

TERMS AND CONDITIONS OF CONTRACT FOR THE PURCHASE OF GOODS**TABLE OF CONTENTS**

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THE HEALTH AND SAFETY EXECUTIVE (HSE)

TERMS AND CONDITIONS OF CONTRACT FOR THE PURCHASE OF GOODS

DEFINITIONS

1 In these Terms and Conditions of Contract the following definitions shall apply:

“Condition” means a condition within the Contract;

“Contract” means the contract between HSE and the Supplier;

“the Goods” means those goods, specified in the Purchase Order, which are to be supplied to HSE by the Supplier or by any of the Supplier’s sub-contractors;

“HSE” means the Health and Safety Executive;

“Purchase Order” means the formal request from HSE to supply Goods and shall form a Contract between HSE and the Supplier;

“the Supplier” means the person, firm or company to whom an HSE Purchase Order is issued;

2 In all cases the masculine includes the feminine and the singular includes the plural and vice versa.

HEADINGS

3 The headings in these Conditions are solely for convenience of reference and shall not affect their construction or interpretation.

VARIATION

4 These Terms and Conditions may only be varied with prior written agreement of The Health and Safety Executive (HSE).

THE GOODS

5 The Goods shall be to the reasonable satisfaction of HSE and shall conform in all respects with any particulars specified in the Purchase Order and in any agreed variations to the Purchase Order.

6 The Goods shall conform in all respects with the requirements of any statutes, orders, regulations or bye-laws from time to time in force.

7 The Goods shall be fit and sufficient for the purpose for which such goods are ordinarily used and for any particular purpose made known to the Supplier by HSE and HSE relies on the skill and judgement of the Supplier in the supply of the Goods and the execution of the Purchase Order.

TIMBER AND PRODUCTS CONTAINING WOOD

8 The Contractor shall ensure that no timber or wood contained in any product supplied to HSE shall have derived from any species of tree that is protected under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) unless the Contractor can prove, by producing official documentation, that he has complied with the CITES requirements that permit trading in the particular species of tree so listed under that Convention.

9 All timber and wood, other than recycled timber and wood, supplied to HSE shall derive from trees or other plants that have been harvested and exported in strict accordance with the applicable law or laws of the country in which the trees or other plants grew. The Contractor shall obtain documentary evidence to prove such legality and to prove that the evidence does in fact match the products supplied by establishing a chain of custody from the source of the timber and wood through to delivery of the final product.

10 The Contractor is required to supply timber and wood that derive from trees or plants that were grown in forests or plantations that were managed to (a) sustain their biodiversity, productivity and vitality and (b) to prevent harm to other ecosystems and any indigenous forest-dependent people. The Contractors shall obtain documentary evidence to demonstrate that this requirement has been met.

11 It is the Contractor's responsibility to produce documentary evidence, in respect of these requirements, that will enable HSE to verify the authenticity and credibility of the claims being made. The Contractor shall obtain independent verification of the claims being made and shall meet the full costs involved in so doing. In this context "independent" means a body or organisation that is accepted by HSE as having the competence and capacity to provide an objective assessment of the evidence presented and as having no interests that would conflict with their duty to provide impartial advice. One way in which HSE will accept that the Contractor has met his obligations in proving the source of his timber and wood products is if those products are certified, by properly accredited organisations, as meeting the standards set by the Forest Stewardship Council or such other standards set by such other bodies as are listed in the Contract Specification.

DELIVERY

12 The Goods shall be delivered to the delivery address or addresses set out on the Purchase Order.

13 Any access to premises and any labour and equipment which may be provided by HSE in connection with the delivery shall be provided without acceptance by HSE of any liability whatsoever and the Supplier shall indemnify HSE in respect of any actions, suits, claims, demands, losses, charges, costs and expenses which HSE may suffer or incur as a result of or in connection with any damage or injury, whether fatal or otherwise, occurring in the course of delivery or installation where any such damage or injury is attributable to any act or omission of the Supplier or any of his sub-contractors.

14 Where any access to the premises is necessary in connection with delivery or installation the Supplier and his sub-contractors shall comply with all reasonable requirements of the HSE Head of Security at all times.

15 The time for delivery stated on the Purchase Order, or agreed between HSE and the Supplier, shall be of the essence. In the event that delivery is not achieved on time due to the default of the Supplier HSE shall be entitled to release itself from any obligation to accept and pay for the goods and/or cancel all or part of the Purchase Order, in either case without prejudice to its other rights or remedies.

16 The provisions of Clause 15 shall not be invoked where failure to deliver on time is due to circumstances outside the control of the Supplier.

COMPENSATION

17 Should HSE incur any additional costs by a requirement to place orders for the Goods elsewhere as a result of a failure on behalf of the Supplier to meet either the guaranteed deliveries or the quality of any of the Goods for any reason then the difference between the contract price and that paid elsewhere by HSE shall be borne by the Supplier. Such compensation will not be claimed where failure to meet delivery requirements is due to circumstances outside the control of the Supplier.

PROPERTY AND RISK

18 Without prejudice to any of the rights or remedies of HSE, including those rights and remedies under Clauses 20 to 21 and 22 to 25, Property and Risk in the Goods shall pass to HSE at the time of delivery.

DAMAGE IN TRANSIT or NON DELIVERY

19 On despatch of any consignment of Goods the Supplier shall send an advice note to HSE at the delivery address shown on the Purchase Order. The advice note shall specify the means of transport, the place and date of dispatch, the number of packages and their weight and volume.

20 Where any Goods have been damaged in transit HSE shall inform the Supplier of the damage in writing within thirty (30) days of delivery and shall require the Supplier to either repair or replace the Goods as soon as possible without charge.

21 Where HSE has been advised of the dispatch of Goods, but the Goods fail to be delivered, HSE shall inform the Supplier that the Goods have not been delivered within ten days of the notified date of delivery.

INSPECTION, REJECTION AND DEFECTS

22 The Supplier shall permit HSE or its authorised representative to make any inspections or tests it may reasonably require and the Supplier shall make available all reasonable facilities and assistance free of charge at his premises. No failure to make complaint at the time of such inspection or tests and no approval given during or after such tests or inspections shall constitute a waiver by HSE of any rights or remedies in respect of the Goods.

23 HSE may reject any of the Goods which fail to meet the requirements specified in the Purchase Order by giving written notice to the Supplier. Such notice shall be given to the Supplier concerned within a reasonable time after delivery. Where any of the Goods are rejected under this Condition HSE shall have the option, without prejudice to its other rights and remedies:

- a) to have the Goods concerned repaired as quickly as possible by the Supplier;
or
- b) to have the Goods concerned replaced by the Supplier with Goods which comply in all respects with the requirements specified in the Purchase Order;
or
- c) to obtain a full refund from the Supplier in respect of the Goods concerned; or
- d) claim compensation as detailed in Clause 17.

24 The Contractor shall make good to the satisfaction of HSE with all due diligence and at his own expense any defects arising from the defective design, materials or workmanship or from any act or omission of the Contractor that may develop in the Goods under proper use for a period of 12 months from putting into service or 18 months from delivery, whichever shall be the shorter.

25 Any Goods rejected or returned by HSE as described in Clauses 23 and 24 shall be returned to the Supplier at the Supplier's risk and expense.

LABELLING AND PACKAGING

26 All Goods delivered under the Contract are to be securely packed before dispatch and each package must be distinctly marked with the description and quantity of contents, with the name of the Supplier and a distinctive number or mark, which is to be shown for the purposes of identification. All previous irrelevant markings must be carefully obliterated.

27 Any containers of hazardous goods, and all documents relating to them, shall bear prominent and adequate warnings in accordance with any legislation for the time being in force. The Supplier shall indemnify HSE against all actions, suits, claims, demands, losses, charges, costs and expenses which HSE may suffer or incur as a result of or in connection with any breach of this Condition.

28 All packaging materials will be considered non-returnable and will be destroyed unless the Supplier states that such materials will be charged for unless returned. HSE accepts no liability in respect of the non-arrival at the Supplier's premises of empty packages returned by HSE unless the Supplier notifies HSE of such non-arrival within ten days of receiving notice from HSE that the packages have been dispatched.

HEALTH AND SAFETY

29 The Supplier represents and warrants to HSE that all necessary tests and examinations have been made or will be made prior to delivery of the Goods to ensure that the Goods are designed and constructed so as to be safe and without risk to the health and safety of persons using them, and that the Supplier has made available to HSE adequate information about the use for which the Goods have been designed and have been tested and about any conditions necessary to ensure that when put to use the Goods will be safe and without risk to health. The Supplier shall indemnify HSE against all actions, suits, claims, demands, losses, charges, costs and expenses which HSE may suffer or incur as a result of or in connection with any breach of this Condition.

INDEMNITY AND INSURANCE

30 Without prejudice to any rights or remedies of HSE, including the rights and remedies under Clauses 22 to 25 of these Conditions, the Supplier shall indemnify HSE against all actions, suits, claims, demands, losses, charges, costs and expenses which HSE may suffer or incur as a result of or in connection with any damage to property or in respect of any injury, whether fatal or otherwise, to any person which may result directly or indirectly from any defect in the Goods or the negligent or wrongful act or omission of the Supplier. Liability shall be unlimited in the case of death or injury, fraud, or losses arising from the Contractor's breaches of Clauses 44 and 51 to 52.

31 The Supplier shall effect a policy or policies of insurance, with a reputable insurance company, covering all the matters which are the subject of indemnities under these Conditions. Where requested the Supplier shall produce the relevant policy or policies, together with receipts or other evidence of payment of the latest premium due.

THE PRICE

32 The price of the Goods shall be as stated in the Purchase Order.

INVOICING AND PAYMENT

33 The Supplier shall submit invoices at intervals agreed between HSE and the Supplier.

34 Payment will be made within 30 days of receipt and agreement of invoices for Goods delivered to the satisfaction of HSE. HSE's usual method of payment is through the Banks Automated Clearing System (BACS). All payments made by HSE to the Contractor shall be through BACS unless the Contractor provides advance written notice to HSE that this method of payment is not possible or will cause undue inconvenience.

35 Any complaints which may arise concerning late payment of invoices should be addressed in the first instance to the purchasing manager at the address shown in the Purchase Order as the invoice point. If you are not satisfied with the response you may write to the Head of Financial Information Systems and Payments, FIN U3 (FISP), Room 401B, St Hugh's House, Trinity Road, Bootle, Merseyside L20 3QY who will see that your complaint is followed up promptly and fairly. HSE aims to reply to complaints within 10 working days. This is without prejudice to the rights of both parties under the Late Payment of Commercial Debt (Interest) Act 1998.

VALUE ADDED TAX

36 Where applicable the prevailing rate and total of Value Added Tax (VAT) shall be shown separately on all invoices.

RIGHT OF AUDIT

37 The Supplier shall keep secure and maintain until two years after the final payment of all sums due under the Contract, or such longer period as may be agreed between HSE and the Supplier, full and accurate records of the supply, all expenditure reimbursed by the Supplier and all payments made by HSE.

38 The Supplier shall grant to HSE, or its authorised agents, such access to those records as may reasonably be required in order to check the Supplier's compliance with the Contract.

39 For the purpose of:

- a) the examination and certification of HSE's accounts; or
- b) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which HSE has used its resources,

the Comptroller and Auditor General may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Supplier and may require the Supplier to provide such oral and/or written explanations as he considers necessary. This Condition does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Supplier under Section 6(3)(d) and (5) of the National Audit Act 1983.

PATENTS AND INFORMATION

40 It is a condition of the Contract that the Goods will not infringe any patent, trade mark, registered design, copyright or other right in the nature of industrial property of any third party, except to the extent that the Goods incorporate designs furnished by HSE, and the Supplier shall indemnify HSE against all actions, claims, demands, costs and expenses which HSE may suffer or incur as a result of or in connection with any breach of this Condition.

41 All rights, including ownership and copyright in any specifications, instructions, plans, drawings, patents, models, designs, documents or other materials:

- a) furnished to or made available to the Supplier by HSE are hereby assigned to and shall vest in HSE absolutely;
- b) prepared by or for the Supplier for use, or intended use, in relation to the performance of the Contract are hereby assigned to and shall vest in HSE absolutely, and (without prejudice to Clause 40) the Supplier shall not and shall ensure that his servants and agents shall not (except to the extent necessary for the implementation of the Contract) without prior written consent of HSE use or disclose any such specifications, instructions, plans, drawings, patents, models, designs, documents or other material or any other information (whether or not relevant to the Contract) which the Supplier may obtain through the execution of the Contract, except information which is in the public domain otherwise than by reason of a breach of this provision, and in particular the Supplier shall not refer to HSE or the Contract in any advertisement without the prior written consent of HSE.

42 The provisions of Clauses 40 to 41 shall apply during the continuance of this Contract and after its termination howsoever arising.

DISCRIMINATION

43 The Supplier shall not unlawfully discriminate on the grounds of race, sex, disability, sexual orientation or religious belief, within the meaning and scope of the provisions of the Race Relations Act 1976, the Race Relations (Amendment) Act 2004, the Disability Discrimination Act 1995, the Sex Discrimination Act 1975, the Employment Equality (Religion or Belief) Regulations 2003 and the Employment Equality (Sexual Orientation) Regulations 2003, or any statutory modification or re-enactment thereof relating to discrimination in employment. The Supplier shall take all reasonable steps to secure the observance of these provisions by all servants, employees or agents of the Supplier and all sub-contractors employed in the execution of the Contract.

OFFICIAL SECRETS ACTS AND CONFIDENTIALITY

44 The Supplier's attention is drawn to the provisions of the Official Secrets Acts 1911, 1920 and 1989. The Supplier must take all reasonable steps necessary to ensure that all persons employed on any work in connection with the Contract have notice that the said Acts and Regulations apply to them and will continue to apply after the execution of the Contract.

FREEDOM OF INFORMATION

45 The Contractor acknowledges that HSE is subject to the requirements of the Code of Practice on Access to Government Information (2nd Edition), the FOIA and the Environmental Information Regulations and shall assist and cooperate with HSE (at the Contractor's expense) to enable HSE to comply with these Information disclosure requirements.

46 The Contractor shall and shall procure that its sub-contractors shall:

- a) transfer the Request for Information to the other Party as soon as practicable after receipt and in any event within two working days of receiving a Request for Information;
- b) provide HSE with a copy of all Information in its possession or power in the form that HSE requires within five working days (or such other period as HSE may specify) of HSE requesting that Information; and
- c) provide all necessary assistance as reasonably requested by HSE to enable HSE to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA.

47 HSE shall be responsible for determining at its absolute discretion whether:

- a) the Information is exempt from disclosure under the Code of Practice on Access to Government Information (2nd Edition), the FOIA and the Environmental Information Regulations;
- b) the Information is to be disclosed in response to a Request for Information, and

- c) in no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by HSE.

48 The Contractor acknowledges that HSE may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000, be obliged under the Code of Practice on Access to Government Information (2nd Edition), the FOIA, or the Environmental Information Regulations to disclose Information:

- a) without consulting with the Contractor, or
- b) following consultation with the Contractor and having taken its views into account.

49 The Contractor shall ensure that all information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit HSE to inspect such records as requested from time to time.

50 The Contractor acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that HSE may nevertheless be obliged to disclose Confidential Information in accordance with Clause 48.

CORRUPT GIFTS AND PAYMENTS OF COMMISSION

51 The Supplier must not offer or give, or agree to give, to any member or officer or servant of HSE any gift or consideration of any kind as an inducement or reward for doing or refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other contract with HSE or for showing or refraining from showing favour or disfavour to any person in relation to this or any other contract HSE.

52 Any breach of Clause 51 by the Supplier or by anyone employed by them or acting on their behalf (whether with or without the knowledge of the Supplier) shall entitle HSE to terminate the Contract summarily and recover from the Supplier the amount of any loss resulting from such termination. (**Note:** The attention of the Supplier is drawn to the criminal offence provisions of the Prevention of Corruption Acts 1889 to 1916).

ARBITRATION

53 Disputes, differences or questions between the parties to any contract with respect to any matter arising out of or relating to the Contract other than a matter as to which the decision of HSE is to be final and conclusive and except as may be otherwise provided in the Contract shall be referred to the Arbitration of two persons, one to be appointed by HSE and one by the Supplier, or their Umpire, in accordance with the provisions of the Arbitration Act 1950, 1975, 1979 and 1996 or any statutory modification or re-enactment thereof.

54 Where it is considered appropriate, subject to the agreement of both parties, alternative methods of dispute resolution shall be considered including adjudication and mediation.

LEGITIMACY OF THE WORKFORCE

55 The Supplier shall take all reasonable steps to ensure that any servants, employees or agents of the Supplier and any sub-contractors, their servants or agents, employed in the execution of the Contract are entitled to obtain employment in the United Kingdom and are not claiming Unemployment Benefit or any other Benefit payable to persons registered as unemployed.

TERMINATION

56 Without prejudice to any other rights or remedies of HSE under the Contract HSE shall have the right to terminate the Contract forthwith by written notice to the Supplier or their trustee in bankruptcy or receiver or (if a company) liquidator or administrator and HSE shall not be liable to make any further payment to the Supplier until the Goods have been delivered in accordance with the requirements of the Contract and shall be entitled to deduct from any amount due to the Supplier the costs therefore incurred by HSE including HSE's own costs:

- a) where the Supplier is an individual and if a petition is presented for the Supplier's bankruptcy or a criminal bankruptcy order is made against the Supplier, or the Supplier makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors or if an administrator is appointed to manage its affairs; or
- b) where the Supplier is not an individual but is a firm or a number of persons acting together in any capacity, if any event in any Clause of this Condition occurs in respect of any partner in the firm or any of those persons or a petition is presented to the Supplier to be wound up as an unregistered company; or
- c) where the Supplier is a company, if the company passes a resolution for winding-up or dissolution (other than for the purposes of and followed by an amalgamation or reconstruction) or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge; or
- d) where the Supplier shall have committed a material breach of the Contract and, if such breach is capable of remedy, shall have failed to remedy such breach within thirty days of being required by HSE to do so; or
- e) where the Supplier is an individual and shall die or be adjudged incapable of managing their affairs within the meaning of Part VII of the Mental Health Act 1983.

57 Where the total costs to HSE of having the Goods supplied by a third party exceed the amount (if any) due to the original Supplier, the difference shall be recoverable by HSE from the Supplier.

BREAK

58 In addition to its rights of termination under Clauses 56 and 57 HSE shall be entitled to terminate the Contract by giving to the Supplier not less than thirty days notice to that effect.

59 Termination under Clauses 56 to 57 and 58 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to HSE and not affect the continued operation of Clauses 40 to 41 and 44 of the Contract.

RECOVERY OF SUMS DUE

60 Wherever under the Contract any sum of money is recoverable from or payable by the Supplier, that sum may be deducted from any sum then due, or which at any later time may become due, to the Supplier under the Contract or under any other agreement or contract with HSE.

ASSIGNMENT AND SUB-CONTRACTING

61 The Supplier shall not assign the benefit or burden of the Contract or any part thereof without the written permission of HSE.

62 No sub-contracting by the Supplier shall in any way relieve the Supplier of any of his responsibilities under the Contract.

PROMPT PAYMENT TO SUB-CONTRACTORS

63 Where the Supplier enters into a sub-contract with another person for the purpose of performing the Contract, he shall include a term in the sub-contract which requires payment to be made to that sub-contracted person within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the sub-contract requirements.

WAIVER

64 The failure of either party to enforce any provision of the Contract at any time shall not affect any future right to require complete performance by the other party, nor shall the waiver of any individual breach of any provision be taken or held to be a waiver of any subsequent breach of that or any other provision.

CURRENT REMEDIES

65 The rights of remedy available to either party shall include both the rights or remedies contained in these Conditions and those available under English law. These rights of remedy may be enforced concurrently.

NOTICES

66 Any notice given in connection with the Contract may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted by telex, teletext, facsimile transmission or other means of telecommunication, or by electronic mail where such a means of communication has been agreed for the purposes of the Contract resulting in the receipt of a written communication in permanent form. When it is sent or transmitted to the address of the party shown in the Contract, or to any other address agreed between the parties, it shall be deemed effectively to have been received:

- a) if delivered by hand, on the day of delivery if it is the recipient's business day and otherwise on the first business day of the recipient immediately following the day of delivery;

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- b) if sent by first class prepaid post (or airmail if appropriate) on the third business day (or on the tenth business day in the case of airmail) after the day of posting;
- c) if sent by facsimile, telex or other electronic means:
 - i if transmitted between 09.00 and 17.00 on a business day (recipient's time) on completion of receipt by the sender of verification of the transmission from the receiving instrument;
 - ii if transmitted at any other time, at 09.00 on the first business day (recipient's time) following the completion of receipt by the sender of verification of the transmission from the receiving instrument.

GOVERNING LAW

67 These Conditions shall be governed by and construed in accordance with English law and the Supplier hereby irrevocably submits to the jurisdiction of the English courts. The submission to such jurisdiction shall not, and shall not be construed so as to limit the right of HSE to take proceedings against the Supplier in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.