

OFCOM STANDARD TERMS AND CONDITIONS OF CONTRACT FOR SUPPLIES

1. Definitions and Interpretation

(1) In these terms and conditions of contract for supplies ("Conditions"):

"the Contract" means the agreement concluded between Ofcom and the Contractor for the supply of Goods, including the Purchase Order, all specifications, plans and drawings which are relevant to the Contract and these Conditions;

"the Contract Price" means the price exclusive of any Value Added Tax, payable to the Contractor by Ofcom under the Contract for the full and proper performance by the Contractor of the Contract;

"the Contractor" means the person who agrees to supply the Goods and includes any person to whom all or part of the Contractor's obligations are assigned pursuant to Condition 4;

"the Goods" mean the goods to be supplied under the Contract;

"Intellectual Property Rights" means patents, trade marks, service marks, design rights (whether registrable or not), applications for any of those rights, copyright, database rights, trade or business names and other similar rights or obligations whether registrable or not, in any country, including but not limited to, the United Kingdom;

"loss" includes destruction;

"Ofcom" means the Office of Communications established by the Office of Communications Act 2002;

"Ofcom Property" means anything issued or otherwise furnished in connection with the Contract by or on behalf of Ofcom including but not limited to equipment, information, schedules, documents, papers and other materials provided in whatever form; and

"Purchase Order" means the Ofcom purchase order which specifies inter alia the Contract Price, the time and place of delivery and the quantity and a brief description of the Goods or consignments of Goods required by Ofcom.

(2) The interpretation and construction of the Contract shall be subject to the following provisions:

(a) a reference to any statute, enactment, order, regulation or similar instrument shall be construed as a reference to the statute, enactment, order, regulation or

instrument as subsequently amended or re-enacted;

(b) the headings in these Conditions are for ease of reference only and shall not affect the interpretation or construction of the Contract;

(c) references to "person", where the context allows, includes an individual, firm, company, corporation or an unincorporated association.

2. Terms Applicable

(1) These Conditions shall apply to all contracts for the purchase of goods by Ofcom to the exclusion of all other terms and conditions including any terms or conditions which the Contractor may purport to apply under any sales offer, standard terms of sale, acknowledgement of order or similar documentation.

(2) Ofcom will not be liable for any orders for goods or amendments thereto other than those issued or confirmed on the Purchase Order and signed by a representative of Ofcom with authority to enter into contracts on behalf of Ofcom.

3. Service of Notice

Any notice that either party gives under the Contract shall be made by hand-delivered or recorded first class letter or by facsimile (followed by a hard copy sent by first class letter). A notice shall be deemed to be duly given or made in the case of a hand-delivered letter on delivery, in the case of a letter sent by recorded first class mail the next working day after posting, and in the case of facsimile on the day of receipt if transmitted during the normal hours or on the next working day if transmitted after normal business hours.

4. Assignment and Sub-contracting

(1) The Contractor shall not give, bargain, sell, deal, charge, transfer, assign, sub-contract or otherwise dispose of the Contract or any part thereof (or purport to do any of the foregoing) without the previous agreement in writing of Ofcom.

(2) Subject to Condition 4(1) if the Contractor uses a sub-contractor for the purpose of performing the Contract or any part of it, the Contractor shall include in the relevant contract a provision which requires the Contractor to pay for those goods or services within 30 days of the Contractor receiving a correct invoice from the sub-contractor.

(3) The Contractor shall be responsible for the acts and omissions of its sub-contractors as if they were its own.

5. Ofcom Property

(1) All Ofcom Property shall remain the property of Ofcom and shall be provided and used by the Contractor solely for the purpose of performing the obligations under the Contract and for no other purpose whatsoever except with the prior agreement in writing of Ofcom.

(2) All Ofcom Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless he notifies Ofcom to the contrary within 14 days or such other time as is specified in the Contract.

(3) The Contractor undertakes to return any and all Ofcom Property upon the Contract ending (howsoever terminated) or on any earlier request by Ofcom.

(4) The Contractor shall, except as otherwise provided for in the Contract, repair or replace or, at the option of Ofcom, pay compensation for all loss, destruction or damage occurring to any Ofcom Property caused by the acts or omissions of the Contractor, or by its employees, agents or sub-contractors, whether or not arising from their performance of the Contract and wherever occurring.

5. Condition 5(4) shall not apply where the Contractor is able to show that any such loss, destruction or damage was not caused or contributed to by its negligence or default or the neglect or default of its employees, agents, or sub-contractors.

6. Waiver

(1) The failure or delay by either party to exercise any right or remedy under the Contract or these Conditions shall not constitute a waiver of that right or remedy.

(2) No waiver shall be effective unless it is communicated to the other party in writing.

(3) A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.

7. Severability

If any Condition, clause or provision of the Contract not being of a fundamental nature is held to be unlawful, invalid or unenforceable by a court in any proceedings relating to the Contract, the validity or enforceability of the remainder of the Contract shall not be affected.

8. Confidentiality

(1) The Contractor undertakes to treat as confidential all information which may be derived

from or obtained in the course of performing the Contract, or in connection with it, in whatever form and howsoever provided, and to take all necessary precautions to ensure that all such information is strictly treated as confidential by the Contractor, its staff, agents and sub-contractors.

(2) Except with the prior consent in writing of Ofcom, the Contractor shall not:

(a) 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;

(b) make use of the Contract or any information issued or furnished by or on behalf of Ofcom otherwise than for the purposes of the Contract; or

(c) handle or examine or use or remove from Ofcom's premises any Ofcom Property or any other document or information which relates to Ofcom's functions or activities without the prior written consent of Ofcom.

(3) Any samples or patterns or any specifications, plans, drawings, or other documents issued by or on behalf of Ofcom for the purposes of the Contract remain the property of Ofcom and must be returned on completion or earlier termination of the Contract.

9. Amendments and Variations

No amendment or variation to the terms of the Contract shall be valid unless previously agreed in writing between Ofcom and the Contractor.

10. Invoices and Payment

(1) Notwithstanding any other provision of this Contract, Ofcom shall not be liable to pay for Goods or consignments of Goods which it has not ordered or which are not otherwise in accordance with the terms of the Contract.

(2) Invoices may only be submitted by the Contractor after delivery of the Goods.

(3) Invoices shall quote the Ofcom Purchase Order reference number, and set out the Contract Price, the quantity of Goods, the number of consignments of Goods and the date of delivery to Ofcom.

(4) Subject to Condition 10(1), after receiving a correctly submitted invoice Ofcom shall pay the Contract Price to the Contractor and such

payment shall normally be made within 30 days of receipt by Ofcom of the invoice.

11. Accounts

(1) The Contractor shall keep full and proper accounts, records and vouchers relating to any expenditure which the parties agree in writing shall be reimbursed by Ofcom and all payments made by Ofcom in respect of the Goods.

(2) The Contractor shall permit Ofcom by its officers, employees, agents, advisers, independent auditor or other person duly authorised by Ofcom on request and at all reasonable times to examine all accounts, records and vouchers at the offices of the Contractor or at such other places as Ofcom shall direct, and to take copies of such accounts, records and vouchers and the Contractor shall provide Ofcom or its independent auditor with such explanations relating to that expenditure as Ofcom may request.

(3) The Contractor shall ensure that the said accounts, records and vouchers are available for a period of two years after termination or expiry of the Contract.

12. Recovery of Sums Due

(1) Whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor, such sum may be deducted from any amount then due from Ofcom, or which at any time thereafter may become due, to the Contractor under the Contract or any other agreement or arrangement with Ofcom.

(2) Any over-payment by Ofcom to the Contractor whether in respect of the Contract Price or Value Added Tax shall be a sum of money recoverable from the Contractor pursuant to Condition 12(1) above or otherwise.

13. Value Added Tax

(1) Ofcom shall pay to the Contractor, in addition to the Contract Price, a sum equal to any Value Added Tax chargeable on the value of the Goods provided in accordance with the Contract.

(2) The Contractor shall, if so requested by Ofcom, furnish such information as may reasonably be required by Ofcom relating to the amount of Value Added Tax chargeable on the Goods.

14. Packaging

(1) 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.

(2) The Contractor will ensure that all hazardous, toxic, noxious, fragile or similar Goods are properly labelled as such and that this is drawn to the attention of Ofcom, its employees, agents or contractors where appropriate

15. Specifications and Quality Assurance

(1) The Contractor warrants that:

(a) the Goods shall be delivered in accordance with the specifications in the Purchase Order;

(b) the Goods shall be fit for the purpose for which they were ordered taking account of all requirements to install and integrate the Goods with or into Ofcoms existing systems and procedures (where appropriate) and be of satisfactory quality and free from defects;

(c) the quantity and quality of the Goods shall be as described and shall correspond to any samples, patterns, specifications, plans, drawings or other documents, individually or collectively, which may have been given in relation to the Goods; and

(d) any installation or other work carried out in relation to the Goods shall be of the highest standards and otherwise comply with all British and European Union statutory and other legal requirements applicable to such Goods, and the Contractor agrees that it will be fully responsible to make good and repair any Ofcom Property, or fixtures or fittings into or onto which the Goods may be installed.

(2) Except in so far as may otherwise be indicated by a sample, pattern, specification, plan, drawing or other document, the Goods shall strictly adhere to the latest relevant British Standards, or equivalent, where such exist, published before the date of the Contract, or otherwise shall be to the satisfaction of Ofcom.

(3) The Contractor shall, if so requested by Ofcom, furnish details of his quality management system and produce evidence, if appropriate, of certification to BS5750/EN29000/ISO9000 or equivalent.

16. Delivery, Title and Risk

(1) The Goods shall be delivered by the Contractor at such times, at such places and in such manner as is specified in the Purchase Order, or as otherwise advised in writing by Ofcom.

(2) Unless the Contract specifically otherwise provides, time of delivery shall be of the essence and failure to deliver within the specified time shall entitle Ofcom, at its option, and without prejudice to its other rights and remedies, to treat such failure as a fundamental breach of Contract so as to release Ofcom from any obligation to accept the Goods or pay for them, or entitle it to cancel by notice in writing to the Contractor all or part of any order in relation to the Goods.

(3) Title and risk in the Goods shall pass to Ofcom on delivery of the Goods to Ofcom or on payment of the Contract Price whichever is earlier.

(4) Any access to premises and any labour and equipment provided by Ofcom in connection with delivery shall be provided without acceptance by Ofcom of any liability in respect of any actions, claims, demands, costs and expenses incurred by the Contractor or any third parties (including any agent of Ofcom) for any loss or damages to the extent that such loss or damage is not attributable to the negligence or other wrongful act of Ofcom, or any employee or agent thereof.

(5) Where any access to premises owned or occupied by Ofcom is necessary in connection with delivery or installation of the Goods, the Contractor and/or his sub-contractors shall at all times comply with the reasonable requirements of Ofcom's facilities manager.

17. Inspection

(1) Ofcom may inspect or arrange for the inspection of all or any of the Goods in the course of production at the Contractor's premises, or the premises where the Goods are being produced, at any reasonable time.

(2) Without prejudice to Ofcom's right of inspection under Condition 17(1), Ofcom may inspect or arrange for the inspection of all or any of the completed Goods at the Contractor's premises or premises where the Goods have been produced, or after delivery, or as otherwise provided in the Contract.

(3) When Ofcom wishes to exercise its right of inspection under this Condition, the Contractor shall give Ofcom full and free access to the said premises as and when required for that purpose and shall provide at his own expense all such accommodation and facilities in connection with the inspection and all appliances, materials and labour required for inspection purposes as Ofcom may reasonably require.

18. Rejection of the Goods

(1) Ofcom may reject any Goods which on inspection are found not to conform with the requirements of the Contract.

(2) Ofcom may reject the whole of any consignment of the Goods if an inspection shows that:

(a) such proportion or percentage of the Goods in that consignment as the Contract may specify as being appropriate for the purposes of this Condition; or

(b) such samples taken from that consignment by Ofcom,

do not conform with the requirements of the Contract.

(3) When under this Condition Ofcom rejects any Goods or consignment after delivery, the Contractor shall, subject to the provisions of Condition 18(6), at his own expense remove the rejected Goods and shall do so within such period as is provided by the Contract or, if the Contract makes no such provision, within 8 working days from receipt of notification of rejection.

(4) If the Contractor fails to remove the Goods or any of them in accordance with Condition 18(3), Ofcom may dispose of the Goods as it sees fit.

(5) When under this Condition Ofcom rejects any Goods or consignment after delivery, Ofcom may in its sole discretion:

(a) immediately cancel subsequent consignments of similar Goods that were due for delivery under the Contract; or

(b) require the Contractor at his own expense to deliver in the place of the rejected Goods, goods which conform with 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 Ofcom may allow.

(6) If any Goods whether completed or in the course of production are rejected on inspection by Ofcom, the same shall, if Ofcom so requires, be marked in a manner satisfactory to Ofcom to ensure their subsequent identification as rejected Goods.

19. Loss of or Damage to the Goods

(1) The Contractor is responsible for the Goods and any materials, equipment, fittings or things acquired or allocated by it for incorporation into the Goods until delivery has been effected in

accordance with Condition 16 and it shall make good any loss of or damage to the Goods or any such materials, equipment, fittings or things however occasioned which may occur before such delivery.

(2) Condition 19(1) shall apply notwithstanding that the Goods concerned may have been inspected in accordance with the Contract or that the title in the Goods may have passed, in accordance with provisions specifically made in the Contract, from the Contractor to Ofcom or its agent earlier than upon delivery.

(3) Unless the Contract specifically otherwise provides, the Contractor is not responsible for the Goods after delivery save that it shall become responsible in all respects including assuming risk of damage to or loss of the Goods which under Condition 18 Ofcom rejects after delivery, and such responsibility shall take effect upon the Contractor:

- (a) removing the Goods in accordance with Condition 18(3); or
- (b) if it fails so to remove the Goods, on the expiry of the period provided by the Contract or, where no such period is provided, on the expiry of the eighth working day from his receipt of notification of rejection of the Goods.

20. Acceptance of the Goods

Acceptance of the Goods or a consignment of Goods shall take place when Ofcom confirms acceptance of the Goods in accordance with the procedure specified in the Contract, and if none is so specified, Ofcom shall be deemed to have accepted the Goods or a consignment of Goods without prejudice to any remedies, upon the happening of any of the following:

- (a) Ofcom takes the Goods into use;
- (b) Ofcom fails to exercise its right of rejection of the Goods under Condition 18 within any period specified for that purpose in the Contract; or
- (c) where no period for exercising the right of rejection is specified in the Contract where Ofcom fails to exercise its right of rejection within such reasonable time since delivery of the Goods was effected as may be necessary to inspect the Goods in accordance with Condition 18 or in accordance with the Contract.

21. Marking of Goods

If so required by the Contract, the Contractor shall at its own expense mark or permit the representative of Ofcom to mark all approved

materials, Goods or parts thereof with recognised Ofcom marks. In the case of materials, Goods or parts thereof which cannot be so marked, the same shall, if so required by Ofcom, be packed in suitable packages or cases, each of which shall be sealed and shall have the Ofcom mark placed on the seals.

22. Indemnities

(1) The Contractor shall hold harmless and indemnify Ofcom on demand from and against all claims, demands, proceedings, actions, damages, costs (including legal costs), losses, charges, expenses and any other liabilities arising from claims made by Ofcom's staff or agents, or by third parties, in respect of any death or personal injury, or loss or destruction of or damage to property, or any other loss, destruction or damage, including but not limited to financial losses which are caused, whether directly or indirectly, by the Goods or their use following delivery or by the Contractor's, its employee's, agent's or sub-contractor's, breach of contract or breach of duty (whether arising in negligence, tort, statute or otherwise).

(2) The Contractor shall hold harmless and indemnify Ofcom on demand from and against any loss, damage, destruction, injury or expense, whether direct or indirect, (and including but not limited to loss or destruction of or damage to Ofcom's property, which includes data) caused, whether directly or indirectly, by the Goods or their use following delivery or by the Contractor's breach of contract or breach of duty (whether arising in negligence, tort, statute or otherwise).

(3) Nothing in these Conditions nor in any part of the Contract shall impose any liability on any member of the staff of Ofcom or its representatives in their personal capacity.

(4) The Contractor shall indemnify Ofcom against all claims, demands, proceedings, actions, damages, costs (including legal costs), losses, charges, expenses and any other liabilities arising from or incurred by reason of any infringement or alleged infringement of any third party's Intellectual Property Rights resulting from the use or resale of the Goods supplied by the Contractor.

5. Nothing in these Conditions excludes Ofcom's liability for fraudulent misrepresentation or for death or personal injury resulting from its negligence.

23. Termination due to Insolvency or on Change of Control

(1) The Contractor shall notify Ofcom in writing immediately upon the occurrence of any of the following events:

- (a) where the Contractor is an individual, if a petition is presented for his/her bankruptcy, or he/she makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage his/her affairs; or
- (b) where the Contractor is not an individual but is a firm or a number of persons acting together, if any event in Condition 23(1)(a) or (c) occurs in respect of any partner in the firms or any of those persons, or if a petition is presented for the Contractor to be wound up as an unregistered company; or
- (c) where the Contractor is a company, if the company passes a resolution to wind up or the court makes an administration order or the company takes steps to place itself into administration (including the filing of papers at a court of competent jurisdiction) or the court makes a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver or manager is appointed by a creditor or by the court over the whole or any part of its assets or undertaking, or possession is taken of any of its property under the terms of a floating charge;
- (d) the Contractor undergoes a change of control, where "control" has the meaning given in Section 416 of the Income and Corporation Taxes Act 1998.

(2) After receipt of the notice under Condition 23(1) or on earlier discovery by Ofcom of the occurrence of any of the events described in Condition 23(1), Ofcom may, by notice in writing to the Contractor, terminate the Contract with immediate effect without compensation to the Contractor and without any prejudice to any right or action or remedy which may accrue to Ofcom thereafter. Ofcom's right to terminate the Contract under Condition 23(1)(d) will exist until the end of a period of six calendar months starting from receipt of the notice provided by the Contractor pursuant to Condition 23(1), or such other period as is agreed by the parties.

24. Termination for Breach of Contract

(1) If either party commits a material breach of the Contract which is either not capable of remedy, or, if it is capable of remedy, it fails to remedy such breach within 28 days of being notified by the other party in writing to do so, that other party shall be entitled to terminate the Contract with immediate effect by notice in writing to the party that committed the material breach and without prejudice to any other rights or

remedies of either party in respect of the breach concerned or any other breach of the Contract.

(2) Termination of the Contract, howsoever caused, shall be without prejudice to any accrued rights or obligations of either party.

25. Cancellation

Ofcom shall be entitled to terminate the Contract at any time by giving to the Contractor not less than 14 days' notice in writing to that effect.

26. Dispute Resolution

(1) The parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract.

(2) If the parties cannot resolve the dispute pursuant to Condition 26(1), either party may at any time serve written notice on the other stating that a dispute exists and setting out the matters in dispute and the dispute may then, by agreement between the parties, be referred to mediation pursuant to Condition 26(4).

(3) The performance of the Contract shall not cease or be delayed by the reference of a dispute to mediation pursuant to Condition 26(2).

(4) If the parties agree to refer the dispute to mediation:

(a) in order to determine the person who shall mediate the dispute (the "Mediator") the parties shall by agreement choose a neutral adviser or mediator within 30 days after agreeing to refer the dispute to mediation;

(b) the parties shall within 14 days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure;

(c) unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings;

(d) if the parties reach agreement on the resolution of the dispute within 60 days of the Mediator being appointed, or such longer period as may be agreed between the parties, the agreement shall be

reduced to writing and shall be binding on the parties once it is signed by both Ofcom and the Contractor;

- (e) failing agreement within 60 days of the Mediator being appointed, or such longer period as may be agreed between the parties, either of the parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both parties.

(5) If the parties do not agree to refer the dispute to mediation within 30 days of receipt of the notice described in Condition 26(2), or if having agreed to refer the dispute to mediation the parties fail to reach agreement as to who shall mediate the dispute pursuant to Condition 26(4)(a) within 30 days of agreeing to refer the dispute to mediation or if they fail to reach agreement in the structured negotiations within 60 days of the Mediator being appointed or such longer period as may be agreed by the parties, then any dispute or difference between them may be referred to the courts.

27. Conflict of Interest

(1) The Contractor shall ensure that there is no conflict of interest as to be likely to prejudice its independence and objectivity in performing the Contract, and undertakes that upon becoming aware of any such conflict of interest during the performance of the Contract (whether the conflict existed before the award of the Contract or arises during its performance), it shall immediately notify Ofcom in writing of the same, giving particulars of its nature and the circumstances in which it exists or arises and shall furnish such further information as Ofcom may reasonably require.

(2) Where Ofcom is of the opinion that the conflict of interest notified to it under Condition 27(1) is capable of being avoided or removed, Ofcom may require the Contractor to take such steps as will, in its opinion, avoid, or as the case may be, remove the conflict and:

- (a) if the Contractor fails to comply with Ofcom requirements in this respect; or
- (b) if, in the opinion of Ofcom, compliance does not avoid or remove the conflict,

Ofcom may terminate the Contract immediately and recover from the Contractor the amount of any loss resulting from such termination.

(3) Notwithstanding Condition 27(2), where Ofcom is of the opinion that the conflict of interest which existed at the time of the award of the

Contract could have been discovered with the application by the Contractor of due diligence and ought to have been disclosed as required by the tender documents pertaining to the granting of the Contract to the Contractor, Ofcom may terminate the Contract immediately for breach of a fundamental condition of the Contract and, without prejudice to any other rights, recover from the Contractor the amount of any loss resulting from such termination.

28. Special Provisions

In the case of any conflict or inconsistency between these general Conditions and any specific conditions contained within the Contract, the latter shall prevail.

29. Rights of Third Parties

It is not intended that the Contract, either expressly or by implication, confers any benefit on any person who is not a party to the Contract and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply.

30. Freedom of Information Act 2000

Ofcom are obliged to meet their statutory obligations relating to the disclosure of information under the Freedom of Information Act 2000. All information provided to Ofcom under this Contract may need to be disclosed by Ofcom in response to a request for information under that Act. Therefore, nothing in this Contract prevents Ofcom from complying with its statutory obligations under that Act.

31. Law and Jurisdiction

The Contract shall be governed by and construed in accordance with English Law, and shall be subject to the exclusive jurisdiction of the courts of England and Wales.