

**Document No. 03****Invitation to offer for NHS Generic Pharmaceuticals Wave 10b****Offer reference number: CM/PHG/15/5465****Period of framework agreement: Dates detailed below with options to extend up to a maximum period of 48 months****Potential periods of call-offs under the framework agreement:**

<b>100% products:</b>	<b>All regions:</b>	<b>01/11/2016 to 28/02/2019 (28 months)</b>
<b>33% products:</b>	<b>DCE &amp; DSW:</b>	<b>01/11/2016 to 30/06/2018 (20 months)</b>
<b>Housekeeping:</b>	<b>DLS &amp; DNE:</b>	<b>01/11/2016 to 30/06/2017 (8 months)</b>
	<b>DLN &amp; DNW:</b>	<b>01/11/2016 to 30/06/2017 (8 months)</b>

**NHS conditions of contract for the purchase of goods (supplementary)****May 2015**

In order to ensure consistency of approach, the new Cabinet Office terms are awaited to reflect the requirements of Regulation 73, of the Public Contracts Regulations 2015 and, until such time, the requirements of the Regulation will be implied into the contract and bidders will be deemed to submit their bid/offer on that basis.

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## Interpretation

1 In these conditions of contract the following definitions shall apply:

*The Authority* means the health service body which places the order for the goods. Where such order is placed under a contract agreed between the Authority and the contractor, the Authority shall have been specified in the Order. *Health service body* means:

- (i) a health service body as defined in section 9 of the National Health Service Act 2006;
- (ii) the Commercial Medicines Unit, part of the Department of Health (CMU)
- (iii) any NHS foundation trust listed in the registered of NHS foundation trusts maintained pursuant to section 39 of the National Health Service Act 2006

as the case may be.

*Confidential information* means information, data and material of any nature which either party may receive or obtain in connection with the operation of the contract and:

- (i) which comprises personal data or sensitive personal data (as both terms are defined in the Data Protection Act 1998) or (in the case of the Authority) which relates to any patient or his or her treatment or medical history;
- (ii) the release of which is likely to prejudice the commercial interests of the Authority or the contractor respectively; or
- (iii) which is a trade secret.

*The contract* means the agreement concluded between the Authority and the contractor, comprising the Order, these NHS conditions of contract for the purchase of goods (supplementary), the NHS supplementary conditions of contract for the purchase of pharmaceuticals and the Specification.

*The contractor* means the person who by the contract undertakes to supply the goods to the Authority as provided for in the contract. Where the contractor is an individual or partnership the expression shall include the personal representatives of that individual or of the partners.

*The contract price* means the price exclusive of value added tax that is payable to the contractor by the Authority under the contract for the full and proper performance by the contractor of its part of the contract.

*Framework Agreement* means the framework agreement between the Secretary of State for Health and the contractor being the basis on which the Authority is able to make an Order.

*The goods* means all goods, materials or articles that the contractor is required to supply under the contract as described in the Order.

The NHS *supplementary conditions of contract for the purchase of pharmaceuticals* means the document named as such in the Framework Agreement

*Order* means a request for the goods raised by the Authority pursuant to the Framework Agreement.

*Parties* means the contractor and the Authority and *Party* means either the contractor or the Authority as the context allows.

*Specification* means the description of the goods as referred to in the Framework Agreement.

- 2 Unless the context otherwise requires it, reference to any statute, order, regulation or other similar instrument shall be construed as a reference to the statute, order, regulation or instrument as amended or re-enacted by any subsequent statute, order, regulation or instrument.
- 3 The headings to these conditions shall not affect their interpretation.
- 4 Any decision, act or thing that the Authority is required or authorised to take or do under the contract may be taken or done by any person authorised, either generally or specifically, by the Authority to take or do that decision, act or thing, provided that upon receipt of a written request the Authority shall inform the contractor of the name of any person so authorised.

### **Variation of conditions**

- 5 The goods shall be supplied solely in accordance with these conditions. All other contractual terms which in any way add to, vary or contradict these conditions upon which the contractor may seek to rely or otherwise impose on the Authority shall be excluded and not form part of the contract (whether or not such other contractual terms post-date these conditions) unless the Authority has specifically agreed in writing to be bound by any of such other contractual terms.
- 6 No later variation to the contract shall be binding unless it has been agreed in writing and signed by an authorised representative of the Authority.

### **The Commercial Medicines Unit**

- 7 Subject to condition 8, where the Secretary of State for Health acting through the Commercial Medicines Unit (part of the Department of Health), has negotiated the contract with the contractor such negotiation has been undertaken by the Commercial Medicines Unit in its capacity as agent for the Authority, so that it incurs no personal liability on the contract or on any other contract resulting from such negotiation.

- 8** Where exceptionally the Commercial Medicines Unit makes it clear in its official order that it is placing the Order on its own account as principal, condition 7 shall not apply and the Secretary of State for Health shall be the Authority with all the rights and liabilities of the Authority under the contract.

### **Specification**

- 9** Unless otherwise specified the goods shall be new, of the qualities and kinds described and equal in all respects to the Specification and any samples provided by the contractor and accepted by the Authority. Except insofar as may otherwise be indicated by the Specification the goods shall be strictly in compliance with the latest relevant British standards or equivalent European Union standards where such exist.

### **Identification of goods**

- 10** All goods that customarily bear any mark, tab, brand, label or other device indicating place of origin, inspection by any government or other body or standard of quality must be delivered with all the said marks, tabs, brands, labels, serial numbers or other devices intact.

### **Packaging**

- 11.1** Where the goods are imported into the United Kingdom then for the purposes of the Producer Responsibility Obligations (Packaging Waste) Regulations 1997 the contractor shall assume the rolled-up obligations for all the activities performed outside the United Kingdom in relation to the goods and the packaging which is used for the containment, protection, handling, delivery and presentation of the goods in addition to any other obligations the Contractor may have pursuant to the said Regulations.
- 11.2** The goods shall be securely packed in trade packages of a type normally used by the contractor for commercial deliveries of the same or similar goods either in retail or in bulk quantities within the United Kingdom.
- 12** The following details shall be shown on the outside of every package (where applicable) unless otherwise specified in the contract:
- 12.1 a description of the goods
  - 12.2 the quantity in the package
  - 12.3 any special directions for storage
  - 12.4 the expiry date of the contents
  - 12.5 the batch number

12.6 the name of the manufacturer.

### **Containers and pallets**

13 The contractor shall collect without charge any returnable containers (including pallets) within 21 days of the date of the relevant delivery note unless otherwise instructed by the Authority named in the contract. Empty containers not so removed may be returned by the Authority at the contractor's expense or otherwise disposed of at the Authority's discretion. Charged containers shall be credited in full by the contractor upon collection or return.

### **Forms**

14.1 A delivery note shall accompany each delivery of the goods. An invoice shall be rendered on the contractor's own invoice form to the Authority. All delivery notes and invoices shall be clearly marked with the Authority's order number, the consignee and the description and quantity of the goods concerned, and shall show separately any additional charge for containers and/or any other item not included in the contract price or, where no charge is made, whether the containers are required to be returned, and shall be compatible in all respects with these conditions.

14.2 With the prior written agreement of all parties, the arrangements set out in clause 14.1 may be suspended in favour of alternative arrangements (including electronic trading and new logistics process) provided that such alternative arrangements improve service levels and/or reduce costs for the benefit of the Authority.

### **Delivery**

15.1 In the absence of written agreement between the Authority and the contractor to the contrary, the goods shall be delivered by the contractor carriage paid and in such quantities, in such manner, at such times and to such places as the Authority or any health service body named in the contract may order in writing from time to time, (being times and places within the period and localities specified in the contract). Any arrangement to deliver goods where carriage is to be charged separately or any arrangement by which goods are collected by the Authority in return for a discount on the carriage paid price shall be recorded in writing and signed by a duly authorised signatory on behalf of the Authority. Where due to an emergency such arrangements cannot be committed to writing and signed off as aforesaid the parties shall confirm such arrangements in writing as soon as possible thereafter.

15.2 Delivery shall only be completed when the goods have been unloaded at the location specified by the Authority and such delivery has been accepted by a duly authorised representative of the Authority. The Authority shall procure that its duly authorised representative is at such a location to accept delivery.

- 16** The time of delivery shall be agreed on the face of the purchase order (or otherwise agreed in writing by the parties) and if no time for delivery is expressly agreed then delivery shall be made within 14 days of receipt of Order.
- 17** Where the time of delivery has been agreed by the parties on the face of the Order or otherwise agreed in writing (and for the avoidance of doubt not where delivery is to be made within 14 days of receipt of order because no time for delivery has expressly been agreed) then time for delivery shall be of the essence and without prejudice to any other right or remedy of the Authority. Failure by the contractor to deliver the goods or any part of them within the time agreed shall entitle the Authority to terminate the contract and purchase other goods of the same or similar description to make good such default and recover from the contractor the amount by which the cost of purchasing other goods exceeds the amount that would have been payable to the contractor in respect of the goods replaced by such purchase provided that the Authority uses all reasonable endeavours to mitigate its losses in this respect.

### **Property and risk**

- 18** Risk in the goods shall pass to the Authority when the goods have been delivered to the Authority and unloaded and the property in the goods shall pass upon the earlier of delivery or the time of any payment being made thereof.

### **Rejection of goods**

- 19** Without prejudice to the operation of condition 22 the goods shall be inspected on behalf of the Authority within a reasonable time after delivery and may be rejected if found to be defective or inferior in quality to or differing in form or material from the requirements of the contract, or if they do not comply with any term, whether expressed or implied, of the contract.
- 20** Without prejudice to the operation of condition 22 the Authority shall notify the contractor of:
- 20.1 the discovery of any defect within a reasonable time of its discovery and shall give the contractor all reasonable opportunities to investigate such defect
- 20.2 any shortage or damage caused in transit and found on delivery within 14 days of delivery.
- 21** The whole of any consignment may be rejected if a reasonable sample of the goods taken indiscriminately from that consignment is found not to conform in every material respect to the requirements of the contract.
- 22** The Authority's right of rejection shall continue irrespective of whether the Authority has in law accepted the goods. In particular, taking delivery, inspection, use or payment by the Authority of the goods or part of them shall not constitute acceptance, waiver or approval and shall be without prejudice to any right or remedy that the Authority may have against the contractor; provided that the right of rejection

shall cease within a reasonable time from the date on which the Authority discovers or might reasonably be expected to discover the latent defect or other relevant breach of contract.

- 23** Goods so rejected after delivery shall be removed by the contractor at its own expense within fourteen days from the date of notification of rejection. If the contractor fails to remove them within such period the Authority may return the rejected goods at the contractor's risk and expense and charge the contractor for the cost of storage from the date of rejection.

### **Force majeure**

- 24** Neither party shall be liable to the other for any failure to perform its obligations under the contract where such performance is rendered impossible by circumstances beyond its control, but nothing in this condition shall limit the obligations of the contractor to use its best endeavours to fulfil its obligations under the contract.

### **Price and payment**

- 25** The contract price shall be net, i.e. after the deduction of all agreed discounts. It shall include the cost of packaging, packing materials, addressing, labelling, loading and delivery to the addresses named in the contract or order. The amount of any duty additional to the contract price and any early settlement discounts shall be shown separately in the contract.
- 26** Where the Contractor submits an invoice to the Authority in accordance with condition 25 the Authority will consider and verify that invoice in a timely fashion.
- 27** The Authority should pay the contract price to the contractor, by BACS (Bank Account Clearing System) if the Authority so chooses, within 30 days from the date on which the Authority has determined that the invoice is valid and undisputed.
- 28** Where the Authority fails to comply with condition 26 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of condition 27 after a reasonable time has passed.
- 29** Whenever under the contract any sum of money shall be recoverable from or payable by the contractor the same may be deducted from any sum then due or which at any time thereafter may become due to the contractor under the contract or under any other contract with the Authority.
- 30** Where the Contract Price is or may become subject to any pricing requirements of any voluntary and/or statutory pricing regulation schemes, the Parties shall comply with such requirements as required by Law from time to time and specifically as required by the statutory pricing regulation scheme (and any future regulation) or to the extent applicable to the Supplier from time to time as an industry member of a voluntary scheme, including any reductions in price by reason of the application of such schemes.

## Indemnity and limitation of liability

- 31** Neither Party shall be liable to the other Party for any loss or damage, costs or expenses incurred or suffered by the other Party as a result of any breach of the terms of the contract, unless the same were in the reasonable contemplation of the Parties at the time when they entered into the contract.

Except in the case of death or personal injury caused by negligence, and fraudulent misrepresentation or in other circumstances where liability may not be so limited under any applicable law, the liability of either Party under or in connection with the Contract, whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall not exceed the sum of £5 million for any one incident in any one Year.

The Contract Price of the goods under the contract has been negotiated and agreed on the basis that the Parties may limit their liability to each other as set out in the contract and the Parties each confirm that they will themselves bear or insure against any loss for which the other Party has limited its liability under the Contract.

## Insurance

- 32** The contractor shall insure against its liability under condition 31 with a minimum limit of indemnity of £5 million in any insurance year or such other sum as may be agreed between the contractor and the Authority.

## Transfer and sub-contracting

- 33** Neither party shall assign the whole or any part of the contract. The contractor shall not sub-contract the production or supply of the goods without the previous consent in writing of the Authority, such consent not to be unreasonably withheld or delayed.

The contractor acknowledges and agrees that by way of illustration only and without restricting or fettering the Authority's right to withhold its consent on reasonable grounds it shall be reasonable for the Authority to withhold its consent where the sub-contracting of the production or supply of goods would be contrary to law or contrary to public or government policy or contrary to public morality and decency or which is not in the national interest. If with the Authority's consent the contractor sub-contracts the production or supply of the goods, every act or omission of the sub-contractor shall for the purposes of this contract be deemed to be the act or omission of the contractor and the contractor shall be liable to the Authority thereafter as if such act or omission had been committed or omitted by the contractor itself.

- 34** In accordance with condition 33. Where the Contractor is authorised to enter into a Sub-Contract, the Contractor shall include in that Sub-Contract:

- 34.1** Provisions having the same effect as conditions 26, 27 and 28 of this Agreement; and

- 34.2 A provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as conditions 26, 27 and 28 of this Agreement.
- 34.3 In condition 33, "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from the Authority in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.

### **Other participants**

- 35 The Authority reserves the right to include within the contract the requirements of any other healthcare establishments outside the boundaries of the National Health Service (such healthcare establishments being as specified in the contract) and the contractor shall be required to supply the goods on the same terms as quoted in the contract it being the intention of the Parties that goods supplied hereunder are for consumption and not for resale only by such other healthcare establishments as are referred to in the relevant Order. The contractor will only be required to make a delivery to any such other healthcare establishment outside of the UK by separate agreement with the Authority.

### **Patents etc**

- 36 The contract price shall include all royalties, licence fees or similar expenses in respect of the making, use or exercise by the contractor of any invention or design for the purpose of performing the contract.
- 37 The contractor shall indemnify the Authority against any costs, claims, proceedings, expenses and demands arising from the use, manufacture, supply, delivery or initially expected use of any process, article, matter or thing supplied under the contract that would constitute any infringement of any right, patent, design, trademark or copyright or any other intellectual property rights.

### **Confidentiality and Transparency**

- 38.1 In respect of any confidential information (confidential information being that which is expressly designated as confidential or which by its very nature would be deemed to be confidential) it may receive from the other party ("the discloser") and subject always to the remainder of this clause 38, each party ("the recipient") undertakes to keep secret and strictly confidential and shall not disclose any such confidential information to any third party, without the discloser's prior written consent provided that:
- 38.1.1 the recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of the contract;

38.1.2 the provisions of this clause 38 shall not apply to any confidential information which:-

- (a) is in or enters the public domain other than by breach of the contract or other act or omissions of the recipient;
- (b) is obtained by a third party who is lawfully authorised to disclose such information; or
- (c) is authorised for release by the prior written consent of the discloser; or
- (d) the disclosure of which is required to ensure the compliance of the Authority with the Freedom of Information Act 2000 (the FOIA).

**38.2** Nothing in this clause 38 shall prevent the recipient from disclosing confidential information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law or, where the contractor is the recipient, to the contractor's immediate or ultimate holding company provided that the contractor procures that such holding company complies with this clause 38 as if any reference to the contractor in this clause 38 were a reference to such holding company.

**38.3** The contractor authorises the Authority to disclose the confidential information to such person(s) as may be notified to the contractor in writing by the Authority from time to time to the extent only as is necessary for the purposes of auditing and collating information so as to ascertain a realistic market price for the goods supplied in accordance with the contract, such exercise being commonly referred to as "benchmarking". The Authority shall use all reasonable endeavours to ensure that such person(s) keeps the confidential information confidential and does not make use of the confidential information except for the purpose for which the disclosure is made. The Authority shall not without good reason claim that the lowest price available in the market is the realistic market price.

**38.4** The Authority may disclose the Confidential Information of the Supplier:

- (a) on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;
- (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- (c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 12.4(a) (including any benchmarking organisation) for any purpose relating to or connected with this Agreement;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Agreement; or
- (f) on a confidential basis to a proposed successor body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 38.

- 38.5** The contractor acknowledges that the Authority is or may be subject to the FOIA. The contractor notes and acknowledges the FOIA and both the respective Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records (which are issued under section 46 and 47 of the FOIA respectively) and the Environmental Information Regulations 2004 as may be amended, updated or replaced from time to time. The contractor will act in accordance with the FOIA, these Codes of Practice and these Regulations (and any other applicable codes of practice or guidance notified to the contractor from time to time) to the extent that they apply to the contractor's performance under the contract.
- 38.6** The contractor agrees that:
- 38.6.1 without prejudice to the generality of clause 38.2, the provisions of this clause 38 are subject to the respective obligations and commitments of the Authority under the FOIA and both the respective Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records (which are issued under section 46 and 47 of the FOIA respectively) and the Environmental Information Regulations 2004;
  - 38.6.2 subject to clause 38.5.3, the decision on whether any exemption applies to a request for disclosure of recorded information is a decision solely for the Authority;
  - 38.6.3 where the Authority is managing a request as referred to in clause 38.5.2, the contractor shall co-operate with the Authority making the request and shall respond within five (5) working days of any request by it for assistance in determining how to respond to a request for disclosure.
- 38.7** The contractor shall and shall procure that its sub-contractors shall:
- 38.7.1 transfer any request for information, as defined under section 8 of the FOIA, to the Authority as soon as practicable after receipt and in any event within five (5) working days (a working day being any day of the week from Monday to Friday save those days which are Bank holidays in the United Kingdom) of receiving a request for information;
  - 38.7.2 provide the Authority with a copy of all information in its possession or power in the form that the Authority requires within five (5) working days (or such other period as the Authority may specify) of the Authority requesting that information; and
  - 38.7.3 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a request for information within the time for compliance set out in section 10 of the FOIA.

- 38.8** The Authority may consult the contractor in relation to any request for disclosure of the contractor's confidential information in accordance with all applicable guidance.
- 38.9** Notwithstanding any other term of this contract, the contractor hereby gives his consent for the Authority to publish the contract in its entirety, including from time to time agreed changes to the Contract, to the general public except for any information which is exempt from disclosure in accordance with the provisions of the FOIA.
- 38.10** The Authority may consult with the contractor to inform its decision regarding any redactions but the Authority shall have the final decision in its absolute discretion.
- 38.11** This clause 38 shall remain in force without limit in time in respect of confidential information which comprises personal data or which relates to a patient, his or her treatment and/or medical records. Save as aforesaid and unless otherwise expressly set out in the contract, this clause 38 shall remain in force for a period of 3 years after the termination or expiry of this contract.
- 38.12** In the event that the contractor fails to comply with this clause 38, the Authority reserves the right to terminate the contract by notice in writing with immediate effect.

### **Inducements to purchase**

- 39** The contractor shall not offer to the Authority or any of its employees or its representatives or any health service body as a variation of the conditions of the contract, or as an agreement collateral to it, any advantage other than a cash discount against the contract price.
- 40** The Authority shall be entitled to terminate the contract and to recover from the contractor the amount of any loss resulting from such termination in the following circumstances:
- 40.1 if the contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any action in relation to the obtaining or execution of the contract or any other contract with the Authority or any health service body, or for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Authority or any health service body
- 40.2 if the like acts shall have been done by any person employed by it or acting on its behalf (whether with or without the knowledge of the contractor)
- 40.3 if in relation to the contract or any other contract with the Authority or any health service body the contractor or any person employed by it or acting on its behalf shall have committed any offence under the Bribery Act 2010, or shall have given any fee or reward to any officer of the Authority which shall have been exacted or accepted by such officer under colour of his office or employment and is otherwise than such officer's proper remuneration.

## Termination

- 41.1** The Authority may at any time by notice in writing summarily terminate the contract without compensation to the contractor in any of the following events:
- 41.1.1 if the contractor being an individual (or where the contractor is a firm, any partner in that firm) shall at any time become bankrupt or shall have a receiving order, administration order or interim order made against him, or shall make any composition or scheme of arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or if in Scotland he shall become insolvent or notour bankrupt, or any application shall be made for sequestration of his estate, or a trust deed shall be granted by him for the benefit of his creditors
- 41.1.2 if the contractor being a company shall pass a resolution, or the courts shall make an order, that the company shall be wound up (except for the purposes of amalgamation or reconstruction), or if an administrative receiver on behalf of a creditor shall be appointed, or if the courts shall make an administration order, or if circumstances shall arise that entitle the courts or a creditor to appoint an administrative receiver, or which entitle the courts to make a winding-up order or administration order provided always that such termination shall not prejudice or affect any right of action or remedy that shall have accrued or shall accrue thereafter to the Authority.
- 41.1.3 The Authority may terminate this contract forthwith by notice in writing to the contractor if the contractor is in breach of this contract and shall have failed to remedy the breach within (30) days of receipt of a request in writing from the Authority to remedy the breach such request indicating that failure to remedy the breach may result in termination of this contract.
- 41.2** The contractor may terminate this contract forthwith by notice in writing to the Authority if the act or omission of any health care establishment referred to in clause 35 would amount to a breach of this contract by the Authority if it had been committed or omitted by the Authority and that health care establishment shall have failed to remedy such act or omission within 30 days of receipt of a request in writing from the contractor to remedy the same such a request indicating that failure to remedy the same may result in termination of this contract. The contractor undertakes to provide a copy of such request to the Authority at the same time it is received by the other health care establishment in question.
- 41.3** The termination of the contract (in whole or in part) under this clause 41 shall be without prejudice to:
- 41.3.1 (where the contract is terminated in part only) the continuance and validity of the part or parts of the contract not terminated by the notice under this clause 41;
- 41.3.2 the rights or obligations of either party which have accrued prior to the date of termination.

**Safety, quality and efficacy of medicinal products**

- 42** The sale, supply, importation, manufacture or assembly of such of the goods as are medicinal products within the meaning of the Medicines Act 1968 shall comply with the provisions of the Medicines Acts 1968 and 1971 and the Human Medicines Regulations 2012 and the regulations made thereunder. For the avoidance of doubt the Human Medicines Regulations 2012 take precedence in all matters covered therein.
- 43** In the event that the contractor is in breach of condition 42, then without prejudice to any other right or remedy of the Authority, the Authority shall be entitled to reject the goods and the contractor shall indemnify the Authority against all costs, claims, liabilities, expenses made against or incurred by the Authority as a result of such breach, including (without limitation) the cost of purchasing alternative goods and all administrative costs incurred by the Authority in inviting and awarding tenders for the supply of such alternative goods.

**Publicity**

- 44** The contractor shall not advertise or publicly announce that it is supplying goods or undertaking work for the Authority without the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed.

**Notices**

- 45** Any notice required or permitted to be given by either party to the other under these conditions of contract for the purchase of goods shall be in writing and sent by first class prepaid mail, either recorded delivery or registered post, addressed to that other party at its registered office or principal place of business, or such other address which may have been notified to the party giving the notice. A notice shall be deemed to have been served forty-eight hours after posting.

**Law**

- 46** The parties shall accept the non-exclusive jurisdiction of the English courts and agree that the contract is to be governed and construed according to English law.

**Communications**

- 47** All written and oral communications, all documents and the labelling and marking of all packages shall be in English.

**Importation procedures**

- 48** The contractor shall be responsible for all procedures and bear all costs involved in the importation of the goods.

## The Commercial Medicines Unit Catalogue - electronic trading

49 The Commercial Medicines Unit Catalogue is a web-based tool whereby the appropriate details pertaining to medicines framework agreements are communicated to Participating Authorities (as defined in the Framework Agreement). The main function of the Commercial Medicines Unit Catalogue is to illustrate the comprehensive range of goods and services available on the Commercial Medicines Unit contracts in a user-friendly fashion.

Once the Commercial Medicines Unit's and the contractor's systems are implemented, both expect to exchange information electronically in a form and on a media to be agreed between them. It shall be the responsibility of each of the Commercial Medicines Unit and the contractor to ensure that all such information is correct as at the date upon which it is delivered to the other and that such information does not contain any data or statement which gives rise to any liability on the part of the other following publication of the same in accordance with this condition. Each of the Commercial Medicines Unit and the contractor warrants that such information is complete and accurate as at the date it is delivered to the other and that in the event such information ceases to be complete and accurate then the party supplying the information shall promptly notify the other in writing of any modification or addition to or any inaccuracy or omission in such information.

The Commercial Medicines Unit shall reproduce the information provided by the contractor in the Commercial Medicines Unit Catalogue, which shall be made available upon the National Health Service internal communications network in electronic format.

Subject to condition 38, the contractor grants to the Commercial Medicines Unit a licence to use and exploit the information provided by it as aforesaid for the purpose of illustrating the range of goods and services available under the Commercial Medicines Unit contracts for an indefinite period subject to the contractor notifying the Commercial Medicines Unit in writing that it no longer wishes such information to be included in the Commercial Medicines Unit Catalogue.

If requested in writing by the Commercial Medicines Unit, the contractor and the Commercial Medicines Unit shall forthwith negotiate in good faith an agreement to use such electronic trading system as the Commercial Medicines Unit may specify in its request. For the purposes of this condition, "electronic trading system" shall include, without limitation, Electronic Data Interchange with such message standards and protocols as the Commercial Medicines Unit may specify and the World Wide Web.

The contractor shall indemnify the Commercial Medicines Unit from and against all liability of the contractor arising out of or in connection with any statement relating to the goods or information or material on or description of the goods provided by or on behalf of the contractor which is included in the Commercial Medicines Unit Catalogue or associated material except for liability arising as a result of the

Commercial Medicines Unit's wilful or negligent misrepresentation of, such statements information, material or description.

### **Sales information**

- 50 i) If requested by the Authority, the contractor shall provide the Authority with statements giving accurate and complete details of the quantity and value of the goods supplied by the contractor to the Authority pursuant to the contract. The frequency, format and level of detail to be included in such statements shall be as specified by the Authority in the Order (or, if no such description is set out in or attached to the Order, as set out in or attached to any documentation inviting the contractor to tender for the appointment to supply the goods.
- ii) The contractor shall keep at its normal place of business detailed, accurate and up to date records of the amount and value of the goods sold by it to any Authority on or after the date of this contract and pursuant to this contract together with accurate details of the identity of the Authority to which such goods were sold. Subject to any other auditing process being agreed between the Authority and the contractor, the Authority shall be entitled on reasonable notice to enter the contractor's premises during normal office hours and to inspect such records in order to verify whether any statement supplied by the contractor to the Authority pursuant to condition (a) above is accurate and complete.

### **Data protection**

- 51 The contractor must protect personal data in accordance with the provisions and principles of the Data Protection Act 1998 and in particular the contractor must ensure compliance with the Authority's security arrangements and ensure the reliability of its staff who have access to any personal data held by the Authority. In addition, if the contractor is required to access or process personal data held by the Authority, the contractor shall keep all such personal data secure at all times and shall only process such data in accordance with the Data Protection Act 1998 and any instructions received from the Authority.

The contractor shall indemnify the Authority and the Secretary of State for Health against all claims and proceedings and all liability, loss, costs and expenses incurred in connection therewith made or brought by any person in respect of any loss, damage or distress caused to that person as a result of the contractor's unauthorised and/or unlawful processing or the contractor's destruction and/or damage to any personal data held by the contractor, its employees or agents.

### **Mediation**

- 52 If any dispute arises out of these Conditions (other than in relation to any matter in which the Authority has a discretion which is exercised in accordance with the terms of these Conditions and which shall be final and conclusive) the parties will use all of their respective reasonable endeavours to resolve it by negotiation. If negotiations fail to resolve such dispute the parties will attempt to settle it by mediation in

accordance with the CEDR Model Mediation Procedure. To initiate mediation a party shall give notice in writing (a "Mediation Notice") to the other party requesting mediation of the dispute and shall send a copy thereof to CEDR asking CEDR to nominate a mediator in the event that the parties shall not be able to agree such appointment by negotiation. The mediation shall commence within 28 days of the Mediation Notice being served. Neither party will terminate such mediation until each party has made its opening presentation and the mediator has met each party separately for at least one hour. Thereafter paragraph 14 of the CEDR Model Mediation Procedure will apply. Neither party will commence legal proceedings against the other until thirty days after such mediation of the dispute in question has failed to resolve the dispute.

### **Third party rights**

- 53** Except as otherwise provided in this contract, including without limitation clause 31, this contract is intended and agreed to be solely for the benefit of the contractor and the Authority and no third party shall acquire any benefit, claim or rights of any kind whatsoever pursuant to, under, by or through this contract.

### **Environmental considerations**

- 54** The contractor shall comply in all material respects with applicable environmental laws and regulations in force from time to time in relation to the products/services the subject of the contract. Where the provisions of any such legislation are implemented by the use of voluntary agreements or codes of practice, the contractor shall comply with such agreements or codes of practice as if they were incorporated into English law subject to those voluntary agreements being cited in the tender documentation. Without prejudice to the generality of the foregoing, the contractor shall:-

- comply with all reasonable stipulations of the Authority aimed at minimising the packaging in which the products the subject of the contract, or any products supplied by the contractor to the Authority as part of performance of the services, are supplied;
- promptly provide such data as may reasonably be requested by the Authority from time to time regarding the weight and type of packaging according to material type used in relation to all products supplied to the Authority under or pursuant to the contract;
- comply with all obligations imposed on it in relation to the products/services the subject of the contract by the Producer Responsibility Obligations (Packaging Waste) Regulations 2005 (or any other equivalent legislation giving effect in any part of the European Economic Area to the Packaging and Packaging Waste Directive 94/62/EC);
- label all products supplied to the Authority under the contract, and the packaging of those products, to highlight environmental and safety information as required by applicable UK and EU legislation;

- unless otherwise agreed with the Authority, insofar as any products supplied under the contract comprise or include electrical or electronic equipment, manage the said equipment and associated consumables at end of life to facilitate recovery, treatment and recycling and provide any information which the Authority may reasonably require from time to time regarding the costs of such activity;
- promptly provide all such information regarding the environmental impact of any products supplied or used under the contract as may reasonably be required by the Authority to permit informed choices by end users;
- where goods are imported into the United Kingdom then for the purposes of the Producer Responsibility Obligations (Packaging Waste) Regulations 2005 the Contractor shall assume the rolled-up obligations for all the activities performed outside the United Kingdom in relation to the goods and the packaging which is used for the containment, protection, handling, delivery and presentation of the goods in addition to any other obligations he may have pursuant to the said Regulations.

The contractor shall meet all reasonable requests by the Authority for information evidencing the contractor's compliance with the provisions of this clause.

## **Equality and non-discrimination**

**55** The contractor shall not:

- 55.1.1 discriminate directly or indirectly or by way of victimisation or harassment against any person on racial grounds within the meaning of the Equality Act 2010;
- 55.1.2 contravene the Equality Act 2010.

**55.2** The contractor shall notify the Authority immediately of any investigation of or proceedings against the contractor under the Equality Act 2010 and shall cooperate fully and promptly with any requests of the person or body conducting such investigation or proceedings, including allowing access to any documents or data required, attending any meetings and providing any information requested.

**55.3** The contractor shall indemnify the Authority against all costs, claims, charges, demands, liabilities, damages, losses and expenses incurred or suffered by the Authority arising out of or in connection with any investigation conducted or any proceedings brought under the Equality Act 2010 due directly or indirectly to any act or omission by the contractor, its agents, employees or sub-contractors.

**55.4** The contractor shall impose on any sub-contractor obligations substantially similar to those imposed on the contractor by this clause 55.

**55.5** In addition to its obligations under this clause 55 relating to race equality, the contractor shall:

- 55.5.1 ensure that it complies with all current employment legislation and in particular, does not unlawfully discriminate within the meaning of the Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000, the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002, or any other relevant legislation relating to discrimination in the employment of employees for the purpose of providing the goods. The contractor shall take all reasonable steps (at its own expense) to ensure that any employees employed in the provision of the goods do not unlawfully discriminate within the meaning of this clause 55.5 and shall impose on any sub-contractor obligations substantially similar to those imposed on the contractor by this clause 55.5; and
- 55.5.2 in the management of its affairs and the development of its equality and diversity policies, the contractor shall co-operate with the Authority in light of the Authority's obligations to comply with statutory equality duties. The contractor shall take such steps as the Authority considers appropriate to promote equality and diversity, including race equality, equality of opportunity for disabled people, gender equality, and equality relating to religion and belief, sexual orientation and age in the provision of the goods.