

## **TSol standard terms & conditions**

Please see the following:

- A General terms & conditions for the purchase of Services; and
- B General terms and conditions for the purchase of Supplies

### **A Terms and conditions for the purchase of Services:**

#### **1 Interpretation**

(1) In these terms and conditions of contract for the purchase of Services (“Conditions”):

the ‘Authority’ means the Treasury Solicitor acting through the Treasury Solicitor’s Department;

‘Charges’ means the charge for the Services

‘Conditions’ means the standard conditions of purchase set out in this document and (unless the context otherwise requires) includes any special conditions agreed in Writing between the Authority and the Supplier

‘Contract’ means the agreement constituted by the acceptance of these Conditions by the Supplier

‘Delivery Address’ means that address stated on the Order

‘Order’ means the document so described by the Authority to purchase the Services which makes reference to the Conditions

‘Supplier’ means the person or company so described in the Order

‘Services’ means the services (if any) described in the Order

‘Specification’ includes any plans, drawings, data, description or other information relating to the Services

‘Writing’ includes facsimile transmission, email and comparable means of communication.

(2) The headings in these Conditions are for convenience only and shall not affect their interpretation.

(3) Unless the context otherwise requires words importing one gender include all other genders and words incorporating the single include the plural and vice versa.

#### **2 Basis of purchase of the Services**

(1) The Order constitutes an offer by the Authority to purchase the Services subject to these Conditions. Unless otherwise specifically agreed in Writing, any offer and/or acceptance of an Order by the Supplier shall be deemed to constitute an acceptance of and agreement to comply with these Conditions.

(2) No variation to the Order or these Conditions shall be binding unless agreed in Writing by the authorised representative of the Authority.

(3) If the Authority shall so require the Supplier shall enter into a separate agreement for services in the Authority’s standard form.

#### **3 Specifications**

(1) The quality and description of the Services shall subject as provided in these Conditions, be as specified in the Order and/or in any applicable Specification supplied by the Authority to the Supplier or agreed in Writing by the Authority.

(2) Any Specification supplied by the Authority to the Supplier, or specifically produced by the Supplier for the Authority, in connection with the Contract, together with the copyright, design rights or any other intellectual property rights in the Specification, shall be the exclusive property of the Authority. The Supplier shall not disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of the Supplier, or as required for the purpose of the Contract.

(3) The Supplier shall comply with all applicable regulations or other legal or contractual requirements concerning the performance and supply of the Services.

(4) All equipment provided by the Authority shall be and remain the Authority's property and must be returned to the Authority in good condition upon request or completion of the Order, whichever is earlier. The equipment shall not be copied or used for any purpose other than completion of the Order. The Supplier shall correctly maintain and store such equipment and shall be liable for any loss or damage to it while in the possession or under the control of the Supplier.

#### **4 Charges for the Services**

(1) The Charges for the Services shall be as stated in the Order and, unless otherwise so stated, shall be exclusive of any applicable value added tax (which shall be payable by the Authority subject to receipt of a VAT invoice).

(2) No increase in the Charges may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Authority in Writing.

#### **5 Terms of payment**

(1) The Supplier shall be entitled to invoice the Authority on or at any time after delivery of the Services.

(2) Unless otherwise stated in the Order, the Authority shall pay the Charges for the Services within 30 days after the end of the month of receipt by the Authority of a proper invoice or, if later, after acceptance of the Services in question by the Authority. Time of payment shall not be of the essence of the Order.

(3) The Authority shall be entitled to set off against the Charges any sums owed to the Authority by the Supplier.

#### **6 Supply and Delivery**

(1) The Services shall be supplied and delivered to the Delivery Address on the date or within the period stated in the Order, in either case during, the Authority's usual business hours. Delivery shall be deemed to be made on receipt of the Services by the Authority in accordance with the terms of the Contract.

(2) Where the date of performance and supply of the Services is to be specified after the placing of the Order, the Supplier shall give the Authority reasonable notice of the specified date.

(3) The performance and supply of the Services and time of delivery thereof to the Authority is of the essence of the Contract.

(4) If the Services are to be performed by instalments, the Contract will be treated as a single contract and not severable.

(5) The Authority shall be entitled to reject any Services supplied which are not in accordance with the Contract.

(6) If the Services are not performed on the due date then, without prejudice to any other remedy, the Authority shall be entitled to deduct from the Charges or (if the Authority has paid the Charges) to claim from the Supplier by way of liquidated damages for delay 25 per cent of the Charges for every week's delay up to a maximum of 100 per cent.

#### **7 Warranties and liability**

(1) The Supplier warrants to the Authority that it is fully experienced, qualified, equipped, organised and financed to perform its obligations under the Contract, and warrants to the Authority that the Services will be performed by appropriately qualified and trained personnel, with due care and diligence and to such high standard of quality as it is reasonable for the Authority to expect in all the circumstances.

(2) Without prejudice to any other remedy, if Services are not supplied or performed in accordance with the Contract, then the Authority shall be entitled: (a) to require the Supplier to re-perform the Services in accordance with the Contract within 7 days; or (b) at the Authority's sole option, and whether or not the Authority has previously required the Supplier to re-perform the Services, to treat the Contract as discharged by the Supplier's breach and require the repayment of any part of the Charges which have been paid.

(3) The Supplier shall indemnify the Authority in full against all liabilities, loss (whether direct or indirect and including loss of profits), damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the Authority as a result of or in connection with: (a) breach of any warranty given by the Supplier in relation to the Services; (b) any act of omission of the Supplier or its employees, agents or sub-contractors in supplying and delivering the Works and in performing the Services.

(4) The Supplier shall maintain insurance cover against its liabilities under the contract and shall produce the policy and latest premium receipt to the Authority on demand.

## **8 Termination**

(1) The Authority shall be entitled to cancel the Order in respect of all or any part of the Goods by notice to the Supplier at any time prior to delivery or performance without incurring any liability to the Supplier other than to pay for the Goods already delivered or performed at the time of such notice.

(2) The Authority shall be entitled to terminate the Contract without liability to the Supplier and reserving all rights of the Authority by giving notice to the Supplier at any time if the Supplier: (a) is guilty of any breach or non-observance of any of the terms and conditions contained in these Conditions; or (b) becomes bankrupt or makes any composition with his creditors; or (c) is incompetent and/or neglects or omits to perform any of his duties or obligations under these Conditions

## **9 Confidentiality**

(1) All information of whatever nature supplied to the Supplier by the Authority at any time in connection with the Contract shall be regarded as confidential, and shall not without the prior consent in Writing of the Authority be published or disclosed to any third party or used by the Supplier except for the purpose of implementing the Order, and the Supplier shall not, without such consent, advertise or announce the Services to the Authority. This obligation shall remain in force notwithstanding completion, cancellation or termination of the Contract.

## **10 General**

(1) The Order is personal to the Supplier and the Supplier shall not assign or purport to assign or transfer to any other person any of its rights or sub-contract any of its obligations under the Contract.

(2) Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

(3) No waiver by the Authority of any breach of the Contract by the Supplier shall be considered as a waiver of any subsequent breach of the same or any other provision.

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

(5) The Contract shall be governed by the laws of England, and the parties submit to the exclusive jurisdiction of the English Courts.

## **B Standard Terms and Conditions of Contract for Supplies**

### **1 Definitions and Interpretation**

(1) In these terms and conditions of contract for the purchase of Goods ("Conditions"):

the "**Authority**" means the Treasury Solicitor acting through the Treasury Solicitor's Department;

"**Authority's Premises**" means land or buildings owned or occupied by the Authority; the "**Contract Price**" means the price in respect of the Goods inclusive of packaging, marketing, handling, freight and delivery, insurance and any other applicable costs and charges but excluding Value Added Tax;

"**Confidential Information**" means all information obtained by the Contractor from the Authority or any other department, agency or office of Her Majesty's Government relating to and connected with the Contract and the Goods, including but not limited to the Contract itself and the provisions of the Contract;

the "**Contract**" means the agreement concluded between the Authority and the Contractor for the supply of Goods, including without limitation the Conditions (to the extent that they are not expressly excluded or modified), all specifications, plans, drawings and other documents which are incorporated into the agreement;

the "**Contractor**" means the person who agrees to supply the Goods provided for in the Contract and includes any person to whom all or part of the Contractor's obligations are assigned pursuant to Condition 4;

"**Government Property**" means anything issued or otherwise furnished in connection with the Contract by or on behalf of the Authority, including but not limited to documents, papers and other materials;

"**Intellectual Property Rights**" means patents, trade marks, service marks, design rights (whether registrable or not), applications for any of those rights, copyright, database rights, know how, trade or business names and other similar rights or obligations, whether registrable or not, in any country, including but not limited to, the United Kingdom;

the "**Goods**" means the goods to be supplied under the Contract;

"**Order**" means the document so described by the Authority to purchase the Goods which makes reference to the Conditions.

(2) The interpretation and construction of the Contract shall be subject to the following provisions:

(a) a reference to any statute, enactment, order, regulation or similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as subsequently amended or re-enacted;

(b) the headings in these Conditions are for ease of reference only and shall not affect the interpretation or construction of the Contract;

(c) references to "person", where the context allows, includes a corporation or an unincorporated association.

## **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 expressly or impliedly, by the Authority to take or do that decision, act or thing.

## **3 Service of Notices and Communications**

Any notice or other communication that either party gives under the Contract shall be made in writing and given either by hand, first class recorded postal delivery or facsimile transmission. Notice given by hand shall be effective immediately, notice given by recorded postal delivery shall be effective three working days after the date of posting, notice given by facsimile transmission shall be effective the working day after receipt by the notifying party of a transmission slip showing that the transmission has succeeded.

## **4 Assignment & Sub-contracting**

(1) The Contractor shall not give, bargain, sell, assign, sub-contract or otherwise dispose of the Contract or any part thereof without the previous agreement in writing of the Authority.

(2) The Contractor shall not use the services of self-employed individuals in connection with the Contract without the previous agreement in writing of the Authority.

(3) If the Contractor uses a sub-contractor for the purpose of providing the Goods, the Contractor shall include in the relevant contract a provision which requires the Contractor to pay for those goods or services within 30 days of the Contractor receiving a correct invoice from the sub-contractor.

(4) The Contractor shall be responsible for the acts and omissions of his sub-contractors as though they were his own.

(5) The Authority shall be entitled to assign any or all of its rights under the Contract to any Authority as defined in Regulation 3(1) of the Public Contracts Regulations 2006, provided that such assignment shall not materially increase the burden of the Contractor's obligations under the Contract.

## **5 Waiver**

(1) The failure by either party to exercise any right or remedy shall not constitute a waiver of that right or remedy.

(2) No waiver shall be effective unless it is communicated to the other party in writing.

(3) A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.

## **6 Severability**

If any Condition, clause or provision of the Contract not being of a fundamental nature is held to be unlawful, invalid or unenforceable by a court or any other competent body in any proceedings relating to the Contract, the validity or enforceability of the remainder of the Contract shall not be affected. If the court finds invalid a provision so fundamental as to prevent the accomplishment of the purpose of the Contract, the parties shall immediately commence negotiations in good faith to remedy the invalidity.

## **7 Amendments and Variation**

No amendment or variation to the terms of the Contract including these Conditions shall be valid unless previously agreed in writing between the Authority and the Contractor.

## **8 Invoices & Payment**

(1) The Contractor shall submit invoices at times or intervals agreed by the Authority in the Contract or otherwise. The Contractor shall ensure that any invoice it submits sets out [the Authority's Purchase Order or contract number] the amount and, where not all of the Goods to which the invoice relates have been supplied, confirmation when those Goods will be supplied and its confirmation that the Goods have been supplied.

(2) In consideration for the supply of the Goods by the Contractor, the Authority shall pay the amount after receiving a correctly submitted invoice as set out in paragraph (1) of this Condition. Such payment shall normally be made within 30 days of receipt of the correctly submitted invoice.

(3) The Contractor shall not be entitled to charge for the supply of any goods that are not part of the Goods agreed within the Contract, unless the Contract has been properly varied in advance in accordance with Condition 7.

(4) The Authority may reduce payment in respect of any Goods that the Contractor has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the Authority.

(5) If the Contractor believes that payment for a correctly submitted invoice is overdue, he should, in the first instance, speak to the named contact on the face of the Contract. In the event that the problem is not resolved to his satisfaction, he should write to the [insert relevant contact e.g. Head of Procurement at TSoI] setting out his case. The [Head of Procurement] shall ensure that the complaint is dealt with by an official who is independent of the main contact and that the Contractor is not treated adversely in future for having made a complaint.

(6) For the purpose of calculating any statutory interest under the Late Payment of Commercial Debts (Interest) Act 1998, the relevant date for the payment of the debt shall be deemed to be the last day of a period of 30 days commencing on the day when the Authority received the correctly submitted invoice, or, if the Contractor had not supplied the Goods before submitting the invoice, the last day of a period of 30 days commencing on the day when the Contractor supplied the Goods.

## **9 Accounts**

(1) The Contractor shall keep full and proper accounts, records and vouchers relating to all expenditure reimbursed by the Authority and all payments made by the Authority in respect of the Goods.

(2) The Contractor shall permit the Authority by its officers, servants and agents or independent auditor on request and at all reasonable times to examine all accounts, records and vouchers at the offices of the Contractor or at such other places as the Authority shall direct, and to take copies of such accounts, records and vouchers and the Contractor shall provide the Authority or its independent auditor with such explanations relating to that expenditure as the Authority may request.

(3) The Contractor shall ensure that the said accounts, records and vouchers are available for a period of six years after termination or expiry of the Contract.

## **10 Recovery of Sums due**

(1) Whenever under the Contract or otherwise any sum of money shall be recoverable from or payable by the Contractor, such sum may be deducted from any amount then due, or which at any time thereafter may become due, to the Contractor under this Contract or any other agreement or arrangement with the Authority or with any other department, agency or office of Her Majesty's Government

(2) Any over-payment by the Authority to the Contractor whether in respect of the charges or Value Added Tax shall be a sum of money recoverable from the Contractor pursuant to paragraph (1) of this Condition or otherwise.

## **11 Value Added Tax**

(1) The Authority shall pay to the Contractor, in addition to the charges, a sum equal to the Value Added Tax chargeable on the value of the Goods provided in accordance with the Contract.

(2) Any invoice or other request for payment of monies due to the Contractor under the Contract shall, if he is a taxable person, be in the same form and contain the same information as if the same were a tax invoice for the purposes of Regulations made under the Value Added Tax Act 1994.

(3) The Contractor shall, if so requested by the Authority, furnish such information as may reasonably be required by the Authority relating to the amount of Value Added Tax chargeable on the Goods.

## **12 Delivery**

(1) The Goods shall be delivered at such times, at such places and in such manner as is specified in the Contract.

(2) Unless the Contract specifically otherwise provides, time of delivery shall be of the essence and failure to deliver within the specified time shall entitle the Authority, at its option, and without prejudice to its other rights and remedies, to treat such failure as a fundamental breach of Contract so as to release the Authority from any obligation to accept the Goods or pay for them, or entitle it to cancel by notice in writing to the Contractor all or part of any order in relation to the Goods.

(3) Any access to the Authority's Premises and any labour and equipment provided by the Authority in connection with delivery shall be provided without acceptance by the Authority or the Crown of any liability in respect of any actions, claims, demands, costs and expenses incurred by third parties (including any agent of the Authority or the Crown) for any loss or damages to the extent that such loss or damage is not attributable to the negligence or other wrongful act of the Authority, the Crown or any servant or agent thereof.

(4) Where any access to the Authority's Premises is necessary in connection with delivery or installation, the Contractor and his sub-contractors shall at all times comply with the reasonable requirements of the Authority's [*Head of Security? - or insert alternative TSol staff member*].

## **13 Inspection**

(1) The Authority may inspect or arrange for the inspection of all or any of the Goods in the course of production at the Contractor's premises, or the premises where the Goods are being produced, at any reasonable time.

(2) Without prejudice to the Authority's right of inspection under (1) of this Condition, the Authority may inspect or arrange for the inspection of all or any of the Goods at the Contractor's premises or premises where the Goods have been produced, or after delivery, or as otherwise provided in the Contract.

(3) When the Authority wishes to exercise its right of inspection under this Condition, the Contractor shall give the Authority full and free access to the said premises as and when required for that purpose and shall provide at its own expense all such accommodation and facilities in connection with the inspection and all appliances, materials and labour required for inspection purposes as the Authority may reasonably require.

## **14 Rejection of the Goods**

(1) The Authority may reject any Goods which on inspection are found not to conform with the requirements of the Contract.

(2) The Authority may reject the whole of any consignment of the Goods if an inspection shows that: (a) such proportion or percentage of the Goods in that consignment as the Contract may specify as being appropriate for the purposes of

this Condition; or (b) such samples taken indiscriminately from that consignment by the Authority, do not conform with the requirements of the Contract.

(3) When under this Condition the Authority rejects any Goods or consignment after delivery, the Contractor shall, subject to the provisions of paragraph (7) of this Condition, at his own expense remove the rejected Goods and shall do so within such period as is provided by the Contract or, if the Contract makes no such provision, within 8 working days of the Authority's notice of rejection.

(4) If the Contractor fails to remove the Goods or any of them in accordance with paragraph (3) of this Condition, the Authority may return the rejected Goods or any of them to the Contractor at the Contractor's risk, the cost of carriage being recoverable by the Authority from the Contractor.

(5) When under this Condition the Authority rejects any Goods or consignment after delivery, the Contractor shall at its own expense deliver in the place of the rejected Goods, Goods which conform with the requirements of the Contract and shall do so within the period for delivery stipulated in the Contract or within such further reasonable period as the Authority may allow.

(6) If the Contractor considers himself aggrieved by a rejection under this Condition, he may give the Authority notice of objection. Such notice shall be given within 8 working days from the Authority's notice of rejection and before removing the rejected Goods from the Authority. The objection shall constitute a dispute between the parties, which, if not otherwise resolved within a reasonable time, shall be dealt with in accordance with the provisions of the Contract relating to the settlement of disputes. If the Contractor gives notice of objection the Goods shall not be removed until the Authority so requires.

(7) If any Goods whether completed or in course of production are rejected on inspection by the Authority, the same shall, if the Authority so requires, be marked in a manner satisfactory to the Authority to ensure their subsequent identification as rejected Goods.

## **15 Loss or Damage to the Goods**

(1) The Contractor is responsible for the Goods and any materials, equipment, fittings or things acquired or allocated by it for incorporation therein until delivery has been effected in accordance with Condition 12 and the Contractor shall make good any loss or destruction of or damage to the Goods or any such materials, equipment, fittings or things however sustained which may occur before such delivery.

(2) Paragraph (1) of this Condition shall apply notwithstanding that the Goods concerned may have been inspected in accordance with the Contract or that the property therein may have passed, in accordance with provisions specifically made in the Contract, from the Contractor to the Authority or its agent earlier than upon delivery.

(3) Unless the Contract specifically provides otherwise, the Contractor is not responsible for the Goods after delivery save that he shall become responsible in all respects for any Goods which under Condition 14 the Authority rejects after delivery, and such responsibility shall take effect upon the Contractor: (a) removing the Goods in accordance with paragraph (3) of Condition 14; or (b) upon the returning of the Goods to the Contractor in accordance with paragraph (4) of Condition 14; or (c) if he fails so to remove the Goods, or if the Authority does not exercise the right to return the Goods, on the expiry of the period provided by the Contract or, where no such period is provided, on the expiry of the 8th working day after the Authority's notice of rejection of the Goods.

(4) Notwithstanding the provisions of paragraph (3) of this Condition, the Contractor shall not be responsible for any Goods which remain in the possession of the Authority after the Authority has rejected them for so long as they so remain after notice of objection to the rejection has been given under paragraph (6) of Condition 14 and the dispute between the parties relating to the rejection remains unresolved.

## **16 Acceptance of the Goods**

Acceptance of the Goods or a consignment of Goods shall take place when the Authority confirms acceptance of the Goods in accordance with the procedure specified in the Contract, and if none is so specified, the Authority shall be deemed to have accepted the Goods or a consignment of Goods without prejudice to any remedies, on the occurrence of any of the following: (a) the Authority takes the Goods into use; (b) the Authority fails to exercise its right of rejection of the Goods under Condition 14 within any period specified for that purpose in the Contract; (c) where no period for exercising the right of rejection is specified in the Contract a reasonable time has elapsed since delivery of the Goods was effected in accordance with the manner specified under Condition 12 or in accordance with the Contract.

## **17 Marking of Goods**

If so required by the Contract, the Contractor shall at its own expense mark or permit the representative of the Authority to mark all approved materials, Goods or parts thereof with recognised Government marks. In the case of materials, Goods or parts thereof which cannot be so marked, the same shall, if so required by the Authority, be packed in suitable packages or cases, each of which shall be sealed and shall have the Government mark placed on the seals.

## **18 Identification of the Goods**

All goods which customarily have any mark, tab, brand, label or other device indicating place of origin, inspection by any body or standard of quality must be delivered with all the said marks, tabs, brands, labels or other devices intact.

## **19 Packaging Containers and Pallets**

Unless otherwise provided in the Contract, the Authority will not be obliged to return any containers (including packing cases, boxes, pallets, tins, drums and wrappings) supplied by the Contractor, and the cost of such containers shall be considered as having been included in the charges.

## **20 Specification and Quality Assurance**

(1) The Goods shall be of the quality and kinds described and equal in all respects to the description, specification, patterns and Contractor's samples which form part of the Contract or are otherwise relevant for the purpose of the Contract. Except in so far as may otherwise be indicated by such descriptions, specifications, patterns or Contractor's samples, the Goods shall be strictly in compliance with the latest British Standards (or equivalent international Standard) where such exist.

(2) The Contractor shall ensure that the design, construction, quality and safety of any goods manufactured or supplied by it comply with any applicable laws which may be in force at the time.

(3) The Contractor shall, if so requested by the Authority, furnish details of its quality management system and produce evidence, if appropriate, of certification to the relevant quality standard.

## **21 Default by the Contractor**

(1) If the Contractor commits a material breach of any term of the contract, either in relation to time of delivery or otherwise, the Authority shall be entitled (whether or not the Goods have been accepted by the Authority and whether the property in the Goods has passed to the Authority) to take any of the following actions at its discretion:-

(a) terminate the Contract under clause 23; (b) return the Goods or any part thereof to the Contractor. The Contractor shall pay any costs incurred thereby. The Authority shall be entitled to be repaid in full for any Goods so returned; (c) give the

Contractor the opportunity to replace, repair or reinstate the Goods at the Contractor's expense so that they comply with the terms of the contract; (d) refuse to accept any further deliveries of Goods without any liability to the Contractor; (e) carry out at the Contractor's expense such work as may be necessary to make the Goods comply with the contract; (f) claim such damages, cost and expenses as the Authority may have sustained in consequence of any breach of the terms of the contract or failure by the contractor any statutory or other legal obligations specified or implied by law.

(2) These rights shall be in addition to and without prejudice to any rights the Authority may have.

## **22 Termination for Insolvency or Change of Control**

(1) The Contractor shall notify the Authority in writing immediately upon the occurrence of any of the following events: (a) where the Contractor is an individual, if a petition is presented for his bankruptcy, or he makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage his affairs; or (b) where the Contractor is not an individual but is a firm or a number of persons acting together, if any event in Condition 22(1)(a) or (c) occurs in respect of any partner in the firms or any of those persons, or if a petition is presented for the Contractor to be wound up as an unregistered company; or (c) where the Contractor is a company or a limited liability partnership, if the company or limited liability partnership enters administration or passes a resolution to wind up or the court makes an administration order or a winding-up order, or the company or limited liability partnership makes a composition or arrangement with its creditors, or an administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge; or (d) the Contractor undergoes a change of control, where "control" has the meaning given in Section 416 of the Income and Corporation Taxes Act 1988.

(2) After receipt of the notice under paragraph (1) above or earlier discovery by the Authority of the occurrence of any of the events described in that paragraph, the Authority may, by notice in writing to the Contractor, terminate the Contract with immediate effect without compensation to the Contractor and without any prejudice to any right or action or remedy which may accrue to the Authority thereafter. The Authority's right to terminate the Contract under Condition 22(1)(d) will exist until the end of a period of three months starting from receipt of the notice provided by the Contractor pursuant to Condition 22(1), or such other period as is agreed by the parties.

## **23 Termination for Breach of Contract**

If either party commits a material breach of any term of the Contract which is either not capable of remedy, or, if it is capable of remedy, he fails to remedy such breach within 28 days of being notified by the other party in writing to do so, that other party shall be entitled to terminate the Contract with immediate effect by notice in writing to the party that committed the breach and without prejudice to any other rights or remedies of either party in respect of the breach concerned or otherwise in relation to the Contract.

## **24 Cancellation**

The Authority shall be entitled to terminate the Contract by giving to the Contractor not less than 28 days' notice in writing to that effect without prejudice to any rights or remedies of the Contractor for breach of contract.

## **25 Dispute Resolution**

The parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract.

#### 26. Confidentiality

(1) The Contractor agrees not to disclose any Confidential Information to any third party without the prior written consent of the Authority. To the extent that it is necessary for the Contractor to disclose Confidential Information to its staff, agents and sub-contractors, the Contractor shall ensure that such staff, agents and sub-contractors are subject to the same obligations as the Contractor in respect of all Confidential Information.

(2) Condition 26 (1) shall not apply to information which: (a) is or becomes public knowledge (otherwise than by breach of these Conditions) or a breach of an obligation of confidentiality to any other department or office of Her Majesty's Government; (b) in the possession of the Contractor, without restriction as to its disclosure, before receiving it from the Authority; or (c) is required by law to be disclosed.

(3) The obligations contained in this Condition shall continue to apply after the expiry or termination of the Contract.

(4) except with the prior consent in writing of the Authority, the Contractor shall not make use of the Contract or any Confidential Information otherwise than for the purposes of supplying the Goods.

#### 27. Government Property

(1) All Government Property shall remain the property of the Authority and shall be used in the execution of the Contract and for no other purpose whatsoever except with the prior agreement in writing of the Authority.

(2) All Government 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 time as is specified in the Contract.

(3) The Contractor undertakes to return any and all Government Property on completion of the Contract or on any earlier request by the Authority.

(4) The Contractor shall, except as otherwise provided for in the Contract, repair or replace or, at the option of the Authority, pay compensation for all loss, destruction or damage occurring to any Government Property caused or sustained by the Contractor, or by his servants, agents or sub-contractors, whether or not arising from his or their performance of the Contract and wherever occurring, provided that if the loss, destruction or damage occurs at the Authority's Premises or any other Government premises, this Condition shall not apply to the extent that the Contractor is able to show that any such loss, destruction or damage was not caused or contributed to by his negligence or default or the negligence or default of his servants, agents, or sub-contractors.

#### 28. Indemnities

(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.

(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.

(3) The Contractor undertakes to indemnify and keep indemnified the Authority from and against any and all loss, damage to property or bodily injury, or liability (whether criminal or civil) suffered by the Authority, its employees or agents or any third party resulting from a breach of the Contract by the Contractor or any negligent act, neglect or default of the Contractor, his employees or agents in the performance of the Contract.

(4) 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 undertaking the Contract.

### **29 Insurance**

The Contractor shall insure against its liability under Condition 28 (3) with a minimum limit of indemnity of [1,000,000 – or alternative standard level required by TSoI] GBP or such other sum as may be agreed in writing between the Contractor and the Authority.

### **30 Corrupt Gifts and Payments of Commission**

(1) The Contractor shall not: (a) offer or give, or agree to give, to any person employed by or on behalf of the Authority any gift or consideration of any kind as an inducement or reward for doing, or having done, or not doing, any act in relation to the obtaining or execution of this Contract or any other contract with the Authority, or for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Authority; (b) enter into the Contract or any other contract with the Authority or any other department or office of Her Majesty's Government in connection with which commission has been paid, or agreed to be paid by him or on his behalf, or to his knowledge, unless, before the Contract is made, particulars of any such commission and the terms and conditions of any agreement for the payment thereof, have been disclosed in writing to any person duly authorised by the Authority to act as its representative for the purpose of this Condition. Nothing contained in this Condition shall prevent the Contractor paying such commission or bonuses to his own staff in accordance with their agreed contracts of employment

(2) Any breach of this Condition by the Contractor, or by anyone employed by him or acting on his behalf (whether with or without his knowledge), or the commission of any offence by the Contractor or by anyone employed by him or acting on his behalf under the Prevention of Corruption Acts 1889-1916, in relation to this Contract or any other contract with the Authority, shall entitle the Authority to terminate the Contract with immediate effect and recover from the Contractor the amount of any loss resulting from such termination and the amount of the value of any such gift, consideration or commission as the Authority shall think fit.

(3) Where the Contract has been terminated under paragraph (2) of this Condition, there shall be deemed to be a failure to commence the supply of the Goods, enabling the Authority to terminate the Contract with immediate effect and the Authority will not be obliged to pay the charges.

(4) In any dispute, difference or question arising in respect of: (a) the interpretation of this Condition (except so far as the same may relate to the amount recoverable from the Contractor under paragraph (2) of this Condition in respect of any loss resulting from such determination of the Contract); or (b) the right of the Authority to determine the Contract; or (c) the amount or value of any gift, consideration or commission, the decision of the Authority shall be final and conclusive.

### **31. Official Secrets**

The Contractor's attention is drawn to the provisions of the Official Secrets Acts 1911 to 1989. The Contractor shall take all reasonable steps by display of notices or by other appropriate means to ensure that all persons employed in connection with the Contract have notice that these statutory provisions apply to them and will continue so to apply after the expiry or earlier termination of the Contract.

### **32. Special Provisions**

In the case of any conflict or inconsistency between these general Conditions and any specific terms of the Contract, the latter shall prevail.

### **33. Conflict of Interest**

(1) The Contractor shall ensure that there is no conflict of interest as to be likely to prejudice his independence and objectivity in performing the Contract and

undertakes that upon becoming aware of any such conflict of interest during the performance of the Contract (whether the conflict existed before the award of the Contract or arises during its performance) he shall immediately notify the Authority in writing of the same, giving particulars of its nature and the circumstances in which it exists or arises and shall furnish such further information as the Authority may reasonably require.

(2) Where the Authority is of the opinion that the conflict of interest notified to it under paragraph (1) above is capable of being avoided or removed, the Authority may require the Contractor to take such steps as will, in its opinion, avoid, or as the case may be, remove the conflict and: (a) if the Contractor fails to comply with the Authority's requirements in this respect; or (b) if, in the opinion of the Authority, it is not possible to remove the conflict, the Authority may terminate the Contract immediately and recover from the Contractor the amount of any loss resulting from such termination.

(3) Notwithstanding paragraph (2) of this Condition, where the Authority is of the opinion that the conflict of interest which existed at the time of the award of the Contract could have been discovered with the application by the Contractor of due diligence and ought to have been disclosed as required by the tender documents pertaining to it, the Authority may terminate the Contract immediately for breach of a fundamental condition and, without prejudice to any other rights, recover from the Contractor the amount of any loss resulting from such termination.

#### **34. Intellectual Property Rights**

(1) The Contractor warrants that the supply of the goods specified in this contract does not and will not infringe the industrial property rights of every kind of any third party.

(2) The Contractor shall ensure that all royalties licence fees or similar expenses in respect of intellectual property used in connection with the Goods have been paid and are included with the Contract price.

#### **35 Rights of Third Parties**

It is not intended that the Contract, either expressly or by implication, shall confer any benefit on any person who is not a party to the Contract and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply.

#### **36 Law and Jurisdiction**

The Contract shall be governed by and construed in accordance with English Law and shall be subject to the exclusive jurisdiction of the courts of England and Wales.

#### **37 Non-discrimination**

The Contractor shall not unlawfully discriminate within the meaning and scope of the anti-discrimination legislation within the UK in relation to the provision of the Services or otherwise and shall take all reasonable steps to ensure that all servants, employees or agents of the Contractor and all sub-contractors employed in the execution of the Agreement do not unlawfully discriminate.

#### **38 Other Legislation**

The Contractor shall, and shall procure that its sub-contractors, agents and personnel, comply with all applicable law.

#### **39 Contractor Status**

Nothing in the Contract shall create or be construed as creating a partnership, joint venture, a contract of employment or relationship of employer and employee, or a relationship of principal and agent between the Authority and the Contractor.

**40 Entire Agreement**

The Contract constitutes the entire agreement and understanding between the parties and supersedes all prior written and oral representations, agreements or understandings between them relating to the subject matter of the Contract provided that neither party excludes liability for fraudulent misrepresentations upon which the other party has relied.