

**FOOD STANDARDS AGENCY  
CONDITIONS OF CONTRACT FOR GOODS AND SERVICES**

These Conditions may only be varied with the written agreement of the Purchaser. No terms or conditions put forward at any time by the Supplier shall form any part of the Purchase Order.

**1. INTERPRETATION**

In this Purchase Order:-

(a) “Approval” and “Approved” refer to the written consent of the Purchaser’s Representative;

“Authority” means the Food Standards Agency and includes the Authority’s Representative.

“Authority’s Premises” means land or buildings owned or occupied by the Authority.

“Authority’s Representative” means the individual authorised to act on behalf of the Authority.

“Commercially Sensitive Information” means the information listed in the Commercially Sensitive Information Schedule comprised of information: (a) which is provided by the Supplier to the Purchaser in confidence for the period set out in that Schedule; and/or (b) that constitutes a trade secret.

“Confidential Information” means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA. Confidential Information shall not include information which: (i) was public knowledge at the time of disclosure (otherwise than by breach of Condition 19); (ii) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party; (iii) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or (iv) which is independently developed without access to the Confidential Information.

“Consultant” means the Person named as the Consultant in the Purchase Order.

“Contract” means the Purchase Order (including any continuation and additional sheets) and any other document referred to in the Purchase Order together with these Standard Conditions.

“Contracting Authority” means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006.

“Contract Price” means the sum or sums, exclusive of Value Added Tax, payable by the Authority to the Supplier.

“Contractor” means the Person named as the Contractor in the Purchase Order.

“Crown” means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government offices and government agencies.

“DPA” means the Data Protection Act 1998 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

“Environmental Information Regulations” means that Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

“FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

“Fee” means the sum or sums, exclusive of Value Added Tax, payable by the Authority to the Supplier.

“Fraud” means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud the Crown.

“Good Industry Practice” means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

“Goods” means such goods as are to be supplied to the Purchaser by the Supplier pursuant to the Purchase Order;

“Information” has the meaning given under section 84 of the FOIA.

“Intellectual Property Rights” means patents, inventions, trademarks, service marks, logos, design rights (whether registrable or not), applications for any of the above rights, copyright, database rights, domain names, trade or business names, moral rights or other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;

“Key Staff” means Staff so identified in the Contract.

“Law” means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body of which the Supplier is bound to comply.

“Order Value” means the price of the Goods, inclusive of a sum equal to the Value Added Tax chargeable on the value of the Goods, as stated in the Purchase Order Form;

“Parties” means the Purchaser and the Supplier;

“Person” includes a corporation or unincorporated association.

“Personnel” means persons employed by the Authority.

“Purchase Order” means the Purchase Order Form attached (including any Special Conditions entered on that Form and any continuation sheets as indicated) together with these Conditions of Purchase;

“Purchaser” means the person named as Purchaser in the Purchase Order Form and includes the Purchaser’s Representative;

“Purchaser’s Representative” means the individual authorised to act on behalf of the Purchaser for the purposes of the Purchase Order;

“Replacement Supplier” means any third party supplier appointed by the Purchaser to supply any goods which are substantially similar to any of the Goods and which the Purchaser receives in substitution for any of the Goods following the expiry, termination or partial termination of a Purchase Order.

“Request for Information” shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term ‘request’ shall apply).

“Services” means the services to be supplied as specified in the Purchase Order.

“Staff” means all persons used by the Supplier (including employees, agents and sub-contractors) in the performance of the Purchase Order,

“Supplier” means the person named as the Supplier, Contractor or Consultant in the Purchase Order Form, his permitted successors and assigns;

“Supplier’s Representative” means the individual authorised to act on behalf of the Supplier.

“Working Day” means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London;

(b) references to statutes include amendments or re-enactments;

(c) where the context allows, the masculine includes the feminine and neuter, and the singular includes the plural and vice versa;

(d) in the event of ambiguity or contradiction, the terms and conditions of the Purchase Order shall be given precedence in the following order: (i) Special Conditions; (ii) Other matters contained in the Purchase Order Form; (iii) Conditions of Purchase.

## **2. ENTIRE AGREEMENT**

The Purchase Order constitutes the entire agreement between the Parties relating to the subject matter of the Purchase Order. The Purchase Order supersedes all prior negotiations, representations and

understandings, made by either of the Parties whether written or oral, except that this Condition shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

### **3. THE GOODS**

3.1 The Goods shall be to the reasonable satisfaction of the Purchaser and shall conform in all respects with any particulars specified in the Purchase Order Form and all other requirements of the Purchase Order. The Goods supplied shall correspond with any sample provided by the Supplier, in particular as to the quality of the sample, and shall be free from any defect that would not be apparent on reasonable examination of the sample.

3.2 The Goods shall conform in all respects with all applicable Laws in force at the date when the Purchase Order is signed on behalf of the Supplier.

3.3 The Goods shall be fit and sufficient for the purpose for which such Goods are ordinarily used. The Purchaser relies on the skill and judgement of the Supplier in the supply of the Goods and the performance of the Purchase Order.

### **4. DURATION**

The duration shall be as set out in the Purchase Order, provided always that the duration shall continue in full effect until such time as the Supplier has completed the performance of the Services in accordance with the Purchase Order and the Authority has paid all sums due under it, unless it is terminated in accordance with these Conditions or otherwise lawfully terminated.

### **5. SERVICES**

5.1 The Supplier shall perform the Services in accordance with the Purchase Order. The Supplier shall be deemed to have satisfied himself as regards the nature and extent of the Services to be provided.

5.2 The Supplier shall perform the Services with all due care, skill and diligence and in accordance with the Law and Good Industry Practice. Timely provision of the Services is of the essence.

5.3 On the instruction of the Authority's Representative, the Supplier shall at his own expense re-execute any part of the Services which have not been provided in accordance with the Purchase Order and shall do so within such reasonable time as the Authority may specify.

5.4 The Supplier shall provide the Authority with reports as required by the Authority.

5.5 Nothing in the Purchase Order shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the Authority and the Supplier.

### **6. PAYMENT AND VALUE ADDED TAX**

6.1 The Purchaser shall pay the Order Value to the Supplier in consideration of the supply of the Goods in accordance with the Purchase Order.

6.2 Unless otherwise Approved, the Supplier shall submit an original and a copy invoice, containing all appropriate references, in respect of each consignment delivered under the Purchase Order. Payment shall be made within 30 days of receipt by the Purchaser (at its nominated address for invoices) of the Supplier's valid original invoice or within 30 days after delivery of the Goods, whichever is the later.

6.3 Where the Supplier enters into a sub-contract for the provision of the whole or any part of the Goods, the Supplier shall ensure that a term is included in the sub-contract which requires the Supplier to pay all sums due to the sub-contractor within a specified period, not exceeding 30 days from the date of receipt of a valid invoice as defined by the terms of that sub-contract.

6.4 In consideration of the performance of the Services by the Supplier in accordance with the Purchase Order, the Authority shall pay the Fees, in the amount or at the rate of payment specified in the Purchase Order. The Authority shall reimburse the Supplier for expenses as specified in the Purchase Order.

6.5 The Supplier shall submit an original and a copy invoice to the Authority at monthly intervals in arrears, unless otherwise agreed. Each invoice shall contain all appropriate references, a detailed breakdown of the Services and the appropriate Fees and expenses claimed and shall be supported by such other documentation as may be required by the Authority's Representative.

6.6 The Authority shall pay the Supplier the Value Added Tax chargeable on the Services provided in accordance with the Purchase Order.

6.7 The Authority may reduce payment in respect of any Services which the Supplier has failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the Authority.

6.8 The Supplier shall pay any sum due to a subcontractor within 30 days of receiving a valid invoice from the subcontractor.

## **7. DELIVERY**

7.1 Carriage/freight costs shall be at the Supplier's expense (Free Delivered Destination).

7.2 The Goods shall be delivered to the place named in the Purchase Order. Any access to the Purchaser's premises and any labour or equipment that may be provided by the Purchaser in connection with delivery shall be provided without acceptance of any liability by the Purchaser. The Supplier shall indemnify the Purchaser against all claims, proceedings, actions, damages, costs, expenses and any other liability or loss in respect of any death or personal injury, or loss of or damage to property, occurring in the course of delivery or installation to the extent that such death or injury, or loss or damage, is caused directly or indirectly by any wrongful act or omission of the Supplier or Staff.

7.3 Where any access to the Purchaser's premises is necessary in connection with delivery or installation, the Supplier and Staff shall comply with all security measures implemented by the Purchaser in respect of persons attending those premises. The Purchaser shall provide copies of its written security procedures to the Supplier on request. The Purchaser shall have the right to carry out any search of Staff or of vehicles used by the Supplier at the Purchaser's premises.

7.4 The time of delivery shall be of the essence. Failure to deliver within the time specified in the Purchase Order, or any further time agreed between authorised representatives of the Parties, shall entitle the Purchaser (at its option) to release itself from any obligation to accept and pay for the Goods and/or to cancel all or part of the order for the Goods, in either case without prejudice to its other rights and remedies pursuant to the Purchase Order.

## **8. PROPERTY AND RISK**

Property and risk in the Goods shall pass to the Purchaser at the time of delivery, without prejudice to any of the rights or remedies of the Purchaser pursuant to the Purchase Order.

## **9. DAMAGE IN TRANSIT AND NON-DELIVERY**

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 (at the option of the Purchaser) 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 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 10 days of the notified date of delivery give notice to the Supplier that the Goods have not been delivered.

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

10.1 The Supplier shall allow the Purchaser or its authorised representatives to make any inspections or tests it may reasonably require and the Supplier shall provide all reasonable facilities and assistance free of charge at his premises. No failure to make complaint at the time of such inspections or tests and no approval given during or after such inspections or tests shall constitute a waiver of any rights or remedies in respect of the Goods.

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

(a) to have those Goods promptly, and in any event within 5 Working Days, either repaired by the Supplier or (at the option of the Purchaser) replaced by the Supplier with Goods which comply in all respects with the requirements of the Purchase Order and due delivery shall not be deemed to have taken place until such repair or replacement has occurred; or

(b) to obtain a refund (if payment for the Goods has already been made) from the Supplier in respect of those Goods.

10.3 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. If the Purchaser shall within such guarantee

period or within 30 days thereafter give written notice to the Supplier of any defect in any of the Goods which arises during such guarantee period under proper and normal use, the Supplier shall promptly remedy such defects (whether by repair or replacement at the option of the Purchaser) without cost to the Purchaser and without prejudice to any other rights or remedies of the Purchaser.

10.4 Any Goods rejected or returned pursuant to Condition 10.2 or 10.3 shall be returned to the Supplier at the Supplier's risk and expense.

## **11. LABELLING AND PACKAGING**

11.1 The Goods shall be packed and marked in a proper manner and in accordance with any statutory requirements and any requirements of the carriers. In particular the Goods shall be marked with the Order Number, the net and gross weights; the description of the Goods shall be clearly marked on each container; all containers of hazardous goods (and all documents relating thereto) shall bear prominent and adequate warnings. The Supplier shall indemnify the Purchaser against all claims, proceedings, actions, damages, costs, expenses and any other liability or loss incurred by the Purchaser as a result of any breach of this Condition.

11.2 All packaging materials shall be either non-returnable and may be destroyed by the Purchaser or returnable at the Supplier's expense. The Purchaser shall have no liability in respect of the non-arrival at the Supplier's premises of empty packages returned by the Purchaser unless the Supplier shall notify the Purchaser of such non-arrival within 10 days of receiving notice from the Purchaser that the packages have been dispatched.

## **12. INTELLECTUAL PROPERTY RIGHTS**

12.1 In relation to Goods:

(a) The Supplier shall not infringe any Intellectual Property Rights of any third party in supplying the Goods and the Supplier shall indemnify the Purchaser and the Crown against all claims, proceedings, actions, damages, costs, expenses and any other liability or loss incurred by the Purchaser or the Crown by reason of the possession or use by the Purchaser of any Goods, or other material delivered by the Supplier, which involves any infringement of the Intellectual Property Rights of any third party. The provisions of this Condition 12.1 shall not apply in respect of any Goods or other materials which are made up in accordance with designs provided by the Purchaser.

(b) All rights (including ownership and Intellectual Property Rights) in any specifications, instructions, plans, drawings, patterns, models, designs or other material provided or made available to the Supplier by the Purchaser pursuant to the Purchase Order shall remain vested solely in the Purchaser. Except to the extent necessary for the implementation of the Purchase Order, the Supplier shall not (and shall ensure the Staff shall not) without prior Approval use or disclose any such material which he may obtain pursuant to the Purchase Order.

12.2 In relation to Services:

(a) The Supplier hereby assigns to the Authority, with full title guarantee, all Intellectual Property Rights owned by the Supplier in any material which is generated by the Supplier and delivered to the Authority in the performance of the Services and shall waive all moral rights relating to such material. The Supplier shall not reproduce, publish or supply any such material to any Person other than the Authority without prior Approval. In performing the Services the Supplier shall obtain Approval before utilising any other material which is or may be subject to any Intellectual Property Rights.

(b) Subject to Condition 12.2d, the Supplier shall indemnify the Authority and the Crown against all claims, proceedings, actions, damages, costs, expenses and any other liabilities arising from or incurred by the use by the Supplier, or the use by the Authority following delivery by the Supplier, of any material which involves any infringement of the Intellectual Property Rights of any third party.

(c) The Supplier shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Contract grants to the Purchaser a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Purchaser an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Purchaser to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Supplier or to any other third party supplying services to the Purchaser.

(d) The provisions of Condition 12.2b shall not apply in respect of any material which the Authority has supplied to the Supplier or has specified for use by the Supplier or for delivery to the Authority.

(e) The Authority shall indemnify the Supplier against all claims, proceedings, actions, damages, costs, expenses and any other liabilities arising from or incurred by the use, by the Supplier, of any material referred to in Condition 12.2c which involves any infringement of the Intellectual Property Rights of any third party.

(f) The Supplier grants to the Purchaser a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights that the Supplier owned or developed prior to the Purchase Order being issued and which the Purchaser reasonably requires in order to use the Goods and exercise its rights and take the benefit of the Contract.

(g) Where any claim is made by a third party in respect of any material referred to in Condition 12.2b or 12.2d, the Party which is required to provide an indemnity shall have the right to conduct the defence to the claim and to any proceedings brought by the third party.

(h) The obligations imposed by this Condition shall continue to apply after the expiry or termination of the Contract.

### **13. RECOVERY OF SUMS DUE TO AUTHORITY**

Wherever any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay in respect of any breach of the Contract), the Authority may unilaterally deduct that sum from any sum then due or which at any later time becomes due to the Supplier under the Contract or under any other contract with the Authority. Any overpayment by the Authority to the Supplier shall be a sum recoverable.

### **14. STAFF AND ACCESS TO AUTHORITY'S PREMISES**

14.1 The Supplier shall provide at all times the number of Staff required to fulfil his obligations under the Contract. The Supplier shall also ensure that all Staff supplying the Services will do so with all due skill care and diligence and shall possess the qualifications and competence appropriate to the tasks for which they are employed in the provision of the Services.

14.2 Unless given prior Approval, the Supplier shall make the Key Staff available for the entire period needed to fulfil their part in the provision of the Services while they continue to be employed by the Supplier.

14.3 Where the Services are performed on the Authority's Premises the Supplier shall have use of those premises without charge as a licensee and shall vacate them on completion or termination of the Contract.

14.4 Whilst on the Authority's Premises, the Supplier shall (and shall ensure that the Staff shall) comply with such rules, regulations and other requirements, including security measures, as may be in force in respect of Persons attending those premises.

14.5 If, in the opinion of the Authority, any member of Staff has misconducted himself on the Authority's Premises, or the Authority does not consider it to be in the public interest for a particular member of Staff to be admitted to the Authority's Premises, the Authority may require the Supplier to ensure that that Person is no longer deployed in the provision of Services on the Authority's Premises.

14.6 For the purposes of Condition 14.5, misconduct includes conduct which in any manner contravenes good order, discipline or security or adversely affects routine at the Authority's Premises.

### **15. HEALTH AND SAFETY**

15.1 The Supplier shall take all reasonable measures to ensure 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 Goods. The Supplier shall make available to the Purchaser adequate information about the use for which the Goods have been designed and 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 claims, proceedings, actions, damages, costs, expenses and any other liability or loss incurred by the Purchaser as a result of any breach of this Condition.

15.2 The Supplier shall promptly notify the Authority of any health and safety hazards which may arise in performing the Services. The Authority shall promptly notify the Supplier of any health and safety hazards of which the Authority is aware which may exist or arise at the Authority's Premises and which may affect the Supplier in performing the Services. The Supplier shall comply with all health and safety measures implemented on the Authority's Premises.

15.3 The Supplier shall take all measures necessary to comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other Acts, orders, regulations and Codes of Practice relating to health and safety, which apply to the Supplier in the performance of the Purchase Order.

#### **16. ENVIRONMENTAL CONSIDERATIONS**

The Supplier shall so far as possible conform to the Purchaser's policy to avoid the use of Goods or materials produced by the exploitation of human labour or which involve a disproportionately adverse effect on the environment. The Supplier shall so far as possible supply Goods and use packaging materials which do not contain, or involve in the manufacturing process, chlorofluorocarbons, carbon tetrachloride, trichloroethane, methyl chloroform or halons. The Supplier shall so far as possible use packaging manufactured from recycled material, where such use fulfils other packaging requirements under the Purchase Order.

#### **17. DATA PROTECTION ACT**

17.1 The Supplier shall (and shall ensure that Staff shall) comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA which arise in the performance of a Purchase Order.

17.2 Notwithstanding the general obligation in Condition 17.1, where the Supplier is processing personal data (as defined by the DPA) as a Data Processor for the Purchaser (as defined by the DPA) the Supplier shall ensure that it has in place appropriate technical and organisational measures to ensure the security of the Personal Data (as defined in the DPA) (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and (i) provide the Purchaser with such information as the Purchaser may reasonably request to satisfy itself that the Supplier is complying with its obligations under the DPA; (ii) promptly notify the Purchaser of any breach of the security measures to be put in place pursuant to this Condition; and (iii) ensure that it does not knowingly or negligently do or omit to do anything which places the Purchaser in breach of the Purchaser's obligations under the DPA.

#### **18. OFFICIAL SECRETS ACTS 1911 TO 1989, SECTION 182 OF FINANCE ACT 1989**

The Supplier shall comply with, and shall ensure that Staff comply with, the provisions of: (a) the Official Secrets Acts 1911 to 1989 and (b) section 182 of the Finance Act 1989. In the event that the Supplier or Staff fail to comply with this Condition, the Purchaser reserves the right to terminate the Purchase Order by giving notice in writing to the Supplier.

#### **19. CONFIDENTIAL INFORMATION**

19.1 Except to the extent set out in this Condition or where disclosure is expressly permitted elsewhere in the Contract, each Party shall:

- (a) treat all Confidential Information belonging to the other Party as confidential and use all reasonable endeavours to prevent Staff and Personnel from making any disclosure to any person of any such Confidential Information; and
- (b) not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of either Party's obligations under the Contract.

19.2 The Supplier shall ensure that Staff are aware of the Contractor's confidentiality obligations under the Contract.

19.3 The Supplier shall not use any Confidential Information it receives from the Purchaser otherwise than for the purposes of the Contract.

19.4 Nothing in Conditions 19.1 to 19.3 shall prevent the Purchaser disclosing any Confidential Information obtained from the Supplier:

- (a) for the purpose of the examination and certification of the Authority's accounts; or
- (b) for the purpose of any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources; or
- (c) to any government department or any other Contracting Authority and the Supplier hereby acknowledges that all government departments or Contracting Authorities receiving such Confidential Information may further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority; or

(d) to any consultant, contractor or other person engaged by the Purchaser, provided that in disclosing information under sub-paragraphs (c) and (d) the Purchaser discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

19.5 Nothing in Conditions 19.1 to 19.3 shall prevent either Party from: (a) using any techniques, ideas or know-how gained during the performance of its obligations under the performance of a Purchase Order in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights, or (b) disclosing Confidential Information which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations.

19.6 In the event the Supplier fails to comply with Conditions 19.1 to 19.3, the Purchaser reserves the right to terminate the Contract with immediate effect by notice in writing.

19.7 Conditions 19.1 to 19.6 are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

19.8 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Goods under the Contract, the Supplier undertakes to maintain adequate security arrangements that meet the requirements of professional standards and best practice.

19.9 The Supplier will immediately notify the Purchaser of any breach of security in relation to Confidential Information and all data obtained in the supply of the Goods under the Purchase Order and will keep a record of such breaches. This obligation is in addition to the Supplier's obligations under Conditions 19.1 to 19.3. The Supplier will cooperate with the Authority in any investigation that the Authority considers necessary as a result of the breach of security.

19.10 The Supplier shall, at its own expense, alter any security systems at any time during the performance of the Contract at the Authority's request if the Authority reasonably believes the Supplier has failed to comply with Condition 19.8.

19.11 The Supplier shall not make any public statement relating to the existence or performance of the Purchase Order without prior Approval.

19.12 The obligations imposed by this Condition shall continue to apply after the expiry or termination of the Purchase Order.

## **20. TRANSPARENCY**

20.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of these Terms and Conditions and any Purchase Order is not Confidential Information. The Purchaser shall be responsible for determining in its absolute discretion whether any content of any Purchase Order is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of these Terms and Conditions, the Supplier gives his consent for the Purchaser to publish any Purchase Order in its entirety, (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), to the general public.

20.2 The Purchaser may consult with the Supplier to inform its decision regarding any redactions but the Purchaser shall have the final decision in its absolute discretion.

## **21. FREEDOM OF INFORMATION**

21.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Purchaser to enable the Purchaser to comply with its Information disclosure obligations.

21.2 The Supplier shall and shall procure that Staff shall transfer to the Supplier all Requests for Information it receives as soon as practicable and, in any event, within two Working Days of receiving such a Request.

21.3 The Supplier shall also: (a) provide the Purchaser with a copy of all Information in its possession or power in the form that the Purchaser requires within five Working Days (or such other period as the Purchaser may specify) of the Purchaser's request; and (b) provide all necessary assistance as reasonably requested by the Purchaser to enable the Purchaser to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

21.4 The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in these Conditions of Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations. The Supplier acknowledges that the Commercially Sensitive Information listed in the Commercially Sensitive Information Schedule is of indicative value only and that the Supplier may be obliged to disclose it in accordance with this Condition 20.

21.5 In no event will the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Authority.

## **22. INDEMNITY AND INSURANCE**

22.1 Without prejudice to any other rights or remedies of the Purchaser the Supplier shall indemnify the Authority against all claims, proceedings, actions, damages, costs, expenses and any other liabilities brought against or incurred by the Authority and any other loss or damage sustained by the Authority in respect of:

(a) any death or personal injury, or loss of or damage to property, which is caused directly or indirectly by any defect in the Goods, any act or omission of the Supplier, his Staff or subcontractors, or the performance or non-performance of the Supplier of its obligations under the Contract, except to the extent that the Supplier is able to demonstrate that such death or personal injury, or loss or damage, was not caused, or contributed to, by the negligence or default of the Supplier, his Staff or subcontractors, or by any circumstances within his or their control;

(b) any breach of Conditions 17 to 19 or of any statutory or other confidentiality obligation, where such breach arises from any act or omission of the Supplier, his Staff or subcontractors;

(c) financial loss arising from any negligence by the Supplier, his Staff or subcontractors, in giving or omitting to give professional or other expert advice to the Authority, where the Services include a requirement for the Supplier to provide such advice.

22.2 The Supplier shall effect and maintain with a reputable insurance company a policy or policies of insurance providing a minimum level of cover of £1 million for all risks which may be incurred by the Supplier, arising out of the performance of the Contract, in respect of: (a) death or personal injury, or loss of or damage to property or any other loss; and

(b) financial loss arising from any advice given or omitted to be given by the Supplier, where the Services include a requirement to provide professional or other expert advice. The Supplier shall produce to the Purchaser's Representative, on request, copies of the relevant policy or policies or other evidence confirming the existence and extent of cover under those policies, together with receipts or other evidence of payment of the latest premiums due under those policies. The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Purchase Order. It shall be the responsibility of the Supplier to determine the amount of insurance cover (but not to be less than £1 million) that will be adequate to enable the Supplier to satisfy any liability referred to in Condition 21.1.

22.3 The Supplier's total liability under the Contract, in respect of all indemnities and breaches of the Contract, shall be limited to the sum of £1 million, except that there shall be no limitation of liability for death or personal injury caused by its negligence; or for Fraud; or for fraudulent misrepresentation; or for any obligations implied by section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.

22.4 The Supplier shall hold employer's liability insurance in respect of the Staff in accordance with any legal requirement from time to time in force.

## **23. PREVENTION OF CORRUPTION**

23.1 The Supplier shall not do (and warrants that in entering the Purchase Order he has not done) any of the following: offer, give or agree to give to the Purchaser or any Crown body or any employee of the Purchaser or of the Crown any gift or consideration of any kind as an inducement or reward for doing or not doing any act in relation to the obtaining or performance of the Purchase Order or any contract with the Authority or the Crown or for showing favour or disfavour to any person in relation to the Purchase Order or any such contract;

23.2 The Supplier warrants that it has not paid commission or agreed to pay commission to the Purchaser or any other Crown body or any employee of the Authority or the Crown in connection with the Purchase Order.

23.3 If the Supplier or any Staff, or anyone acting on his or their behalf, engages in conduct prohibited by Conditions 22.1 and 22.2 the Purchaser shall be entitled to: (a) terminate the Purchase Order and recover from the Supplier the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Goods and any additional expenditure incurred by the Authority throughout the remainder of the period of the Purchase Order; or (b) recover in full from the Supplier any other loss sustained by the Authority in consequence of any breach of those clauses.

#### **24. PREVENTION OF FRAUD**

24.1 The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Supplier (including its shareholders, members and directors) in connection with the receipt of monies from the Purchaser, and shall notify the Purchaser immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

24.2 If the Supplier or its Staff commits Fraud in relation to this or any other contract with the Crown (including the Purchaser) the Purchaser may:

(a) terminate the Contract and recover from the Contractor the amount of any loss suffered by the Client resulting from the termination, including the cost reasonably incurred by the Client of making other arrangements for the supply of the Goods and any additional expenditure incurred by the Client throughout the remainder of the Contract Period; or

(b) recover in full from the Supplier any other loss sustained by the Purchaser in consequence of any breach of this Condition.

#### **25. CONFLICT OF INTEREST**

25.1 The Supplier shall take all measures necessary to ensure that no conflict of interest exists or arises relating to the Supplier or any Staff that could in any way adversely affect the performance of the Contract. The Supplier shall promptly notify the Authority in writing if he knows or becomes aware of any conflict of interest or any circumstances that could give rise to a conflict of interest.

25.2 If the Authority's Representative becomes aware of any conflict of interest or any circumstances that could give rise to a conflict of interest, the Authority shall have the right, after taking into account all representations made by the Supplier:

(a) to allow such period as may be specified by the Authority, during which period the Supplier shall have the opportunity to take any measures necessary to ensure that the conflict of interest, or the cause of the potential conflict of interest, is removed; or

(b) to terminate the Contract in accordance with Condition 34 if, in the opinion of the Authority's Representative, there is a conflict of interest that cannot be removed.

25.3 Where the Authority has exercised the option under Condition 24.2(a) and the Supplier fails to demonstrate to the satisfaction of the Authority's Representative that the conflict of interest, or cause of the potential conflict, has been removed, the Authority shall have the right to terminate the Contract in accordance with Condition 34.

#### **26. UNLAWFUL DISCRIMINATION**

The Supplier shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976, the Sex Discrimination Act 1975, 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 or the Equality Act 2006 or other relevant or equivalent legislation. The Supplier shall take all reasonable steps to secure the observance of this Condition by all Staff.

#### **27. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

A person who is not a Party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties. This clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Right of Third Parties) Act 1999 and does not apply to the Crown.

#### **28. SUB-CONTRACTING**

The Supplier shall not assign, sub-contract or in any other way dispose of the Purchase Order or any part of it without prior Approval. The Supplier shall be responsible for the acts and omissions of his sub-contractors as though they were his own.

#### **29. SERVICE OF NOTICES**

Any notice or other formal communication to be given by either Party to the other for the purposes of these Conditions shall be given by letter, or by facsimile transmission or electronic mail confirmed by letter. Such letters shall be delivered by hand or sent prepaid by first class post to the address of the other Party and addressed for the attention of The Head of Procurement of the FSA and the FSA Account Manager for the Supplier.

### **30. WAIVER**

The failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy. No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Condition 28.

### **31. VARIATION**

The Purchase Order shall not be varied unless such variation is made in writing. The Authority shall have the right to vary the Services unilaterally at any time, subject to the variation being related in nature to the Services being provided, and no such variation shall vitiate the Contract. The price for any variation, unless otherwise agreed, shall be calculated, in order of precedence, using the amount or rates of payment specified in the Purchase Order, or pro rata to, or based upon the amount or rates specified in the Purchase Order.

### **32. SEVERABILITY**

If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

### **33. RIGHT OF AUDIT**

The Supplier shall keep secure and maintain until two years after the final payment of all sums due under the Contract, or such longer period as may be agreed, full and accurate records of the Contract including the Goods supplied under it, all expenditure reimbursed by the Authority and all payments made by the Authority. The Supplier shall grant the Authority, or its authorised agents, such access to those records as they may reasonably require in connection with the Contract.

### **34. TERMINATION ON INSOLVENCY**

34.1 The Purchaser may terminate the Purchase Order by written notice with immediate effect where the Supplier is a company and in respect of, the Supplier:

- (a) a proposal is made for the voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- (c) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- (g) being a "small company" within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (h) any event similar to those listed in 34.1(a)-(g) occurs under the law of any other jurisdiction.

34.2 The Purchaser may terminate the Purchase Order by written notice with immediate effect where the Supplier is an individual and:

- (a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors; or
- (b) a petition is presented and not dismissed within 14 days or order made for the Contractor's bankruptcy; or

- (c) a receiver, or similar officer is appointed over the whole or any part of the Contractor's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
- (d) the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or
- (e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within 14 days; or
- (f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005; or
- (g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

### **35. TERMINATION ON BREACH OR DEFAULT**

35.1 The Purchaser may terminate the Purchase Order by written notice to the Supplier with immediate effect if the Supplier is in breach of the Purchase Order and:

- (a) the Supplier has not remedied the breach to the satisfaction of the Purchaser within 25 Working Days, or such other period as may be specified by the Purchaser, after service of written notice specifying the breach and requiring it to be remedied; or
- (b) the breach is not in the opinion of the Purchaser capable of remedy; or
- (c) the breach is a material breach of the Contract.

35.2 Termination of the Purchase Order under Conditions 33 or 34 shall not affect any right of action or remedy that shall have accrued or shall thereafter accrue to either Party and shall not affect the continuing operation of Conditions 12, 17, 18 and 19.

35.3 If the Authority terminates the Purchase Order under Condition 34.1, and then makes other arrangements for the provision of the Services, the Authority shall be entitled to recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority for the remainder of the period specified in the Purchase Order. The client shall take all reasonable steps to mitigate such additional expenditure. No further payments shall be payable to the Supplier until the Authority has established the final cost and expenditure in making those other arrangements.

35.4 In the event that through any breach of the Supplier, data transmitted or processed in connection with a Purchase Order is either lost or sufficiently degraded as to be unusable, the Supplier shall be liable for the cost of reconstitution of that data and shall reimburse the Supplier in respect of any charge levied for its transmission and any other costs charged in connection with such breach.

### **36. BREAK**

The Authority shall have the right to terminate the Purchase Order, or the provision of any part of the Services, at any time by giving 3 months' written notice to the Supplier. Subject to Condition 21.1(a), the Authority shall indemnify the Supplier for any unavoidable direct loss, not including loss of profit, actually and reasonably incurred as a result of such termination, provided that (a) the Supplier takes immediate and all reasonable steps to mitigate any such loss; and (b) the Authority shall not be liable to pay any sum in reimbursement which, when added to any sums paid or due under the Purchase Order, exceeds the total sum that would have been payable if the Purchase Order had not been terminated. Where the Supplier holds insurance, the Purchaser will only indemnify the Supplier for those unavoidable direct costs that are not covered by the insurance available. The Supplier shall submit a fully itemised and costed list of unavoidable direct loss which it is seeking to recover from the Purchaser, with supporting evidence, of losses reasonably and actually incurred by the Supplier as a result of such termination.

### **37. LAW AND JURISDICTION**

This Purchase Order shall be governed and interpreted in accordance with English law and shall be subject to the jurisdiction of the Courts of England and Wales.

### **38. DISPUTE RESOLUTION**

38.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 25 days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director (or equivalent) of each Party.

- 38.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 38.3 If the dispute cannot be resolved by the Parties pursuant to clause 31.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause 31.5 unless (a) the Purchaser considers that the dispute is not suitable for resolution by mediation; or (b) the Supplier does not agree to mediation.
- 38.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation and the Supplier and the Staff shall comply fully with the requirements of the Contract at all times.
- 38.5 The procedure for mediation and provisions relating to mediation are as follows:
- (a) A neutral adviser or mediator (the “**Mediator**”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to a recognised and appropriately qualified mediation provider to appoint a Mediator.
  - (b) The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held.
  - (c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
  - (d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
  - (e) If the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.

**Terms and Conditions are available on request in a larger format by emailing [mhsap@foodstandards.gsi.gov.uk](mailto:mhsap@foodstandards.gsi.gov.uk)**