

**INEOS HYGIENICS MANUFACTURING UK LIMITED – T&Cs 2021**

**1. DEFINITIONS**

- (i) **'Buyer'** shall mean the INEOS entity named in the Contract
- (ii) **'Contractor'** shall mean the person, firm or company named in the Contract
- (iii) **'Contract'** shall mean the binding agreement incorporating these terms between Buyer and Contractor formed either via the Buyers' issuing of a purchase order or the signing of a written agreement as may be applicable.
- (iv) **'Works'** shall mean and include all goods and services provided and all other work to be done by the Contractor under the Contract.
- (v) **'Site'** shall mean the location referred to in the Contract where the Works will be executed.

**2. CONTRACTOR'S CONDITIONS**

- 2.1 No general conditions submitted or referred to by the Contractor shall form part of the Contract unless expressly agreed to in writing by the Buyer.
- 2.2 The Contract constitute(s) the entire agreement between the parties and supersedes all previous agreements (written or oral) between the parties in relation to its subject-matter.
- 2.3 Each party acknowledges that in entering into the Contract it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this Contract

**3. QUALITY AND FITNESS FOR PURPOSE**

- 3.1 The Works shall be free from defects in material or workmanship and performed by the Contractor with all reasonable skill and care.
- 3.2 If the purpose for which the Works are required is made known to the Contractor expressly or by implication, the Works shall be fit for that purpose.
- 3.3 The Works shall conform with the specifications, standards, drawings, descriptions and samples contained or referred to in the Contract.
- 3.4 In the absence of a specification or sample, the Works shall be within the normal limits of industrial quality.

**4. PROGRAMME**

- 4.1 The Contract shall commence from the date specified in the Contract,
- 4.2 The Works shall be executed with in accordance with the programme / schedule as specified in the Contract (if applicable).
- 4.3 The completion date of the whole (or if applicable; part(s)) of the Works shall be as specified in the Contract. The Contractor shall complete all of the Works by this date.

**5. LIQUIDATED DAMAGES FOR DELAY**

- 5.1 If the Contractor fails to meet the completion date(s) as may be defined within the Contract, the Contractor shall be liable to pay to the Buyer liquidated damages as may be defined in the Contract, with such amounts being mutually determined by the parties to be a genuine pre-estimate of loss and not a penalty. Such payments shall not relieve the Contractor of its continuing obligations under the Contract or limit the Buyers rights to seek damages under the Contract or law.
- 5.2 In the event of prolonged delay in completion (deemed to be once the maximum liquidated damages limit is reached) the Buyer may its sole option choose to cancel the Contract. In the event that the Buyer chooses to cancel the Contract under this clause the Buyer shall be under no liability to the Contractor, and the Contractor shall reimburse to the Buyer any and all loss which the Buyer may incur as a consequence (including but not limited to cost the Buyer incurs in completing the Works itself or via third parties).

**6. PRICE**

- 6.1 Buyer shall pay the Contractor, in the manner laid down in the Contract, the price which is calculated in accordance with or is stated in the Contract. All prices and rates stated in the Contract shall be fixed and firm for the duration of the Contract.

6.2 Value Added Tax (VAT), where applicable, shall be shown separately on all Contractor's invoices.

## **7. VARIATIONS**

7.1 The Buyer reserves the right to request variations to the Contract.

7.2 If the Buyer requests variations to the Contract the Contractor shall request a written variation request from the Buyer within 10 days of the Buyers initial request

7.3 If the Contractor believes any actions / omissions of the Buyer result in the Contractor incurring costs or delays for which the Contractor requires a variation to Contract the Contractor shall request a written variation request from the Buyer within 10 days of the Buyers action / omission.

7.4 Such written variation requests will only be valid and binding amendments to the Contract if embodied in a written variation agreement agreed by both parties

7.5 If the Buyer requests a variation (ref. 7.1) which is duly implemented by the Contractor prior to the Contractor obtaining a written variation agreement as per 7.2 and 7.4 the Contractor shall not be entitled to any variation of the Contract (including but not limited to an increase in the Contract price and / or change of completion date(s)) - the onus being on the Contractor to ensure that the effect of any variation requests are documented and agreed prior to implementation

7.6 If the Contractor believes any actions / omissions of the Buyer have resulted in the Contractor incurring costs or delays but has not requested a written variation request from the Buyer in accordance with 7.3 the Contractor shall not be entitled to any variation of the Contract (including but not limited to an increase in the Contract price and / or change of completion date) - the onus being on the Contractor to ensure that they promptly notify the Buyer of any circumstances which they believe may affect the Contractors ability to perform according to the Contract.

## **8. PAYMENT**

8.1 If appropriate, a retention shall be held by the Buyer as stated in the Contract for the duration of the maintenance period.

8.2 The Buyer shall make payment for the accepted Works / monthly valuations (as may be specified in the Contract) by electronic transfer by the end of the 2<sup>nd</sup> month following the month of invoice / valuation acceptance (e.g. for an invoice accepted in June, payment is due at the end of August).

8.3 If payment of any sum due and payable under the Contract is delayed, except where due to the fault of the Contractor, the Contractor may charge interest on the unpaid sum calculated at the current UK clearing banks base lending rate plus 2% on an APR basis, pro-rated per complete day overdue. Such interest will accrue from the date upon which payment was due to clear by electronic transfer until payment in full is made.

8.4 Wherever under the Contract any sum of money may be payable by the Contractor to the Buyer such sum may be deducted by the Buyer from any sum then due or which at any time thereafter may become due to the Contractor under or in respect of the Contract or any other dealing with the Buyer.

8.5 Where the Buyer issues a certificate of payment or other notice of a sum to be paid (in whatever format) this shall be constituted to be the 'notified sum' in respect of the Housing Grants, Construction and Regeneration Act 1996 as amended by the local Democracy, Economic Development and Construction Act 2009, regardless of the value of the application submitted by the Contractor. A payless notice is not required unless the Buyer intends to pay less than the notified sum as defined above.

## **9. CONTRACTOR'S SUPERVISION**

9.1 The Contractor shall have a competent supervision on the Site at all times whilst the Works are being carried out and any instructions given to the supervision by the Buyer shall be deemed to be given to the Contractor. The Contractors supervision shall be fluent in both the language of the Contract, the local language of the Site and the language of all workers employed on the Site by the Contractor.

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

10.1 The Contract shall not be assigned by the Contractor nor shall the Works be sub-let as a whole without the written permission of the Buyer. The Contractor shall be responsible for all work done and materials and articles supplied by the Contractor's sub-contractors or assignees. The Buyer may assign the Contract by giving notice in writing.

## **11. COPIES OF SUB-CONTRACTS**

11.1 The Contractor shall provide copies of all sub-contracts placed specifically for use in connection with the Contract, on reasonable request from the Buyer.

## **12. CONTRACTOR SITE RESPONSIBILITIES AND SHE**

12.1 The Contractor is deemed to have visited the Site and understood the nature and extent of the Works and shall make no claim founded on its failure to do so. The Buyer shall, on reasonable request of the Contractor, grant such access

as may be reasonable for this purpose. Specifically the Contractor shall have made allowances within the Contract for the condition of the Site and the nature of the Works such that it shall not be entitled to any variation on the basis of any items / issues not specifically identified by the Buyer.

- 12.2 The Buyer shall provide such possession of the Site to the Contractor that is necessary for the performance of the Works. Such possession shall not be exclusive to the Contractor or its sub-contractors and the Contractor shall, as directed by the Buyer, allow others to work on the Site and afford them all reasonable facilities to do so.
- 12.3 The Contractor shall afford all reasonable facilities of access to the Site to the Buyer, its servants and agents.
- 12.4 The Contractor shall inform the Buyer prior to making any deliveries to or commencing any work on the Site and must obtain the consent of the Buyer.
- 12.5 No work shall be covered or hidden until approved by the Buyer and such approval shall not be unreasonably withheld, approval given by the Buyer to cover/hide Works in accordance with this clause does not constitute acceptance of the Works in whole or part.
- 12.6 Burning shall not be carried out on the Site without the approval of the Buyer.
- 12.7 Explosives shall not be used or brought to the Site without the written approval of the Buyer.
- 12.8 All consignments to the Site shall be clearly marked with the Contractor's name together with other markings as required by the Buyer and these references shall also appear on all consignment notes. The Contractor shall be responsible for receiving and off-loading all such consignments and for the safe storage and demurrage of the same unless otherwise stated in the Contract. Risk for such items shall be with the Contractor until the completion of the Works, title passes to the Buyer when said consignments arrive on Site.
- 12.9 With exception of any arisings which have a value to the Buyer (e.g. scrap / items that could be resold) the Contractor shall remove all rubbish progressively from the Site unless otherwise instructed by the Buyer. The Contractor shall be responsible and liable for such arisings and must comply with all statutory regulations dealing with the disposal of such arisings.
- 12.10 On the completion of the Works the Contractor shall remove from the Site all constructional plant, accommodation, rubbish and temporary works of every kind and leave the Site and the Works in a clean and workmanlike condition to the satisfaction of the Buyer. During execution of the Works the Contractor shall comply fully with the Buyers site rules regarding housekeeping.
- 12.11 The Contractor shall at all times comply with all applicable legislation in respect of the Site and the Works and shall indemnify and hold the Buyer harmless for any failure on the Contractors part to do so.
- 12.12 To the extent that the Contractor is responsible for the Site and the Works the Contractor shall indemnify and hold the Buyer harmless for any and all incidents, accidents or losses which may occur on the Site and / or in association with the Works
- 12.13 The Contractor shall carry out the Works with proper regard to the safety and health of all persons, both in its employ, its subcontractors, the Buyers' personnel and agents and all other 3<sup>rd</sup> parties including the wider community located in the vicinity of the Site.
- 12.14 The Contractor shall comply with the Buyer's Site rules (the latest version of which is available from the Buyer on request) and the safety requirements applicable to the Site and shall ensure that its sub-contractors, servants or agents comply. This includes but is not limited to:
- A) INEOS Life Savings Rules
  - B) INEOS Drug and Alcohol policy, including participating in random / scheduled testing if applicable in the Site rules
- 12.15 The Buyer shall have the right to require the removal of any person or subcontractor brought to the Site by the Contractor who:-
- 12.15.1 Has failed to comply with the Buyer's Site Rules including but not limited to INEOS life saving rules, or
  - 12.15.2 Has, in the opinion of the Buyer, mis-conducted himself/herself or has been negligent or incompetent, or
  - 12.15.3 is prejudicial to health and/or safety

and any such person shall not again be employed on the Site without the specific permission of the Buyer.

In the event of a breach of INEOS life saving rules by the employees of the Contractor or subcontractor working for the Contractor, the following shall apply:

- (a) The individual who breached any INEOS Life Saving Rule shall be immediately removed from the Site (INEOS Hygienics Manufacturing UK Limited site or 3<sup>rd</sup> party site as may be applicable) by the Contractor and the breach shall be reported to INEOS Hygienics Manufacturing UK Limited. The individual shall not be allowed to return to the Site or any other INEOS site for 12 months and only then if adequate evidence of suitable training to prevent re-occurrence can be provided.

(b) Additionally, the Contractor shall pay to INEOS Hygienics Manufacturing UK Limited as liquidated damages (and not as a penalty) of 2.5% of the previous 12 months turnover under the Contract or 2.5% of the Purchase Order Value.

Should there be a 2<sup>nd</sup> breach of the INEOS Life Saving Rules within 12 months of the 1<sup>st</sup> by the employees of the Contractor or subcontractor working for the Contractor then such breach of the INEOS lifesaving rules shall be considered as a material breach under the Contract / Agreement and the following shall apply:

(c) INEOS Hygienics Manufacturing UK Limited shall be entitled to terminate the Contract / Agreement with immediate effect

(d) Upon such termination the Contractor shall be entitled to payment for any work/services completed up to the date of termination, but shall not be entitled to reimbursement for any costs resulting directly or indirectly from such termination.

- 12.16 The Contractor shall ensure that all its employees who visit and work on the Site are fully fit for work in the environment in which they will be operating and that they will also be free from all infectious and contagious diseases and are not under the influence of drugs and/or alcohol.
- 12.17 The Contractor shall provide for all its employees who will be present on the Site all the necessary safety and industrial wear such as overalls, safety footwear, hard hats, ear defenders and goggles together with any special safety wear which may be necessary for the purpose of the fulfilment of the Contract.
- 12.18 The Contractor shall be responsible for the suitability and safety of all constructional plant used by the Contractor and no constructional plant shall be used which may be unsuitable, unsafe or liable to cause damage or injury. Without lessening the responsibility of the Contractor in any way with regards to such constructional plant, if in the Buyer's opinion, it is unsuitable, unsafe or liable to cause damage or injury, it shall not be used on the Works or the Site and it shall be replaced with the minimum of delay at the Contractor's cost.
- 12.19 The Contractor shall not permit any person to visit the Site whose presence is not necessary for the performance of the Contract.
- 12.20 The Contractor shall not carry out any of the Works unless it has an appropriate permit for said Works issued by the Buyer; the Contractor is responsible for producing and providing to the Buyer a risk assessment and method statement when applying for a permit. Any delays in permit issuing due to deficiencies in the Contractors method statement or risk assessments will be solely for the Contractor and shall not entitle the Contractor to an amendment of the completion date.
- 12.21 The Contractor shall operate a safety management system that complies with the Buyers requirements to guarantee an acceptable level of safety awareness and knowledge amongst all its personnel, subcontractors and agents.
- 12.22 All incidents and injuries, in which the Contractor is involved, must be reported to the Buyer. The Contractor will collaborate with the Buyer to investigate and determine the root cause. The learning from the incident investigations shall be communicated by both the Buyer and the Contractor to ensure appropriate awareness of the incident, the cause, and the actions to prevent recurrence.
- 12.23 The Contractor shall actively participate in any 'behavioral safety process' in place at the Site.
- 12.24 The Contractor shall participate in regular safety meetings with the Buyer at the Site and pro-actively work with the Buyer to drive improvements in its own safety performance, the safety performance of the Buyer and the general Site.
- 12.25 The Contractor shall carry out regular safety inspection tours on Site and report the results, along with detailed improvement actions to the Buyer
- 12.26 WHERE SPECIFIED IN THE CONTRACT: The Contractor shall monitor and report on KPI's as may be detailed in the Contract, particularly in respect of SHE performance. The Contractor agrees that where specifically detailed in the Contract the Buyer is entitled to deduct liquidated damages from the Contract price should the Contractor fail to meet said KPI's, including but not limited to KPI's related to compliance with the INEOS life savings rules, with such amounts being mutually determined by the parties to be a genuine pre-estimate of loss and not a penalty. Such payments shall not relieve the Contractor of its continuing obligations under the Contract or limit the Buyers rights to seek damages under the Contract or law.

### **13. HAZARDOUS GOODS AND DANGEROUS SUBSTANCES**

- 13.1 All hazardous goods must be marked by the Contractor with international danger symbol(s) and display the name of the material in English. Transport and other documents must include a declaration of hazard and name of material in English. Goods must be accompanied by emergency information in English in the form of written instructions, labels or markings.
- 13.2 The Contractor's attention is drawn to all UK and international agreements relating to all packaging, labelling and carriage or hazardous goods and the Contractor must comply with any statutory regulations and observe any Codes of Practice which may apply.

13.3 At least 14 days prior to delivery of any Goods all information held by or available to the Contractor regarding any potential hazards known or believed to exist in the transportation, handling or use of the materials supplied shall be communicated to the Buyer.

**14. BUYER'S RIGHTS IN SPECIFICATIONS, PLANS, PROCESS KNOW-HOW, DRAWINGS, PATTERNS, ETC**

14.1 Any specifications, plans, process know-how, drawings, patterns, design or any information (howsoever recorded) supplied by the Buyer to the Contractor in connection with the Contract shall remain the property of the Buyer and any information derived therefrom or otherwise communicated to the Contractor in connection with the Contract shall be kept secret and confidential by the Contractor and shall not, without the consent in writing of the Buyer, be published or disclosed to any third party, or made use of by the Contractor except for the purpose of implementing the Contract.

14.2 The obligations with respect to secrecy and confidentiality contained in this clause shall not apply to information that the Contractor can evidence was, prior to its disclosure by the Buyer:

- 14.2.1.1 already in the Contractor's possession or
- 14.2.1.2 already in the public domain or
- 14.2.1.3 purchased or legally acquired by the Contractor from third parties having good title thereof

14.3 This obligation shall also not apply to information which comes into the public domain (other than through the fault of the Contractor).

14.4 Any specifications, plans, process know-how, drawings, patterns, designs or any information (howsoever recorded) supplied by the Buyer must be returned in good order and condition on fulfilment of the Contract.

14.5 The taking of photographs of or on the Site or any section of the Site or the Works or any property belonging to the Buyer is not permitted without the Buyer's prior written consent.

14.6 The Contractor shall not mention the Buyer's name in connection with the Contract or disclose the existence of the Contract or any matter connected with the Contract in any publicity material or any other communication to third parties without the Buyer's prior written consent.

**15. DESIGN**

15.1 Where the Contractor, either by himself or by means of any servant, agent, subcontractor or supplier is required under the Contract to undertake the design of any part of the Works, he shall in accordance with the Contract or as instructed by the Buyer, submit to the Buyer for approval a suitable drawing or design document relating to that work. The Contractor shall not commence any work to which such a drawing or design document relates unless the design has been approved in writing by the Buyer, and the Contractor shall not alter that design without the further written approval of the Buyer. The approval of the Buyer shall not relieve the Contractor of any liability which he would otherwise have in respect of the design under the Contract.

15.2 The Contractor's liability under this condition shall not be affected by any warranty that the Buyer may obtain from any subcontractor.

15.3 Any design work undertaken by the Contractor in respect of the Contract shall become the property of the Buyer; the passing to the Buyer of all design, calculations, drawings etc. shall be deemed part of the Works and shall be done by the completion date(s).

**16. RESPONSIBILITY FOR INFORMATION**

16.1 The Contractor shall be responsible for any errors or omissions in any drawings, calculations, packing details or other particulars supplied by the Contractor, whether such information has been approved by the Buyer or not, provided that such errors or omissions are not due to inaccurate information furnished in writing by the Buyer.

16.2 The Contractor shall be responsible for checking the suitability of all information provided to it by the Buyer in respect of the Works (including that which forms part of the Contract). The Contractor shall notify the Buyer within 10 days of receipt of any errors and/or omissions in such information such that the Buyer can correct/supplement as may be required. If the Contractor does not notify the Buyer within 10 days of receipt of any errors and/or omissions in the Buyer's information then the errors and/or omissions will be deemed to be those of the Contractor, and the Contractor shall have no right of claim or variation against the Buyer in respect thereof.

**17. FREE ISSUE MATERIALS / EQUIPMENT**

Where the Buyer provides free issue equipment/materials to the Contractor for incorporation into the Works they shall remain the property of the Buyer but shall be at the risk of the Contractor during the period they remain in the Contractor's possession. The Contractor shall maintain all such equipment/materials in good order and condition and shall use them economically and solely in accordance with the Contract. Surplus equipment/materials shall only be disposed of at the Buyer's discretion. Waste or loss of equipment/materials shall be made good at the Contractor's expense. The Contractor shall at all times comply with any instructions provided by the Buyer and/or the equipment / materials provider in respect of the handling and use of any such equipment/materials.

**18. SUSPENSION OF THE WORKS**

The Contractor shall suspend the whole of the Works or any part thereof on the written instructions of the Buyer. If such suspension is for the Buyer's convenience any unavoidable cost proved by the Contractor to have arisen from such suspension shall be reimbursed by the Buyer, provided the Contractor has made all reasonable endeavours to mitigate such costs. If such suspension is resulting from a breach by the Contractor or particularly concerns the Buyer due to SHE all costs relating to the suspension shall be for the Contractor.

**19. CARE OF THE WORKS**

- 19.1 Except as provided in Clause 19.2 below the Contractor shall be solely responsible for and shall at its own expense make good any loss of or damage to the whole or any part of the Works (including any free issue materials/equipment) and any other property of the Buyer and/or its agents, which results from any act or omission of the Contractor or its subcontractors or any employee or representative of the Contractor or its subcontractors.
- 19.2 The Contractor shall not be liable to make good at its own expense any loss or damage directly caused by any act or omission of the Buyer or any employee or representative of the Buyer.

**20. INSPECTION, TEST AND PROGRESS**

- 20.1 The Buyer and any person authorised by the Buyer shall have the right of access to the Contractor's and its subcontractor's premises (as may be required), to the Works and / or Site at all reasonable times to inspect / test the Works and to reject any part of the Works that does not comply with the Contract. Any inspection / testing and subsequent approval or acceptance by or on behalf of the Buyer shall not relieve the Contractor or its sub-contractors from any obligations under the Contract. Any re-testing required due to the Contractor's errors or omissions shall be at the Contractor's cost.

**21. REJECTION**

- 21.1 The Buyer shall have the right, at any time before the completion date(s) to reject the Works or any parts thereof which do not conform with the Contract for whatever reason, including without limitation reasons of quality, safety or being unfit for the purpose for which the Contract specifies, and the Contractor shall promptly rectify these defects so that the Works conform with the Contract. In the event of the Contractor failing to remedy the defects and make the Works conform with the Contract in a timeframe that is reasonable to the Buyer, the Buyer may at its sole option terminate the Contract and the Contractor shall (in addition to any other damages applicable under the Contract) pay to the Buyer any costs the Buyer reasonably incurs in correcting said defects itself or via 3<sup>rd</sup> parties.

**22. TESTS AND TAKE-OVER AT THE COMPLETION DATE**

- 22.1 When the Works have been completed in accordance with the Contract (including if applicable all tests have been satisfactorily passed) the Contractor shall request from the Buyer a 'take-over certificate' in respect of the Works confirming the completion date.

**23. MAINTENANCE PERIOD (WARRANTY)**

- 23.1 The Contractor shall at its own cost, for a period of thirty six months (or other period as may be stated in the Contract) from the completion date, maintain the Works in good and proper order, repair as necessary and rectify any and all defects arising from improper or defective design, materials or workmanship (to the extent the Contractor is responsible for said design, materials or workmanship). In the event that it is necessary for the Contractor to repair or replace any portion of the Works, the Contractor shall do so at its own cost and shall complete such rectification within a time that is acceptable to the Buyer.
- 23.2 In the event that the Contractor cannot or does not respond within a time that is reasonable to the Buyer to rectify any such defects, the Buyer may carry out the repair or replacement themselves and shall be entitled to reimbursement by the Contractor for all reasonable costs (internal and 3<sup>rd</sup> party) necessarily incurred in connection therewith. Such action shall not relieve the Contractor of his continuing obligations under the Contract.
- 23.3 Unless otherwise stated in the Contract, the Contractor shall further be liable in damages (if any) up to the total Contract value.

**24. CONTRACTOR'S INSOLVENCY**

- 24.1 If the Contractor becomes bankrupt, insolvent or makes an arrangement with its creditors or has a liquidator or a receiver appointed or commences to be wound up (other than for the purpose of amalgamation or reconstruction) the Buyer may, without prejudice to any other of his rights, terminate the Contract forthwith by notice to the Contractor or any person in whom the Contract may have become vested. In any such event it shall be lawful for the Buyer to enter the premises where the Works are being undertaken and take possession of the Works and any materials the property in which has passed to or is vested in the Buyer.

**25. TERMINATION**

- 25.1 If the Contractor commits a breach of the Contract and fails within 10 days of notice by the Buyer to rectify the breach, the Buyer may, without prejudice to any other of his rights, terminate the Contract by notice in writing to the Contractor. In the event of termination under this clause the Contractor shall be liable for damages as detailed in the Contract and / or under statute. All terms, conditions and provisions of the Contract including but not limited to these conditions shall survive such termination to the extent the Buyer must rely on them to seek reparation for the breach(es) of the Contractor. In the event of the Buyer's termination for the Contractor's breach the Buyer shall have no liability to the Contractor.



25.2 The Buyer may at its sole option terminate the Contract at any time without prior notice, and the Buyer shall (except where such termination was for a breach of Contract by the Contractor) pay the Contractor such a sum as may be equitable for direct and irrecoverable costs incurred by the Contractor in respect of the Works performed prior to cancellation. For the avoidance of doubt nothing in this clause shall make the Buyer liable for consequential losses of the Contractor including but not limited to loss of earnings, loss of profits, indirect and / or costs that would not have been incurred by any reasonable and prudent Contractor operating under the structure of the Contract. Any payments made by the Buyer to the Contractor under this clause shall be in consideration of the passing of title of materials / Works as may be applicable to the Buyer.

25.3 Termination under Clauses 26 or 27 shall be without prejudice to the rights of the Buyer to enforce outstanding obligations and/or to recover sums due from the Contractor.

## 26. RESPONSIBILITY AND LIBAILITY

26.1 In so far as either party has responsibility for performance of the Contract (without in any way limiting its liabilities responsibilities and obligations under any other provision herein or otherwise under law), each party indemnifies the other and shall be liable to the other for any and all damages the other party may incur in relation to the its' performance, breach(es) (material or otherwise), negligence (gross / wilful or otherwise), act(s) and / or omission(s) to a sum of the greater of:

- (i) £5,000,000 (Five Million pounds GB sterling) or;
- (ii) The sum as may be stated in the Contract or;
- (iii) the total aggregate value of the sum of the Contract price(s), based on the expected payment to be made by the Buyer to the Contractor over the term of the Contract.

26.2 Each party shall indemnify the other against all losses, liabilities, claims, costs and expenses that may result from loss of or damage to any property (which shall be deemed to include that of the parties) or injury to or death of any person that may arise out of or in connection with the performance of its obligations under the Contract - other than loss, damage, injury or death resulting directly from the act or omission of the other party.

26.3 Except in respect of personal injury or death or loss of or damage to property the liability of the parties under the indemnity provided under Clause 26.2 for any one act or omission shall be for the amount determined in clause 26.1 above.

26.4 The Contractor shall at its own expense maintain at all times insurance to cover its obligations, liabilities and indemnities under the Contract and otherwise required under law and if so requested by the Buyer shall provide evidence of such insurance.

26.5 The parties shall, and shall ensure that any affiliates or persons engaged by or associated with either party in relation to the Contract (including but not limited to directors, employees, contractors, subsidiaries, consultants, advisors, distributors and agents) shall, comply with all applicable laws, statutes, regulations, decrees and/or official government orders and codes relating to anti-bribery and anti-corruption including but not limited to the UK Bribery Act 2010 and the US Foreign and Corrupt Practices Act ("**Acts**")

The parties each undertake that no payments or transfers of anything of value which have the purpose or effect of public or commercial bribery, money laundering, extortion or other unlawful or improper means of obtaining or retaining business or business advantage shall be made, offered, given, authorised or promised to any person or entity (including, for the avoidance of doubt, any government official; any political party or official thereof; any candidate for political office; or any other person, individual or entity at the suggestion, request or direction of or for the benefit of any of the above-described persons and entities) by it or any of its affiliates or persons engaged by or associated with it as listed in paragraph above.

Each party undertakes that it: (a) will not do, or omit to do, any act that will cause or lead the other party to be in breach of either or both paragraphs above; (b) will notify the other party promptly of any request or demand for any improper financial or other advantage of any kind received from any person in connection with the performance of the Contract; (c) (if requested), will assist the other party and any of its affiliates in complying with its obligations under the Acts and understands that any breach of this clause will amount to a material breach of the Contract giving each party the right to terminate immediately without liability in respect of such termination; (d) indemnifies the other party against any losses, liabilities, damages, fines, costs (including legal fees) and expenses incurred by, or awarded against, such other party as a result of any breach by a party of this clause.

26.6 Nothing in the Contract will operate to exclude or restrict one party's liability (if any) to the other:

- 29.9.1 for death or personal injury resulting from its negligence or the negligence of a person for whom it is vicariously liable;
- 29.9.2 for its fraud or fraudulent misrepresentation or fraud or fraudulent misrepresentation by a person for whom it is vicariously liable; or
- 29.9.3 for any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its

liability.

## 27. PERFORMANCE BOND – IF EXPLICITLY STATED AS REQUIRED IN THE CONTRACT:

- 27.1 The Contractor shall obtain and provide at its cost a payable on first demand performance bond for proper performance of the Contract in an amount equivalent to ten percent of the total Contract price or other value as may be stated in the Contract.
- 27.2 The Contractor shall deliver said performance bond to the Buyer immediately after the Contract is placed (and if stated in the Contract shall be a condition precedent to the forming of a binding Contract). The performance bond shall be issued by a financial institution and from within a country (or jurisdiction) approved by the Buyer.
- 27.3 The Contractor shall ensure that the performance bond is valid and enforceable until the end of the period of Contractors obligations (including any applicable warranty period) under the Contract.
- 27.4 The Buyer shall not make a claim under the performance bond except in such circumstances where the Contractor has failed to perform any of his obligations under the contract or otherwise compensate the Buyer for the Contractor liabilities under the Contract.

## **28. INTELLECTUAL PROPERTY RIGHTS**

- 28.1 The Contractor shall indemnify the Buyer against any claim for infringement of patent, registered design, trademark or service mark (whether registered or not) copyright/design right and any similar property rights and applications for protection thereof arising from the use or construction of the Works and against all costs and damages which the Buyer may incur in any action for such infringement or for which the Buyer may become liable in any such action. Provided always that this indemnity shall not apply to any infringement which is due to the Contractor having followed a design or instruction furnished or given by the Buyer or to the use of that which is designed under the Contract, in a manner, or for a purpose, or in a foreign country not specified by or disclosed to the Contractor, or to any infringement which is due to the use of such an article or material in association or combination with any other article or material not supplied by the Contractor.
- 28.2 The Contractor shall transfer to the Buyer or otherwise provide full license(s) as may be applicable to enable the Buyer to take-over and utilise the Works.

## **29. FORCE MAJEURE**

- 29.1 If either party is prevented from carrying out any of its obligations under the Contract by any event of force majeure, being an event outside of the reasonable control of the affected party, (including but limited to; war, riot, fire, flood or earthquake) then any scheduled time for delivery or completion shall be extended for so long as such force majeure continues to prevent the performance of such obligations.
- 29.2 Any party prevented from carrying out any obligations by reason of force majeure shall promptly notify the other party including full particulars thereof.
- 29.3 The party being prevented from carrying out its obligations for reason of force majeure shall take all reasonable measures to mitigate the effects of the event upon the performance of its obligations under the Contract.
- 29.4 If a force majeure event continues for a period in excess of 28 days and as a result of the party affected is being prevented from performing substantially all of its obligations under the Contract, the party not relying on the force majeure may terminate the Contract by giving notice in writing to the other party to take effect either forthwith or on such date no later than 28 days from the date of the notice which the party giving the notice shall state and neither party shall be liable to the other for any loss arising thereby.

## **30. THIRD PARTY RIGHTS**

Nothing in this Contract shall create any rights for third parties under the Contracts (Rights and Third Parties) Act 1999. No variation to this Contract, nor any supplemental or ancillary agreement shall create any such rights unless expressly so stated in any such agreement between the Buyer and the Contractor.

## **31. LAW, JURISDICTION AND SEVERANCE**

- 31.1 The Contract and any non-contractual obligations arising out of or in connection with it will be governed by the law of England and Wales.
- 31.2 The courts of England and Wales have exclusive jurisdiction to determine any dispute arising out of or in connection with the Contract (including (without limitation) in relation to any non-contractual obligations).
- 31.3 If any term of this Contract is found by any court or body or authority of competent jurisdiction to be illegal, unlawful, void or unenforceable, such term will be deemed to be severed from this Contract and this will not affect the remainder of this Contract which will continue in full force and effect. In this event the parties will agree in writing a valid and enforceable term to replace the severed term which, to the maximum extent possible, achieves the parties' original commercial intention and has the same economic effect as the severed term.



**32 TUPE**

- 32.1 The Contractor agrees to defend, indemnify and hold the Buyer harmless from and against any and all liabilities, damages, causes of action, claims or costs (including but not limited to all related legal costs and expenses) arising directly or indirectly under or as a result of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") or any similar national or European legislation on the commencement, cessation, transfer / placement of any Contract(s) in relation to this tender and / or acceptance of the tender.
- 32.2 The Contractor confirms that it has gathered all information required regarding any potential TUPE issues such that any resulting TUPE related costs are deemed to be included within the tendered rates and prices, such that it shall make no further claim against the Buyer for any additional monies in relation to TUPE above and beyond the tendered Price and also such that it will reimburse the Buyer for any costs the Buyer incurs directly in relation to this tender / resulting Contracts and TUPE.
- 32.3 The Contractor warrants that, where applicable, during the last six (6) months of any Contract(s) placed against the conditions of this agreement the Contractor shall not change any employees or personnel deployed to carry out the services under said Contract(s) (other than in the normal course of business) or change all or any of their terms and conditions of employment or engagement without the prior written consent of the Buyer.
- 32.4 The Contractor shall, during the last twelve months of the any Contract(s) placed against the conditions of this agreement, in circumstances where it receives any claim by an employee or personnel of the Contractor deployed in the carrying out of services of the Contract arising out of or in connection with the employee's contract of employment or engagement with the Contractor notify the Buyer of the details of the claim within seven days of the Contractor receiving intimation thereof.
- 32.5 The Contractor shall, whenever requested by the Buyer, within seven days of such request, provide to the Buyer such details of any employees or personnel of the Contractor deployed in the carrying out of services relating to the Contract(s) as may be required by the Buyer and will warrant that all information supplied pursuant to such request is accurate in every material respect.
- 32.6 The Contractor shall when requested by the Buyer or any prospective tenderer for any works in continuation of the Contract (or any part thereof) and of a similar nature to the Contract ("the NEW WORKS") identified by the Buyer within seven days of such request, provide to any such prospective tenderer and to the Buyer such details of the Contractors employees or personnel deployed in the carrying out the Contract as may be required by the Buyer, or prospective tenderers. The Contractor agrees that such details shall include the estimated number of employees or personnel likely to transfer to the provider of the NEW WORKS, details of their lengths of service, salaries, benefit provision, names, employment contract details and % of time allocated to the Works. The Contractor agrees that any information supplied to the Buyer or any prospective tenderer pursuant to this provision or otherwise will be provided in compliance with the provisions of the Data Protection Act 1998("the DPA") and the Contractor agrees that it will take all measures available to it to supply the information requested and, if necessary to avoid breach of the DPA, shall provide the information in an anonymised format. The Contractor warrants that any information supplied to the Buyer or any prospective tenderer pursuant to this provision or otherwise, for the purpose of enabling any prospective tenderer to prepare a bid for the provision of the NEW WORKS, shall be accurate in every material respect.
- 32.7 The Contractor shall in the event that it is not successful in re-tendering (or in the event of it not re-tendering) for the provision of the NEW WORKS at the expiry or non-renewal of the Contract, liaise, consult and co-operate with any tenderers for the provision of the NEW WORKS in order to attempt to ascertain whether or not TUPE is likely to apply to the arrangements facilitating the change in the provider of the NEW WORKS and so as to facilitate a smooth handover in the change of provider of the NEW WORKS.
- 32.8 The Contractor warrants that it shall procure the inclusion of the provisions set out in Clauses 32.1 – 32.7 above in any subcontract arrangements that relate to the performance of any part of the Contract.

By signing this document you are confirming your acceptance of the above Terms and conditions.

For and on behalf of

Name:

Position:

Signature:

Date:

