

Scottish Wildlife Trust Standard Terms and Conditions for Suppliers

1. INTERPRETATION

1.1 In these Conditions:-

2. **"the Company"** means the Scottish Wildlife Trust a company limited by guarantee, registered in Scotland (registered number SC040247), having its registered office at Harbourside House, 110 Commercial Street, Edinburgh EH6 6NF also being a Scottish registered charity (charity number SC005792);

"Conditions" means these standard terms and conditions for Suppliers;

"the Contract" means the agreement for the supply of the Goods and/or Services concluded between the Company and the Supplier by acceptance of the Order, subject to these Conditions;

"the Contract Price" means the price exclusive of Value Added Tax payable to the Supplier by the Company under the Contract for the full and proper performance by the Supplier of its part of the Contract;

"Data Protection Legislation" all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder); and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended; and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the Information Commissioner or other relevant data protection or supervisory authority and applicable to a party;

"Delivery Address" means the address specified in the order for the delivery of the Goods;

"Document" includes, in addition to a document in writing, any map, plan, design, drawing, picture or other image, or any other record of information in any form;

"Goods" means the goods (if any) described in the Order, and includes any instalment of the goods or any part of them;

"Input Material" means any Document or other material, and any data or other information provided by the Company relating to the Goods and/or Services;

"Intellectual Property Rights" patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

"Order" means the Company's purchase order to which these Conditions are attached;

"Output Material" means any Documents or other material, and any data or other information provided by the Supplier relating to the Goods and/or Services;

"the Services" means the services to be provided by the Supplier to the Company as specified in the Order and any specification or other document referred to therein;

"the Supplier" means the person who by the Contract undertakes to supply the Goods and/or Services to the Company as is provided for in the Contract. Where the Supplier is an individual or partnership, the expression shall include the personal representatives of that individual or of the partners; and

"UK GDPR" has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

- 2.1 The headings to Conditions shall not affect their interpretation.
- 2.2 A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- 2.3 Any words following the terms including, include, in particular, for example or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- 2.4 A reference to writing or written includes email.

3. CONSTITUTION OF THE CONTRACT

Any Order raised in writing (including email) by the Company constitutes an offer on the part of the Company to acquire Goods and/or Services subject to these Conditions which must be accepted in writing (including email) by the Supplier or by the actual execution of the Order. The Company shall not be liable for any Order unless it is confirmed on its official order form and signed by a designated officer of the Company, at which point and on which date the Contract shall come into existence.

4. VARIATION OF CONDITIONS

- 4.1 The Goods and/or Services shall be provided in accordance with the Order and these Conditions. Any conditions which the Supplier may seek to impose and which in any way add to, vary or contradict these Conditions shall be excluded and not form part of the Contract, unless each such condition has been specifically agreed to in writing by a duly authorised official of the Company.
- 4.2 Acceptance of an Order will be deemed to bind the Supplier to these Conditions and no Goods and/or Services shall be supplied by the Supplier, their employees, agents or representatives, except in accordance herewith. The Supplier's Conditions of Service do not form part of the Contract.

5. SPECIFICATION

The Supplier shall provide the Goods and/or Services and/or Output Material in all respects in accordance with the Order, any document or specification referred to therein and any other undertaking given by the Supplier as to the basis upon which the Goods and/or Services and/or Output Material would be provided. Except where the Company has agreed otherwise, the Supplier shall at its own expense provide all materials necessary for the provision of the Goods and/or Services and/or Output Material. In providing the Goods and/or Services and/or Output Material, the Supplier will comply with all applicable standards and any statute, statutory rule or order or other regulations which may be in force from time to time.

6. DEFAULT BY SUPPLIER

- 6.1 If the Supplier shall have failed to comply with any terms of the Contract, either in relation to time of provision of the Goods and/or Services or otherwise, the Company shall be entitled to avail itself of any of the following remedies at the Company's discretion:-
 - i) rescind the Contract;
 - ii) give the Supplier the opportunity to re-perform or remedy any default in performance of the Services and/or supply of the Goods at the Supplier's expense so that they comply with the terms of the Contract;
 - iii) refuse to accept any further Goods and/or Services without any liability to the Supplier;
 - iv) obtain at the Supplier's expense such work as the Company considers may be necessary to make good any failure in the provision of the Goods and/or Services; and
 - v) claim such damages, costs and expenses as the Company may have sustained in consequence of any breach of the terms of the Contract or failure by the Supplier to comply with any statutory or other legal obligations herein specified or implied by law.
- 5.2 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.
- 5.3 These rights shall be in addition to and without prejudice to any other rights the Company may have.

6. DELIVERY AND PERFORMANCE

- 6.1 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods and/or Services.
- 6.2 In providing the Services, the Supplier shall:
- i) co-operate with the Company in all matters relating to the Services, and comply with all instructions of the Company;
 - ii) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
 - iii) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract; and
 - iv) not do or omit to do anything which may cause the Company to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Company may rely or act on the Services.
- 6.3 The Supplier shall hold all Input Material in safe custody at its own risk, maintain the Input Material in good condition until returned to the Company, and not dispose of or use the Input Material other than in accordance with the Company's written instructions or authorisation.
- 6.4 The Supplier shall ensure that the Output Material shall be fit for any purpose that the Company expressly or impliedly makes known to the Supplier.
- 6.5 Goods shall be delivered:
- i) to the Delivery Address;
 - ii) on the date stated in the Order, or if no such delivery date is specified in the Order, then delivery shall take place within 28 days of the Order; and
 - iii) during the Company's usual business hours.
- 6.6 Services shall be performed:
- i) at the site as specified in the Order;
 - ii) on the date stated in, or within the period stated in, the Order, if no such performance period is specified in the Order, then performance shall take place within 28 days of the Order; and
 - iii) during the Company's usual business hours.
- 6.7 Where the date of delivery of the Goods or performance of the Services is to be specified after the placing of the Order, the Supplier shall give the Company reasonable notice of the specified date.
- 6.8 The Supplier shall not deliver the Goods in instalments without the Company's prior written consent.
- 6.9 The time of delivery of the Goods and of performance of the Services is of the essence of the Contract.
- 6.10 The Company may reject any Goods and/or Output Material delivered which are not in accordance with the Contract and return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Goods and/or Output Material so returned shall be paid forthwith by the Supplier
- 6.11 The Company shall not be deemed to have accepted any Goods and/or Output Material until the Company has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods and/or Output Material has become apparent.
- 6.12 The Supplier shall:
- i) observe and shall ensure that all employees, consultants, agents and sub-contractors which it engages in relation to the Contract observe all health and safety rules and regulations and any other security requirements that apply at the Delivery Address and/or any other address at which the Services are performed;

- ii) ensure that the Goods and/or Output Material are properly packed and secured in such manner as to enable them to reach their destination in good condition.
- 6.13 Risk of damage to or loss of the Goods and/or Output Material shall pass to the Company on delivery to the Company in accordance with the Contract.
- 6.14 The property in the Goods and/or Output Material shall pass to the Company on delivery, unless payment for the Goods and/or Output Material is made prior to delivery, when it shall pass to the Company once payment has been made and the Goods and/or Output Material have been appropriated to the Contract.

7. FORCE MAJEURE

Neither party shall be liable to the other for any failure to perform its obligations under the Contract where such performance is rendered impossible by circumstances beyond its control, but nothing in this Condition shall limit the obligations of the Supplier to use its best endeavours to fulfil its obligations under the Contract.

8. PRICE AND PAYMENT

- 8.1 The Contract Price shall be 'net', that is, after deduction of all agreed discounts. It shall include the cost of materials necessary for the provision of the Goods and/or Services, save where the Order specifically provides otherwise. The amount of any duty (including VAT) additional to the Contract Price and any early settlement discounts shall be shown separately in the Order.
- 8.2 In respect of the Goods, the Supplier shall invoice the Company on or at any time after completion of delivery (unless otherwise stated in the Order). In respect of Services, the Supplier shall invoice the Company on completion of the Services (unless otherwise stated in the Order).
- 8.3 Undisputed payment for the Goods and/or Services will normally be made within 30 days of receipt and agreement of the Supplier's invoice.
- 8.4 Whenever under the Contract any sum of money shall be recoverable from or payable by the Supplier, the same may be deducted from any sum then due, or which at any time thereafter may become due, to the Supplier under the Contract or under any other contract between the Supplier and the Company.
- 8.5 No increase in the Contract Price will be accepted (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without prior written agreement with the Company.
- 8.6 If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each date at 2% a year above the Bank of Scotland's base rate from time to time, but at 2% a year for any period when the base rate is below 0%. Where a payment is disputed in good faith, interest is only payable after the dispute is resolved, on sums found or agreed to be due, from 7 days after the dispute is resolved until payment.
- 8.7 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow the Company to inspect such records at all reasonable times on request.

9. RIGHTS IN THE INPUT MATERIAL AND THE OUTPUT MATERIAL

- 9.1 The property and all Intellectual Property Rights in any Input Material and any Output Material shall belong to the Company.
- 9.2 The Supplier hereby assigns to the Company absolutely all existing and future Intellectual Property Rights in the Output Material, including the right to bring, make, oppose, defend, appeal proceedings, claims or actions and obtain relief (and to retain any damages recovered) in respect of any infringement, or any other cause of action arising from ownership, of any of the Output Material whether occurring before, on, or after the date of the Contract.
- 9.3 The Supplier shall provide to the Company written absolute waivers from all authors of the Output Material in relation to all their moral rights arising under the Copyright, Designs and Patents Act 1988 and, so far as is legally possible, any broadly equivalent rights such authors may have in any territory of the world.

- 9.4 At the Company's expense, the Supplier shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this clause 9.
- 9.5 The Supplier shall treat the Order and all designs, drawings, specifications and information supplied therewith as confidential and shall not disclose the same to any third party without the Company's written consent or infringe any copyright, patent, trade mark, trade name or registered design vested in the Company.
- 9.6 All materials, drawings, patterns, gauges, samples, specifications and other technical data prepared by the Supplier in connection with the Contract shall be the Company's property and the Company may reproduce and use the said items freely for any purpose whatsoever.

10. WARRANTIES AND LIABILITIES

The Supplier warrants to the Company:-

- 10.1 that the Services will be provided using reasonable care and skill in accordance with the Order and any document referred to therein and at the intervals and within the times specified in the Order;
- 10.2 that in performing the Services the Supplier will comply with all statutory requirements and regulations relating to the provision of the Services;
- 10.3 that in performing the Services the Supplier will comply with all obligations upon it under the Health & Safety at Work Act 1974, the Data Protection Legislation or under any other regulations or orders or under any policies of the Company which the Company notifies to the Supplier are mandatory for its suppliers including its data protection and privacy policy;
- 10.4 The Supplier shall ensure that the Goods shall:
- i) correspond with their description;
 - ii) be of satisfactory quality, material and workmanship;
 - iii) be free from defects in design, materials and workmanship and shall remain so for a period of 12 months after delivery; and
 - iv) be fit any purpose held out by the Supplier or made known to the Supplier by the Company, expressly or by implication, and in this respect the Company relies on the Supplier's skill and judgement; and
 - v) conform with:
 - (1) all applicable legislation in force from time to time;
 - (2) the Order; and
 - (3) any specification or design supplied or advised by the Company to the Supplier or by the Supplier to the Company.
- 10.5 The Company's rights under these Terms are in addition to the statutory conditions implied in favour of the Company by the Sale of Goods Act 1979; the Sale and Supply of Goods Act 1982, any other applicable legislation and any conditions implied under Scots common law.
- 10.6 At any time prior to delivery of the Goods to the Company, the Company shall have the right to inspect and test the Goods upon giving reasonable notice to the Supplier.
- 10.7 If the results of such inspection or testing cause the Company to be of the opinion that the Goods do not conform or are unlikely to conform with the Order or to any specifications and/or designs supplied or advised by the Company to the Supplier, the Company shall inform the Supplier and the Supplier shall immediately take such action as is necessary to ensure conformity and in addition the Company shall have the right to require and witness further testing and inspection.
- 10.8 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Supplier's obligations under the Contract.
- 10.9 If any of the Goods fail to comply with the provisions set out in this clause 10 the Company shall be entitled to avail itself of any one or more remedies listed in clause 6.
- ## 11. INDEMNITY
- 11.1 Without prejudice to its liability for breach of any of the obligations under the Contract the Supplier shall be liable for and shall indemnify (and keep indemnified) the Company against all liability, loss, damages, costs, expenses, claims or proceedings whatsoever arising under any statute or at common law as a result of or in connection with:-
- i) breach of any warranty given by the Supplier in relation to the Goods and/or Services;

- ii) any claim that the provision of the Goods and/or Services and/or Output Material infringes the patent, copyright, design right, trademark or other Intellectual Property Rights of any person, except to the extent that the claim arises from compliance with any specification supplied by the Company;
- iii) any act or omission of the Supplier or its employees, agents or sub-contractors in supplying the Goods and/or Services;
- iv) any loss of or damage to property caused during the provision of the Goods and/or Services;
- v) any injury to any person, including injury resulting in death, save where such injury or death is caused by negligence on the part of the Company; and
- vi) any financial or economic loss except insofar as such loss, damage or injury shall have been caused by negligence on the part of the Company, its employees or agents.

12. INSURANCE

- 12.1 The Supplier shall insure and keep insured against its full liability under this Contract. Such insurance by the Supplier shall be a condition precedent of the Contract.
- 12.2 If requested, the Supplier will produce documentary evidence that the insurance is properly maintained.
- 12.3 The Supplier (if an individual) represents that he is regarded by both HM Revenue & Customs and the Department for Work and Pensions as self-employed and accordingly shall indemnify the Company against any tax, National Insurance contributions or similar impost for which the Supplier may be liable in respect of the Contract.

13. CONFIDENTIALITY

- 13.1 Each party undertakes that it shall not at any time during the Contract and for a period of three years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 13.2..
- 13.2 Each party may disclose the other party's confidential information:
 - i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 13; and
 - ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 13.3 Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

14. LIMITATION OF LIABILITY

- 14.1 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
 - i) death or personal injury caused by negligence;
 - ii) fraud or fraudulent misrepresentation; and
 - iii) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 14.2 Subject to clause 14.1, but excluding any liability of the Supplier under clause 11 and clause 12.3, the Supplier's total liability to the Company shall not exceed £[AMOUNT].
- 14.3 Subject to clause 14.1, the Company's total liability to the Supplier shall not exceed the sums paid to the Supplier under the Contract.

15. DATA PROTECTION

- 15.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 0 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 15.2 The Supplier acknowledges that for the purposes of the Data Protection Legislation, the Company is the controller. Where the Supplier is a processor under this Contract, it shall enter into an additional agreement provided by the Company in compliance with Article 28 of the UK GDPR (which shall form part of the Contract).

16. TRANSFER AND SUB-CONTRACTING

Neither party shall assign the whole or any part of the Contract. The Supplier shall not sub-contract the provision of the Services or Goods without the previous consent in writing of the Company.

17. INDUCEMENT TO ENTER CONTRACT

17.1 The Supplier shall not offer to the Company or its representatives as a variation of the conditions of the Contract or as an agreement collateral to it any advantage other than a cash discount against the Contract Price.

17.2 The Supplier shall not offer or give or agree to give, to any member, employee or representative of the Company any gift or consideration of any kind as an inducement or reward for doing or refraining from doing, or for having done or refrained from doing any act in relation to the obtaining or execution of this or any other Contract with the Supplier or for showing or refraining from showing favour or disfavour to any person in relation to this or any such Contract. The attention of the Supplier is drawn to the Bribery Act 2010.

18. TERMINATION AND CONSEQUENCES OF TERMINATION

18.1 The Company may at any time by notice in writing summarily terminate the Contract without compensation to the Supplier in any of the following events:-

- i) if the Supplier, being an individual, or, where the Supplier is a firm any partner in that firm shall become insolvent or notour bankrupt, or any application shall be made for sequestration of his estate, or a trust deed shall be granted by him for the benefit of his creditors or any equivalent action in competent jurisdiction; or
- ii) if the Supplier being a company shall pass a resolution, or the Court shall make an order, that the company shall be wound up (except for the purpose of amalgamation or reconstruction) or if an administrative receiver on behalf of a creditor shall be appointed, or if the Court shall make an administration order, or if circumstances shall arise which entitle the Court or a creditor to appoint an administrative receiver or which entitle the Court to make a winding-up order or administration order or any equivalent action in a competent jurisdiction: provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Company.

18.2 On termination of the Contract for any reason, the Supplier shall immediately deliver to the Company all Output Material whether or not then complete, and return all Input Material. If the Supplier fails to do so, then the Company may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

18.3 Termination or expiry of the Contract shall not affect the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

18.4 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

19. PUBLICITY

The Supplier shall not advertise that it is supplying goods or undertaking work for the Company, or use the Company's logo without the prior written consent of the Company.

20. CANCELLATION

Any Order raised by the Company may be cancelled at any time by the Company giving the Supplier notice in writing. A fair and reasonable price shall be paid for all work in progress/goods received at time of the cancellation which is subsequently received by the Company. The Company shall not be liable for any loss to the Supplier including consequential loss.

21. NOTICE

Any notice required to be given in writing under the Contract shall be given where possible by e-mail, facsimile or by first class post addressed to the registered office of the party for which it is intended (or to such other address as may be notified in writing in accordance herewith for the purposes).

22. WAIVER

No failure or delay on the part of the Company to exercise any of its rights under the Contract shall operate as a waiver thereof nor shall any single or partial exercise of any such right preclude any other or further exercise thereof. Any waiver by the Company of any breach by the Supplier of any of its obligations under the Contract shall not affect the rights of the Company in the event of any further or additional breach or breaches.

23. VALIDITY

If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

24. VARIATION

Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives.

25. NO PARTNERSHIP OR AGENCY

Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

26. LAW AND JURISDICTION

The Contract shall be governed by and construed in accordance with Scots Law and the parties hereto prorogate the exclusive jurisdiction of the Scottish courts.

MINOR LANDSCAPE AND CONSTRUCTION WORKS

Where the Services include physical works including minor building works and landscape maintenance (**Works**) the following additional provisions shall apply:-

27. The Works will be carried out in accordance with the reasonable instructions of, and to such quality and standards as shall be to the reasonable satisfaction of, any architect or other supervising official appointed by the Company to oversee the Works and, in so far as they apply to the Works, in compliance with the Construction (Design and Management) Regulations 2007.
28. If any defects, shrinkages or other faults in the Works appear within any rectification period set out in the Order due to materials, goods or workmanship not in accordance with this Contract or frost occurring before the Works are practically complete or any failure to comply with this Contract the Supplier shall make the same good at the Supplier's cost unless the Company (or its agent) shall instruct otherwise.
29. If any Works are not completed before any Date for Completion specified in the Contract the Supplier shall notify the Company and where that delay occurs for reasons beyond the reasonable control of the Supplier, the Company shall give such extension of time for completion as shall be reasonable. If the Works are not completed by the Date of Completion or any extended date established in accordance with this clause the Supplier shall pay to the Company liquidated damages at the rate specified in the Order. Such liquidated damages may be deducted by the Company from any sum it is due to pay to the Supplier.
30. The Supplier shall ensure that all reasonable times it has on site a competent person in charge.
31. If required to do so by the Company the Supplier shall take out and maintain with insurers acceptable to the Company:-
 - 31.1 a joint names full risk policy for the full reinstatement value of the Works and shall maintain the same until a practical completion certificate has been issued in respect of the Works or until the same are complete as appropriate,. In the event of any claim on such insurance the insurance monies shall be used to reinstate the Works all to the reasonable satisfaction of the Company or its agent; and

- 31.2 where the Works involve any element of design the Supplier will also take out a policy of professional indemnity insurance in such amount as the Company shall reasonably require.
32. The Supplier is encouraged to suggest economically viable amendments to the Works which if accepted by the Company in writing, may result in an improvement in environmental performance in respect of the Works and the Supplier will provide to the Company all information it may reasonably request in relation to the environmental impact of the supply and use of materials and goods in the Works.
33. In the event of any dispute in relation to a Contract involving Works the parties will where appropriate, prior to commencing court proceedings, give reasonable consideration to whether or not the dispute ought to be referred to mediation, adjudication or arbitration as an alternative means of resolving the dispute.