

NHS GREATER GLASGOW AND CLYDE

CONDITIONS OF CONTRACT FOR THE PROCUREMENT OF GOODS

1. DEFINITIONS

In these Conditions (unless the context otherwise requires):

'*Confidential Information*' means all and any (i) information relating to the identity, condition or medical history of any NHS patient or which otherwise constitutes sensitive personal information and (ii) information the disclosure of which would or would be likely to substantially prejudice the commercial interests of any person including trade secrets;

'*Contract*' means the contract between the Purchaser and the Supplier consisting of the Purchase Order, these Conditions and any other documents (or parts thereof) specified in the Purchase Order;

'*Goods*' means any such goods as are to be supplied to the Purchaser by the Supplier (or by any of the Supplier's sub-contractors) pursuant to or in connection with the Contract;

'*Intellectual Property Rights*' means copyright, patents, trade marks, design rights (whether registered or unregistered) database rights, proprietary information rights and all similar proprietary rights as may exist anywhere in the World, any applications for protection or registration of these rights and all renewals and extensions thereto throughout the World;

'*Price*' means the sums payable by the Purchaser to the Supplier for performance and/or delivery of the Services and/or Goods in accordance with the Contract as further described in Clause 3 below;

'*Purchase Order*' means the document setting out the Purchaser's requirements for the Contract.

'*Purchaser*' means NHS GG&C;

'*Supplier*' means the person, firm or company to whom the Contract is issued.

2. THE GOODS

2.1 The Goods shall be to the reasonable satisfaction of the Purchaser and shall conform in all respects with any particulars specified in the Contract and in any variations thereto.

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

2.3 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 the Purchaser and the Purchaser relies on the skill and judgement of the Supplier in the supply of the Goods and the execution of the Contract.

3. THE PRICE

3.1 The Price shall be as stated in the Contract and no increase will be accepted by the Purchaser unless agreed by him in writing before the execution of the Contract.

3.2 Unless otherwise agreed in writing by the Purchaser, the Supplier shall render a separate invoice in respect of each consignment delivered under the Contract. Payment shall be due 30 days after receipt of the Goods or the correct invoice therefor, whichever is the later.

3.3 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.

3.4 Notwithstanding Clause 18 of the Contract the Supplier may assign to another person (an "assignee") the right to receive payment of the Price or any part thereof due to the Supplier under the Contract subject to (i) deduction of sums in respect of which the Purchaser exercises its right of recovery under Clause 17 of the Contract and (ii) all the related rights of the Purchaser under the Contract in relation to the recovery of sums due but unpaid. The Supplier shall notify or procure that any assignee notifies the Purchaser of any variations to the arrangements for payment of the Price or for handling invoices, in each case in good time to enable the Purchaser to redirect payments or invoices accordingly. In the absence of such notification the Purchaser shall be under no obligation to vary its arrangements for payment of the Price or for handling invoices.

4. DELIVERY

4.1 The Goods shall be delivered to the place named in the Contract. Any access to premises and any labour and equipment that may be provided by the Purchaser in connection with delivery shall be provided without acceptance by the Purchaser of any liability whatsoever and the Supplier shall **indemnify** the Purchaser in respect of any actions, suits, claims, demands

losses, charges, costs and expenses which the Purchaser 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 to the extent that any such damage or injury is attributable to any act or omission of the Supplier or any of his sub-contractors.

4.2 Where any access to the premises is necessary in connection with delivery or installation the Supplier and his sub-contractors shall at all times comply with the reasonable health and safety and security requirements of the Purchaser.

4.3 The time of delivery shall be of the essence and failure to deliver within the time promised or specified shall enable the Purchaser (at his option) to release himself from any obligation to accept and pay for the Goods and/or to cancel all or part of the Contract therefor, in either case without prejudice to his other rights and remedies.

4.4 Delivery shall be completed when the Goods have been unloaded at the place named in the Contract and such delivery has been accepted by a duly authorised representative of the Purchaser. The Supplier shall procure that its delivery drivers are aware that they must ensure that they obtain a signature of such duly authorised representative which will act as proof of delivery.

5. PROPERTY AND RISK

Property and risk in the Goods shall pass to the Purchaser once the Goods have been delivered and accepted in accordance with Clause 4.4.

6. DAMAGE IN TRANSIT

On dispatch of any consignment of the Goods the Supplier shall send to the Purchaser at the address for delivery of the Goods an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. The Supplier shall free of charge and as quickly as possible either repair or replace (as the Purchaser shall elect) such of the Goods as may either be damaged in transit or having been placed in transit fail to be delivered to the Purchaser provided that:

- (a) in the case of damage to such Goods in transit the Purchaser shall within 30 days of delivery give notice to the Supplier that the Goods have been damaged;
- (b) in the case of non-delivery the Purchaser shall (provided that the Purchaser has been advised of the dispatch of the Goods) within ten days of the notified date of delivery give notice to the Supplier that the Goods have not been delivered.

7. INSPECTION, REJECTION AND GUARANTEE

7.1 The Supplier shall permit the Purchaser or his authorised representatives to make any inspections or tests of the Goods as he may reasonably require and the Supplier shall afford 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 the Purchaser of any rights or remedies in respect of the Goods.

7.2 The Purchaser may by written notice to the Supplier reject any of the Goods which fail to meet the requirements specified in the Contract. Such notice shall be given within a reasonable time after delivery to the Purchaser of the Goods concerned. If the Purchaser rejects any of the Goods pursuant to this Clause the Purchaser shall be entitled (without prejudice to his other rights and remedies) either:

- (a) as quickly as possible to have the Goods concerned either repaired by the Supplier or (as the Purchaser shall elect) replaced by the Supplier with Goods which comply in all respects with the requirements specified herein; or
- (b) to obtain a refund from the Supplier in respect of the Goods concerned.

7.3 The guarantee period applicable to the Goods shall be 12 months from putting into service or 18 months from delivery, whichever shall be the shorter (subject to any alternative guarantee arrangements agreed in writing between the Purchaser and the Supplier). If the Purchaser shall within such guarantee period or within 30 days thereafter give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use the Supplier shall (without prejudice to any other rights and remedies which the Purchaser may have) as quickly as possible remedy such defects (whether by repair or replacement as the Purchaser shall elect) without cost to the Purchaser.

7.4 Any Goods rejected or returned by the Purchaser as described in Clauses 7.2 or 7.3 shall be returned to the Supplier at the Supplier's risk and expense.

8. LABELLING AND PACKAGING

8.1 The Goods shall be packed and marked in a proper manner and in accordance with the Purchaser's instructions and any statutory requirements and any requirements of the carriers. In particular the Goods shall be marked

with the Purchase Order number, the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous goods (and all documents relating thereto) shall bear prominent and adequate warnings. The Supplier shall **indemnify** the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any breach of this Clause.

8.2 All packaging materials will be considered non-returnable and will be destroyed unless the Supplier's advice note states that such materials will be charged for unless returned. The Purchaser accepts no liability in respect of the non-arrival at the Supplier's premises of empty packages returned by the Purchaser unless the Supplier shall within 10 days of receiving notice from the Purchaser that the packages have been dispatched notify the Purchaser of such non-arrival.

8.3 The Supplier represents and warrants that the maximum use has been made of recycled materials in the manufacture of crates, pallets, boxes, cartons, cushioning and other forms of packing, where these fulfil other packing specifications.

9. CORRUPT GIFTS OR PAYMENTS

The Supplier shall not offer or give, or agree to give, to any employee or representative of the Purchaser 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 the Purchaser or for showing or refraining from showing favour or disfavour to any person in relation to this or any such Contract. The attention of the Supplier is drawn to the criminal offences created by the Prevention of Corruption Acts 1889 to 1916.

10. PATENTS, INFORMATION AND COPYRIGHT

10.1 It shall be a condition of the Contract, except to the extent that the Goods incorporate designs furnished by the Purchaser, that nothing done by the Supplier in the provision of the Goods shall infringe any Intellectual Property Rights of any third party and the Supplier shall **indemnify** the Purchaser against all actions, claims, demands, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any breach of this Clause..

10.2 All Intellectual Property Rights in any reports, documents, specifications, instructions, plans, drawings, patents, models, or designs audio or visual media whether in writing or on magnetic or other media or held electronically:

(a) furnished to or made available to the Supplier by the Purchaser shall remain vested in the Purchaser 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 the Purchaser absolutely, and (without prejudice to Clause 14.2) the Supplier shall not and shall procure that his servants and agents shall not (except to the extent necessary for the implementation of the Contract) without the prior written consent of the Purchaser use or disclose any such reports, documents, specifications, instructions, plans, drawings, patents, models, designs or other material as aforesaid or any other information (whether or not relevant to the Contract) which the Supplier may obtain pursuant to or by reason of the Contract, except information which is in the public domain otherwise than by reason of a breach of this provision, and in particular (but without prejudice to the generality of the foregoing) the Supplier shall not refer to the Purchaser or the contract in any advertisement without the Purchaser's prior written consent.

11. HEALTH AND SAFETY

The Supplier represents and warrants to the Purchaser that the Supplier has satisfied himself 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 or safety of persons using the same, and that he has made available to the Purchaser 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** the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any breach of this Clause.

12. INDEMNITY AND INSURANCE

12.1 Without prejudice to any rights or remedies of the Purchaser (including the Purchaser's rights and remedies under Clause 7 hereof) the Supplier shall indemnify the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser 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.

12.2 The Supplier shall effect with a reputable insurance company a policy or policies of insurance covering all the matters which are the subject of indemnities under these Conditions and shall at the request of the Purchaser produce the relevant policy or policies together with receipts or other evidence of payment of the latest premium due thereunder.

13. DISCRIMINATION

The Supplier shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of the Sex Discrimination Act 1975, the Race Relations Act 1976, the Equal Pay Act 1970, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Age) Regulations 2006, the Equality Act 2006, the Equality Act (Sexual Orientation) Regulations 2007, the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof. The Supplier shall take all reasonable steps to secure the observance of this Clause by all employees and representatives of the Supplier.

14. CONFIDENTIALITY AND FREEDOM OF INFORMATION

14.1 The Supplier warrants and undertakes that:-

- (a) it and its personnel shall only use Confidential Information for the purpose of performing the Services;
- (b) it and its personnel shall not reveal any Confidential Information to a third party without the prior written consent of the Purchaser; and
- (c) it shall take all necessary precautions to ensure that all Confidential Information is treated as confidential and not revealed (save as aforesaid) or used other than for the purpose of the performance of the Services.

14.2 The Purchaser shall treat as confidential all Confidential Information obtained from the Supplier and shall not, subject to Clause 14.3(b), disclose to any third party without the prior written consent of the Consultant any Confidential Information obtained from the Consultant.

14.3 The provisions of Clauses 14.1 and 14.2 shall not apply to any information which:-

- (a) is or becomes public knowledge other than by breach of this Clause 14;

- (b) is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party;

- (c) is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

- (d) is independently developed without access to the Confidential Information;

- (e) is required to be disclosed by law.

14.4 Nothing in this Clause 14 shall be deemed or construed to prevent the Purchaser from disclosing any Confidential Information obtained from the Supplier:-

- (a) to any department of Her Majesty's Government, provided that the Purchaser has required that such information is treated as confidential by such department, and

- (b) to any consultant, contractor or other person engaged by the Purchaser provided that they shall have obtained from the consultant, contractor or other person a signed confidentiality undertaking on substantially the same terms as are contained in this Clause 14.

14.5 No term of this Contract, whether express or implied (including this Clause 14), shall preclude the Purchaser from making public under the Freedom of Information (Scotland) Act 2002 (as amended) and/or any codes applicable from time to time relating to access to public authorities' information, details of all matters relating to the Contract unless (i) such details constitute a trade secret; (ii) the disclosure of such details would or would be likely to prejudice substantially the commercial interest of any person (including but not limited to the Supplier or the Purchaser; or (iii) such details fall within such other exemption as may be applicable at the discretion of the Purchaser in terms of the said Act; provided that the Purchaser will take all reasonable steps to consult with the Supplier prior to making such information public.

14.6 The Supplier and the Purchaser agree to ensure that they will at all times comply with the provisions and obligations imposed by the Data Protection Act 1998 (as amended) and the Data Protection Principles set out in that Act in storing and processing personal data, and all personal data acquired by either party from the other will be returned to the disclosing party on request. Both parties agree to indemnify each other in respect of any unauthorised disclosure of personal data.

15. ALCOHOL AND DRUGS

15.1 The consumption of alcohol or the use of illicit drugs is not permitted on any of the purchasers premises by supplier personnel.

15.2 Supplier personnel must be free from the effects of alcohol and illicit drugs while performing any duties required by this contract.

15.3 Should any supplier personnel suspected to be in breach of these conditions the purchaser reserves the right to require the employee to be temporarily suspended from the delivery of the service whilst this is being investigated and subsequently permanently be suspended should the breach be proven.

16. TERMINATION

16.1 Without prejudice to any other rights or remedies of the Purchaser under the Contract the Purchaser shall have the right forthwith to terminate the Contract by written notice to the Supplier or the appropriate trustee in bankruptcy or sequestration, receiver, liquidator or administrator:

- (a) where the Supplier is an individual and if a petition is presented for the Supplier's bankruptcy or the sequestration of his estate or a criminal bankruptcy order is made against the Supplier, or he is apparently insolvent, or he 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 or trustee is appointed to manage his 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 (a) or (c) of this Clause occurs in respect of the firm or any partner in the firm or any of those persons or a petition is presented for 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 (otherwise 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 administrator, 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.

16.2 In addition to his rights of termination under Clause 16.1, the Purchaser shall be entitled to terminate the Contract by giving to the Supplier not less than 30 days' notice to that effect.

16.3 On the breach of clause 15.1 or 15.2 the purchase reserves the right to terminate the contract with immediate effect.

17. RECOVERY OF SUMS DUE

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 the Purchaser.

18. ASSIGNATION AND SUB-CONTRACTING

18.1 The Supplier shall not without the written consent of the Purchaser assign the benefit or burden of the Contract or any part thereof.

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

18.3 Where the Supplier enters a sub-contract with a supplier or contractor for the purpose of performing the Contract, he shall cause a term to be included in such sub-contract which requires payment to be made to the supplier or contractor within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the sub-contract requirements.

19. NOTICES

Any notice given under or pursuant to the Contract may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted by facsimile transmission and if so sent or transmitted to the address of the party shown on the Purchase Order, or to such other address as the party may by notice to the other have substituted therefor, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

20. GENERAL

20.1 If any provision of the Contract is held to be invalid or unenforceable by any court of competent jurisdiction, the parties shall promptly seek to substitute such provision with an alternative valid and or enforceable provision which seeks to replicate, so far as is possible, the legal, financial and economic effect of the Contract as if the invalid or unenforceable provision were valid and or enforceable. In the absence of any such agreement, either party may, on reasonable notice, terminate the Contract.

20.2 The waiver of or acquiescence by any party to any terms or provision of the Contract, or the failure of any party to insist upon strict compliance with any warranty, representation,

term, or condition in the Contract, shall not constitute a waiver of any subsequent default or failure, whether similar or dissimilar.

20.3 The Contract and the documents referred to in it contain the entire agreement between the parties in relation to its subject matter and save in respect of any fraudulent misrepresentation by either party supersedes all prior representations, agreements, arrangements and understandings relating to its subject matter between the parties, whether written or oral.

20.4 The Contract may only be amended by the agreement, in writing, of both parties.

20.5 Termination of the Contract shall be without prejudice to the rights and obligations of the parties which have accrued prior to termination. The provisions of Clauses 1, 7, 10, 11, 12, 17, 20 and 21 will survive

termination of the Contract.

20.6 Where possible, all written communication to The Board must be on double-sided print.

20.7 The supplier shall comply with The Environmental Protection Act 1990, The Control of Pollution (Amendment) Act 1989, The Waste Management Licensing Regulations 1994 (as amended) and The Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991 (or any other equivalent legislation giving effect in any part of the European Economic Area to the Directive on Waste 75/442/EEC).

21. GOVERNING LAW

These Conditions shall be governed by and construed in accordance with Scottish law and the parties hereby irrevocably submit to the exclusive jurisdiction of the Scottish courts.

SUPPLEMENTARY NOTICE

1. PROTECTING THE ENVIRONMENT

Suppliers to NHS GG&C are requested to satisfy themselves that no product will be supplied or used in the Supply of Goods to the Purchaser which will endanger the health of the consumers or others, will cause significant damage to the environment during manufacture, use, or disposal, which consumes a disproportionate amount of energy during manufacture, use, or disposal, which causes unnecessary waste because of over-packaging or because of an unusually short shelf life, or which contains materials derived from threatened species or threatened environments.

2. LATE PAYMENT OF INVOICES

Suppliers to NHS GG&C are requested to address complaints regarding late payment of invoices to, in the first instance, the addressee of the invoice and, in the second instance to the relevant commodities manager. This procedure is suggested as the best practical way of ensuring problems of late payment are resolved, and is not intended to interfere with Suppliers' legal rights.

THIS NOTICE DOES NOT FORM PART OF THE CONDITIONS OF CONTRACT