

Additional Conditions of Contract

Project Number: D22074

Project Name: Supply of Security Grade Bollards

Document Reference: D22074-DAA-XXX-XX-XXX-CT-J-XXX-0002

Revision: A
Status: A5

Additional Conditions of Contract

Z Clauses

Z1: General

Amendments to Core Clauses and Main Option clauses

The Core Clauses, Main Option clauses and the Secondary Option clauses are amended and added to as follows:

Z1: Priority of documents

ADD new clause **Z1**:

- Z1.1** The *additional conditions of contract* stated in the Contract Data are part of the contract.
- Z1.2** The priority of the documents forming this contract is:
- (a) These *additional conditions of contract*,
 - (b) The *conditions of contract*,
 - (c) The Scope and
 - (d) The documents defining the Prices.
- Z1.3** *Supply Manager* instruction requiring the *Supplier* to comply with a higher priority document is not a compensation event.

Z2: Definitions

ADD new clause **Z2**:

- Z2.1** An Insolvency Event is any of the following:

Z7: Subcontractors

- Z7.1** **ADD** the following at the end of the second sentence in clause 23.2
- “or the *Supplier* has not followed the subcontracting requirements and/or Subcontractor procurement procedures in the Scope.”

Z8: Assignment

- Z8.1** **REPLACE** clause 25.1 as follows:
- “25.1 Neither party may assign, subcontract, novate or otherwise dispose of this contract or any part thereof without the prior written consent of the other Party, save that the *Purchaser* is not required to obtain such consent in circumstances where it is assigning/subcontracting and/or novating to
- any other entity who assumes, through operation of law, responsibility for the operation/management of Dublin and/or Cork airports and/or
 - any company or entity within the *Purchaser*’s own Group (as defined within Companies Act 2014).”

Z10: Correcting Defects

- Z10.1** **DELETE** the last two sentences in clause 41.2 and **REPLACE** as follows.

"If the *Supplier* fails to correct any Defect within the *defect correction period*, the *Purchaser* may employ or pay others to correct such Defect and the *Supplier* pays to the *Purchaser* the following:

- the reasonable and proper costs incurred by the *Purchaser* in employing others to correct such Defect and
- all reasonable and properly incurred losses, costs, damages and expenses suffered by the *Purchaser* arising directly from the *Supplier's* failure to correct the Defect within the defect correction period.

Z10.2 **ADD** new clause 41.3:

"41.3 The *Purchaser's* remedies under this contract shall not operate to exclude any other rights and/or remedies which may be available to the *Purchaser* in relation to any Defect or damage by statute or under common law."

Z11: Payment

Z11.1 **DELETE** the first sentence in clause 51.2 and **REPLACE** with:

"Each certified payment is made within thirty-five days of receipt by the paying Party of a valid invoice."

Z11.2 **DELETE** the last sentence first bullet in clause 53.2 and **REPLACE** with:

"The final payment is made within twenty-one days of receipt by the paying Party of a valid invoice."

Z12: Compensation Event Management

Z12.1 **DELETE** the second bullet point in clauses 18.1 and 60.1(12) and **REPLACE** in each case with:

"Stops the *Supplier* Providing the whole of the Goods and Services by the Delivery Date."

Z12.2 In clause 61.3, **REPLACE** 'eight weeks' with 'four weeks'.

Z12.3 **DELETE** the last bullet point in clause 66.1.

Z12.4 **ADD** new clause 63.6A after 63.6:

"63.6A Notwithstanding any other provision in this contract, there shall be no increase to the Prices where, and to the extent that, a compensation event is an event of the type referred to in clause 60.1(12) and/or X2.1 and/or any correction to an assumption stated about a compensation event notified under clause 60.1(12) and X2.1"

Z13: Set off

ADD new clause **Z13**:

"**Z13.1** The *Purchaser* may deduct from of set off against any amount due or becoming due to the *Supplier* under this Contract any amount which is due and payable from the *Supplier* to the *Purchaser* under

- this contract; or
- any other agreement between the *Purchaser* and the *Supplier*

Z14: Omission

ADD new clause **Z14**:

“Z14.1 Without prejudice to any other provision of this Contract, the Purchaser may instruct the omission of all or any part of the Goods and Services from the Scope and may arrange for such omitted Goods and Services to be provided by others.

Z15: Audit and Transparency

ADD new clause **Z15**:

“Z15.1 The *Supplier* shall keep books and records of all financial transactions and expenditures in relation to the contract.

Z15.2 The *Supplier* allows the *Supply Manager* to inspect at any time within working hours the accounts and records which it is required to keep.

Z15.3 Funder means any entity providing funding in relation to this contract

Z15.4 The Supplier shall, to the extent not prohibited by law and without prejudice to the right of any person to assert legal professional privilege in respect of any document, promptly inform the Purchaser upon becoming aware of any genuine (that is, non-frivolous and non-vexatious) allegation, complaint or information relating to any criminal offence connected with this Contract

Z15.5 The Funder and the Purchaser shall have the right, in relation to any alleged criminal offence connected with this Contract, to inspect and audit the books and records of the Supplier relating to this Contract and to take copies of documents, to the extent permitted by law and without prejudice to the right of any person to assert legal professional privilege in respect of any document

Z16: Recovery of costs

Z16.1 **DELETE** clause 82.2.

Z17: Termination

Z17.1 At clause 91.2 **REPLACE** the first bullet point with the following:

“Substantial failure to comply with a material obligation (R11)”.

Z17.2 **DELETE** the second bullet point in clause 91.7 and **REPLACE** with:

“Stops the Supplier providing the whole of the Goods and Services by the Delivery Date and is forecast to delay provision of the whole of the Goods and Services by more than thirteen weeks”

Z18: Dispute Resolution

Z18.1 In 94.1, **DELETE** the second rows of the Dispute Reference Table.

Z18.2 In 94.2, **DELETE** all references to ‘*adjudicator*’ and **REPLACE** with ‘*conciliator*’

Z18.3 In 94.3 DELECT all reference to ‘adjudication’ and REPLACE with ‘conciliation’

Conciliation

If a dispute arises under or in connection with this contract, either Party may, by notice to the other, refer the dispute for conciliation under this sub-clause Z18.3. A Party may not refer a dispute to conciliation unless it has first been referred to the Senior Representatives in accordance with this contract.

The conciliation procedure is the Conciliation Procedure 2000 as published by Engineers Ireland. In the event of any discrepancy between the conciliation procedure and the provisions of this subclause the provisions of the sub-clause take precedence.

Within ten days of the referral of a dispute to conciliation, the Parties attempt to jointly appoint a conciliator who is able to act fairly and independently between the Parties in respect of the dispute referred. If the Parties fail to appoint a conciliator within ten days of the referral or if a person appointed refuses to act or becomes unable to act the conciliator is appointed by the *conciliator nominating body*. The Party referring this dispute pays any nomination fee charged by the *conciliator nominating body*.

The conciliation shall be confidential, and the Parties shall respect its confidentiality except when it is necessary to enforce a recommendation that has become conclusive and unbinding.”

Z18.4 In 94.4 DELETE all references to ‘adjudicator’ and REPLACE with ‘conciliator’

Z23: Insolvency Event

Z23.1 DELETE the first bullet point under clause 91.1 and REPLACE with:

“Either Party may terminate if an Insolvency Event occurs in relation to the other party. (R1)”