

CONDITIONS OF CONTRACT

1. CONDITIONS OF CONTRACT

The Contractor shall with due diligence and in a good and workmanlike manner, carry out and complete the clearance of snow from highways in accordance with the Specification and to the satisfaction of the County Council's Chief Engineer or his representative.

2. CONTRACT PERIOD

The contract period shall be as stated in the preamble to the Schedule of Rates.

3. COMPLIANCE OF REGULATIONS

- a. All plant supplied under this Contract shall be subject to initial and subsequent checks for efficiency by the County Council's Transport Manager and must conform to the Motor Vehicles (Construction and Use) Regulations 1986 and the Agricultural or Forestry tractor and tractor equipment (type approval) Regulations 1979 (Sit 1979/221) as appropriate and must conform with the requirements of the Health and Safety at Work Act 1974 and related legislation.
- b. All plant used under this Contract shall be properly licensed in accordance with statutory and similar requirements and the Contractor shall also provide competent operators who are in possession of the necessary driving licence for that purpose.
- c. The Contractor shall also comply with any statute, statutory instrument, rule, order, regulation or bye-law applicable to the Contract and the work to be carried out by the Contractor in respect thereof.

4. GIFTS INDUCEMENTS AND REWARDS

The County Council shall have the right to cancel this Contract and to recover from the Contractor the amount of any loss resulting from such cancellation. If the Contractor or any person on his behalf shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of the Contract or any other Contract with the County Council, or for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other Contract with the County Council, or if the like acts shall have been done by any person employed by him or acting on his behalf - (whether with or without the knowledge of the Contractor), or if, in relation to any contract with the County Council, the Contractor or any person employed by him or acting on his behalf shall have committed any offence under the Prevention of Corruption Acts, 1889 to 1916, or shall have given any fee or reward, the receipt of which is an offence under Section 117(2) and (3) of the Local Government Act, 1972.

5. ASSIGNMENT

The Contractor shall not assign or underlet this Contract or any part of it for the time being, without the written consent of the County Council.

6. DETERMINATION BY COUNCIL

The County Council may, but not unreasonably or vexatiously, by notice by registered post or recorded delivery to the Contractor forthwith terminate the employment of the Contractor under this Contract if the Contractor:-

- a. without reasonable cause fails to proceed diligently with the clearance of snow; or
- b. becomes bankrupt or make any composition or arrangement with his creditors or has a winding up order made or a resolution for voluntary winding up passed or a Receiver or Manager of his

business is appointed or possession is taken by or on behalf of any creditor of any property the subject of a charge. Provided always that the right of determination shall be without prejudice to any other rights or remedies which the County Council may possess.

7. DETERMINATION BY CONTRACTOR

The Contractor may but not unreasonably or vexatiously by notice by registered post or recorded delivery to the County Council forthwith terminate the employment of the Contractor under this Contract if the County Council fails to make any payment due under the provision of the Contract within 28 days of such payment becoming due.

8. ARBITRATION

If any dispute or difference concerning this Contract shall arise between the County Council and the Contractor such dispute or difference shall be and is hereby referred to the arbitration and final decision of a person to be agreed between the parties or, failing agreement within 14 days after either party has given to the other a written request to concur in the appointment of an arbitrator, a person to be appointed on the request of either party by the President or a Vice President for the time being of the Institute of Arbitrators.

9. HEALTH AND SAFETY

If during the performance of the contract the Health and Safety of any person is endangered then the Contractor shall cease work and take immediate steps to remedy that situation.

The Contractor shall inform the authorised officer/supervisor of all incidents and/or accidents connected with the contract and that occur during the performance of the contract.

10. INJURY TO PERSONS AND PROPERTY AND COUNTY COUNCIL'S INDEMNITY

The Contractor shall be liable for and shall indemnify the County Council against any expense, liability, loss, claim or proceedings whatsoever arising under any statute or at common law in respect of personal injury to or the death of any persons whomsoever or any damage whatsoever to any property, real or personal, insofar as such injury or damage arises out of or in the course of or is caused by the carrying out of the Contract, save where the same is due to the negligence of the County Council. During such time as the Contractor's operator is not actually operating the plant or engaged in necessary maintenance work, he shall carry out such other works as may be required of him by the County Council or its representative and which he may reasonably be regarded as able to perform. In the event of the Contractor's operator being required to carry out such other work, he shall for the purpose of such work continue to be regarded as the servant or, as the case may be, Sub-Contractor, agent of the Contractor and the Contractor will indemnify the County Council in respect of any claim by any person by any death or personal injury or any damage to any property arising out of the operator's performance of such work.

11. INSURANCE AGAINST INJURY TO PERSONS AND PROPERTY

Without prejudice to his liability to indemnify the County Council under Clause 10 the Contractor shall maintain and shall cause any Sub-Contractor to maintain such insurance's as are necessary to cover the liability of the Contractor or, as the case may be, Sub-Contractor, in respect of personal injury, death, loss or damage to property arising out of or in the course of carrying out of the Contract and which is caused by negligence, omission or default of the Contractor, his servants or agents or, as the case may be, of such Sub-Contractor his servants or agents and not due to the negligence of the County Council.

The insurance in respect of claims under a contract of service or apprenticeship with the Contractor or the Sub-Contractor, as the case may be and arising out of and in the course of such person's

employment, shall comply with the Employers Liability (Compulsory Insurance) Act 1969 and any statutory orders made thereunder or any amendment or re-enactment thereof.

The insurance's effected in accordance with this clause shall be for a sum of £5,000,000 (or such greater sum as the Contractor may choose) in respect of any one claim or claims arising out of any one event.

Whilst any item of plant or equipment is used on the public highway a satisfactory policy of insurance as required by the Road Traffic Acts must be in force in respect of that plant or equipment.

As and when he is reasonably required so to do by the County Council the Contractor shall produce and shall cause any Sub-Contractor to produce for inspection by the County Council documentary evidence that the insurance's required by this Clause are properly maintained and the County Council may require to have produced for its inspection the policy or policies and premium receipts in respect of such insurance.

Should the Contractor or any Sub-Contractor be in default in taking out insurance in accordance with the provisions of this Clause the County Council may itself insure against any risk and may deduct a sum or sums equivalent to the amount paid or payable in respect from any monies due or to be due to the Contractor or such amount shall be recoverable from the Contractor by the County Council as a debt.

THE POLICIES OF INSURANCE REQUIRED UNDER THIS CLAUSE MUST BE ENDORSED AS FOLLOWS:

"It is hereby declared and agreed that Hampshire County Council as highway authority for the County of Hampshire and any District Council acting as its agent, is interested in the insurance effected by this policy as principal in respect of a contract made between the said Hampshire County Council and the insured as Contractor relating to the clearance of snow from highways in the County of Hampshire."

THE CONTRACTOR SHALL SUBMIT WITH HIS TENDER THE ENCLOSED CERTIFICATE COMPLETED BY HIS INSURANCE COMPANY OR BROKER

The Contractor shall immediately notify the County Council and its insurers of any happening or event which may give rise to any claim, demand, proceeding, damage, cost or charge whatsoever arising out of the particular work and the Contractor shall indemnify the County Council against any loss whatsoever which may be occasioned to the County Council by the contractor's failure to give such notification.

Any costs incurred by the Contractor to cover the above indemnities and insurance's are deemed to be included in the rates inserted in the Schedule of Prices.

12. WORKING HOURS

Normal working hours for the purpose of this contract are Monday to Friday 7.45 am to 4.15p.m.

During snow emergencies there are no restrictions on working hours and snow clearance operations are often required continuously 24 hours day and night. The hours of work required will be issued by the Chief Engineer representative on each occasion.

13. FIXED PRICE CONTRACT

The rates in this contract shall be fixed for the period of the contract.

Hourly payments are claimable from the time vehicles/plant leave their normal base or location of the prime mover to the time of completion of the work undertaken.

14. ACCOUNTS AND PAYMENTS

Contractors must submit monthly invoices stating hours worked..

For Vehicles and Drivers listed in Schedules No's 1, 2 and 3 of the Tender Form payment for work done during normal working hours (see clause 12 above) will be made at an hourly rate not in excess of those rates agreed with the National Farmers Union Table No. 1.1. For plant and equipment listed in Schedule No 4 payment will be made at the rate per hour quoted by the Contractor. Additional payments in respect of schedules 1, 2 and 3 for working outside normal working hours will be made at the appropriate overtime rates quoted in the Tender Form Table No 1.3.

15. STANDING CHARGE

An annual payment (see Tender Form Table No 1, section 1.4) will be made for each snowplough, snow-blower or snow-thrower operated by the Contractor in respect of the contract to cover the charges incurred in bringing tractors back to farms at night in anticipation of snow fall. This includes the removal of tractor mounted equipment and fitting of snow clearing equipment in preparation for snow clearance including occasions when snow clearance is not undertaken.

16. MAINTENANCE

For those Contractors undertaking to maintain the snowplough in a sound operational condition, including painting and fitting of wearing blades when required using parts provided by the County Council, an annual payment (see Tender Form Table 1, section 1.5) for each snowplough will be paid to the Contractor.

This payment is made the following year and is subject to a satisfactory maintenance inspection by the Local Hampshire Highways Office or his Representative. Maintenance of snow blowers and snow throwers will be arranged by The Local Hampshire Highway Office or his Representative.

17. WORK LIGHTS

Where tractors and lorries require work lights for snow ploughing and these are not already fitted, a "once off" payment of £25 towards the provision of work lights will be made on receipt of evidence of the purchase. Agreement has been reached with the NFU that lights purchased under this scheme will remain the Contractor's property but upon a vehicle being replaced, the Contractor will be expected to transfer the lights to the replacement vehicle at his own expense.

NB: The client will need to maintain the record of payments.

18. VALUE ADDED TAX

Output VAT should not be added to the rates quoted in the schedule of prices, but where applicable should be added to invoices for work carried out.

19. CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999

None of the provisions of this Agreement are intended to or will operate to confer any benefit (pursuant to the Contracts (Rights of Third Parties) Act 1999) on a person who is not named as a party to this Agreement.

20. SOCIAL RESPONSIBILITY

- 20.1 The Contractor agrees that there shall be no discrimination by it against any person with respect to opportunity for employment or conditions of employment, because of age, culture, disability, gender, marital status, race, religion or sexual orientation.
- 20.2 The Contractor shall in all matters arising in the performance of the Contract comply with the provisions of the Disability Discrimination Act 1995 and any regulations made there under. The cost to the Contractor in meeting the requirements of this Clause shall be included in the Contract price.
- 20.3 The Contractor must comply with the provisions of the Race Relations Act 1976 and the Race Relations (Amendment) Act 2000 and shall ensure that they perform their responsibilities under this Contract with due regard to the need to eliminate unlawful racial discrimination, and to promote equality of opportunity and good relationships between different racial groups.
- 20.4 The Contractor shall, at all times, be responsible for and take all such precautions as are necessary to protect the health and safety of all employees, volunteers, service users and any other persons involved in, or receiving goods or services from, the performance of the Contract and shall comply with the requirements of the Health and Safety at Work Act 1974 and any other Act or Regulation relating to the health and safety of persons and any amendment or re-enactment thereof.

21. "Freedom of Information Act 2000 ('FOIA')

- 21.1 The Contractor recognises that Hampshire County Council ('the Council') is subject to legal duties which may require the release of information under the FOIA or any other applicable legislation governing access to information, and that the Council may be under an obligation to provide information on request. Such information may include matters relating to, arising out of or under this contract in any way.
- 21.2 The Contractor will assist the Council to enable it to comply with its obligations. In particular, it acknowledges that the Council is entitled to any and all information relating to the performance of this Contract or arising in the course of performing this Contract. In the event that the Council receives a request for information under the FOIA or any other applicable legislation governing access to information, and requests the Contractor's assistance in obtaining the information that is the subject of such request or otherwise, the Contractor will respond to any such request for assistance at its own cost and promptly, and in any event within seven days of receipt of the Council's request.
- 21.3 The Council shall not be liable for any loss, damage, cost, harm or other detriment however caused arising from the disclosure of information relating to this Contract further to its duties under the FOIA or other applicable legislation governing access to information."

22.. GENERAL

This Contract is made subject to the foregoing Conditions of Contract. If these Conditions of Contract differ in any respect from Conditions of Contract on any letters, forms, quotations, advice notes, delivery notes etc. tendered by the Contractor, then the foregoing Conditions of Contract shall prevail.