

APPENDIX C

TERMS AND CONDITIONS OF CONTRACT FOR GOODS

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1. INTERPRETATION

1.1 In this Contract:

“Authority”	means the Authority identified in the Invitation to Tender;
“Award Letter”	means the letter sent on behalf of the Authority to the Supplier which confirms the award of the Contract and which may give details of the Goods to be supplied by the Supplier to the Authority in accordance with the terms of this Contract;
“Contract”	means these terms and conditions, the Invitation to Tender, the Purchase Order, the Specification and (if applicable) the Award Letter;
“Crown”	means the government of the United Kingdom including, but not limited to, government ministers, government departments, government offices and government agencies;
“Default”	means any breach of the obligations of the Supplier (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the Supplier or the Staff in connection with or in relation to the subject-matter of the Contract and in respect of which the Supplier is liable to the Authority;
“Delivery”	means the delivery and installation, if any, of the Goods by the Supplier to the Premises on the Delivery Date and “Deliver” and “Delivered” shall be interpreted accordingly;
“Delivery Date”	means the date and time specified as the delivery date for the Goods in the Purchase Order or Award Letter as applicable;
“DPA”	means the Data Protection Act 1998;
“Environmental Policy”	means the conservation of energy, water, wood, paper and other resources, the reduction of waste and phasing out of the use of ozone depleting substances and minimising the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment;
“FOIA”	means the Freedom of Information Act 2000;
“Goods”	means the goods to be provided to the Authority as identified in the Specification
“Information”	has the meaning given under section 84 of the FOIA;
“Invitation to Tender”	means the invitation to tender document (together with any related documentation referred to in that document) issued by the Authority relating to the procurement for this Contract;
“Party/Parties”	the Supplier and/or the Authority (as appropriate);



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“Premises”	will be defined in the Purchase Order, or Invitation to Tender, as applicable, or if such term is not defined it will be the address to which the Authority requires the Goods to be Delivered as specified in the Purchase Order;
“Price”	means the amount payable by the Authority to the Supplier for the Goods as stated in the Purchase Order or Award Letter (as applicable);
“Purchase Order”	means the Authority’s order for the Goods which has a unique Purchase Order number, and details the Goods to be supplied by the Supplier to the Authority in accordance with the terms of this Contract;
“Purchase Order Number”	means the reference given to the Purchase Order by the Authority;
“Request for Information”	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant;
“Specification”	means any specification for the Goods: (a) produced by the Supplier and agreed with the Authority; or (b) supplied to the Supplier by the Authority including any specification contained in the Invitation to Tender, Purchase Order or Award Letter, which set out the quantity, description, quality and price of the Goods and any documents referred to therein;
“Staff”	means all persons employed by the Supplier to perform its obligations under this Contract together with the Supplier’s servants, agents, suppliers and sub-suppliers used in the performance of its obligations under this Contract;
“Supplier”	means the Supplier identified in the Purchase Order;
“VAT”	means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
“Working Day”	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

1.2 In the event of and only to the extent of any conflict between the Purchase Order, the Award Letter, the Specification, the Invitation to Tender and these terms and conditions the conflict shall be resolved in accordance with the following order of precedence:

- 1.2.1 the Specification;
- 1.2.2 the Invitation to Tender;
- 1.2.3 these terms and conditions;

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1.2.4 the Purchase Order; and

1.2.5 any Award Letter.

1.3 In this Contract unless the context otherwise requires:

1.3.1 references to numbered clauses are references to the relevant clause in this Contract;

1.3.2 any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;

1.3.3 the headings to the clauses of this Contract are for information only and do not affect the interpretation of this Contract;

1.3.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;

1.3.5 where the word 'including' is used in this Contract, it will be understood as meaning 'including without limitation';

1.3.6 words importing the singular meaning include where the context so admits the plural meaning and vice versa..

2. BASIS OF CONTRACT

2.1 The Supplier acknowledges and agrees that the Authority will not be bound by any terms and conditions imposed, incorporated or implied by the Supplier concerning the sale of the Goods by the Supplier to the Authority, however such provisions are introduced.

2.2 The Purchase Order will be deemed to be an offer by the Authority to purchase the Goods pursuant to the provisions of this Contract. Signature of the Award Letter or Purchase Order by the Supplier, or any act to fulfil the order for the Goods by the Supplier, will be deemed conclusive evidence of the Supplier's acceptance of this Contract.

2.3 Any variation to the provisions of this Contract (including any special terms and conditions agreed between the Parties) will be inapplicable unless in writing and signed by a duly authorised representative of each Party.

3. QUALITY OF THE GOODS TO BE SUPPLIED

3.1 The Supplier will supply the Goods to the Authority in accordance with this Contract. The Supplier warrants, represents, undertakes and guarantees that the Goods supplied under this Contract will:

3.1.1 (where applicable) be free from defects (manifest or latent) in materials and workmanship and remain so for 12 months after Delivery;

3.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and comply with any applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods;

3.1.3 conform with the specifications, drawings, descriptions given in quotations, estimates, brochures, sales, marketing and technical

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literature or material (in whatever format made available by the Supplier) supplied by, or on behalf of, the Supplier and referred to in the Contract;

- 3.1.4 be free from design defects;
- 3.1.5 be fit for any purpose held out by the Supplier or made known to the Supplier by the Authority expressly or by implication, and in this respect the Authority relies on the Supplier's skill and judgement. The Supplier acknowledges and agrees that the approval by the Authority of any designs provided by the Supplier will not relieve the Supplier of any of its obligations under this clause.

4. PRICE

- 4.1 In consideration of the Supplier's performance of its obligations under this Contract, the Authority will pay the Price in accordance with this clause, and clause 5, below.
- 4.2 The Price will be as stated in the Purchase Order, or Award Letter (as applicable), and no increase will be accepted by the Authority unless agreed in writing before the issue of the Purchase Order.
- 4.3 The Price shall be exclusive of VAT and/or any other applicable taxes or levy. Any VAT and/or other applicable taxes which are chargeable on the supply of the Goods will be charged in addition to the Price at the rate in force at the date shown on the invoice from the Supplier to the Authority.
- 4.4 The Price will include the costs of packaging, insurance, delivery, unloading, stacking and carriage of the Goods. No extra charges will be effective unless agreed in writing and signed by the Authority.

5. PAYMENT

- 5.1 The Authority will pay the Supplier the Price for the Goods, (plus a sum equal to the VAT and/or any other applicable tax chargeable on the supply of the Goods):
 - 5.1.1 following Delivery of the Goods; and
 - 5.1.2 no later than 30 days after the receipt of a valid invoice for the Goods by the Authority which includes a valid Purchase Order Number.
- 5.2 Where the Supplier enters into a sub-contract with a supplier for the purpose of performing its obligations under the Contract, it will ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Supplier to the supplier within a specified period not exceeding 30 days from the receipt of a valid invoice from the Supplier.
- 5.3 If a payment is not made by the Authority within 30 days of the receipt of a valid invoice by the Authority, then the Authority will pay the Supplier interest at a rate which will compensate for such loss as has been directly caused by the late payment. The interest rate will not be at a rate higher than the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.

6. RECOVERY OF SUMS DUE

- 6.1 Wherever under this Contract any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Authority in respect of any breach of this Contract), that sum may be

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deducted unilaterally by the Authority from any sum then due, or which at any later time may become due, to the Supplier under this Contract or under any other agreement or contract with the Authority or with any department, agency or authority of the Crown. The Supplier will not be entitled to assert any deduction, set-off or counterclaim against the Authority in order to justify withholding payment of any amount under or in connection with this Contract in whole or in part.

7. PACKAGING

- 7.1 The Goods will be packed and marked in a proper manner and in accordance with the Authority's instructions and any statutory requirements and any requirements of the carriers. The Supplier will indemnify the Authority and the Crown against all actions, suits, claims, demands, losses, charges, costs and expenses which the Authority or the Crown may suffer or incur as a result of, or in connection with, any breach of this clause.
- 7.2 All packaging materials will be consistent with the Environmental Policy and considered non-returnable.

8. ENVIRONMENTAL REQUIREMENTS

- 8.1 The Supplier will provide the Goods in accordance with the Environmental Policy.

9. CANCELLATION

- 9.1 The Authority will have the right to cancel in writing the order for the Goods, or any part of the Goods, which have not yet been Delivered to the Authority. Without prejudice to the generality of the foregoing, the Authority will pay the Price (or where applicable, that part of the Price) for:
- 9.1.1 any part of the Goods which have been Delivered to the Authority; and
- 9.1.2 the costs of materials which the Supplier has purchased specifically to fulfil the order for the Goods and which cannot be used by the Supplier for other orders or be returned to the supplier of those materials for a refund.

10. DELIVERY

- 10.1 The Supplier will Deliver the Goods on the Delivery Date.
- 10.2 Any access to premises and any labour and equipment that may be provided by the Authority in connection with Delivery will be provided, without acceptance by the Authority of any liability whatsoever and the Supplier will indemnify the Authority and the Crown in respect of any actions, suits, claims, demands, losses, charges, costs and expenses which the Authority or the Crown may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of Delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Supplier or any of his Staff.
- 10.3 Each Delivery of the Goods will be accompanied by a delivery note which shows the Purchase Order Number and the type and quantity of the Goods.

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11. NON-DELIVERY

11.1 Where: (i) the Supplier fails to Deliver the Goods; or (ii) the Goods do not comply with the provisions of clause 3, then without limiting any of its other rights or remedies, the Authority will be entitled:

- 11.1.1 to terminate the Contract;
- 11.1.2 to require the Supplier, free of charge, to deliver substitute Goods within the timescales specified by the Authority;
- 11.1.3 to require the Supplier, free of charge, to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
- 11.1.4 to reject the Goods (in whole or part) and return them to the Supplier at the Supplier's own risk and expense; and/or
- 11.1.5 to buy the same or similar Goods from another supplier and to recover the element of the cost of buying the Goods from another supplier which exceeds the Price.

12. PROPERTY

12.1 Property and risk of the Goods will, without prejudice to any of the rights or remedies of the Authority, pass to the Authority on completion of Delivery. Delivery of the Goods will be completed once the completion of unloading the Goods from the transporting vehicle at the Premises has taken place, any installation work has been carried out in accordance with the Tender and the Authority has signed for the delivery.

13. GUARANTEE OF TITLE

13.1 The Supplier warrants that:

- 13.1.1 it has full clear and unencumbered title to all the Goods;
- 13.1.2 it has full capacity and authority to enter into this Contract; and
- 13.1.3 at the date of Delivery of any of the Goods it will have full and unrestricted right, power and authority to sell, transfer and Deliver all of the Goods to the Authority and from that date the Authority will acquire a valid and unencumbered title to the Goods.

14. INSURANCE

14.1 The Supplier will effect and maintain with a reputable insurance company, a policy or policies of insurance providing an adequate level, and duration, of cover in respect of all risks which may be incurred by the Supplier in respect of its performance of this Contract, including death, personal injury, loss or damage to property or any other loss.

15. INTELLECTUAL PROPERTY INDEMNITY

15.1 The Supplier will indemnify, and keep indemnified, the Authority in full against all cost, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Authority as a result of or in connection with any claim made against the Authority for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Goods, to the extent that the claim is

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attributable to the acts or omission of the Supplier, its employees, agents or suppliers.

16. ASSIGNMENT AND SUB-CONTRACTING

- 16.1 The Supplier will not without the written consent of the Authority assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of this Contract or any part thereof. The Authority may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier will be responsible for the acts and omissions of its suppliers as though those acts and omissions were its own.
- 16.2 Where the Supplier enters into a sub-contract with a supplier for the purpose of performing its obligations under this Contract, it will comply with the subcontractor payment provision in clause 5.2.
- 16.3 The Authority may assign, novate, or otherwise dispose of its rights and obligations under this Contract provided that such assignment, novation or disposal will not increase the burden of the Supplier's obligations under this Contract.

17. TERMINATION

- 17.1 Without prejudice to any other right or remedy it might have, the Authority may terminate this Contract by written notice to the Supplier with immediate effect if:
 - 17.1.1 the Supplier is in material breach of any obligation which is not capable of remedy; or
 - 17.1.2 the Supplier is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving written notice from the Authority specifying the breach and requiring it to be remedied; or
 - 17.1.3 the Supplier becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 17.1.3) in consequence of debt in any jurisdiction.
- 17.2 Termination or expiry of this Contract will not affect clauses 2, 13, 23, 24, 25, 26, 29, 31, 38 and 40.

18. PREVENTION OF CORRUPTION

- 18.1 The Supplier will not offer, give, or agree to give anything to any person as an inducement or reward for doing, refraining from doing, or for having done, any act in relation to the obtaining or execution of the Contract or for showing or refraining from showing favour or disfavour to any person in relation to the Contract.
- 18.2 If the Supplier, its Staff or anyone acting on the Supplier's behalf, engages in conduct prohibited by clause 18 the Authority may:

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- 18.2.1 terminate the Contract and recover from the Supplier the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Goods and any additional expenditure incurred by the Authority throughout the remainder of the Contract; and/or
- 18.2.2 recover in full from the Supplier any other loss sustained by the Authority in consequence of any breach of this clause.

19. PREVENTION OF FRAUD

- 19.1 The Supplier will take all reasonable steps, in accordance with good industry practice, to prevent fraud by Staff and the Supplier (including its shareholders, members and directors) in connection with the receipt of monies from the Authority.
- 19.2 The Supplier will notify the Authority immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 19.3 If the Supplier or its Staff commits fraud in relation to this or any other contract with the Crown (including the Authority) the Authority may:
 - 19.3.1 terminate this Contract and recover from the Supplier the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Goods and any additional expenditure incurred by the Authority throughout the remainder of the Contract; and/or
 - 19.3.2 recover in full from the Supplier any other loss sustained by the Authority in consequence of any breach of this clause.

20. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 20.1 A person who is not a Party to the Contract will have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties.

21. HEALTH AND SAFETY

- 21.1 The Supplier will promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Authority will promptly notify the Supplier of any health and safety hazards which may exist or arise at the Premises and which may affect the Supplier in the performance of its obligations under the Contract.
- 21.2 While on the Premises the Supplier will comply with all health and safety measures.
- 21.3 The Supplier will notify the Authority immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

22. DISCRIMINATION

- 22.1 The Supplier will not unlawfully discriminate within the meaning and scope of the Equality Act 2006, the Equality Act 2010 and the Human Rights Act 1998

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or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

- 22.2 The Supplier will take all reasonable steps to secure the observance of clause 22 by all Staff.

23. DATA PROTECTION ACT

- 23.1 The Supplier and its Staff will comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA which arise in connection with the Contract.

24. OFFICIAL SECRETS ACTS 1911 TO 1989, SECTION 182 OF THE FINANCE ACT 1989

- 24.1 The Supplier will comply with, and will ensure that its Staff comply with, the provisions of:

24.1.1 the Official Secrets Acts 1911 to 1989; and

24.1.2 Section 182 of the Finance Act 1989.

- 24.2 In the event that the Supplier or its Staff fail to comply with this clause, the Authority reserves the right to terminate the Contract by giving notice in writing to the Supplier.

25. FREEDOM OF INFORMATION

- 25.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and will provide any necessary assistance to the Authority to enable it to comply with all Information disclosure obligations.

- 25.2 The Authority may request the Supplier to provide Information in its possession in a specific form and the Supplier will respond within [5] working days.

- 25.3 The Authority has absolute discretion, notwithstanding any other provision in this Contract, to determine whether Information is exempt from disclosure.

- 25.4 The Supplier should not respond to any Request for Information in respect of Information held on behalf of the Authority. The Supplier should notify the applicant that it does not hold the Information requested and that any Request for Information should be addressed to the Authority.

- 25.5 The Supplier acknowledges that (notwithstanding the provisions of this clause and the provisions of clause 31) the Authority may be obliged to disclose Information concerning the Supplier or the Services in certain circumstances:

25.5.1 without consulting the Supplier; or

25.5.2 following consultation with the Supplier and having taken their views into account.

- 25.6 Where clause 25.5.1 applies the Authority will, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

- 25.7 The Supplier will ensure that all Information relevant to this Contract is retained for disclosure and, if requested, permit the Authority to inspect it.

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26. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

- 26.1 Without prejudice to the Authority's obligations under the FOIA or the Environmental Information Regulations 2004, neither Party will make any press announcement or publicise this Contract or any part thereof in any way, except with the prior written consent of the other Party.
- 26.2 Both Parties will take reasonable steps to ensure that their servants, employees, agents, sub-contractors, suppliers, professional advisors and consultants comply with clause 26.

27. SECURITY

- 27.1 The Authority will be responsible for maintaining the security of the Premises in accordance with its standard security requirements. .
- 27.2 Where any access to the Authority's Premises is necessary in connection with Delivery or installation the Supplier and his Staff will at all times comply with the Authority's security requirements.

28. SUPPLIER'S STAFF

- 28.1 If requested, the Supplier will provide a list of the names (and addresses (and any other relevant information) of all persons who may require admission to the Authority's premises in connection with this Contract.
- 28.2 The Authority may, by giving written notice to the Supplier, refuse to admit onto, or withdraw permission to remain on the Premises, from any member of the Staff or any person employed or engaged by any member of the Staff and the Supplier shall comply with this notice.
- 28.3 The Supplier's Staff will comply with any rules, regulations and requirements specified by the Authority.
- 28.4 If the Supplier fails to comply with clause 28.1 or 28.2 and in the reasonable opinion of the Authority such failure may be prejudicial to the interests of the Crown, then the Authority may terminate the Contract, provided always that such termination will not prejudice or affect any right of action or remedy which will have accrued or will thereafter accrue to the Authority.
- 28.5 The decision of the Authority in relation to this clause will be final and conclusive.

29. AUDIT

- 29.1 The Supplier will keep and maintain until 6 years after the end of the Contract, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Goods supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Supplier will on request afford the Authority or the Authority's representatives such access to those records as may be reasonably requested by the Authority in connection with the Contract.

30. TRANSPARENCY

- 30.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not confidential. The Authority will be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt

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from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of this Contract, the Supplier hereby gives his consent for the Authority to publish the Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to the Contract, to the general public.

31. CONFIDENTIALITY

31.1 (Subject to clauses 24 and 25) each Party will keep confidential and not disclose, and will procure that his employees and the employees of any supplier keep confidential and do not disclose, any information of a confidential nature obtained by him (concerning the other Party) by reason of this Contract except information which:

- (a) is in the public domain otherwise than by reason of a breach of this provision;
- (b) is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- (c) was in a Party's possession without restriction as to its disclosure prior to receiving such information from the other Party;
- (d) is required to be disclosed by law (including under the FOIA and Environmental Information Regulations), or for the purposes of audit or regulatory requirements;
- (e) is necessary for a Party to disclose for the purposes of the performing its obligations under this Contract (but only to the extent it is necessary to do so);
- (f) the other Party has given its specific express prior written consent can be disclosed;
- (g) in the case of the Authority, disclosed to any other government department provided that such government department will comply with confidentiality provisions in respect of such disclosed information which are no less onerous than this clause.

31.2 The provisions of this clause will apply during the continuance of this Contract and after its expiry or termination howsoever arising.

32. FORCE MAJEURE

32.1 Neither Party will have any liability under or be deemed to be in breach of this Contract for any delays or failures in performance of this Contract which result from circumstances beyond the reasonable control of that Party (those circumstances excluding any industrial action occurring within the Supplier's organisation). The Party affected by such circumstances will promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to cause such delay or failure. If such circumstances continue for a continuous period of more than six months, either Party may terminate this Contract by written notice to the other Party.

33. LIABILITY

33.1 Neither Party excludes or limits its liability for:

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- 33.1.1 death or personal injury; or
- 33.1.2 bribery, fraud or fraudulent misrepresentation by it or that of its staff; or
- 33.1.3 any other matter which, by law, may not be excluded or limited.

33.2 Subject to clause 33.1 the aggregate liability of the Supplier (whether provisions are expressed as an indemnity or otherwise):

- 33.2.1 for all Defaults resulting in direct loss of or damage to the property of the other under or in connection with the Contract shall in no event exceed one hundred thousand pounds sterling (£100,000); and
- 33.2.2 for all Defaults shall in no event exceed two hundred thousand pounds sterling (£200,000).

34. ENTIRE AGREEMENT

34.1 This Contract contains the whole agreement between the parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The parties confirm that they have not entered into this Contract on the basis of any representation that is not expressly incorporated into this Contract. Nothing in this clause will exclude liability for fraud or fraudulent misrepresentation.

35. WAIVER

35.1 Any waiver or relaxation either partly, or wholly of any of the conditions of the Contract will be valid only if it is communicated to the other party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract will not constitute a waiver of any right or remedy arising from any other breach of the Contract.

36. AGENCY, PARTNERSHIP ETC

36.1 This Contract will not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Contract. Neither Party will have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

37. REMEDIES CUMULATIVE

37.1 Except as otherwise expressly provided by this Contract, all remedies available to either Party for breach of this Contract (whether under this Contract, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy will not be deemed an election of such remedy to the exclusion of other remedies.

38. SEVERANCE

38.1 If any provision of this Contract is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision will, to the extent required, be severed from this Contract and rendered ineffective as far as possible without modifying the remaining provisions of this agreement, and will not in any way affect any other circumstances of or the validity or enforcement of this Contract.



39. DISPUTE RESOLUTION

- 39.1 The parties will attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract. If the dispute cannot be resolved by the parties within a reasonable period, the dispute may, by agreement between the parties, be referred to a neutral adviser or mediator (“the Mediator”) chosen by agreement between the parties. If they are unable to agree a Mediator or if the chosen Mediator is unable or unwilling to act either party will be able to apply to an appropriate mediation provider to appoint a Mediator. Within 10 Working Days of appointing the Mediator, the parties will meet with the Mediator to agree a procedure for negotiations.
- 39.2 All negotiations connected with the dispute will be conducted in confidence and without prejudice to the rights of the parties in any further proceedings. The parties agree to be bound by any written agreement once signed by both parties. If the parties fail to appoint a Mediator, or fail to reach agreement within one month of the Mediator being appointed, either party may exercise any remedy that it has under this Contract.

40. NOTICES

- 40.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party sending the communication.
- 40.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party as set out in clause 40.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.
- 40.3 For the purposes of Clause 40.2, the address of each Party shall be:

(a) for the Authority:-

[]

Address:

For the attention of:

Tel:

Fax:

Email:

(b) for the Supplier:-

[]

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Address:

For the attention of:

Tel:

Fax:

Email:

- 40.4 Either Party may change its address for service by serving a notice in accordance with this clause.

41. GOVERNING LAW AND JURISDICTION

- 41.1 The validity, construction and performance of this Contract, and all contractual and non contractual matters arising out of it, will be governed by English law and will be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

42. COUNTERPART

- 42.1 This Contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Contract, but all the counterparts shall together constitute the same Contract.
- 42.2 No counterpart shall be effective until each party has executed at least one counterpart.



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Signed for and on behalf of the Authority:

By:

Name:

Title:

Date:

Signed for and on behalf of the Supplier:

By:

Name:

Title:

Date:



Assumptions and Omissions

- Where possible, care should be taken in the drafting of any Purchase Order, Award Letter or Specification to ensure that the same defined terms are used as in these terms and conditions and that the terms do not conflict.
- This is for a goods only contract, and although installation may be a feature of the purchase, there should not be any TUPE risk.
- This is for 'off-the-shelf' goods and therefore there should not be drawings or specific design information that the Authority will want to rely on or Intellectual property. For bespoke goods, additional contract provisions may be required and legal advice should be sought on a case-by-case basis.
- Delivery is assumed not to be in instalments. There is an implied term in the Sale of Goods Act 1979 which provides that unless the contract specifies the goods may be delivered in instalments, the customer is not obliged to accept delivery in instalments. If instalments are required then this must be set-out in the Specification and in the Award Letter/Purchase Order.
- The contract assumes the Supplier neither requires access to nor prior inspection of the Authority's premises to fulfil the contract.
- Acceptance criteria are not covered, however the contract includes express rights to reject goods which are defective (as the Sale of Goods Act 1979 provides that once goods have been accepted, these rights are lost).
- 'Time is of the essence' is not included as in most cases it would be disproportionate to reject delivery and claim damages if the goods are delivered late. Where this is a requirement, it should be stated in the Award letter. Where delivery is late, clause 11 of the contract provides a number of alternative remedies including rejection of the goods or termination of the contract.
- The goods will be delivered in accordance with the Environmental Policy.
- Further information required by the Authority from the supplier for the purposes of responding to FOI requests should be stated in 25.2 (default is 5 days).
- Liability for indirect and consequential loss is not covered on the basis it seems disproportionate for the value of the contracts and many suppliers resist such a term. A damages claim would still extend to losses naturally flowing from the breach or which were in the reasonable contemplation of the parties at the time the contract was made. If a specific loss is a concern, this should be specified in the Award Letter as a direct loss.
- Liquidated damages are not included as a standard clause if unlikely to be appropriate across the board and if the amount was deemed to be a penalty it would be void. A clause may also prevent the Authority from being able to reject goods for late delivery. Any justifiable liquidated damages required should be discussed with legal and specified in the Award letter.
- The default cap on liability in clause 33 can be varied on a case-by-case basis in the Award Letter if necessary.