Purchase Order, dispatch or delivery of Products by the Supplier to the Employer shall be deemed conclusive evidence of the acceptance of a Purchaser Order and the terms and conditions of the contract thereby constituted.

* 1. Without prejudice to any other rights or remedies to which it may be entitled, the Employer may terminate a Purchase Order issued by it without liability to the Supplier by giving written notice to the Supplier to take effect immediately or on the date specified in the said notice if:

* + 1. the Supplier commits a material breach, in the opinion of the Employer, of any of these Conditions, and if such breach is capable of being remedied, fails to remedy the breach within thirty (30) days of the notice given by the Employer requiring the Supplier to do so;
    2. the Supplier is, or is deemed for the purposes of any relevant law to be, unable to pay its debts as they fall due or to be insolvent, or admits inability to pay its debts as they fall due; or the Supplier suspends making payments on all or any class of its debts or announces an intention to do so, or a moratorium is declared in respect of any of its indebtedness;
    3. any step (including the making of any proposal, the convening of any meeting, the passing of any resolution, the presenting of any petition or the making of any order) is taken with a view to a composition, assignment or arrangement with any creditors of, or the winding up, liquidation or dissolution of, the Supplier; or any liquidator, receiver or examiner is appointed to or in respect of the Supplier or any of its assets;

* + 1. the Supplier ceases or threatens to cease to carry on business;
    2. any representation made by the Supplier in connection with the Mini-Competition Request for Tender shall in the opinion of the Employer prove to be untrue or incorrect in a material respect as of the date when made;
    3. the Supplier has committed any fraudulent act or any criminal activity or is guilty of gross negligence in the performance of its obligations; or
    4. the Employer has reason to believe that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Supplier or any agent or representative of the Supplier, to any employee of the Employer with a view towards securing any agreement for the provision of the Products. Paying the expenses of normal business meals shall not be prohibited by this provision.
  1. The Employer may terminate a Purchase Order at any time by giving 30 days’ notice in writing to that effect to the Supplier.
  2. Termination of any Purchase Order pursuant to Clauses 3.4 or 3.5 above shall not relieve or discharge either the Supplier or the Employer from any obligations which have accrued prior to such termination.

* 1. The Employer shall not be liable to the Supplier for any loss of profit, or other economic losses and/or expenses or for any indirect, economic, or consequential loss suffered or incurred by the Supplier arising out of or in connection with these Conditions or the termination of any Purchase Order.

1. PAYMENT
   1. Subject to these Conditions and in accordance with the provisions of this clause, the Purchase Order and the Specification, the Employer will pay the Supplier the value of delivered Products.
   2. The price for any Products ordered by the Employer shall be the price set out in the applicable Purchase Order. If no price is specified therein, the price of the Products shall be the price last quoted by the Supplier. The payment terms for any Products ordered by the Employer shall be set out in the applicable Purchase Order.
   3. The rates and prices in the Proposal exclude VAT.
   4. The Employer may deduct from amounts due to the Supplier any amount that the Employer considers is due, or likely to become due, to the Employer from the Supplier under these Conditions.
2. INSPECTION
   1. At any time, prior to any dispatch of Products to it, the Employer (or any other person whom it may nominate) shall be entitled to inspect, examine and test the Products at the Supplier's premises and, if any Products or any part of them are being sourced at other premises, the Supplier shall obtain for the Employer permission to carry out a like inspection on such premises.
   2. The Supplier shall make available to the Employer (or its nominee) (at the Supplier's cost unless otherwise agreed in writing), all necessary resources making it possible for the Employer to check the conformity of the Products to the relevant Purchase Order.
   3. The Supplier must be able to supply all documentary evidence concerning the origin and quality of the raw materials used in its supply.
   4. Any inspection, examination or test required or carried out by the Employer shall not in any way affect the Supplier's warranties or reduce or relieve the Supplier of its obligations under these Conditions or constitute a waiver by the Employer and shall be without prejudice to any of the Employer's other rights under these Conditions. Without prejudice to the generality of the foregoing, the Employer shall be entitled to inspect the Products upon their arrival at the final destination and to issue a refusal at any of these times, or to express any reservations. The Supplier's responsibility shall not be reduced or relieved by any observations that the Employer may make regarding instructions detailed in the Employer's designs or drawings and concerning the nature and quality of the materials used.
3. DELIVERY
   1. The Supplier must deliver the Products ordered on the delivery date or dates specified in the applicable Purchase Order (or such other delivery date as may be specified by the Employer) to such place as the Purchase Order may specify and otherwise upon the terms and conditions set out in the Purchase Order and in accordance with the Specification. For the purpose of delivery of the Products, time is of the essence.
   2. If the Supplier fails to deliver the Products to the Employer on or before the due date for delivery as specified in the relevant Purchase Order, the Supplier shall pay to the Employer as and by way of agreed liquidated damages an amount in euro equal to [X%] of the contract price stipulated in this Purchase Order per week subject to a maximum amount in euro equal to [x]% of the contract price. The parties acknowledge and agree that damages payable pursuant to this sub-clause 6.2 are a genuine pre-estimate of the loss likely to be suffered by the Employer as a result of failure of the Supplier to deliver the Products on or before the delivery date.
   3. If the Supplier fails to deliver the Products to the Employer on or before the due date for delivery as specified in the relevant Purchase Order, the Employer may (without prejudice to any other right it may have under the terms of these Conditions or otherwise) cancel the order.
   4. The Employer may postpone delivery by reasonable notice given to the Supplier at any time before delivery. Without prejudice to the generality of the foregoing, in the event of an industrial dispute or other action preventing the Employer from operating in its normal course of business, the Employer reserves the right to suspend acceptance of deliveries of Products until the dispute or other action has ceased.
4. ACCEPTANCE
   1. The Employer shall not be deemed to have accepted any Products until after the Employer has actually inspected the Products and carried out all tests which it may, in its absolute discretion, deem appropriate to ascertain that the Products are in accordance with its requirements, notwithstanding any prior acknowledgement of receipt or prior payment. The Employer may reject Products which are not in accordance with its requirements. In those circumstances, the Employer shall be entitled to return any such Products to the Supplier at the Supplier's cost and risk to the fullest extent permitted by law.
5. TRANSPORTATION AND CLAIMS
   1. The Supplier is solely responsible for compliance with all laws relating to the sourcing, packaging and carriage of the Products until delivery and for ensuring that such sourcing, packaging, carriage and delivery are made in accordance with the best current industry practice and all applicable legal requirements and meet with all relevant government and local authority requirements. For the avoidance of doubt, the Supplier shall be obliged to procure that all third party carriers and other contractors engaged by it shall comply with the foregoing.
   2. The Supplier agrees to indemnify and hold harmless the Employer and the employees and sub-contractors of the Employer from and against any and all losses arising out of any injury (including death) to any person or damage to any property resulting from or in any way connected with
      1. the sourcing of the Products; and/or
      2. any breach by the Supplier of the provisions of sub-clause 8.1;

except for such losses that have been caused solely and exclusively by the negligence of the Employer or the employees or sub- contractors of the Employer.

1. RISK AND TITLE
   1. Title to the Products (if applicable) shall pass on delivery to the Employer unless payment is made prior to the delivery date, in which event, title shall pass to the Employer on payment. Where title in the Products has passed to the Employer prior to the delivery date pursuant to this clause 9, the Supplier shall keep such Products separate from other products and clearly mark the Products as the property of the Employer.
   2. The risk in the Products shall remain with the Employer until delivery in accordance with Clause 6.
2. WARRANTIES
   1. The Supplier represents and warrants to the Employer that on an ongoing basis:
      1. it has examined the Specification and/or other documents provided by the Employer and has satisfied itself that same are suitable to enable the Supplier to proceed with the sourcing of the Products;
      2. all Products delivered to the Employer shall conform to the Specification and/or other documents provided by the Employer and to any description given by the Supplier in respect of the Products concerned;
      3. any Products delivered to the Employer shall be of merchantable quality, free from defects in materials and workmanship and shall, unless a different period is specified in the applicable Purchase Order, remain fit for use in their intended purpose for the period of [430] days commencing on the date on which the Products concerned are delivered;
      4. if a sample of the Products was provided to the Employer before delivery, the bulk of the Products will correspond with the sample; and
      5. the Products when delivered with comply with all applicable laws.
   2. In the event of any breach of these warranties or representations, and in addition to and without prejudice to any other rights which the Employer may have, the Employer may:
      1. require the Supplier to remedy the defect(s) in the Products and any damage to other property arising directly or indirectly out of any defect(s) in the Products in which event the Supplier shall proceed to carry out such remedial works with all possible speed and/or supply replacement products; or
      2. arrange for a person other than the Supplier to remedy the defect(s) in the Products and any damage to other property arising directly or indirectly out of the defect(s) in the Products, in which event the Supplier shall indemnify the Employer on demand against all costs incurred in connection with such remedial works and/or supply replacement products.
   3. The provisions of these terms and conditions shall apply to any products supplied by the Supplier to the Employer in place of any defective Products.
3. LOSS AND DAMAGE
   1. The Supplier shall indemnify and keep indemnified the Employer (on demand) from and against all losses suffered or incurred by the Employer arising out of or in connection with any of the following:
      1. any injury or death to any person or in respect of any loss of or damage to any property caused by or arising out of any act, omission or negligence of the Supplier, its servants, agents, employees or contractors in connection with these Conditions;
      2. any damage caused by the Products or any defects therein owing to the act, omission or negligence of the Supplier, or any of its employees, servants, agents or contractors.
4. INSURANCES
   1. During the entire Term the Supplier shall maintain in force full and comprehensive insurance policies in respect of all customary liabilities and risks undertaken by the Supplier in connection with the provision of the Products in accordance with this clause and the Specification, including but not limited to:
      1. Employer’s liability insurance with a limit of indemnity of no less than €13 million. Such policy shall include an indemnity to the Employer as principal.
      2. Public liability insurance with a limit of indemnity of no less than €6.5 million. Such policy shall include an indemnity to the Employer as principal.
      3. Products Liability Policy with a limit of indemnity of no less than €6.5 million. Such policy shall include an indemnity to the Employer as principal.
      4. Motor Insurance with a limit of indemnity of no less than €6.5 million. Such policy shall include an indemnity to the Employer as principal.
   2. The Supplier shall ensure that its insurance policies are taken out with reputable insurers acceptable to the Employer within the jurisdiction of the EU and that the level of cover and other terms of insurance are acceptable to and agreed by the Employer.
   3. The Supplier shall comply with all terms and conditions of its insurance policies at all times. If cover under the insurance policies shall lapse or not be renewed or be changed in any material way or if the Supplier is aware of any reason why the cover under its insurance policies may lapse or not be renewed or be changed in any material way, the Supplier shall notify the Employer without delay.
   4. It shall be the Supplier’s responsibility to ensure that any agent or sub-contractors of the Supplier effects and maintains all insurances required by law and all such other insurances as are necessary for the provision of the Products. Any deficiencies in the cover or policy limits of the insurance policy of such agents or sub-contractors shall be the sole responsibility of the Supplier.
   5. The Supplier shall not do or suffer to be done anything which may render the said policy or policies of insurance void or voidable.
5. ETHICS IN PUBLIC OFFICE

13.1 The Supplier warrants to the Employer that neither the Supplier nor any person on the Supplier’s behalf has committed any offence under the Prevention of Corruption Acts 1889 to 2010 or the Ethics in Public Office Acts 1995 and 2001 in connection with this Conditions or the Products, and nor will they commit any such offence.

1. LAW AND DISPUTES
   1. These Conditions and any contractual obligations or disputes arising out of or in connection with these Conditions shall be governed and construed in accordance with the laws of Ireland. The parties irrevocably agree that the courts of Ireland shall have exclusive jurisdiction to hear and decide any suits, actions or proceedings and to settle any disputes which may arise out of or are in connection with these Conditions.