

MITIE STANDARD PURCHASING TERMS

1. Definitions and interpretation

- 1.1 In these Terms the following words have the following meanings: **'ARs'** all laws, statutes, acts, regulations, codes, judgments, orders, directives, determinations and common law applicable to the manufacture, packaging, storage, supply and sale of the Goods and provision of any Services, as applicable (including sub-ordinate legislation and European Community legislation to the extent it has direct effect in member states); **'Contract'** the FA (if any) for the supply of Goods and Service between the Seller and MITIE and the schedules (if any) (being the SSch and/or the PSch) to it, these Terms and all accepted Orders; **'Delivery Address'** the address stated in the PSch (if any) or otherwise the Order; **'Force Majeure'** any circumstances beyond the reasonable control of a party provided that no event shall be treated as Force Majeure if it is attributable in whole or in part to any wilful act or omission or any failure to take reasonable precautions by a party, or it is a strike, lock-out or other industrial action or trade dispute by the employees of a party, or an act or omission of a party's supplier or sub-contractor; **'FA'** the formal written framework agreement (if any) between the Parties (and signed by an authorised representative of each of the Parties) which incorporates, by reference, these Terms and all Orders; **'Goods'** the goods (if any) set out in the SSch (if any) or otherwise in the Order including all packing materials; **'MITIE'** the MITIE group company identified in the FA or otherwise in the Order; **'MITIE Company'** any company in the MITIE group being MITIE, its direct and/or indirect subsidiaries, its holding companies and any direct and/or indirect subsidiaries of such holding companies, "subsidiary" and "holding company" having the meanings ascribed to those terms in ss736 and 736A of the Companies Act 1985; **'Order'** MITIE's applicable purchase order for supply of the Goods and Services; **'Parties'** MITIE and the Seller; **'PSch'** the schedule 2 (if any) agreed between the Parties under the FA (if any); **'Price'** the price payable to the Seller calculated in accordance with the SSch (if any) or otherwise in the Order; **'Seller'** the person, firm or company set out on the front page of the FA (if any) or otherwise in the Order; **'Services'** the services (if any) set out in the SSch (if any) or otherwise in the Order; **'SIs'** the standards to which the Services are to be performed as described in the SSch (if any) or otherwise in the Order; **'Specification'** the technical description (if any) of the Goods or Services set out in the SSch (if any) or otherwise in the Order and shall be deemed to include an item's barcode and the relevant British and European Standard unless expressly excluded; **'Start Date'** the start date specified in the FA or the relevant schedule (if any) or otherwise in the Order; **'SSch'** the schedule 1 (if any) agreed between the Parties under the FA (if any); **'Terms'** these standard terms and conditions of purchase; **'Term'** the period specified on the front page of the Contract; **'VAT'** value added tax; and, **'Writing'** includes fax, e-mail and letter.
- 1.2 Any reference in the Contract to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time. The headings in the Contract are for convenience only and shall not affect its interpretation.

2. Duration and basis of purchase

- 2.1 This Contract shall be deemed to have commenced on the Start Date and shall (unless terminated earlier under clause 9.7 or 10) continue for an initial period of 2 years and thereafter shall continue until it is terminated by one party giving not less than 3 month's notice in Writing to the other to expire at any time.
- 2.2 If MITIE requires the Goods and Services or any part of them it shall issue an Order to the Seller setting out the specific Goods and Services required and the Seller shall provide such Goods and Services. The appointment is not exclusive and MITIE does not guarantee to request any Goods or Services.
- 2.3 The Contract shall prevail over any acknowledgment from the Seller of such Order and/or in other correspondence between the Parties relating to the subject matter of this Contract and over any other terms of the Supplier. For the avoidance of doubt, the terms of the FA (if any) shall prevail over these Terms.
- 2.4 Any MITIE Company may request the Goods and Services in accordance with this Contract and the Seller shall provide them to the requesting company on the terms of this Contract. Irrespective of MITIE Company that requested the Goods or Services the Seller may only enforce its rights and remedies under this Contract against MITIE and for these purposes only any breach of the Contract by the MITIE Company that requested the Goods and Services shall be deemed to be a breach of MITIE.
- 2.5 MITIE will be bound by an Order only if it is placed on its official Order form, and the Seller accepts it by signing and returning the acknowledgement copy of the Order within 7 days of the date of the Order or undertakes an act of part performance specifically referable to the Order.

3. Seller's obligations, inspection and testing

- 3.1 The Seller shall: comply with all ARs; comply with MITIE's policies from time to time in force including without limitation MITIE's health and safety policy, any environmental and welfare regulations any other policies and procedures of which MITIE may from time to time notify the Seller; and, provide the Goods and any other tools and equipment necessary to properly and efficiently provide the Services.
- 3.2 The Seller shall not unreasonably refuse any request by MITIE to inspect and test the Goods during manufacture, processing or storage at the premises of the Seller or any third party prior to delivery, and the Seller shall provide MITIE with all access and facilities reasonably required for inspection and testing.
- 3.3 If as a result of inspection or testing MITIE is not satisfied that the Goods will comply in all respects with the Contract or ARs, and MITIE informs the Seller within 14 days of inspection or testing, the Seller shall at its expense take such steps as are necessary to ensure compliance. Irrespective of whether the right of inspection is exercised MITIE shall have the right to reject any Goods after delivery if in the opinion of MITIE they do not comply with the Contract or the ARs.
- 3.4 The Goods shall be marked in accordance with the PSch and any procedures and requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course of events.

4. Intellectual property rights

- 4.1 The Seller warrants that the Goods or any part of them will not cause an infringement of any patent, registered design, trade or service mark, know-how, copyright or other intellectual property rights ("IPR") of any third party resulting from the use or resale of the Goods that are the subject of the Order.
- 4.2 The Seller grants or shall procure the grant of the right to MITIE to use and disclose all or any part of any report, blueprint, drawing, data or technical information supplied by the Seller to MITIE, provided that MITIE shall only use and disclose such information for the purpose agreed between the Parties or, in the absence of such agreement, as MITIE may reasonably expect to so use and disclose. The Seller warrants that the Buyer is entitled to exercise those rights without any payment to any third party.
- ### 5. Price and payment
- 5.1 In consideration for the provision of the Goods and Services MITIE shall pay to the Seller the Price. The Price shall be exclusive of any applicable VAT (which shall be payable by MITIE subject to receipt of a valid VAT invoice) but inclusive of all charges for packaging, packing, shipping, carriage, insurance, testing and delivery of the Goods to the Delivery Address and any duties, imposts or levies. No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange, legislative/regulatory changes or otherwise) without the prior consent of MITIE in Writing. MITIE shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Seller, whether or not shown on its own terms and conditions of sale.
- 5.2 The Seller shall be entitled to invoice MITIE on or at any time after delivery of the Goods or performance of the Services, as the case may be, and each invoice shall quote the number of the Order. MITIE shall pay the Price of the Goods and the Services within the period set out in the FA, or in the absence thereof, in the Order or in the absence thereof within 60 days after the end of the month of receipt by MITIE of a valid invoice or, if later, after acceptance of the relevant Goods or Services. Time for payment shall not be of the essence.
- 5.3 Without prejudice to any other right or remedy, MITIE reserves the right to set off any sum of money owing at any time by the Seller to MITIE against any sum payable or which at any time may become payable by MITIE to the Seller under the Contract or under any other contract between MITIE and the Seller.
- 5.4 MITIE shall deduct the cost of any Goods which are returned by MITIE from the next payment due to the Seller. Where the return of goods puts a supplier into a debit position, and MITIE is unable to deduct the balance from a payment due, MITIE will require settlement of the debit note by the Seller within 14 days of the date of the debit note.
- 5.5 Where under this Contract any party agrees to pay to any other party any sum or to furnish to any other party consideration which (in either case) is consideration for a taxable supply that sum or consideration shall be exclusive of VAT payable on it and the recipient of the supply shall pay an amount equal to such VAT in addition to any sum or consideration on receipt of a valid VAT invoice from the relevant party.
- 5.6 If either party fails to pay any sum payable under this Contract when due (whether payable by agreement or by an order of the court or otherwise) the liability of that party shall be increased to include interest on that sum from the date when such payment was due until the date of the actual payment at a rate of 3% over the base rate from time to time of Barclays plc. Such interest shall accrue from day to day and shall be compounded annually.
- ### 6. Delivery
- 6.1 The Goods shall be delivered and the Services performed in accordance with the provisions of the PSch (if any) or otherwise the Order. The Goods shall be delivered to, and the Services shall be performed at, the Delivery Address on the date or within the period stated in the PSch (if any) or otherwise the Order, in either case during MITIE's usual business hours.
- 6.2 Where the date of delivery of the Goods or of the performance of the Services is to be specified after the placing of the Order, the Seller shall give MITIE reasonable notice of the specified date. Where no date of delivery is specified, delivery shall be made within 10 working days of receipt of an Order.
- 6.3 Time of delivery of the Goods and of performance of the Services shall be of the essence.
- 6.4 Documentation quoting the number of the Order must accompany each delivery or consignment of the Goods and must be displayed prominently. Receipt of such documentation is a condition precedent to payment.
- 6.5 If the Goods are to be delivered, or the Services are to be performed, by instalments, the Contract will be treated as a single contract and not severable.
- 6.6 If any of the Goods do not comply with the Contract or the Seller does not comply with its obligations under clauses 9.1 and/or 9.2, MITIE shall be entitled to reject those Goods or any part of them until it has had a reasonable time to inspect the Goods. MITIE shall also have the right to reject the Goods as though they had not been accepted within a reasonable time after any latent defect in the good has become apparent.
- 6.7 MITIE shall, when giving notice of rejection, specify the reasons for it and shall return the rejected Goods to the Seller or at MITIE's option request that the Goods be collected by the Seller at the Seller's risk and expense. In such case the Seller shall within a reasonable time replace those rejected Goods with goods which are in all respects in accordance with the Contract.
- 6.8 Any sums paid by MITIE to the Seller in respect of any rejected Goods not replaced by the Seller within a reasonable time, together with any additional expenditure over and above the Price reasonably incurred by MITIE in obtaining other goods in replacement, shall be paid by the Seller to MITIE.
- 6.9 The Seller shall supply MITIE with any instructions or other information required within a reasonable time to enable MITIE to accept delivery of the Goods and performance of the Services.
- 6.10 MITIE shall not be obliged to return to the Seller any packaging or packing materials for the Goods, whether or not any Goods are accepted by MITIE.

- 6.11 If the Seller fails to complete delivery of any ordered Goods or provide any Services in accordance with this Contract and the relevant Order for any reason other than Force Majeure, without prejudice to any other rights and remedies it may have, MITIE shall be entitled to: (in the case of defective Services) require the Seller to remedy such defect at its own cost within 7 days (in which case the Seller shall also be liable to MITIE for any costs arising out of any damage caused by the Seller in remedying such defects and shall also provide free of charge any additional Goods necessary to remedy the Services); and/or, (in the case of defective Services) charge to the Seller the costs incurred by MITIE in having such defect remedied; and/or, cancel any Goods or Services (or both) which have not been delivered by the date required in the Order for those Goods or Services (or both) and require repayment of any part of the Price which has been paid; and/or, charge to the Seller any additional costs, losses or expenses which MITIE may incur due to the Seller's failure to deliver the correct Goods (with, where applicable, the correct Services having been performed) by the specified delivery date including, but not limited to, any additional costs incurred by MITIE in obtaining replacement Goods or Services (or both) from a third party and any payments contractually due to third parties as a result of the Goods or Services (or both) not being so provided by the specified delivery date.
- 6.12 In addition to its rights under clauses 5.3 and 5.4 MITIE reserves the right to withhold any sums as may be due to the Seller under this Contract as are necessary for the remedying of any defect in the Seller's performance of this Contract or otherwise due to MITIE in accordance with this clause 6.
- 6.11 Where the Contract contains an express PSch and without prejudice to any other right or remedy MITIE may have, MITIE shall be entitled, (on the terms set out in the relevant PSch) to liquidated damages on each occasion which the Seller: fails to provide Goods or Services by the specified delivery date for those Goods or Services; and/or, fails to perform the Services or part of them or performs them otherwise than in accordance with the SLs.
- 7 Risk and Property**
- 7.1 Risk of damage to or loss of the Goods shall remain with the Seller until delivery in accordance with the Contract and the Seller shall insure the Goods to their full replacement value until risk passes to MITIE.
- 7.2 Title in the Goods shall pass to MITIE on delivery or payment in whole or in part which ever occurs earlier (without prejudice to MITIE's right of rejection under the Contract).
- 8. Confidentiality**
- 8.1 Any plans, drawings, designs, Specifications, samples or other information issued by a MITIE Company to the Seller shall be property of MITIE. All such materials as well as any information acquired by either party as a result of or in connection with the Contract are confidential and subject to Condition 8.2, shall not be disclosed, copied nor used for any other purpose (apart from in connection with the Contract) and shall be returned to the relevant party at its request.
- 8.2 Any party may disclose information which would otherwise be confidential if and to the extent: it is required to do so by law or any securities exchange or regulatory or governmental body to which it is subject wherever situated; it considers it necessary to disclose the information to its professional advisers, auditors and bankers provided that it does so on a confidential basis; the information has come into the public domain through no fault of that party; the information was previously disclosed to it without any obligation of confidence; or, the relevant party has given its prior consent in Writing.
- 9. Warranties and liability**
- 9.1 The Seller warrants that the Goods shall: be of satisfactory quality and free from defects in design, material and workmanship and fit for their intended purpose; be of sound material and workmanship; in all respects correspond with any relevant Specification, sample or pattern given by either party; meet the quality standard and be capable of any performance specified in the Contract; and, comply with all ARs.
- 9.2 The Seller warrants that the Services will be performed by appropriately qualified and trained personnel, with reasonable care and skill and in accordance with the SLs and warrants that in respect of the supply of Goods and/or Services hereunder it has all authorities and license necessary for such supply.
- 9.3 The Seller shall indemnify MITIE in full against all liability, loss, damage, costs and expenses (including legal expenses) awarded against or incurred by MITIE as a result of or in connection with: a breach of any warranty given by the Seller in relation to the Goods or the Services including but not limited to the warranties contained in this clause 9; any claim that the Goods infringe, or their importation, use or resale, infringes, the IPR of any third party whether in Britain or overseas, except to the extent that the claim arises from compliance with any Specification supplied by MITIE; any liability under that MITIE might incur under the Consumer Protection Act 1987 or General Product Safety Regulations 2005 in respect of the Goods and other items in which the Goods are incorporated; any act or omission or negligence of the Seller or its employees, agents or sub-contractors in supplying, delivering and installing the Goods in accordance with the Contract; any act or omission or negligence of any of the Seller or its employees, agents or sub-contractors in connection with the performance of the Services; and, dealing with any complaints received from customers of MITIE as a result of failure of the Goods to conform with the Specification or ARs, including but not limited to administration costs and the value of any compensation or good will gesture made by MITIE in its reasonable discretion to such customer; and all costs of carrying out any remedy.
- 9.4 The Seller shall (unless detailed otherwise in the FA (if any), the PSch (if any) of otherwise in the Order) take out and maintain full insurance with a reputable insurance company against all risks associated with its obligations and potential liabilities under the Contract (including insurance of the Goods while they are at the Sellers risk) to the minimum sum of £2,500,000.00 in respect of any one incident or series of related incidents and shall produce to MITIE evidence of such insurance on request.
- 9.6 Neither party shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of its obligations under the Contract by reason of Force Majeure.
- 9.7 If the Seller is prevented from performance of its obligations for a continuous period in excess of 28 days, MITIE may terminate the Contract forthwith on service of a Written notice on the Seller, in which case neither party shall have any liability to the other except that rights and liabilities which accrued prior to such termination shall continue to subsist.
- 10. Termination**
- 10.1 MITIE shall be entitled to cancel any Order in whole or in part by giving notice to the Seller at any time prior to delivery or performance, in which case MITIE's sole liability shall be to pay to the Seller the Price for the Goods or Services in respect of which MITIE has exercised its right of cancellation, less the net proceeds of resale to a third party received by the Seller and less the Seller's net saving of cost arising from the cancellation.
- 10.2 Without prejudice to its other rights or remedies MITIE shall be entitled to terminate the Contract without liability to the Seller by giving notice to the Seller at any time if: the Seller fails to comply with any provisions of the Contract; or, the Seller makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or, an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Seller; or, the Seller ceases or threatens to cease, to carry on business; or, MITIE reasonably apprehends that any of the events mentioned above is about to occur in relation to the Seller and notifies the Seller accordingly.
- 10.3 The Seller shall not cancel any Order without the consent of MITIE such consent to be conditional on the Seller indemnifying MITIE against all direct loss (including without limitation, consequential loss) damage, claims or actions arising out of such cancellation.
- 10.4 Upon receipt of a termination notice the Seller shall immediately cease all work in performance of the Contract and shall make every reasonable effort to obtain cancellation of all sub-contracts made by it relating to the Contract.
- 10.5 MITIE shall be entitled to terminate the Contract and to recover from the Seller the amount of any loss resulting from such termination if the Seller offers to any employee of MITIE or its agents or representatives any advantage other than a cash discount against the Price.
- 10.6 On termination or expiry of this Contract for any reason whatsoever: the relationship of the Parties shall cease save as expressly provided for in this clause 10.5; the termination or expiry of this Contract shall be without prejudice to the rights and remedies either party may have against the other or which may have accrued up to the date of, or which arise out of, the termination or expiry; and, clauses 1, 3, 4, 5, 6, 8, 9, 10, 11 and 12 shall remain in force.
- 11. Guarantee**
- 11.1 If the Seller is not the manufacturer and if required by MITIE the Seller shall assign the benefit of any warranty or guarantee given by the manufacturer or the Seller's supplier relating to the Goods.
- 11.2 Where any Goods or Services supplied under this Contract are the subject of a Guarantee and if within the relevant guarantee period MITIE gives notice in writing to the Seller of any defect in the design, materials or workmanship of the Goods (other than a design made, furnished or specified by MITIE for which the Seller has in writing disclaimed responsibility), the Seller shall, as soon as possible, replace or repair (at MITIE's sole option, acting reasonably) the relevant Goods so as to remedy the defects without cost to MITIE; provided that MITIE shall, where practicable, within a reasonable period of time of discovery of any such defect, return the defective Goods or parts of them to the Seller at the Seller's risk and expense unless it has been agreed between the Parties that the necessary replacement or repair shall be carried out by the Seller on MITIE's premises.
- 11.3 The liabilities of the Seller under this clause 11 shall be in addition and without prejudice to any other rights or remedies of MITIE (whether arising in contract, tort, at common law, under statute or otherwise).
- 12. General**
- 12.1 Any variation of the Contract shall only be effective if agreed in Writing and signed by an authorised representative of each party save that MITIE shall be entitled to vary an Order and any Specification that may relate to such Order, at any time prior to delivery. The Seller shall not assign the Contract or any part of it without the prior written consent of MITIE. The Seller shall not sub-contract any of its obligations under the Contract without the prior written consent of MITIE. Any such consent shall not relieve the Seller of any of its obligations under the Contract. Any concession allowed by the MITIE at any time shall not constitute a waiver of its rights under the Contract or otherwise. If any provision of this Contract is found by any court or competent authority to be invalid, unlawful or unenforceable in any jurisdiction, that provision shall be deemed not to be a part of this Contract, it shall not affect the enforceability of the remainder of this Contract nor shall it affect the validity, lawfulness or enforceability of that provision in any other jurisdiction. This Contract and any documents expressly referred to in it set out the entire agreement and understanding between the Parties in respect of the subject matter of this Contract. The Express written terms set out in the FA will prevail in the event of conflict with these Terms. No term of this Contract (whether express or implied) is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it except as provided by clause 2.4. The Parties may without limit or restriction rescind or novate this Contract or vary it in accordance with its terms without reference to or the consent of any MITIE Company.
- 12.2 Any notice to a party under this Contract shall be in Writing signed by or on behalf of the party giving it and shall be addressed to the other party at its registered office or such other address as may be notified by a party from time to time in Writing. A notice shall be deemed to have been served at the time of delivery if delivered personally, 48 hours after posting or 2 hours after transmission if served by fax on a business day prior to 3pm or in any other case at 10am on the business day after the date of despatch. A party shall not attempt to prevent or delay the service on it of a notice connected with this Contract.
- 12.3 The Contract shall be governed by the laws of England, and the Parties submit to the non-exclusive jurisdiction of the English courts.