

THE  
NATIONAL  
MUSEUM



# STANDARD TERMS AND CONDITIONS OF CONTRACT FOR THE PROVISION OF GOODS

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SAMPLE

**THIS AGREEMENT** is made on [ ]

**BETWEEN**

- (1) **NMRN OPERATIONS** a company limited by guarantee and incorporated under number 09988314 with registered charity number 1169061 whose registered office is at National Museum Of The Royal Navy, HM Naval Base, PP66, Portsmouth, Hampshire PO1 3NH ("the **Customer**"); and
- (2) [ ] a company registered in England and Wales with number [ ] whose registered office is at [ ] OR IF A PERSON [ ] of [ ] ("the **Supplier**").

**BACKGROUND**

The Customer wishes to purchase, and the Supplier wishes to supply certain Goods subject to the following terms and conditions.

**NOW IT IS AGREED** as follows:

**1. INTERPRETATION**

**Definitions**

- 1.1 In this Agreement the following words and expressions shall have the following meanings:

<b>"Agreement"</b>	means an agreement for the purchase of the Goods consisting of contract documentation as described in Clause 3.1, the conditions and any schedules;
<b>"Business Day"</b>	means 09:00 to 17:00 Monday to Friday, or a day, other than a Saturday or a Sunday, on which banks are open for business;
<b>"Commencement Date"</b>	means the date on which provision of the Goods will commence, as defined in the Agreement;

<b>“Conditions”</b>	means the standard terms and conditions of purchase set out in this Agreement and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Customer and the Supplier;
<b>“Confidential Information”</b>	means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with the Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);
<b>“the Contract”</b>	means the contract for the sale and purchase of the Goods constituted by the Supplier’s acceptance of the Order in accordance with this Agreement;
<b>“the Delivery Address”</b>	means the address stated on the Order for delivery of the Goods;
<b>“Deliverables”</b>	any documents, products and materials to be developed and provided by the Supplier as part of or in connection with the Goods, including any products of the Goods;
<b>“the Goods”</b>	means the Goods (including any instalment of the Goods or any part of them) described in the Order;

**“Intellectual Property Rights”**

means :

(a) any and all rights in any patents, trade marks, service marks, registered designs, applications (and rights to apply for any of those rights) trade, business and company names, internet domain names and e-mail addresses, unregistered trade marks and service marks, copyrights, database rights, know-how, rights in designs and inventions;

(b) rights under licences, consents, orders, statutes or otherwise in relation to a right in paragraph (a);

(c) rights of the same or similar effect or nature as or to those in paragraphs (a) and (b) which now or in the future may subsist; and

(d) the right to sue for past infringements of any of the foregoing rights;

**“Legislation”**

in relation to the United Kingdom and Act of Parliament, any subordinate legislation within the meaning of section 21 of the Interpretation Act 1978, or any exercise of Royal Prerogative;

**“the Order”**

means the Customer’s purchase order to which these conditions are annexed;

**“Parties”**

the Customer and the Supplier collectively, and “Party” means either of them and their permitted assignees;

**“Person”**

includes any individual, company, Customer, corporation, body corporate, government, state or agency of state, trust or foundation, or any association, partnership or unincorporated body of two or more of the foregoing (whether or not having separate legal personality and wherever incorporated or established);

<b>“the Price”</b>	a price excluding any Value Added Tax (VAT) which is not subject to variation;
<b>“Specification”</b>	all matters concerning the structure, design, operation, performance and functionality of the Goods (including drawings, designs, patterns, descriptions, technical and functional specifications), and particulars of quantities, weights and dimensions, set out or referred in the Order and (to the extent not inconsistent with the Order) in any manuals, sales materials and other documentation produced by or for the Supplier; and
<b>“Software”</b>	any and all computer programs and computer software (of whatever type and in whatever form or media) installed on or supplied with the Goods at the time of delivery and either necessary for their operation in the manner contemplated by the Customer or otherwise referred to in the Order;
<b>“Term”</b>	means the term of the Agreement as defined therein.

- 1.2 Unless the context otherwise requires, each reference in these Terms and Conditions to:
- a) “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
  - b) a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
  - c) “these Terms and Conditions” is a reference to these Terms and Conditions as amended or supplemented at the relevant time;
  - d) a Clause or paragraph is a reference to a Clause of these Terms and Conditions or to a Clause of the Agreement, as appropriate; and
  - e) a "Party" or the "Parties" refer to the parties to the Agreement.
- 1.3 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.

- 1.4 Words imparting the singular number shall include the plural and vice versa.
- 1.5 References to any gender shall include the other gender.
- 1.6 References to persons shall include corporations.

## **2. DURATION**

This Agreement shall come into effect on the Commencement Date and, subject to provisions for earlier termination, shall continue for a period of [ ], unless and until terminated by either party in accordance with this Agreement.

## **3. BASIS OF PURCHASE**

- 3.1 The Agreement will be established on the first to occur of the following:
  - a) issue by the Customer of an Order based on a quotation for Goods by the Supplier;
  - b) written confirmation or acceptance by the Supplier of an Order; or
  - c) the Supplier delivering Goods pursuant to an Order.
- 3.2 The conditions will apply to and be incorporated into the Agreement and prevail over any terms or conditions of the Supplier contained or referred to in the Supplier's acceptance, confirmation of order or in correspondence or elsewhere, or any inconsistent terms or conditions implied by law, trade custom, practice or course of dealing.
- 3.3 If there is any inconsistency between these Terms and Conditions and the associated documents expressly referred to therein, the conflict shall be resolved according to the following descending order of precedence:
  - a) the terms and conditions of this Agreement;
  - b) any Orders;
  - c) the Schedules; and
  - d) the documents expressly referred to in this Agreement.
- 3.4 Any typographical clerical or other accidental error or omission in the Order placed by the Customer or in any drawings specifications, instructions, tools or other material supplied by the Customer, shall be subject to correction without any liability on the part of the Customer.
- 3.5 No variation to the Contract or this Agreement shall be binding unless agreed in writing between the authorised representatives of the Customer and the Supplier.



#### **4. SPECIFICATION**

- 4.1 The quantity, quality and description of the Goods shall, subject as provided in these Conditions, be as specified in the Order and/or in any applicable Specification supplied by the Customer to the Supplier or agreed in writing by the Customer.
- 4.2 Any Specification supplied by the Customer to the Supplier, or specifically produced by the Supplier for the Customer, in connection with the Contract, together with the copyright, design rights or any other intellectual property rights in the Specification, shall be the exclusive property of the Customer. The Supplier shall not disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of the Supplier, or as required for the purpose of the Contract.
- 4.3 The Goods shall be marked in accordance with the Customer's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course.
- 4.4 The Supplier shall not unreasonably refuse to take any steps necessary to comply with any request by the Customer to inspect or test the Goods during manufacture, processing or storage at the premises of the Supplier or any third party prior to despatch, and to provide the Customer with any facilities reasonably required by the Customer for inspection or testing.
- 4.5 If as a result of inspection or testing the Customer is not satisfied that the Goods will comply in all respects with the Contract, and the Customer so informs the Supplier within seven days of inspection or testing, the Supplier shall take such steps as are necessary to ensure compliance.
- 4.6 The Supplier shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods.

#### **5. PRICE**

- 5.1 The Price of the Goods shall be as stated in the Order at Schedule 1 and, unless otherwise so stated, shall be:
  - a) exclusive of any applicable value added tax (which shall be payable by the Customer subject to receipt of a VAT invoices); and
  - b) inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the Delivery Address and any duties, imposts or levies other than value added tax.
- 5.2 No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without

the prior consent of the Customer in writing.

- 5.3 The Customer shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Supplier, whether or not shown on its own terms and conditions of sale.

## **6. PAYMENT**

- 6.1 The Supplier shall be entitled to invoice the Customer on or at any time after delivery of the Goods, as the case may be, and each invoice shall quote the number of the Order.
- 6.2 Unless otherwise stated in the Order, the Customer shall pay the Price of the Goods within thirty (30) calendar days after the end of the month of receipt by the Customer of a proper invoice or, if later, after acceptance of the Goods in question by the Customer.
- 6.3 All payments required to be made pursuant to the Agreement by either Party shall be made in UK Pound Sterling (£) in cleared funds to such bank in the United Kingdom as the receiving Party may from time to time.
- 6.4 Where any payment pursuant to the Agreement is required to be made on a day that is not a Business Day, it may be made on the next following Business Day.
- 6.5 The Customer shall be entitled to set off against the Price any sums owed to the Customer by the Supplier.

## **7. DELIVERY, SHIPPING AND LICENCES**

- 7.1 The Goods shall be delivered to the Delivery Address on the date stated in the Order at Schedule 1, during the Customer's usual business hours (Monday to Friday between 9am to 5pm).
- 7.2 Where it is agreed in writing that the date of delivery of the Goods is to be specified by the Supplier after the placing of the Order, the Supplier shall give the Customer written notice of the specified date within thirty (30) calendar days of the Order having been acknowledged.
- 7.3 A packing note clearly quoting the number of the Order must accompany each delivery or consignment of the Goods.
- 7.4 If the Goods are to be delivered by instalments, the Contract will be treated as a single contract and not severable.
- 7.5 The Customer shall be entitled to reject any Goods delivered which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods until the Customer has had a reasonable time to inspect them following delivery.

- 7.6 The Supplier shall supply the Customer within thirty (30) calendar days of the delivery date, with any instructions or other information to enable the Customer to accept delivery of the Goods.
- 7.7 The Customer shall not be obliged to return to the Supplier any packaging or packing materials for the Goods, whether or not any Goods are accepted by the Customer.
- 7.8 The Customer shall not be deemed to have accepted the Goods until it has had thirty (30) calendar days to inspect them following delivery. The Customer shall also have the right to reject the Goods as though they had not been accepted for thirty (30) calendar days after any latent defect in the Goods has become apparent.
- 7.9 The Supplier acknowledges that the Customer has a legitimate commercial interest in the Goods being delivered on the due date and that the Customer should have an appropriate remedy if they are not so delivered.
- 7.10 Failure to deliver the Goods (or any instalment of the Goods, if the Customer has agreed to accept delivery by instalments) on the due date (and time, if specified) shall entitle the Customer, at its option and without prejudice to its other rights and remedies, to treat such failure as a breach of condition and:
- a) to deduct from the Price or (if the Customer has agreed to pay any part of the price in advance of delivery) to claim from the Supplier by way of liquidated damages for delay 0.1 per cent of the Price for every week's delay, up to a maximum of five (5) per cent of the price, without prejudice to claim any other remedy for any further delay in delivery once that maximum amount of liquidated damages has been reached;
  - b) to accept delivery of the Goods at the date and time of actual delivery; or
  - c) to reject the Goods when actually delivered; and/or
  - d) to cancel or vary delivery of any other Goods not yet delivered under the Agreement; and/or
  - e) to receive from the Supplier reimbursement of any payments made by the Customer for rejected or cancelled Goods less a reasonable allowance for use and all costs, losses or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to deliver the Goods on to the due date (and time, if specified), including the cost of obtaining substitute Goods from another supplier where applicable, but less any sums reimbursed by the Supplier.
- 7.11 Any access to premises and any labour and equipment provided by the Customer in connection with delivery or installation of the Goods shall be provided to the Supplier. The Customer shall not accept any liability in respect of any actions, claims, demands, costs and expenses incurred by third parties (including any agent of the Supplier), for any loss or damages to the extent that such loss or damage is not attributable to the Customer's (or any of its representatives) negligence or

other wrongful acts or omission.

- 7.12 Where the Goods are imported into the United Kingdom they shall be provided under Delivery Duty Paid (DDP) INCOTERMS 2020. If any licence or consent of any government or other authority shall be required for the acquisition, carriage or use of the Goods by the Customer, the Supplier shall obtain it at its own expense and if required by the Customer produce evidence on demand that it has done so. Additional expenses or charges incurred by the Customer resulting from such failure shall be for the Supplier's account.

## **8. QUALITY AND WARRANTY**

- 8.1 Where the Supplier is not the manufacturer of the Goods, the Supplier shall endeavour to transfer to the Customer the benefit of any warranty or guarantee given to the Supplier.
- 8.2 The Supplier warrants that upon delivery, and for a period of twelve (12) months from the date of delivery, the Goods shall:
- a) be of satisfactory quality within the meaning of the Sale of Goods Act 1979;
  - b) be reasonably fit for purpose; and
  - c) be reasonably fit for any particular purpose for which the Goods are being bought if the Customer had made known that purpose to the Supplier in writing and the Supplier has confirmed in writing that it is reasonable for the Customer to rely on the skill and judgment of the Supplier.
- 8.3 The Supplier shall not be liable for a breach of any of the warranties in condition 8.2 unless:
- a) the Customer gives written notice of the defect to the Supplier, and, if the defect is as a result of damage in transit to the carrier, within thirty (30) calendar days of the time when the Customer discovers the defect; and
  - b) the Supplier is given a reasonable opportunity after receiving the notice of examining such Goods and the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost for the examination to take place there; or
  - c) the Customer makes any further use of such Goods after giving such notice; or
  - d) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice.
- 8.4 Subject to Clause 8.3, if any of the Goods do not conform with any of the warranties in Clause 8.2 the Supplier shall at its option repair or replace such Goods (or the defective part) or refund the Price of such Goods at the pro-rata

Contract rate provided that, if the Supplier so requests, the Customer shall, at the Supplier's expense, return the Goods or the part of such Goods which is defective to the Supplier.

- 8.5 The rights of the Customer under these conditions are in addition to the terms implied in favour of the Customer by the Sale of Goods Act 1979 or otherwise at law or in equity.
- 8.6 If, during the period of the warranty specified in Clause 8.2, the Goods or any part of them do not in the reasonable opinion of the Customer to conform to the Specifications or are otherwise not in accordance with the warranties and undertakings given by the Supplier under Clause 8.2 or the implied terms referred to in Clause 8.3, the Customer shall be entitled, without prejudice to any other rights and remedies:
  - a) to accept the Goods and receive a reduction in the price of the Goods reasonably appropriate to the diminution in value attributable to the defect: or
  - b) to have the defective Goods repaired or modified by the Supplier or (as the Customer shall elect) replaced with fully conforming Goods (which the Supplier undertakes to do as quickly as possible); or
  - c) to return the defective Goods; and
  - d) to cancel or vary the description, quantity or delivery dates of any remaining Goods to be delivered under the Agreement; and
  - e) to receive from the Supplier reimbursement of any payments made by the Supplier for returned Goods less a reasonable allowance for use and all costs, losses or expenses incurred by the Customer which are in any way attributable to the defective and/or returned Goods, including the cost of obtaining substitute Goods from another supplier where applicable, but less any sums reimbursed by the Supplier.

## **9. RISK AND PROPERTY**

- 9.1 Risk of damage to or loss of the Goods shall pass to the Customer upon delivery in accordance with the Contract.
- 9.2 The property in the Goods shall pass to the Customer upon delivery, unless payment for the Goods has been agreed to be made prior to delivery, when it shall pass to the Customer once payment has been made and the Goods have been appropriated to the Contract.

## **10. INTELLECTUAL PROPERTY RIGHTS**

- 10.1 The Customer authorises the Supplier to use the Intellectual Property of the

Customer for the purposes only of exercising its rights and performing its obligations under the Contract. The Supplier will have no other rights whatsoever in respect of the Intellectual Property of the Customer.

- 10.2 The Supplier grants to the Customer under the Supplier's Intellectual Property in the Goods a worldwide, non-exclusive, royalty-free irrevocable licence (with the right to grant sub-licences) to repair (or have repaired) the Goods and to make (or have made) parts for the Goods.
- 10.3 The Supplier warrants that neither the Goods, nor their use, resale or importation, infringes the Intellectual Property of any third party except to the extent that any infringements arise from any specifications, drawings, samples or descriptions provided by the Customer.

## **11. LIABILITY, INDEMNITY AND INSURANCE**

- 11.1 The Supplier shall indemnify the Customer in full against all liability, loss, damages, costs and expenses (including legal expenses) incurred or paid by the Customer as a result of, or in connection with:

- a) A breach of any warranty given by the Supplier in relation to the Goods;
- b) any claim that the Goods infringe, or that their importation, use or resale, infringes, the patent, copyright, trademark or other intellectual property rights of any other person;
- c) any act, error or omission of the Supplier, its employees, agents or sub-contractors, in supplying or delivering the Service; or
- d) all claims by the customers of the Customer (and their sub-Customers) arising out of any breach by the Supplier of this Agreement,

unless such liability arises from:

- e) a breach of this Agreement by the Customer; or
- f) compliance with any Specification supplied by the Customer.

- 11.2 During the term of this Agreement and for a period of one (1) year afterwards the Supplier shall maintain in force the following insurance policies with reputable insurance companies:

- a) public liability insurance with a limit of at least [[ ] million (£[ ]) per claim]; and
- b) professional indemnity insurance with a limit of at least [[ ] million (£[ ]) for claims arising from a single event or series of related events in a single calendar year.

- 11.3 The terms of any insurance policy or the amount of the cover shall not relieve the Supplier of any liabilities under the Agreement. It shall be the responsibility of the Supplier to determine the amount of insurance cover that will be adequate to

enable the Supplier to satisfy any liability referred to in Clause 11.2.

- 11.4 The Supplier shall produce to the Customer on request copies of all insurance policies referred to in Clause 11.2 or other evidence confirming the existence and extent of cover given by those policies.
- 11.5 Neither Party limits its liability for:
- a) death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);
  - b) fraud or fraudulent misrepresentation by it or its employees;
  - c) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Goods Act 1982; or
  - d) any liability to the extent it cannot be limited or excluded by law.
- 11.6 The financial caps on the Supplier's liability set out in Clause 11.7 below shall not apply to the following:
- a) for any indemnity given by the Supplier to the Customer under this Agreement, including but not limited to those instances as noted in Clause 11.1; and
  - b) the Supplier's indemnity in relation to Intellectual Property Rights and Restrictions set out in Clause 10.
- 11.7 Subject to Clauses 11.4 and 11.5 and to the maximum extent permitted by law:
- a) [throughout the Term] the Supplier's total liability in respect of losses that are caused by Defaults of the Supplier shall in no event exceed:
    - 11.7.1 in respect of damage caused by the Supplier's personnel whilst on the Customer's premises [£ pounds] (£[ ]) in aggregate;
    - 11.7.2 in respect of material breach of contract [£ pounds] (£[ ]) in aggregate;
    - 11.7.3 in respect of loss or damage to Customer's issued property [£ pounds] (£[ ]) in aggregate; and
    - 11.7.4 in respect of loss or damage to Goods [£ pounds] (£[ ]) in aggregate;
  - b) the Supplier's total liability throughout the Term in respect of all other liabilities, whether in contract, in tort (including negligence), arising under warranty, under statute or otherwise under or in connection with this Agreement shall be [£ pounds] (£[ ]) in aggregate.
- 11.8 Clause 11.7 shall not exclude or limit the Supplier's right under this Agreement to claim for the Charges. The Supplier shall not be liable for any loss or damage suffered by the Customer that results from the Customer's failure to follow any instructions given by the Supplier.

- 11.9 Neither Party shall be liable to the other or be deemed to be in breach of the Agreement by reason of any delay in performing, or any failure to perform, any of that Party's obligations if the delay or failure is due to any cause beyond that Party's reasonable control.

## **12. CONFIDENTIALITY**

- 12.1 Each Party shall undertake that, except as provided by Clause 12.2 or as authorised in writing by the other Party, it shall, at all times during the continuance of the Agreement and for two (2) years after its termination:

- a) keep confidential all Confidential Information;
- b) not disclose any Confidential Information to any other party;
- c) not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of the Agreement;
- d) not make any copies of, record in any way or part with possession of any Confidential Information; and
- e) ensure that none of its directors, officers, employees, agents, sub-contractors or advisers does any act which, if done by that Party, would be a breach of the provisions of Clauses 12.1.1 to 12.1.4 of the Agreement.

- 12.2 Either Party may:

- a) disclose any Confidential Information to:
  - 12.2.1 any sub-contractor or Supplier of that Party;
  - 12.2.2 any governmental or other authority or regulatory body; or
  - 12.2.3 any employee or officer of that Party or of any of the aforementioned persons, parties or bodies;
- b) to such extent only as is necessary for the purposes contemplated by the Agreement (including, but not limited to, the provision of the Goods), or as required by law. In each case that Party shall first inform the person, party or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body under Clause 12.2.1.2 or any employee or officer of any such body) obtaining and submitting to the other Party a written confidentiality undertaking from the party in question. Such undertaking should be as nearly as practicable in the terms of Clause 12 of the Agreement, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and
- c) use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of the Agreement, or at any time after that date becomes, public knowledge through no fault of



that Party. In making such use or disclosure, that Party must not disclose any part of the Confidential Information that is not public knowledge.

- 12.3 If the receiving party has reasonable grounds to believe that the disclosing party is involved in activity that constitutes an offence under the Bribery Act 2010, it may disclose relevant Confidential Information to the Serious Fraud Office (or other relevant government body) without informing the disclosing party of such disclosure.
- 12.4 Within three (3) Business Days of receipt of a request to do so made at any time and in any event if the Agreement is terminated, the receiving party shall promptly return or destroy (at the option of the disclosing party) all Confidential Information of the disclosing party.
- 12.5 The provisions of Clause 12 of the Agreement shall continue in force in accordance with their terms, notwithstanding the termination of the Agreement for any reason.

### **13. FORCE MAJEURE**

- 13.1 No Party to the Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, internet Supplier failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.
- 13.2 In the event that a Party to the Agreement cannot perform their obligations hereunder as a result of force majeure for a continuous period to be defined in the Agreement, the other Party may at its discretion terminate the Agreement by written notice at the end of that period. In the event of such termination, the Parties shall agree upon a fair and reasonable payment for all Goods provided up to the date of termination. Such payment shall take into account any prior contractual commitments entered into in reliance on the performance of the Agreement.

### **14. REMEDIES**

- 14.1 Without prejudice to any other right or remedy which the Customer may have, if any Goods are not supplied in accordance with, or the Supplier fails to comply with, any of the terms of the Contract the Customer shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods have been accepted by the Customer:
  - a) to rescind the Order;
  - b) to reject the Goods (in whole or in part) and return them to the Supplier at

the risk and cost of the Supplier on the basis that a full refund for the Goods so returned shall be paid forthwith by the Supplier;

- c) at the Customer's option to give the Supplier the opportunity at the Supplier's expense either to remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
- d) to refuse to accept any further deliveries of the Goods but without any liability to the Supplier;
- e) to carry out at the Supplier's expense any work necessary to make the Goods comply with the Contract; and
- f) to claim such damages as may have been sustained in consequence of the Supplier's breach or breaches of the Contract.

## 15. ANTI-BRIBERY AND CORRUPTION

### 15.1 The Supplier shall:

- a) comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);
- b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- c) have and shall maintain in place throughout the term of this agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate; and
- d) promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Agreement.

### 15.2 Breach of this Clause 15 shall be deemed a material breach.

### 15.3 For the purpose of this Clause 15 the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section **Error! Reference source not found.** of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively.

## 16. SAFEGUARDING

### 16.1 Both Parties warrant that they have adopted and will enforce an appropriate

safeguarding policy and will make it available to the other Party on request.

- 16.2 The Supplier shall report immediately to the Customer any safeguarding incidents it becomes aware of in connection with the Goods provided under this Agreement and shall also report without delay any other incidents it becomes aware of concerning its own activities (or otherwise) which could have a detrimental effect on the Customer's reputation.
- 16.3 The Supplier shall, if requested, assist the Customer to prepare any Serious Incident Report required to be filed with the Charity Commission or other report or notification required by another regulator or authority and shall assist the Charity Commission and any other relevant authorities with any subsequent enquiries.

## **17. TERM AND TERMINATION**

- 17.1 The Agreement shall come into force on the agreed Commencement Date and shall continue for a defined Term from that date, subject to the provisions of this Clause 17 of the Agreement.
- 17.2 The Customer shall be entitled to cancel the Contract in respect of all or part only of the Goods by giving notice in writing to the Supplier at any time prior to delivery or performance, in which event the Customer's sole liability shall be to pay to the Supplier the Price for the Goods in respect of which the Customer has exercised its right of cancellation, less the Customer's reasonable estimate of the Supplier's net saving of cost arising from cancellation.
- 17.3 Either Party may immediately terminate the Agreement by giving written notice to the other Party if:
  - a) any sum owing to that Party by the other Party under any of the provisions of the Agreement is not paid within ninety (90) Business Days of the due date for payment;
  - b) the other Party commits any other breach of any of the provisions of the Agreement and, if the breach is capable of remedy, fails to remedy it within sixty (60) Business Days after being given written notice giving full particulars of the breach and requiring it to be remedied;
  - c) an encumbrancer takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party;
  - d) the other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);
  - e) the other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a

manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other Party under the Agreement);

- f) anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party;
- g) the other Party ceases, or threatens to cease, to carry on business; or
- h) control of the other Party is acquired by any person or connected persons not having control of that other Party on the date of the Agreement. For the purposes of Clause 10, “control” and “connected persons” shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010.

17.4 For the purposes of Clause 17.4.3.b, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.

17.5 The rights to terminate the Agreement shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

## **18. EFFECTS OF TERMINATION**

18.1 Upon the termination of the Agreement for any reason:

- a) any sum owing by either Party to the other under any of the provisions of the Agreement shall become immediately due and payable;
- b) all Clauses which, either expressly or by their nature, relate to the period after the expiry or termination of the Agreement shall remain in full force and effect;
- c) termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of the Agreement which existed at or before the date of termination;
- d) subject as provided in this Clause 18 of the Agreement and except in respect of any accrued rights neither Party shall be under any further obligation to the other; and
- e) each Party shall (except to the extent referred to in Clause 12 of the Agreement) immediately cease to use, either directly or indirectly, any Confidential Information, and shall immediately return to the other Party any documents in its possession or control which contain or record any Confidential Information.

## **19. AMENDMENTS**

No amendment of this Agreement shall be effective unless it is in writing and signed by or on behalf of each of the Parties.

## **20. WAIVERS**

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

## **21. SEVERANCE**

21.1 If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect:

- a) the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or
- b) the legality, validity or enforceability in any other jurisdiction of that or any other provision of this Agreement.

## **22. FURTHER ASSURANCE**

Each Party shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of the Agreement into full force and effect.

## **23. COSTS**

Subject to any provisions to the contrary each Party shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of the Agreement.

## **24. ASSIGNMENT AND SUB-CONTRACTING**

The Agreement shall be personal to the Parties. Neither Party may assign, mortgage, charge (otherwise than by floating charge) or sub-licence or otherwise delegate any of its rights thereunder, or sub-contract or otherwise delegate any of its obligations thereunder without the written consent of the other Party, such consent not to be unreasonably withheld.

## **25. RELATIONSHIP OF THE PARTIES**

Nothing in the Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in the Agreement.

## **26. NON-SOLICITATION**

- 26.1 Neither Party shall, for the Term of the Agreement and for a period of twelve (12) months after its termination or expiry, employ or contract the Goods of any person who is or was employed or otherwise engaged by the other Party at any time in relation to the Agreement without the express written consent of that Party.
- 26.2 Neither Party shall, for the Term of the Agreement and for a period of twelve (12) months after its termination or expiry, solicit or entice away from the other Party any customer or Customer where any such solicitation or enticement would cause damage to the business of that Party without the express written consent of that Party.

## **27. THIRD PARTY RIGHTS**

- 27.1 No part of the Agreement shall confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Agreement.
- 27.2 Subject to this Clause 27 of the Agreement, the Agreement shall continue and be binding on the transferee, successors and assigns of either Party as required.

## **28. NOTICES**

- 28.1 All notices under the Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.
- 28.2 Notices shall be deemed to have been duly given:
  - a) when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
  - b) when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or
  - c) on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or

d) on the tenth business day following mailing, if mailed by airmail, postage prepaid.

28.3 In each case notices shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

## **29. ENTIRE AGREEMENT**

29.1 The Agreement contains the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.

29.2 Each Party shall acknowledge that, in entering into the Agreement, it does not rely on any representation, warranty or other provision except as expressly provided in the Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

## **30. COUNTERPARTS**

The Agreement may be entered into in any number of counterparts and by the Parties to it on separate counterparts each of which when so executed and delivered shall be an original, but all the counterparts together shall constitute one and the same instrument.

## **31. DISPUTE RESOLUTION**

31.1 The Parties shall attempt to resolve any dispute arising out of or relating to the Agreement through negotiations between their appointed representatives who have the authority to settle such disputes.

31.2 If negotiations under Clause 31.1 of the Agreement do not resolve the matter within <<insert period>> of receipt of a written invitation to negotiate, the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution (“ADR”) procedure.

31.3 If the ADR procedure under Clause 31.2 of the Agreement does not resolve the matter within <<insert period>> of the initiation of that procedure, or if either Party will not participate in the ADR procedure, the dispute may be referred to arbitration by either Party.

31.4 The seat of the arbitration under Clause 31.3 of the Agreement shall be England and Wales. The arbitration shall be governed by the Arbitration Act 1996 and Rules for Arbitration as agreed between the Parties. In the event that the Parties are unable to agree on the arbitrator(s) or the Rules for Arbitration, either Party may, upon giving written notice to the other Party, apply to the President or Deputy President for the time being of the Chartered Institute of Arbitrators for

the appointment of an arbitrator or arbitrators and for any decision on rules that may be required.

- 31.5 Nothing in this Clause 31 of the Agreement shall prohibit either Party or its affiliates from applying to a court for interim injunctive relief.
- 31.6 The decision and outcome of the final method of dispute resolution under this Clause 31 of the Agreement shall [not] be final and binding on both Parties.

## **32. LAW AND JURISDICTION**

- 32.1 The Agreement and these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 32.2 Subject to the provisions of Clause 31 of the Agreement, any dispute, controversy, proceedings or claim between the Parties relating to the Agreement or these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.



This Agreement has been entered into on the date stated at the beginning of it.

**Signed for and on behalf of**

**[The Supplier]:**

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*(Signature of director)*

**Director**

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**(name of director)**

**Signed for and on behalf of**

**The National Museum of the Royal Navy (NMRN) Operations:**

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*(Signature)*

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**(name)**

## SCHEDULE 1

### SCHEDULE OF REQUIREMENTS – GOODS

#### 1. THE GOODS, PRICE AND DELIVERY

- 1.1 The Supplier shall sell the following Goods in accordance with the Terms and Conditions and shall deliver the Goods to the Customer's nominated delivery address at <<insert address>>.
- 1.2 The Customer shall pay the Price in accordance with the Supplier's invoice for the same.
- 1.3 [The following settlement discount(s) shall apply to the Goods: <<insert details of settlement discount(s)>>.]

Description of Goods	Contract Price (£)	Delivery Date
Goods Line 1		
[e.g. G1M1]		
[e.g. G1M2]		
Goods Line 2		
[e.g. G2M1]		
[e.g. G2M2]		
[Goods Line X – insert further lines as necessary]		
[etc.]		