**SECTION C3 CONDITIONS FOR GOODS**

**TERMS AND CONDITIONS**

# CONDITIONS OF CONTRACT FOR GOODS

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**G1. Definitions**

In this Agreement the following words shall have the following meanings unless the context requires otherwise:

**Defects Liability Period** means the period set out in Section A.1 (Particulars) of this Agreement or as described in clause G7.3;

**Delivery Date** means the date for delivery of the Goods set out in Section A.1 (Particulars) of this Agreement or stated in the Authority’s Order, or if none is specified, as described in clause G2.2;

**Delivery Location** means the location for delivery of the Goods set out in Section A.1 (Particulars) of this Agreement or stated in the Authority’s Order;

**Goods** as defined in Section C.1 (General Conditions) of this Agreement;

**Order** the Authority’s order for the Goods submitted by the Authority in accordance with clause G2.

**Price** means as defined in Section C.1 (General Conditions) of this Agreement;

**Working Days** means as defined in Section C.1 (General Conditions) of this Agreement.

**G2. The Goods**

G2.1 The Authority may submit Orders for Goods at any time.

G2.2 The Supplier shall supply Goods in accordance with the Authority’s Orders, by the delivery date specified in the Order, or, if none is specified, within five (5) Working Days of submitting the Order.

G2.3 The Authority may amend or cancel an Order in whole or in part at any time before delivery by giving the Supplier written notice. The Authority shall pay the Supplier fair and reasonable compensation for any work in progress manufacturing the Goods at the time of cancellation of an Order, but such compensation shall not include loss of anticipated profits or any consequential loss.

G2.4 The Supplier shall ensure that the Goods:

1. shall be to the reasonable satisfaction of the Authority and shall conform in all respects with any specification and particulars including quantity, quality and description, specified in this Agreement;
2. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and 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;
3. where they are manufactured products, be free from defects in design, material and workmanship; and
4. comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods or other similar instruments from time to time in force.

G2.5 The Authority has the right to inspect and test the Goods at any time before delivery.

G2.6 If following such inspection or testing the Authority considers that the Goods do not conform or are unlikely to comply with the Supplier’s undertakings at [clause G2.](https://uk.practicallaw.thomsonreuters.com/Document/I04f9cf2dd8b411e498db8b09b4f043e0/View/FullText.html?navId=3730842E0B55C5601F0ADE4F072A3B51&transitionType=CategoryPageItem&contextData=(sc.Default)&comp=pluk#co_anchor_a188444)4, the Authority shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

G2.7 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier’s obligations under this Agreement, and the Authority shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

G2.8 The provisions of this clause G2 shall apply during the continuance of this Agreement and after its expiry or termination howsoever arising.

**G3. Health and Safety**

G3.1 The Supplier represents and warrants to the Authority that the Supplier has satisfied itself that all necessary tests and examinations have been made, or will be made, prior to delivery of the Goods to ensure that the Goods are designed and constructed so as to be safe and without risk to health or safety of persons using the same, and that it has made available to the Authority adequate information about any precautions that should be taken in respect of the Goods. The Supplier shall also ensure that the Goods are delivered in a safe manner without risk to health or safety of persons delivering or receiving delivery of the same.

G3.2 The provisions of this clause G3 shall apply during the continuance of this Agreement and after its expiry or termination howsoever arising.

**G4. Delivery**

G4.1 The Supplier shall ensure that:

1. the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
2. each delivery of Goods is accompanied by a delivery note which shows the order number, the type and quantity of Goods (including the code number of the Goods, where applicable), the net and tare weights, special storage instructions (if any) and, if the relevant Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered;
3. all containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings; and
4. if the Supplier requires the Authority to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier. The Authority accepts no liability in respect of the non-arrival at the Supplier’s premises of the packaging materials.
5. any equipment, plant or unused materials utilised during the delivery are removed from the Delivery Location and all rubbish arising from the delivery is cleared away.

G4.2 The Supplier shall deliver the Goods specified in each Order:

1. on its relevant Delivery Date or as stated in the Particulars;
2. at the Delivery Location; and
3. during the Authority’s normal business hours, or as instructed by the Authority.

G4.3 The delivery of Goods is completed on the completion of unloading of those Goods at the Delivery Location.

G4.4 Except where otherwise provided in this Agreement, delivery shall include, at no extra cost to the Authority, the unloading and stacking of the Goods by the Supplier at such place within the Delivery Location as the Authority shall reasonably require.

G4.5 Any access to the Delivery Location and any labour and equipment that may be provided by the Authority in connection with the delivery shall be provided without acceptance by the Authority of any liability whatsoever.

G4.6 Where any access to the Delivery Location is necessary in connection with delivery the Supplier shall be responsible for the observance by itself and the Supplier’s Personnel of all such rules, site regulations, policies, procedures, requirements (including those relating to security arrangements) and safety precautions necessary for the protection of itself and the Supplier’s Personnel and any other persons including all precautions required to be taken by or under all applicable laws, enactments, orders, regulations, other similar instruments and codes of practice. The Supplier and the Supplier’s Personnel shall co-operate fully with the Authority to ensure the proper discharge of these duties.

G4.7 Where any access to the Delivery Location is necessary in connection with delivery the Supplier shall on completion of the delivery leave the Delivery Location in a neat and tidy condition.

G4.8 Unless expressly agreed to the contrary in this Agreement or subsequently in writing by the Parties the Authority shall not be obliged to accept delivery by instalments. If, however, the Authority does specify or agree to delivery by instalments, delivery of any instalment later than the time specified or agreed shall, without prejudice to any other rights or remedies of the Authority, entitle the Authority to terminate the whole of any unfulfilled part of this Agreement without further liability.

G4.9 If the Authority rejects any Goods they are returnable at the Supplier’s risk and expense. If the Supplier fails to collect rejected Goods within a reasonable period after notification of the rejection, the Authority may charge the Supplier storage costs and sell or dispose of the rejected Goods. The Authority will account to the Supplier for the proceeds of sale (if any) after deducting the purchase price paid for the Goods, storage costs and its reasonable costs and expenses in connection with the sale.

**G5. Title & Risk**

G5.1 Title and risk in the Goods shall without prejudice to any of the rights or remedies of the Authority (including the rights and remedies under clause G7) pass to the Authority at the time of delivery.

G5.2 Transfer of title and risk shall not relieve the Supplier of any of its obligations under this Agreement.

G5.3 The Supplier warrants that the Goods shall be free from all encumbrances when title and risk pass.

**G6. Damage in transit**

G6.1 On dispatch of any consignment of Goods, the Supplier shall send to the Authority’s Contract Manager a written advice note specifying the Authority’s Agreement reference, a description of the Goods, the means of transport, the place and date of dispatch, the number of packages and their weight and volume.

G6.2 Where the Goods are either damaged in transit or having been placed in transit fail to be delivered to the Authority, the Authority shall elect:

 G6.2.1 to reject the consignment; or

G6.2.2 to require the Supplier, free of charge to the Authority, to repair or replace (at the option of the Authority) the Goods and deliver the repaired or replaced Goods to the Delivery Location in accordance with timescales specified by the Authority provided that:

G6.2.2.1 in the case of damage to such Goods in transit the Authority shall within fifteen (15) Working Days of delivery give notice to the Supplier that the Goods have been damaged;

G6.2.2.2 in the case of non-delivery the Authority shall (provided that the Authority has been advised in writing of the dispatch of Goods in accordance with clause G6.1) within ten (10) Working Days of the notified date of delivery give notice to the Supplier that the Goods have not been delivered.

**G7. Inspection, Rejection & Guarantee**

G7.1 The Supplier shall permit the Authority or its authorised representative to make any inspections or tests which may reasonably be required and the Supplier shall afford all reasonable facilities and assistance free of charge at the Supplier’s premises. No failure to make a complaint at the time of such inspections or tests and no approval given during or after such tests or inspections shall constitute a waiver by the Authority of any rights or remedies in respect of the Goods and, in particular, the Authority retains the right to reject the Goods.

G7.2 The Authority may, notwithstanding the use or any continued use by the Authority of the Goods after the right of rejection thereof has arisen, reject by notice in writing any of the Goods which in the opinion of the Authority, are not of satisfactory quality and/or fit for their purpose and/or fail to meet the requirements of this Agreement. Any Goods not so rejected shall be deemed to have been accepted by the Authority. Such notice shall be given within a reasonable time after delivery to the Authority of the Goods concerned. If the Authority shall reject any of the Goods pursuant to this clause G7 the Authority shall be entitled (without prejudice to other rights and remedies) either:

G7.2.1 at the Supplier’s expense to have the Goods concerned as quickly as possible and in any event within five (5) Working Days either repaired by the Supplier or (as the Authority shall elect) replaced by the Supplier with Goods which conform in all respects with this Agreement and due delivery shall not be deemed to have taken place until such repair or replacement has occurred; or

G7.2.2 to treat this Agreement as discharged by the Supplier’s breach and require a refund from the Supplier in respect of the Goods concerned and engage an alternative contractor to provide the outstanding balance of the Goods. The Supplier shall indemnify the Authority against all reasonable costs incurred in doing so. Such costs shall include the administrative costs of re-tendering the requirement and any difference in the price of the Goods which the Authority may have to pay to the new contractor where such price is higher than the price payable under this Agreement.

G7.3 Unless agreed otherwise, the Supplier shall guarantee the Goods for the Defects Liability Period stated in the Particulars or, if not stated, for the shorter of 3 years from putting into service or 3 years from delivery. If the Authority shall within such guarantee period or within twenty (20) Working Days thereafter give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such Defects Liability Period under proper and normal use, the Supplier shall (without prejudice to any other rights and remedies which the Authority may have) as quickly as possible remedy such defects (whether by repair or replacement as the Authority shall elect) without cost to the Authority, unless otherwise instructed. If instructed otherwise by the Authority, an appropriate deduction may be made from the contract sum of the Price.

G7.4 The Supplier shall, immediately following notification by the Authority of any defect in the Goods, submit to the Authority written proposals for the repair or replacement of the Goods and state the time required for such repair or replacement (and the time for removing the Goods from the Delivery Location where necessary). If these proposals are not received by the Authority within ten (10) Working Days of the Authority’s notification, or are not acceptable to the Authority, repair or replacement (or removal) may be arranged by the Authority from an alternative source at the Supplier’s expense.

G7.5 Any Goods rejected or returned by the Authority as described in clause G7.2 or G7.3 shall be returned to the Supplier at the Supplier’s risk and expense.

G7.6 Any Goods repaired or replaced under this clause G7 shall be subject to the same Defects Liability Period specified in clause G7.3 which shall run from the actual date of delivery of the Goods following their repair or replacement.