

**WELSH GOVERNMENT'S STANDARD CONDITIONS FOR THE SUPPLY OF GOODS****TABLE OF CONTENTS**

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**1. DEFINITIONS AND INTERPRETATION**

- 1.1. For the purposes of these Conditions except where expressly stated to the contrary, the following words shall have the following meaning:

Acceptance Criteria	means such criteria as the Customer has specified as must be met by the Goods before the Customer will take delivery of the Goods;
Affected Party	means the Party seeking to claim relief in respect of a Force Majeure Event;
Award Letter	means the letter sent by the Customer to the Supplier notifying it that its tender has been successful and the Supplier has been awarded this Contract for the supply of the Goods;
Commencement Date	has the meaning given in Condition 3.1;
Conditions	means these standard conditions for the supply of goods;
Confidential Information	means information (however it is conveyed or on whatever media it is stored) the disclosure of which would constitute an actionable breach of confidence and which has either been designated as confidential by either Party in writing or which ought to be considered as subject to a duty of confidentiality and includes but is not limited to Personal Data and any information which relates to the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party;
Confidentiality Undertaking	means an undertaking not to use or disclose any Confidential Information received save as strictly required to fulfil the purposes of this Contract (including, without limitation, its re-tender);
Contract	means the contract comprised of the documents referred to in Condition 4;
Contract Period	means the period starting on the Commencement Date and ending on the date when this Contract expires or terminates (as the case may be);
Contracting Authority	means any contracting authority as defined in Section 2(1) of the PA 2023;
Customer	means the Welsh Ministers whose principal office is Crown Buildings, Cathays Park, Cardiff, CF10 3NQ unless stated otherwise in the Award Letter;

Customer Contract Manager	means a person appointed by the Customer to act on its behalf for the purposes of this Contract;
Customer Premises	means any Premises owned, occupied or controlled by the Customer;
Default	means  (i) any breach of an obligation of either Party under this Contract; or  (ii) any default, act, omission, negligence or statement of either Party or its Personnel in connection with or in relation to the subject matter of this Contract in respect of which such Party is liable to the other;
Delivery Date	has the meaning given in Condition 5.2(c);
Delivery Location	has the meaning given in Condition 5.2(c);
EIR	means the Environmental Information Regulations 2004;
FOIA	means the Freedom of Information Act 2000 and any subordinate legislation made under it from time to time including where applicable any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to it;
Force Majeure Event	means an event occurring after the date of this Contract of war, armed conflict, acts of terrorism, riots, fire, flood, storm, earthquake, disaster or such other similar events which directly causes the Affected Party to be unable to comply with all or a material part of its obligations under this Contract but excluding any industrial dispute relating to the Supplier, the Supplier's Personnel or any other failure in the Supplier's supply chain or in the supply chain of any Sub-Contractor;
Goods	means any and all of the Goods supplied or to be supplied by the Supplier in accordance with this Contract;
Good Industry Practice	means the exercise of the degree of skill, diligence, prudence, efficiency, foresight and timeliness which would be expected from a leading provider within the relevant industry or business sector of services of a similar type to the Services to be provided under this Contract;
Guarantee	means a guarantee provided pursuant to Condition 2;
Guarantor	means any person who has provided a Guarantee pursuant to Condition 2;

Indemnified Loss	means all liabilities, fines, penalties, damages, demands, proceedings, claims, costs, expenses whatsoever and howsoever arising, incurred including without limitation all legal expenses (on an indemnity basis) and other professional fees (together with any VAT thereon);
Information	shall have the meaning given under section 84 of the FOIA and/or Regulation 2 of the EIR;
Intellectual Property Rights	means copyright, rights related to or affording protection similar to copyright; rights in databases; patents and rights in inventions; semi-conductor topography rights; design rights; trademarks, service marks; rights in internet domain names and website addresses; trade names, business names, brand names; rights in get up; goodwill; know-how, trade secrets and rights in confidential information 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;
Intention to Award Letter	means the letter setting out the Customer's intention to award a public contract to the most advantageous tender (MAT). The Intention to Award Letter can also take the form of an assessment summary (as defined in Section 50 of the PA 2023) to the MAT;
Invitation to Tender (ITT)	means the invitation to tender issued by the Customer for the provision of the Goods;
KPIs	means the applicable key performance indicators referred to in Condition 9;
KPI Report	has the meaning given in Condition 9;
KPI Reporting Period	has the meaning given in Condition 9;
Legislation	means: <ul style="list-style-type: none"> <li>(a) any applicable statute or proclamation or any delegated or subordinate legislation;</li> <li>(b) any applicable guidance, code of practice, direction or determination with which the Customer and/or the Supplier is bound to comply to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Supplier by the Customer; and</li> <li>(c) any applicable judgment or order of a relevant court of law which is a binding precedent in England and Wales,</li> </ul>

	in each case in force or applicable in both England and Wales, or in Wales only;
Order	means an order for the Goods placed by the Customer in accordance with Condition 5;
Order Number	means the official number allocated by the Customer to an Order;
PA 2023	means the Procurement Act 2023;
Parent Company	shall have the meaning given to “parent undertaking” in section 1162 and Schedule 7 of the Companies Act 2006;
Parties	means the Customer and the Supplier and “ <b>Party</b> ” shall mean either of them;
Personal Data	has the meaning given in the UK GDPR;
Personnel	means the officers, partners, employees, workers, agents, consultants and sub-contractors of whatever nature of a Party;
Premises	means buildings and land;
Price	has the meaning given in Condition 12.1;
Prohibited Act	<p>the following constitute Prohibited Acts:</p> <ul style="list-style-type: none"> <li>(a) directly or indirectly to offer, promise or give any person working for or engaged by the Customer a financial or other advantage to: <ul style="list-style-type: none"> <li>(i) induce that person to perform improperly a relevant function or activity; or</li> <li>(ii) reward that person for improper performance of a relevant function or activity;</li> </ul> </li> <li>(b) directly or indirectly to request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;</li> <li>(c) committing any offence: <ul style="list-style-type: none"> <li>(i) under the Bribery Act 2010;</li> <li>(ii) under legislation creating offences concerning fraudulent acts;</li> <li>(iii) at common law concerning fraudulent acts relating to this Contract or any other contract with the Customer; or</li> </ul> </li> </ul>

	(iv) defrauding, attempting to defraud or conspiring to defraud the Customer;
Request for Information	has the meaning set out in section 8 of the FOIA and/or Regulation 5 of the EIR and includes any apparent request for such Information;
Samples	means any samples submitted to the Customer as part of the procurement process leading to the award of this Contract;
Services	means any and all of the services (or part thereof) provided with the Goods or to be provided by the Supplier as set out in this Contract;
Specification	means the specification attached to the Invitation to Tender including any qualification or pre-qualification questionnaire and any clarification thereof;
Staff	means any and all individuals who are employed or engaged by the Supplier or any Sub-Contractor who at any time is concerned with the supply of all or any of the Goods or any part thereof;
Sub-Contractor	means any third party with whom the Supplier enters into a sub-contract or a consortium agreement and/or the Sub-Contractor's employees or agents and any third party with whom that third party enters into a sub-contract and/or its employees or agents for the performance of any part of the Supplier's obligations under this Contract;
Supplier	means the individual(s), organisation(s) or business(es) to which the Award Letter is addressed and any other individual(s), organisation(s) or business(es) which have executed the Award Letter;
Supplier Contract Manager	means a person appointed by the Supplier to act on its behalf for the purposes of this Contract in accordance with Condition 40.4;
Tender	means all documentation submitted by the Supplier in response to the Invitation to Tender (including without limitation the Supplier's response to any prequalification or qualification questionnaire or any clarification by the Supplier);
Tender Documents	means the Specification, the Tender, the ITT and the Award Letter;
Termination Date	means the date upon which this Contract terminates or expires and references to the Termination Date includes the partial termination or expiry of this Contract;

VAT	means value added tax chargeable under the Value Added Tax Act 1994; and
Working Day	means Monday to Friday 9.00 a.m. to 4.30 p.m. excluding any statutory public holidays in Wales.

- 1.2. In this Contract the masculine includes the feminine and the neuter and the singular includes the plural and vice versa.
- 1.3. A reference to any statute, statutory instrument, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, statutory instrument, enactment, order, regulation or instrument as subsequently amended, replaced or re-enacted and as in force at the relevant time. Any reference to a statutory provision shall include any subordinate legislation made from time to time under that provision.
- 1.4. A reference to a Party shall include that Party's personal representatives and permitted assigns.
- 1.5. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.6. A reference to a company shall include any company, corporation or other body corporate wherever and however incorporated or established.
- 1.7. A reference to any document shall be construed as a reference to the document as at the date of the Award Letter.
- 1.8. Headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of this Contract.
- 1.9. The schedules and appendices, if any, form part of this Contract and shall have effect as if set out in full in the body of this Contract and any reference to this Contract shall include the schedules and appendices.

## **2. PRELIMINARIES**

- 2.1. The terms of this Contract shall apply to all Orders made by the Customer.
- 2.2. The Supplier shall, if required to do so by the Customer, enter into a form of supplementary agreement determined by the Customer to reflect the relevant requirements of any Invitation to Tender and (as appropriate) the offers or proposals set out in any Tender submitted in response to it including, without limitation, a consortium agreement.
- 2.3. If required to do so by the Customer, the Supplier shall provide the names and addresses of two substantial sureties who are satisfactory to the Customer and who are prepared to guarantee the due performance of this Contract. The terms of any such guarantee must be to the satisfaction of the Customer.
- 2.4. Where the Supplier is part of a consortium, the Supplier shall ensure that each member of the consortium is prepared to guarantee the due performance of this Contract if required to do so by the Customer.

## **3. COMMENCEMENT AND DURATION**

- 3.1. This Contract shall take effect on the commencement date specified in the Award Letter (the "**Commencement Date**") and shall expire on:

- (a) the expiry date specified in the Specification; or
- (b) where no date is specified, on completion of the provision of the Goods;

unless this Contract is terminated in accordance with these Conditions or extended in accordance with Condition 3.2.

- 3.2 If provided for in the Specification, the Customer may extend the Contract Period for such further period as is set out in the Specification. The Contract Period shall either be extended by notice served by the Customer on the Supplier no less than twenty eight (28) days before the end of the Contract Period or with the written agreement of the Parties.

#### **4. SCOPE**

- 4.1 This Contract shall comprise the following:

- (a) the Award Letter;
- (b) these Conditions;
- (c) the supplementary agreement made pursuant to Condition 2.2, if any;
- (d) the Specification;
- (e) the Schedules (if any);
- (f) the Invitation to Tender and the Tender;
- (g) the Order; and
- (h) any other document which is agreed in writing by the Parties to be incorporated into and form part of this Agreement.

- 4.2. The documents listed in Condition 4.1 shall be read together and construed so as to be consistent with one another so far as possible. In the event of any unavoidable conflict or inconsistency between any of the various documents forming part of this Contract the following order of precedence shall apply:

- (a) the Special Conditions, and/or supplementary agreement pursuant to Condition 2.2;
- (b) these Conditions;
- (c) the Specification;
- (d) the Schedules (if any);
- (e) the Invitation to Tender;

- (f) the Order;
  - (g) the Tender, unless any part of the Tender offers a better commercial position for the Customer (as decided by the Customer, in its absolute discretion), in which case that part of the Tender will take precedence over the documents above; and
  - (h) any other document which is agreed in writing by the Parties to be incorporated into and form part of this Contract (which does not, for the avoidance of doubt, include any terms and conditions issued by the Supplier).
- 4.3. If there shall be a conflict between the provisions of this Contract (including any of the documents listed in Condition 4.1) and any terms and conditions issued by the Supplier then the terms and conditions contained in this Contract shall prevail and the Supplier in executing this Contract hereby confirms acceptance of this Condition 4.3.

## **5. SUPPLY AND DELIVERY**

- 5.1. The Customer may at any time during the Contract Period order Goods from the Supplier by giving an Order to the Supplier and the Supplier shall supply such Goods in accordance with the Customer's Order.
- 5.2. Each Order shall:
- (a) be given in writing or, if given orally, shall be confirmed in writing within two Working Days;
  - (b) specify the type and quantity of the Goods ordered; and
  - (c) specify the date on which the Order is to be delivered (the "**Delivery Date**") and the delivery location (the "**Delivery Location**").
- 5.3. The Customer shall assign an Order Number to each Order and notify such Order Numbers to the Supplier. Each Party shall use the relevant Order Number in all subsequent correspondence relating to the Order.
- 5.4. The Supplier shall, at its own expense and risk, supply and deliver each Order to the Delivery Location on the Delivery Date, in accordance with the provisions of this Contract and the relevant Order.
- 5.5. Delivery of an Order shall be complete on the completion of delivery of the Order at the Delivery Location stated in the Order. In the event that the Customer has elected to collect the Goods, the Order shall be complete when the Goods are loaded onto the Customer's vehicle.
- 5.6. Except where otherwise provided in the Order, delivery shall include the unloading, stacking or installation of the Goods by the Supplier or the Staff at such place as the Customer or other duly authorised person shall reasonably direct.
- 5.7. Each Order shall be accompanied by a delivery note or delivery notes giving full particulars thereof, quoting the Order Number, the date of the Order and the type and quantity of Goods included in the Order. Where the Goods are to be supplied by weight and are not weighed at the place of delivery, the Supplier shall provide to the Customer at the time of delivery a weight ticket.

- 5.8 Where the Goods are sold by weight, the weight of all packing materials shall be deducted from the gross weight of the Goods and the Customer shall pay only for the net weight thereof and shall not be liable for the return of any such packing materials.
- 5.9 At any time prior to despatch of the Goods, the Customer may cancel or amend any of the requirements set out in an Order including, but not limited to, any of the following:
- (a) the quantity of the Goods required;
  - (b) the Delivery Date; and/or
  - (c) the Delivery Location;
- 5.10 If the Customer amends or cancels an Order pursuant to Condition 5.9, its liability to the Supplier shall be limited to payment to the Supplier of all direct costs reasonably incurred by the Supplier in fulfilling the Order up to the date of receipt of the notice of amendment or cancellation, except that where the amendment or cancellation results from the Supplier's failure to comply with its obligations under this Contract, the Customer shall have no liability to the Supplier in respect of it.
- 5.11 If the Contract Period expires before the supply or delivery of any Goods comprised in an Order, the Supplier shall remain liable for the completion of the Order. The terms and conditions of this Contract shall continue in full force and effect in respect of such completion.

## **6. THE GOODS**

- 6.1 The Supplier shall at its own cost ensure that all Goods supplied to the Customer pursuant to this Contract shall:
- (a) conform to the Specification;
  - (b) be compliant with any requirement of any Legislation (including, but not limited to, (i) being of satisfactory quality within the meaning of the Supply of Goods and Services Act 1982 and (ii) conforming to all applicable statutory and regulatory requirements);
  - (c) conform to any relevant British Standard, specification or code of practice or European Union equivalents;
  - (d) be compliant with any policies, rules, codes of practice, procedures and standards with which the Supplier is required to comply;
  - (e) conform to any Acceptance Criteria that are specified by the Customer;
  - (f) be free from defects in design, material and workmanship and remain so for 12 months after delivery;
  - (g) be of satisfactory quality and fit for any purpose for which such Goods are commonly used or which is made known to the Supplier in writing by the Customer;
  - (h) correspond in all respects with any Samples; and

- (i) be provided in accordance with the terms set out in this Contract.
- 6.2 In addition to the obligations imposed on the Supplier pursuant to Condition 6.1, the Supplier shall also:
  - (a) ensure that the Goods are properly packed and secured in such a manner as to enable them to reach their destination in good condition;
  - (b) obtain and maintain in force for the Contract Period all licences, permissions, authorisations, consents and permits needed to supply the Goods in accordance with the terms of this Contract; and
  - (c) comply with all applicable laws, enactments, orders, regulations and other instruments relating to the packing, packaging, marking, storage, handling, and delivery of the Goods.
- 6.3 The Supplier's Premises shall be available at all reasonable times for inspection by a representative of the Customer with or without a prior appointment and during such inspections the Supplier shall allow the representative of the Customer to examine any Goods to be supplied under the provisions of this Contract or to take samples of all or any Goods for the purpose of testing or analysis to determine compliance with the Specification.
- 6.4 If, following an inspection pursuant to Condition 6.3, the Customer reasonably considers that the Goods are not or are not likely to comply with any of the provisions of Condition 6.1, without prejudice to any other right or remedy available to it, the Customer shall inform the Supplier and the Supplier shall immediately take such action as is necessary to ensure that the Goods are or will be as required by Condition 6.1.
- 7. ACCEPTANCE AND DEFECTIVE GOODS**
- 7.1. The Customer shall not be deemed to have accepted any Goods until it has had five Working Days to inspect them following delivery or, in the case of a latent defect in the Goods, until a reasonable time after the latent defect has become apparent.
- 7.2. Where under the terms of this Contract any Acceptance Criteria have been specified, the Customer shall not be obliged to accept the Goods unless and until the Supplier has demonstrated that all Acceptance Criteria for the Goods have been met and the Customer has issued an acceptance certificate.
- 7.3. The Customer shall be under no obligation to accept or pay for any Goods supplied in excess of the quantity ordered. If the Customer elects not to accept such over-delivered Goods it shall give notice in writing to the Supplier to remove them within five Working Days of delivery and to refund to the Customer any expenses incurred by it as a result of such over-delivery (including but not limited to the costs of moving and storing the Goods), failing which the Customer may dispose of such Goods and charge the Supplier for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Supplier unless they are expressly accepted in writing by the Customer.
- 7.4. The Customer shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the Order.

- 7.5. The Customer shall not be obliged to accept delivery by instalments. If the Customer specifies or agrees to delivery by instalments in the relevant Order, delivery of any instalment later than the date specified or agreed for its delivery in the Order shall, without prejudice to any other rights or remedies of the Customer, entitle the Customer to terminate the whole of any unfulfilled part of the Order without further liability to the Customer.
- 7.6. Time of delivery shall be of the essence with regard to the Supplier's obligations under this Contract and if the Supplier fails to deliver the Goods on the Delivery Date, the Customer may, without prejudice to any other rights and remedies of the Customer:
- (a) release itself from any obligation to accept and pay for the Goods;
  - (b) obtain substitute goods from another supplier and, subject to Condition 29, recover from the Supplier any costs and expenses reasonably incurred by the Customer in obtaining such substitute goods (including, but not limited to, increased administration costs and costs of delay and disruption thereby incurred by the Customer);
  - (c) subject to Condition 30 claim damages for any other costs, expenses or losses resulting from the Supplier's failure to deliver the Order on the Delivery Date; and/or
  - (d) terminate this Contract.
- 7.7. If any Goods supplied to the Customer pursuant to an Order do not comply with any of the provisions of Condition 6.1 or are otherwise not in accordance with the requirements of this Contract, without affecting any other right or remedy available to it, the Customer may reject the Goods.
- 7.8. In any case of rejection of the Goods by the Supplier for whatever reason:
- (a) the Supplier shall promptly and at its own expense remove the rejected Goods and replace the same, as the Customer shall direct, with Goods which comply with all requirements of this Contract and are to the satisfaction of the Customer; and
  - (b) if any payment has been made by the Customer in respect of the rejected Goods, the Customer may require the Supplier to repay the price of the rejected Goods in full (whether or not the Customer has previously required the Supplier to repair or replace the rejected Goods);
  - (c) the Customer may obtain substitute goods from another supplier and, subject to Condition 30 recover from the Supplier any costs and expenses reasonably incurred by the Customer in obtaining such substitute goods (including, but not limited to, increased administration costs and costs of delay and disruption thereby incurred by the Customer).
- 7.9. The Customer's rights and remedies under this Contract are in addition to the rights and remedies available to it in respect of the statutory conditions relating to description, quality, fitness for purpose and correspondence with samples implied into this Agreement by the Supply of Goods and Services Act 1982.

**8. REPLACEMENT AND REPAIR**

- 8.1. Notwithstanding acceptance by the Customer, and without prejudice to any other right of the Customer under this Contract or at law, the Supplier shall, at the Customer's option, promptly repair or replace, at the Supplier's expense and to the satisfaction of the Customer, any Goods which are notified by the Customer as being defective within a reasonable period of time (dependent on the nature of the Goods) from the date when the Goods have been put into operational use either following delivery or following repair, modification or replacement of the Goods or any part thereof pursuant to this Condition 8.
- 8.2. In addition to the remedies under Condition 8.1 and without prejudice to any of its other rights, the Customer shall have the right to recover from the Supplier all costs and expenses arising from the defective Goods including, but not limited to those of:
- (a) removing the Goods;
  - (b) carriage and storage of the Goods;
  - (c) testing the Goods; and
  - (d) reinstalling and re-commissioning the Goods.

**9. KEY PERFORMANCE INDICATORS**

- 9.1. If KPIs are specified in the Specification and/or the Tender, those KPIs will apply to the supply of the Goods unless any additional or alternative KPIs are agreed in writing by the Parties.
- 9.2. Where KPIs are stated to apply (but are not specified) in the Specification, the Supplier and the Customer shall meet within twenty (20) Working Days (or such other period agreed by the Parties) of the date of the Intention to Award Letter to agree in writing the applicable KPIs over the Contract Period.
- 9.3. The Supplier shall supply the Goods in such a manner as will ensure that the KPIs achieved in respect of the Goods (or any part of the Goods) are equal to or higher than the specified KPIs.
- 9.4. The Supplier shall provide records setting out the applicable KPIs and its performance against the KPIs (a "**KPI Report**") at monthly intervals or such other interval stipulated by the Customer from time to time ("**KPI Reporting Period**").
- 9.5. Failure to achieve the KPIs shall entitle the Customer to terminate this Contract in accordance with Condition 34.1(o).

**10. DEFAULT**

- 10.1. The Supplier shall be liable to make good and pay all damages, costs, charges and expenses arising out of the breach of contract or negligence of itself and/or its Staff arising out of the performance of this Contract howsoever such damages, costs, charges and expenses arise.
- 10.2. The Supplier shall make good or replace with all possible speed any Goods which are or which become subject to defects arising from defective design, materials or workmanship of the Goods within twelve (12) months of either:
- 10.2.1. delivery to and acceptance of such Goods by the Customer; or

- 10.2.2. any making good or replacement of such Goods by the Supplier (whichever shall be the later).
- 10.3. The Supplier must meet any costs incurred as a result of such making good or replacement under Condition 10.2.
- 10.4. In this Condition “**making good**” means bringing the Goods into a condition which fully meets all the obligations of the Supplier under this Contract, and “**replacement**” means replacement with Goods of at least equal quality which fully meet all the Supplier’s obligations under this Contract.
- 10.5. If the Supplier makes good or replaces any portion of the Goods supplied, the provisions of this Contract shall apply in full to the portion made good or replaced as if that portion had been supplied on the date of replacement or renewal.
- 10.6. For the purpose of this Contract the expression “**additional costs**” shall include (without limitation) the reasonable cost to the Customer of the time spent by its officers in terminating this Contract and in making alternative arrangements for the provision of the Goods, any additional costs of the Goods, and the costs of any delay or disruption.

## **11. TITLE AND RISK**

- 11.1. Title in any Goods shall, without prejudice to the Customer’s right to reject the Goods if they are defective, pass to the Customer on delivery.
- 11.2. The risk in the Goods shall pass to the Customer on acceptance by the Customer.

## **12. PRICE AND PAYMENT**

- 12.1. The sum payable by the Customer for the Goods shall be determined by reference to the costs, fees, rates or prices specified in the Tender Documents for the provision of the Goods and any Services (the “**Price**”) and shall be the full and exclusive remuneration of the Supplier for the Goods.
- 12.2. The Price payable by the Customer in respect of each Order shall be specified in the Order and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Order.
- 12.3. The Price is inclusive of the costs of packaging, insurance, delivery, installation and carriage of the Goods.
- 12.4. The Price is exclusive of VAT. The Customer shall pay the VAT on the Price at the rate and in the manner prescribed by law, from time to time.
- 12.5. All invoices submitted by the Supplier to the Customer shall be valid VAT invoices and shall contain the Order Number(s) a full description of the Goods supplied and the Price to which the invoice relates and shall be denominated in sterling.
- 12.6. The Supplier shall ensure that all invoices clearly show the following information (where applicable):
- 12.6.1. the name and address of the Supplier; and
- 12.6.2. the period to which the payment relates.

- 12.7. In the event of the submitted invoice being incorrect, the Customer may return the invoice to the Supplier as a query, and/or raise any query or request for information, and the Supplier shall answer any such request within five (5) Working Days. The period for payment shall not commence until the date of receipt of an accurate invoice by the Finance Section of the Customer.
- 12.8. Payment of invoices by the Customer for Goods supplied shall be made, at the discretion of the Customer, either by way of the BACS system or the Welsh Purchase Card from Barclaycard. Where the Welsh Purchase Card is the preferred method of payment, the Supplier shall be solely responsible for the payment of the merchant fee levied by the card provider and the Supplier shall not recover this merchant fee from the Customer.
- 12.9. Payment shall be made within thirty (30) days of receipt by the Customer (at its nominated address for invoices) of a valid and agreed invoice from the Supplier.
- 12.10. If the Customer disputes any invoice or other statement of monies due, the Customer shall promptly notify the Supplier in writing. The Parties shall negotiate in good faith to attempt to resolve the dispute promptly. The Supplier shall provide all such evidence as may be reasonably necessary to verify the disputed invoice or request for payment.
- 12.11. If the Parties have not resolved the dispute within 30 days of the Customer giving notice to the Supplier, the dispute shall be resolved in accordance with Condition 37. Where only part of an invoice is disputed, the undisputed amount shall be paid in accordance with the terms of this Agreement. The Supplier's obligations to supply the Goods shall not be affected by any payment dispute.
- 12.12. Where the Supplier enters into a Sub-Contract, the Supplier shall include in that Sub-Contract:
- 12.12.1. a provision that where the Sub-Contractor submits an invoice to the Supplier, the Supplier shall consider and verify that invoice in a timely fashion and shall notify the Sub-Contractor without undue delay if the Supplier disputes the invoice or considers it invalid;
  - 12.12.2. a provision that the Supplier shall pay the Sub-Contractor any sums due under such an invoice no later than a period of 30 days from the date of receipt of a valid and undisputed invoice; and
  - 12.12.3. a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as Conditions 12.12.1 to 11.2.2 (inclusive).
- 12.13. In this Condition 12, "**Sub-Contract**" means a Sub-Contract at any stage of remoteness from the Customer in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.

### **13. WARRANTIES AND REPRESENTATIONS**

- 13.1. The Supplier warrants and represents that:
- 13.1.1. it has full capacity and authority to enter into and to perform this Contract and that this Contract is executed by a duly authorised representative of the Supplier;

- 13.1.2. the Goods shall (to the extent required under this Contract) be supplied, installed, tested and commissioned and thereafter maintained and repaired by appropriately experienced, qualified and trained personnel in accordance with Good Industry Practice;
- 13.1.3. as at the Commencement Date, all information contained in its Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Customer prior to the execution of this Contract;
- 13.1.4. the Supplier shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to Good Industry Practice and (without limiting the generality of this Condition 13) in accordance with its own established internal procedures; and
- 13.1.5. it shall not take any action nor shall it make any omission in terms of which the reputation of the Welsh Ministers is placed into disrepute.

#### **14. ALTERATION OF PLACE OF MANUFACTURE**

- 14.1. Where the Supplier has stated that the Goods will be manufactured at a particular place or places, it shall not alter such place or places without the prior written consent of the Customer (such consent not to be unreasonably withheld or delayed) and any such alteration shall not have any financial consequences to the Customer.

#### **15. SET-OFF**

- 15.1. The Customer may at any time set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Contract.
- 15.2. Any exercise by the Customer of its rights under this Condition 15 shall not limit or affect any other rights or remedies available to it under this Contract or otherwise.

#### **16. POLICIES**

- 16.1. The Supplier shall, and shall procure that all the Supplier's Personnel, comply with all the Customer's published policies and with any further rules, codes of practice, procedures and standards which the Customer specifies in the Specification or notifies the Supplier from time to time. The Customer shall throughout the Contract Period ensure that any changes to any policies, rules, codes of practice, procedures and standards are brought promptly to the attention of the Supplier.

#### **17. INTELLECTUAL PROPERTY**

- 17.1. All Intellectual Property Rights in all materials (in whatever format) including but not limited to documents, specifications, instructions, data, databases, plans, reports, drawings, inventions, patents, patterns, models, designs, programs or other material:
  - 17.1.1. furnished to or made available to the Supplier by the Customer ("**Customer Materials**") shall remain the property of the Customer;

- 17.1.2. prepared or collated by or for the Supplier after the Commencement Date for use, or intended use, in relation to the performance of this Contract ("**Supplier Materials**") are hereby assigned to and shall vest in the Crown absolutely.
- 17.2. The Supplier shall promptly, at the Customer's request, do all such further acts and execute all such other documents as the Customer may require for the purpose of securing for the Customer all right, title and interest in and to the Intellectual Property Rights and all other rights assigned to the Customer under Condition 17.1.2.
- 17.3. The Supplier shall not have the right to use any Customer Materials or Supplier Materials for its own commercial purposes except upon obtaining the prior written consent of, and subject to such terms and conditions as may be stipulated by, the Customer.
- 17.4. At any time during the Contract Period the Supplier shall, on request, provide to the Customer a copy of any Supplier Materials. On or after termination or expiry of this Contract the Supplier shall at the Customer's option either destroy or deliver-up to the Customer all Customer Materials held by it or any Supplier's Personnel in connection with this Contract, including any back up media (save that the Supplier may, with the Customer's permission, be permitted to retain one copy of such materials for audit purposes only and subject to obligations of confidentiality).
- 17.5. The Supplier shall immediately notify the Customer if any claim or demand is made or action brought against the Supplier for infringement or alleged infringement of any Intellectual Property Right in connection with the performance of this Contract. The Supplier shall at its own expense conduct any litigation arising from any such claim, demand or action and all associated negotiations provided always that the Supplier shall consult with the Customer on all substantive issues which arise during the conduct of such litigation and negotiations and shall in such conduct take due and proper account of the interests of the Customer.
- 17.6. The Customer shall at the request of the Supplier afford to the Supplier all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Customer or the Supplier for infringement or alleged infringement of any Intellectual Property Right in connection with the performance of this Contract and the Customer shall be repaid all costs and expenses (including but not limited to legal cost and disbursements on a solicitor "own client" basis) incurred in doing so.
- 17.7. The Customer shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Customer or the Supplier in connection with the performance of this Contract.
- 17.8. If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with this Contract or in the reasonable opinion of the Supplier is likely to be made, the Supplier shall at its own expense and subject to the approval of the Customer (not to be unreasonably withheld or delayed) either:
- 17.8.1. modify any or all of the Goods without reducing the quality or fitness for purpose of the same, or substitute alternative Goods of equivalent quality and fitness for purpose, so as to avoid the infringement or alleged infringement, provided that this Contract shall apply *mutatis mutandis* to such modified Goods or to the substituted Goods; or

17.8.2. procure a licence to use the Intellectual Property Rights which are the subject of the infringement or alleged infringement, on terms which are acceptable to the Customer.

17.9. In the event that any claim or demand is made or action brought against the Customer for infringement or alleged infringement of any Intellectual Property Right in connection with the performance of this Contract Condition 29 shall apply and the Supplier shall at its own expense provide to the Customer all such assistance as the Customer may require in connection with such action.

## **18. SUPPLIER'S PERSONNEL**

18.1. The Customer reserves the right under this Contract to refuse any Supplier's Personnel admission to any Customer Premises if, in the opinion of the Customer, such admission is undesirable or unnecessary.

18.2. If and when directed by the Customer, the Supplier shall provide a list of the names and addresses of all persons who may require admission in connection with the performance of this Contract to any Customer Premises, specifying the capacities in which they are concerned with this Contract and such other particulars as the Customer may reasonably require.

18.3. The Supplier and the Supplier's Personnel shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of Personnel when, at or in the vicinity of any Customer Premises.

18.4. The decision of the Customer as to whether any person is to be refused admission to any Customer Premises and as to whether the Supplier has failed to comply with Condition 18.3 shall be final and conclusive.

18.5. If the Supplier fails to comply with Condition 18.3 or fails to do so within a reasonable time of being given notice so to do, then the Customer may terminate this Contract in accordance with Condition 34.1(a) provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall afterwards accrue to the Customer.

## **19. ENVIRONMENTAL REQUIREMENTS**

19.1. The Supplier shall:

- (a) have a sustainable approach to waste management and not treat, keep or dispose of any waste produced and/or carried by the Supplier in connection with this Contract in a manner likely to cause harm to the health and safety of any person or to the environment and shall comply with all relevant Legislation;
- (b) perform this Contract in such a way as to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment;

- (c) during the Contract Period, take such steps as are reasonably practicable to avoid (or, where avoidance is not possible, to minimise) harm to the environment.

**20. DISCRIMINATION AND EQUALITY**

- 20.1. The Supplier shall ensure that it complies with all relevant requirements of all current equalities Legislation, regulations and duties including but not limited to the Equality Act 2010 and all other similar Legislation ("**Equality Legislation**") in force from time to time together with any guidance or codes of practice issued by the Equality and Human Rights Commission and shall in addition discharge its obligations under this Contract and provide the Services in a manner consistent with the Customer 's equalities policies.
- 20.2. The Supplier shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) in employment.
- 20.3. The Supplier shall provide any information reasonably requested by the Customer in respect of such Equality Legislation in so far as it relates to the performance of this Contract.
- 20.4. The Supplier shall take all reasonable steps to secure the observance of this Condition 20 by all Supplier's Personnel in performance of this Contract.
- 20.5. The Supplier shall provide such information as the Customer may from time to time request on the Supplier's supply chain for the goods and Services provided in connection with this Contract.

**21. CONFIDENTIALITY**

- 21.1. The Supplier acknowledges that any Confidential Information obtained from or relating to the Customer or its Personnel is the property of the Customer.
- 21.2. Except to the extent set out in this Condition 21 or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:
  - (a) treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
  - (b) not disclose the other Party's Confidential Information to any other person without that Party's (or the owner's, if different,) prior written consent.
- 21.3. Condition 21.2 shall not apply to the extent that:
  - (a) such disclosure is a requirement of law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIR pursuant to Condition 23 or for disclosure to a regulatory authority (including without limitation Audit Wales);
  - (b) such information was in the possession of the Party making the disclosure without an obligation of confidentiality prior to its disclosure by the information owner;
  - (c) such information was already in the public domain at the time of the disclosure otherwise than by a breach of this Contract; or

(d) it is independently developed without access to other Party's Confidential Information.

- 21.4. The Supplier may only disclose the Customer's Confidential Information to the Supplier's Personnel who are directly involved in the provision of the Services and who need to know the Confidential Information, and shall ensure that such Supplier's Personnel are aware of and comply with these obligations as to confidentiality and are bound by obligations of confidentiality equivalent to those set out in this Condition 21.
- 21.5. The Supplier shall not, and shall procure that the Supplier's Personnel do not, use any of the Customer's Confidential Information received otherwise than for the purposes of this Contract.
- 21.6. The Supplier undertakes (except as may be required by Legislation or in order to instruct professional advisers in connection with this Contract who shall be bound by obligations of confidentiality equivalent to those set out in this Condition 21) not to:
- (a) disclose or permit disclosure of any details of this Contract to the news media or any third party other than Supplier's Personnel;
  - (b) disclose that the Customer is a Customer of the Supplier; or
  - (c) use the Customer's name and or brand in any promotion of marketing or announcement of orders, without the prior written consent of the Customer.
- 21.7. At the written request of the Customer, the Supplier shall procure that those members of the Supplier's Personnel identified in the Customer's request sign a Confidentiality Undertaking prior to commencement of any work in accordance with this Contract.
- 21.8. In the event that the Supplier fails to comply with this Condition 21 the Customer reserves the right to terminate this Contract by notice with immediate effect.

## **22. SECURITY OF CONFIDENTIAL INFORMATION**

- 22.1. In order to ensure that no unauthorised person gains access to any Confidential Information obtained in the performance of this Contract, the Supplier:
- (a) shall comply with the Customer's security requirements set out in the Specification or as otherwise agreed in writing; and
  - (b) undertakes to maintain appropriate security systems, which may be subject to review and approval by the Customer.
- 22.2. The Supplier will immediately notify the Customer of any breach of security in relation to Confidential Information obtained or processed in the performance of this Contract and will keep a record of such breaches. The Supplier will use its best endeavours to recover such Confidential Information however it may be recorded. This obligation is in addition to the Supplier's obligations under Condition 21.
- 22.3. The Supplier shall at its own expense co-operate with the Customer in any investigation that the Customer considers necessary to undertake as a result of any breach of security in relation to Confidential Information.

- 22.4. The Customer may (acting reasonably and proportionately) require the Supplier to alter or update any security systems at any time during the Contract Period.

**23. FREEDOM OF INFORMATION**

- 23.1. The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the EIR and shall assist and co-operate with the Customer (at the Supplier's expense) to enable the Customer to comply with these information disclosure requirements.
- 23.2. The Supplier shall and shall procure that the Supplier's Personnel shall:
- (a) notify receipt of any Requests for Information in connection with this Contract to the Customer as soon as practicable after receipt and in any event within two (2) Working Days of receiving a Request for Information and comply with any instructions provided by the Customer;
  - (b) provide the Customer with a copy of all Information in its possession or power in the form that the Customer requires in connection with a Request for Information within five (5) Working Days (or such other period as the Customer may specify) of the Customer requesting that Information; and
  - (c) provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5(2) of the EIR.
- 23.3. For the purposes of Condition 23.2, **"reasonable assistance"** shall include the redaction of documentation within five (5) Working Days of a request from the Customer to do so.
- 23.4. The Customer shall be responsible for determining in its absolute discretion whether the Confidential Information and/or any other Information:
- (a) is exempt from disclosure under the FOIA or the EIR; and
  - (b) is to be disclosed in response to a Request for information.
- 23.5. In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Customer.
- 23.6. The Supplier shall ensure all information submitted in connection with the tendering process or in the course of this Contract or relating to this Contract is retained for disclosure and shall permit the Customer to inspect such records as the Customer may request from time to time.
- 23.7. The Supplier acknowledges that any lists or schedules provided by it as part of the tendering process identifying the Supplier's Confidential Information are of indicative value only and that the Customer may nevertheless be obliged to disclose Confidential Information in accordance with this Condition 23.

**24. PUBLICITY**

- 24.1. Except with the written consent of the other Party, such consent not to be unreasonably withheld or delayed, neither Party shall make any press announcements or publicise this Contract (except as reasonably necessary to supply the Goods) in any way.

- 24.2. Both Parties shall take all reasonable steps to ensure the observance of the provisions of Condition 24.1 by all their respective Personnel.
- 24.3. Neither Party shall use the business logos or publicise the logos of the other Party either in print or electronically without the express written consent of the other Party such consent not to be unreasonably withheld or delayed.
- 24.4. Notwithstanding the provisions of Condition 24.1, the Customer shall be entitled to publicise this Contract in accordance with any legal obligation upon the Customer, including any examination of this Contract by Audit Wales and the provisions of the FOIA or EIR.
- 24.5. The Parties acknowledge that Audit Wales has the right to publish details of this Contract (including Confidential Information) in its relevant reports to the extent permitted and required by law.

**25. LEGISLATIVE CHANGE**

- 25.1. The Supplier shall bear the cost of complying with all Legislation and any amendments thereto relating to the provision of the Goods. In the event that a change in Legislation necessitates a material change to the performance of this Contract by the Supplier and provided that such Legislative change:

- (a) relates directly to the performance of all or part of this Contract and does not necessitate a business or organisational wide change to the goods and services generally provided by the Supplier or to the procedures and processes used by the Supplier in the course of its business; and
- (b) could not have reasonably been foreseen by the Supplier on the Commencement Date,

the Parties shall enter into negotiations to make such adjustments to the Price as may be necessary to compensate the Supplier for any additional costs as are both reasonably and necessarily incurred by the Supplier in implementing such changes. If the Parties cannot reach agreement on such costs within a reasonable time, then the Customer may at its discretion terminate by notice this Contract in whole or in part.

**26. CONFLICTS OF INTEREST**

- 26.1. The Supplier shall take appropriate steps to ensure that neither itself nor any Supplier's Personnel is placed in a position where there is or may be an actual conflict, or a potential conflict between the pecuniary or personal interests of such persons and the duties owed to the Customer under the provisions of this Contract. The Supplier will disclose to the Customer full particulars of any such conflict of interest which may arise.
- 26.2. Failure to disclose this information will be considered a material breach incapable of remedy and this Contract may be terminated in accordance with Condition 34.1.

**27. CORRUPT GIFTS, PAYMENTS OF COMMISSION AND PREVENTION OF BRIBERY**

- 27.1. The Supplier shall not, and shall procure that any Supplier's Personnel shall not, in connection with this Contract commit a Prohibited Act.

- 27.2. The Supplier, warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Customer, or that an agreement has been reached to that effect, in connection with the award of this Contract to the Supplier, excluding any arrangement of which full details have been disclosed in writing to the Customer before the award of this Contract to the Supplier.
- 27.3. The Supplier shall:
- (a) if requested, provide the Customer with any reasonable assistance to enable the Customer to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010;
  - (b) within fourteen (14) Working Days of the date of the Award Letter, and annually thereafter, certify to the Customer in writing (such certification to be signed by a senior officer of the Supplier) compliance with this Condition 27 by the Supplier and all persons associated with it or other persons who are supplying goods or providing services in connection with this Contract. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request.
- 27.4. The Supplier shall have an anti-bribery policy (which shall be disclosed to the Customer) to prevent any Supplier's Personnel from committing a Prohibited Act and shall enforce it where appropriate.
- 27.5. If any breach of Conditions 27.1 or 27.2 is suspected or known, the Supplier must notify the Customer immediately.
- 27.6. If the Supplier notifies the Customer that it suspects or knows that there may be a breach of Condition 27.1 or 27.2, the Supplier must respond promptly to the Customer's enquiries, co-operate with any investigation, and allow the Customer to inspect audit books, records and any other relevant documentation.
- 27.7. The Customer may terminate this Contract by notice with immediate effect if the Supplier or Supplier's Personnel (in all cases whether or not acting with the Supplier's knowledge) breaches Conditions 27.1 or 27.2.
- 27.8. Any notice of termination under Condition 27.7 must specify:
- (a) the nature of the Prohibited Act;
  - (b) the identity of the party whom the Customer believes has committed the Prohibited Act; and
  - (c) the date on which this Contract will terminate.
- 27.9. Despite Condition 37, any dispute relating to:
- (a) the interpretation of this Condition 27; or
  - (b) the amount or value of any gift, consideration or commission,
- shall be determined by the Customer and its decision shall be final and conclusive.

- 27.10. Any termination under Condition 27.7 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Customer and the Parties agree that the Customer may recover from the Supplier the amount or value of any gift, consideration or commission given in contravention of this Condition 27, together with all costs to the Customer of terminating and entering into an alternative contract with another supplier including associated costs of any re-tendering or re-advertising.

**28. FRAUD**

- 28.1. The Supplier must take all reasonable steps including all preliminary enquiries and investigations to prevent the risk of fraud to the Customer.
- 28.2. Where such preliminary actions suggest the possibility of fraud or other irregularity affecting the resources of the Customer the Supplier shall immediately inform the Customer.

**29. INDEMNITY**

- 29.1. The Supplier shall indemnify and keep indemnified the Customer in full against all direct costs, liabilities, fines, expenses, damages and losses (including but not limited to any legal and other professional fees and expenses awarded against or incurred or paid by the Customer) as a result of or in connection with:
- (a) any claim made against the Customer by a third party arising out of, or in connection with, the provision of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Contract by the Supplier or the Supplier's Personnel;
  - (b) any claim made against the Customer for or in connection with the actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the Goods;
  - (c) any failure to comply with any Legislation; and
  - (d) any damage caused to Customer Premises or the Customer's equipment arising out of an act or omission by the Supplier or the Supplier's Personnel.
- 29.2. If a payment due from the Supplier under this Condition 29 is subject to tax, (whether by way of direct assessment or withholding at its source), the Customer shall be entitled to receive from the Supplier such amounts as shall ensure that the net receipt, after tax, to the Customer in respect of the payment is the same as it would have been were the payment not subject to tax.

**30. LIMITATION OF LIABILITY**

- 30.1. Nothing in this Contract shall limit or exclude the liability of either Party for:
- (a) death of or personal injury to any individual resulting from negligence;
  - (b) fraud or fraudulent misrepresentation; or
  - (c) any other act or omission, liability for which may not be limited under any applicable law.

- 30.2. Subject always to Condition 30.1, and notwithstanding any other provision contained herein, the total liability of the Supplier (whether under contract, tort (including without limitation negligence) or statutory provision) arising out of or in connection with this Contract (excluding Conditions 29.1(a) to 29.1(d) (inclusive) shall not exceed the sum specified in the Specification in respect of any one incident or series of related incidents. In the event that the Specification does not specify a sum, the Supplier's total liability shall be unlimited.
- 30.3. Without prejudice to the Customer's obligation to pay the Price as it falls due, the Customer's liability under this Contract shall be limited to 100% of the total Price payable for the Goods supplied under this Contract unless stated otherwise in the Specification.
- 30.4. Subject always to Condition 30.2, in no event shall either Party be liable to the other Party for:
- (a) indirect or consequential loss or damage; and/or
  - (b) loss of profits; and/or
  - (c) loss of business; and/or
  - (d) loss of revenue; and/ or
  - (e) loss of goodwill.
- 30.5. The provisions of Condition 30.4 shall not be taken as limiting the right of the Customer to claim from the Supplier for any:
- (a) additional operational and administrative costs and expenses; and/or
  - (b) any costs or expenses rendered worthless; and/or
  - (c) loss or damage resulting directly from the default of the Supplier.
- 30.6. The Parties expressly agree that should any limitation or provision contained in this Condition 30 be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed omitted but if any Party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out in this Condition 30.

## **31. INSURANCE**

- 31.1. The Supplier shall maintain and shall ensure that all Sub-Contractors involved in the provision of the Goods shall maintain the following insurance cover with a reputable insurance company:

- (a) Professional Indemnity (if required); and
- (b) Public Liability (including if applicable Products Liability);

in each case with the minimum level of indemnity set out in the Specification. If no level is specified in the Specification, then the Supplier shall hold and maintain such insurance cover with a reputable insurance company with a minimum level of indemnity set at one million pounds (£1,000,000) or such higher level as is consistent with (i) Good Industry Practice in the relevant

industry or business sector of services of a similar type to the Goods to be supplied under this Contract and (ii) any applicable Legislation unless otherwise agreed in writing by the Customer.

- 31.2. Such insurance shall be maintained for a minimum of six (6) years following expiration or earlier termination of this Contract.
- 31.3. The Supplier shall from time to time and upon being given not less than two (2) Working Days' notice when so required by the Customer produce the relevant policy of insurance and receipts for premiums or other satisfactory evidence of insurance cover.
- 31.4. If the Supplier or any Sub-Contractor fails or is unable to maintain insurance in accordance with this Condition 31, or fails to provide evidence in accordance with Condition 31.3, the Customer may (so far as it is able), purchase such alternative insurance cover as it deems to be reasonably necessary and shall be entitled to recover all reasonable costs and expenses it incurs in doing so from the Supplier.
- 31.5. The Supplier shall hold employer's liability insurance in respect of its Staff in accordance with any Legislation for the time being in force.
- 31.6. The Supplier's liabilities under this Contract shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in this Condition 31.
- 31.7. If stated as required in the Specification the Supplier shall ensure that the Customer's interest is noted on each insurance policy or that a generic interest condition has been included.

## **32. FORCE MAJEURE**

- 32.1. Subject to the remaining provisions of this Condition 32, either Party may claim relief from liability for non-performance of its obligations to the extent any non-performance is due to a Force Majeure Event.
- 32.2. A Party cannot claim relief if the Force Majeure Event is attributable to its wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 32.3. An Affected Party cannot claim relief as a result of a failure or delay by any other person in the performance of that other person's obligations under an agreement with the Affected Party (unless that other person is itself prevented from or delayed in complying with its obligations as a result of a Force Majeure Event).
- 32.4. The Affected Party shall immediately give the other Party notice of the Force Majeure Event. The notification shall include details of the Force Majeure Event together with evidence of its effect on the obligations of the Affected Party, and any action the Affected Party proposes to take to mitigate its effect.
- 32.5. As soon as practicable after the Affected Party's notification, the Parties shall discuss in good faith and endeavour to agree a means of performing this Contract so far as reasonably possible for the duration of the Force Majeure Event. In the event that the Parties fail to agree a means of performing this Contract within two (2) calendar months from the date of the Affected Party's notification (or such other period agreed by the Parties in writing), the Customer may in its absolute discretion elect to terminate this Contract in whole or in part.

- 32.6. The Affected Party shall use all reasonable endeavours to continue to perform, or resume performance of this Contract for the duration of such Force Majeure Event and if the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 32.7. The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract. Following such notification, this Contract shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.
- 32.8. In the event that the Force Majeure Event continues for a period of two (2) calendar months (or such other period agreed by the Parties in writing) from the date of the Affected Party's notification, the Customer may in its absolute discretion terminate this Contract in whole or in part by notice.

### **33. INDUSTRIAL ACTION**

- 33.1. The Supplier shall immediately inform the Customer of any actual or potential industrial action by Staff, whether such action be by its own Personnel or others which affects or might affect its ability at any time to provide the Goods in accordance with the requirements of this Contract. In the event of industrial action by such Staff the Supplier shall seek the Customer's approval to any revised proposals to provide the Services.
- 33.2. If the Supplier's proposals referred to in Condition 33.1 are considered insufficient or unacceptable by the Customer then the Customer may terminate this Contract in whole or in part.

### **34. TERMINATION**

- 34.1. The Customer may at any time by notice terminate this Contract as from the date of deemed receipt of such notice (as provided in Condition 40.5) if:
- (a) the Supplier fails to comply with Conditions 6.1 and 6.2 (The Goods), 7.6 (Time of Delivery), Condition 18.5 (Supplier's Personnel), Condition 21 (Confidentiality), 22 (Security of Confidential Information), 26 (Conflicts of Interest), 27 (Corrupt Gifts and Payments of Commission and Prevention of Bribery), 28 (Fraud) or 38 (Sub-Contracting and Assignment); or
  - (b) there is a change of control, (in this Condition 34 "**control**" shall be as defined by section 1124 of the Corporation Tax Act 2010), in the Supplier or its Parent Company provided that the Customer shall only be permitted to exercise its rights pursuant to this Condition 34.1(b) for six (6) calendar months after each such change of control and shall not be permitted to exercise such rights where the Customer has agreed in advance in writing to the particular change of control and such change of control takes place as proposed; or
  - (c) the Supplier, being a company, passes a resolution, or the Court makes an order that the Supplier or its Parent Company be wound up otherwise than for the purpose of a bona fide reconstruction or amalgamation, or a receiver, manager or administrator on behalf of a creditor is appointed in respect of the business or any part thereof of the Supplier or the Parent Company, or circumstances arise which

entitle the Court or a creditor to appoint a receiver, manager or administrator or which entitle the Court otherwise than for the purpose of a bona fide reconstruction or amalgamation to make a winding up order, or the Supplier or its Parent Company is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or any similar event occurs under the law of any other jurisdiction; or

- (d) the Supplier, being an individual, or where the Supplier is a firm, any partner or partners in that firm who together are able to exercise direct or indirect control, shall at any time become bankrupt or shall have a receiving order or administration order made against him or shall make any composition or arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or appears unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of Section 268 of the Insolvency Act 1986 or he shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 2016 or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of his estate, or a trust deed shall be granted by him for the benefit of his creditors, or any similar event occurs under the law of any other jurisdiction; or
- (e) the Supplier commits a Default and the Default is irremediable; or
- (f) the Supplier commits a Default and the Default is a fundamental breach of this Contract; or
- (g) the Supplier commits a Default which is remediable but fails to remedy that Default to the satisfaction of the Customer within twenty five (25) Working Days (or such other period as may be specified by the Customer) after being notified in writing to do so; or
- (h) the Supplier commits a series of Defaults which when taken together amount to a fundamental breach of this Contract; or
- (i) the Supplier repeatedly commits a Default of any terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract; or
- (j) the Supplier is the subject of a formal investigation for, or is the subject of prosecution for, any offence under the Modern Slavery Act 2015;
- (k) the Supplier is the subject of formal investigation, or the subject of a claim arising in connection with its statutory obligations relating to employment rights, employment relations, working rights or equality;
- (l) the Supplier is the subject of a claim for breach of the Human Rights Act 1998;
- (m) the Supplier commits a breach of the Official Secrets Acts 1911 to 1989 or Section 182 of the Finance Act 1989;
- (n) subject to Clause 34.3, any of the termination grounds set out in Section 78 of the PA 2023 applies;

- (o) three (3) consecutive KPI Reports state that the Supplier has failed to achieve all the KPIs or in any five (5) or more consecutive KPI Reporting Periods (of whatever duration), at least half of the KPI Reports state that the Supplier has failed to achieve all the KPIs. This Condition is without prejudice to any other provisions in the Tender Documents relating to the failure to achieve the KPIs; or
- (p) any of the events described in Conditions 34.1(b), 34.1(c) 34.1(d), 34.1(k) occurs in respect of a Guarantor, the Guarantor is in breach of any term of a Guarantee or a Guarantee becomes invalid or unenforceable.

34.2. In deciding whether any Default is fundamental no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

34.3. Before terminating the Contract pursuant to Clause 34.1(n), the Customer shall:

34.3.1. notify the Supplier of its intention to terminate the Contract;

34.3.2. specify which of the grounds set out in Section 78 of the PA 2023 apply and why it has decided to terminate the Contract; and

34.3.3. give the Supplier reasonable opportunity to make representations about: (i) whether a termination ground applies; and (ii) the Customer's decision to terminate the Contract.

## **35. CONSEQUENCES OF TERMINATION AND EXPIRY**

35.1. Except as expressly provided otherwise this Condition 35 shall apply on the expiry or the termination (in full or in part) of this Contract howsoever terminated.

35.2. The termination or expiry of this Contract shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party.

35.3. The Customer shall be entitled without prejudice to the Customer's other rights and remedies to obtain a refund of any payments made by the Customer in respect of any Goods which have not been provided by the Supplier by the date of termination or expiry.

35.4. In the event of the termination or expiry of this Contract by either Party, the provisions of this Condition 35 (Consequences of Termination) and Conditions 15 (Set-Off), 17 (Intellectual Property), 21 (Confidentiality), 22 (Security of Confidential Information), 23 (Freedom of Information), 24 (Publicity), 27 (Corrupt Gifts, Payments of Commission and Prevention of Bribery), 28 (Fraud), 29 (Indemnity), 30 (Limitation of Liability), 31 (Insurance), 37 (Dispute Resolution Process), 40 (Notices), 43 (Waiver), and 50 (Law and Jurisdiction) shall survive the expiry or termination of this Contract.

35.5. Where, following a termination by the Customer pursuant to Condition 34.1 the Customer re-lets this Contract, or any part of it, to an alternative supplier, the Supplier shall make good to the Customer all costs, losses damages and expenses it may incur or be liable to in consequence of such re-letting.

## **36. BREAK**

- 36.1. In addition to the Customer's rights of termination under Condition 34 the Customer may terminate this Contract by giving to the Supplier no less than one (1) calendar month's prior notice.
- 36.2. In the event of termination of this Contract pursuant to Condition 36.1 the Supplier shall:
- (a) be entitled to fair and reasonable remuneration for such part of the Goods as it has delivered and in respect of which it has not been paid, and for any costs or liabilities incurred to third parties as a result of irrevocable commitments entered into in performance of this Contract to the extent that the Supplier is able to provide evidence to the reasonable satisfaction of the Customer to support any sums which it claims;
  - (b) upon receiving notice under Condition 36.1 continue to supply the Goods until the date of termination unless requested otherwise by the Customer and shall immediately take all reasonable steps to mitigate its costs and losses and withdraw from any commitments to third parties relating to performance of its obligations under this Contract.
- 36.3. The Customer shall not be liable upon termination under Condition 36.1 to pay any sum which when added to the sums paid or due to the Supplier under this Contract exceeds the total sum which would have been payable to the Supplier if this Contract had not be terminated prior to the expiry of the original Contract Period.

## **37. DISPUTE RESOLUTION PROCESS**

- 37.1. The Parties shall refer all matters in dispute arising out of or in connection with this Contract for consideration and decision by directors or designated senior managers of each Party, who shall use their reasonable endeavours to reach a solution to any such dispute within a period of fifteen (15) Working Days from the date notified in writing by one Party to the other in which details of the dispute are specified, and failing which, unless the Parties agree another period of time, any such dispute may be dealt with as set out in Condition 37.2.
- 37.2. If the dispute cannot be resolved by the Parties' representatives nominated under Condition 37.1, within fifteen (15) Working Days or such other period as shall have been agreed between the Parties then the dispute may be referred to mediation under the supervision of the Centre for Effective Dispute Resolution, International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU ("**CEDR**"). Mediation shall commence by either Party serving on the other notice ("**Mediation Notice**") setting out in summary the issues in dispute and calling upon that other Party to join in an approach to CEDR for the appointment of a mediator.
- 37.3. The mediation shall be conducted using a sole mediator in and substantially in accordance with CEDR's recommended agreement for the time being in use. The mediator must be a CEDR accredited mediator agreed between the Parties or, in default of agreement within ten (10) Working Days of the date of the Mediation Notice, appointed by CEDR at the request of the Party who served the Mediation Notice.
- 37.4. The Parties agree to co-operate fully and promptly and in good faith with CEDR and/or the mediator in the performance of their obligations under this Condition 37. Both Parties will afford the mediator all necessary assistance which the mediator requires to consider the dispute including but not limited to full access to any documentation or correspondence relating to the

matters in dispute. All negotiations connected with the dispute shall be conducted in strict confidence and without prejudice to the rights of the Parties in any future legal proceedings.

- 37.5. If, with the assistance of the mediator, the Parties reach a settlement, such settlement shall be reduced to writing and, once signed by the duly authorised representatives of each of the Parties, shall remain binding on the Parties.
- 37.6. Unless agreed otherwise in the course of the procedure each Party shall bear its own costs of the mediation.
- 37.7. If and to the extent that after engaging in good faith in mediation the Parties do not resolve the matters in dispute, all matters remaining in dispute shall be referred to the courts in accordance with Condition 50.
- 37.8. In the event that the process of mediation does not succeed in finding a resolution to the dispute within a period of two (2) calendar months of appointment of the mediator, or such other time as the Parties may agree, either Party may take such action as is available to it under this Contract or at law.
- 37.9. Nothing in this Contract shall be taken to prevent or constrain either Party from seeking from any court of competent jurisdiction an interim order or injunction restraining the other Party from doing any act or compelling the other Party to do any act.
- 37.10. Each Party's respective obligations to be carried out under this Contract shall not cease or be delayed by the invocation of this dispute resolution procedure.

**38. SUB-CONTRACTING AND ASSIGNMENT**

- 38.1. This Contract is personal to the Supplier.
- 38.2. The Supplier shall not assign, novate, or otherwise dispose of this Contract or any part of it without the prior written consent of the Customer acting in its absolute discretion.
- 38.3. The Supplier shall not sub-contract the performance of any of its obligations under this Contract nor change any Sub-Contractor without the prior written consent of the Customer, such consent not to be unreasonably withheld or delayed. The Supplier shall provide such information as the Customer shall reasonably request in respect of any Sub-Contractor.
- 38.4. Notwithstanding any sub-contracting permitted hereunder, the Supplier shall remain primarily responsible for the acts and omissions of its Sub-Contractors as though they were its own.
- 38.5. The Supplier shall provide the Customer with a list of all Personnel engaged by his Sub-Contractors and any subsequent amendments to the list and shall ensure that all other requirements of Condition 18 are observed and complied with by any Sub-Contractor. The Customer reserves the right to reject the appointment of or to request the removal of any of the Sub-Contractors' appointed Personnel to supply the Goods.
- 38.6. In the event that the Supplier, in accordance with the terms of this Contract, enters into a sub-contract in connection with this Contract, the Supplier shall ensure that:

- (a) Sub-Contractors and any of its suppliers have accepted obligations equivalent to those set out in this Contract and that they comply with such obligations; and

- (b) a term is included in the sub-contract which requires the Supplier to pay all sums due thereunder to the Sub-Contractor within a specified period, not to exceed thirty (30) days, from the date of receipt of a valid and agreed invoice as defined by the terms of the sub-contract (as appropriate).

38.7. The Customer shall be entitled to:

- (a) assign, novate or otherwise dispose of its rights and obligations under this Contract or any part of it to any Contracting Authority; or
- (b) novate this Contract to any other body (including but not limited to any private sector body) which substantially performs any of the functions that previously had been performed by the Customer.

38.8. This Contract is binding on the Customer and its successors and assignees and the Supplier and the Supplier's successors and permitted assignees.

#### **39. WELSH MINISTERS' FUNCTIONS**

39.1. The Parties acknowledge that the Welsh Ministers have a range of functions which will continue to accrue and be amended and that decisions in relation to each such function are obliged to be taken in the light of all relevant and to the exclusion of all irrelevant considerations. The Parties agree that nothing contained or implied in, or arising under or in connection with, this Contract shall in any way prejudice, fetter or affect the functions of the Welsh Ministers or any of them nor oblige the Welsh Ministers or any of them to exercise or refrain from exercising any of their functions in any particular way.

#### **40. NOTICES**

40.1. Except as expressly provided otherwise in this Contract, no communication from one Party to the other shall have any validity under this Contract unless made in writing.

40.2. The Parties agree that e-mail will be considered a satisfactory form of communication for the purposes of Condition 40.1.

40.3. Any notice given to a Party under or in connection with this Contract must be in writing and must be:

- (a) delivered by hand or pre-paid first class post or other next Working Day delivery service; or
- (b) sent by email and the notice attached to the email

40.4. Unless otherwise agreed in writing between the Parties, for the purposes of Condition 40.3 the addresses and email addresses for the Parties shall:

- (a) for the Customer be the address set out in the Award Letter and the email address of the Customer Contract Manager.
- (b) for the Supplier be the address set out in the Tender and the email address of the Supplier Contract Manager.

40.5. Any notice shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt at the proper address;
- (b) if sent by pre-paid first class post or other next Working Day delivery service, at 9.00am on the second Working Day after posting;
- (c) if sent by email, shall be deemed to be served on the day of transmission if transmitted before 4:00 pm on a Working Day but otherwise on the next Working Day, provided that no error report is generated and confirmation by first class post or other next Working Day delivery service is sent the same day.

40.6. The Parties agree that this Condition 40 does not apply to the service of any proceedings or other documents in any legal action.

#### **41. JOINT AND SEVERAL LIABILITY**

41.1. Where the Supplier is more than one person, each of those persons shall be jointly and severally liable for the Supplier's obligations and liabilities arising under this Contract. The Customer may take action against or release or compromise the liability of, or grant any time or other indulgence to, any one of the persons comprising the Supplier without affecting the liability of any other of them.

#### **42. SEVERABILITY**

42.1. If any provision or part-provision of this Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Contract had been executed with the invalid illegal or unenforceable provision eliminated.

42.2. In the event of a severed term being so fundamental as to prevent the accomplishment of the purpose of this Contract, the Customer and the Supplier shall immediately commence good faith negotiations to remedy such provision so that, as amended, it is legal, valid and enforceable and, to the greatest extent possible, achieves the intended commercial result of the original provision.

42.3. If no agreement has been reached between the Parties within twenty (20) Working Days of commencement of negotiations under Condition 42.2, either Party may by notice to the other terminate this Contract and neither Party shall bear any liability to the other in respect of such termination (but without prejudice to any other provisions of this Contract).

#### **43. WAIVER**

43.1. The failure of either Party to insist upon strict performance of any provision of this Contract, or the failure of either Party to exercise any right or remedy to which it is entitled under this Contract or by law, shall not constitute a waiver of that or any other right or remedy and shall not cause a diminution of the obligations established by this Contract.

43.2. Waiver of any Default shall not constitute a waiver of any subsequent Default.

- 43.3. No waiver of any of the provisions of this Contract shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of Condition 40.

**44. REMEDIES CUMULATIVE**

- 44.1. Except as otherwise expressly provided by this Contract, all remedies available to either Party for breach of this Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

**45. AMENDMENTS TO THIS CONTRACT**

- 45.1. This Contract shall not be varied or amended unless such variation or amendment is agreed in writing by a duly authorised representative of the Customer and a duly authorised representative of the Supplier.

**46. THIRD PARTY RIGHTS**

- 46.1. Save as otherwise expressly provided in this Contract, a person who is not a Party to this Contract shall not have any rights under or in connection with it and shall not be entitled to enforce any part of it.

**47. NO AGENCY OR PARTNERSHIP**

- 47.1. The Supplier is not and shall not in any circumstances hold itself out as being the servant or agent of the Customer. The Supplier shall not hold itself out as being authorised to enter into any contract on behalf of the Customer or in any way bind the Customer to the performance, variation, release or discharge of any obligation to a third party. The Supplier's Personnel shall not hold themselves out to be and shall not be held out by the Supplier as being servants or agents of the Customer.

- 47.2. Nothing in this Contract shall be construed as constituting a partnership between the Parties.

**48. ENTIRE AGREEMENT**

- 48.1. This Contract constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral relating to its subject matter.
- 48.2. Each Party acknowledges that in entering into this Contract, it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract.

**49. COSTS**

- 49.1. Except as provided expressly in this Contract, each Party shall pay its own costs incurred in connection with the negotiation, preparation and execution of this Contract and any documents referred to in it.

**50. LAW AND JURISDICTION**

- 50.1. This Contract is a contract made in Wales and shall be governed and construed in accordance with the laws of England and Wales, as it applies in Wales. Subject to Condition 37 the Parties irrevocably submit to the exclusive jurisdiction of the Courts of England and Wales sitting in the locality of the Customer or at Cardiff.