

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS TO THE EAST LONDON WASTE AUTHORITY

N B: Set out below are the Terms and Conditions which the East London Waste Authority shall deem applicable to any Order placed by the East London Waste Authority for the supply of goods.

These Terms and Conditions shall apply to the supply to the East London Waste Authority of any goods as if the terms were expressly included in the Order and signed by all parties. As such, all suppliers on acceptance of an Order shall be deemed to have accepted all of these Terms and Conditions and the Terms and Conditions shall thereafter be enforceable by the East London Waste Authority. For the avoidance of doubt, in the event of any conflict between these Terms and Conditions and any Terms expressly included in an Order, the Terms of the Order shall prevail.

WHEREAS:

- a) The East London Waste Authority of 1st Floor, Harvey House, St Edward's Court, London Road, Romford, RM7 9QD (the Authority) requires the Supplier to provide certain Goods pursuant to an Order placed by the authority in accordance with the terms of this Contract;
- b) The Supplier agrees to undertake to supply the Goods detailed in the Order in accordance with the terms of this Contract in consideration of which the Authority shall pay the supplier in accordance with the terms of this Contract

NOW IT IS AGREED between the Authority and the Supplier as follows:

1. Definitions and Interpretation

1.1 In this Contract, except where the context otherwise requires, the following expressions shall have the meanings hereby ascribed to them:

- a) "Authorised Officer" means the person named in the Order or such other person appointed by the Authority to act in the name of the Authority for the purposes of the Contract;
- b) "Commencement Date" means the date contained in the Order or such other date as agreed in writing between the parties to be the Commencement Date of the contract;
- c) "Conditions" means these Terms and Conditions which form part of the Contract and subject to which the Supplier has submitted their Quotation;
- d) "Contract" means the whole of the agreement entered into between the Authority and the Supplier embodying these conditions, the Authority's Order, the supplier's Quotation and the Authority's acceptance thereof;
- e) "Day" means any calendar day;
- f) "Data Protection Law" means the Data Protection Act 1998, all related and subordinate legislation and any guidance or codes of practice issued by the Information Commissioner;
- g) "Goods" means any goods or supplies (including any part or parts of the same) referred to in the Order as required by the authority and as agreed to be provided by the supplier pursuant to the Order and the provisions of the Conditions;
- h) "Intellectual Property Rights" means all intellectual property rights, whether registered or unregistered, and include all applications for and renewals or extensions of such rights and all similar or equivalent rights or forms of protection

in any part of the world including 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 design, rights in computer software, database rights, topography rights, rights in confidential information (including know-how and trade secrets);

- i) "Order" means the order for the Goods submitted by the Authorised Officer and incorporating these Conditions and the contents of any documents expressly referred to in the Order and annexed thereto;
- j) "Price" means the total price of the Goods provided pursuant to the Order, including delivery and any associated costs but excluding Value Added Tax (VAT), as was set out in the Supplier's Quotation for the Goods and as accepted by the Authority;
- k) "Quotation" means the Quotation submitted by the supplier either orally or in writing pursuant to the Order indicating the supplier's agreement to supply the Goods for the Price and in accordance with the order and these Conditions;
- l) "Supplier" means the company organisation, partnership or person who accepts the Order and in doing so agrees to supply the goods pursuant to the terms of the Order and these Conditions;
- m) "Working Day" means any day Monday to Friday, excluding public holidays, between 8.30 am and 4.30 pm;

1.2 Reference to employees of the supplier shall, unless the context otherwise require, be deemed to include the Supplier's agents and sub-contractors or anyone acting on the supplier's behalf, including but not limited to, volunteers, temporary staff and workers who are engaged by the Supplier and performing the Contract on the Supplier's behalf but who may not be deemed to be an "employee" of the Supplier under the Employment Rights Act 1996;

1.3 Reference to time shall be construed, during the period of summer Time, to be British Summer Time and otherwise to be Greenwich Mean Time while those terms are in use and subsequently any other time standard as may be introduced by legislation;

1.4 The Contract and any issues or disputes arising out of or in connection with it (whether such disputes are contractual or non-contractual in nature, such as claims in tort, for breach of statute or regulation, or otherwise) shall be governed by and construed in accordance with English Law and the parties submit to the exclusive jurisdiction of the English courts;

1.5 A reference to any Act of Parliament, or to any Order, Regulation, Statutory Instrument, or the like, shall be deemed to include a reference to any amendment or re-enactment of the same;

1.6 A reference to any gender includes reference to any other gender and reference to any word in the singular shall (where appropriate) include the plural and vice versa;

1.7 The headings contained in these conditions are for convenience only and do not affect the construction or interpretation of the Conditions.

2. Application of Terms

2.1 Subject to any variation agreed in accordance with Sub-Clause 2.5 below, these conditions and any additional requirements detailed in the Order shall constitute the entire agreement between the parties and shall govern the performance of the Contract by the Supplier to the entire exclusion of all other terms or conditions

including any terms submitted by the Supplier as part of the Quotation but save for any terms contained in the Order.

- 2.2 In the event of any ambiguity or conflict between these conditions and the terms on any Order, the terms of the Order shall prevail.
- 2.3 In submitting its Quotation, the Supplier shall be deemed to have satisfied itself as to all requirements of the Order and that the Supplier is able and willing to fulfil the Order for the Price and strictly in accordance with the terms of the Order and the conditions. The Authority shall not consider any changes to the Price requested by the Supplier in respect of any matter relating to the goods (or any part or parts) or in respect of any cost incurred by the supplier in fulfilling the Order or complying with any provision in the Contract.
- 2.4 No terms or condition endorsed upon, delivered with or contained in the Quotation or any other document produced by the supplier shall form part of the Contract or serve to vary any provision in the contract and in submitting its Quotation the supplier agrees to waive any right which it otherwise might have to rely on such terms and conditions.
- 2.5 No deletion from, addition to, or variation of these Conditions or any other part of the Contract shall be valid or of any effect unless agreed in writing and signed by the parties.
- 2.6 Irrespective of the absence of any signature deeming acceptance of these Conditions, the supplier in submitting its Quotation irrevocably agrees to be bound by these Conditions as if the same were expressly repeated in the Order and signed by the parties as a deed.

3. **Quality and Defects**

- 3.1 The Supplier warrants that the goods are fit for purpose and are of best quality, material, workmanship and design as applicable to the Goods.
- 3.2 The Supplier warrants that the Goods conform in all respects with, but not limited to:
 - a) the Authority's requirements detailed in the Order;
 - b) any sample(s) provided by the Supplier;
 - c) any detail or description contained in the Quotation;
 - d) any drawings, descriptions, specifications and/or patterns supplied or advised by the Authority to the Supplier; and
 - e) a minimum of any British Standard Specification or British Standard Code of Practice or EEC equivalent applicable to the goods and in place at the date of supply of the Goods.
- 3.3 In supplying the Goods the Supplier shall comply with and warrants that the Goods comply with all requirements of any applicable statute, regulations, standards, statutory rules or orders or other instrument applicable to the supply of the goods or applicable to the goods themselves.

4. **Inspection and Testing**

- 4.1 At any time prior to, upon or within fourteen (14) Days following delivery of the Goods to the authority, the Supplier shall permit the Authority to inspect and/or test the Goods or shall requirement the Supplier to inspect and/or test the Goods either in the presence of the Authorised Officer or any other witness nominated by the Authorised Officer, or in the absence of any witness. If the supplier is requested to inspect and/or

test the Goods in the absence of a witness, the Supplier shall provide the Authorised Officer with written confirmation that such inspection and/or test has taken place and details of the outcome of the same.

4.2 If the results of any inspection and/or testing of the goods cause the Authority to determine that the Goods do not conform or are unlikely to conform with the provisions of Clause 3 (Quality and Defects) the Authority shall be permitted without prejudice to any other rights or remedies available to the Authority to invoke any of the provisions of Clause 19 (Remedies).

4.3 The occurrence or absence of any inspection and/or testing of the Goods shall not diminish or otherwise affect the Supplier's obligations under the Contract and the Authority shall be permitted to invoke all provisions of the Contract irrespective of whether the Goods have been inspected and/or tested and following such inspection and/or testing accepted by the Authority or whether the Authority declined to inspect and/or test the Goods.

5. Suppliers' Employees

5.1 The Supplier shall ensure that it and any employees or agents engaged in the supply of the Goods shall:

- a) be sufficiently trained, skilled and supervised in respect of the tasks they perform;
- b) be trained in and shall observe all health and safety requirements as applicable to the tasks being performed and the supply of the Goods;
- c) complete all necessary risk assessments and observe the outcome of the same;
- d) observe and comply with all statutes, regulations, agreements, standards or any other binding provisions in relation to the packing, labelling, handling and carriage of hazardous materials;
- e) when on any Authority premises observe all rules and procedures specified by the Authority in respect of those premises; and
- f) not act in any manner which places themselves, a third party or any property at risk of damage or harm.

5.2 The Supplier shall on request provide the Authorised Officer with evidence of compliance with the requirements of Sub-Clause 5.1 above.

5.3 The Supplier shall ensure that every person engaged in the supply of the Goods works strictly in accordance with the EC Working Time Directive (No.2003/88), the Working Time Regulations 1998 and any subsequent Directives, Regulations, Statutes or Acts relating to working time.

5.4 The Supplier shall ensure that every person engaged in the supply of the Goods is legally entitled to work and remain in the United Kingdom and shall not permit any person not so entitled to continue to work and shall take such actions in respect of such person not legally entitled to remain or work in the United Kingdom as appropriate.

5.5 The Supplier shall at all times comply with the requirements of the Health and Safety at Work etc. Act 1974 and of any other acts, regulations, orders or other statutory provisions relating to the health and safety of employees including any acts, regulations, orders or other statutory provisions which may come into force at any time in the future.

6. Agency

- 6.1 Neither the Supplier nor its employees shall in any circumstances hold itself or themselves out as being the servant or agent of the Authority.
- 6.2 Neither the Supplier nor its employees shall in any circumstances hold itself or themselves out as being authorised to enter into any contract on behalf of the Authority, or in any other way to bind the Authority to the performance, variation, release or discharge of any obligation.
- 6.3 Neither the Supplier nor its employees shall in any circumstances hold itself or themselves out as having the power to make, vary, discharge or waive any by-law or regulation of any kind.

7. Delivery and performance

- 7.1 The Goods shall be delivered, to the place specified by the Authority in the Order or to such other place of delivery as is agreed in writing by the Authority prior to delivery of the Goods.
- 7.2 The Supplier shall off-load the Goods at the Authority's specified place of delivery at the Supplier's own risk and as directed by the Authority.
- 7.3 The Supplier acknowledges that all carriers of the Goods shall be deemed to be agents of the Supplier and not of the Authority.
- 7.4 Prior to delivery of the Goods the Supplier shall provide the Authority with all information reasonably available to the Supplier or in the Supplier's possession in respect of any potential hazards known or believed to exist in the transport, handling or use of the Goods.
- 7.5 The Supplier accepts that where the Authority has included in the Order a date and/or time for delivery of the Goods or has subsequently informed the Supplier in writing of a date and/or time for delivery of the Goods such date and/or time for delivery shall be binding on the Supplier and shall be of the essence.
- 7.6 The Supplier shall notify the Authority as soon as reasonably practicable of any anticipated delays in the delivery of the Goods save that such notification shall not relieve the Supplier of its obligations to deliver the Goods or of the Authority's rights pursuant to these Conditions if the Goods are not delivered to the originally specified date and/or time unless the Authority agrees in writing that the Goods may be delivered on an alternative date and/or time. If the Authority does agree to an alternative date and/or time for delivery of the Goods, such alternative date and/or time shall then become binding on the Supplier and shall be of the essence.
- 7.7 Unless otherwise stipulated by the Authority in the Order, or otherwise notified to the Supplier in writing, the Authority shall only accept delivery of the Goods on a Working Day.
- 7.8 The Supplier shall ensure that each delivery of Goods is accompanied by a delivery note which includes (without limitation); the Order number, date of Order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered. The delivery note shall become the property of the Authority.
- 7.9 The Supplier accepts that signature of the delivery note on behalf of the Authority shall be evidence only of the number of packages received. Signature shall not be deemed to be acceptance of the Goods by the Authority nor shall signature be deemed as evidence that the correct quantity of Goods has been delivered or that the Goods are in good condition or of the correct quality.

- 7.10 If the Supplier delivers the Goods prior to the agreed date for delivery the Authority reserves the right to:
- a) refuse to accept delivery of the Goods; or
 - b) recover from the Supplier any expenditure reasonably incurred by the Authority in storing and/or insuring the Goods until the due date for delivery.
- 7.11 If the Supplier fails to deliver the Goods on the date and/or time specified by the Authority or such subsequent date and/or time agreed by the Authority, then, without prejudice to any other rights which the Authority may have pursuant to this Contract or at law, the Authority reserves the right to :
- a) cancel the Contract in whole or in part;
 - b) refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
 - c) recover from the Supplier any expenditure reasonable incurred by the Authority in obtaining the Goods in substitution from another supplier; and
 - d) seek damages from the Supplier for any additional costs, losses or expenses incurred by the Authority as a result of the Supplier's failure to deliver the goods on the due date and/or time.
- 7.12 Where the Authority agrees in writing to accept delivery of the Goods by instalments the Contract shall be construed as a single contract in respect of each Instalment. Nevertheless failure by the Supplier to delivery any one instalment on a date and/or time for delivery specified in writing to the Supplier, shall entitle the Authority, at the Authority's entire discretion to invoke the provisions of Sub-Clause 7.11 above.
- 7.13 If the Supplier shall deliver Goods in excess of the quantities specified in the Order or otherwise notified by the Authority in writing, the Authority shall not be bound to pay for the excess Goods and the excess Goods delivered shall be and shall remain at the Supplier's risk and shall be returnable to the Supplier entirely at the Supplier's expense. The Authority shall be entitled to recover from the Supplier any costs incurred by the Authority as result of the Supplier delivering excess Goods or shall be entitled to deduct such sums from future payments due to the Supplier.
- 7.14 The Authority shall not be deemed to have accepted any Goods delivered until the expiry of fourteen (14) Days following the date on which the Goods are validly delivered to the Authority and providing that prior to the expiration of the fourteen (14) Days the Authority has not notified the Supplier of any defect in the Goods. In the event that the Authority discovers a latent defect in the Goods after the expiration of fourteen (14) Days following the date on which the Goods are delivered, the Authority may reject the Goods and invoke the provisions of Clause 19 (Remedies) providing that the Authority has notified the Supplier of such defect no later than fourteen (14) Days following the date on which the Authority identified the defect.
8. **Risk and Title**
- 8.1 The Goods shall remain at the full risk of the Supplier until they have been accepted by the Authority In accordance with Clause 7 (Delivery and Performance). Upon acceptance of the Goods by the Authority risk and title in the Goods shall pass to the Authority but shall be without prejudice to the rights and remedies of the Authority pursuant to the Contract or at law.
9. **Price**
- 9.1 The Supplier shall supply the Goods for the Price, including in respect of the delivery of the Goods and any other costs incurred by the Supplier in the supply of the Goods,

and unless otherwise agreed in writing by the Authority the Price shall be exclusive of Value Added Tax.

9.2 The Authority shall not accept any variation in the Price and shall not pay the Supplier any monies in respect of additional costs incurred by the Supplier in respect of the supply of the Goods unless such variation to the Price or additional costs have been agreed in writing by the Authorised Officer prior to delivery of the Goods.

9.3 The Authority shall pay to the Supplier such Value Added Tax as may be properly chargeable by the Supplier In connection with the supply of the Goods.

10. **Payment**

10.1 Upon delivery of the Goods or no later than fourteen (14) Days following the date of delivery of the Goods the Supplier shall submit to the Authorised Officer, or such other person as notified in writing to the Supplier, an invoice setting out in accordance with the Price contained in the Quotation or otherwise agreed in writing by the Authority in accordance with Sub-Clause 9.2 (Price) the sum due by the Authority in respect of the Goods delivered together with details of any VAT element thereon (a "Properly Submitted Invoice").

10.2 The Authority shall pay the Supplier the sum stated in a Properly Submitted Invoice within thirty (30) Days of receipt of the same but time for payment shall not be of the essence of the Contract.

10.3 Should the Authority pay the Supplier the sum stated in a Properly Submitted Invoice within fourteen (14) Days of receipt of the Properly Submitted Invoice the Authority shall be entitled to deduct two and a half percent (2.5%) from the sum stated in the Properly Submitted Invoice by way of an early payment discount ("the Discount").

10.4 The Authority shall not apply the Discount to any sums due to the Supplier under a Properly Submitted Invoice and not paid to the Supplier within fourteen (14) Days of receipt by the Authority of the Properly Submitted Invoice.

10.5 Payment of a Properly Submitted Invoice by the Authority shall not be deemed as acceptance of the Goods and all rights of the Authority in respect of the Goods and/or the acceptance thereof shall remain irrespective of whether the Authority has paid any Properly Submitted Invoice in respect of the Goods.

10.6 Without prejudice to any other right or remedy the Authority has under the Contract or at law, the Authority reserves the right to set off against any amount owing at any time to the Supplier pursuant to this Contract any amount owing or due to the Authority pursuant to this Contract or any other contract between the Authority and the Supplier.

11. **Confidentiality**

11.1 The Supplier shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Supplier by the Authority or its agents and any other confidential information concerning the Authority's business which the Supplier may obtain as a result of the Supplier performing its obligations under the Contract (the "Confidential Information").

11.2 The Supplier shall ensure that the Confidential Information is only disclosed to those of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Supplier's obligations to the Authority under the Contract and the Supplier shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality no less onerous than those contained in this Clause 11 (Confidentiality).

11.3 Any Confidential Information in the Supplier's possession, or the possession of any employee, agent or sub-contractor of the Supplier at the date of expiration or earlier termination of the Contract, shall be immediately returned to the Authority at the Supplier's expense or shall, on the written instruction of the Authority, be destroyed by the Supplier and the Supplier shall thereafter confirm such destruction in writing.

12. Intellectual Property Rights

12.1 The Supplier shall grant to the Authority and the Authority 's officers, agents, customers and assigns a perpetual, royalty free, worldwide, non- exclusive licence to market, distribute, sell or otherwise use all Intellectual Property Rights belonging or otherwise licenses to the Supplier incorporated in or required for the use of goods.

12.2 The Supplier warrants that:

a) the Supplier has all Intellectual Property Rights, permissions, licences, and consents necessary to carry out its obligations under the Contract and shall not carry out its obligations in breach of any Intellectual Property Right permission, licence or consent, and

b) in respect of the Goods, the Supplier has full clear and unencumbered title to all such items, and at the date of delivery of such items to the Authority, it has full and unrestricted rights to transfer full title to all such items to the Authority.

12.3 The Supplier shall promptly at the Authority's request do (or procure to be done) all such further acts and things and execute (or procure the execution of) all such other documents as the Authority may from time-to-time require for the purpose of securing for the Authority the full benefit of the Contract, including all right, title and interest in the Intellectual Property Rights assigned or licensed to the Authority in accordance with the Contract.

12.4 The Supplier shall not act in any way so as to infringe, fetter or damage any Intellectual Property Rights owned or vesting in the Authority or any third party and shall fully indemnify the Authority in respect of any loss, demand, damages, costs, expenses or liability whatsoever caused as a result of the Supplier infringing this Clause 12 (Intellectual Property Rights).

12.5 The Supplier undertakes to fully indemnify and hold harmless the Authority from and against any costs, losses, demands, damages, liability, or expenses arising from or incurred by the Authority as a result of any demands, action(s), dispute(s), claim(s) or proceeding(s) brought by a third party in respect of their Intellectual Property Rights or any alleged breaches of such Intellectual Property Rights by the Supplier or by the Authority as a result of the Authority's use or possession of the Goods supplied by the Supplier.

13. Data Protection

13.1 The Supplier shall comply at all times with Data Protection Law and shall not do anything or perform its obligations under or in connection with the Contract in such a way as to cause the Authority to breach any of its obligations under Data Protection Law.

13.2 If the Supplier, pursuant to its obligations under the Contract, processes Personal Data (as defined in the Data Protection Act 1998) on behalf of the Authority, the Supplier shall:

a) process the Personal Data only in accordance with instructions from the Authority;

b) process the Personal Data only to the extent, and in such manner, as is necessary for the performance of its obligations under the Contract;

- c) implement appropriate technical and organisational measures to protect Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure, such measures to be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
- d) notify the Authority promptly if it becomes aware of any breach of any of its measures put in place under Sub-Clause 13.2 (c) above;
- e) take reasonable steps to ensure the reliability of any personnel who have access to the Personal Data;
- f) obtain prior written consent from the Authority in order to transfer the Personal Data to any third party in connection with the Contract;
- g) ensure that any personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Clause 13 (Data Protection);
- h) ensure that none of those personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the other party;
- i) notify the Authority immediately if it receives :
 - i. a request from a Data Subject (as defined in the Data Protection Act 1998) to have access to that Data Subject's Personal Data; or
 - ii. a complaint or request relating to the other party's obligations under Data Protection Law;
- j) provide the Authority with full co-operation and assistance in relation to any complaint or request made, including by providing the other party with full details of the complaint or request; and
- k) not transmit or process Personal Data outside the European Economic Area without the prior written consent of the other party and, where the other party so consents to a transfer, to comply with:
 - i. the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998; and
 - ii. any reasonable Instructions notified to it by the other party.

14. Freedom of Information

14.1 The Supplier acknowledges that the Authority is subject to the requirements of the Code of Practice on Government Information, the Freedom of Information Act 2000 ("the FOIA"), the Environmental Information Regulations 2004 ("the EIR's") and other statutory requirements, guidance and codes of practice issued by the Information Commissioner or relevant Government departments and the Supplier agrees to assist and co-operate with the Authority (at the Supplier's expense except insofar as otherwise agreed in writing) to enable the Authority to comply with its Information (as defined in Section 84 of the FOIA) obligations.

14.2 The Supplier shall and shall procure that its sub-contractors shall:

- a) transfer to the Authority any Requests for Information, or an apparent request, under the Code of Practice on Access to Government Information, the FOIA or the

EIR's that it receives as soon as practicable after receipt and in any event within two (2) Working Days of receiving such Request for Information;

- b) provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may specify) of the Authority requesting that Information; and
- c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out In Section 10 of the FOIA or Regulation 5 of the EIR's.

14.3 The Authority shall be responsible for determining at its absolute discretion and notwithstanding any other provision in the Contract or any other agreement that the Information is confidential or commercially sensitive whether:

- a) the Information is exempt from disclosure; or
- b) the Information is to be disclosed in response to a Request for Information; or
- c) the Information or all or any part of the Contract is to be published by the Authority.

14.4 The Supplier agrees that in no event shall it respond directly to a Request for Information unless expressly authorised in writing by the Authority to do so.

14.5 The Supplier acknowledges that the Authority may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part 1 of the FOIA ("the Code") and freedom of information best practice for local authorities:

- a) disclose Information under the FOIA or the EIR's without consulting the Supplier; or
- b) disclose Information under the FOIA or the EIR's following consultation with the Supplier and having taken its views into account

14.6 provided always that where this Clause 14 (Freedom of Information) applies, the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice of the disclosure, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

14.7 The Supplier agrees that notwithstanding any other Clause in this Contract, the Supplier hereby consents to the Authority publishing the Contract in its entirety, including from time-to-time agreed changes to the Contract, to the general public irrespective of whether such publication is pursuant to a Request for Information or otherwise.

14.8 The Contractor acknowledges that any information the Supplier or the Authority deem confidential is indicative only of the status of such information and that the Authority may nevertheless disclose such information in accordance with the provisions of this Clause 14 (Freedom of Information).

14.9 The Supplier shall ensure that all Information is retained for disclosure for a minimum of six (6) years after the date of termination or expiry (whichever is the earlier) of this Contract (or as long a period as may be agreed between the Authority and the Supplier) and shall permit the Authority to inspect such records as requested from time to time.

15. Authority Property

- 15.1 Materials, equipment, tools, dies, moulds, copyright, design rights or any other forms of Intellectual Property Rights in all drawings, specifications and data supplied by the Authority to the Supplier or used by the Supplier specifically in the manufacture of the Goods for the Authority (the "Authority's Property") shall at all times be and remain the exclusive property of the Authority.
- 15.2 The Supplier shall hold the Authority's Property in safe custody at the Supplier's own risk and shall ensure that the Authority's Property is maintained and kept in good condition by the Supplier until returned to the Authority at the Supplier's expense on expiration or earlier termination of the Contract.
- 15.3 The Supplier shall not make use of or dispose of the Authority's Property other than in accordance with the express written instructions of the Authorised Officer.

16. Termination

- 16.1 The Authority may terminate the Contract in whole or in part at any time by issuing the Supplier with twenty-eight (28) Days written notice of such termination. Upon receipt of the notice the Supplier shall immediately cease all work being undertaken at the date of receipt of the notice. Subject to any rights of set off the Authority has pursuant to the Contract or any other contract between the Authority and the Supplier, the Authority shall pay the Supplier such sums as reasonably due to the Supplier pursuant to this Contract from the Commencement Date up to and including the date of receipt of the notice, including reasonable costs necessarily incurred by the Supplier since the Commencement Date. The Authority shall not be liable to the Supplier for any claims for loss of profits, consequential loss or any other direct or indirect costs or losses other than those expressly set out in this Sub-Clause 16.1.
- 16.2 The Authority may without prejudice to any other accrued rights or remedies under the Contract, terminate this Contract, and any other contract between the parties, by notice in writing having immediate effect if the Supplier:
- a) commits a material breach of any of the terms of the Contract and which breach is either incapable of being remedied or, if capable of being remedied, the Supplier has not remedied the breach within fourteen (14) Days of being notified in writing of the same; and/or
 - b) repeatedly breaches any term or terms of the Contract in such a manner as to reasonably justify the Authorised Officer to conclude that the Supplier does not have the intention and/or the ability to satisfactorily perform the Contract; and/or
 - c) has offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or having done or forborne to do any action or omission in relation to the obtaining or execution of the Contract or any other contract with the Authority, or for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other contract with the Authority, or if the like acts shall have been done by any person engaged by the Supplier or acting on the Supplier's behalf (whether with or without the Supplier's knowledge), or if in relation to the Contract or any other contract with the Authority the Supplier or any person before referred to shall have committed any offence under the Bribery Act 2010 or shall have given any fee or reward the receipt of which is an offence under the Local Government Act 1972; and/or
 - d) has any distress, execution or other process levied upon any of its assets; and/or
 - e) has a bankruptcy order made against it or makes an arrangement or composition with its creditors, or otherwise takes the benefit of any statutory provision for the

time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver or manager, administrator or administrative receiver appointed over its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Supplier or notice of Intention to appoint an administrator is given by the Supplier or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule BI to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Supplier or for the granting of an administration order in respect of the Supplier, or any proceedings are commenced relating to the insolvency or possible insolvency of the Supplier; and/or

- f) ceases or threatens to cease to carry on its business; and/or
- g) experiences a deterioration in its financial position to such an extent that in the reasonable opinion of the Authority the capability of the Supplier adequately to fulfil its obligations under the Contract has been placed in jeopardy; and/or
- h) there is a change of control of the Supplier as defined in s574 of the Capital Allowances Act 2001; and/or
- i) as a result of any misconduct or mismanagement on the Supplier's part has a Regulatory Body make an order of any kind in relation to the Supplier's affairs; and/or
- j) has any registration which the Supplier must maintain in order to provide all or any part of the Goods withdrawn or cancelled; and/or
- k) commits or causes the commission of any criminal offence in providing the Goods.

16.3 If the Contract is terminated in whole or in part in accordance with any of the provisions contained in Sub-Clause 16.2 above, the Authority may, without prejudice to any other rights or remedies the Authority has at law, invoke the provisions of Clause 19 (Remedies).

16.4 The terms of the Contract which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding expiration of the Contract or prior termination pursuant to this Clause 16 (Termination).

17. Indemnity

17.1 The Supplier shall indemnify, and shall keep indemnified, the Authority in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses, awarded against or incurred or paid by the Authority as a result of or in connection with:

- a) any claim made against the Authority for death, personal injury or damage to property arising out of, or in connection with, any non-compliance of the Goods with the Contract;
- b) any claim made against the Authority arising out of, or in connection with, the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier;
- c) any claim made against the Authority for infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the Authority's use of the Goods;

- d) all damage to the Authority's property caused by the Supplier or its representatives (including any damage or destruction to, corruption of, or loss of data held by the Authority);
 - e) any breach of Data Protection Law by the Supplier; and
 - f) any claim made against the Authority by a third party resulting from, or arising out of any breach by the Supplier of its obligations under Clause 11 (Confidentiality) or Clause 12 (Intellectual Property Rights).
- 17.2 The Supplier shall not be liable to the Authority for any losses, damage or injury to the extent that they are caused by or arise directly out of an act or omission of, or negligence attributable to, the Authority in breach of its obligations under the Contract.
- 17.3 The provisions of this Clause 17 (Indemnity) shall survive termination of the Contract howsoever arising and shall remain enforceable by the Authority for a period of twelve (12) years following the date of termination.
- 17.4 For the avoidance of doubt, the Authority's rights under this Clause 17 (Indemnity) are in addition to and without prejudice to the express or implied statutory rights of the Authority pursuant to the Sale of Goods Act 1979 and/or the Supply of Goods and Services Act 1982 and any other statute.
- 18. Liability**
- 18.1 In this Clause 18 (Liability) a reference to the Authority's liability for something is a reference to any liability whatsoever which the Authority may have for it, its consequences, and any direct, indirect or consequential loss, damage, costs or expenses resulting from its consequences whether the liability arises under the Contract, in tort or otherwise, and even if it results from the Authority's negligence or from negligence for which the Authority would otherwise be liable.
- 18.2 The Authority is not in breach of the Contract and does not have any liability for anything to the extent that its apparent breach or liability is attributable to the Supplier's breach of the Contract.
- 18.3 Subject to Sub-Clause 18.5 below, the Authority shall not have any liability for:
- a) any indirect or consequential loss or damage;
 - b) any loss of business, rent, profit or anticipated savings whether direct or indirect unless it has expressly assumed such liability;
 - c) any damage to goodwill or reputation;
 - d) loss, theft, damage or destruction to any equipment, tools, machinery, vehicles or other equipment belonging to the Supplier; or
 - e) any loss, damages, costs or expenses suffered or incurred by any third party.
- 18.4 Subject to Sub-Clause 18.5 below, the Authority's total liability shall be limited to the Price it has paid or is due to pay to the Supplier pursuant to these Conditions.
- 18.5 Nothing in this Clause 18 (Liability) restricts the Authority's liability for:
- a) death or personal injury resulting from negligence for which it is responsible; or
 - b) its fraud (including fraudulent misrepresentation).

19. Remedies

- 19.1 Without prejudice to any other right or remedy the Authority may have pursuant to the Contract or at law, if the Supplier fails to supply the Goods in accordance with the Contract or otherwise breaches any term of the Contract irrespective of the Authority's acceptance of any part of the Goods the Authority shall be entitled at the Authority's discretion to avail itself of any one or more of the following remedies:
- a) to cancel all or part of the Order;
 - b) to reject all or part of the Goods and, at the Authority's discretion, return them to the Supplier at the risk and cost of the Supplier on the basis that if the Authority has already paid for the Good returned and/or rejected the Supplier shall forthwith pay the Authority the amount of the payment;
 - c) to permit the Supplier the opportunity at the Supplier's expense either to remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
 - d) to refuse to accept any further deliveries of the Goods but without any liability to the Supplier;
 - e) to withhold payment of all or part of a Properly Submitted Invoice;
 - f) to carry out any work necessary to make the Goods comply with the Contract and to recover from the Supplier all costs incurred in respect of the same;
 - g) to obtain the Goods or any part of the Goods from an alternative supplier and to recover from the Supplier any additional costs incurred by the Authority as a result of the same;
 - h) to set off against any amounts owed to the Supplier or to recover from the Supplier as a debt, any loss or damage to the Authority resulting from or arising out of the breach or breaches of the Contract by the Supplier or the termination of the Contract by the Authority pursuant to the provisions of Sub-Clause 16.2 (Termination).
- 19.2 For the avoidance of doubt, all sums recoverable by the Authority pursuant to this Clause 19 (Remedies) shall also include the reasonable cost to the Authority of the time spent by its officers in invoking such remedy or remedies.

20. Insurance

- 20.1 For the duration of the Contract and for a period of six (6) years thereafter, the Supplier shall maintain in force, with a reputable European based insurance company, insurance to provide a level of cover sufficient for all risks which may be incurred by the Supplier under the Contract, including death or personal Injury, or loss of or damage to property.
- 20.2 The insurance required under Sub-Clause 20.1 above shall include, as a minimum:
- a) employer's liability insurance with a limit of indemnity of not less than five million pounds (£5,000,000) per claim;
 - b) public liability insurance with a limit of indemnity of not less than five million pounds (£5,000,000) per claim;
 - c) if applicable, professional indemnity insurance with a limit of not less than two million pounds (£2,000,000) per claim; and
 - d) product liability insurance with a limit of not less than two million pounds (£2,000,000) per claim.

- 20.3 The Supplier shall, at the request of the Authority, produce to the Authority a valid certificate of insurance and such other written documentation as is necessary to demonstrate that the Supplier has complied with its obligations under this Clause 20 (Insurance).
- 20.4 The Supplier shall not do or permit any thing, or make any omission, which might cause any insurance to be voided.
- 20.5 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities incurred in connection with the Contract.
- 20.6 The Supplier shall inform the Authority in writing whenever there is any change to the insurance referred to in this Clause 20 (Insurance) (including any change in the scope or level of cover or the identity of the insurer).

21. Assignment and Sub Contracting

- 21.1 The Authority may assign, novate, outsource or otherwise dispose of any or all of its rights and obligations under the Contract at any time to any person having the legal capacity, power and authority to become a party to and perform its obligations, being:
- a) a Minister of the Crown pursuant to any order under the Ministers of the Crown Act 1975;
 - b) any other local authority which has sufficient financial standing or financial resources to perform the obligations; or
 - c) any other public authority
- 21.2 provided that such an assignment, novation, outsourcing or disposal does not increase the burden of the Supplier's obligations under the Contract.
- 21.3 Nothing in these Conditions shall restrict the rights of the Secretary of State to effect a statutory transfer.
- 21.4 The Supplier shall not:
- a) assign the Contract or any part thereof or the benefit or advantage of the Contract or any part thereof;
 - b) sub-contract the supply of the Goods or any part thereof without the previous written consent of the Authority, which consent shall be in the absolute discretion of the Authority and, if given, shall not relieve the Supplier from any liability or obligation under the Contract and the Supplier shall be responsible for the acts, defaults or neglect of any subcontractor, its employees or agents in all respects as they were the acts, defaults or neglect of the Supplier, its employees or agents.
 - c) If the Supplier is given permission to sub-contract all or any part of the supply of the Goods the Supplier shall ensure that such sub-contracting arrangement provides that the Supplier shall pay the sub-contractor all sums due by the Supplier to the sub-contractor within a specified period not exceeding thirty (30) Days from receipt by the Supplier of a valid invoice.

22. Notice

- 22.1 Any demand, notice, or other communication required to be given under the Contract shall be sufficiently served if served personally on the addressee, or if sent by prepaid first class recorded delivery post to the Authority for the attention of and at the address provided on the Order and to the Supplier at the registered office address if the Supplier is a company and in all other circumstances to the Supplier's address as stated in the Quotation unless either party notifies the other in writing, of any

alternative address for the service of notices and if so sent shall, subject to proof to the contrary, be deemed to have been received by the addressee on the second Working Day after the date of posting.

23. **Enforcement, Waiver and Validity**

23.1 Each right or remedy of the Authority under the Contract Is without prejudice to any other right or remedy of the Authority whether under the Contract or at law.

23.2 Failure by the Authority at any time to enforce the provisions of the Contract or to require performance by the Supplier of any of the provisions of the Contract shall not be construed as a waiver of any such provision and shall not affect the validity of the Contract or any part thereof or the right of the Authority to enforce any provision in accordance with Its terms.

23.3 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable It shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

24. **Exclusion of Third Party Rights**

24.1 No person who is not a party to this Contract (including any employee, officer, agent, representative or sub-contractor of either party) shall have the right to enforce any term of this Contract which expressly or by implication confers a benefit on that person and the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Contract.

25. **Variations**

25.1 Neither the Authority nor the Supplier shall be bound by any variation, waiver of, or addition to the Contract unless evidenced in writing and signed by a duly authorised representative on their behalf.

26. **Dispute Resolution**

26.1 The parties shall attempt, in good faith, to resolve any dispute promptly by negotiation which shall be conducted as follows:

- a) the dispute shall first be referred, on the request of either party, to a senior manager within each of the parties; and
- b) if the dispute cannot be resolved by the parties' senior managers within ten (10) Working Days after it has been referred to them, either party may give notice to the other party in writing referring the matter to mediation to be conducted in accordance with Sub- Clause 26.2 below.

26.2 The following provisions shall apply to any such reference to mediation:

- a) the reference shall be a reference under the Model Mediation Procedure ("MMP") of the Centre of Dispute Resolution ("CEDR") for the time being in force;
- b) both parties shall, immediately on such referral, co-operate fully, promptly and in good faith with CEDR and the mediator and shall do all such acts and sign all such documents as CEDR or the mediator may reasonably require to give effect to such mediation, including an agreement in, or substantially in, the form of CEDR's Model Mediation Agreement for the time being in force; and

- c) to the extent not provided for by such agreement of the MMP, the mediation shall commence by either party serving on the other written notice setting out, in summary form, the issues in dispute and calling on that other party to agree the appointment of a mediator. The mediation shall be conducted by a sole mediator (which shall not exclude the presence of a pupil mediator) agreed between the parties or, in default of agreement, appointed by CEDR.

26.3 If the parties are able to resolve the dispute through mediation under this Clause 26 (Dispute Resolution), the parties' authorised representatives shall document the resolution and sign a memorandum evidencing its terms.

26.4 The commencement of mediation will not prevent the parties commencing or continuing court proceedings.

26.5 Nothing in this Clause 26 (Dispute Resolution) shall prevent either party from instigating legal proceedings where an order for an injunction, disclosure or legal precedent is required.

26.6 The Supplier shall continue to provide the Goods and to perform its obligations under the Contract notwithstanding any dispute or the implementation of the procedures set out in this Clause 26 (Dispute Resolution).

27. **Corruption**

27.1 The Supplier undertakes to:

- a) comply with all applicable laws and regulations and codes relating to anti bribery and anti-corruption including, but not limited to, the Bribery Act 2010;
- b) 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 United Kingdom;
- c) comply with the Authority's anti-corruption policies disclosed to the Supplier from time to time;
- d) ensure that any of persons acting on its behalf in association with the supply of the Goods comply with this Clause 27 (Corruption); and
- e) immediately notify the Authority if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier.

27.2 For the purposes of Sub-Clause 27.1 (e) above, the meaning of "foreign public official" and whether a person is "associated" with another person shall be determined in accordance with sections 6(2), 6(5), 6(6) and 8 of the Bribery Act 2010.

27.3 The Authority shall be entitled to terminate the Contract forthwith and to recover from the Supplier the amount of any loss resulting from such termination if the Supplier or a Supplier's Representative:

- a) offers or agrees to give any person working for or engaged by the Authority or any other Public Body any favour, gift or other consideration, which could act as an inducement or a reward for any act or failure to act connected to the Contract, or any other agreement between the Supplier and the Authority or any Public Body, including its award to the Supplier and any of the rights and obligations contained within it;
- b) has entered into the Contract if it has knowledge that, in connection with it, any money has been, or will be, paid to any person working for or engaged by the Authority or any other Public Body by or for the Supplier, or that an agreement

has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Authority before the Contract is entered into.:

- c) breaches the undertaking set out in Sub-Clause 27.3 above; or
- d) gives any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

27.4 For the purposes of Sub-Clause 27.3 above, "loss" shall include, but shall not be limited to:

- a) the Authority's costs in finding a replacement Supplier;
- b) direct, indirect and consequential losses;
- c) any loss suffered by the Authority as a result of a delay in its receipt of the Goods.

28. Equality

28.1 The Supplier shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in gender, gender reassignment, religion, race, disability, age, sexual orientation, pregnancy and maternity or otherwise) in the performance of its obligations under this Contract.

28.2 The Supplier shall take all reasonable steps to secure the observance of Sub- Clause 28.1 above by all of its Representatives engaged in the performance of the Contract.

28.3 The Supplier shall:

- a) have appropriately trained staff available to deal with discrimination issues or complaints and monitor the same and the manner of dealing therewith. Such information shall be passed to the Authority on a regular basis as agreed with the Authority; and
- b) actively endeavour to achieve a workforce representative of the ethnic diversity of the area.

28.4 The Supplier shall ensure that for all matters relating to the Contract the Supplier complies with the public sector equality duty contained in Section 149 of the Equality Act 2010 and shall ensure that it does not by any act or omission place the Authority in breach of its obligations under the Equality Act 2010.

29. Whistleblowing Policy

- a) has entered into the Contract if it has knowledge that, in connection with it, any money has been, or will be, paid to any person working for or engaged by the Authority or any other Public Body by or for the Supplier, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Authority before the Contract is entered into.

30. Sustainability

30.1 The Supplier shall ensure that the Supplier adheres to the Authority's Statement of Sustainability Principles as far as possible in connection with the provision of the Goods.