

## Terms and Conditions

### 1. DEFINITIONS

1.1 "Authority" means the Secretary of State for Health.

1.2 "Contract" means the arrangement between the Authority and the Contractor, comprising the Purchase Order and these terms and conditions.

1.3 "Contractor" means the person, firm, partnership or company with whom the Authority enters into the Contract.

1.4 "Goods" the goods (or any part of them) set out in the Purchase Order.

1.5 "Party" (and "Parties") means a party to (and both parties to) the Contract.

1.6 "Purchase Order" means the Authority's commercial document showing the agreed type, quantity and price of Goods and/or Service the Contractor will supply to the Authority.

1.7 "Service" means the service to be supplied as specified in the Purchase Order.

1.8 "Staff" means all persons employed by the Contractor to perform its obligations under the Contract together with the Contractor's servants, agents, suppliers and sub-contractors used in performing the Contract.

### 2 CONTRACTOR OBLIGATIONS

2.1 The Contractor shall co-operate with the Authority in all matters relating to the supply of the Goods and/or Service and comply with the Authority's instructions. The Contractor shall promptly and efficiently provide the Goods and/or Service in accordance with:

2.1.1 the Contract;

2.1.2 the skill and care which would reasonably be expected from a person engaged in a similar type of work to providing the Goods or Service; and

2.1.3 all applicable laws (including health, safety and welfare at work legislation, the Equality Act 2010 and the Human Rights Act 1998).

2.2 In carrying out the Contract, the Contractor shall comply with all relevant provisions of the Data Protection Act 1998 and the Authority's security policies and shall be liable for, and indemnify the Authority against, any expense, liability, loss, claim or proceedings arising as a result of or in connection with any breach of this clause.

### 3 PAYMENT

3.1 The Authority shall pay the Contractor on the amount stated on the Purchase Order, which shall be the full and exclusive remuneration of the Contractor.

3.2 The Authority shall pay the Contractor the price on the Purchase Order within 30 days, provided that the Contractor has provided full and proper delivery of the Goods and/or Service, supported by full and accurate information and documentation to the satisfaction of the Authority.

3.3 Should the Purchase Order from the Authority contain products such as (but not restricted to) face masks, coveralls and hand sanitisers, which have been subject to extremely high demand due to the Covid 19 outbreak, the Contractor will require upfront payment on a non-cancellable basis to secure those orders.

## 4 SUPPLY AND DELIVERY OF GOODS AND SERVICES

4.1 The Contractor shall ensure that the Goods shall:

(a) correspond with their description in the Purchase Order and any other specification for the Goods agreed with the Authority; and

(b) be delivered on the date specified and to the location agreed with the Authority's representative.

4.2 The Contractor shall meet any performance dates for the Services specified in the Purchase Order or notified to the Contractor by the Authority.

4.3 The Contractor shall ensure that the Services conform with all descriptions and specifications of the Service as agreed with the Authority and provide all equipment, tools and vehicles and such other items as are required to provide the Services.

4.4 The Contractor shall satisfy itself that Staff are suitable to provide the Goods and/or Service. The Contractor shall use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Contractor can fulfil its obligations under the Contract.

## 5 ASSIGNMENT AND SUB-CONTRACTING

The benefit and burden of this Contract may not be assigned or sub-contracted by the Contractor without the written consent of the Authority.

## 6 INTELLECTUAL PROPERTY RIGHTS

6.1 The Parties acknowledge that all intellectual property rights owned at the date of the Contract by the Authority shall remain so owned and all intellectual property rights owned at the date of the Contract by the Contractor shall remain so owned.

6.2 All Intellectual Property Rights in any material or works that the Contractor produces to comply with its obligations under the Contract after its formation (including any guidance, specifications, instructions, plans, data, drawings, databases, models, designs or other material prepared by or for the Contractor to perform the Service) shall belong to the Authority. This clause shall not affect the ownership of Intellectual Property Rights that existed prior to the Contract, as described in clause 9.1.

6.3 The Contractor shall indemnify the Authority against all claims, demands, actions, costs, (including legal costs and disbursements on a solicitor and client basis), and losses arising from or incurred by reason of any infringement or alleged infringement of any Intellectual Property Right in connection with provision of the Goods and/or Service by the Contractor.

## 7 STATUS OF CONTRACTOR

The Contractor agrees that nothing in the Contract shall create a contract of employment, relationship of agency, partnership or joint venture between the Parties.

## 8 REPUTATION AND PUBLIC SERVICE CONSIDERATIONS

In providing the Goods and/or Service the Contractor shall pay regard to the standing and reputation of the Authority and shall not do (by act or omission) anything that may bring the standing or reputation of the Authority into disrepute, attract adverse publicity to the Authority or harm public confidence in the Authority.

## 9 WARRANTIES

9.1 The Contractor warrants and represents to the Authority that:

9.1.1 the Goods or any goods supplied by the Contractor pursuant to the delivery of the Service shall be of satisfactory quality, fit for their purpose and free from defects in design, material and workmanship;

9.1.2 the Contractor has full capacity and authority and all necessary licences, permits and consents to enter into and to perform the Contract;

9.1.3 the provision of the Goods and/or Service and the Authority's use thereof, shall not infringe any third party intellectual property rights;

9.1.4 the Contractor will make all reasonable endeavours to ensure that any representations made to the Authority are true and accurate; and

9.1.5 there are no contractual obligations, claims, litigation, or proceedings against the Contractor which could materially affected its ability to perform its obligations under the Contract.

## 10 INDEMNITY AND LIABILITY

10.1 The aggregate liability of the Contractor in respect of all defaults, claims or loss, whether arising from breach of the Contract, the supply or failure to supply the Goods and/or Service, tort or otherwise shall in no event exceed 150% of the price in the Purchase Order. This clause shall not affect the Contractor's liability under the indemnity or right to recovery in clauses 2.2 (data protection), 6.3 (Intellectual Property Rights) and 12.2 (fraud).

10.2 This clause 10 shall survive termination of the Contract.

## 11 AUTHORITY REMEDIES

If the Contractor fails to comply with the Contract, the Authority shall, without limiting its other rights or remedies, have one or more of the following rights:

(a) to terminate the Contract with immediate effect by giving written notice to the Contractor; and

(b) to recover from the Contractor any costs incurred by the Authority in obtaining substitute goods and/or services from a third party.

## 12 FRAUD

12.1 The Contractor shall safeguard the Authority's funding of the Service or purchase of the Goods against fraud and notify the Authority immediately if it suspects that any serious irregularity or fraud has occurred or is occurring.

12.2 If the Contractor or its Staff commits fraud in relation to the Contract the Authority may terminate the Contract immediately and recover from the Contractor any loss suffered by the Authority resulting from the termination.

## 13 PREVENTION OF BRIBERY AND CORRUPTION

The Contractor must comply with the Bribery Act 2010 and failure to do so will allow the Authority to terminate the Contract immediately in writing.

## 14 CONFIDENTIALITY

The Contractor shall take all necessary precautions to ensure that all confidential information obtained from the Authority under or in connection with the Contract is treated as confidential

and not disclosed (without prior written approval) or used by it, its Staff or its professional advisors otherwise than for the purposes of the Contract.

#### 15 FREEDOM OF INFORMATION

The Contractor acknowledges that the Authority is subject to the Freedom of Information Act 2000 and the Environmental Information Regulations and shall assist and cooperate with the Authority (at the Contractor's expense) to enable the Authority to comply with its information disclosure requirements.

#### 16 TERM

The Contract shall expire when the Contractor has supplied the Goods and/or Service to the Authority's satisfaction and the Authority has paid all sums due to the Contractor.

#### 17 TERMINATION

Where the Contractor supplies the Goods or Service over a period of more than one month, the Authority may terminate the Contract by giving the Contractor 1 month notice in writing without the need to give any reason for the termination.

#### 18 VARIATION

The Agreement cannot be varied except in writing by both Parties.

#### 19 DISPUTE RESOLUTION

The Parties shall attempt in good faith to negotiate a settlement to any dispute arising out of or in connection with the Contract. Such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.

#### 20 LAW AND JURISDICTION

The formation, interpretation and operation of the Contract and any disputes arising under or in any way connected with its subject matter shall be subject to English law and the English courts.