



## DEPARTMENT FOR TRANSPORT

### SUPPLEMENTARY CONDITIONS OF CONTRACT FOR THE SUPPLY OF GOODS AND ASSOCIATED SERVICES

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**19 DISCLOSURE OF INFORMATION**

*A & B - Additional conditions for inclusion where the Department and Contractor are able to define 'confidential information'*

***Confidential Information Belonging To The Contractor***

- 19.2A i Subject to Conditions 19.1 and 19.2 above, the Department agrees to treat the information described in Schedule [ ] to this Contract as confidential by hereby agreeing that it will not:
- a disclose that information to any third party (other than another government department) without the prior written consent of the Contractor, except to such persons and to such extent as may be necessary for the performance of this Contract;
  - b use that information otherwise than for the purposes of this Contract.
- ii In this Condition "government department" shall have the same meaning as in section 84 of the FOI Act.
- iii This Condition shall cease to apply on [ ].

***Confidential Information Belonging To The Department***

- 19.2B i The Contractor agrees to treat the information described in Schedule [ ] to this Contract as confidential by hereby agreeing that it will not:
- a disclose that information to any third party without the prior written consent of the Department, except to such persons and to such extent as may be necessary for the performance of this Contract;
  - b use that information otherwise than for the purposes of this Contract.
- ii Condition 13.3 shall not apply to the information referred to in paragraph (a) of this Condition.
- iii This Condition shall cease to apply on [ ].

**19 DISCLOSURE OF INFORMATION**

*Alternative condition 19.6 for use where the Contractor agrees in Condition 19.2B to treat certain Departmental information as confidential*

- 19.6 The Contractor shall take all reasonable steps to ensure the observance of the provisions of Conditions 19.2B and 19.3 to 19.5 inclusive above by all his employees, office holders, workers, and Sub-contractors.

## **29 LIABILITY FOR LOSS OR DAMAGE**

29.4 The Contractor's liability for loss and damage:

- a arising as a result of death, personal injury, the Contractor's fraud (which for these purposes shall include that of his employees and any Sub-contractor) or breaches of Conditions 17 and 18 of the General Conditions of Contract for Supply Of Goods And Associated Services;
- b which cannot lawfully be excluded or limited, and
- c under Condition [34/31]<sup>1</sup> of the Intellectual Property Conditions.

is unlimited. In all other cases the Contractor's liability under this Contract is limited to a total sum of £[xxx].

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<sup>1</sup> 34 - Contractor ownership, 31 Crown ownership

## **46 DEPARTMENT'S PROPERTY**

- 46.1 Where for the purposes of this Contract the Department issues or provides any item of property to the Contractor ("Department Property") that item shall be and remain the property of the Department. The Contractor shall not in any circumstances have a lien on any Department 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 Department Property.
- 46.2 The Contractor shall keep, use and maintain all items of Department Property in accordance with the manufacturer's recommendations, where provided by the Department, and in accordance with the terms of this Condition.
- 46.3 On receipt of Department Property the Contractor shall inspect it visually and carry out any additional inspections and tests necessary to check that it is not defective. Within 7 days of his inspection the Contractor shall notify the Department in writing of any defects discovered. Within 14 days of receiving such notification, the Department shall inform the Contractor of the action to be taken.
- 46.4 Without prejudice to Condition 46.3, the Contractor shall regularly inspect and test Department Property to check that it is not defective. As soon as reasonably practicable and no later than 7 days after discovering any defect the Contractor shall notify the Department of the presence of defects. Within 14 days of receiving such notification, the Department shall inform the Contractor of the action to be taken.
- 46.5 The Department shall be responsible for and shall pay for the repair or replacement of Department Property within a reasonable time, provided that:
- a the Contractor has complied with the terms of conditions 46.1 to 46.4;
  - b the defect was not caused by any act, neglect or other default by the Contractor or any Sub-contractor; and
  - c the defect is not one which should have been discovered upon a competent inspection by the Contractor, but which the Contractor failed to identify timeously.
- 46.6 Subject to Condition 46.5, where the Contractor has given notice of a defect in an item of Department Property that is critical to the performance of the Contract and the Department does not repair or replace the property within a reasonable time, the Contractor shall not be penalised for any delay in the performance of the Contract caused thereby.
- 46.7 The Contractor shall, subject to any overall limitation of liability contained in Condition 29, be liable for any loss or damage caused by or arising from his use of Department Property, provided that this Condition shall not apply to the extent that the Contractor is able to show that any such loss or damage was not caused by his negligence or default or by the negligence or default of his employees or any Sub-contractor or any circumstances within his or their control.

46.8 Where the Contractor uses or keeps Department Property away from the Premises he shall be responsible for its safe-keeping and shall be liable to the Department for any loss or damage to the property howsoever caused.

#### **47 SAFETY**

The Contractor shall be responsible for the observance by himself, his employees and Sub contractors of all safety precautions necessary for their protection and the protection of any other persons, including all precautions required to be taken by or under or pursuant to any Act of Parliament. For the avoidance of doubt this includes the Department's health and safety policies and any regulations or by laws issued by the Department, any other government department, local authority or other body. The Contractor shall co operate fully with the Department to ensure the proper discharge of these duties.

#### **48 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.

#### **49 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 to that property or caused by that property 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 only to the extent to which such loss or damage is so caused or contributed to.

#### **50 HOURS OF WORK**

Where the Services are to be performed wholly or in part at the Premises the Contractor shall perform them in such a manner that the business of the Department is interfered with as little as possible. The Contract Manager or his authorised representative may specify the period during which the Contractor shall carry out his operations. In the event that the Contractor wishes to work outside normal working hours, such work shall be subject to the Contract Manager's approval and any additional costs arising there from shall be borne by the Contractor.

#### **51 FACILITIES PROVIDED**

51.1 For the purpose of this Contract the following areas and facilities will be provided free for use by the Contractor and his staff:

- Toilets
- Cooking facilities
- Heating
- Lighting
- First Aid

- 51.2 The Contractor is to be responsible for the proper use and reasonable care of facilities provided.
- 51.3 The Contractor shall ensure that services on the Premises are used with due regard for the need for the efficient use and conservation of supplies and the Department shall not bear the costs of any use of such supplies which does not conform to the requirements of this Condition, whether through the negligence or otherwise of the Contractor, or any Sub contractor. The Contractor shall observe any instructions issued by the Contract Manager or his authorised representative in this connection.
- 51.4 Continuity of electricity, heating, telephone, cooking facilities, water supplies and sewerage is not guaranteed and no liability will be accepted by the Department for shut down or restrictions due to any cause whatsoever.

## **52 SPECIAL HEALTH AND SAFETY HAZARDS**

- 52.1 The Department shall throughout the life of this Contract notify the Contractor of any known special health and safety hazards which may be involved or introduced on the Premises or the site and which may affect the Contractor. The Contractor shall throughout the life of this Contract notify the Department of any hazards which may affect the Department or his performance of the Services.
- 52.2 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.

## **53 FRAMEWORK ARRANGEMENTS**

- 53.1 This framework arrangement shall operate in two parts: (1) the overarching framework agreement and (2) individual orders (each an "Order") placed against it.
- 53.2 This framework agreement and any Order placed thereunder by the Department with the Contractor shall each constitute a contract. The Conditions shall apply to each such contract, provided that:
- a the following amendments shall be deemed to have been made in respect of any Order:
    - i "Award Date" means the date of the placing of an Order by the Department with the Contractor as specified in the Order;
    - ii "Contract" means the agreement concluded between the Department and the Contractor contained in any documents listed in the Order, the Order, the Conditions, the Specification and any Programme; and
  - b Condition 56 shall not be included in any Order contract.

53.3 The Department does not bind itself to receive and pay for any amounts other than those actually requested in this Contract or any Order placed thereunder. The Contractor shall only respond to an Order when an authorised ordering officer has issued it. Where the Contractor receives an Order from any other source he shall send it unactioned to one of the authorised ordering officers.

#### **54 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.

#### **55 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.

#### **56 CONSIDERATION**

The Department does not bind itself to demand any quantity over and above any minimum specified in this Contract, or to receive and pay for any quantities other than those specified in this Contract or demanded in any Order placed thereunder. 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.

## 57 LIQUIDATED DAMAGES

Without prejudice to the Department's rights of termination under Conditions 23, 24 and 35, if any of the Services are not delivered within the time or times specified in this Contract, the Contractor shall be liable to pay to the Department as liquidated damages for delay in delivery in relation to [each Service] [the Services] the sum of £..... for each day of such delay up to a maximum of £.....

**NOTE 1:** If liquidated damages apply to Services under more than one Item of the Schedule of Requirements, paragraph 1 of the above Condition should be modified on the following lines:

Without prejudice to the Department's rights of termination under Conditions 23, 24 and 35, if any of the Services are not delivered within the time or times specified in this Contract, the Contractor shall be liable to pay to the Department liquidated damages in relation to [each Service][the Services] in respect of which delay occurs the following sum for each day of such delay:

£..... per day up to a maximum of £..... for [each Service]

[the Services] under Item 1 of the Price Schedule

£..... per day up to a maximum of £..... for [each Service]

[the Services] 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.

## 58 FORCE MAJEURE

- 58.1 If, by any reason of any acts of terrorism, 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 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 any claim for an extension of time for the provision of the Articles and the Department shall allow the Contractor an extension of time for such completion 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.
- 58.2 The Contractor shall not be in breach of this Contract by reason only of any delay in the provision of the Articles or any temporary inability to provide the Articles as a result of force majeure. The Contractor shall not be entitled to any payment for that part of the Contract he was unable to perform as a result of force majeure.

**59 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.

**60 CAPITAL ITEMS (APPARATUS AND EQUIPMENT)**

Any 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 this Contract ("Capital Item"), shall be the property of the Department. The Department shall have the right to require the Contractor to pass any Capital Item 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.

**61 APPROVED MAXIMUM COST**

The Department shall not accept liability for any expenditure beyond the "approved maximum cost" authorised in the Department's Award Letter or any variation thereto. If at any time the Contractor considers that the Contract cannot be completed without exceeding that sum, he shall immediately submit to the Department a full written explanation of the reasons together with a detailed forecast of the excess. The Department shall not accept any liability for any forecast excess until a formal amendment to this Contract has been made in writing.

**62 VARIATION OF PRICE**

- 62.1 The Contract Price shall be unchanged for a period of at least 1 year 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.
- 62.2 In such review the Contract Price shall change by not more than the percentage change in the current (at the time of writing of the notice of the price review) [All Items Index of the General Index of Retail Prices as published in Table RP04 of the Central Statistical Office publication "Monthly Digest of Statistics"], from the same index 12 months earlier.
- 62.3 Subsequent variations 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.
- 62.4 The Contractor may propose price reductions at any time.

**63 CONTRACTOR'S OBLIGATIONS IN CONNECTION WITH THE TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 1981 ("TUPE")**

- 63.1 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.
- 63.2 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.
- 63.3 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.

**64 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.

**65 EURO (€) FUNCTIONALITY**

The Contractor shall ensure that implementation of the Euro shall not prejudice execution of the Services, such that the Services 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 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 Department's requirements detailed in the Specification both for Sterling and for the Euro.