

# NHS GREATER GLASGOW AND CLYDE CONDITIONS OF CONTRACT FOR THE PROCUREMENT OF GOODS (and any related Services)

## 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 Supplier consisting of the Supplier's tender and the Purchaser's acceptance thereof (or the Supplier's acceptance of the Purchaser Order for the Goods and/or services, as the case may be) together with any documents referred to in them, including the Specification and these Conditions and any Schedules annexed;

'*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;

'*Premises*' means the location where the Services are to be performed as specified in the Contract or Purchase Order;

'*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 2 below;

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

'*Purchaser*' means NHS GG&C;

'*Services*' means the services provided as specified in the Contract including (but not

restricted to) installation of goods and shall, where the context so admits, include any materials, articles and goods to be supplied in connection with any such services;

'*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 commencement of performance 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 24 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 23 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. CHANGE TO CONTRACT REQUIREMENTS**

4.1 The Purchaser may order any variation to any quantity or specification of Goods or to any part of the Services that for any other reason shall in its opinion be desirable. Any such variation may include (but shall not be restricted to) additions, omissions, alterations, substitutions to the Goods or Services and changes in quality, form, character, kind, timing, method or sequence of the delivery of Goods or provision of Services.

4.2 Save as otherwise provided herein, no variation of the specification of Goods or of the Services as provided for in Clause 4.1 hereof shall be valid unless given or confirmed in the form of an order given by the Purchaser. All such orders shall be given in writing provided that if for any reason the Purchaser shall find it necessary to give any such order orally in the first instance the Supplier shall comply with such oral order which must be confirmed in writing by the Purchaser within 2 working days of the giving of such oral order by the Purchaser, failing which the variation made by such oral order shall cease to have effect on the expiry of the said 2 working day period.

4.3 Where any such change in quality or specifications of Goods or variation of the Services made in accordance with Clauses 4.1 and 4.2 has affected or may affect the costs incurred by the Supplier delivering the Goods or providing the Services, the Supplier will notify the Purchaser in writing of the effect which it has had or may have on the said costs and such notification shall be considered by the Purchaser, who shall take all of the facts into account (including such information as may be provided by the Supplier in respect of the effect which such variation has had or may have on the costs incurred by the Supplier in providing the Goods or Service) and may authorise such alteration to Price in accordance with the provisions of the Contract as are, in his opinion, appropriate and reasonable in the circumstances.

#### **5. INSPECTION OF PREMISES AND NATURE OF SERVICES**

5.1 The Supplier is deemed to have inspected the Premises before tendering so as to have understood the nature and extent of the Services to be carried out and satisfied himself in relation to all matters connected with the Services and Premises.

5.2 The Purchaser shall, at the request of the Supplier, grant such access to the Premises as may be reasonable for this purpose.

5.3 Unless otherwise specified, the Supplier shall provide all plant, tools, material, labour, haulage and any other things necessary to complete the Contract.

#### **6. SUPPLIER'S STATUS**

In carrying out any Services associated with the Contract the Supplier shall be acting as principal and not as the agent of the Purchaser. Accordingly:

- (a) the Supplier shall not (and shall procure that his agents and servants do not) say or do anything that might lead any other person to believe that the Supplier is acting as the agent of the Purchaser, and
- (b) nothing in the Contract shall impose any liability on the Purchaser in respect of any liability incurred by the Supplier to any other person but this shall not be taken to exclude or limit any liability of the Purchaser to the Supplier that may arise by virtue of either a breach of the Contract or any negligence on the part of the Purchaser, his staff or agents.

#### **7. SUPPLIER'S PERSONNEL**

7.1 The Supplier shall take the steps reasonably required by the Purchaser to prevent unauthorised persons being admitted to the Premises. If the Purchaser gives the Supplier notice that any person is not to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract, the Supplier shall take all reasonable steps to comply with such notice and if required by the Purchaser the Supplier shall replace any person removed under this Clause with another suitably qualified person and procure that any security pass issued to the person removed is surrendered. The giving of such notice by the Purchaser to the Supplier as aforesaid shall not entitle the Supplier to delay, suspend, terminate or withhold the performance of any of its obligation in terms of the Contract and it shall remain bound to timeously implement its obligations in full, whether or not it complies with the terms of the said notice or otherwise.

7.2 If and when instructed by the Purchaser, the Supplier shall give to the Purchaser a list of names and addresses of all persons who are or may be at any time concerned with the Services or any part of them specifying the capacities in which they are so concerned, and giving such other particulars and evidence of identity and other supporting evidence as the Purchaser may reasonably require.

7.3 The decision of the Purchaser as to whether any person is to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract and as to whether the Supplier has furnished the information or taken the steps required of him by this Clause shall be final and conclusive.

7.4 The Supplier shall bear the cost of any notice, instruction or decision of the Purchaser under this Clause 8.

## **8. DELIVERY**

8.1 The Supplier shall make no delivery of materials, plant or other things, nor commence any work on the Premises without obtaining the Purchaser's prior consent. The Supplier shall make delivery at a time agreed between the Supplier and Purchaser.

8.2 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.

8.3 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.

8.4 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.

## **9. ACCESS**

9.1 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..

9.2 Access to the Premises shall not be exclusive to the Supplier but only such as shall enable him to carry out the Services concurrently with the execution of work by others. The Supplier shall co-operate with such others as the Purchaser may reasonably require.

9.3 The Purchaser shall have the power at any time during the progress of the Services to order in writing:

(a) the removal from the Premises of any materials which in the opinion of the Purchaser are either hazardous, noxious or not in accordance with the Contract;

(b) the substitution of proper and suitable materials;

(c) the removal and proper re-execution notwithstanding any previous test thereof or interim payment therefor of any work which, in respect of material or workmanship, is not in the opinion of the Purchaser in accordance with the Contract.

The Supplier shall comply forthwith with the terms of any such order.

9.4 On completion of the Services the Supplier shall remove his plant, equipment and unused materials and shall clear away from the Premises all rubbish arising out of the Services and leave the Premises in a neat and tidy condition.

## **10. 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 9.4.

## **11. 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 thirty 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 10 days of the notified date of delivery give notice to the Supplier that the Goods have not been delivered.

## **12. INSPECTION, REJECTION AND GUARANTEE**

12.1 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.

12.2 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.

12.3 The guarantee period applicable to the Goods shall be 12 months from the putting into service or 18 months from delivery of the Goods, 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.

12.4 Any Goods rejected or returned by the Purchaser as described in Clause 12.2 or 12.3 shall be returned to the Supplier at the Supplier's risk and expense.

## **13. LABELLING AND PACKAGING**

13.1 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 number of the Purchase Order (if any), 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.

13.2 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 ten days of receiving notice from the Purchaser that the packages have been dispatched notify the Purchaser of such non-arrival.

13.3 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.

## **14. AUDIT**

The Supplier shall keep and maintain until 2 years after the Contract has been completed records to the satisfaction of the Purchaser of all expenditures which are reimbursable by the Purchaser and of the hours worked and costs incurred in connection with any employees of the Supplier paid for by the Purchaser on a time charge basis. The Supplier shall on request afford the Purchaser or his representatives such access to those records as may be required by the Purchaser in connection with the Contract.

## **15. 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.

## **16. PATENTS, INFORMATION AND COPYRIGHT**

16.1 It shall be a condition of the contract, except to the extent that the Goods or Services incorporate designs furnished by the Purchaser,

that nothing done by the Supplier in the provision of the Goods or Performance of the Services 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 16.1.

16.2 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 20.2) 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 Clause, 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.

16.3 The Supplier shall do all such things and acts and sign all such documents reasonably necessary in the opinion of the Purchaser to confirm or vest in the Purchaser the Intellectual Property Rights assigned or otherwise transferred to the Purchaser under the Contract.

## **17. HEALTH AND SAFETY**

17.1 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.

17.2 The Supplier shall perform the Services in such a manner as to be safe and without risk to the health or safety of persons in the vicinity of the place where the Services are being performed (whether such persons are in the vicinity of the said place at the time when the Services are being performed or otherwise) and in such a manner as to comply with any relevant health and safety or other legislation (including Statutory Instrument, Orders, or Regulations made under the said legislation) and any requirements imposed by a local or other regulatory authority or by NHS Scotland in connection with the performance of services of the type supplied to the Purchaser, whether specifically or generally.

17.3 With prejudice to the generality of Clause 17.1 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 breach of Clauses 17.1 or 17.2 hereof.

## **18. INDEMNITY AND INSURANCE**

18.1 Without prejudice to any rights or remedies of the Purchaser (including the Purchaser's rights and remedies under Clause 12 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.

18.2 The Supplier shall have in force and shall require any sub-Contractor to have in force:

- (a) employer's liability insurance in accordance with any legal requirements for the time being in force, and
- (b) public liability insurance for such sum and range of cover as the Supplier deems to be appropriate but covering at least all matters which are the subject of indemnities or compensation obligations under these Conditions in the sum of not less than £5 million for any one incident and unlimited in total, unless otherwise agreed by the Purchaser in writing.

18.3 The policy or policies of insurance referred to in Clause 18.2 shall be shown to the Purchaser whenever he requests, together with satisfactory evidence of payment of premiums.

## **19. 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.

## **20. CONFIDENTIALITY, AND FREEDOM OF INFORMATION**

20.1 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.

20.2 The Purchaser shall treat as confidential all Confidential Information obtained from the Supplier and shall not, subject to Clause 20.3(b), disclose to any third party without the prior written consent of the Consultant any Confidential Information obtained from the Consultant.

20.3 The provisions of Clauses 20.1 and 20.2 shall not apply to any information which:-

- (a) is or becomes public knowledge other than by breach of this Clause 20;
- (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.

20.4 Nothing in this Clause 20 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 20.

20.5 No term of this Agreement, whether express or implied (including this Clause 20), 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.

20.6 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.

## **21. ALCOHOL AND DRUGS**

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

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

21.3 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.

## **22. TERMINATION**

22.1 The Supplier shall notify the Purchaser in writing immediately upon the occurrence of any of the following events:

- (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 assignation 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.

22.2 On the occurrence of any of the events described in Clause 22.1 or, if 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 30 days of being required by the Purchaser in writing to do so or, where the Supplier is an individual, if he shall die or be adjudged incapable of managing his affairs within the meaning of Schedule 7 of the Mental Capacity Act 2005 or of Part 5 of the Mental (Care and Treatment) (Scotland) Act 2003, (both as amended), the Purchaser shall be entitled to terminate the Contract by notice to the Supplier with immediate effect. Thereupon, without prejudice to any other of his rights, the Purchaser may himself complete the Services or have them completed by a third party, using for that purpose (making a fair and proper allowance therefor in any payment subsequently made to the Supplier) all materials, plant and equipment on the Premises belonging to the

Supplier, and the Purchaser shall not be liable to make any further payment to the Supplier until the Services have been completed in accordance with the requirements of the Contract, and shall be entitled to deduct from any amount due to the Supplier the costs thereof incurred by the Purchaser (including the Purchaser's own costs). If the total cost to the Purchaser exceeds the amount (if any) due to the Supplier, the difference shall be recoverable by the Purchaser from the Supplier.

22.3 In addition to his rights of termination under Clause 22.2, the Purchaser shall be entitled to terminate the Contract by giving to the Supplier not less than 30 days' notice to that effect.

22.4 Termination under paragraphs 22.2 or 22.3 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Purchaser and shall not affect the continued operation of Clauses 16 and 20.

22.5 On the breach of clause 21.1 or 22.2 the purchase reserves the right to terminate the contract with immediate effect.

## **23. 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.

## **24. ASSIGNATION AND SUB-CONTRACTING**

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

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

24.3 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.

## **25. 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.

## **26. GENERAL**

- 26.1 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.
- 26.2 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.
- 26.3 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.
- 26.4 The Contract may only be amended by the agreement, in writing, of both parties.
- 26.5 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, 10, 11, 12, 13, 16, 18, 20, 22, 23, 26, 27 and 28 shall survive termination of the Contract.
- 26.6 Where possible, all written communication to The Board must be on double-sided print.
- 26.7 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).

## **27. 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.

## **28. TUPE**

- 28.1 The Supplier recognises that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) may apply in respect of the Contract, and that for the purposes of those Regulations, the undertaking concerned (or any relevant part of the undertaking) shall (a) transfer to the Supplier on the commencement of the Contract; (b) transfer to another supplier on the expiry of the Contract.
- 28.2 During the period of six months preceding the expiry of the Contract or after the Purchaser has given notice to terminate the Contract or the Supplier stops trading, and within 20 working days of being so requested by the Purchaser, the Supplier shall fully and accurately disclose to the Purchaser or to any person nominated by the Purchaser information relating to employees engaged in providing the Services in relation to the Contract in particular, but not necessarily restricted to, the following:
- (a) the total number of personnel whose employment with the Supplier is liable to be terminated at the expiry of this Contract but for any operation of law; and
  - (b) for each person, age and gender, details of their salary, date of commencement of continuous employment and pay settlements covering that person which relate to future dates but which have already been agreed and their redundancy entitlements (the names of individual members of staff do not have to be given); and
  - (c) information about the other terms and conditions on which the affected staff are employed, or about where that information can be found; and
  - (d) details of pensions entitlements, if any.
- 28.3 The Supplier shall permit the Purchaser to use the information for the purposes of TUPE and of re-tendering, which shall include such disclosure to potential suppliers as the Purchaser considers appropriate in connection with any re-tendering. The Supplier will co-operate with the re-tendering of the contract by allowing the transferee to communicate with and meet the affected employees and/or their representatives.
- 28.4 The Supplier agrees to indemnify the Purchaser fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision or disclosure of information permitted under this Clause.

28.5 In the event that the information provided by the Supplier in accordance with this Clause becomes inaccurate, whether due to changes to the employment and personnel details of the affected employees made subsequent to the original provision of such information or by reason of the Supplier becoming aware that the information originally given was inaccurate, the Supplier shall notify the Purchaser of the inaccuracies and provide the amended

information. The Supplier shall be liable for any increase in costs the Purchaser may incur as a result of the inaccurate or late production of data.

28.6 The provisions of this Condition 25 shall apply during the continuance of this Contract and after its termination howsoever arising.

## **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**