

# DWP General Terms and Conditions of Contract for the Supply of Goods

## 1. Interpretation

In these Conditions:

- a) "DWP" means the Department for Work and Pensions;
- b) "the Contractor" means the person who undertakes to supply the Articles and render the services (if any) specified on the order;
- c) "the Contract" means the agreement concluded between the DWP and the Contractor, for the supply of Articles and related services (if any);
- d) "the Articles" means all articles which the Contractor is required under the Contract to supply or in connection with which he is required under the Contract to carry out any service;
- e) "the Contract Price" means the price exclusive of Value Added Tax, payable to the Contractor by the DWP under the Contract for the full and proper performance by the Contractor of his part of the Contract;
- f) "Government Property" means anything issued or otherwise furnished in connection with the Contract by or on behalf of the DWP or its authorised representative;
- g) "month" means calendar month;
- h) "loss" includes destruction;
- i) "person" includes a corporation;
- j) "representative of the DWP" in any provision of the Contract means the person duly authorised by the DWP to act for the purposes of the provision.

## 2. Acts by DWP

Any decision, act or thing which the DWP is required or authorised to take or do under the Contract may be taken or done by any person authorised, either generally or specifically, by the DWP to take or do that decision, act or thing.

## 3. Service of Notice

Any notice or other communication which the DWP is required to give under the Contract will be sufficiently

given if sent by recorded delivery or registered post to the last known address of the Contractor.

## 4. Amendments and Variations

No amendment or variation in the terms and conditions of the Contract will be valid unless previously agreed in writing between the DWP and the Contractor and no payment will be made for the unauthorised supply of goods and related services (if any).

## 5. Transfer and Subletting

The Contractor shall not give, bargain, sell, assign, sub-let or otherwise dispose of the Contract or any part thereof without the previous consent in writing of the DWP.

## 6. Payment

- 1) On presentation of a correct invoice quoting the DWP contract and/or purchase order number and confirming that property in the goods has passed to the DWP or its agent, the DWP shall pay the Contract Price to the Contractor. Payment will be made within 30 days of receipt of the invoice by the DWP or in accordance with the contract.
- 2) If, for the purpose of performing the Contract, the Contractor enters into a contract for the supply of goods or services to the Contractor by a third party, the Contractor shall include in that contract a provision which requires the Contractor to pay for those goods or services within 30 working days of the Contractor receiving a correct invoice from that third party.

## 7. Recovery of Sums Due

- 1) Whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor, the same may be deducted from any sum then due, or which at any time thereafter may become due to the Contractor under any contract with the DWP or with any other department or office of Her Majesty's Government
- 2) Any over-payment by the DWP to the Contractor whether of charges or of Value Added Tax shall be a sum of money recoverable from the Contractor.

## 8. Value Added Tax

- 1) The DWP shall pay to the Contractor, in addition to the Contract Price, a sum equal to the Value Added Tax chargeable on the value of the Articles and

services (if any) supplied in accordance with the Contract

- 2) Any invoice or other request for payment of monies due to the Contractor under the Contract shall, if he is a taxable person be in the same form and contain the same information as if the same were a tax invoice for the purposes of Regulations made under the Finance Act 1972.
- 3) The Contractor shall, if so requested by the DWP, furnish such information as may reasonably be required by the DWP as to the amount of Value Added Tax chargeable on the Articles in accordance with the Contract and payable by the DWP to the Contractor in addition to the Contract price. Any overpayments by the DWP to the Contractor shall be a sum of money recoverable from the Contractor for the purposes of Condition 7.

### **9. Bankruptcy**

- 1) The DWP may at any time by notice in writing summarily determine the Contract without compensation to the Contractor if:
  - a) the Contractor, being an individual or where the Contractor is a firm, any partner in that firm at any time becomes bankrupt or has a receiving order or administration order made against him or makes any composition or agreement with or for the benefit of his creditors, or makes any conveyance or assignment for the benefit of his creditors, or purports to do so or if in Scotland he becomes insolvent or notour bankrupt, or any application is made under any bankruptcy act for the time being in force for sequestration of his estate, or a trust deed is granted by him for behoof of his creditors; or
  - b) the Contractor, being a company, is the subject of a proposal for a voluntary arrangement; or has a petition for an administration order or a petition for a winding-up order brought against it; or passes a resolution for a winding-up order; or makes any composition, arrangement, conveyance or assignment for the benefit of its creditors; or purports to do so; or a receiver or any other person is appointed in respect of its undertaking or of all or any of its property.

Provided always that such determination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the DWP.

### **10. Termination**

Either party shall have the right to terminate the Contract if the other party is in breach of any of the conditions of the Contract and such breach shall not have been remedied to the satisfaction of the injured party within a period of thirty days of written notification of such breach to the other party. Notice of termination shall be given to the offending party in writing with immediate effect and such termination shall be without

prejudice to the rights of the parties accrued to the date of determination.

### **11. Arbitration**

- 1) All disputes, differences or questions between the parties to the Contract with respect to any matter arising out of or relating to the Contract, except where the decision of the DWP or of any other person is by the Contract expressed to be final and conclusive, shall after 14 days written notice by either party to the Contract to the other be referred in writing to a single arbitrator agreed for the purpose, or in the absence of such agreement to be appointed at the request of either party by the President of the London Chamber of Commerce.
- 2) Such reference shall be deemed to be a submission to arbitration under the Arbitration Act 1950 as amended or any statutory modification or re-enactment thereof.

### **12. Break**

- 1) The DWP shall, in addition to its power under any other provision of the Contract, have power to determine the Contract at any time by giving the Contractor written notice to expire at the end of the period of notice specified for the purpose of this Condition in the Contract or if no such period is specified at the end of one month and upon expiration of the notice the Contract shall be determined without prejudice to rights of the parties accrued to the date of determination but subject to the operation of the following provisions:
  - a) if such notice is given the DWP shall indemnify the Contractor against commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the determination of the Contract and shall further negotiate a payment representing reasonable loss of profit, if any, to the Contractor;
  - b) the DWP shall not be liable to pay under the provisions of clause 1) and 1)a) of this Condition any sum which, when taken together with any sums paid or due or becoming due to the Contractor under the Contract, shall exceed such total sum as would have been payable under the Contract if the Articles had been delivered in accordance with the requirements of the Contract;
- 2) If hardship to the Contractor should arise from the operation of clause 1)b) of this Condition it shall be open to the contractor to refer the circumstances to the DWP which, on being satisfied that such hardship exists, shall make such allowance, if any, as in its opinion is reasonable, and the decision of the DWP on any matter or thing arising out of this Condition shall be final and conclusive.

### **13. Official Secrets**

The Contractor's attention is drawn to the provisions of the Official Secrets Acts 1911 to 1989 and to any

statutory amendment or re-enactment thereof. The Contractor shall take all reasonable steps by display of notices or by other appropriate means to ensure that all persons employed in connection with the Contract have notice that the said statutory provisions apply to them and will continue so to apply after the completion or early determination of the Contract.

#### **14. Confidentiality**

- 1) The contractor undertakes:
  - a) to treat as confidential all information which may be derived from or obtained in the course of the Contract: and
  - b) to take all necessary precautions to ensure that all such information is treated as confidential by the Contractor, his-staff, agents and subcontractors.
- 2) The DWP undertakes to treat as confidential all unpublished information supplied by the Contractor under the Contract.

#### **15. Corrupt Gifts and Payments of Commission**

- 1) The Contractor shall not:
  - a) offer or give, or agree to give, to any person employed by or on behalf of the DWP any gift or consideration of any kind as an inducement or reward for doing or having done or not doing any act in relation to the obtaining or execution of any contract with the DWP or for showing or for not showing favour or dis-favour to any person in relation to any contract with the DWP;
  - b) enter into any contract with the DWP or any other department or office of Her Majesty's Government in connection with which commission has been paid or agreed to be paid by him or on his behalf, or to his knowledge, unless before the Contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to any person duly authorised by the DWP to act as its representative for the purpose of this clause.

Note: nothing contained in this clause prevents the Contractor paying such commission or bonuses to his own staff as are within their agreed contract of employment

- 2) Any breach of this Condition by the Contractor or by anyone employed by him or acting on his behalf (whether with or without his knowledge) or the commission of any offence by the Contractor or by anyone employed by him or acting on his behalf under the Prevention of Corruption Acts 1889 to 1916, in relation to any contract with the DWP shall entitle the DWP to determine the Contract and recover from the Contractor the amount of any loss resulting from such determination and/or recover from the Contractor the amount of the value of any such gift, consideration or commission, as the DWP shall think fit.

- 3) Where the Contract has been determined under clause 2) of this Condition the powers given by clause 2) of Condition 25 shall apply as if there had been a failure in delivery.
- 4) In any dispute, difference or question arising in respect of:
  - a) the interpretation of this Condition (except so far as the same may relate to the amount recoverable from the Contractor under clause 2) of this Condition in respect of any loss resulting from such determination of the Contract); or
  - b) the right of the DWP to determine the Contract; or
  - c) the amount or value of any gift, consideration or commission;

the decision of the DWP shall be final and conclusive.

#### **16. Issued Government Property**

- 1) All Government property issued in connection with the Contract shall remain the property of the DWP and shall be used in the execution of the Contract and for no other purpose whatsoever save with the prior approval in writing of the DWP.
- 2) All such property shall be deemed to be in good condition when received by or on behalf of the Contractor unless he notifies the DWP to the contrary within 14 days or such other period as is specified in the Contract.
- 3) The Contractor shall undertake to return all such property so issued and will be responsible for all loss thereof or damage thereto from whatever cause to the full amount of such loss or damage.

#### **17. Liability**

- 1) The Contractor shall not be liable for any loss, damage, or delay suffered by the DWP to the extent that such loss, damage or delay is attributable to instructions given by or on behalf of the DWP.
- 2) Nothing in these Conditions nor in any part of the Contract shall impose any liability on any member of the staff of the DWP or its representatives in their personal capacity.

#### **18. Indemnities**

- 1) The Contractor shall indemnify the DWP against all actions, claims, demands, costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of copyright, patent, registered design or other property right used by or on behalf of the Contractor for the purpose of the Contract, providing that any such infringement is not knowingly caused by, or contributed to, by any act of the DWP.

- 2) The DWP shall indemnify the Contractor against all actions, claims, demands, costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of copyright, patent, registered design or other property right used at the request of the DWP by the Contractor in the course of performing the Contract.

## 19. Law

The Contract shall be considered as a contract made in England and shall be governed by, and construed in accordance with the provisions of English Law

## 20. Waiver

The failure of either party at any time to enforce any provision of the Contract shall in no way affect its right thereafter to require complete performance by the other party, nor shall the waiver of any breach of any provision be taken or held to be a waiver of any subsequent breach of any such provision or be a waiver of the provision itself.

## 21. Severability

If any condition, clause or provision of the Contract not being of a fundamental nature be held to be illegal or unenforceable the validity or enforceability of the remainder of the Contract shall not be affected thereby.

## 22. Racial Discrimination

- 1) The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976 or any statutory modification or re-enactment thereof relating to discrimination in employment.
- 2) The Contractor shall take all reasonable steps to secure the observance of the provisions of clause 1) of this Condition by all staff or agents of the Contractor and all sub-contractors employed in the execution of the Contract.

Note: the Race Relations Act 1976 does not apply in Northern Ireland but the Contractor utilising labour in Northern Ireland must observe the provisions of the Fair Employment (Northern Ireland) Act 1976.

## 23. Special Provisions

In the event of any conflict or inconsistency between these general Conditions and any special conditions contained within the Contract, such special conditions shall prevail.

## 24. Specifications and Quality Assurance

- 1) The Articles shall be of the qualities and sorts described in and equal in all respects to the samples, patterns, specifications, plans, drawings or other documents, individually or collectively which form part of the Contract. Except insofar as may otherwise be indicated by a sample, pattern, specification, plan, drawing or other document the

Articles shall be strictly in accordance with the latest relevant British Standard, or equivalent, where such exists, published before the date of the Contract, or otherwise shall be to the satisfaction of the DWP.

- 2) The Contractor shall, if so requested by the DWP, furnish details of his quality management system and produce evidence, if appropriate, of certification to BS5750/ISO9000 or equivalent.

## 25. Delivery

- 1) The Contractor shall hand over to the DWP, or the agent of the DWP at the time or times and at the place or places and in the manner specified in the Contract or in orders issued under the Contract.
- 2) The time of delivery shall be of the essence and failure to deliver within the time promised or specified shall enable the DWP (at its option) to be released from any obligation to accept and pay for the Articles and/or to cancel all or part of the Articles, in either case without prejudice to the other rights and remedies of the DWP.
- 3) When handing over the Articles in accordance with this Condition, the Contractor shall:
  - a) ensure that the Articles are properly packed and secured as may be stipulated in the Contract; and
  - b) comply with any additional instructions which from time to time the DWP may give with regard to the transportation of the Articles, provided that any extra cost necessarily incurred in so doing shall be borne by the DWP as an addition to the Contract Price.
- 4) When the Contract specifies that the Articles shall be handed over ex-works or despatched F.O.R., F.A.S., F.O.B. or F.D.D. the Contractor shall hand over or despatch the articles accordingly, consigning them to such destinations as the DWP require
- 5) When the articles are handed over in accordance with clause 1) of this Condition, delivery shall occur on their being so handed over. When the Articles are handed over or despatched in accordance with clause 4) of this Condition, delivery shall occur on their going into the possession of the DWP or its agent
- 6) Unless the Contract specifically otherwise provides, the property in the Articles passes from the Contractor to the DWP upon delivery in accordance with clause 5) of this Condition.
- 7) If after delivery one or more Articles is rejected under Condition 28 that Article shall for the purposes of the Contract be considered as not having been delivered under the Contract and the property in that Article shall revert in the Contractor provided that this clause shall have effect only when the Contractor has received notice of rejection.

## 26. Inspection

- 1) The DWP may inspector arrange for the inspection of the Articles, or any of them, in course of production at the Contractor's premises, at any reasonable time.
- 2) Without prejudice to the DWP's right of inspection under clause 1) of this Condition, the DWP may inspect or arrange for the inspection of the completed Articles, or any of them at the Contractor's premises where the Articles have been produced, or after delivery, or as otherwise provided in the Contract.

## 27. Loss or Damage to Articles

- 1) The Contractor is responsible for the Articles and any materials, fittings or things acquired or allocated by him for incorporation therein until delivery has been effected in accordance with Condition 25 and shall make good any loss or damage to the Articles or any such materials equipment, fittings or things however occasioned which may occur before delivery.
- 2) Clause 1) of this Condition shall apply notwithstanding that the Articles concerned may have been inspected in accordance with the Contract or that the property therein may in accordance with provisions specifically made in the Contract have passed from the Contractor to the DWP or its agent earlier than upon delivery
- 3) Unless the Contract specifically provides the Contractor is not responsible for the Articles after delivery save that he shall become responsible in all respects for any Article which under Condition 28 the DWP rejects after delivery and such responsibility shall take effect upon the Contractor removing the Article in accordance with clause 3) of Condition 28 or upon the returning of the Article to the Contractor in accordance with clause 4) of Condition 28 or, if he fails so to remove the Article, or if the DWP does not exercise the right to return the Article, on the expiry of the 8th working day from his receipt of notification of rejection of the Article.
- 4) Notwithstanding the provisions of clause 3) of this Condition, the Contractor shall not be responsible for any rejected Article which remains in the possession of the DWP after the DWP has rejected it for so long as it so remains after notice of objection to rejection has been given under clause 6) of Condition 28 and the dispute between the parties relating to the rejection remains unresolved.

## 28. Rejection

- 1) The DWP may reject any Article which on inspection in accordance with Condition 26 is found not to conform to the requirements of the Contract.
- 2) The DWP may reject the whole of any consignment of the Articles if inspection in accordance with

Condition 26 shows that any part of it is found not to conform to the requirements of the Contract.

- 3) When under this Condition the DWP rejects any Articles or consignment after delivery, the Contractor shall, subject to the provisions of clause 6) of this Condition, at his own expense remove from the DWP each and every rejected Article and shall do so within such period as is provided by the Contract, or if the Contract makes no provision, within 8 working days from receipt of notification of rejection.
- 4) If the Contractor fails to remove the Articles or any of them in accordance with clause 3) of this Condition the DWP may return the rejected Articles or any of them to the Contractor at the Contractor's risk, the cost of carriage being recoverable from the Contractor.
- 5) When under this Condition the DWP rejects any Article or consignment after delivery, the Contractor shall at his own expense deliver in place of each and every rejected Article, an Article which conforms to the requirements of the contract and shall do so within the period for delivery stipulated in the Contract or within such further reasonable period as the DWP may allow.
- 6) If the Contractor considers himself aggrieved by a rejection under this Condition, he may give the DWP notice of objection. Such notice shall be given within 8 working days from receipt of notification of rejection and before removing the rejected Articles from the DWP. The objection shall constitute a dispute between the parties which if not otherwise resolved within a reasonable time shall be dealt with in accordance with the provisions of the Contract relating to the settlement of disputes. If the Contractor gives notice of objection the Articles shall not be removed until the DWP directs.
- 7) If any of the Articles whether completed or in course of production is rejected on inspection by the DWP, the same shall, if the DWP so requires, be marked in a manner satisfactory to the DWP to ensure its subsequent identification as a rejected Article.

## 29. Acceptance

- 1) Acceptance of an Article shall take place when the DWP confirms acceptance of the Article in accordance with the procedure specified in the Contract, and if none is so specified, the DWP shall be deemed to have accepted an Article without prejudice to any remedies, when and as soon as any of the following events occurs:
  - a) the DWP takes the Article into use;
  - b) the DWP fails to exercise its right of rejection of the Article under Condition 281Nithin any period specified for that purpose in the Contract;

- c) where no period for exercising the right of rejection is specified in the Contract and a reasonable time has elapsed since delivery of the Article was effected in accordance with clause 5) of Condition 25.

### **30. Acceptance Marks**

If so required by the Contract the Contractor shall at his own expense mark or permit the representative of the DWP to mark all approved materials, Articles or parts thereof with recognised Government marks. In the case of materials, Articles or parts thereof which cannot be so marked, the same shall, if so required by the DWP, be packed in suitable packages or cases, each of which shall be sealed and shall have the Government mark placed on the seals.

### **31. Packages**

Unless otherwise provided by the Contract all containers (including packing cases, boxes, tins, drums and wrappings) supplied by the Contractor shall be considered as non returnable, and their cost as having been included in the Contract Price.

### **32. Use of Documents, Information etc**

- 1) Except with the prior consent in writing of the DWP, the Contractor shall not disclose the Contract or any provision thereof to any person other than a person employed by the Contractor in carrying out the Contract or any sub-contractor, supplier or other person concerned with the same. Such disclosure shall be made in confidence and shall extend so far only as may be necessary for the purposes of the Contract.
- 2) Except with the prior consent in writing of the DWP the Contractor shall not make use of the Contract or any information issued or furnished by or on behalf of the DWP otherwise than for the purposes of the Contract, and, save as provided for in clause 3) of this Condition the Contractor shall not make any article or part thereof similar to the Articles for any other purpose.
- 3) Subject to any rights of third parties, nothing in this Condition shall prevent the use for any purpose by the Contractor of any specifications, plans, drawings and other documents, the rights of which vest in him otherwise than as a result of work carried out under a Contract.
- 4) Any samples or patterns or any specifications, plans, drawings or other documents issued by or on behalf of the DWP for the purposes of the Contract shall remain the property of the DWP and must be returned on completion of the Contract.