

## **GENERAL MATERIAL PURCHASING CONDITIONS**

These General Material Purchasing Conditions are for incorporation into a contract for the procurement of goods or materials by one of the Costain Group of Companies named in the Order.

### **1. DEFINITIONS**

- 1.1 "Purchaser" means the company named in the Order.
- 1.2 "Supplier" means the company or person named in the Order, who has agreed to supply the Goods. Or any other Company or person acting on behalf of the Supplier.
- 1.3 "Order" means the order to which these General Purchasing Conditions apply, issued by the Purchaser to the Supplier instructing the Supplier to supply the Goods.
- 1.4 "Supply Contract" means the agreement between the Purchaser and the Supplier comprising the Order and these General Purchasing Conditions.
- 1.5 "Goods" means the goods, materials, equipment and such other things that are to be supplied by the Supplier to the Purchaser as generally described in the Order, or which may reasonably be inferred from the Order as being included in the Supply Contract.
- 1.6 "Price" means any fixed price lump sum for the supply of the Goods, entered in the Order.
- 1.7 "Schedule of Rates" means any rates entered in or referred to in the Order.
- 1.8 "Employer" means the Purchaser's employer under the Contract.
- 1.9 "Contract" means the contract between the Employer and the Purchaser for the work referred to in the Order.
- 1.10 "Contract Works" means the work to be carried out by the Purchaser under the Contract, into which the Goods will be incorporated, referred to in the Order.
- 1.11 "Site" means the place or places where the Goods are to be installed or used, as stated in the Order.
- 1.12 "Purchaser's Representative" means any representative of the Purchaser whose name may be notified from time to time by the Purchaser to the Supplier, having full authority to act on behalf of the Purchaser.
- 1.13 "Specification" means the specification for the Goods including the packing and transport thereof and unloading if applicable, whether prepared by the Employer, the Purchaser, or the Supplier or any of them.
- 1.14 "Programme" means the Programme for the supply of Goods, whether incorporated in the Order or otherwise notified by the Purchaser to the Supplier.
- 1.15 "Design Basis" means such drawings or other information incorporated in the Order or as may be notified by the Purchaser to the Supplier from time to time.

- 1.16 “Place of Delivery” means the Site or such other place or places where the Goods are to be delivered as may be notified to the Supplier by the Purchaser’s Representative.
- 1.17 “Construction Product Regulations” means, as applicable, the Construction Products (Amendment etc.) (EU Exit) Regulations 2019, Construction Products (Amendment etc.) (EU Exit) Regulations 2020 and/or any other relevant legislation or regulation relating to the UKCA or CE marking regimes where relevant to the supply of the Goods.
- 1.18 “Applicable Laws” means any and all legislation, instruments, rules or orders made under any Act of Parliament and any regulation or byelaw of any local authority or of any statutory undertaker or of any public or private utility or undertaking which has any jurisdiction with regard to the Contract Works and/or the Goods.
- 1.19 Reference in these General Purchasing Conditions to the defects correction period means the defects correction period specified in the Contract.

## **2. ORDER OF PRECEDENCE**

- 2.1 In case of ambiguity or discrepancy between any of the documents incorporated in the Supply Contract such ambiguity or discrepancy shall be resolved by giving effect first to the Order and these General Purchasing Conditions.

## **3. PURCHASER’S REPRESENTATIVE**

- 3.1 The Purchaser’s Representative shall carry out such duties as are specified in the Supply Contract or as may be necessary for the carrying out of the Supply Contract.
- 3.2 The Purchaser’s Representative may order variations to the Supply Contract and any variation shall be confirmed in writing. In order to be valid and binding.
- 3.3 The Purchaser’s Representative may give such instructions to the Supplier as the Purchaser’s Representative deems necessary and shall be confirmed in writing. In order to be valid and binding.

## **4. ASSIGNMENT AND SUB-CONTRACTING**

- 4.1 The Supplier shall not assign the benefit of the Supply Contract.
- 4.2 The Supplier shall not sub-let all or any part of the Supply Contract without the written consent of the Purchaser’s Representative.

## **5. BASIS OF OFFER AND PRICE**

- 5.1 The Supplier acknowledges that the details of the Contract (other than the Purchaser’s prices) were made available to the Supplier, and the Supplier has or is deemed to have full knowledge of the Contract except for the Purchaser’s prices.
- 5.2 The Supplier shall be deemed to have examined the Site and to have satisfied himself as to the Contract Works and the circumstances affecting the Contract Works, and the manner by which the Goods are to be incorporated therein including without limitation any safety regulations applicable thereto.

- 5.3 The Supplier's Price and rates in the Schedule of Rates shall remain fixed throughout the period of the Order.

## 6. SUPPLIER'S OBLIGATIONS

- 6.1 The Supplier shall design (if applicable), manufacture, test and deliver the Goods to the place of delivery in accordance with the Programme.6.2. The manufacturing of the goods shall as a first principle comply with the specification and in accordance with the Purchaser's Sustainable Procurement policy and the controls contained within the Delivering Sustainable Procurement document these can be found on [www.costain.com](http://www.costain.com). and subsequent good practice or in accordance with such British & European Standards or industry standards as may be applicable.
- 6.3 The Goods shall be manufactured, finished, packed, and delivered to the Site or place of delivery to the reasonable satisfaction of the Purchaser's Representative and in accordance with such reasonable instructions as he may give.
- 6.4 The Supplier shall comply with the requirements set out in the Specification relating to the packing and marking of the Goods. Where there are no such requirements, the Supplier shall pack the Goods (unless it is expressly indicated otherwise in the Order that packing is not required) to avoid damage during transfer to and storage on the Site or place of delivery, and shall if required, mark the Goods both on the exterior of the packing (unless packing is not required) and on the Goods themselves so that the Goods are readily identifiable. Markings on both the exterior and on the Goods shall include the Purchaser's order number.
- 6.5 Each consignment of Goods shall be accompanied by a packing list or delivery note which identifies clearly the Goods contained in each consignment and which states the Purchaser's Order Number.
- 6.6 The Supplier shall test the Goods during or following manufacture in accordance with the requirements of the Specification and applicable industry standard. The Supplier shall give the Purchaser adequate notice of when such testing is to be carried out. The Supplier shall test or witness testing of the Goods following installation thereof if required to do so by the Purchaser's Representative, and such testing or witnessing shall be deemed to be included in the Price or the Schedule of Rates.
- 6.7 Any failure by the Purchaser to witness testing or any approval by the Purchaser of the Goods or any tests shall not constitute acceptance of the Goods or relieve the Supplier of any liability under the Supply Contract.
- 6.8 All Goods supplied by the Supplier shall be fit for the purpose as intended as indicated by the Order or as may reasonably be inferred therefrom.
- 6.9 In providing the Goods, the Supplier shall comply with all Applicable Laws. . Without prejudice to the generality of this clause, the Supplier undertakes to carry out and fulfil all its duties in accordance and full compliance with:
- a) health and safety legislation; and
  - b) where applicable, the Construction Product Regulations in relation to which the Supplier shall ensure that any applicable Goods or component parts thereof are certified or re-certified to the appropriate UK designated standard, as defined in the Construction Product Regulations.
- 6.10 In performing the obligation under the supply Contract, the Supplier shall conform to all Governmental laws, regulations, or codes, local or national applicable to the country through which the goods are to be transported. The Supplier shall pay the costs of any compliance.

## **7. DESIGNS AND DRAWINGS**

- 7.1 If applicable, using the Design Basis, the Supplier shall prepare such further designs and drawings as are necessary to enable the Goods to be manufactured in accordance with the Supply Contract and to the reasonable requirements of the Purchaser's Representative.
- 7.2 If applicable, all further designs and drawings shall be submitted to the Purchaser's Representative for his consent, which shall be obtained by the Supplier before manufacture is commenced.
- 7.3 If applicable, where the Supplier is responsible for the Design of the Goods, the Supplier shall affect and maintain Professional Indemnity insurance. The minimum Professional Indemnity Insurance cover effected by the Supplier shall be £10 million (each and every occurrence) and shall be maintained in full force for a period of 12 years from the delivery of the Goods

## **8. INSTALLATION, OPERATION AND MAINTENANCE INSTRUCTIONS**

- 8.1 In cases where the Goods are not to be installed in the Contract Works by the Supplier, the Supplier shall provide timeously such installation instructions as may be necessary to enable the Purchaser or his sub-contractors to install the Goods in the Contract Works. The Supplier shall provide timeously such operation and maintenance instructions as may be necessary to enable the Purchaser, the Employer, or the Purchaser's sub-contractors to operate and maintain the Goods.
- 8.2 It is expressly agreed that if the Supplier is to supply operation and maintenance instructions as part of its obligations the Supplier shall not be entitled to the release of any payments where it is specifically stated in the order that the said payments are dependent upon the receipt by the Purchaser of acceptable operation and maintenance instructions.

## **9. INTELLECTUAL PROPERTY AND DESIGNS**

- 9.1 The Supplier will grant to the Purchaser an irrevocable, royalty-free, non-exclusive license to use and to reproduce all designs, drawings, samples, models, tests or any other information or documentation supplied or produced by the Supplier during the completion of an Order for any purpose whatsoever connected with the Contract Works including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of the Contract Works. Such licence will carry the right to grant sub-licences and will be transferable to third parties.
- 9.2 Notwithstanding the above provision, the Supplier shall be responsible for any errors, omissions or discrepancies within designs, drawings, samples, models, tests or any other information or documentation supplied or produced by the Supplier save to the extent that the error omission or discrepancy is due to information supplied to the Supplier by the Purchaser.
- 9.3 The Supplier shall be liable for and shall indemnify and keep indemnified the Purchaser against any and all expenses, liabilities, losses, claims and proceedings which the Purchaser may incur as a result of any breach of clauses 9.1 or 9.2 of these General Purchasing Conditions by the Supplier or any claim that the Goods infringe, or their importation, use or resale infringes, the patent, copyright, design right, trademark, or other intellectual property rights of any other person.

- 9.4 The Supplier shall reimburse the losses which the Purchaser may incur due to the late supply by the Supplier of designs, drawings or other information save to the extent that such late supply is due to the fault of the Purchaser or the Purchaser's Representative.

## 10. INSPECTION AND TESTING OF GOODS BEFORE DELIVERY

- 10.1 The Purchaser's Representative shall be entitled at all reasonable times to inspect examine and test the Goods during manufacture or at any other time before delivery. In case the Goods are not on the Supplier's premises the Supplier shall make whatever arrangements are necessary to enable the Purchaser's Representative to inspect, examine and test the Goods.

## 11. DELIVERY

- 11.1 The Supplier shall deliver the Goods in accordance with time periods and/or dates stated in the Order.
- 11.2 The Supplier shall manufacture the Goods so that they are ready for delivery at the time or times indicated on the Programme or at the time or times indicated in the Order or at such other time or times as the Purchaser's Representative may notify the Supplier in writing. In case of conflict between the Programme and the Order, the Order shall prevail.
- 11.3 The Supplier shall deliver the Goods to the Site or to the Place or places of delivery or to such other place or places as the Purchaser's Representative may notify the Supplier in writing. The Goods shall be unloaded by the Supplier unless specified otherwise in the Order. The Goods shall be unloaded by the Supplier at the place or places indicated by the Purchaser's Representative.
- 11.4 If for any reason the Supplier suffers delay to the manufacture of the Goods by reason of a fault of the Purchaser, the Purchaser's Representative shall extend the time or times for delivery of the Goods by such period or periods as may be appropriate in the circumstances.
- 11.5 If the Supplier fails to deliver the Goods by the time or times required by the Supply Contract (or the extended time or times) the Supplier shall reimburse the Purchaser such losses as may be suffered by the Purchaser as a result, such as but not limited to liquidated damages, loss and expense of the Purchaser and claims from other suppliers and sub-contractors employed by the Purchaser in connection with the Contract Works.
- 11.6 Vehicle Safety Specification – From the 1<sup>st</sup> October 2013, all vehicles rated greater than 3.5te attending or going to the Purchaser's site geographically located within the M25, which are operated/used by the Supplier or its designated transportation/logistics supply chain that do not comply with the minimum Purchaser's safety specification/standard will be denied access to such project.

The Supplier shall be liable for and indemnify the Purchaser against any expense, liability, loss, claim or proceedings howsoever arising in respect of such denied access.

The Purchaser shall have no liability whatsoever to the Supplier (or its designated transportation /logistics supply chain) arising from such denied access.

The minimum Purchaser safety specification/standard have been branded 'Stop & Think: Are your vehicles Safe?' The corresponding technical specification can be access via the following website path:

**[www.costain.com/responsibility/relationships/supplychain](http://www.costain.com/responsibility/relationships/supplychain)**.

- 11.7 Fleet Operators Recognition Scheme (FORS) **Membership** – before 1<sup>st</sup> October 2013, all transportation operators acting on behalf of the Supplier must be registered with FORS and then within 3 months must achieve the bronze standard of accreditation. Thereafter, any vehicle not adorned with an official FORS decal and carrying evidence of bronze status will be denied access to our projects.

The Supplier shall be liable for and indemnify the Purchaser against any expense, liability, loss, claim or proceeding howsoever arising in respect of such denied access.

The Purchaser shall have no liability to the Supplier (or its designate transportation/logistics supply chain) arising from such denied access.

Information on FORS registration and accreditation can be accessed via the FOR A website [www.fors-online.org.uk](http://www.fors-online.org.uk)

- 11.8 Driver Training – the supplier shall ensure that it promotes driver awareness of the requirements of these clauses 11.6 to 11.9 and risk to vulnerable road users. In this regard, the Supplier shall deliver a training workshop or toolbox talk, signed off by all present as a record of their attendance. The Supplier shall either use the Purchaser's FORS 'Cycle safety': It's no accident' driver presentation (downloadable from [www.costain.com/responsibility/relationships/supplychain](http://www.costain.com/responsibility/relationships/supplychain)) or its own similar and equivalent training pack to deliver its training workshop or toolbox talks by the Supplier shall be deemed to be evidence in respect of the FORS audit for verification of training
- 11.9 With regard to the Supplier compliance with these clauses 11.6 to 11.9, the Purchaser reserves the right to audit (at any time during normal working hours) the Suppliers records and processes in relation to transportation upon giving reasonable prior notice to the supplier.

## 12. VARIATIONS

- 12.1 The Purchaser or the Purchaser's Representative may by a written instruction to the Supplier order a change or alteration to the quantity, quality, type or amount of the Goods (hereinafter 'a Variation').
- 12.2 As soon as possible after receiving such instruction the Supplier shall notify the Purchaser's Representative if in the Supplier's opinion the Variation will involve an addition or deduction to the Price or a change to the Schedule of Rates or a change to the time or times for delivery of the Goods.
- 12.3 The amount to be added to or deducted from the Price by reason of such Variation shall, if not the subject of a quotation from the Supplier which has been accepted by the Purchaser, be agreed by the Purchaser's Representative and the Supplier by reference to the rates, if any, specified in the Price or by reference to the Price, if applicable. Failing agreement, the value of the Variation shall be determined by the Purchaser's Representative on such basis as is fair and reasonable. Where the Supplier does not agree with the determination made by the Purchaser the Supplier shall be entitled to refer the matter to dispute resolution in accordance with clause 20.
- 12.4 Where the Variation involves a change to the Schedule of Rates the applicable rate shall be agreed by the Purchaser's Representative and the Supplier by reference to the Schedule of Rates or failing agreement shall be determined by the Purchaser's Representative on such basis as is fair and reasonable. Where the Supplier does not

agree with the determination made by the Purchaser the Supplier shall be entitled to refer the matter to dispute resolution in accordance with clause 20.

- 12.5 In case the Supplier is instructed to proceed with the Variation before the value thereof has been determined the Supplier shall keep contemporary records of the cost of making the Variation including the materials purchased and the time expended thereon. Such records shall be made available for inspection by the Purchaser's Representative as and when he requires at all reasonable times.

### **13. DEFECTS CORRECTION**

- 13.1 The defects correction period is the period stated in the Order or if no period is stated 12 months following the date of completion of the Contract Works. The Supplier shall make good by repair or replacement any defect or damage to the Goods which may appear during the defects correction period, following instructions issued in writing to the Supplier by the Purchaser or the Purchaser's Representative. The Supplier shall carry out the correction of the defect or damage during the time or times notified in the said instructions or as may otherwise be agreed by the Purchaser or the Purchaser's Representative.
- 13.2 The Supplier shall bear the cost of such correction where the defect or damage arises from any defective materials, workmanship, or design or from any act of omission of the Supplier or any other defects or fault within the Goods which has not been caused solely by the Purchaser or the Employer.
- 13.3 In case the Supplier fails to correct any defect or damage within the time instructed or at all the Purchaser may arrange for the correction to be carried out by others and may deduct the reasonable cost of doing so from monies due to the Supplier or may recover the said cost from the Supplier as a debt.

### **14. TITLE AND RISK**

- 14.1 Title in Goods supplied pursuant to this Supply Contract shall pass to the Purchaser upon their receipt on Site (or such other place of delivery which the Purchaser has agreed) or upon payment for the Goods, whichever is the earlier.
- 14.2 Risk in the Goods remains with the Supplier until delivery on Site (or such other place of delivery which the Purchaser has agreed)

### **15. PAYMENTS**

- 15.1 All payment invoices shall be submitted to the Purchaser's address stated on the Order and marked for the attention of the Accounts Department. The Supplier shall be entitled to payment for the Goods as stated on the Order; provided that the Purchaser is satisfied that he has title to the Goods.
- 15.2 The Purchaser shall not use a factoring agent to collect any debts owed to the Purchaser by the Supplier without the prior written consent of the Purchaser.

## **16. SET OFF**

- 16.1 The Purchaser has the right to withhold from monies due to the Supplier any amounts which are owed to the Purchaser by the Supplier arising out of or in connection with the Supply Contract or any other contract between the Purchaser or a holding company or subsidiary of Costain (as defined in section 1159 of the Companies Act 2006) and the Supplier. Without prejudice to the foregoing, if the Supplier is in breach of the provisions of the Supply Contract, pending the final agreement between the parties as to the amount of loss or damage suffered or to be suffered by the Purchaser the Supplier shall pay or allow the Purchaser such sum as the Purchaser shall in good faith estimate as the amount of such loss or damage.

## **17. INSURANCE**

- 17.1 The Supplier shall insure the following in the joint names of the Supplier and the Purchaser to the amount of cover stated in the Order for the periods specified below.
- 1) The Goods, from the date of commencement of their manufacture until they have been delivered to the Site or the place of delivery specified in the Order and unloaded (if the Supplier is responsible for unloading), for their repair or full replacement value.
  - 2) Following the incorporation of the Goods into the Contract Works the Supplier shall at all times (including during the Contract period) maintain a policy of insurance to cover the Supplier's third party liability including but not limited to damage to the Contract Works, the Goods or other property, and death or injury to any persons whatsoever including without limitation the workmen of the Purchaser and the Supplier which is due to any fault in the Goods whether due to faulty design or faulty manufacture by the Supplier.
  - 3) The material or property referred to in Clause 25.3 (ii) and (iii).
- 17.2 The Supplier has no benefit under any Costain Group insurance policy.

## **18. CONFIDENTIALITY**

- 18.1 Save as may be necessary for the proper performance of the Supply Contract the Supplier will maintain in confidence any and all information provided to the Supplier by the Purchaser and any and all information developed or arising from the provision of the Goods and may only disclose such information if and to the extent that the Purchaser approves such disclosure in writing.
- 18.2 The obligation on the Supplier set out in clause 17.1 shall not apply to the extent that the information was:
- 18.2.1 already in the public domain at the date of the disclosure.
  - 18.2.2 acquired by the Supplier in good faith from an independent third party prior to the date of the disclosure by the Supplier; or



18.2.3 required to be disclosed by law, judicial action or a government agency, provided that the Supplier takes reasonable steps to consult with the Purchaser in relation to such disclosure prior to making the disclosure.

## **19. CARE OF GOODS**

19.1 The Supplier shall be responsible for the care of the Goods or any part thereof until the Goods or part thereof are delivered to the Site or the place or places of delivery and have been unloaded by the Supplier where the Supplier is responsible for unloading. In case all or any part of the Goods suffers loss or damage whilst the Supplier has the responsibility for the care thereof the same shall be made good by the Supplier at his own expense at such time as the Purchaser's Representative may instruct.

## **20. DISPUTES**

20.1 If any dispute or difference arises at any time out of or in connection with the Supply Contract and it cannot be resolved amicably it shall initially be referred to formal mediation. Should the mediation be unsuccessful the Courts of England and Wales shall have exclusive jurisdiction over any dispute or difference arising out of or in connection herewith subject only to the rights of the parties to enforce a judgment obtained in the Courts of England and Wales in any other jurisdiction

## **21. THIRD PARTIES**

21.1 Other than as may be expressly stated herein, nothing in this Supply Contract purports to confer on any third party any benefit or right to enforce any term of the Supply Contract and the Contract (Rights of Third Parties) Act 1996 shall not apply.

## **22. TERMINATION**

22.1 The Purchaser may without prejudice to any other rights or remedies terminate the Supplier's employment under this Supply Contract in respect of the whole or any portion of the work to be carried out or Goods to be supplied under the Supply Contract if the Supplier:-

- a) fails within three working days' notice in writing to proceed regularly and diligently with the design or manufacture or delivery of the Goods in accordance with the provisions of Clause 6 (Supplier's Obligations) hereof; or
- b) without reasonable cause wholly suspends carrying out the design, manufacture or delivery of the Goods before completion thereof; or
- c) refuses or neglects after three working days' notice in writing to remove defective work or improper materials or to rectify defects or faults in the Goods; or
- d) conducts himself in such a manner as to prejudice the completion of the whole or any portion of the Contract; or
- e) fails to complete and deliver up the whole or any portion of the Goods by the time or times specified, or by such extended time or times as may be allowed by the Purchaser or the Purchaser's Representative; or

- f) makes any arrangements with its creditors (including a voluntary arrangement as defined in the Insolvency Act 1986); has a receiver, administrator, administrative receiver, provisional liquidator or other encumbrancer appointed over the whole of any material part of its assets under the Insolvency Act 1986; or has a petition presented (and not being the subject of challenge by the Supplier) or a resolution passed or an order made for the administration or winding up, bankruptcy or dissolution of the Supplier;
  - g) fails within three working days of a notice in writing from the Purchaser to comply with any of the obligations on the part of the Supplier herein contained; or
  - h) significantly breaches any health and safety requirement of the Supply Contract.
- 22.2 Upon termination, the Supplier shall not be entitled to any compensation and shall upon instruction from the Purchaser remove or leave (as instructed) any of its materials or property from or at the Site or place of delivery.
- 22.3 Notwithstanding anything to the contrary contained in these conditions, the Supplier's entitlement to payment shall be for the value of the Goods delivered to the place of delivery provided that the Supplier can demonstrate that the Purchaser has title to the same. Such payment shall be subject to Clauses 15 and 16 hereof. The Purchaser shall be entitled to set off all loss, expense and damage suffered by the Purchaser by reason of a termination under this clause.

## **23. TERMINATION OF THE PURCHASER'S EMPLOYMENT**

- 23.1 If the Purchaser's employment under the Contract is terminated the Supply Contract shall also be terminated. The Purchaser shall bear no liability for any loss or expense suffered by the Supplier and shall not be obliged to make any further payments to the Supplier in the event of the termination of the Purchaser's employment as aforesaid.

## **24. COLLATERAL WARRANTIES**

- 24.1 In case the Employer requires the Purchaser's suppliers to provide collateral warranties to the Employer or third parties the Supplier shall provide such warranties as the Purchaser may reasonably require. Provided that the Supplier's liabilities thereunder shall not be greater than the Supplier's liability to the Purchaser under the Supply Contract.
- 24.2 The cost of supplying any such warranties shall be deemed to be included in the Price or the Schedule of Rates.

## **25. WARRANTIES AND LIABILITY**

- 25.1 The Supplier warrants to the Purchaser that the Goods:-
- 25.1.1 will be of satisfactory quality and fit for any purpose held out by the Supplier or made known to the Supplier in writing at the time the Supply Contract is entered into.
  - 25.1.2 will be free from defects in design, material and workmanship.
  - 25.1.3 will correspond with any relevant specification or sample.
  - 25.1.4 will comply with all statutory requirements and regulations relating to the supply of the Goods;

- 25.1.5 that the Goods will be manufactured by appropriately qualified and trained personnel, with due care and diligence to such high standard of quality as it is reasonable for the Purchaser to expect in all the circumstances;
- 25.1.6 that where no standards are specified in the Supply Contract the Goods will be in accordance with the standards specified in the Contract or in the absence of any such standard in accordance with any relevant British Standard or industry standard or in the absence of any such standards in accordance with instructions to be issued by the Purchaser's Representative;
- 25.1.7 that the Goods will be free from defect; free from any third party rights and interests (including liens, charges and options) and that the use or possession by the Purchaser of any of the Goods will not subject the Purchaser to any claim for infringement of any intellectual property rights of any third party.
- 25.2 Without prejudice to any other remedy, if any other Goods are not supplied or do not perform in accordance with the Supply Contract, then the Purchaser shall be entitled:-
- (i) to require the Supplier to repair the Goods free of charge or to supply replacement Goods free of charge in accordance with the Supply Contract within 7 days; or
  - (ii) at the Purchaser's sole option, and whether or not the Purchaser has previously required the Supplier to repair the Goods or to supply any replacement Goods, to treat the Supply Contract as repudiated by the Supplier's breach and require the payment of any sums which have been paid by the Purchaser to the Supplier in respect of such Goods.
- 25.3 The Supplier hereby indemnifies and shall keep indemnified the Purchaser in full against all liability, loss, damage, costs and expenses (including legal expenses) awarded against or incurred or paid by the Purchaser as a result of or in connection with:-
- (i) the Supplier's failure to perform in accordance with the Supply Contract;
  - (ii) the personal injury or death of any persons arising out of or in the course of or caused by the carrying out of the Supply Contract by the Supplier; or
  - (iii) any injury or damage whatsoever to any property real or personal due to any negligence, omission or default of the Supplier his servants or agents.
- 25.4 The Supplier shall insure in the joint names of the Purchaser and the Supplier any material or property sent to the Supplier by the Purchaser for any purpose in connection with the Supply Contract against any damage which may occur to it whilst in the custody of the Supplier.
- 25.5 The Supplier shall indemnify and save harmless the Purchaser from all liens and other encumbrances against the Goods or any property belonging to or in possession of the Purchaser on account of debts or claims alleged to be due from the Supplier or its sub-contractors to any person, including sub-contractors. On behalf of the Purchaser and in the Purchaser's name, as the case may be the Supplier shall defend at its own expense any claim or litigation in connection therewith and shall follow any reasonable instructions issued by the Purchaser in connection therewith.

## **26. VAT**

26.1 All rates and prices included in the Supply Contract are exclusive of Value Added Tax.

## **27. NOTICES**

27.1 All notices required by this Supply Contract to be served on the Purchaser by the Supplier shall be served in writing at the address given in the Order.

## **28. LAW OF SUPPLY CONTRACT**

28.1 The Supply Contract shall be governed by the law of England and Wales.

## **29. ADMINISTRATION OF THE CONTRACT**

29.1 Whenever the Purchaser is required by the Contract to give any return, account or notice to the Employer or the Employer's representative the Supplier shall in relation to the Supply Contract give a similar return, account or notice or such other information in writing to the Purchaser as will enable the Purchaser to comply with the terms of the Contract, and shall do so in sufficient time to enable the Purchaser to comply with such terms punctually. If by reason of any breach by the Supplier of this provision the Purchaser is prevented from recovering any sum from the Employer under the Contract then without prejudice to any other remedy which the Purchaser may possess for such breach the Purchaser may deduct such sum from monies otherwise due to the Supplier under the Supply Contract.

## **30. ENTIRE AGREEMENT**

30.1 The Supply Contract constitutes the entire agreement between the Supplier and the Contractor as to the terms upon which the Goods shall be supplied and delivered and supersedes any previous agreements relating to the subject matter of the Supply Contract. Any other terms whether written or verbal (including without limitation any terms and conditions contained in the Supplier's order forms, tender, printed conditions, correspondence or delivery notes) are expressly excluded.

## **31. ANTI BRIBERY AND CORRUPTION**

31.1 The Supplier acknowledges that it has seen the Purchaser's Anti-Bribery Policy and agrees to comply with and support such policy so as not to breach or cause the Purchaser to breach the Bribery Act 2010. The Supplier shall further comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010.

31.2 Where the Supplier is a non-UK company, in relation to its activities, practices and conduct outside the UK, the Supplier shall not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK.

31.3 The Supplier shall have and shall maintain in place throughout the term of the Supply Contract its own policies and procedures, including but not limited to adequate

procedures in accordance with the Bribery Act 2010, to ensure compliance with this clause 31 and will enforce them where appropriate.

- 31.4 The Supplier warrants that it has not received or provided any request or demand for any undue financial or other advantage of any kind in entering into the Supply Contract and the Supplier shall promptly report to the Purchaser any request or demand for any undue financial or other advantage of any kind received by the Supplier from any other party in connection with the performance of the Supply Contract.
- 31.5 With regard to the Supplier's compliance with this clause 31, the Purchaser reserves the right to audit (at any time during normal working hours) the Supplier's methods of working and processes upon giving reasonable prior notice to the Supplier.
- 31.6 Without prejudice to the generality of clause 31.5, if the Purchaser reasonably suspects the Supplier or any person associated with the Supplier of breach of this clause 31, the Purchaser and its third party representatives shall have the right to immediately access and take copies of any records and any other information held at the Supplier's premises and to meet with the Supplier's personnel to audit the Supplier's compliance with its obligations under this clause 31. The Supplier shall give all necessary assistance to the conduct of such audit during the term of the Supply Contract and for a period of three years after termination or expiry of the Supply Contract.
- 31.7 The Supplier shall ensure that any person associated with the Supplier who is providing any part of the Goods or providing works or service in connection with the Supply Contract, including its agents, suppliers or subcontractors, does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 31 (**Relevant Terms**). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Purchaser for any breach by such persons of any of the Relevant Terms.
- 31.8 Should the Purchaser determine that the Supplier or any person associated with the Supplier who is providing any part of the Goods or providing works or service in connection with the Supply Contract, including its agents, supplier or subcontractors, has acted in a manner which could constitute a breach of the Bribery Act 2010 or of this clause 31, the Purchaser may immediately terminate the Agreement, at its sole discretion, in accordance with clause 22.1. For the avoidance of doubt, if the Purchaser terminates this Supply Contract in accordance with this clause, there will be no rectification or period to put right the default before termination.

## **32. Competition Law**

- 32.1 The Supplier acknowledges that it has seen the Purchaser's Competition Law Policy and agrees to comply with and support such policy so as not to breach or cause the Purchaser to breach the prohibitions against anti-competition set out in the Competition Act 1998 and the Enterprise Act 2002 (the "Acts"). The Supplier shall further comply with all applicable laws, statutes, regulations and codes relating to UK and EU competition laws, including but not limited to the Competition Act 1998 and the Enterprise Act 2002.
- 32.2 Where the Supplier is a non-UK company, in relation to its activities, practices and conduct outside the UK, the Supplier shall not engage in any activity, practice or conduct which would constitute an offence under the Acts if such activity, practice or conduct had been carried out in the UK.
- 32.3 The Supplier warrants that it has engaged in no price fixing, bid rigging, illegal price information exchange agreement or other arrangement in breach of UK, EU or other competition laws relevant to the Supply Contract or arrangements between the parties.
- 32.4 The Supplier shall have and shall maintain in place throughout the term of the Supply

Contract its own policies, procedures to ensure compliance with the Acts and will enforce such policies and procedures where appropriate.

- 32.5 With regard to the Supplier's compliance with this clause 32, the Purchaser reserves the right to audit (at any time during normal working hours) the Supplier's compliance with this clause 32 upon giving reasonable prior notice to the Supplier.
- 32.6 Without prejudice to the generality of clause 32, if the Purchaser reasonably suspects the Supplier or any person associated with the Supplier of breaching this clause 32, the Purchaser and its third party representatives shall have the right to immediately access and take copies of any records and any other information held at the Supplier's premises and to meet with the Supplier's personnel to audit the Supplier's compliance with its obligations under this clause 32. The Supplier shall give all necessary assistance to the conduct of such audit during the term of this Supply Contract and for a period of three years after termination or expiry of this Supply Contract.
- 32.7 The Supplier shall ensure that any person associated with the Supplier who is providing any part of the Supply Contract or providing works or service in connection with this Supply Contract, including its agents, suppliers or subcontractors, does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 32 (Relevant Terms). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Purchaser for any breach by such persons of any of the Relevant Terms.
- 32.8 Should the Purchaser determine that the Supplier or any person associated with the Supplier who is providing any part of the Supply Contract or providing works or service in connection with this Supply Contract, including its agents, supplier or subcontractors, has acted in a manner which could constitute a breach of the Acts or of this clause 32, the Purchaser may immediately terminate the Supply Contract, at its sole discretion. For the avoidance of doubt, there will be no rectification or period to put right the default before termination in respect of a breach of clause 32.

### **33. Data Protection Law**

- 33.1 The Supplier acknowledges that it has seen the Purchaser's Data Protection Policy and agrees to comply with and support such policy so as not to breach or cause the Purchaser to breach the General Data Protection Regulation (Regulation (EU) 2016/679) ("GDPR") and any equivalent legislation amending, supplementing or replacing the GDPR (together "Data Protection Law"). The Supplier shall further comply with all applicable laws, statutes, regulations and codes relating to data protection and information security including but not limited to Data Protection Law.
- 33.2 The Supplier will ensure that any Goods and services supplied to the Purchaser under the Supply Contract will conform with the requirements of Data Protection Law. This clause 33 is in addition to, and does not relieve, remove or replace, the Supplier's obligations under Data Protection Law.
- 33.3 In this clause 33, "personal data", "data controller", "data processor", "data subject", "processing", "personal data breach" and other terms recognized under Data Protection Law, shall have the same meaning given thereunder.
- 33.4 Where the Supplier is a non-UK company, in relation to its activities, practices and conduct outside the UK, the Supplier shall not engage in any activity, practice or conduct which would constitute an offence under Data Protection Law if such activity, practice or conduct had been carried out in the UK.
- 33.5 The Supplier shall have and shall maintain in place throughout the term of this Supply Contract its own policies, procedures and safeguards to ensure compliance with Data Protection Law, and will enforce such policies and procedures where appropriate.
- 33.6 Where the Purchaser is acting as a data controller and the Supplier is acting as a data processor, the Supplier shall, in relation to any personal data belonging to the Purchaser that is processed in connection with the performance by the Supplier's obligations under

the Supply Contract:

- 33.6.1 process that personal data only on the written instructions of the Purchaser (including for the purposes of this Supply Contract) unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier to process personal data ("Applicable Laws"). Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing personal data, the Supplier shall promptly notify the Purchaser of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Purchaser;
- 33.6.2 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of that personal data and against accidental loss or destruction of, or damage to, that personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the personal data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 33.6.3 ensure that all personnel who have access to and/or process that personal data are obliged to keep the personal data confidential;
- 33.6.4 not transfer that personal data outside of the European Economic Area unless the prior written consent of the Purchaser has been obtained and the following conditions are fulfilled:
  - (a) the Supplier has provided appropriate safeguards in relation to the transfer;
  - (b) the data subject has enforceable rights and effective legal remedies;
  - (c) the Supplier complies with its obligations under the Data Protection Law by providing an adequate level of protection to that personal data; and
  - (d) the Supplier complies with reasonable instructions notified to it in advance by the Purchaser with respect to the processing of that personal data;
  - (e) assist the Purchaser in responding in a timely manner to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Law with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - (f) notify the Purchaser without undue delay on becoming aware of a personal data breach in respect of that personal data;
  - (g) at the written direction of the Purchaser, delete or return to the Purchaser that personal data and all copies thereof on termination of the Supply Contract unless and to the extent required by Applicable Laws to store that personal data; and
  - (h) maintain complete and accurate records and information to demonstrate its compliance with Data Protection Legislation and this clause 33 and allow for

audits in respect of such compliance by the Purchaser or the Purchaser's designated auditor.

- 33.7 Subject to the conditions of this clause 33, the Purchaser consents to the Supplier appointing such third parties as are necessary for the purposes of performing this Supply Contract and such third parties will act as sub-processors of the personal data under this Supply Contract. The Supplier confirms that it has entered or (as the case may be) will enter into a written agreement with the sub-processor incorporating terms which are no less onerous than those set out in this clause 33. The Supplier shall notify the Purchaser in writing of the appointment of any sub-processor. The Supplier shall remain fully liable to the Purchaser for all acts or omissions of any third-party processor appointed by it pursuant to this clause 33.
- 33.8 The Supplier warrants that it will maintain and provide to the Purchaser within three working days of a written request, the Supplier's record of all categories of processing activities carried out on behalf of the Purchaser, as set forth in Article 30(2) of the GDPR.
- 33.9 The Supplier warrants that it has in place technical and organisational measures to comply with Data Protection Legislation and that it will provide to the Purchaser within three working days of a written request a statement setting out the Supplier's then current technical and organisational measures that comply with Data Protection Law.
- 33.10 If the Purchaser reasonably suspects the Supplier or any person associated with the Supplier of breaching this clause 33, the Purchaser and its third party representatives shall have the right to immediately access and take copies of any records and any other information held at the Supplier's premises and to meet with the Supplier's personnel to audit the Supplier's compliance with its obligations under this clause 33. The Supplier shall give all necessary assistance to the conduct of any audit under this clause 33 during the term of this Supply Contract and for a period of three years after termination or expiry of this Supply Contract. The cost of the audit will be recoverable by the Purchaser from the Supplier in the event that it's found that there is a breach of Data Protection Law.
- 33.11 The Purchaser may require the Supplier to audit its sub-processors to the Purchaser's reasonable satisfaction where the Supplier cannot provide audit findings of its sub-processors within the previous twelve (12) months that demonstrates compliance with the requirements of this clause 33 to the Purchaser's or a data protection authority's reasonable satisfaction.
- 33.12 The Supplier shall ensure that any person associated with the Supplier who is providing any part of the Supply Contract or providing works or service in connection with this Supply Contract, including its agents, suppliers or subcontractors, does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 33 (Relevant Terms). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Purchaser for any breach by such persons of any of the Relevant Terms.
- 33.13 Should the Purchaser determine that the Supplier or any person associated with the Supplier who is providing any part of the Supply Contract or providing works or service in connection with this Supply Contract, including its agents, supplier or subcontractors, has acted in a manner which could constitute a breach of Data Protection Law or of this clause 33, the Purchaser may immediately terminate the Supply Contract, at its sole discretion. For the avoidance of doubt, there will be no rectification or period to put right the default before termination in respect of a breach of clause 33.
- 33.14 The Supplier acknowledges that it shall keep the Purchaser indemnified against any losses or liabilities which the Purchaser may suffer or incur due to the Supplier's or its sub-processor's breach of the provisions of this clause 33.



### **34. Modern Slavery and Human Trafficking**

- 34.1 The Supplier acknowledges that it shall comply with all applicable laws, statutes, regulations and codes relating to modern slavery and human trafficking including but not limited to the Modern Slavery Act 2015 (the "Act").
- 34.2 Where the Supplier is a non-UK company, in relation to its activities, practices and conduct outside the UK, the Supplier shall not engage in any activity, practice or conduct which would constitute an offence under the Act if such activity, practice or conduct had been carried out in the UK.
- 34.3 The Supplier shall have and shall maintain in place throughout the term of this Supply Contract its own policies, procedures to ensure compliance with the Act, and will enforce such policies and procedures where appropriate.
- 34.4 With regard to the Supplier's compliance with this clause 34, the Purchaser reserves the right to audit (at any time during normal working hours) the Supplier's compliance with this clause 34 upon giving reasonable prior notice to the Supplier.
- 34.5 Without prejudice to the generality of clause 34, if the Purchaser reasonably suspects the Supplier or any person associated with the Supplier of breaching this clause 34, the Purchaser and its third party representatives shall have the right to immediately access and take copies of any records and any other information held at the Supplier's premises and to meet with the Supplier's personnel to audit the Supplier's compliance with its obligations under this clause 34. The Supplier shall give all necessary assistance to the conduct of such audit during the term of this Supply Contract and for a period of three years after termination or expiry of this Supply Contract.
- 34.6 The Supplier shall ensure that any person associated with the Supplier who is providing any part of the Supply Contract or providing works or service in connection with this Supply Contract, including its agents, suppliers or subcontractors, does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 34 (Relevant Terms). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Purchaser for any breach by such persons of any of the Relevant Terms.
- 35.7 Should the Purchaser determine that the Supplier or any person associated with the Supplier who is providing any part of the Supply Contract or providing works or service in connection with this Supply Contract, including its agents, supplier or subcontractors, has acted in a manner which could constitute a breach of the Act or of this clause 34, the Purchaser may immediately terminate the Supply Contract, at its sole discretion. The Purchaser shall also be entitled to terminate the Supply Contract with immediate effect where the Supplier has failed to take reasonable steps to ensure modern slavery or human trafficking is not taking place in its supply chain and one of its supply chain has committed an offence under the Act, or where applicable, where the Supplier has failed to take reasonable steps to ensure compliance and one of the Supplier's supply chain fails to comply with its duty to prepare a slavery and human trafficking statement, as prescribed in Part 6, Section 54 of the Act. For the avoidance of doubt, there will be no rectification or period to put right the default before termination in respect of a breach of clause 34.
- 35.8 The Supplier acknowledges that it shall keep the Purchaser indemnified against any liabilities which the Purchaser may suffer or incur due to the Supplier's breach of the provisions of this clause 34.