

**Department for Transport**  
**General & Supplementary Conditions of Contract for the Supply of Goods and Associated Services**

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## **1. DEFINITIONS AND INTERPRETATIONS**

1.1 In this Contract, unless the context requires otherwise, the following words and phrases shall have the following meanings:-

- (a) "Article(s)" means all goods and, where the context requires, any associated services or Work described in the Specification which the Contractor is required to supply under the Contract.
- (b) "Award Date" means the date of the award of the Contract by the Department to the Contractor;
- (c) "Contract" means the documents listed in the Department's acceptance letter, including these Conditions and the Specification. In case of discrepancy between these Conditions and other documents forming part of the Contract, these Conditions shall prevail unless otherwise agreed in writing;
- (d) "Contract Price" means the price or prices payable to the Contractor by the Department under the Contract for the full and proper performance by the Contractor of his part of the Contract as determined under the provisions of the Contract;
- (e) "Contractor" means the person (including any successors) appointed by the Department to supply the Articles;
- (f) "Contractor's Representative" means a competent person appointed by the Contractor to be his representative in relation to the performance of the Contract who will receive and act on any directions given by the Contract Manager;
- (g) "Contract Manager" means the official of the Department, or other person appointed by the Department to act on its behalf for the purpose of managing the Contract;
- (h) "Department" or "Authority" means the Secretary of State for Transport, his Department, Executive Agencies of the Department and persons authorised to act on the Secretary of State's behalf;
- (i) "Department's Property" means anything issued or otherwise provided in connection with the Contract by or on behalf of the Department;
- (j) "month" means calendar month, unless otherwise defined;
- (k) any reference to a "person" shall, as the context may require, be construed as a reference to any individual, firm, company, corporation, Government Department, Agency or any association or partnership (whether or not having a separate legal personality);
- (k) "Premises" means any premises occupied, owned or leased by the Department or any other servant of the Crown, or as described in the Contract;
- (l) "Work" means anything which the Contractor is required to provide under the contract as described in the Specification;
- (m) "Specification" means the description of the Articles which the Contractor is required to supply under the Contract.

1.2 Unless the context requires otherwise, the singular shall include the plural and vice versa, and words expressed in any gender shall include any other gender;

1.3 The headings are inserted for convenience only and shall not affect the interpretation of the Contract.

1.4 Reference to a statute, statutory provision or subordinate legislation (each "legislation") shall be constructed as referring, except where express provision is made to the contrary, to such legislation as amended and in force from time to time, to any legislation in force that (with or without modification) re-enacts, consolidates or replaces such legislation and, in the case of statute or statutory provision, to all subordinate legislation made under any such statute or statutory provision as aforesaid (whether before, on or after the Award Date).

## **2. LAW**

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

## **3. DURATION OF THE CONTRACT**

Subject to the Department's rights of termination under these conditions, the Contract shall be in force from the Award Date until either the satisfactory supply of the Articles or for such other period as may be specified within the Contract.

## **4. QUALITIES ETC**

The Articles shall be of the qualities, standards and sorts described in the Specification and equal in all respects to the samples, patterns, specifications, plans, drawings or any other documents, individually or collectively, which form part of the Contract.

## **5. ALTERATION OF REQUIREMENT**

The Department reserves the right to alter the requirements of the Contract should this at any time become necessary. In the event of any alteration of the contractual requirement, payment under the Contract shall be subject to fair and reasonable adjustment to be agreed between the Department and the Contractor and recorded in writing.

## **6. DUTY OF CARE**

The Contractor shall perform the Contract with all reasonable skill, care and diligence and all relevant legislative requirements.

## **7. CONTRACTOR'S PERFORMANCE**

7.1 The Contractor shall properly manage and monitor performance of the Contract and immediately inform the Contract Manager if any aspect of the Contract is not being or is unable to be performed.

7.2 The Contractor shall provide all the necessary facilities, materials and any other equipment, and personnel of appropriate qualifications and experience to undertake the Contract.

7.3 The Contractor shall: -

- (a) give the Department, if so requested, full particulars of all persons who are or may be at any time employed on the Contract;
- (b) comply with any rules, regulations and any safety and security instructions from the Department, including completion of any additional clearance procedures required by the Department, and return of any passes as required.

7.4 Unless otherwise agreed by the Department, neither the Contractor nor any of his employees or agents shall carry out any business or trading activity within the confines of the Department's premises and no advertisement, sign or notice of any description shall be exhibited without prior approval, in writing, from the Department.

7.5 The Contractor shall exercise due care and propriety when dealing with third parties in connection with the Contract and ensure that no commitments are entered into (unless expressly required under the Contract), without the Department's prior written consent.

7.6 Nothing in the Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the Department and the Contractor.

## **8. MEETINGS AND REPORTS**

8.1 The Contractor shall attend all meetings arranged by the Department for the discussion of matters connected with the performance of the Contract.

8.2 Without prejudice to the submission of reports as specified under the Contract, the Contractor shall render any additional reports as to the performance of the Contract at such time or times, and in such form as the Contract Manager may reasonably require.

## **9. INSPECTION**

During the course of the Contract the Department shall have the power to inspect and examine any of the Articles at any reasonable time. The Contractor shall provide free of charge all such facilities as the Department may

reasonably require for such inspection and examination. For the avoidance of doubt this Condition applies to the completed Articles and to Articles in the course of production.

## **10. ACCEPTANCE MARKS**

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

## **11. PACKAGING**

11.1 All Articles delivered under this Contract are to be securely packed before despatch and each package must be distinctly marked with the description and quantity of contents, the Contractor's name and a distinctive number or mark for identification purposes.

11.2 Unless otherwise provided by the Contract, the cost of packaging is deemed to be included in the Contract Price and the packaging shall be non-returnable.

11.3 The Contractor shall make maximum use of recycled materials in the manufacture of crates, pallets, cartons, cushioning and other forms of packaging. Packaging must be capable of recovery for reuse or recycling.

## **12. DELIVERY**

The Contractor shall deliver the Articles to the Department as specified in the Contract or in orders raised under the Contract.

## **13. REJECTION**

13.1 Without prejudice to any of its other rights under the Contract, the Department may reject any Article which does not conform with the Contract.

13.2 When under this Condition any Article is rejected by the Department, the Contractor shall, subject to the provisions of condition 13.5, at his own expense remove from the Department each and every rejected Article 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 from receipt of the notification of rejection.

13.3 If the Contractor fails to remove any Article in accordance with condition 13.2, the Department may return any rejected Article to the Contractor at the Contractor's expense and at the Contractor's risk.

13.4 When under this Condition the Department rejects any Article, the Contractor shall, if required by the Department, deliver in its place and at his own expense, an Article which conforms 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 Department may allow.

13.5 If the Contractor considers himself aggrieved by a rejection under this Condition, he may give the Department notice of objection. To be effective such notice shall be given within 8 working days from receipt of notification of rejection and before removing any rejected Article from the Department. The objection shall constitute a dispute between the parties which if not otherwise resolved between the parties within a reasonable time shall be dealt with in accordance with Condition 30 (Arbitration). If the Contractor gives notice of objection the Articles shall not be removed until the Department directs.

13.6 If any Article whether completed or in the course of production is rejected on inspection by the Department, the same shall, if the Department so requires, be marked in such a manner satisfactory to the Department, as to ensure its subsequent identification as a rejected Article.

#### **14. ACCEPTANCE**

Acceptance of an Article shall take place when the Department confirms acceptance of the Article in accordance with the procedure specified in the Contract, or if none is so specified then the Department shall be deemed to have accepted an Article without prejudice to any other remedies, when and as soon as any of the following events has occurred:-

- (a) the Department has taken the Article into use;
- (b) the Department has not exercised its right of rejection of the Article under Condition 13 within any period specified for that purpose in the Contract;
- (c) there being no period for exercising the right of rejection specified in the Contract, a reasonable time has elapsed since the Article was delivered to the Department.

#### **15. INVOICES AND PAYMENT**

15.1 The Contractor shall submit an invoice to the Department as specified in the Contract or within 28 days of the completion of the Contract. All invoices shall quote the Contract number and, where appropriate, the purchase order number.

15.2 The Contractor shall submit with the invoice such records as the Department may reasonably require which would enable the Department to verify the information and the amounts referred to in that invoice.

15.3 The Contractor shall provide to the Department the name and address of his bank, the account name and number, the bank sort code and any other details, in whatever format the Department may require.

15.4 The Department shall pay the Contractor in respect of the satisfactory supply of the Articles in accordance with the Contract. Payment by the Department shall not imply acceptance under condition 14.

15.5 Except where otherwise provided in the Contract, the amount payable to the Contractor for the supply of the Articles shall be inclusive of all costs of staff, facilities, equipment, materials, carriage and all other expenses whatsoever incurred by the Contractor in discharging his obligations under the Contract.

15.5 The Department is committed to prompt payment and shall pay the Contractor within 30 days of the receipt of a valid invoice, provided that the Department is satisfied that the Articles to which the invoice relates have been supplied fully in accordance with the Contract.

#### **16. VALUE ADDED TAX**

The Department shall pay to the Contractor the amount of any VAT chargeable in respect of the performance of the Contract.

#### **17. WARRANTY**

The Contractor shall make good to the satisfaction of the Department with all due diligence and at his own expense any defects arising from the defective design, materials or workmanship or from any act or omission of the Contractor that may develop in the Articles under proper use for a period of 12 months. The period shall commence either from the date the Articles were taken into use or, if held in storage by the Department, the date of issue from storage subject to a maximum storage period of 12 months.

#### **18. CORRUPT GIFTS AND PAYMENTS OF COMMISSION**

18.1 The Contractor shall not receive or agree to receive from any person, or offer or agree to give to any person, or procure for any person any gift or consideration of any kind as an inducement or reward for doing or not doing anything, or for showing favour or disfavour to any person in relation to the Contract or any other contract with the Crown.

18.2 The Contractor shall not conspire with any person to do any of the acts mentioned in Condition 18.1.

18.3 Any: -

- (a) breach by the Contractor of this Condition; or
  - (b) commission of any offence by the Contractor under the Prevention of Corruption Acts 1889 to 1916 in relation to this or any other contract for Her Majesty's Service;
- shall entitle the Department to terminate the Contract and recover from the Contractor the amount of any loss resulting from such termination and recover from the Contractor the amount of value of any such gift, consideration or commission.

18.4 The decision of the Department in relation to this Condition shall be final and conclusive.

## **19. OFFICIAL SECRETS ACTS**

The Contractor shall take all reasonable steps to ensure that all persons employed by him or by any sub-contractor in connection with the Contract are aware of the Official Secrets Acts 1911 to 1989, and that these Acts apply to them during and after the supply of the Articles under or in connection with the Contract.

## **20. DISCLOSURE OF INFORMATION**

20.1 Under the Government's Code of Practice on Access to Government Information, the Department reserves the general right to disclose information about this Contract, unless otherwise agreed in writing.

20.2 The Contractor shall not disclose the Contract or any provision thereof or any information resulting from, in connection with, or during the course of, the Contract, to any person unless it is strictly necessary for the performance of the Contract, and authorised in writing by the Department. The Contractor shall comply with any instructions regarding changes to authorisations and other instructions regarding disclosure or non-disclosure. This Condition does not apply in relation to information

- (a) which is in or enters the public domain otherwise than by a breach of an obligation of confidentiality (b) which is or becomes known from other sources without breach of any restriction on disclosure or (c) which is required to be disclosed by law or any professional or regulatory obligation.

20.3 Subject to Condition 20.2, the Contractor shall ensure that information about the Contract, or arising from or connected with the Contract: -

- (a) is divulged only to the minimum number of persons;
- (b) is divulged only to the extent essential to each person's action in carrying out (or in connection with) the Contract and that such persons do not further divulge such information;
- (c) (c) is properly safeguarded.

20.4 The Contractor shall ensure that any contract with any contractor of his engaged in any way in connection with the Contract contains a condition requiring that person to keep all information (other than that which: (a) is in or enters the public domain otherwise than by a breach of an obligation of confidentiality; or (b) is or becomes known from other sources without breach of any restriction on disclosure; or (c) is required to be disclosed by law or any professional or regulatory obligation) in relation to the Contract and its performance confidential, and shall draw their attention (and that of any employee of the Contractor involved in any way with the performance of the Contract) to the requirements of the Official Secrets Acts and to this condition and condition 20.2.

20.5 No information regarding the Services being provided under the Contract or facilities to photograph or film shall be given or permitted by the Contractor except with prior written permission of the Department, to whom any press or other enquiry or any such matter should be referred. This Condition does not apply in relation to information

- (a) which is in or enters the public domain otherwise than by a breach of an obligation of confidentiality
- (b) which is or becomes known from other sources without breach of any restriction on disclosure or
- (c) which is required to be disclosed by law or any professional or regulatory obligation.

20.6 The Contractor shall not, in connection with the Contract, communicate with representatives of the general or technical press, radio, television or other communications media unless specifically granted permission to do so in writing by the Department.

20.7 Except with the consent in writing of the Department the Contractor shall not make use of the Contract or any information issued or furnished by or on behalf of the Department otherwise than for the purpose of the Contract.

20.8 The decision of the Department regarding anything in this Condition 20 shall be final and conclusive.

## **21. DISCRIMINATION**

The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976 and the Sex Discrimination Acts 1975 and 1986 and the Disability Discrimination Act 1995 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 Contract do not unlawfully discriminate. This condition shall not in any way relieve the Contractor of his general obligations to comply with any legislative requirements as provided in Condition 6.

## **22. MERGER, TAKE-OVER OR CHANGE OF CONTROL**

The Contractor shall forthwith inform the Department in writing of any proposal or negotiations which may or will result in a merger, take-over, change of control, change of name or status, or the Contractor (being a company as defined in the Companies Act 1985) shall inform the Department of any such change as defined in section 416 of the Income and Corporation Taxes Act 1988. The Contractor shall comply with any request by the Department for information arising from this Condition.

## **23. UNSATISFACTORY PERFORMANCE**

23.1 Where in the opinion of the Department the Contractor has failed to perform the whole or any part of the Contract, with the standard of skill, care and diligence which a competent and suitably qualified person performing the Contract could reasonably be expected to exercise the Department may give the Contractor a notice specifying the way in which his performance falls short of the requirements of the Contract, or is otherwise unsatisfactory.

23.2 Where the Contractor has been notified of a failure in accordance with Condition 23.1 the Department may:

- (a) request from the Contractor that, at his own expense and as specified by the Department, he re-schedules and performs the Contract to the Department's satisfaction within such period as may be specified by the Department in the notice, including where necessary, the correction or re-execution of any Work already carried out; or
- (b) withhold or reduce payments to the Contractor, in such amount as the Department deems appropriate in each particular case.

## **24. TERMINATION OF THE CONTRACT**

Without prejudice to any other power of termination, the Department may terminate the Contract without notice, for any of the following reasons:-

- (a) the breach by the Contractor of any of Conditions 18 (Corrupt Gifts & Payments of Commission), 19 (Official Secrets Acts), 20 (Disclosure of Information) of the Contract, or any other material breach of contract;
- (b) the failure by the Contractor to comply with a notice given under Condition 23 (Unsatisfactory Performance);
- (c) the Contractor ceases or proposes to cease to carry on his business;
- (d) there is a change of control of the type referred to in Condition 22 (Merger, Take-over or Change of Control), and the Department has not agreed in advance in writing to the particular change of control, save that in this event the Department shall give one month's notice in writing to the Contractor.

## **25. BREAK**

The Department shall in addition to its powers under any other of these Conditions have power to terminate the Contract at any time by giving to the Contractor one month's written notice. Upon the expiry of the notice the Contract shall be terminated without prejudice to the rights of the parties accrued to the date of termination.

## **26. CONSEQUENCES OF TERMINATION AND BREAK**

26.1 Where the Contract is terminated under Condition 24 (Termination of the Contract), the following provisions shall apply: -

- (a) Any sum due or accruing from the Department to the Contractor may be withheld or reduced by such amount as the Department in either case considers reasonable and appropriate in the circumstances;
- (b) the Department may make all arrangements which are in its view necessary to procure the orderly completion of the Contract including the letting of another contract or contracts;
- (c) where the total costs reasonably and properly incurred by the Department by reason of such arrangements exceed the amount that would have been payable to the Contractor for the completion of the Contract, the excess shall, subject to any overall limitation of liability contained in Condition 29, be recoverable from the Contractor and the Department reserves the right to recover such excess by set-off against any amount withheld by the Department under Condition 26.1(a) or as otherwise provided for under Condition 31 (Recovery of Sums Due).

26.2 Without prejudice to Condition 26.1, where the Contract is terminated under Condition 24 (d) or Condition 25 (Break) the Contractor shall have the right to claim from the Department reimbursement of all reasonable costs necessarily and properly incurred by him in relation to the orderly cessation of the Contract, including any commitments, liabilities or expenditure which are reasonably and properly incurred, and would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract. For the avoidance of doubt the Department will not indemnify the Contractor against loss of profit. The Department shall not in any case be liable to pay under the provisions of this Condition any sum which, when taken together with any sums paid or due or becoming due to the Contractor under the Contract, shall exceed the total Contract price.

26.3 Where the Contract is terminated under Condition 24 (Termination of the Contract) or Condition 25 (Break), the Department may, during any notice period: -

- (a) direct the Contractor, where Work has not commenced, to refrain from commencing Work or where Work has commenced, to cease Work immediately;
- (b) direct the Contractor to complete in accordance with the Contract all or any of the Articles, or any part or component thereof, which shall be paid at the agreed Contract Price or, where no agreement exists, a fair and reasonable price.

## **27. ASSIGNMENT, SUB-CONTRACTORS AND SUPPLIERS**

27.1 The Contractor shall not sub-contract or transfer, assign, charge, or otherwise dispose of the Contract or any part of it without the prior written consent of the Department.

27.2 The Contractor shall ensure that any sub-contractor complies with the terms and Conditions of the Contract, so far as they are applicable. Any sub-contract shall not relieve the Contractor of his obligations under the Contract.

27.3 Where the Contractor enters into a contract with a supplier or sub-contractor for the purpose of performing the Contract or any part of it, he shall cause a term to be included in such contract which requires payment to be made by the Contractor to the supplier or sub-contractor within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the Contract requirements.

## **28. INSURANCE**

28.1 The Contractor shall effect and maintain insurance necessary to cover his liabilities under the Contract and, where the Contractor sub-contracts part of the Contract, he shall procure that any such sub-contractor effects and maintains insurance to cover its liabilities under the sub-contract.

28.2 The Contractor shall, whenever required by the Department, produce to the Department documentary evidence showing that the insurance required by Condition 28.1 has been taken out and is being maintained.

28.3 If, for whatever reason, the Contractor fails to maintain, or fails to procure that any sub-contractor maintains, the insurance required by this Condition 28 the Department may make alternative arrangements necessary to protect its interests and recover the costs thereof from the Contractor, provided always that any overall limitation of liability contained in Condition 29 shall not thereby be exceeded.

28.4 The terms of any insurance or the amount of cover shall not relieve the Contractor or his sub-contractors or consultants of any liabilities under the Contract, their sub-contracts or their terms of commission.

## **29. LOSS OR DAMAGE**

29.1 Condition 29 applies to any loss or damage which arises out of or is in any way connected with the performance of the Contract and shall include, for the avoidance of doubt and without prejudice to the generality of the foregoing, breaches of Conditions 32 and 34.

29.2 The Contractor shall, without delay and at his own expense, replace or make good to the satisfaction of the Department, or if the Department requires, compensate the Department, for any loss or damage.

29.3 The Contractor shall indemnify the Crown and servants of the Crown against all demands, liabilities, claims made, or proceedings brought, against the Crown or servants of the Crown in respect of any loss or damage and against all costs and expenses reasonably incurred in dealing with or in settling such demands, liabilities, claims or proceedings.

29.4 The Department shall notify the Contractor as soon as possible of any demand or claim made, or proceedings brought against the Crown in respect of any loss or damage.

29.5 If any loss or damage: -

(a) was not caused or contributed to by the Contractor's neglect or default, whether by act, omission or otherwise (for the purposes of this Condition 29.5, 'Contractor' shall include, his servants, agents or sub-contractors) he shall be under no liability under this Condition 29;

(b) was in part caused or contributed by the Contractor's neglect or default, whether by act, omission or otherwise, and in part by:-

(i) the act, neglect or default of any other person; and/or

(ii) circumstances outside both the Contractor's control and his reasonable contemplation

the Contractor's liability under this condition 29 shall, except in relation to any loss or damage arising out of the Contractor's fraud or breach of Condition 18 and 19 (to which this Condition 29.5(b) shall not apply, be limited to the proportion of the loss or damage which it is just and equitable for the Contractor to pay having regard to the extent of the Contractor's responsibility for the same and on the basis that: -

(iii) any such other person shall be deemed to have paid the Crown such proportion of the loss or damage which it would be just and equitable for them to pay having regard to the extent of their responsibility for the same (for the avoidance of doubt, whether or not they would actually be able to pay such amount); and

(iv) the risk of the proportion of loss or damage arising from circumstances outside both the Contractor's control and his reasonable contemplation shall lie with the Crown.

29.6 In this condition 29 loss or damage includes: -

(a) loss or damage to property, including the Articles themselves before delivery to and acceptance by the Department

(b) personal injury and death;

(c) loss of profit or loss of use;

(c) any other loss.

## **30. DISPUTE RESOLUTION**

30.1 Nothing in Condition 30 shall relieve the Department or the Contractor from any obligation arising under or in connection with this Contract or affect the resolution of any dispute, difference or question between the Department and the Contractor arising out of or in connection with this Contract (in this Condition 30, a "Matter") and as to which the Department's decision is under the Contract to be final and conclusive; in

particular Condition 30.2 shall not restrict the Department's ability to commence Court proceedings in respect of any such Matter.

30.2 Subject to Condition 30.1, where any Matter cannot be resolved between the Contract Manager and Contractor's Representative, either of them shall be entitled, by written notice to the other, to refer the Matter to a senior representative of the Department and of the Contractor in accordance with Condition 30.3 below. Except as strictly required to preserve the legal rights of the Department or of the Contractor (as the case may be), or to obtain interim relief, neither the Department nor the Contractor shall commence Court proceedings until the Matter has been referred in accordance with this Condition 30.2.

30.3 Where a notice of referral has been given pursuant to Condition 30.2, a senior representative of the Department (Grade 5 or above) and a senior representative of the Contractor (a director or a person of equivalent authority) (in this Condition 30, each a "Senior Representative") shall meet within 15 working days from, but excluding, the date when the recipient receives the notice of referral, to endeavour to resolve the Matter. Each Senior Representative may be accompanied to such meeting by such other person or persons (not to exceed three) as that Senior Representative considers appropriate. Unless otherwise agreed between the Department and the Contractor, the Senior Representatives shall not have had direct operational involvement in the Matter and shall not have had direct involvement in any previous negotiations in relation to the Matter.

30.4 Where the Senior Representatives are able to agree a resolution to the Matter, the Senior Representatives shall arrange for that agreement to be recorded in writing; the agreed written resolution shall be binding upon the Department and the Contractor.

30.5 Where the Senior Representatives are unable to agree a resolution to the Matter, either the Department or the Contractor may request (in this Condition 30, the requesting party shall be "the Requester") that the other (in this Condition 30, "the Recipient") enters into a process of mediation or early neutral evaluation in a further effort to resolve the Matter (in this Condition 30, a "Request"). Any Request shall: (a) be made in writing; (b) specify which of the two processes the Requester wishes to use; and (c) propose in outline the procedure to be adopted for the specified process, including provision as to timing, sharing of costs and volume of documentation, having regard to the sum in issue and the complexity of the Matter.

30.6 The Recipient shall, within 15 working days from, but excluding, the date it receives the Request: (a) determine whether it considers it appropriate to use the specified process in an effort to resolve the Matter; and (b) send written notice of its determination to the Requester. If the Recipient's determination is that it does not consider it appropriate to use the specified process, the Recipient shall give in its written notice brief reasons for that determination.

30.7 If the Recipient's determination pursuant to Condition 30.6 is that it is appropriate to use the specified process, the written notice sent pursuant to Condition 30.6 shall: (a) state which, if any, of the Requester's outline proposals for the procedure are acceptable to the Recipient; and (b) to the extent that the Recipient is unable to agree to such outline proposals, state its outline proposals in respect of the procedure, having regard to the sum in issue and the complexity of the Matter. Such written notice may also contain proposals as to any matter that the Recipient considers ought to have been dealt with in the outline proposals in the Request, but that were not so dealt with.

30.8 Where the Recipient's determination pursuant to Condition 30.6 is that it is appropriate to use the specified process, the Department and Contractor shall use reasonable endeavours to conclude an agreement to operate the specified process.

## **31. RECOVERY OF SUMS DUE**

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

## **32. DATA PROTECTION**

The Contractor shall take such technical and organisational measures as are necessary to comply with the seventh data protection principle set out in Part I and amplified in Part II, of Schedule 1 to the Data Protection Act 1998

### **33. INSOLVENCY OF THE CONTRACTOR**

33.1 The Contractor shall inform the Department: -

- (a) if being an individual, or where the Contractor is a firm, any partner in that firm, 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 if in Scotland he shall become insolvent or notour bankrupt, or any application shall be made under any bankruptcy 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
- (b) if being a company, he passes a resolution, or the Court makes an order, that the company be wound up otherwise than for the purpose of reconstruction or amalgamation, or if a receiver or manager on behalf of a creditor shall be appointed, or if circumstances shall arise which entitle the Court, otherwise than for the purposes of amalgamation or reconstruction, to make a winding-up order.

33.2 If any of the events in the conditions 33.1 (a) or 33.1 (b) occur (whether or not the Contractor has informed the Department) the Department may at any time by notice in writing summarily terminate the Contract without compensation to the Contractor. Such termination shall not prejudice or affect any right of action or remedy which shall have accrued before that date or shall accrue thereafter to the Department.

### **34. ROYALTIES AND LICENCE FEES**

The Contractor shall ensure that all royalties, licence fees or similar expenses in respect of all intellectual property used in connection with the Contract, have been paid and are included within the Contract Price.

### **35. DRAWINGS, SPECIFICATIONS, SOFTWARE, DESIGNS AND OTHER DATA**

35.1 The final 'deliverable' version of any data, including, without prejudice to the generality of the foregoing, written reports, calculations, software, designs, drawings, specifications, maps and photographs, completed or provided in connection with the Contract (for the purposes of this Condition 35, each a "Deliverable") shall become or, as the case may be, remain the property of the Department and (unless previously delivered) be delivered up to the Department forthwith upon request on completion (or, if sooner, termination) of the Services, subject to the retention of proper professional records. Where the Department has agreed to accept such Deliverables using modern storage media or means of communication (for example, e-mail), such Deliverables shall be supplied by the Contractor in an agreed form.

35.2 If the Contract is terminated by the Department pursuant to the provisions of Conditions 24, 25 or 33, the provisions of Condition 35.1 shall also apply, with the necessary changes, to the working data, including, without prejudice to the generality of the foregoing, working versions of written reports, calculations, software, designs, drawings, specifications, maps and photographs (for the purpose of this Condition 35, the "Working Data") relating to any element of the Services that at the date of termination of the Contract has not been completed by the handing over of the Deliverable relating to that element. The Department acknowledges that Working Data may contain information that cannot be relied upon and agrees that should it choose to rely upon Working Data such reliance shall be entirely at its own risk.

### **36. RETENTION OF DOCUMENTATION AND NATIONAL AUDIT OFFICE ACCESS**

36.1 The Contractor shall retain for a period of 2 years from the date of conclusion of provision of the Services or termination of the Contract (whichever is the earlier), or such longer period as may be agreed between the Department and the Contractor (such agreement to be recorded in writing), full and accurate records of the performance of the Services, including, without prejudice to the generality of the foregoing, records of all payments made to the Contractor by the Department in relation to the Contract.

36.2 The Contractor shall:

- (a) produce such records retained pursuant to Condition 36.1 as the Department may reasonably require;
- (b) afford such facilities as the Department may reasonably require for his representatives to inspect the records retained pursuant to Condition 36.1. Provided that the Contractor takes all reasonable steps to prevent this exception from applying, the right granted by this Condition 36.2(b) shall not apply to the extent that the confidentiality of information relating to the Contractor's other clients would be jeopardised by such inspection; and
- (c) provide such explanations of records produced pursuant to Condition 36.2(a) or inspected pursuant to Condition 36.2(b) as the Department may reasonably require.

36.3 For the purpose of:

- (a) the examination and certification of the Department's accounts; or
- (b) any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Department has used its resources, the Comptroller and Auditor General shall have a right of access at all reasonable times to such documents as he may require which are owned, held or otherwise within the control of the Contractor and the Contractor shall provide to the Comptroller and Auditor General such assistance and such oral and/or written information and explanation as he may require.

36.4 For the avoidance of doubt, nothing in Condition 36.1, Condition 36.2 or Condition 36.3 constitutes a requirement or agreement for the purposes of section 6(3)(d) of the National Audit Act 1983 for the examination, certification or inspection of the accounts of the Contractor.

### **37. SERVING OF NOTICES**

Any notice required to be given or served under this Contract by the Department shall be in writing and shall be served by either: -

- (a) delivery to the Contractor's Representative, or
- (b) sending it by post to the Contractor's last known place of business or registered office, when it shall be deemed to be served on the day when in the ordinary course of the post it would have been delivered.

### **38. TRANSFER OF RESPONSIBILITY**

38.1 In the event that a different organisation is required to take over the supply of the Articles at the expiry or termination of the Contract, the Contractor shall co-operate in the transfer, under arrangements to be notified to him by the Department.

38.2 The transfer shall be arranged between the Department and the Contractor so as to reduce to a minimum any interruption in the supply of the Articles.

### **39. OCCUPATION OF GOVERNMENT PREMISES**

Any land or premises (including temporary buildings) made available to the Contractor by the Department in connection with the Contract shall be made available to the Contractor free of charge and shall be used by the Contractor solely for the purposes of performing the Contract. The Contractor shall have the use of such land or premises as licensee and shall vacate the same upon completion or determination of the Contract. Any utilities required by the Contractor shall be subject to such charges as are set out elsewhere in the Contract.

### **40. ENVIRONMENTAL REQUIREMENTS**

40.1 The Contractor shall provide the Articles in accordance with the Department's environmental policy and shall use biodegradable substances where they are available, conserve energy, water 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.

40.2 All written work, including reports, in connection with the Contract shall (unless otherwise specified) be produced on recycled paper containing at least 80% post consumer waste and used on both sides where appropriate.

#### **41. SEVERABILITY**

If any provision of the 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 of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Department and the Contractor shall immediately commence negotiations in good faith to remedy the invalidity.

#### **42. WAIVER**

42.1 The failure of the Department or the Contractor to exercise any right or remedy shall not constitute a waiver of that right or remedy.

42.2 No waiver shall be effective unless it is communicated to either the Department or the Contractor in writing.

42.3 A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.

#### **43. RIGHTS OF THIRD PARTIES**

Nothing in this Contract confers or purports to confer on any third party any right to enforce any term of this Contract.

#### **44. CONFLICT OF INTEREST**

It shall be the Contractor's responsibility to ensure that no conflicts of interest arises in connection with the Articles to be supplied under this Contract. The Department should be consulted if there is any uncertainty about whether any such conflict of interest may exist or arise.

#### **45. DEPARTMENT'S PROPERTY**

45.1 All the Department's Property shall remain the property of the Department and shall be used in the performance of the Contract and for no other purpose without prior approval.

45.2 On receipt of the Department's Property the Contractor shall subject it to a visual inspection and such additional inspection and testing as may be necessary to check that it is not defective, within 14 days of receipt of any item of the Department's Property, or such other period as may be approved. The Contractor shall notify the Department in writing of any defects discovered within 14 days after receiving such notification, the Department shall inform the Contractor of the action to be taken.

45.3 The Department shall be responsible for the repair or replacement of the Department's Property unless the need for repair or replacement is caused by the Contractor's failure to comply with Condition 45.5, or by the negligence or default of the Contractor.

45.4 The Contractor shall be responsible for his own costs resulting from any failure of the Department's Property, unless he can demonstrate that the Department had caused undue delay in its replacement or repair.

45.5 The Contractor shall use and maintain all items of the Department's Property in accordance with the manufacturer's recommendations.

45.6 The Contractor shall, subject to any overall limitation of liability contained in condition 29 (which for the avoidance of doubt shall not include condition 29. 5) be liable for any loss or damage to or arising from any of

the Department's Property unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the negligence or default of the Department.

45.7 The Contractor shall not in any circumstances have a lien on any of the Department's Property and shall take all steps necessary to ensure that the title of the Department and the exclusion of any lien are brought to the attention of any third party dealing with any of the Department's Property.

#### **46. SAFETY**

The Contractor shall be responsible for the observance by himself, his employees and Sub-contractors of all safety precautions necessary for the protection of himself, his employees, Sub-contractors and any other persons including all precautions required to be taken by or under any Act of Parliament including any regulations or by-laws of any local or other Department or local authority. He shall co-operate fully with the Department to ensure the proper discharge of these duties.

#### **47. ACCIDENTS TO CONTRACTOR'S SERVANTS OR AGENTS**

Accidents to the Contractor's servants or agents which require to be reported in accordance with relevant health and safety legislation shall be reported immediately to the Contract Manager or his authorised representative at the time.

#### **48. CONTRACTOR'S PROPERTY**

All property of the Contractor while at the Premises shall be at the risk of the Contractor and the Department shall accept no liability for any loss or damage howsoever occurring thereto or caused thereby except where any such loss or damage was caused or contributed to by any act, neglect or default of any Servant of the Crown at the Premises acting in the course of his employment. The Department shall accept liability to the extent to which such loss or damage is so caused or contributed to as aforesaid.

#### **49. HOURS OF WORK**

49.1 The Contract Manager or his authorised representative may specify the period during which the Contractor shall carry out Work and such Work shall be carried out in such a manner that the business of the Department occupying the Premises is interfered with as little as possible. In the event that the Contractor wishes to work outside normal working hours for his own benefit, such work shall be subject to the Contract Manager's approval and any additional costs arising therefrom shall be borne by the Contractor.

49.2 The Contractor shall ascertain from the Contract Manager when the Premises will be closed for public holidays etc. when, apart from the exceptions set out in Condition 49.1, entry will not be allowed.

#### **50. SPECIAL HEALTH AND SAFETY HAZARDS**

50.1 The Department shall throughout the life of the Contract notify the Contractor of any known special health and safety hazards which may be involved or introduced on the Premises and which may affect the Contractor. The Contractor shall throughout the life of the Contract notify the Department of any hazards which may affect the Department.

50.2 The Contractor shall draw any such hazards to the attention of his employees and Sub-contractors or any other persons under his control engaged on the work being performed on the Premises. Arrangements shall be made by the Contractor so that such persons and other persons employed by or controlled by Sub-contractors and working on the Contractor's tasks on the Premises are adequately informed and instructed on the hazards and any necessary associated safety measures.

## **51. FRAMEWORK ARRANGEMENTS**

51.1 This framework arrangement shall operate in two parts - the overarching framework agreement itself and individual orders placed against it, each of which shall constitute a Contract.

51.2 The estimated quantity is stated either in the Specification or the invitation letter (or both) but more or less may be ordered. The Department does not bind itself to demand any amounts from the framework agreement or to receive and pay for any amounts other than those actually ordered.

## **52. CALL-OFF CONTRACTS**

The Department's minimum quantity is stated in the Price Schedule and more may be demanded. The Contractor must clearly understand that the Department does not bind itself to demand any quantities over and above the minimum specified, or to receive and pay for the quantities other than those specified or actually demanded.

## **53. AUTHORISED ORDERING OFFICERS**

The Contractor shall supply such quantities of the Articles as may be ordered by the following ordering officers: Orders received by the Contractor from any other source MUST be sent unactioned to one of the officers listed above.

## **54. CONSIDERATION**

In consideration for the Department hereby agreeing to pay to the Contractor the sum of £1 (if demanded by the Contractor), the Contractor agrees to keep its prices, as set out in its tender, fixed for [.....months/years] from the Award Date and only to claim in accordance with the terms of the relevant Contract for additional monies in respect of work undertaken.

## **55. LIQUIDATED DAMAGES**

55.1 If any of the Articles are not delivered within the time or times specified in the Contract, the Contractor shall be liable to pay to the Department as liquidated damages for delay in delivery in relation to [each Article] [the Articles] the sum of £... for each day of such delay up to a maximum of £...

55.2 Condition 55 is subject to any overall limitation of liability in condition 29 (for the avoidance of doubt this does not include condition 29.5) but otherwise without prejudice to any other rights of the Department under the Contract. Accordingly, damages shall be payable hereunder in respect of any material period during which the Contractor subsists, notwithstanding any ultimate determination under Condition 24.

55.3 No payment or concession to the Contractor by the Department shall in any way affect the rights of the Department to recover the said liquidated damages or be deemed to be a waiver of the right of the Department to recover any such damages unless a waiver has been expressly stated in writing by the Department.

[NOTE 1: If liquidated damages apply to Articles under more than one Item in the Price Schedule, paragraph 1 of this Condition should be modified on the following lines:]

55.4 If any of the Articles are not delivered within the time or times specified in the Contract, the Contractor shall be liable to pay to the Department liquidated damages in relation to [each Article][the Articles] in respect of which delay occurs the following sum for each day of such delay:

£..... per day up to a maximum of £..... for [each Article][the Articles] under Item 1 of the Price Schedule

£..... per day up to a maximum of £..... for [each Article][the Articles] under Item 2 of the Price Schedule

NOTE 2: If the contract is for supply and installation the words "supplied and installed to the satisfaction of the Department" should be substituted for 'delivered' in paragraph 1 of the Condition.

## **56. FORCE MAJEURE**

If, by any reason of any acts of nature, war, hostilities, strikes, lock-outs, or of any fire at any of the Contractor's premises or those of his suppliers or any act or default of the Department the Contractor shall have been delayed in supplying the Articles, the Contractor shall, immediately upon becoming aware that any such delay has been caused, give to the Department notice in writing of his claim for an extension of time for the supply of the Articles and the Department shall allow the Contractor an extension of time for such supply in respect of any delay caused by any of the circumstances before mentioned as shall be reasonable. Provided always that the Contractor shall not be entitled to any extension of time unless he shall at all times have used all reasonable endeavours to prevent any such delay and to minimise any such delay and to do all that may be reasonably required to the satisfaction of the Department to proceed with the work.

## **57. RETENTION OF MONIES BY THE DEPARTMENT**

All payments shall be subject to retention by the Department of [%] which will only be paid on satisfactory completion of the Contract.

## **58. CAPITAL ITEMS (APPARATUS AND EQUIPMENT)**

Any Capital Item, being a tangible productive asset, acquired or fabricated, which will yield a continuous service for one year or more, which is essential to the Contract, which costs or is valued in excess of [£500] and for which the Department has specifically reimbursed the Contractor under the Contract, shall be the property of the Department. The Department shall have the right to require the Contractor to pass such Capital Items into the Department's possession or to dispose of them. In the latter event the Contractor shall pass any monies realised by the disposal to the Department.

## **59. VARIATION OF PRICE**

The Contract Price(s) shall be unchanged for a period of at least two years from the [Award Date] [Date of the first delivery under the contract] and shall then be subject to review, at one month's notice, by either party giving notice of such review to the other. The price review shall reflect the sum of the adjustments appropriate to the elements of cost shown in the "attribution of costs" provided by the Contractor in Appendix A to the Form of Tender.

In such review the Contract Price(s) shall change by not more than the percentage change in the current (at the time of writing of the notice of the price review) [\*], from the same index 12 months earlier.

Subsequent changes shall also be subject to one month's notice, as above, provided that each change is at least 12 months from the previous one. No price variation shall be retrospective.

The Contractor may propose price reductions at any time.

[\* Insert appropriate Index e.g. All Items Index of the General Index of Retail Prices as published in Table 18.1 of the Office of National Statistics publication "Monthly Digest of Statistics"]

## **60. INTELLECTUAL PROPERTY RIGHTS**

Subject to the rights of third parties and to any rights of the Contractor and the Crown arising otherwise than by virtue of the Contract, all rights in the results of work undertaken by or on behalf of the Contractor for the purposes of the Contract, including any data, reports, servicing schedules, drawings, specifications, designs, inventions or other material produced or acquired in the course of such work and copyright therein shall vest in and be the property of the Department, who reserves the right to determine whether the results of that Work shall be published and, if so, on what conditions and the Contractor shall ensure where necessary that he secures the right to effect such vesting.

## **61. CONTRACTOR'S OBLIGATIONS IN CONNECTION WITH TUPE**

61.1 Where requested to do so the Contractor shall provide such information (including any changes to and interpretations thereof) in connection with The Transfer of Undertakings (Protection of Employment) Regulations 1981 (TUPE), as the Department may require, to the Department and/or to any other person authorised by the Department who is to be invited to submit a tender in relation to the supply of similar Articles, within 10 days of the request.

61.2 During the 8 month period preceding the expiry of this Contract or within any period of notice of Termination or notice of Break, the Contractor shall not without the prior written agreement of the Department, which shall not be unreasonably withheld or delayed: -

- (a) materially amend the terms and conditions of employment of any employee whose work, wholly or mainly falls within the scope of this Contract; or
- (b) materially increase the number of employees whose work (or any part of it) is work undertaken for the purposes of this Contract.

61.3 The Contractor shall not knowingly do or omit to do anything which may adversely affect an orderly transfer of responsibility for supply of the Articles. The Contractor agrees to indemnify the Department fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision of TUPE related information.

## **62. TAX AND NATIONAL INSURANCE CONTRIBUTIONS**

Where the contract falls within the scope of the Income Tax (Sub-contractors in the Construction Industry) Regulations 1993 (SI 1993/743) as amended by the Income Tax (Sub-contractors in the Construction Industry) (Amendment) Regulations 1998 (SI 1998/2622) and the Contractor does not hold a valid Inland Revenue Gross Payment Certificate (CIS5 or CIS6) invoices must separately identify the cost of labour and materials. The department will withhold payment on account of tax and national insurance contributions from the labour element and issue the Contractor with the appropriate tax deduction certificate and if the Contractor does not hold a valid CIS5, CIS6 or a valid registration card (CIS4) all payments under this Contract shall be postponed, without interest charged, until the Contractor so does.

## **63. EURO FUNCTIONALITY**

The Contractor shall ensure that implementation of the Euro shall not prejudice the functionality of the Articles, such that the Articles provided:

- a) comply with all legal requirements applicable to the Euro in the United Kingdom, including, but without limitation, the rules on conversion and rounding set out in the EC Regulation number 1103/97;
- b) are capable of utilising all symbols and codes adopted by the EU Commission in relation to the Euro; and
- c) are in accordance with the Departments requirements detailed in the Specification both for Sterling and for the Euro.

## **64. USE OF BRANDS, LOGOS AND TRADEMARDS**

64.1 The Department does not grant the Contractor licence to use any of its brands, logos or trade marks except for use on communications or official contract documentation that is exchanged between the Department and the Contractor as part of their fulfilment of the Contract. Any further, specific uses of Department brands, logos or trade marks that are necessary in order to fulfil the Contract will either be detailed by, or must be agreed in writing by, the Department in advance.

64.2 While the Department may permit the Contractor to make known, for promotional purposes, the fact that they have undertaken work on behalf of the Department, the Contractor will not be entitled to use any of the Department's brands, logos or trade marks for such promotional purposes.

LOGOS



Driver and Vehicle<sup>®</sup>  
Licensing Agency

DVLA<sup>®</sup>

