

Conditions of Contract

These conditions shall not apply where the supply of goods or services is subject to the terms of a framework contract between the Contractor and the Department, OGC or any other government department or agency.

1. Definitions - In these conditions:

- (i) "Data Loss Event" means any event that results, or may result, in unauthorised access to Personal Data held by the contractor under the contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data breach.
- (ii) "Data Protection legislation" means (i) the General Data Protection Regulation (Regulation (EU) 2016/679), the Law Enforcement Directive (Directive (EU) 2016/ 680) and any applicable national implementing Laws as amended from time to time (ii) the Data Protection Act 2018 (subject to Royal Assent) to the extent that it relates to processing of personal data and privacy (iii) all applicable law about the processing of personal data and privacy.
- (iii) "Days" means calendar days save where the context otherwise requires.
- (iv) "Department" means the Secretary of State for Transport.
- (v) "Contractor" means the supplier of any Goods or Services under the Contract.
- (vi) "Contract" means the agreement between the Department and Contractor comprising the Contractor's quotation or tender and the Department's acceptance thereof, including this Purchase Order, and any documents referred to therein.
- (vii) "Goods" means anything supplied or to be supplied to the Department under the Contract.
- (viii) "ICT Environment" means the Authority's system and the Contractor's system.
- (ix) "Services" means all the Services that the Contractor is required to carry out under the Contract.
- (x) "Sub-processor" means any third party appointed to process Personal Data on behalf of the Contractor related to this Contract.
- (xi) "Removable Media" means all physical items and devices that can carry and transfer electronic information. Examples include but are not limited to DVDs, CDs, floppy disks, portable hard disk drives, USB memory sticks, flash drives, portable music and video players including mobile phones, hand held devices such as Blackberries and Personal Digital Assistants and laptop computers.

2. Conditions for the supply of Goods - Contractor's duties

- (i) The Contractor shall supply the Goods specified in this Purchase Order. Goods may be returned at the Contractor's expense if they do not correspond with this Purchase Order.
- (ii) All Goods shall be delivered, carriage paid, at the place specified and only between 9.00 am and 4.00 pm Mondays to Fridays, unless otherwise agreed by the Department. An Advice Note must be sent by post and a Delivery Note must accompany the Goods.
- (iii) The cost of packaging will be deemed to be included in the cost of the Goods. If the Contractor requires packaging to be returned, it will be returned at the Contractor's expense.

3. Conditions for the supply of Services - Contractor's duties

The Contractor shall properly perform the Services specified with the standard of skill, care and diligence which a competent and suitably qualified person performing such services could reasonably be expected to exercise and in accordance with all relevant statutory requirements and industry best practice.

4. Environmental Requirements

- (i) In performing the Contract the Contractor shall comply with the Department's environmental policy, which is to 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.
- (ii) The Contractor shall ensure that the Articles and their packaging are manufactured using biodegradable substances wherever they are available and appropriate. Where the Articles, their packaging or their manufacturing process include timber or timber products, the Contractor shall procure timber and wood-containing products from either sustainable and legal sources or Forest Law Enforcement, Governance and Trade (FLEGT) licensed or equivalent sources.
- (iii) The paper for all written outputs, including reports, produced in connection with the Contract shall (unless otherwise specified) be produced on recycled paper containing 100% post consumer waste and used on both sides where appropriate.
- (iv) All goods purchased by the Contractor on behalf of the Department (or which will become the property of the Department) must comply with the relevant minimum environmental standards specified in the Government Buying Standards (formerly "Quick Wins") unless otherwise specified or agreed in writing.

Click on <http://sd.defra.gov.uk/advice/public/buying/> and select "find a product".

5. Health, safety and security

- (i) The Contractor shall ensure that all of the Contractor's staff who have access to or are employed on the Department's premises comply with the Department's health, safety and security procedures and instructions and

complete any additional security clearance procedures required by the Department when working at their premises.

- (ii) The Contractor shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus definitions available [from an industry accepted anti-virus software vendor] to check for and delete Malicious Software from the ICT Environment

6. Invoices and Payment

The Contractor shall submit an invoice within 28 days of supplying the Goods or Services to the satisfaction of the Department. The invoice shall show the amount of VAT payable and bear this Purchase Order number. Save where an invoice is disputed, the Department shall pay the Contractor within 30 days of receipt of an invoice. Invoices must be sent to: Accounts Payable, DfT Shared Service Centre, 5 Sandringham Park, Swansea Vale, Swansea SA7 0EA).

7. Corrupt Gifts and Payments of Commission

The Contractor shall not receive or agree to receive from any person, or offer or agree to give to, or procure on behalf of any person in the employment of the Crown, 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 connection with the Contract.

8. 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 understand that these Acts apply to them during and after performance of any work under or in connection with the Contract.

9. Data Handling

- (i) The Contractor will only use encrypted Removable Media issued by the Authority when connected to the Authority's IT network and all use must be in strict accordance with the rules about sensitivity and risks of information and pursuant to the provisions of clause 11. In particular, encrypted memory sticks may only be used for data marked up to and including the Protective Marking of 'Protect'.
- (ii) All losses of data must be reported to the Contract Manager as soon as possible, subject to clause 11(vi) so that risk mitigation action can be taken. Any theft of Removable Media must be reported to the Police and a crime/incident number obtained.
- (iii) Floppy disks must not be used in the delivery of this Contract

10. Disclosure of Information

- (i) To enable compliance with the Freedom of Information Act 2000 and the Environmental Information Regulations, the Department reserves the right to disclose information about this Contract pursuant to a valid request for information.
- (ii) The Contractor shall not disclose any information relating to the Contract or the Department's activities without the prior written consent of the Department, which shall not be unreasonably withheld. Such consent shall not be required where the information is already in the public domain, is in the possession of the Contractor without restriction as to its disclosure, or is received from a third party who lawfully acquired it and is under no obligation restricting its disclosure.

11. Data Protection.

- (i) The Parties acknowledge that for the purposes of the Data Protection legislation, the Department is the Data Controller and the Contractor is the Data Processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection legislation)
- (ii) The Parties agree to comply with all applicable requirements of the Data Protection legislation.
- (iii) The Department will ensure that it has all necessary consents and notices in place to enable the transfer of Personal Data (as defined by the Data Protection legislation) to the Contractor for the duration and purposes of this Contract.
- (iv) The Contractor shall, in regard to any Personal Data processed in connection with the performance of its obligations under this Contract:
 - (a) Process the Personal Data only on the written instructions of the Department (as set out in the Services specification or specified otherwise) unless required otherwise by law.
 - (b) Notify the Department immediately if it considers that any of the Department's instructions infringe the Data Protection legislation.
 - (c) Ensure that it has in place appropriate measures to protect against unauthorised or unlawful processing, any Data Loss Event or destruction of or damage to Personal Data, having taken account of the nature of the data to be protected, the harm that might result from any Data Loss Event, the state of technological development and the cost of implementing any measures.
 - (d) Ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential and do not process the Personal Data except in accordance with this Contract.

(e) Not transfer any Personal Data outside of the European Union unless the prior written consent of the Department has been obtained and the following conditions are fulfilled:

- a. The Contractor or the Department has provided appropriate safeguards in relation to the transfer.
- b. The Data Subject (as defined under the Data Protection legislation) has enforceable rights and effective legal remedies.
- c. The Contractor provides an adequate level of protection to any Personal Data that is transferred.
- d. The Contractor complies with any reasonable instructions notified to it in advance by the Department with respect of the processing of the Personal Data.

(v) The Contractor shall provide all reasonable assistance to the Department in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Department, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- (vi) The Contractor will notify the Department if it receives any request from a Data Subject and will be required to assist the Department, at the Contractor's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection legislation.
- (vii) The Contractor will be required to notify the Department without undue delay upon becoming aware of any Data Loss Event..
- (viii) The Contractor may also be required at the direction of the Department to delete or return Personal Data or copies of the Personal Data to the Department unless required by law to store the Personal Data.
- (ix) The Contractor is required to maintain complete and accurate records and information to demonstrate its compliance with this clause 11.
- (x) Before allowing any Sub-processor to process any Personal Data related to this Contract, the Contractor must:

- (a) Notify the Department in writing of the intended Sub-processor and processing;
- (b) Obtain the written consent of the Department
- (c) Enter into a written agreement with the Sub-processor which gives effect to the terms set out in this clause 11 such that they apply to the Sub-processor.
- (d) Provide the Department with such information regarding the Sub-processor as the Department may reasonably require.

(xi) The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.

(xii) The Contractor shall allow for audits of its Personal Data processing activity by the Department or the Department's designated auditor.

12. Discrimination

The Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the Sex Discrimination Act 1975, the Race Relations Act 1976, the Equal Pay Act 1970, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) (Religion or Belief) (Age) Regulations 2006, the Equality Act 2006, the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re enactment thereof.

13. Sub-contracting and assignment

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. 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 period not exceeding 30 days from receipt of a valid invoice as defined by the contract requirements. The Department reserves the right to ask for information about payment performance and will provide a facility for sub-contractors to report poor performance to the Department and the Office of Government Commerce.

14. Intellectual Property Rights

Subject to any prior rights of the Department or Crown, and to the rights of third parties arising otherwise than under the Contract, such intellectual property rights as are derived from or arise as a result of the performance of the Contract by the Contractor shall vest in the Contractor. The Department and Crown shall be entitled to use, supply, reproduce, publish, modify, adapt, enhance or otherwise deal with any materials in which such intellectual property rights exist with the Contractor's prior written approval but the Contractor shall not demand payment for any such uses.

15. Termination

If the Contractor fails to fulfil their obligations under the Contract, the Department may terminate the Contract forthwith by written notice and, in accordance with condition 16, may recover from the Contractor any

reasonable costs necessarily and properly incurred by the Department as a consequence of termination.

16. Break

(i) Without prejudice to condition 14, the Department shall at any time have the right to terminate the Contract or reduce the quantity of Goods or Services to be provided by the Contractor in each case by giving to the Contractor one month's written notice. During the period of notice the Department may direct the Contractor to perform all or any of the work under the Contract. Where the Department has invoked either of these rights, the Contractor may claim reasonable costs necessarily and properly incurred by him as a result of the termination or reduction, excluding loss of profit and consequential losses, provided that the claim shall not exceed the total cost of the Contract.

(ii) Termination or reduction under this provision shall not affect the rights of the parties to the Contract that may have accrued up to the date of termination.

17. Loss or Damage

The Contractor shall, without delay and at the Contractor's own expense, reinstate, replace or make good to the satisfaction of the Department, or if the Department agrees, compensate the Department, for any loss or damage connected with the performance of the Contract, except to the extent that such loss or damage is caused by the neglect or default of the Department. "Loss or damage" includes but is not limited to: loss or damage to property; personal injury, sickness or death; and loss of profits or loss of use suffered as a result of any loss or damage.

18. Recovery of Sums from Contractor

Whenever under the Contract any sum or sums of money shall be recoverable from or payable by the Contractor to the Department, that amount 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 Department, Agency or office of Her Majesty's Government.

19. Insurance

The Contractor shall effect and maintain an adequate level of insurance cover in respect of all risks that may be incurred by him in the performance of this Contract.

20. Notices

A notice may be served: by delivery to the Contractor; by sending it by facsimile to him; or by ordinary first class post to the Contractor's last known place of business or registered office. A notice shall be deemed served at the time of delivery, after four hours for a facsimile, or on the second working day after posting.

21. Law

The Contract shall be governed by and interpreted in accordance with English Law.

22. Variations to the Contract

The Contract may only be varied in writing.

23. Transparency

The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract (including, but not limited to, any documents subsequently developed to monitor delivery and performance of the contract) are, is not Confidential Information. The Department shall be responsible for determining in its absolute discretion whether any of the content of the contract is exempt from disclosure in accordance with the provisions of the FOIA.

Notwithstanding any other term of this Contract, the Contractor hereby gives his consent for the Department to publish the Contract (and any documents subsequently produced by either party as part of management of the contract – including, but not limited to, performance against key performance indicators and plans to rectify the same etc.) in their entirety, (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted) including from time to time agreed changes to the Agreement, to the general public.

The Department may consult with the Contractor to inform its decision regarding any redactions that may be required to keep information which is exempt from disclosure under the FOIA from being disclosed but the Department shall have the final decision in its absolute discretion. The Contractor shall assist and cooperate with the Department to enable the Department to publish this Contract.