

NCG Standard Terms and Conditions for the Purchase of Goods and/or Services (“the Conditions”)

1. Interpretation

1.1. In these Conditions the following words shall have the following meanings:

- “Access Law”** means the Freedom of Information Act 2000 and the Environmental Information Regulations 2004, as either may be amended from time to time or any other applicable legislation or codes of practice governing access to information from time to time;
- “Authorised Officer”** means the Group’s employee authorised either generally or specifically, by the Group to release its purchase order , confirmation of which may be obtained from the Shared Services Department;
- “the Contract”** means the Order and the Supplier’s acceptance of the Order;
- “Default”** means any breach of the obligations of the relevant Party (including Material Breach) or any other default, act omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of this Contract;
- “Delivery Address”** means the place specified on the Order to which the Goods will be delivered and/or the premises where the Services will be performed;
- “Data Controller, Data Processor and Data Subject”** have the meanings as defined in the Data Protection Legislation;
- “Data Protection Legislation”** means the General Data Protection Regulation (CEU 2016/679) on and from 25 May 2018 and any national implementing laws, regulations and secondary or related legislation, as amended or updated from time to time;
- “Goods”** means any goods agreed in the Contract to be purchased by the Group from the Supplier (including any part or parts of them);
- “the Group”** means NCG (including all subsidiaries) whose main place of business is registered at Rye Hill Campus, Scotswood Road, Newcastle upon Tyne NE4 7SA
- “In Writing”** means by letter, fax or email to the Authorised Officer;

“Order”	means the Group’s official written instruction to supply Goods and/or Services, incorporating these Conditions;
“Packaging”	means any type of package including but without limitation bags, cases, carboys, cylinders, drums, pallets, tank wagons and other containers;
“Personal Data and Processing”	have the meanings as defined in the Data Protection Legislation;
“Supplier”	means the person, firm or company who accepts the Group’s Order.
“Services”	means any Services agreed in the Contract to be purchased by the Group from the Supplier or to be provided by the Supplier to the Group.

1.2. In these Conditions references to any statute or statutory provision, shall unless the context otherwise requires , be construed as a reference to that statute or provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

1.3. In these Conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.

1.4. In these Conditions the headings will not affect the construction of these Conditions.

1.5. Reference to statutory obligations and requirements shall include obligations arising under Articles of the Treaties establishing the European Community and Union and directives of the European Union as well as UK Acts of Parliament and subordinate legislation.

2. Application of Terms

2.1. These Conditions, any formal letter from the Group accompanying them or any signed agreements of which they form part and the Supplier Code of Conduct are the only conditions upon which the Group is prepared to contract with the Supplier and they shall govern the Contract to the entire exclusion of all other terms or conditions save where expressly agreed or stated otherwise in writing by an Authorised Officer of the Group.

- 2.2. Each Order for Goods and/or Services by the Group from the Supplier shall be deemed to be an offer by the Group to purchase Goods and/or Services subject to these Conditions and no Order shall be accepted until the Supplier either expressly by giving notice of acceptance or impliedly by fulfilling the Order, in whole or in part, accepts the offer.
- 2.3. The Supplier is deemed to have understood the nature and extent of the supply requirements and to have visited the premises and shall make no claim founded on their failure to do so. The Group shall not be liable for any Order unless it is issued or confirmed on an official NCG Purchase Order.
- 2.4. For the avoidance of doubt, terms or conditions endorsed upon, delivered with or contained in the Supplier's quotation, acknowledgement or acceptance of order, specification or similar document will not form part of the Contract and the Supplier waives any right which it otherwise might have to rely on such terms and conditions.
- 2.5. These Conditions apply to all the Group's purchases and any variation to these Conditions shall have no effect unless expressly agreed in writing and signed by an Authorised Officer of the Group.

3. Supplier's Warranties as to Quality Defects and Specifications

- 3.1. The Goods shall be of the best quality, safe and fit for any purpose held out by the Supplier or made known to the Supplier at the time the Order is placed by the Group.
- 3.2. The Goods shall:-
- 3.2.1. be fully compliant with all applicable statutory requirements, regulations, EU regulations relating to the manufacture and sale of goods, product safety, packaging, labelling (including the appropriate British standard or equivalent specification) unless agreed otherwise;
 - 3.2.2. be free from defects in design, material and workmanship; and
 - 3.2.3. conform in all respects (including quantity and description) with the Order and specification supplied or advised by the Group to the Supplier and where no specification or sample has been provided, shall meet the Group's performance criteria and perform to best industry practice.
- 3.3. The Supplier warrants to the Group that the Services:-
- 3.3.1. will be performed professionally and safely by fully qualified and trained personnel with all due care and diligence and to such high standards of

quality as it is reasonable for the Group to expect in all the circumstances;

3.3.2. will comply with all statutory requirements, regulations, bye-laws and EU directives and regulations relating to the provision of services; and

3.3.3. will comply with all standards of performance specified in the Contract.

3.4. The Supplier warrants that all information, representations or statements provided by it to the Group in connection with the Goods and /or the Services are accurate. The Supplier acknowledges that the Group was induced to contract with it in reliance upon such information, representations and statements.

3.5. The Supplier warrants that the supply of the Goods to the Group and the use and/or sale of the Goods by the Group in the course of its business do not and will not infringe any trade mark, copyright, patent, licence, royalty, moral or design right or other intellectual property or third party right whatsoever.

3.6. The Supplier warrants that the Group will be free to use and/or sell the Goods without payment of any royalty, licence fee or other payment to any third party of whatever nature (except United Kingdom value added tax arising on sale).

3.7. The Supplier warrants that it will on the date of delivery of the Goods hold full, clear and unencumbered title in and to the Goods and will on the date of delivery of the Goods have full right and power to transfer the Goods to the Group whereupon the Group will acquire valid and unencumbered title thereto.

3.8. The Group's rights under these Conditions are for the avoidance of doubt in addition to any statutory or common law rights (including, without limitation, any rights arising under the Sale of Goods Act 1979 (as amended) and the Supply of Goods and Services Act 1982) implied in its favour.

3.9. The Supplier will comply and will ensure that the Goods and Services comply and that its agents, employees and sub-contractors comply with all legal and statutory obligations, provisions and regulations, including without limitation, the Health and Safety at Work Act 1974, the Consumer Protection Act 1987, the Environmental Protection Act 1990, the Data Protection Act 1998, the Construction Design and Management Regulations 2007, the Building Regulations 2010 and the General Product Safety Regulations 2005. Where the Goods are produced outside the European Union, the Supplier will use its best endeavours to ensure that it, its agents and suppliers will comply with

the health, safety, labour, welfare, hygiene and environmental laws in the country of production.

- 3.10. Without prejudice to its other obligations and undertakings the Supplier will use its best endeavours to comply with best practice from time to time in relation to sound sourcing, health, safety, hygiene, environmental standards and staff welfare.
- 3.11. At any time prior to delivery of the Goods and/or the Services to the Group, the Group shall have the right to inspect and test the Goods or assess the Services at all times.
- 3.12. If the results of such inspection or testing cause the Group to be of the opinion that the Goods and/or the Services do not conform or are unlikely to conform with the Order or to any specifications supplied or advised by the Group to the Supplier, the Group shall inform the Supplier and the Supplier shall immediately take such action as is necessary to ensure conformity and in addition the Group shall have the right to require and witness further testing and inspection at the Supplier's expense.
- 3.13. Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and/or the Services, and any such inspection or testing shall not diminish or otherwise affect the Supplier's obligations under the Contract.
- 3.14. If any of the Goods or the Services fail to comply with any of the provisions set out in this clause 3, the Group shall be entitled (without limitation) to avail itself of any one or more remedies listed in clause 14.
- 3.15. The Goods shall be marked and labelled in accordance with the Group's instructions and any applicable regulations or requirements of any carrier and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course of carriage.
- 3.16. The Supplier shall adhere and shall procure that its employees, servants, agents, or sub-contractors shall adhere to current health and safety legislation and the Group's rules and regulations as may be in force and/or notified by the Group to the Supplier from time to time in respect of the conduct of the Supplier's personnel while delivering the Goods or providing the Services on the Group's premises including, without limitation, the security policy and procedures in relation to the Delivery Address.
- 3.17. The Supplier's attention is drawn to the provisions of the Official Secrets Acts 1911 to 1989. The Supplier shall take all reasonable steps by display of

notices or by other appropriate means to ensure that all persons employed on any work in connection with the Contract have notice that these statutory provisions apply to them and will continue to apply after the completion or earlier determination of the Contract.

- 3.18. The Supplier warrants to the Group that it will use its best endeavours to assist the Group, as soon as reasonably practicable upon request by the Group, (at the cost of the Group insofar as this condition requires the Supplier to do anything that it is not already obliged to do by law or in accordance with these Conditions) to comply with any obligations imposed on the Group by any Access Law, including (but not limited to) where applicable, to provide the Group as soon as possible and in any event, within five working days of notification by the Group of any Access Law requirement, with all such information which is in the possession of the Supplier that is necessary to enable the Group to comply with any request for information served on the Group pursuant to any Access Law which relates to or arises out of or under these terms and conditions and/or the documentation associated with the Services and/or relates to the Supplier.
- 3.19. The warranties set out in this clause 3 shall continue in force (notwithstanding any acceptance by the Group of all or any part of the Goods and/or the Services) for 24 months from the date of first use of the Goods or provision of the Services.

4. Liability

- 4.1. Nothing in this Contract shall be construed to limit or exclude either Party's liability for:
- 4.1.1. death or personal injury caused by its negligence;
 - 4.1.2. fraud or fraudulent misrepresentation;
 - 4.1.3. any breach of 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.
- 4.2. Subject to Clause 4.1 and Clause 4.3, the liability of the Group under or in connection with this Contract, whether arising in contract, tort (including negligence), breach of statutory duty or otherwise shall not exceed ten thousand pounds sterling (£10,000).
- 4.3. Subject to Clause 4.1, in no event will the Group be liable to the Supplier for:

- 4.3.1. any indirect or consequential loss or damage;
 - 4.3.2. any loss resulting from the loss of, or corruption of, or damage to, any data stored electronically on any computer system and/or any computer software;
 - 4.3.3. any loss resulting from the liability of the Supplier to any third party;
 - 4.3.4. any loss of profit, loss of revenue, loss of use, or loss of goodwill.
- 4.4. The Group may, amongst other things, recover as a direct loss:
- 4.4.1. any additional operational and/or administrative reasonable expenses arising from the Subcontractor's Default;
 - 4.4.2. any reasonable wasted expenditure or charges rendered unnecessary and/or incurred by the Group arising from the Supplier's Default;
 - 4.4.3. the additional cost of procuring replacement services for the remainder of the Contract Period following termination of the Contract as a result of a Default by the Supplier;
 - 4.4.4. loss or withdrawal of funding by the Funder arising from the Supplier's Default; and/or
 - 4.4.5. damage to its goodwill and reputation arising from the Supplier's Default.
- 4.5. Nothing in this Contract shall impose any liability on the Group in respect of any liability incurred by the Supplier to any other person.

5. Indemnity

- 5.1. The Supplier shall indemnify and keep the Group indemnified in full against all direct, indirect or consequential liability (including loss of profit), losses, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Group, its servants or agents as a result of or in connection with:-
- 5.1.1. defective workmanship, quality or materials;

- 5.1.2. any act or omission of the Supplier, its employees, permitted agents or sub-contractors in supplying, delivering and/or installing the Goods;
- 5.1.3. any act or omission of the Supplier, its employees, permitted agents or sub-contractors in connection with the performance of the Services including any injury, loss or damage to persons or to Group property caused or contributed to by any of their negligence or by faulty design, workmanship or materials (except to the extent that the injury, loss or damage is caused by the negligent act or omission of the Group);
- 5.1.4. any infringement or alleged infringement of any intellectual property rights by the use, manufacture or supply of the Goods or performance of the Services (except to the extent that the claim arises from compliance with any specification requested by the Group);
- 5.1.5. any claim made against the Group in respect of any liability, loss, damage, injury, cost or expense sustained by the Group's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by or relates to or arises from the Goods or the Services;
- 5.1.6. any claim made against the Group in respect of breach or alleged breach by the Group of any statutory provision, regulation, bye-law or other rule of law arising from the acts or omissions of the Supplier or its employees, agents or sub-contractors;
- 5.1.7. any liabilities of the Group arising out of or in connection with the Supplier's statutory breach as set out in clause 3.9 above;
- 5.1.8. any breach of these Conditions by the Supplier.

6. Insurance

- 6.1. Without prejudice to its liability to indemnify the Group, the Supplier shall maintain such insurances as are necessary to cover the liability of the Supplier or, as the case may be, of its employees permitted agents or sub-contractors in respect of :-
 - 6.1.1. public liability to an amount of at least £5 million (five million pounds) for any one occurrence in relation to inter alia personal injuries or deaths arising out of , or in the course of, or caused by the supply of the Goods and/or the performance of the Services;

- 6.1.2. product liability in respect of the Goods to an amount of at least £2 million (two million pounds) for any one occurrence;
- 6.1.3. professional indemnity insurance in respect of the performance of the Services to an amount of at least £2 million (two million pounds) for any one occurrence; and
- 6.1.4. any damage to property to an amount of at least £5 million (five million pounds) for any one occurrence arising out of, or in the course of, or caused by the supply of Goods or the performance of the Services.
- 6.1.5. The Supplier shall upon the request of the Group produce forthwith evidence of such insurances as are required to be held under clause 6.1 above and of payment of all premiums.

7. Delivery

- 7.1. The Goods shall be delivered with carriage paid to the Delivery Address and the Services shall be performed at the Delivery Address or, in each case, such other place of delivery as is agreed by the Group in writing prior to delivery of the Goods or performance of the Services. The Supplier shall unload the Goods as directed by the Group. For the avoidance of doubt, delivery shall include packaging, securing, despatching, delivering, installing and commissioning the Goods at the Supplier's expense. The Goods shall arrive in good condition within the Group's normal business hours on the date or within the period specified at clause 7.2. The Group shall require the Supplier to perform the Services in such order as the Group may decide and further reserves the right to amend any delivery instructions including (but not restricted to) the Delivery Address. Delivery shall be deemed to be made on receipt of the Goods by the Group or the Supplier's performance of the Services in full in accordance with the terms of the Contract.
- 7.2. The date or period for delivery shall be specified on the Order, or if no such date is specified then the Goods shall be delivered or the Services performed at such time and in such order as the Authorised Officer of the Group may specify after receipt of the Order by the Supplier.
- 7.3. The Supplier shall ensure that each delivery is accompanied by a delivery note (a copy of which may be retained by the Group) which shows, inter alia, the Order number, date of Order, number of packages and contents (if appropriate) and, in the case of part delivery, the outstanding balance remaining to be delivered.

- 7.4. Time for delivery of the Goods and/or performance of the Services shall be of the essence of the Contract provided always that:-
- 7.4.1. if for any reason the Group requests performance to be delayed, the Supplier hereby undertakes to agree to such request at no additional cost to the Group and the terms of this condition 7.4 shall apply to any such revised date for performance; and
- 7.4.2. the Supplier shall immediately notify the Group of any occurrence which it reasonably considers is likely to delay the delivery of the Goods and/or Services and the Group shall, at its sole discretion, decide whether any extension of time is to be granted.
- 7.5. Unless otherwise stipulated by the Group in the Order, deliveries shall only be accepted by the Group in the hours of 9:00 am to 4:30 pm Monday to Friday inclusive but excluding public and statutory holidays.
- 7.6. If the Goods are not delivered or the Services are not performed on the due date (or dates) then, without prejudice to any other rights which it may have, the Group reserves the right to:-
- 7.6.1. cancel the Contract in whole or in part
- 7.6.2. refuse to accept any subsequent delivery of the Goods or performance of the Services which the Supplier attempts to make;
- 7.6.3. recover from the Supplier any additional expenditure reasonably incurred by the Group in obtaining the Goods or the Services in substitution from another supplier;
- 7.6.4. deduct from any account rendered by the Supplier in respect of Goods and/or Services which the Group (acting reasonably) considers to be unsatisfactory, such sum as the Group deems fit; and
- 7.6.5. claim damages for any additional cost, loss or expenses incurred by the Group which are in any way attributable to the Supplier's failure to deliver the Goods or perform the Services on the due date(s).
- 7.7. Any deliveries of the Goods arriving outside of the allocated due date and time for delivery may be refused by the Group at its sole discretion.
- 7.8. Where the Group agrees in writing to accept delivery by instalments the Contract will be construed as a single contract in respect of each instalment.

Nevertheless, failure by the Supplier to deliver any one instalment shall entitle the Group at its option to treat the whole Contract as repudiated.

- 7.9. If Goods are delivered to the Group in excess of the quantities ordered the Group shall not be bound to pay for the excess and any excess will be and will remain at the Supplier's risk and will be returnable at the Supplier's expense.
- 7.10. Unless otherwise stated in the Contract, all Packaging shall be non-returnable whether or not any Goods are accepted by the Group. If the Contract states that Packaging is returnable, the Supplier must give the Group full return instructions before the time of delivery. The Packaging must be clearly marked to show to whom it belongs. The Supplier must pay the costs of all carriage and handling for the return of the Packaging. The Group shall not be liable for any Packaging lost or damaged in transit.
- 7.11. The Group shall have the right to audit the Supplier's work at any time. The Supplier shall keep and maintain until two years after the Contract has been completed, records to the satisfaction of the Group of all expenditures which are reimbursable by the Group and of the hours worked and costs incurred in connection with any employees of the Supplier paid for by the Group on a time charged basis. The Supplier shall on request afford the Group or its representatives such access to those records as may be required by the Group in connection with the Contract.

8. Risk and Property

- 8.1. The Goods shall remain at the risk of the Supplier until delivery to the Group is complete (including unloading and full installation where relevant) in accordance with the Contract.
- 8.2. Full, unencumbered ownership of the Goods shall pass to the Group:-
- 8.2.1. when the Goods have been delivered in accordance with the Contract but without prejudice to the Group's right of rejection under the Contract;
or
- 8.2.2. (where the Group makes any part, advance or staged payment against the price specified in the Order) at the time such payment is made and the Goods have been appropriated to the Contract, upon which the Supplier must as soon as practicable mark or otherwise identify the Goods as the Group's property and keep them separate and identifiable from other goods held by the Supplier for itself or third parties.

9. Price

- 9.1. The price of the Goods and the Services shall be stated in the Order and unless otherwise agreed in writing by the Group shall be exclusive of value added tax but inclusive of all other charges including, but not limited to, costs of packaging, packing, carriage, insurance, delivery and off-loading.
- 9.2. No variation in the price nor extra charges will be accepted by the Group unless expressly agreed in writing.
- 9.3. The Group shall be entitled to all allowances, discounts, overrides, and rebates customarily granted by the Supplier whether for prompt payment, volume of purchase or otherwise.

10. Payment and Invoices

- 10.1. Where the Supplier submits an invoice to the Group (in accordance with clause 10.5 and any other terms agreed in writing by the Group), the Group will consider and verify that invoice in a timely fashion.
- 10.2. The Group shall pay the Supplier any sums due under such an invoice no later than a period of 30 days from the date on which the Group has determined that the invoice is valid and undisputed.
- 10.3. Where the Group fails to comply with clause 10.1 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of clause 10.2 after a reasonable time has passed.
- 10.4. Where the Supplier enters into a Sub-Contract, the Supplier shall include in that Sub-Contract:
 - 10.4.1. Provisions having the same effect as clauses 10.1 to 10.3 of this Agreement; and
 - 10.4.2. A provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clauses 10.1 to 10.4 of this Agreement.
 - 10.4.3. In clause 10.4, a "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from the Group in a subcontracting chain made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.

- 10.5. The Supplier shall invoice the Group upon, but separately from, the despatch of the Goods to the Group or performance of the Services. The invoice must be addressed to the registered office and quote a valid NCG Purchase Order Number. The Supplier will comply with all the Group's reasonable administrative requirements relating to invoicing as notified to it from time to time.
- 10.6. Without prejudice to any other right or remedy, the Group reserves the right to set off any amount owing at any time from the Supplier to the Group against any amount payable by the Group to the Supplier under the Contract.
- 10.7. Any amount paid by the Group to the Supplier in error shall be repaid within three days at the Group's request.
- 10.8. Invoices shall be forwarded to the Shared Services department of the Group, at the main place of business, i.e. Registered Office.
- 10.9. Value added tax, where applicable, shall be shown separately on all invoices as an additional charge to the price of the Goods or Services. The Group has charitable status and educates some disabled students. VAT zero rating may apply to building work, adaptations for the disabled, advertising or other items as the law changes. Where certificates for VAT zero rating or other reliefs may apply the Supplier should contact the Finance department to make arrangements for their completion.
- 10.10. The Supplier shall:-
 - 10.10.1. (where applicable and notwithstanding clause 10.6 above) be responsible for any taxes payable in relation to or by reference to any remuneration or other payments made to it under the Contract.
 - 10.10.2. volunteer all necessary paperwork to allow the Group to comply on time with any Construction Industry Scheme liabilities and procedures.
- 10.11. Where the Supplier represents that they are regarded by both HM Revenue & Customs and the Department of Social Security as self-employed in relation to the prospective work to be undertaken for the Group, the Supplier shall indemnify the Group against any and all claims that may be made against the Group in respect of any tax (including PAYE), national insurance contributions or similar impost (and any interest, fines, penalties relating to the same) for which the Group may be liable in respect of the Supplier by reason of this Contract. The Supplier shall provide to the Group on request satisfactory evidence of the Supplier's self-employed status.

11. Confidentiality

- 11.1. Save as otherwise required by law, the Supplier shall keep in strict confidence its terms of trade with the Group in relation to the Contract or otherwise, all technical or commercial know-how, specifications, inventions, process or initiatives which are of a confidential nature and have been disclosed to the Supplier by the Group or its agents and any other confidential information concerning the Group's business or its products which the Supplier may obtain and the Supplier shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Supplier's obligations to the Group and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Supplier.

12. The Group's Property

- 12.1. Copyright, design rights, trademarks, patents or any other forms of intellectual property rights in all materials, drawings, designs, logos, specifications and data supplied by the Group to the Supplier shall at all times be and remain the exclusive property of the Group but shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until returned to the Group and shall not be disposed of other than in accordance with the Group's written instructions, nor shall such items be used otherwise than as authorised by the Group in writing.
- 12.2. All tools, materials, drawings, specifications and other equipment ("the Articles") loaned by the Group to the Supplier in connection with the Contract shall remain the property of the Group at all times and shall be surrendered to the Group upon demand in good and serviceable conditions (fair wear and tear allowed) and shall be used by the Supplier solely for the purpose of completing the Contract. The Supplier agrees that no copy of any of the Articles will be made without the consent in writing of the Group. Until the Supplier returns all the Articles to the satisfaction of the Group, they shall be at the Supplier's risk and must be kept insured by the Supplier at its own expense against the risk of loss, theft or damage. Any loss of or damage to the Articles shall be made good by the Supplier at its own expense.
- 12.3. If the Contract involves design and/or development work:-
- 12.3.1. all rights in the results of work arising out of or deriving from the Contract, including inventions, designs, copyright and knowledge, shall vest in and

be the property of the Group, and the Group shall have the sole right to determine whether any patent, registered design, trade mark or other protection shall be sought;

- 12.3.2. the Supplier shall promptly communicate to the Group all such results and shall if requested and at the expense of the Group do all acts and things necessary to enable the Group or its nominee to obtain patents, registered designs or other such protection as the Group may determine for such results in all territories and to assign the same to the Group or its nominee; and
- 12.3.3. the Supplier shall ensure that all technical information (including without limitation computer programs and programming information) arising out of or in connection with the Contract is held in strict confidence except for any such information which becomes public knowledge other than by breach of the Contract.

13. Termination

- 13.1. The Group shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Supplier not less than four weeks' written notice whereupon all work on the Contract shall be discontinued without prejudice to the rights of the parties accrued to the date of termination and the Group shall pay to the Supplier fair and reasonable compensation for work in progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss.
- 13.2. In the event of notice being given in accordance with clause 13.1. above, the Group shall at any time before the expiration of the notice, be entitled to exercise and shall as soon as may be reasonably practicable within that period exercise such of the following powers as it considers expedient:-
 - 13.2.1. to direct the Supplier where work has not been commenced, to refrain from commencing work; and
 - 13.2.2. to direct the Supplier where work has not been commenced, to refrain from commencing work; and
 - 13.2.3. to direct the Supplier to complete in accordance with the Contract all or any of the Services, or any part or component thereof, which shall be paid for at the agreed Contract price or, where no agreement exists, a fair and reasonable price.

- 13.3. The Group shall have the right at any time by giving notice in writing to the Supplier to terminate the Contract forthwith (without payment of compensation) if:-
- 13.3.1. the Supplier commits a breach of any of the terms and conditions of the Contract;
 - 13.3.2. any distress, execution or other process is levied upon any of the assets of the Supplier;
 - 13.3.3. the Supplier enters into any compromise, deed or voluntary arrangement with its creditors, if a bankruptcy order is made against it or if an order is made or an effective resolution is passed for its winding up (except for the purposes of amalgamation or reconstruction as a solvent company) or if a winding up or bankruptcy petition is presented to court, or if a receiver and/or manager, receiver, administrative receiver or administrator is appointed in respect of the whole or any part of the Supplier's undertaking or assets;
 - 13.3.4. the Supplier ceases or threatens to cease to carry on its business; or
 - 13.3.5. the financial position of the Supplier deteriorates to such an extent that in the opinion of the Group the capability of the Supplier adequately to fulfil its obligations under the Contract has been placed in jeopardy.
 - 13.3.6. if inducement/reward under clause 20 is given.
- 13.4. The termination of the Contract, however arising will be without prejudice to the rights and duties of the Group accrued prior to termination. The Conditions which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.
- 13.5. The Group shall not in any case be liable to pay under the provisions of this clause 13 any sum which, when taken together with any sums paid, or due, or becoming due to the Supplier under the Contract shall exceed the total Contract price. Notwithstanding these clauses the liability of the Group shall not exceed the limit set out in Clause 4.2

14. Remedies

- 14.1. Without prejudice to any other right or remedy which the Group may have, if any of the Goods or the Services are not supplied in accordance with, or the Supplier fails to comply with, any of the terms of the Contract, the Group shall be entitled to avail itself of any one or more of the following remedies at its

discretion, whether or not any part of the Goods or the Services have been accepted by the Group or the Supplier's invoice has been paid:-

- 14.1.1. to rescind the Contract to which the Order relates;
- 14.1.2. to reject the Goods (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Goods so returned shall be paid forthwith by the Supplier;
- 14.1.3. at the Group's option to give the Supplier the opportunity at the Supplier's expense either to remedy any defect in the Goods or the Services or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
- 14.1.4. to refuse to accept any further deliveries of the Goods or performance of the Services but without any liability to the Supplier;
- 14.1.5. to carry out at the Supplier's expense any work necessary to make the Goods or the Services comply with the Contract; and
- 14.1.6. to claim such damages as may have been sustained in consequence of the Supplier's breach or breaches of the Contract.

15. Assignment

- 15.1. The Supplier shall not be entitled to assign the Contract or any part of it without the prior written consent of the Group.
- 15.2. The Group may assign the Contract or any part of it to any person, firm, company, or other corporate body.
- 15.3. The Supplier may not sub-contract any of its rights or obligations under the contract without the Group's prior written consent.

16. Force Majeure

- 16.1. The Group reserves the right to defer the date of delivery or payment or to cancel the Contract or reduce the volume of the Goods or Services ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond its reasonable control including without limitation, acts of God, governmental actions, war or national emergency, terrorism, riot, terrorist act, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's

workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies or suitable materials.

17. Data Protection

- 17.1. This clause 17 shall apply to all Suppliers who are Processing Personal Data.
- 17.2. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 17 is in addition to, and does not relieve, remove, or replace, a party's obligations under the Data Protection Legislation.
- 17.3. The parties acknowledge that for the purposes of the Data Protection Legislation, the Group is the Data Controller and the Supplier is the Data Processor.
- 17.4. Without prejudice to the generality of clause 17.1 and 17.2, the Group will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of fulfilling the Purchase Order.
- 17.5. Without prejudice to the generality of clause 17.2, the Supplier shall, in relation to any personal data processed in connection with the performance of the order:
 - 17.5.1. process that personal data only on the written instructions of the Group unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier to process personal data (**Applicable Laws**). Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing personal data, the Supplier shall promptly notify the Group of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Group;
 - 17.5.2. ensure that it has in place appropriate technical and organisational measures, (which at the request of the Group, will be made available, so the measures can be reviewed and approved by the Group), to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those

measures may include where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience, of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- 17.5.3. ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
- 17.5.4. not transfer any personal data outside of the European Economic Area unless the prior written consent of the Group has been obtained and the following conditions are fulfilled:
 - 17.5.4.1. the Group or Supplier has provided appropriate safeguards in relation to the transfer;
 - 17.5.4.2. the Data Subject has enforceable rights and effective legal remedies;
 - 17.5.4.3. the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred;
 - 17.5.4.4. the Supplier complies with reasonable instructions notified to it in advance by the Group with respect to the processing of the personal data;
- 17.5.5. assist the Group at the Supplier's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 17.5.6. notify the Group without undue delay on becoming aware of a personal data breach;
- 17.5.7. at the written direction of the Group, delete or return personal data (and any copies) to the Group on termination or fulfilment of the order unless required by Applicable Law to store the personal data; and
- 17.5.8. maintain complete and accurate records and information to demonstrate its compliance with this clause 17 and allow for audits by the Group or the Group's designated auditor.

- 17.6. The Supplier may not appoint any third party processor of personal data under this agreement without obtaining the prior written consent of the Group and, where such consent is provided, the Supplier shall enter into a written agreement with such third party processor incorporating terms which are substantially the same as those set out in this clause 17. As between the Group and the Supplier, the Supplier shall remain fully liable for all acts and omissions of any third party processor appointed by it pursuant to this clause 16.6.
- 17.7. Either party may, at any time on not less than thirty (30) days' notice, revise this clause 17 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certificate scheme (which shall apply when signed by both parties and attached to this agreement).
- 17.8. The Group will process any personal data provided to it pursuant to the Agreement in accordance with the Data Protection Legislation. The Group will take reasonable precautions to keep such personal data secure and to prevent unauthorised disclosure. The Supplier is liable for any breach of the Data Protection Legislation once the personal data has been remitted by the Group to the Supplier, including actions of its employees, agents and sub-contractors to whom it may lawfully pass personal data.

18. Modern Slavery Act

- 18.1. The Supplier warrants and represents that it shall comply with the Modern Slavery Act 2015 and the Group's Modern Slavery Statement.

19. Equal Opportunities

- 19.1. In accordance with its responsibilities under the Equality Act 2010 to eliminate unlawful racial discrimination, promote equal opportunities and promote good relations between people of different racial groups, the Group requires the Supplier to and any agents, employees and sub-contractors to comply with the following terms:-
- 19.1.1. the Supplier agrees to comply with the Equality Act 2010 and with the Group's policies and procedures regarding such discrimination and equal opportunities;
- 19.1.2. the Supplier warrants that its own practices and procedures comply with legislation to prevent unlawful discrimination and that its employees are

fully trained on matters relating to the prevention of unlawful discrimination;

- 19.1.3. the Supplier will provide such information as may reasonably be required by the Group in relation to its compliance with anti-discrimination legislation and will co-operate with any investigation by the Group or by a body empowered to carry out such investigations under the relevant legislation;
- 19.1.4. where any investigation is conducted, or proceedings are brought which arise directly or indirectly out of any act or omission of the Supplier, its agents, employees or sub-contractors and where there is a finding against the Supplier in any such investigation or proceedings, the Supplier shall indemnify the Group in full against any and all costs, charges and expenses (including legal and administrative expenses) incurred by the Group during or in connection with any such investigation or proceedings and further indemnify the Group for any compensation, damages, costs or other award the Group may be ordered or required to pay to a third party; and
- 19.1.5. Without prejudice to its remedies set out above, the Group may terminate the Contract if notice has been given to the Supplier of a substantial or persistent breach of this clause providing that a reasonable period has been given by the Group during which the breach may have been rectified and the Supplier has failed to remedy the breach within the stated period.

20. Corrupt Gifts

- 20.1. The Supplier shall not offer or give, or agree to give, to any employee their associate, family member or dependent or representative of the Group, any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Group, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such other contract. The attention of the Supplier is drawn to the Criminal Offences Created by the Bribery Act 2010. The Supplier will provide restitution to the Group for any losses incurred.

21. Spare Parts

- 21.1. The Supplier shall ensure that all spare and/or replacement parts, components and materials for the Goods shall be available from the Supplier

for 10 years from the date of first use by the Group of the Goods in question, unless the Supplier provides the Group with all drawings, plans, specifications and other technical data as the Group reasonably believes are necessary to enable the Group to manufacture such parts or the Goods.

22. General

- 22.1. Each right or remedy of the Group under the Contract is without prejudice to any other right or remedy of the Group whether under the Contract or not.
- 22.2. If any provision of the Contract is found by any court, tribunal or administrative body or competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable, or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 22.3. Failure or delay by the Group in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 22.4. Any waiver by the Group of any breach of, or any default under, any provision of the Contract by the Supplier will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 22.5. In no circumstances shall the Group be liable, in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever, for any loss of profit or business or for any special, indirect or consequential damage.
- 22.6. The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.
- 22.7. A person who is not a party to the Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. This clause does not affect any right or remedy of any person which exists or is available other than under the Contracts (Rights of Third Parties) Act 1999.

- 22.8. The Chief Executive or designated representative shall review the content of all notices for issue to the public for any financial impact relating to this contract. Delivery may not deviate from script.
- 22.9. No addition, alteration or substitution of these Conditions will bind the Group or form part of the Contract unless and until accepted in writing by the authorised officer for the Group.
- 22.10. The Supplier hereby acknowledges that these Terms and Conditions shall be amended from time to time, and agrees that it is the Supplier's responsibility to keep up to date with such changes. All changes made will come into force immediately, unless otherwise stated to the contrary.
- 22.11. The Supplier acknowledges and agrees to adhere to the NCG Supplier Code of Conduct as amended from time to time. An up to date version of the NCG Supplier Code of Conduct can be found [here](#).