

# PURCHASE ORDER TERMS AND CONDITIONS

## 1 DEFINITIONS

1.1 In this Contract:

**"Applicable Law"** means all laws and regulations which relate to the parties of either one of them in connection with the performance of their obligations under the Contract and include, without limitation, all health and safety laws and regulations (and any codes of practice, circulars or guidance notes issued by the Health and Safety Executive or any equivalent body), all environmental laws and regulations which relate to the treatment of man or any other living organisms, the Modern Slavery Act 2015 and the Bribery Act 2010.

**"Business Days"** means a day other than a Saturday, Sunday or a public holiday in England and Wales;

**"Commission"** means Forest Research, an executive agency of the Forestry Commission, acting in exercise of the powers contained in the Forestry Act 1967, of 620 Bristol Business Park, Coldharbour Lane, Bristol, BS16 1EJ;

**"Conditions"** means the terms and conditions set out in this document as amended from time to time in accordance with clause 21.9;

**"Contract"** means the contract between the Commission and the Supplier for the purchase of Goods and/or Services, made up of these Conditions, the Purchase Order and any other documents specified by the Commission as being part of the Contract in the Purchase Order;

**"Deliverables"** means all documents, products and materials developed by the Supplier or its agents, contractors and employees (whether individually, collectively or jointly, developed with the Commission), as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts);

**"Documentation"** means all accompanying documentation relating to the quality, standard, origin, shipment, transit and/or delivery of Goods as detailed in the Purchase Order or otherwise requested in writing by the Commission, including but not limited to any export licence, customs documentation, certificates of conformity, origin and quality;

**"Goods"** means any and all goods (or part of them) to be provided by the Supplier under this Contract, including those set out in the Purchase Order;

**"Intellectual Property Rights"** means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in

goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and similar or equivalent rights or forms of protection in any part of the world;

**"Premises"** means, unless otherwise set out in the Purchase Order, the final delivery location for the Goods and/or the location at which the Services are to be performed, as specified in the Purchase Order;

**"Purchase Order"** means the purchase order form completed and submitted to the Supplier by the Commission detailing the Goods and/or Services to be purchased by the Commission;

**"Services"** means any and all services (or part of them) to be provided by the Supplier under this Contract, including those set out in the Purchase Order; and

**"Supplier"** means the person, firm or company set out on the Purchase Order.

## 2 ORDER OF PRIORITY

2.1 These Conditions only apply in the absence of an alternative signed contract between the Supplier and the Commission. Where the Supplier and the Commission have agreed and signed alternative written terms that relate to the same subject matter as the Contract, those terms shall apply to the exclusion of any other terms that either party seeks to impose on the other, including these Conditions.

2.2 In the absence of an alternative, signed contract between the Supplier and the Commission, the Conditions set out at clauses 3 to 21 below shall apply to the exclusion of all other terms and conditions.

## 3 BASIS OF CONTRACT

3.1 The Purchase Order constitutes an offer by the Commission to purchase the Goods and/or Services from the Supplier in accordance with these Conditions. The Commission may revoke an offer at any time prior to the Contract coming into force.

3.2 The Purchase Order shall be deemed to be accepted by the Supplier on the earlier of:

3.2.1 the Supplier issuing a written acceptance of the Purchase Order; or

3.2.2 the Supplier carrying out any act

consistent with fulfilling the Purchase Order,

at which point and on which date the Contract shall come into existence ("**Commencement Date**"). In the event that there has been no deemed acceptance in accordance with this clause 3.2 within 15 Business Days of the Commission making an offer, the offer shall automatically be deemed to be revoked.

3.3 Where, upon receipt of a Purchase Order, the Supplier makes a counter-offer to supply the Goods and/or Services on new conditions to the exclusion of these Conditions, such counter-offer shall only be validly accepted by the Commission if such acceptance is in writing and signed by a duly authorised representative of the Commission. Only upon the Commission's express acceptance of the counter-offer shall the Contract come into existence.

3.4 Subject to clause 2, these Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. No addition to, variation of, exclusion or attempted exclusion of the Purchase Order or these Conditions (or any part of them) shall be binding on the Commission unless in writing and signed by a duly authorised representative of the Commission.

3.5 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

3.6 If there is a conflict or inconsistency between any term set out in (1) the Purchase Order, (2) these Conditions, and (3) any other document(s) specified by the Commission as being part of the Contract in the Purchase Order, a term contained in a document higher in the list shall have priority over one contained in a lower document in the list.

#### 4 **SUPPLY OF GOODS**

4.1 The Supplier represents and warrants that the Goods shall:

4.1.1 correspond with their description and any applicable specification or standard;

4.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979), be fit for any purpose for which they are ordinarily used, and be fit for any purpose held out by the Supplier or made known to the

Supplier by the Commission (expressly or by implication) and in this respect the Commission relies on the Supplier's skill and judgement;

4.1.3 be free from defects in design, materials and workmanship and remain so for 12 months after delivery, subject to any other guarantee arrangements agreed in writing between the Commission and the Supplier or any manufacturer guarantee; and

4.1.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods, including but not limited to all applicable environmental, health and safety laws and regulations.

4.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

#### 5 **DELIVERY OF GOODS**

5.1 The Supplier shall ensure that:

5.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their final destination in good condition without damage or deterioration and in compliance with any special requirements set out in the Purchase Order;

5.1.2 each delivery of the Goods is accompanied by the Documentation and a delivery note which shows the date of the Purchase Order, the Purchase Order number (if any), the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (where applicable) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered;

5.1.3 it states clearly on the delivery note any requirement for the Commission to return any packaging material for the Goods to the Supplier. Any such packaging material shall only be

- returned to the Supplier at the cost and risk of the Supplier. In the absence of any such note, packaging material shall be considered non-returnable and may be destroyed, reused or recycled by the Commission; and
- 5.1.4 if the Goods are damaged in transit, the Supplier shall, free of charge either replace or repair (as the Commission shall elect) the damaged Goods within 30 days of the Commission notifying the Supplier of the damage.
- 5.2 The Supplier shall deliver the Goods:
- 5.2.1 on the date specified in the Purchase Order, or, if no such date is specified, on such date as may be agreed between the parties;
- 5.2.2 to the Premises or such other location specified in the Purchase Order or as instructed by the Commission prior to delivery ("**Delivery Location**"); and
- 5.2.3 during the Commission's normal business hours on a Business Day, or as otherwise instructed by the Commission.
- 5.3 Delivery of the Goods shall be completed on the completion of unloading the Goods from the transporting vehicle at the Delivery Location (including off-loading and stacking) and the Commission signing for the delivery.
- 5.4 The Supplier shall not deliver the Goods in instalments without the Commission's prior written consent. Where it is agreed that the Goods may be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Commission to the remedies set out in clause 8.1.
- 5.5 Title and risk in the Goods shall pass to the Commission on completion of the delivery.
- 5.6 The Supplier shall provide the Commission with periodic updates regarding the progress of the Purchase Order and delivery of Goods. If the Supplier considers or becomes aware that it will be unable to deliver Goods by on the date specified in the Purchase Order, notwithstanding the remedies available to the Commission in clause 8.1, the Supplier shall notify the Commission immediately in writing

and, at the Supplier's cost, use expedited means of delivery to deliver the Goods.

## 6 SUPPLY OF SERVICES

- 6.1 The Supplier shall from the date set out in the Purchase Order and for the duration of the Contract supply the Services to the Commission in accordance with the terms of the Contract.
- 6.2 The Supplier shall meet any performance dates for the Services specified in the Purchase Order or as the Commission otherwise notifies the Supplier and time is of the essence in relation to any of those performance dates.
- 6.3 In providing the Services, the Supplier represents and warrants that:
- 6.3.1 the Supplier will co-operate with the Commission and comply with all of the Commission's instructions in all matters relating to the Services;
- 6.3.2 the Services shall be performed with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- 6.3.3 the Supplier shall use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;
- 6.3.4 the Services will conform with all descriptions, standards and specifications, and that the Deliverables shall be fit for any purpose that the Commission expressly or impliedly makes known to the Supplier;
- 6.3.5 the Supplier will ensure that it has all equipment, tools and vehicles and such other items as are required to provide the Services;
- 6.3.6 the Supplier will use the best quality goods, materials, standards and techniques, and ensure the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Commission, will be free from defects in workmanship, installation and design;

- 6.3.7 the Supplier will obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
- 6.3.8 the Services will comply with all regulations, regulatory policies, guidelines or industry codes which may apply to the provision of the Services;
- 6.3.9 the Supplier shall observe all health and safety rules and regulations and any other security requirements that apply at any of the Commission's premises;
- 6.3.10 the Supplier will hold all materials, equipment and tools, drawings, specifications and data supplied by the Commission ("**Commission Materials**") in safe custody at its own risk, maintain the Commission Materials in good condition until returned to the Commission, and not dispose or use the Commission Materials other than in accordance with the Commission's written instructions or authorisation;
- 6.3.11 the Supplier will not do or omit to do anything which may cause the Commission to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Commission may rely or act on the Services; and
- 6.3.12 the Supplier will comply with any additional obligations set out in the Purchase Order.
- 7 TIMBER**
- 7.1 Where the Services involves the supply of timber, the Supplier will ensure that all such timber supplied or used by the Supplier in the performance of the Services (if any) shall be sourced from an independently verifiable legal and sustainable source including, for the avoidance of doubt, timber from a licensed Forest Law Enforcement, Governance and Trade (FLEGT) partner and shall adhere to the buying standards set out in the Specification (if any).
- 7.2 The Supplier will provide evidence within 5 Business Days from request by the Commission that any Timber used in the performance of the Services complies with clause 7.1.
- 7.3 Any breach of clause 7.1 by the Supplier shall be deemed a material breach of this Agreement and shall entitle the Commission to terminate this Agreement in accordance with clause 17.3.1.
- 8 REMEDIES**
- 8.1 If the Supplier fails to deliver the Goods by the applicable date or to perform the Services by the applicable date, or both, the Commission shall, without limiting or affecting other rights or remedies available to it, have one or more of the following rights:
- 8.1.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
- 8.1.2 to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
- 8.1.3 to recover from the Supplier any costs incurred by the Commission in obtaining substitute goods and/or services from a third party;
- 8.1.4 to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and/or Goods that it has not delivered; and
- 8.1.5 to claim damages for any additional costs, loss or expenses incurred by the Commission which are in any way attributable to the Supplier's failure to meet such dates.
- 8.2 If the Supplier has delivered Goods that do not comply with the warranties set out in clause 4.1, then, without limiting or affecting other rights or remedies available to it, the Commission shall have one or more of the following rights, whether or not it has accepted the Goods:
- 8.2.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
- 8.2.2 to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
- 8.2.3 to require the Supplier to repair or replace the rejected Goods, or to

- provide a full refund of the price of the rejected Goods (if paid);
- 8.2.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- 8.2.5 to recover from the Supplier any expenditure incurred by the Commission in obtaining substitute goods from a third party; and
- 8.2.6 to claim damages for any additional costs, loss or expenses incurred by the Commission arising from the Supplier's breach of any of the warranties set out in clause 4.1.
- 8.3 If the Supplier has supplied Services that do not comply with the requirements of clause 6.3 then, without limiting or affecting other rights or remedies available to it, the Commission shall have one or more of the following rights:
- 8.3.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
- 8.3.2 to return the Deliverables to the Supplier at the Supplier's own risk and expense;
- 8.3.3 to require the Supplier to provide repeat performance of the Services, or to provide a full refund of the price paid for the Services (if paid);
- 8.3.4 to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
- 8.3.5 to recover from the Supplier any expenditure incurred by the Commission in obtaining substitute services or deliverables from a third party; and
- 8.3.6 to claim damages for any additional costs, loss or expenses incurred by the Commission arising from the Supplier's failure to comply with clause 6.3.
- 8.4 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.
- 8.5 The Commission's rights and remedies under the Contract are in addition to, and not exclusive of, any rights and remedies implied by statute and common law.

## 9 THE COMMISSION'S OBLIGATIONS

### 9.1 The Commission shall:

- 9.1.1 provide the Supplier with reasonable access at reasonable times to the Premises for the purpose of providing the Services and/or the Delivery Location for the purpose of delivering the Goods; and
- 9.1.2 provide such necessary information for the provision of the Services as the Supplier may reasonably request.

## 10 COMMISSION'S PREMISES

- 10.1 The Commission shall provide the Supplier with non-exclusive access to such parts of the Commission's Premises as the Supplier requires for the purposes only of providing the Services and/or delivering the Goods. The Supplier's right of access will terminate immediately once the Goods have been delivered and/or, where the Supplier is performing Services, upon the termination of this Agreement however arising.
- 10.2 Where the provision of the Services and/or the delivery of the Goods requires the Supplier to enter onto any forest areas, the Supplier shall use pre-authorised access routes, which shall be authorised in writing by the Commission from time to time and shall take every reasonable precaution to minimise damage to such authorised access routes and restore any actual damage caused.
- 10.3 The Supplier shall adhere to all lawful instructions issued by the Commission from time to time in connection with the pre-authorised access routes and the Supplier shall not use any access routes other than the pre-authorised access routes at any time.
- 10.4 The use of authorised access routes shall be at the Supplier's own risk and the Commission shall not be liable for any damage or injury arising out of the Supplier's use of authorised access routes other than to the extent required by Applicable Law.
- 10.5 Any access of the Supplier or Supplier personnel to the Commission's premises will be solely for the purpose of providing the Services and/or delivering the Goods and performing the Supplier's obligations under this Contract and the Supplier shall obey all written or verbal instructions of the Commission issued from time to time.

- 11 **CHARGES AND PAYMENT**
- 11.1 The price for the Goods:
- 11.1.1 shall be the price set out in the Purchase Order;
- 11.1.2 shall be inclusive of the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by the Commission; and
- 11.1.3 shall be payable in pound sterling unless otherwise agreed in writing between the parties.
- 11.2 The charges for the Services shall be set out in the Purchase Order, shall be payable in pound sterling (unless otherwise agreed between the parties) and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Commission, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 11.3 In respect of the Goods, the Supplier shall invoice the Commission on or at any time after completion of delivery. In respect of the Services, the Supplier shall invoice the Commission on completion of the Services. Each invoice shall include such supporting information required by the Commission to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.
- 11.4 In consideration of the supply of Goods and/or Services by the Supplier, the Commission shall pay the invoiced amounts within 30 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.
- 11.5 The Supplier shall separately state on each invoice any import duties or sales, use, value added, excise or similar tax. The Supplier shall not charge tax if the Commission is exempt from such taxes and furnishes the Supplier with a certificate of such exemption. The Commission will be responsible for any sales, use, VAT, or similar taxes, import duties or any other such assessment however designated.
- 11.6 Payment by the Commission of any invoice received by it pursuant to this clause 11 are made only in accordance with the terms of the Contracts and shall not be deemed to be an acceptance of any terms and conditions proposed by the Supplier's documents.
- 11.7 If the Commission fails to make a payment due to the Supplier under the Contract by the due date, then the Commission shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 11.7 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 11.8 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow the Commission to inspect such records at all reasonable times on request.
- 11.9 The Commission may at any time, without notice to the Supplier, set off any liability of the Supplier to the Commission against any liability of the Commission to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. If the liabilities to be set off are expressed in different currencies, the Commission may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Commission of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.
- 12 **CHANGES**
- 12.1 The Supplier shall not make changes to Goods or Services or to the manufacturing, testing, quality or other processes, the bill of materials, materials, design, tools, sources of materials, or locations used to manufacture, assemble, or package the Goods or perform Services (in each case following the date of the Purchase Order) without the Commission's prior written approval. Any unauthorised change of any type will render the changed Goods and Services non-conforming and will constitute a material breach of the Supplier's obligations under this Contract, and the Supplier shall be responsible for all resulting damage, loss and/or expense incurred by the Commission.
- 12.2 The Commission may request changes to the Goods and/or Services (including packaging and delivery requirements) at any time (prior to the despatch of Goods, where Goods are to be supplied) upon written notice to the Supplier. The Supplier shall implement the requested changes, and the Purchase Order will be deemed amended to incorporate the changes. However, if the requested changes will affect the cost of performance or the time required to perform, the Supplier shall advise the Commission in writing within 14 days of the

Commission's change request, and shall not implement the change without the Commission's written approval.

event giving rise to the claim, and (2) the sum of £5,000.

### 13 INTELLECTUAL PROPERTY RIGHTS

Save as otherwise expressly provided in this Contract, neither the Supplier nor the Commission shall receive any right, title or interest in or to the Intellectual Property Rights of the other party.

15.4 Subject to clause 15.1, neither party shall be liable to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect, special or consequential loss arising under or in connection with this Agreement.

### 14 INSURANCE

During the term of the Contract and for a period of 6 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on the Commission's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

15.5 The parties acknowledge and agree that the limitations contained in this clause 15 are reasonable in all the circumstances.

### 15 LIABILITY

### 16 INDEMNITY

15.1 Neither party limits its liability for: death or personal injury caused by its negligence, or that of its employees, agents or subcontractors (as applicable); fraud or fraudulent misrepresentation; breach of any obligation as to title implied by statute (including by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982); any indemnity given under this Contract; any breach of clauses 6.3.8, 4.1.4, 20 or any liability to the extent it cannot be limited or excluded by law.

16.1 The Supplier shall keep the Commission indemnified in full against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties, fines, legal and other professional costs and expenses (calculated on a full indemnity basis) awarded against or incurred or paid by the Commission as a result or in connection with:

15.2 Subject to clause 15.1, the aggregate liability of the Commission in respect of any loss or damage suffered by the Supplier and arising out of or in connection with this Contract, whether in contract, tort (including negligence) or for breach of statutory duty or in any other way, shall not exceed the greater of: (1) the price payable by the Commission to the Supplier pursuant to this Contract during the 12 months preceding the event giving rise to the claim, and (2) the sum of £1000.

16.1.1 any claim made against the Commission for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services (excluding the Commission Materials);

15.3 Subject to clause 15.1, the aggregate liability of the Supplier in respect of any loss or damage suffered by the Commission and arising out of or in connection with this Contract, whether in contract, tort (including negligence) or for breach of statutory duty or in any other way, shall not exceed the greater of: (1) an amount equal to 125% of the price payable by the Commission to the Supplier pursuant to this Contract during the 12 months preceding the

16.1.2 any claim made against the Commission by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods, as delivered, or the Deliverables or caused by acts or omissions of the Supplier; and

16.1.3 any claim made against the Commission by a third party arising out of or in connection with the supply of the Goods, as delivered, or the Services.

16.2 This clause 16 shall survive termination of the Contract.

### 17 TERMINATION

17.1 Subject to its earlier termination, this Contract will terminate at the cessation of the Services (if applicable) unless extended by written agreement between the parties.

- 17.2 Without affecting any other right or remedy available to it, the Commission may terminate the Contract:
- 17.2.1 with immediate effect by giving written notice to the Supplier if:
- 17.2.1.1 there is a change of control of the Supplier; or
- 17.2.1.2 the Supplier's financial position deteriorates to such an extent that in the Commission's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- 17.2.1.3 the Supplier commits a breach of clause 4.1.4 or clause 6.3.8,
- 17.2.2 for convenience by giving the Supplier 90 days written notice.
- 17.3 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 17.3.1 the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- 17.3.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business; or
- 17.3.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

## 18 CONSEQUENCES OF TERMINATION

- 18.1 On termination of the Contract, the Supplier shall immediately deliver to the Commission all Deliverables whether or not then complete and return all the Commission Materials. If the Supplier fails to do so, then the Commission may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 18.2 Termination of the Contract shall not affect the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 18.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

## 19 DISPUTE RESOLUTION

Where any dispute, difference, or question (**Dispute**) between the Commission and the Supplier arising out of or in connection with this Contract cannot be resolved by the party's initial Authorised Representatives, either party may refer the Dispute to a senior representative of the Commission (a member of the senior civil service) and of the Supplier (a director or other senior office holder) who shall use all reasonable endeavours to resolve the dispute within ten (10) Business Days of notice of the dispute being served by either party. For the avoidance of doubt, all negotiations will be undertaken without prejudice to the rights of the parties in future proceedings.

## 20 FREEDOM OF INFORMATION

- 20.1 The Supplier acknowledges that the Commission is subject to the requirements of the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation (**FOIA**) and the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations (**EIRs**). The Supplier shall:
- 20.1.1 provide all necessary assistance and cooperation as reasonably



- requested by the Commission to enable the Commission to comply with its obligations under the FOIA and EIRs;
- 20.1.2 transfer to the Commission all requests for information or an apparent request for information under the Code of Practice on Access to Government Information, FOIA or the EIRs (**Requests for Information**) relating to this Agreement that it receives as soon as practicable and in any event within 2 Business Days of receipt;
- 20.1.3 provide the Commission with a copy of all information within the meaning of section 84 of the FOIA (**Information**) belonging to the Commission requested in the Request For Information which is in its possession or control in the form that the Commission requires within 5 Business Days (or such other period as the Commission may reasonably specify) of the Commission's request for such Information; and
- 20.1.4 not respond directly to a Request For Information unless authorised in writing to do so by the Commission.
- 20.2 The Supplier acknowledges that the Commission may be required under the FOIA and EIRs to disclose Information (including commercially sensitive information) without consulting or obtaining consent from the Supplier. The Commission shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in the Contract) the Commission shall be responsible for determining in its absolute discretion whether any Information is exempt from disclosure in accordance with the FOIA and/or the EIRs.
- 21 **GENERAL**
- 21.1 **Assignment and other dealings.**
- 21.1.1 the Commission may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights
- and obligations under the Contract.
- 21.1.2 The Supplier shall not assign, transfer, mortgage, charge, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Commission.
- 21.1.3 Notwithstanding anything to the contrary in the Contract, where the Supplier appoints a subcontractor, the Supplier shall not be relieved of any obligation or duty attributable to him under the Contract (including these Conditions) and the Supplier shall remain responsible for all acts and omissions of its personnel and its sub-contractors (and those employed by its sub-contractors) as if they were its own.
- 21.2 **Force Majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure results from events, circumstances or causes beyond its reasonable control, including without limitation to the extent that these are beyond such control industrial disputes, nuclear accident, war or terrorist activity, riot, civil commotion, malicious damage, accident, failure of technical facilities, fire, flood or storm but excluding default of suppliers or sub-contractors (unless such defaults are due to force majeure). If the period of delay or non-performance continues for 4 weeks, the party not affected may terminate the Contract by giving 30 days' written notice to the affected party.
- 21.3 **Notices.**
- 21.3.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand, by pre-paid first-class post or other next working day delivery service or by email at the address or email address specified in the Purchase Order;
- 21.3.2 A notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on

- the second Business Day after posting or, if delivered by email, at the time of transmission, or if this time falls outside working hours in the place of receipt, when working hours resume. In this clause, *working hours* means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 21.3.3 This clause 21.3 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 21.4 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 21.4 shall not affect the validity and enforceability of the rest of the Contract.
- 21.5 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 21.6 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 21.7 **Entire agreement.** The Contract constitutes the entire agreement between the parties and, except to the extent inconsistent with a separate agreement signed by the parties that expressly applies to the subject matter of this Contract, this Contract supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 21.8 **Third party rights.** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 21.9 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives.
- 21.10 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 21.11 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.