

## BASIC CONTRACT CONDITIONS

*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 Authority or any other government department or agency. These short form conditions of contract shall not take precedence over or replace any existing Contractual agreements between the Contractor and the Authority.*

### Index of Contract Conditions

1	Definitions	15	Recovery of Sums from Contractor
2	Duties	16	Insurance
3	Environmental Requirements	17	Audit
4	Health, Safety and Security	18	Notices
5	Invoices and Payment	19	Law and Jurisdiction
6	Corrupt Gifts and Payments of Commission	20	Dispute Resolution
7	Official Secrets Acts	21	Variations to the Contract
8	Disclosure of Information and Transparency	22	Duration
9	Discrimination	23	Contractor's Personnel
10	Prevention of Corruption	24	Authority Property
11	Intellectual Property Rights	25	Waiver
12	Termination	26	Severability
13	Break	27	Safeguarding
14	Liability		

## 1 Definitions - In these conditions:

"Authority" means the Secretary of State for Foreign, Commonwealth and Development Affairs and includes the Authority's Representative. In this Contract, the Authority is acting as part of the Crown.

"Authority's Representative" means the individual authorised to act on behalf of the Authority for the purposes of the Contract.

"Contract" means the agreement between the Authority and the Contractor and comprising these Short Form Conditions of Contract, the Purchase Order, and any documents referred to therein.

"Contract Start" means the date identified in the Contract when the Contractor shall commence delivery of the Contract.

"Contractor" means the individual, firm or company with whom the Authority enters into the Contract (including where necessary any of the Contractor's sub-contractors) as identified in the Purchase Order.

"Contract Delivery" means the date identified in the Contract by which the Contractor shall have completed the Contract to the satisfaction of the Authority.

"Credit Transfer" is a payment instruction from the Authority to its bank or payment service provider to transfer an amount of money to another account.

"Goods" means anything (other than Services or Works) supplied or to be supplied to the Authority under the Contract.

"A GPC (Government Procurement Card) is a credit card used for purchasing and/or payment."

"Purchase Order" means the document with this name which is issued by the Authority to the Contractor for the supply of Goods and/or the provision of Services.

"Services" means all the service activities that the Contractor is required to carry out under the Contract.

"The Crown" means any central government department of the United Kingdom, or a Devolved Administration, or any other body which is legally defined as a Crown Body.

## 2 Duties

2.1 The Authority expects that the Contractor will understand the operating environment in which the Services are to be performed and the standards of performance that are necessary.

2.2 The Contractor warrants and represents that, throughout the term of this Contract, he has full capacity, authority and all necessary approvals to enter into and to perform this Contract and that this Contract is executed by a duly authorised representative of the Contractor. The Contractor will not (and will ensure that its

agents and servants do not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent of the Authority.

## **2.3 Conditions for the supply of Goods**

- 2.3.1 The Contractor shall deliver the Goods in accordance with the terms and conditions in the Purchase Order. A delivery note must accompany the Goods and must specify the quotation reference, the type of Goods being delivered, the Authority's reference number and the Purchase Order number.
- 2.3.2 Unless expressly agreed otherwise the Goods shall be delivered during the Authority's normal business day.
- 2.3.3 Delivery and any other costs associated with the supply of the Goods shall be at the Contractor's own expense unless otherwise stated on the Purchase Order. Any Delivery Date or time specified in the Purchase Order shall be of the essence.
- 2.3.4 Goods may be returned at the Contractor's expense if they do not correspond with the Contract. The Authority shall be entitled to return any goods to the Contractor for a full refund within 30 days of delivery without incurring any costs or charges whatsoever. If the Authority cancels the whole or any part of a Purchase Order pursuant to Clause 2.3.4, it shall only be obliged to pay the Contractor in respect of those items it has expressly accepted.
- 2.3.5 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.
- 2.3.6 The Goods shall remain at the Contractors risk until delivery is affected in accordance with this Purchase Order. The property in the Goods shall pass on delivery or on payment of the invoiced price whichever is the earlier.
- 2.3.7 The Authority's signature given on any delivery note or other document presented for signature in connection with delivery of the Goods is evidence only of the number of packages received, and not evidence of actual quantity, quality or condition of the Goods.

## **2.4 Conditions for the supply of Services**

- 2.4.1 The Contractor shall properly perform the Services specified in the Contract 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, Authority Policy (e.g. Security, document retention, conflict of interest etc) and industry good practice.

## **3 Environmental Requirements**

- 3.1 In providing the Goods or Services the Contractor shall comply with the Authority'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.
- 3.2 All written documents produced 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.
- 3.3 Maximum use must be made of recycled materials in the manufacture of crates, pallets, boxes, cartons, cushioning and other forms of packaging. Packaging must be capable of recovery for reuse or recycling.

## **4 Health, safety and security**

- 4.1 The Contractor shall ensure that all of the Contractor's personnel who have access to or are employed on the Authority's premises comply with the Authority's health, safety and security procedures and instructions and complete any additional security clearance procedures required by the Authority before working at the Authority's premises.

## **5 Invoices and Payment**

- 5.1 The Authority has the right to select the most appropriate payment method from either against a Contractor invoice via credit transfer or by GPC.
- 5.2 If the Authority elects to pay against an invoice via credit transfer, then the Contractor shall submit his invoice to the invoicing address stipulated by the Authority within 28 days of meeting any milestone set out in the request for quotation to the satisfaction of the Authority or otherwise within 28 days of supplying the Goods or Services to the satisfaction of the Authority. Invoices shall include the Purchase Order number.
- 5.3 The Authority shall pay the Contractor within 30 days of receipt against an undisputed invoice by payment direct to the Contractors bank account as a credit transfer.

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

- 6.1 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.
- 6.2 If the Contractor or any of his employees, servants, agents or sub-contractors, or any person acting on his or their behalf, commits any offence under the Bribery Act 2010, with or without the knowledge of the Contractor, in relation to this Contract or any other contract with the Crown, the Authority shall be entitled:
- 6.2.1 to terminate the Contract with immediate effect by written notice to the Contractor and recover from the Contractor the amount of any loss to the Authority resulting from the termination;
- 6.2.2 to recover from the Contractor the amount or value of any such gift, consideration or commission; and
- 6.2.3 to recover from the Contractor any other loss sustained as a result of any breach of this Condition, whether or not the Contract has been terminated.
- 6.3 When exercising its rights or remedies under this Condition the Authority shall:-
- 6.3.1 act proportionately in the light of the gravity and circumstances of the particular breach; and
- 6.3.2 give all due consideration, where appropriate, to the use of remedies other than termination of the Contract.

## **7 Official Secrets Acts**

- 7.1 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.

## **8 Disclosure of Information and Transparency**

- 8.1 To enable compliance with the Freedom of Information Act 2000 and the Environmental Information Regulations, the Authority reserves the right to disclose information about this Contract pursuant to a valid request for information.
- 8.2 The Contractor shall not disclose any information relating to the Contract or the Authority's activities without the prior written consent of the Authority, 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.
- 8.3 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOI Act, the content of this Contract is not Confidential Information. The Authority 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 FOI Act. Notwithstanding any other term of this Contract, the Contractor gives consent to the Authority to publish the Contract in its entirety to the general public, (but with any information which is exempt from disclosure in accordance with the provisions of the FOI Act redacted) including from time to time agreed changes to the Contract.
- 8.4 The Authority may consult with the Contractor to inform its decision regarding any exemptions but the Authority shall have the final decision in its absolute discretion.
- 8.5 The Contractor shall assist and cooperate with the Authority to enable the Authority to publish this Agreement.

## **9 Discrimination**

- 9.1 The Contractor shall not unlawfully discriminate either directly or indirectly on protected characteristics such 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 provisions of all relevant legislation including the Equality Act 2010 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

## **10 Sub-contracting and assignment**

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

## **11 Intellectual Property Rights**

- 11.1 Subject to any prior rights of the Authority or Crown or 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.
- 11.2 The Contractor hereby grants a perpetual, irrevocable, worldwide, royalty-free licence to the Authority and the Crown (and any person authorised by either of them) to use, supply, reproduce, publish, modify, adapt, enhance or otherwise deal for non-commercial purposes with any materials in which such intellectual property rights exist.
- 12 Termination**
- 12.1 If the Contractor fails to fulfil its obligations under the Contract, the Authority may terminate the Contract immediately by written notice and, in accordance with condition 15, may recover from the Contractor any reasonable costs necessarily and properly incurred by the Authority as a consequence of termination.
- 13 Break**
- 13.1 Without prejudice to condition 12, the Authority 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 the Contractor one month's written notice. During the period of notice the Authority may direct the Contractor to deliver all or any of the goods or services under the Contract. Where the Authority relies on either of these rights, the Contractor may claim reasonable costs that are necessarily and properly incurred by him as a result of the termination or reduction, excluding loss of profit, loss of goodwill and consequential losses, but the claim for such costs shall not exceed the total cost of the Contract.
- 13.2 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.
- 14 Liability**
- 14.1 If the Contractor causes loss or damage while performing the Contract, he shall without delay and at the Contractor's own expense, reinstate, replace or make good such loss or damage to the satisfaction of the Authority, or if the Authority agrees, compensate the Authority, for any such loss or damage. The Contractor shall not be liable for any loss or damage which is caused by the neglect or default of the Authority. "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.
- 14.2 Nothing in this Contract will impose any liability on the Authority in respect of any liability incurred by the Contractor to any other person but this will not be taken to exclude or limit any liability of the Authority to the Contractor that might arise by virtue of either a breach of this Contract or any negligence on the part of the Authority, its staff or agents
- 15 Recovery of Sums from Contractor**
- 15.1 Whenever under the Contract any sum or sums of money shall be recoverable from or payable by the Contractor to the Authority, 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 Authority or with any department, agency or office of Her Majesty's Government.
- 16 Insurance**
- 16.1 The Contractor shall effect and maintain an adequate level of relevant insurance cover in respect of all risks that may be incurred by him in the performance of this Contract.
- 17 Audit**
- 17.1 The Contractor shall keep full and accurate records of the Contract, all expenditure reimbursed and payments made by the Authority for 6 years after the end of the Contract. Where necessary, the Contractor shall on request afford the Authority or the Authority's representatives such access to those records as may be requested by the Authority in connection with the Contract.
- 18 Notices**
- 18.1 A notice may be served: by delivery to the Contractor; by sending it by email or 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 an email or facsimile, or on the second working day after posting.
- 19 Law and Jurisdiction**
- 19.1 This Contract shall be governed by and interpreted in accordance with English Law and shall be subject to the exclusive jurisdiction of the Courts of England and Wales.
- 20 Dispute Resolution**

- 20.1 In the event of dispute, the parties shall negotiate in good faith to reach a solution. If they do not reach a solution within one month the Authority may refer the dispute to mediation. During the dispute the Contractor shall at the Authority's discretion continue to perform the Contract with all due diligence.

## **21 Variations to the Contract**

- 21.1 No variation to the Contract will be effective until it has been recorded in writing and signed by the Authority and the Contractor.

## **22 Duration**

- 22.1 The Contract will begin on the 'Contract start' date and will be completed by the 'Contract delivery' date.

## **23 Contractor's Personnel**

- 23.1 The Authority has the right to reject any person or persons proposed by the Contractor to work under the Contract. If the Authority gives the Contractor notice of rejection of any person or persons, the Contractor will submit other suitably qualified person or persons for consideration by the Authority. The decision of the Authority as to the acceptability of individuals proposed by the Contractor shall be final and conclusive. The Contractor will bear the cost of any notice, instruction or decision of the Authority under this Clause. .

## **24 Authority Property**

- 24.1 All Authority Property will remain the property of the Authority and will be used solely in the performance of the Contract and for no purpose without the prior written approval of the Authority.
- 24.2 The Contractor will be liable for any loss of or damage to any Authority Property unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the act, neglect or default of the Authority.
- 24.3 The Contractor will maintain all items of Authority Property in good and serviceable condition, fair wear and tear excepted and in accordance with the manufacturers recommendations.

## **25 Waiver**

- 25.1 The failure of either the Contractor or the Authority to insist upon strict performance of any provision of the Contract, or the failure of either the Contractor or the Authority to exercise any right or remedy to which it is entitled under the Contract, will not constitute a waiver and will not diminish the obligations established by the Contract. No waiver of any provision of the contract will be effective unless it is expressly stated to be a waiver and communicated to the other party in writing in accordance with Clause 18 (Notices).

## **26 Severability**

- 26.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision will be severed and the remainder of the provisions of the Contract will continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

## **27 Safeguarding**

- 27.1 For the purposes of this Clause 27, "**Reasonable Measures**" shall mean:

all reasonable endeavours expected to be taken by a professional and prudent supplier in the Supplier's industry to eliminate or minimise risk of actual, attempted or threatened exploitation, abuse and harassment (including Sexual Abuse, Sexual Exploitation and Sexual Harassment) and whether or not such conduct would amount to a criminal offence in the United Kingdom or an offence under the laws of the territory in which it takes place (together "**Serious Misconduct**") as is reasonable and proportionate under the circumstances. Such endeavours may include (but shall not be limited to):

- (a) Clear and detailed policies and guidance for Supplier Personnel, Supplier Providers and where appropriate, beneficiaries;
- (b) Developing, implementing and maintaining a safeguarding plan throughout the term (including monitoring);
- (c) Provision of regular training to Supplier Personnel, Supplier Providers and where appropriate, beneficiaries
- (d) Clear reporting lines and whistleblowing policies in place for Supplier Personnel, Supplier Providers and beneficiaries,
- (e) Maintaining detailed records of any allegations of Serious Misconduct and regular reporting to FCDO and the Appropriate Authorities (where relevant) of any such incidents;
- (f) Any other Good Industry Practice measures (including any innovative solutions),

- 27.2 The Supplier shall take all Reasonable Measures to prevent Serious Misconduct by the Supplier Personnel or any other persons engaged and controlled by it to perform any activities under this Agreement ("**Supplier Providers**") and shall have in place at all times robust procedures which enable the reporting by Supplier Personnel, Supplier Providers and beneficiaries of any such Serious Misconduct, illegal acts and/or failures by the Supplier or Supplier Personnel to investigate such reports.
- 27.3 The Supplier shall take all Reasonable Measures to ensure that the Supplier Personnel and Supplier Providers do not engage in sexual activity with any person under the age of 18, regardless of the local age of majority or age of consent or any mistaken belief held by the Supplier Personnel or Supplier Provider as to the age of the person. Furthermore, the Supplier shall ensure that the Supplier Personnel and Supplier Providers do not engage in 'transactional sex' which shall include but not be limited to the exchange of money, employment, goods, or services for sex and such reference to sex shall include sexual favours or any form of humiliating, degrading or exploitative behavior on the part of the Supplier Personnel and the Supplier Providers. For the avoidance of doubt, such 'transactional sex' shall be deemed to be Serious Misconduct in accordance with Clause 27.1.
- 27.4 The Supplier shall promptly report in writing any complaints, concerns and incidents regarding Serious Misconduct or any attempted or threatened Serious Misconduct by the Supplier Personnel and Supplier Providers to FCDO, including FCDO's Counter Fraud Section at [reportingconcerns@fcdo.gov.uk](mailto:reportingconcerns@fcdo.gov.uk) or +44 (0)1355 843747, and where necessary, the Appropriate Authorities.
- 27.5 The Supplier shall fully investigate and document all cases or potential cases of Serious Misconduct and shall take appropriate corrective action to reduce the risk and/or eliminate Serious Misconduct being committed by the Supplier Personnel and Supplier Providers (which may include disciplinary action, termination of contracts etc.), such investigations and actions to be reported to FCDO as soon as is reasonably practicable.
- 27.6 The Supplier shall not engage as Supplier Personnel or Supplier Provider for the purposes of the Services any person whose previous record or conduct known to the Supplier (or reasonably ought to be known by a diligent supplier which undertakes the appropriate checks) indicates that they are unsuitable to perform the Services and/or where they represent an increased and unacceptable risk of committing Serious Misconduct.
- 27.7 The Supplier shall comply with all applicable laws, legislation, codes of practice and government guidance in the UK and additionally, in the territories where the Services are being performed, relevant to safeguarding and protection of children and vulnerable adults, which the Supplier acknowledges may include vetting of the Supplier Personnel by the UK Disclosure and Barring Service in respect of any regulated activity performed by the Supplier Personnel (as defined by the Safeguarding Vulnerable Groups Act 2006 (as amended)) and/or vetting by a local equivalent service. Where FCDO reasonably believes that there is an increased risk to safeguarding in the performance of the Services, the Supplier shall comply with any reasonable request by FCDO for additional vetting to be undertaken.
- 27.8 Failure by the Supplier to:
- 1) Put in place preventative measures to eliminate and/or reduce the risk of Serious Misconduct; or
  - 2) Fully investigate allegations of Serious Misconduct; or
  - 3) Immediate report any complaints to FCDO and where appropriate, the relevant authorities (including law enforcement)
- shall be a material Default of this Contract and shall entitle FCDO to terminate this Contract with effect.