

SECTION 3 DEFINITIONS AND STANDARD CONDITIONS

1. DEFINITIONS

In this Contract the following terms shall have the meanings prescribed unless otherwise stated or otherwise required by the context:

- “Authority”** means the Peak District National Park Authority.
- “CDM Regulations”** means the Construction (Design and Management) Regulations 2007 and the current approved code of practice published by the Health and Safety Executive (or any equivalent).
- “Conditions”** means together the Standard Conditions and the Detailed Conditions.
- “Contract”** means the Tender Documentation and the Form of Contract to be signed by the Parties (and each reference to ‘Contract’ shall include ‘Contract’ and vice versa).
- “Contract Commencement Date”** means the date that the Supply is to commence as set out in the Contract Particulars.
- “Contract Completion Date”** means the date on which the Nominated Officer specifies in writing to the Contractor that the Supply of the Machinery has been delivered.
- “Contract Particulars”** means the particulars of the Contract set out in the Form of Contract.
- “Contract Period”** means the period set out in the Contract Particulars.
- “Contractor”** means the Tenderer whose tender has been accepted by the Authority
- “Contract Variation”** means any omission addition or variation to the Supply in accordance with the Standard Conditions
- “Defects Liability Period”** means the defects liability period set out in the Contract Particulars (if any).
- “Delivery”** means the delivery of the Machinery in the manner set out in the Contract Specification (if applicable).
- “Detailed Conditions”** means the conditions contained in the Invitation to Tender.
- “Machinery”** means [the mower]
- “Force Majeure Event”** means civil commotion, riot, invasion, war (or threat of war), explosion, biological disaster, severe weather event which would result in a reasonably prudent contractor not being able to continue and complete the Supply, fire, earthquake, epidemic, nuclear disaster, act of terrorism or other natural physical disaster.
- “Form of Contract”** means the form of Contract annexed.
- “Form of Tender”** means the tender return form at **Section 1**.
- “Invitation to Tender”** means the invitation to tender for the supply of the Machinery.
- “Itemised Costs”** means the costs for the supply of the Machinery in the Form of Tender.
- “Method Statement”** means a statement setting out the proposed methods for the use of the Machinery
- “Nominated Officer”** means the Authority’s officer who shall be the main point of contact for the Contractor and shall be notified to the Contractor from time to time.
- “Payment”** means a payment in respect of the Supply made pursuant to **Section 4**.
- “Price”** means the price set out in the Contract Particulars.
- “Purchase Order”** means the Purchase Order form issued by the Nominated Officer in connection with the supply.
- “Risk Assessment”** means an assessment of the risks associated with the Supply (if requested in the Invitation to Tender)
- “Site”** means the site the Machinery is delivered to
- “Specification”** means the specification of the Machinery
- “Standard Conditions”** means these conditions.
- “Tender”** means the tender submitted by the Tenderer and shall include the term “Tender Return” and the Form of Tender.

“Tender Documentation” means any documents forming part of this Tender and the supplementary documentation (if any) supplied as part of such documentation.

“Tenderer” means the person or company submitting a Tender.

“Waste Machinery” means all packaging, bags, metal tapes, plastic and all other Machinery and rubbish associated with or produced during the course of the Supply (if applicable).

2. INTERPRETATION

- 2.1 Words importing the singular tense shall include the plural and vice versa and obligations undertaken by more than one person shall be deemed to have been undertaken jointly and severally
- 2.2 A 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 save to the extent he is named or identified as a person or class of persons specifically intended to take a benefit under the Contract.
- 2.3 If any provision of the Contract shall become or shall be declared by any court to be invalid or unenforceable in any way, such invalidity or un-enforceability shall in no way impair or affect any other provision of the Contract, all of which shall remain in full force and effect.
- 2.4 This Contract shall be governed by English law in every particular including formation and interpretation and shall be deemed to have been made in England
- 2.5 All rights granted to either of the parties shall be cumulative and no exercise by either of the parties of any right under this Contract shall restrict or prejudice the exercise of any other right granted by this Contract or other otherwise available to it.
- 2.6 Upon termination of the Contract no term other than clauses relating to Confidentiality, Insurance, Defects Liability, Liability of the Contractor (including Liquidated Damages (if any)) and Arbitration shall survive unless expressly provided.

3. STANDARD CONDITIONS

1. The Nominated Officer

The rights, obligations, functions and powers conferred on the Authority under this Contract shall be exercised by the Nominated Officer.

2. Performance of Contract

- a. The Contractor agrees that at all times it will supply the Machinery and perform the Contract:
 - i. in compliance with the following conditions;
 - ii. in a manner wholly consistent with the Tender Documentation;
 - iii. to the entire satisfaction of the Nominated Officer; and
 - iv. in any event with all due skill, care and diligence that would be expected of a qualified competent and experienced person undertaking the supply of the Machinery.
- b. The Machinery shall be fit for purpose;
- c. The Contractor shall notify the Nominated Officer as soon as practicable and in any event within 24 hours if the Contractor is unable supply the Machinery or perform any of its obligations under the Contract;
- d. The Contractor shall exercise all due care and diligence whilst Supplying the Machinery and shall be responsible for any loss or damage caused by the Contractor's negligence or lack of care;

3. Employees

- a. The Contractor shall not engage or employ or cause to be employed in the supervision and performance of the Contract any person without the necessary

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qualifications, skill and experience to perform the duties that they are trained and employed to do.

- b. The Contractor shall have regard to the Authority's health and safety policy and safe working practices when preparing its own statements.

4. Vehicles, Equipment and Machinery

- a. The Contractor shall at all times during the Contract Period at its own cost provide such Equipment and Machinery as is necessary for the proper performance of the Contract to the Authority's satisfaction.
- b. The Contractor shall at all times be fully responsible for licensing fees, taxes and insurances required in connection with or arising out of the possession or use of the such Equipment and Machinery.

5. Health and Safety

- a. The Contractor will be required to comply with the Health and Safety at Work Act 1974 and all other regulations made under the Act and all other legislation and regulations relevant to the performance of the Contract. Methods Statements should include operational Risk Assessments, copies of which are to be submitted with a tender (if required).
- b. The Contractor must at all times adhere to and comply with any RAMS.
- c. The Contractor must take the lead in ensuring the health and safety of all those involved in the Contract at the Site.
- d. The Contractor shall have regard to the Authority's health and safety policy and safe working practices when preparing its own statements.

6. British Standards

- a. Except where hereinafter specified to the contrary all Machinery are to comply with the latest British Standard Specification or equivalent national standard of another Member State of the European Community or international standard recognised in another Member State of the European Community (whichever is the higher), in either of which latter two alternatives the Contractor is required to furnish the Nominated Officer with supporting documentation to prove that the Machinery offer guarantees of safety, standards of reliability and fitness for purpose equivalent to or in excess of the relevant British Standard Specification.
- b. In the event of the Nominated Officer (whose decision shall be final) not being satisfied that the Machinery proposed meet the required standard the Contractor shall comply with the latest British Standard Specification and no claim for additional costs incurred with such compliance will be accepted. Except where hereinafter specified to the contrary all workmanship is to comply with the latest British Standard Code of Practice.

7. Variation of Contract

- a. Without prejudice to any other of the Conditions a Contract Variation shall not be valid or of any effect unless it is agreed in writing and signed by the Nominated Officer and the duly authorised agent or representative of the Contractor. Contract Variations for which there is no written confirmation or on a Project Progress Report form, are not authorised and will not be paid for under any circumstances. No other variations to the Contract shall be accepted by the Authority.

8. Payment and Invoices

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- a. On completion of the Contract (or any phase of the Contract) pursuant to a Purchase Order form and provided that the Contractor shall have performed his duties, obligations and functions under the Contract to the satisfaction of the Nominated Officer the Contractor may submit to the Nominated Officer an invoice ('Invoice') for the sum due to him in respect of that Purchase Order form.
- b. Within thirty (30) days of the receipt of the Invoice unless the Nominated Officer shall disagree with the amount claimed or require further information the Nominated Officer shall (subject to being satisfied as to the performance of the Contract) certify that the Invoice is correct for payment and shall procure payment to the Contractor of the amount so certified.

9. Value Added Tax

All sums payable under this Contract are (unless otherwise stated) exclusive of VAT and other duties or taxes and shall be payable upon production of a valid VAT invoice.

10. Insurance

- a. This clause shall apply where the Contractor is Delivering Machinery.
- b. The Contractor shall at all times from and including the Contract Commencement Date or Contract Date (whichever is the earlier) effect and maintain in force such policies of insurance with reputable insurers approved by the Authority in respect of its liabilities hereunder and shall fully insure and indemnify the Authority against liability:
 1. To the Authority and to any of their employees,
 2. To the employees of the Contractor,
 3. To any other person (including for the avoidance of doubt a Landowner or Tenant)
 4. In respect of the replacement of the Machinery.

in the sum of at least £5,000,000 (FIVE MILLION POUNDS) in respect of any single claim

- c. The Contractor shall be liable for and indemnify the Authority against and insure and procure any sub-contractor to insure against any expense, liability, loss, claim, action, or proceedings in respect of any damage whatsoever (whether directly or indirectly) to private property real or personal in so far as such damage arises out of or in the course of or by reason of carrying out the Contract and which is due to any negligence, omission or default of the Contractor or person for whom the sub-contractor is responsible.
- d. The Contractor shall also maintain public liability insurance arising out of or in connection with any matter involving or relating to the Delivery in the sums set out above.

11. Agency

- a. The Contractor is not and shall not in any circumstance hold itself out as being the agent of the Authority.
- b. The Contractor is not and shall in no circumstance hold itself out as being authorised to enter into any Contract on behalf of the Authority or in any other way to bind the Authority to the performance, variation, release or discharge of any obligation.
- c. The Contractor has not and shall in no circumstances hold itself out as having the power to make, vary discharge or waive any by-law or regulation of any kind.

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- d. The Contractor will not itself or permit any employee or other person engaged by the Contractor to represent themselves as being, servants or agents of the Authority for any purposes whatsoever.

12. Liability of the Contractor

- a. The Contractor hereby indemnifies and shall keep indemnified the Authority from and against any liability to any person whatsoever arising directly or indirectly out of or connected with the performance, non-performance or breach of the Contract or any act neglect default or omission of any employee, agent, servant invitee or visitor of the Contractor or any sub-contractor including, without limitation:
 - i. any and all losses, costs, expenses, (including professional and legal fees) liabilities and damages;
 - ii. any and all proceedings, demands, penalties, statutory charges and fines;
 - iii. death, illness or injury to any third party or for any loss of or damage to any property belonging to any third party and against all losses, costs, expenses, liabilities, damages, claims, demands or causes of action resulting therefrom;

in each case to the extent arising out the Contractor's or any of its sub-contractors' breach or failure in performance of the Contractor's obligations in the Contract or omission whether arising from breach of contract, negligence or default or otherwise, except and to the extent that such losses, costs, expenses, liabilities, damages, claims, demands were wholly and directly caused by the negligence or wilful misconduct of the Authority or its officers, agents or employees.

- b. Any damage or loss which may occur during the Contract Period in relation to the Machinery on or before the Contract Completion Date or to any property whatsoever of the Authority which may at any time for the purpose of any delivery (if applicable) be in the custody or use of the Contractor or sub-contractor which shall arise from the negligence of the Contractor or theft, spoiling, decay, waste, wind, rain or fire shall immediately be made good by the Contractor at the Contractor's cost to the satisfaction of the Nominated Officer.
- c. The Contractor shall indemnify the Authority against all claims liability and actions for or in respect of any damage or injury to property or persons or claims for the infringement of patent rights or copyrights arising from or occasioned by the conduct of the Contractor or his sub-contractor or of any person employed by him or them or arising howsoever from or by the supply of the Machinery and against all costs and proceedings in respect of any such claim. The Contractor shall also make good any loss or damage occasioned to the property of the Authority by the acts or defaults of the Contractor or his sub-contractors and reimburse the Authority for any loss suffered thereby.

13. Force Majeure

- a. Neither party shall be liable for any failure to fulfil or delay in fulfilling its obligations under the Contract (other than an obligation to pay monies due) where such delay or failure is due to a Force Majeure Event Provided That:
 - i. the party so affected could not have avoided the effect of the Force Majeure Event by taking precautions which, having regard to all matters known to it before the occurrence of the Force Majeure Event and all relevant factors, it ought reasonably to have taken but it did not take; and

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- ii. the party so affected has taken all steps as are reasonably necessary to mitigate the effect of the Force Majeure Event and to carry out its obligations under the Contract in any other way that is reasonably practicable; and
 - iii. the party so affected shall immediately notify the other in writing of the existence of the Force Majeure Event and of its anticipated duration.
- b. If the Contractor is the party affected by the Force Majeure Event, the Authority shall be relieved of its liability to make any payments to the Contractor for the duration of the Force Majeure Event and shall be entitled to obtain services the same as or similar to the Supply from any third party during such period that the Force Majeure Event continues and the Contractor shall give all assistance and information necessary to such third party to enable such third party to fulfil the obligations of the Contractor under the Contract.

14. Defects Liability Provisions

- a. The Authority shall have the right at any time to inspect the Supply and the progress of the Delivery and may make representations to the Contractor following any such inspection.
- b. The Contractor shall comply with the Nominated Officers directions following such inspections (insofar as such do not constitute Contract Variations).
- c. Upon the completion of the Supply the Contractor shall notify the Nominated Officer and the Nominated Officer shall in its absolute discretion notify that the Machinery (whether in whole or part) is satisfactory (“the Completion Certificate”).
- d. In the event that the Nominated Officer cannot so notify the Contractor shall take such action as shall be agreed with the Nominated Officer (including but not limited the removal and replacement of such Machinery) to enable the Nominated Officer to confirm that the whole of the Machinery has been Supplied to its entire satisfaction.

15. Bribery and Corruption

- a. The Contractor warrants and undertakes to the Authority that:
 - i. it will comply with applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (“Anti-Bribery Law”);
 - ii. it has not and shall not give any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972;
 - iii. it will comply with the Authority’s anti-bribery policy as may be amended from time to time, a copy of which will be provided to Contractor on written request;
 - iv. it will procure that any person who performs or has performed services for or on its behalf (“Associated Person”) in connection with this Contract complies with this Clause;
 - v. it will not enter into any agreement with any Associated Person in connection with this Contract, unless such agreement contains undertakings on the same terms as contained in this Clause;
 - vi. it has and will maintain in place effective accounting procedures and internal controls necessary to record all expenditure in connection with the Contract;

- vii. from time to time, at the reasonable request of the Authority, it will confirm in writing that it has complied with its undertakings under this Clause and will provide any information reasonably requested by the Authority in support of such compliance;
 - viii. it shall notify the Authority as soon as practicable of any breach of any of the undertakings contained within this clause of which it becomes aware.
- b. Breach of any undertakings in this clause shall be deemed to be a Machinery breach of the Contract for the purposes of **Clause 16 (Termination)**.

16. Termination

- a. The Authority shall be entitled forthwith upon the happening of any of the following events to terminate this Contract by the service of a notice (a "Termination Notice"), such events being;
- i. The failure to of the Machinery to fulfil the Specification.
 - ii. Any material breach by the Contractor of any other provision of the Contract.
 - iii. The Contractor having failed to perform a material part of the Contract for a period of 7 consecutive days.
 - iv. The Contractor suffering a legal claim against its possessions or if the Contractor consists of one or more individual, any such individual dying, entering into a composition or arrangement for the benefit of its creditors or having a receiving order in bankruptcy made against it or, if the Contractor consists of a body corporate, the Contractor having a Receiver or a Receiver and a Manager appointed or being the subject of a resolution or order for winding up, Provided That an amalgamation or reconstruction of a limited company shall be deemed not to be a breach of this Condition.
 - v. Any governmental or other licence, consent or authority required by the Contractor to enable it to perform any of its obligations under the Contract ceases to be in full force and effect or at any time it becomes unlawful for the Contractor to perform any of its obligations thereunder.
 - vi. The continuation of a Force Majeure Event for a period of time which in the opinion of the Nominated Officer materially affects or prejudices compliance by the Contractor of its obligations to the Authority or is likely to do so, preventing the Contractor from fulfilling its obligations under the Contract for a period of 45 days or more
 - vii. The withdrawal of the Authority's funding for the Project
- b. A Termination Notice shall be in writing and may be given by the Nominated Officer on behalf of the Authority.
- c. Upon receipt of a Termination Notice, in addition to such consequences as are set out in other provisions of the Contract:
- i. The Contractor shall forthwith cease to Supply the Machinery;
 - ii. (Save where a Termination Notice is served pursuant to **Clause 16 (a) (vii, viii and ix)** the Contractor shall fully and promptly indemnify the Authority in respect of:
 - a. all losses damages and costs (including professional costs) and expenses incurred or suffered by the Authority from such termination; and
 - b. the cost of causing to be performed such part of the Contract as would be performed by the Contractor during the remainder of the Contract Period to the extent that such costs exceed such sums as would have been

lawfully payable to the Contractor for the Supply of the Machinery. The Authority shall be at liberty to procure such performance by any persons (whether or not employees of the Authority) as the Authority shall in its entire discretion think fit and shall be under no obligation to employ the least expensive Supply of the Machinery.

- iii. The Authority shall be under no obligation to make any further Payments to the Contractor and shall be entitled to retain any Payments which may have fallen due to the Contractor before termination until the Contractor has paid in full to the Authority all sums due under this Contract or to deduct from it any sum due from the Contractor to the Authority under this Contract.
- iv. The Authority shall not be liable for any claim demands costs expenses losses incurred or suffered by the Contractor (or any sub-contractor) resulting (either directly or indirectly) from the serving of a Termination Notice.

17. Contract Suspension

- a. In the event that a Termination Event occurs the Authority may at its option on written notice to the Contractor suspend this Contract for such reasonable period as the Authority shall notify the Contractor (the "Contract Suspension Period") and the Authority shall have the right to instruct another contractor to carry Supply the Machinery during the Contract Suspension Period and the cost of the Authority in relation to such suspension shall be deducted from the Price
- b. The exercise of the rights in this Clause above shall be without prejudice to any antecedent claim by the Authority and shall not prohibit the Authority from serving a Termination Notice at any time

18. Assignment

- a. The Authority shall be entitled to assign or transfer the benefit of the Contract or any part thereof and shall give written notice of any assignment or transfer to the Contractor.
- b. The Contractor shall not assign the Contract or any part thereof or any benefit or interest therein or there under without the written consent of the Authority. As a condition of consent (but without any obligation to consent), the Authority may impose such conditions as it may require. Any assignment occurring as a result of any internal reconstruction of the Contractor that is a limited company shall not require consent Provided That the Authority shall be given prior written notice.

19. Notices

- a. No notice to be served upon the Authority shall be valid or effective unless it is sent by prepaid post or delivered by hand to the Authority at the address specified below or to such other address as the Nominated Officer may notify the Contractor in writing.

**Head of Law
Peak District National Park Authority
Aldern House
Baslow Road
Bakewell
Derbyshire
DE45 1AE**

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Any notice to be served upon the Contractor shall be valid and effective if it is sent by prepaid post or delivered by hand to the registered principal place of business or to the address shown in this Contract if different or is delivered by hand to a Director, Company Secretary or other responsible representative of the Contractor.

20. Arbitration

- a. All disputes under this Contract shall be settled by arbitration under the Arbitration Act 1996 (or any statutory modification or re-enactment thereof for the time being in force) by a single Arbitrator to be appointed in default of agreement between the parties by the President of the Institute of Arbitrators.

21. Observation of Statutory Requirements

The Contractor shall at all times observe and comply with all the relevant Acts of Parliament, regulations and codes of practice (the Statutory Requirements) relating to the Supply of the Machinery including (but not limited to) compliance with any obligations that may be imposed upon the Authority resulting from the Supply (where the same are within the power and control of the Contractor) and the Contractor shall indemnify the Authority accordingly.

22. Waiver

Failure by the Authority at any time to enforce the provisions of the Contract or to require performance by the Contractor of any of the provisions of the Contract shall not be construed as a waiver of any such provision and shall not affect the validity of the Contract or any part thereof or the right of the Authority to enforce any provision in accordance with these conditions.

23. Whole Contract

The Contract (which includes the Tender Documentation) constitutes the whole agreement and understanding of the parties as to the subject matter hereof and there are no prior or contemporaneous agreements between the parties with respect thereto.

24. Rights and Duties Reserved

- a. For the avoidance of doubt nothing herein contained or implied shall prejudice or affect the Authority's rights or powers duties and obligations in the exercise of its functions as a local authority for the enforcement of or pursuance of any enactment by-law or regulation for the time being in force.

25. Confidentiality and Data Protection

- a. Each Party will procure that all confidential information which may already have come into the ownership, possession or control it or of a subsidiary prior to the execution of the Contract provided by the Contractor, or which may at any time hereafter until termination hereof come into the ownership, possession, or control of either of them relating to the other Party or its operation or management, or otherwise in connection with or in anticipation of the performance of the Contract (hereinafter referred to as "the Confidential Information"), shall strictly:-
 - i. not be used for any purpose other than the performance of the Contract;
 - ii. not to be disclosed during the continuance of the Contract to any third party including for the avoidance of doubt any company, organisation or

individual whatsoever employed by the Contractor now or at any time in the future; and

- iii. not after termination be used for any purpose whatever or disclosed to any third party.
- b. The Parties shall comply with the Data Protection Act 1998 and any replacement of it.

26. Freedom of Information and Transparency

- a. The Contractor acknowledges that the Authority is subject to the requirements of the Freedom of Information Act 2000 ("FOIA"), the Environmental Information Regulations 2004 ("EIR") and the Local Government Transparency Code 2014 ("the Code"). The Contractor shall assist and co-operate with the Authority as necessary to comply with these requirements and acknowledge that the Authority may be required to disclose information pursuant to the FOIA, the EIR and the Code. The Contractor shall provide all necessary assistance reasonably requested to enable the Authority to respond to a request for information within the time for compliance and permit the Authority to inspect such records as requested from time to time.
- b. The Contractor acknowledges that all payments over £250 are published in the public domain in accordance with guidelines issued by the Department of Communities and Local Government

27. Conditions

- a. In the event of any contradiction between the Standard Conditions and the Detailed Conditions then the Detailed Conditions shall prevail
- b. The Conditions and all other conditions contained in the Tender Documentation shall take precedence over all other terms and conditions provided by a Contractor (including any terms and conditions which a Contractor purports to imply under any confirmation of order, specification or other document).
- c. No terms and conditions endorsed on, delivered with or contained in a confirmation of order, specification or other document provided by the Contractor shall form part of the Contract.

