

Horniman Museum and Gardens

Standard Terms & Conditions of Purchase for Goods and Services (March 2011)

1. Definitions

In these conditions "HMG" means the Horniman Public Museum & Public Park Trust (known as the Horniman Museum and Gardens); "Contract" means the Purchase Order together with these Conditions and any other documents attached or referred to therein; "Data" means all designs, models, mock ups, drawings, prints, samples, analysis results, data and documents of all kinds, materials, photographs, negatives, diskettes, films, software or any similar items supplied by the HMG or procured from the Supplier of any third party for the purposes of the Contract; "Goods" means the goods specified in the Purchase Order (or amendment thereof) to be supplied by the Supplier in accordance with the Contract. "IPRs" means all copyright and other intellectual property rights, howsoever arising throughout the world and in whatever media or format, whether or not registered, including patents, trademarks, service marks, database rights, trade names, design rights, performance rights (incorporating, without limitation, an irrevocable license to use the name, sobriquet, autograph, likeness, photograph, portrait, caricature, silhouette or voice of any performer), publication and distribution rights and any applications for the protection or registration of these rights, for the full period for which such copyright and other rights subsist including all renewals, revivals and extensions thereof; "Purchase Order" means the HMG's official numbered order; "Services" means the services specified in the Purchase Order including the giving of advice (or amendment thereof) to be carried out by the Supplier in accordance with the Contract; The "Supplier" means the supplier named in the order.

2. Assignment or Sub-Contracting

The Supplier shall not assign or subcontract the whole or part of the benefits or burdens under the Contract without the previous consent of the HMG. The HMG may assign or subcontract the whole or part of the benefits or burdens under the Contract to any company which is a subsidiary of the HMG.

3. Performance

Goods and Services: The Goods supplied under this Contract shall: (a) be of good and sound design, materials and workmanship; (b) be of merchantable quality and fit for the purpose(s) for which they are supplied under the Contract; (c) conform as to description, specification and quantity with the particulars stated in the Contract; (d) comply with all statutory requirements; (e) be free from any defect in title; and (f) be returnable to the Supplier within 21 days in the event the Goods are damaged or have suffered damage during manufacture or transit which could reasonably be discerned from the inspection on delivery or which are not in accordance with the Contract, in which case the Contract shall be deemed to be terminated in accordance with clause 19 (a). The Services executed under the Contract shall (a) be carried out with reasonable skill and care; (b) be carried out with due expedition and in so far as is reasonably practicable within the time if specified under this Contract; (c) comply as to the description, specification and quantity with the particulars stated in the Contract; and (d) comply with all statutory and other regulations applicable to the Services that are in force at the time and delivery of the Services.

4. Price/Payment

- (a) The price(s) detailed in the Contract shall remain firm and fixed for the duration of the Contract. The Supplier shall send a detailed invoice; with VAT quoted separately, quoting the Order number to the Finance Department, Horniman Museum & Gardens, 100 London Road, London, SE23 3PQ. Payment will be made by the HMG within 30 days of receipt of a correct and valid invoice.
- (b) In the case of the supply of Services: unless otherwise expressly agreed on the face of the Purchase Order the Supplier shall be fully responsible for arranging his/her travel and any accommodation (and that of any member of the Supplier's staff or any person employed or engaged by a sub-contractor, agent or servant of the Supplier) within and/or to and from the United Kingdom in connection with Contract (including but not limited to all flights, transfers and other travel arrangements, travel insurance and visas) and shall be fully responsible for meeting all costs associated with the above.

5. Delivery/Completion of Order

The Goods shall be delivered at the times, dates and place specified in the Contract. Delivery shall be deemed to be made on receipt of the Goods by the HMG in accordance with the Contract. The Services shall be

deemed completed when completed in accordance with the Contract. Where the Supplier requires access to the HMG's premises in order to discharge its obligations under the Contract, the Supplier shall at all times comply with the security requirements and site rules and regulations of the HMG.

6. Inspection, Rejection and Guarantee

Without prejudice to any of its other rights hereunder, the HMG may by notice to the Supplier reject all or any of the Goods and/or Services if the Supplier fails to comply with any of its obligations under the Contract. The HMG shall not be deemed to have accepted the Goods and/or Services until the HMG has had a reasonable time after delivery to inspect the Goods and/or Services without charge. The Supplier shall at the HMG's option replace Goods or rectify Services rejected by the HMG with Goods and/or Services which in all respects conform to the Contract or credit the HMG with the invoice price thereof. The Supplier shall guarantee the Goods for the shorter of 12 months from putting into service or 18 months from delivery.

7. Risk and Property

Risk and property in the Goods shall without prejudice to any other rights or remedies of the HMG pass to the HMG at the time of acceptance of the delivery of the Goods at the HMG.

8. Damage in Transit

The Supplier shall without charge to the HMG promptly either repair or replace (at the HMG's option) any Goods damaged in transit or which having been placed in transit fail to be delivered to the HMG, provided that the HMG gives notice, within 30 days of delivery, of damage to the goods or within 10 days of the notified date of delivery that the Goods have not been delivered.

9. Labelling and Packaging

The Goods shall be packed and marked in a proper manner and in accordance with the HMG's instructions and any statutory requirements and any requirements of the carrier. The Goods shall be marked with the Purchase Order number and name of contents on each container and all containers of hazardous Goods (and all related documents) shall bear prominent and adequate warnings. All packaging materials will be considered non-returnable and destroyed unless the Supplier's advice note states otherwise.

10. Intellectual Property Rights

Any Data supplied by the HMG for the purposes of the Contract shall remain the unencumbered intellectual property of the HMG. The Supplier warrants that in the manufacture of the Goods/ supply of Services/ provision of know-how to the HMG under the Contract the Supplier shall not infringe the IPRs of any third party and that the Supplier shall ensure that it has the right to provide such know-how and is not disclosing the same in breach of confidence. All IPRs in the Goods and/or Services (including without limitations IPR's comprised in any associated Data) prepared or developed (or to be prepared or developed) by the Supplier under or in connection with the Contract are hereby assigned to and shall vest in the HMG free from any encumbrance and with full title guarantee. The Supplier unconditionally, irrevocably and in perpetuity waives all moral and author's rights and rights of a similar nature under the laws of any jurisdiction which the Supplier may have in Goods and/or Services and any associated Data.

11. Health and Safety

The Supplier shall comply with the requirements of the Health and Safety at Work Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety in performance of this Contract and/or working on the HMG's premises.

12. Prevention of Corruption

The Supplier shall not itself or in conjunction with any other person:- (a) corruptly solicit, receive or agree to receive, for it or for any other person, or (b) offer or agree to give to any person in the HMG's service, or any other supplier who has a contract with the HMG any gift or consideration of any kind as an inducement or reward for doing or not doing anything, or for showing favour or disfavour to any person, in relation to this Contract or any other contract to which the HMG is party. Without prejudice to clause 17, the HMG may forthwith terminate the Contract with the Supplier if the Supplier is (a) in breach of clause 12; or (b) convicted of any offence under the Bribery Act 2010 and shall be

entitled to recover from the Supplier inter alia the amount or value of any such gift or consideration. Any dispute or difference of opinion arising in respect of either the interpretation or effect or application of clause 12 or of the amount recoverable by the HMG from the Supplier shall be decided by the HMG whose decision on the matter shall be final and conclusive.

13. Indemnity

The Supplier shall indemnify and keep indemnified, the HMG against: (a) all claims, proceedings, actions, damages, legal costs, expenses and other liabilities whatsoever arising out of or in connection with the supply of Goods and/or Services and/or the assignment of IPR's pursuant to the Contract, in respect of death or personal injury to any person (including, without limitation, employees of the HMG), or any damage to property, loss, damages, costs, or other claim for compensation and any legal or other expenses which are awarded against or incurred by or paid or agreed to be paid by the HMG, however the same may arise, unless caused by the negligence of the HMG; (b) (in the supply of Services) any demands for any income tax and primary and secondary class 1 National Insurance or similar contribution, including any penalties or interest arising from any claim that the Supplier (which expression in paragraphs (b) (c) and (d) of this clause 13 includes or any member of the Supplier's staff or any person employed or engaged by a sub-contractor, agent or servant of the Supplier) is or was an employee of the HMG at any material time during the performance of the Contract; (c) (in the supply of Services) any claim whether statutory, contractual or at common law brought by the Supplier and arising out of or based upon an allegation that the Supplier was at any material time during the performance of the Contract an employee of the HMG; (d) (in the supply of Services) any penalties or charges incurred by the HMG in connection with the Supplier's immigration status; and (e) the HMG's reasonable costs (on a full indemnity basis) of dealing with any such claim or matter under (a), (b), (c) or (d) above.

14. Insurance

The Supplier shall be responsible for effecting its own insurances which shall include employer's liability insurance and public liability insurance. The Supplier shall effect and maintain general third party and where applicable product liability insurance cover with a combined bodily injury and property damage limit of not less than five million pounds (£5,000,000) per occurrence or series of occurrences arising from the one event and unlimited cover in any period of insurance (aggregate or product liability). Such insurance shall contain an indemnity or principals clause. The Supplier shall provide evidence of such cover to the HMG, if requested.

15. Confidentiality

The Supplier shall treat all information, data or process in connection with the Contract as confidential and shall not use any confidential information supplied by the HMG other than for the purposes of the Contract. The Supplier shall fully comply with the requirements of the Data Protection Act 1998 insofar as the same applies to the Contract.

16. Transparency

(a) The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act ("the Act") the text of this Agreement, and any Schedules to this Agreement, is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any part of the Agreement or its Schedules is exempt from disclosure in accordance with the provisions of the Act

(b) Notwithstanding any other term of this Agreement, the Contractor hereby gives its consent for the Authority to publish this Agreement and its Schedules in its entirety, including from time to time agreed changes to the Agreement, to the general public in whatever form the Authority decides.

17. Suppliers Staff

The HMG reserves the right to refuse to admit to HMG premises (or to withdraw permission to remain on HMG premises), any member of the Supplier's staff or any person employed or engaged by a sub-contractor, agent or servant of the Supplier, whose admission or continued presence would be, in the unfettered opinion of the HMG contrary to its interest.

18. Disability Rights

The Supplier warrants that all Goods and/or Services supplied under this Contract conform (or shall be capable of conforming in the hands of the HMG) with the guidance contained in the Disability Rights Commission's Code of Practice: Rights of Access: services to the public, public authority functions, private clubs and premises (2006) a copy of which may inspected at <http://www.opsi.gov.uk/SI/si2006/20061967.htm>.

19. Termination

(a) Without prejudice to either party's other rights and remedies under this Contract or at law, either party may terminate the Contract forthwith on notice if the other ("the defaulting party"):

(i) commits a breach of this Contract and fails to remedy such breach (where it is capable of remedy) within 30 days of receipt of a notice in writing requiring it to do so; or

(ii) ceases to trade, or is unable to pay its debts as they fall due or has a petition presented or a meeting convened for the purpose of winding up the defaulting party or enters into liquidation whether compulsorily or voluntarily or compounds with its creditors generally or an administration order is made in relation to it or it has a receiver or administrative receiver appointed over all or a substantial part of its assets or any similar analogous order is made or proceeding commenced or officer appointed or action taken in consequence of debt. In the event of termination by the HMG under sub-clause 19(a), the HMG may retain from any amount due to the Supplier under the Contract an amount equal to any bona fide claim the HMG may have against the Supplier arising out of such breach.

(b) The HMG may at its convenience terminate the Contract or any part thereof at any time by giving notice to the Supplier. In this event the HMG shall subject to any other provisions of the Contract pay the Supplier for all Goods and/or Services supplied in accordance with the Contract up to the time of termination and shall otherwise be free from liability to the Supplier. Upon termination of the Contract the Supplier shall immediately return to the HMG any HMG Data or equipment or other materials belonging to the HMG which the Supplier may have in its possession.

20. Entirety

The Contract constitutes the entire agreement between the parties and shall prevail over any terms contained in the Supplier's acceptance of the Purchase Order. No terms may be implied herein from any course of regular previous dealings between the Supplier and the HMG. The Contract supersedes all prior negotiations representations and undertakings, whether written or oral, except this clause shall not exclude liability in respect of any fraudulent misrepresentation.

21. Notices

Except as otherwise expressly provided within the Contract, no notice or other communications between the parties shall have any validity under the Contract unless made in writing by or on behalf of the party concerned.

22. Scope of the Contract

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

23. Third Party Rights

Neither the HMG nor the Supplier confers or purports to confer on any third party any benefits or any right to enforce any term of this Contract under the Contracts (Rights of Third Parties) Act 1999.

24. Right of Audit

The HMG and/or its agents shall have the right on reasonable notice to inspect the Supplier's records relating to the supply of Goods or Services under this Contract as it may reasonably require in order to ascertain the Supplier's compliance with the terms of this Contract.

25. Governing Law

This Contract shall be governed by and interpreted in accordance with English Law and the parties submit to non-exclusive jurisdiction of the courts of England and Wales.