

General Terms and Conditions of Contract for the Supply of Goods

1. Interpretation

In these Conditions:

- 1.1 "Authority" means the Secretary of State for Work and Pensions;
- 1.2 "Confidential Information" means any information which has been designated as confidential by either Party in writing or that ought reasonably to be considered as confidential however it is conveyed, including information that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the contractor, including IPRs, together with all information derived from the above, and any other information clearly designated as being confidential or which ought reasonably to be considered to be confidential;
- 1.3 "the Contract" means the agreement concluded between the Authority and the Contractor, for the supply of Goods and related services (if any);
- 1.4 "the Contractor" means the person who undertakes to supply the Goods and render the services (if any) specified on the order;
- 1.6 "the Contract Price" means the price exclusive of Value Added Tax, payable to the Contractor by the Authority under the Contract for the full and proper performance by the Contractor of his part of the Contract;
- 1.7 "Default" means any breach of the obligations of the relevant party or any other default, act, omission, negligence or statement of the relevant Party or the Staff in connection with or in relation to this Contract;
- 1.8 "FOIA" means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;
- 1.9 "Goods" means any such goods as are to be supplied by the Contractor (or by the Contractor's sub-contractor) under the Contract as specified in the Specification;
- 1.10 "Government Property" means anything issued or otherwise furnished in connection with the Contract by or on behalf of the Authority or its authorised representative;
- 1.11 "Intellectual Property Rights" means patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;
- 1.12 "Loss" includes destruction;
- 1.13 "Month" means calendar month;
- 1.14 "Person" includes a corporation;
- 1.15 "Premises" means the location where the Goods are to be delivered and/or, where relevant, installed as set out in the Specification;
- 1.16 "Quality Standards" means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification Schedule;
- 1.17 "Representative of the Authority" in any provision of the Contract means the person duly authorised by the Authority to act for the purposes of the provision;
- 1.18 "Specification" means the description of the Goods to be supplied under the Contract as set out in the Specification Schedule including, where appropriate, the quantity of the Goods and any applicable Quality Standards; the location to which the Goods are to be delivered and, where relevant, installed; a description of any installation works to be carried out by the Contractor or any Staff; any equipment with which the Goods must be compatible; the date(s) and time(s) of delivery of the Goods and any necessary training or instruction to be given

to the Authority by the Contractor in connection with the use or maintenance of the Goods;

1.19 "Staff" means anyone acting on the Contractor's behalf employed in the execution of the Contract;

1.20 "VAT" means value added tax in accordance with the provisions of the Value Added Tax Act 1994

2. Acts by the "Authority"

Any decision, act or thing which the Authority is required or authorised to take or do under the Contract may be taken or done by any person authorised, either generally or specifically, by the Authority to take or do that decision, act or thing.

3. Service of Notice

Any notice or other communication which the Authority is required to give under the Contract will be sufficiently given if sent by recorded delivery, registered post or electronically to the last known address or email address of the Contractor.

4. Amendments and Variations

No amendment or variation in the terms and conditions of the Contract will be valid unless previously agreed in writing between the Authority and the Contractor and no payment will be made for the unauthorised supply of goods and related services (if any).

5. Transfer and Subletting

The Contractor shall not without the written consent of the Authority assign, sub-contract, novate or any way dispose of the benefit and/ or burden of the Contract or any part of the Contract.

6. Payment

6.1 On presentation of a "valid" invoice quoting the Authority contract and/or purchase order number and confirming that property in the goods has passed to the Authority or its agent, the Authority shall pay the Contract Price to the Contractor. Payment will be made within 30 days of receipt of the invoice by the Authority or in accordance with the contract.

6.2 The Authority shall pay all sums by direct credit transfer into a suitable bank account or by other electronic payment methods as appropriate.

6.3 If, for the purpose of performing the Contract, the Contractor enters into a contract for the supply of goods or services to the Contractor by a third party, the Contractor shall include in that contract a provision which requires the Contractor to pay for those goods or services within 30 working days of the Contractor receiving a "valid" invoice from that third party.

7. Recovery of Sums Due

7.1 Whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor, the same may be deducted from any sum then due, or which at any time thereafter may become due to the Contractor under any contract with the Authority or with any other department or office of Her Majesty's Government

7.2 Any over-payment by the Authority to the Contractor whether of charges or of Value Added Tax shall be a sum of money recoverable from the Contractor.

8. Value Added Tax

8.1 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate.

8.2 The Authority shall, following the receipt of a valid VAT invoice, pay to the supplier a sum equal to the VAT chargeable in respect of the services provided.

8.3 Any overpayments of VAT by the Authority to the Contractor shall be a sum of money recoverable from the Contractor for the purposes of Condition 7.

9. Insolvency

9.1 The Authority may at any time by notice in writing terminate the Contract without compensation to the Contractor if:

9.1.1 the Contractor, being an individual or where the Contractor is a firm, any partner in that firm at any time becomes bankrupt or has a receiving order or administration order made against him or makes any composition or agreement with or for the benefit of his creditors, or makes any conveyance or assignment for the benefit of his creditors, or purports to do so or if in Scotland he becomes insolvent or notour bankrupt, or any application is made under any bankruptcy act for the time being in force for sequestration of his estate, or a trust deed is granted by him for behoof of his creditors; or

9.1.2 the Contractor, being a company, is the subject of a proposal for a voluntary, arrangement; or has a petition for an administration order or a petition for a winding-up order brought against it; or passes a resolution for a winding-up order; or makes any composition, arrangement, conveyance or assignment for the benefit of its creditors; or purports to do so; or a receiver or any other person is appointed in respect of its undertaking or of all or any of its property.

Provided always that such determination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Authority.

sum as would have been payable under the Contract if the Goods had been delivered in accordance with the requirements of the Contract;

10. Termination on Default

Either party shall have the right to terminate the Contract if the other party is in Default of any of the conditions of the Contract and such Default shall not have been remedied to the satisfaction of the injured party within a period of thirty days of written notification of such Default to the other party. Notice of termination shall be given to the offending party in writing with immediate effect and such termination shall be without prejudice to the rights of the parties accrued to the date of determination.

11. Arbitration

11.1 All disputes, differences or questions between the parties to the Contract with respect to any matter arising out of or relating to the Contract, except where the decision of the Authority or of any other person is by the Contract expressed to be final and conclusive, shall after 14 days written notice by either party to the Contract to the other be referred in writing to a single arbitrator agreed for the purpose, or in the absence of such agreement to be appointed at the request of either party by the London Court of Arbitration.

11.2 Such reference shall be deemed to be a submission to arbitration under the Arbitration Act 1996 as amended or any statutory modification or re-enactment thereof.

12. Break

12.1 The Authority shall, in addition to its power under any other provision of the Contract, have power to terminate the Contract at any time by giving the Contractor written notice to expire at the end of the period of notice specified for the purpose of this Condition in the Contract. If no such period is specified at the end of one month and upon expiration of the notice the Contract shall be determined without prejudice to rights of the parties accrued to the date of determination but subject to the operation of the following provisions:

12.1.1 if such notice is given the Authority shall indemnify the Contractor against commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the determination of the Contract;

12.1.2 the Authority shall not be liable to pay under the provisions of conditions 12.1 and 12.1.1 any sum which, when taken together with any sums paid or due or becoming due to the Contractor under the Contract, shall exceed such total

12.2 If hardship to the Contractor should arise from the operation of condition 12.1.2 it shall be open to the Contractor to refer the circumstances to the Authority which, on being satisfied that such hardship exists, shall make such allowance, if any, as in its opinion is reasonable, and the decision of the Authority on any matter or thing arising out of this Condition shall be final and conclusive.

13. Official Secrets Act

13.1 The Contractor shall comply with, and shall ensure that its staff comply with (including any statutory amendment or re-enactment), the provisions of:

- a) the Official Secrets Act 1911 to 1989; and
- b) Section 182 of the Finance Act 1989.

13.2 In the event that the Contractor or its staff fail to comply with this clause, the Authority reserves the right to terminate the Contract by giving notice in writing to the Contractor.

14. Confidentiality

14.1 The contractor undertakes:

14.1.1 to treat as confidential all information which may be derived from or obtained in the course of the Contract; and

14.1.2 to take all necessary precautions to ensure that all such information is treated as confidential by the Contractor, his staff, agents and subcontractors.

15. Transparency

15.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.

15.2 Notwithstanding any other term of this Contract, the Contractor hereby gives his consent for the Authority to publish the Contract in its entirety, including from time to time agreed changes to the Contract, to the general public.

16. Prevention of Fraud and Corruption

16.1 The Contractor shall not offer, give, or agree to give anything, to any person an inducement or

reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this Contract or for showing or refraining from showing favour or disfavour to any person in relation to this Agreement.

16.2 The Contractor shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the staff and the Contractor (including its shareholders, members and directors) in connection with the order and shall notify the Authority immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

16.3 If the Contractor or the Staff engages in conduct prohibited by clause 16.1 or commits fraud in relation to the order or any other contract with the Crown the Authority may:

- a) Terminate the Agreement and recover from the Contractor the amount of any loss suffered by the Authority resulting from termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Agreement; or
- b) Recover in full from the Supplier any other loss sustained by the Authority in consequence of any Default of this clause.

17. Issued Government Property

17.1 All Government property issued in connection with the Contract shall remain the property of the Authority and shall be used in the execution of the Contract and for no other purpose whatsoever save with the prior approval in writing of the Authority.

17.2 All such property shall be deemed to be in good condition when received by or on behalf of the Contractor unless he notifies the Authority to the contrary within 14 days or such other period as is specified in the Contract.

17.3 The Contractor shall undertake to return all such property so issued and will be responsible for all loss thereof or damage thereto from whatever cause to the full amount of such loss or damage.

18. Liability

18.1 The Contractor shall not be liable for any loss, damage, or delay suffered by the Authority to the extent that such loss, damage or delay is attributable to instructions given by or on behalf of the Authority.

18.2 Nothing in these Conditions nor in any part of the Contract shall impose any liability on any

member of the staff of the Authority or its representatives in their personal capacity.

19. Indemnities

19.1 The Contractor shall indemnify the Authority against all actions, claims, demands, costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of copyright, patent, registered design or other property right used by or on behalf of the Contractor for the purpose of the Contract, providing that any such infringement is not knowingly caused by, or contributed to, by any act of the Authority.

19.2 The Authority shall indemnify the Contractor against all actions, claims, demands, costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of copyright, patent, registered design or other property right used at the request of the Authority by the Contractor in the course of performing the Contract.

20. Law

The Contract shall be considered as a contract made in England and shall be governed by, and construed in accordance with the provisions of English Law

21. Waiver

The failure of either party at any time to enforce any provision of the Contract shall in no way affect its right thereafter to require complete performance by the other party, nor shall the waiver of any Default of any provision be taken or held to be a waiver of any subsequent Default of any such provision or be a waiver of the provision itself.

22. Severability

If any condition or provision of the Contract not being of a fundamental nature be held to be illegal or unenforceable the validity or enforceability of the remainder of the Contract shall not be affected thereby.

23. Discrimination

23.1 The Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex or sexual orientation and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

23.2 The Contractor shall take all reasonable steps to secure the observance of the provisions of condition 23.1 by all staff or agents of the Contractor and all sub-contractors employed in the execution of the Contract.

24. Special Provisions

In the event of any conflict or inconsistency between these general Conditions and any special conditions contained within the Contract, such special conditions shall prevail.

25. Specification

The Contractor shall supply and, where relevant, install the Goods in accordance with the Specification.

26. The Goods

- 26.1 If requested by the Authority, the Contractor shall provide samples of Goods for evaluation and approval, at the Contractor's cost and expense.
- 26.2 The Contractor shall ensure the Goods are fully compatible with any equipment as specified in the Specification.
- 26.3 The Contractor acknowledges that the Authority relies on the skill and judgment of the Contractor in the supply of the Goods and the performance of its obligations under the Contract

27. Delivery

- 27.1 The Contractor shall deliver the Goods at the time(s) and date(s) specified in the Specification.
- 27.2 Unless otherwise stated in the Specification, where the Goods are delivered by the Contractor, the point of delivery shall be when the Goods are removed from the transporting vehicle at the Premises. Delivery shall include the unloading, stacking or installation of the Goods by the Contractors staff or carriers at such place as the Authority or duly authorised person shall reasonably direct.
- 27.3 Where the Goods are collected by the Authority, the point of delivery shall be when the Goods are loaded on the Authority's vehicle.
- 27.4 Time of delivery shall be of the essence and if the Contractor fails to deliver the Goods within the time promised or specified in the Specification, the Authority may release itself from any obligation to accept and pay for the Goods and/or terminate the Contract, in either case without prejudice to any other rights and remedies of the Authority.
- 27.5 The Authority shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered.

27.6 If the Authority elects not to accept such over-delivered Goods it shall give notice in writing to the Contractor to:

- 27.6.1 remove them within 5 Working Days and;
- 27.6.2 to refund to the Authority any expenses incurred as a result of such over-delivery (including but not limited to the costs of moving and storing the Goods);

failing which the Authority may dispose of such Goods and charge the Contractor for the costs of such disposal.

27.7 The risk in any over-delivered Goods shall remain with the Contractor.

27.8 The Authority shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the Specification.

28. Risk & Ownership

- 28.1 Subject to condition 27.5, risk in the Goods shall, without prejudice to any other rights or remedies of the Authority (including the Authority rights and remedies under clause 30 (Inspection, Rejection and Guarantee)), pass to the Authority at the time of delivery
- 28.2 Ownership in the Goods shall, without prejudice to any other rights or remedies of the Authority (including the Authority rights and remedies under condition 30 (Inspection, Rejection and Guarantee)), pass to the Authority at the time of delivery (or payment, if earlier).

29. Non-Delivery

- 29.1 On dispatch of any consignment of the Goods the Contractor shall send the Authority an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume.
- 29.2 Where the Goods, having been placed in transit, fail to be delivered on the due date for delivery, the Authority shall, (provided that the Authority has been advised in writing of the dispatch of the Goods), within 10 Working Days of the notified date of delivery;
- 29.2.1 give notice to the Contractor that the Goods have not been delivered and;
- 29.2.2 may request the Contractor to deliver substitute Goods (free of charge) within the timescales specified by the Authority or;
- 29.2.3 terminate the Contract in accordance with clause 27.4 (Delivery)

30. Inspection, Rejection and Guarantee

30.1 The Authority or its authorised representatives may inspect or test the Goods either completed or, in the process of manufacture during normal business hours on reasonable notice at the Contractor's premises and, the Contractor shall provide all reasonable assistance in relation to any such inspection or test free of charge.

30.2 No failure to make a complaint at the time of any such inspection or test and no approval given during or after such inspection or test shall constitute a waiver by the Authority of any rights or remedies in respect of the Goods and; the Authority reserves the right to reject the Goods in accordance with condition 30.3.

30.3 The Authority may by written notice to the Contractor reject any of the Goods which fail to conform to the approved sample or fail to meet the Specification.

30.4 Such notice shall be given within a reasonable time after delivery to the Authority of such Goods.

30.5 If the Authority rejects any of the Goods pursuant to this condition the Authority may (without prejudice to other rights and remedies) either:

30.5.1 have such Goods promptly, and in any event within 5 Working Days, either repaired by the Contractor or replaced by the Contractor with Goods which conform in all respects with the approved sample or with the Specification and due delivery shall not be deemed to have taken place until such repair or replacement has occurred; or

30.5.2 treat the Contract as discharged by the Contractor's Default and obtain a refund (if payment for the Goods has already been made) from the Contractor in respect of the Goods concerned together with payment of any additional expenditure reasonably incurred by the Authority in obtaining other goods in replacement; provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Goods.

31. Labeling and Packaging

31.1 The Goods shall be packed and marked in a proper manner and in accordance with the Authority's instructions, any statutory requirements and any requirements of the carriers.

31.2 In particular the Goods shall be marked with the contract number (or other reference number if appropriate) and the net, gross and

tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.

32. Training

Where indicated in the Specification, the Contract Price shall include the cost of instruction of the Authority's personnel in the use and maintenance of the Goods and such instruction shall be in accordance with the requirements detailed in the Specification.

33. Use of Documents, Information etc

33.1 Except with the prior consent in writing of the Authority, the Contractor shall not disclose the Contract or any provision thereof to any person other than a person employed by the Contractor in carrying out the Contract or any sub-contractor, supplier or other person concerned with the same. Such disclosure shall be made in confidence and shall extend so far only as may be necessary for the purposes of the Contract.

33.2 Except with the prior consent in writing of the Authority the Contractor shall not make use of the Contract or any information issued or furnished by or on behalf of the Authority otherwise than for the purposes of the Contract, and, save as provided for in condition 33.3 the Contractor shall not make any article or part thereof similar to the Goods for any other purpose.

33.3 Subject to any rights of third parties, nothing in this Condition shall prevent the use for any purpose by the Contractor of any specifications, plans, drawings and other documents, the rights of which vest in him otherwise than as a result of work carried out under a Contract.

33.4 Any samples or patterns or any specifications, plans, drawings or other documents issued by or on behalf of the Authority for the purposes of the Contract shall remain the property of the Authority and must be returned on completion of the Contract.

34. Publicity, Media and Official Enquiries

34.1 The Contractor shall not:

34.1.1 make any press announcements or publicise this Contract or its contents in any way; or

34.1.2 use the Authority's name or brand in any promotion or marketing or announcement of orders;

without the prior written consent of Authority, which shall not be unreasonably withheld or delayed.