

NHSPS -Terms and Conditions for the Supply of Goods and Services
1 Interpretation

1.1 In these Order Terms:

"Buyer" means NHS Property Services;

"Charges" means the prices (exclusive of any applicable VAT), payable to the Supplier by the Buyer as set out in the Order Form, for the full and proper performance by the Supplier of its obligations;

"Deliverables" means the goods and/or services described in the Order;

"Order" means the Buyer's order (identified by a purchase order number issued by the Buyer to the Supplier);

"Order Terms" means these terms and conditions for the supply of goods and services and any special terms agreed in writing between the Buyer and the Supplier; and

"Supplier" means the person, firm or company identified in the Order.

2 Basis

2.1 These Order Terms shall form the terms and conditions of contract under which any Deliverables referred to in the Order are provided by the Supplier to the Buyer.

2.2 The Order constitutes an offer by the Buyer to purchase the Deliverables subject to these Order Terms to the exclusion of any terms or conditions submitted by the Supplier, or which are implied by trade, custom, practice or course of dealing.

2.3 The Supplier shall accept these Order Terms by accepting an Order or by delivering/performing the Deliverables, at which time the contract is formed.

2.4 In the event of a conflict between these terms and conditions and any terms agreed in writing between the Buyer and the Supplier and signed by an authorised signatory of both parties, the terms agreed in writing shall take precedence.

3 Quantity and Description

3.1 The Supplier must provide Deliverables:

3.1.1 that comply with the Order;

3.1.2 to a professional standard;

3.1.3 that are services, with reasonable skill and care;

3.1.4 that are goods, to a good quality and fit for the purpose intended with a warranty of at least 90 days against all defects;

3.1.5 using good industry practice;

3.1.6 on the dates agreed; and

3.1.7 that comply with all applicable law.

3.2 Where the Deliverables are goods:

3.2.1 all Deliverables delivered must be new, or as new if recycled, unused and of recent origin;

3.2.2 if legally possible, all manufacturer warranties covering the Deliverables must be assigned to the Buyer on request and for free;

3.2.3 the Supplier transfers ownership of the Deliverables on delivery or payment for those Deliverables, whichever is earlier;

3.2.4 risk in the Deliverables transfers to the Buyer on delivery of the Deliverables, but remains with the Supplier if the Buyer notices damage following delivery and lets the Supplier know within 3 working days of delivery;

3.2.5 the Supplier warrants that it has full and unrestricted ownership of the Deliverables at the time of transfer of ownership;

3.2.6 the Supplier must deliver the Deliverables to the location specified in the Order during the Buyer's working hours;

3.2.7 the Supplier must provide sufficient packaging for the Deliverables to reach the point of delivery safely and undamaged;

3.2.8 all deliveries must have a delivery note attached that specifies the order number, type and quantity of Deliverables;

3.2.9 the Supplier must provide all tools, information and instructions the Buyer needs to make use of the Deliverables;

3.2.10 the Supplier must indemnify the Buyer against the costs of any recall of the Deliverables and give notice of actual or anticipated action about the recall of the Deliverables;

3.2.11 regardless of clause 6.1, the Buyer can cancel any Order (or part Order) of Deliverables which has not been delivered. If the Buyer gives less than 14 days' notice then it will pay the Supplier's reasonable and proven costs already incurred on the cancelled Order as long as the Supplier takes all reasonable steps to minimise these costs and such sum does not exceed the value of the Order cancelled; and

3.2.12 the Supplier must at its own cost repair, replace, refund or substitute (at the Buyer's option and request) any Deliverables that the Buyer rejects because it doesn't conform with these Order Terms and the Order. If the Supplier doesn't do this, it will pay all the Buyer's costs incurred as a result including repair or re-supply by a third party.

3.3 Where the Deliverables are services:

3.3.1 the Supplier must co-operate with the Buyer on all aspects connected with the performance of the Deliverables and ensure that the Supplier's staff comply with any reasonable instructions;

3.3.2 the Supplier must at its own risk and expense provide all personnel and equipment required to deliver the Deliverables;

3.3.3 the Supplier must take all reasonable care to ensure performance does not disrupt the Buyer's operations, employees or other contractors; and

3.3.4 the Buyer is entitled to withhold payment for partially or undelivered Deliverables, but doing so does not stop it from using its other rights under the Order Terms.

4 Price and Payment

4.1 In exchange for the Deliverables, the Supplier must invoice the Buyer for the Charges in the Order.

4.2 All Charges include all costs connected with the supply of the Deliverables.

4.3 The Buyer must pay the Supplier the Charges within 30 days of receipt by the Buyer of a valid, undisputed invoice, in cleared funds to the Buyer's account stated in the Order.

4.4 A Supplier invoice is only valid if it:

4.4.1 includes all appropriate references including the purchase order number and other details reasonably requested by the Buyer; and

4.4.2 includes a detailed breakdown of the Deliverables.

4.5 The Buyer may retain or set-off any payment of any amount owed to it by the Supplier if notice and reasons are provided.

4.6 The Supplier must ensure all subcontractors are paid, in full, within 30 days of receipt of a valid, undisputed invoice.

4.7 The Supplier has no right of set-off, counterclaim, discount or abatement unless they're ordered to do so by a court.

5 Record Keeping and Reporting

5.1 The Supplier must keep and maintain full and accurate records and accounts on everything to do with the Order for seven years following termination of the Order.

5.2 The Supplier must allow the Buyer or any auditor to access their premises to verify all Order accounts and records of everything to do with the Order and provide copies for an audit.

6 Termination

6.1 The Buyer has the right to terminate the Order at any time without reason or liability by giving the Supplier at least 30 days' notice.

6.2 The Buyer may give notice in writing to the Supplier terminating the Order with immediate effect if:

6.2.1 the Supplier commits any material or repeated breach of any of the Order Terms and that breach (if capable of remedy) is not remedied within 14 days of notice being given requiring it to be remedied;

6.2.2 an order is made or a resolution is passed for the winding-up of the Supplier or an administrator is appointed by order of the court or by other means to manage the affairs, business and property of the Supplier or a receiver and/or manager or administrative receiver is validly appointed in respect of all or any of the Supplier's assets or undertaking or circumstances arise which entitle the Court or a creditor to appoint a receiver and/or manager or administrative receiver or which entitle the Court to make a winding-up or bankruptcy order or the Supplier takes or suffers any similar or analogous action in consequence of debt;

6.2.3 there is a change of control of the Supplier which isn't pre-approved by the Buyer in writing;

6.2.4 the Supplier purports to assign, charge or otherwise deal with its rights or obligations under the Order; or

6.2.5 the Supplier or its affiliates embarrass or bring the Buyer into disrepute or diminish public trust in the Buyer.

6.3 Any provision of these Order Terms that expressly or by implication is intended to come into or continue in force on or after termination of the Order shall remain in full force and effect.

6.4 Termination of the Order shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination.

7 Liability

7.1 Each party's total aggregate liability under the Order (whether in tort, contract or otherwise) for each claim or series of connected claims is no more than the greater of 200% of the Order value or £200,000.

7.2 Neither party limits or excludes its liability in respect of:

7.2.1 death or personal injury caused by its negligence or that of its employees, agents or subcontractors;

7.2.2 bribery or fraud or fraudulent misrepresentation by it or its employees; or

7.2.3 any liability that cannot be excluded by law.

7.3 Neither party is liable to the other for any indirect losses or loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).

7.4 The Supplier indemnifies the Buyer against the following:

7.4.1 wilful misconduct of the Supplier, any subcontractors and Supplier staff that impacts the Order;

7.4.2 third party claims that result from the provision of the Deliverables; and

7.4.3 non-payment by the Supplier of any tax or national insurance.

7.5 The Supplier does not limit or exclude its liability for any indemnity given in these Order Terms.

8 Intellectual Property

8.1 Each party keeps ownership of its existing intellectual property rights ("IPRs").

8.2 The Supplier gives the Buyer a non-exclusive, perpetual, royalty-free, irrevocable, transferable worldwide licence to use, change and sub-license the Supplier's existing IPRs to enable it to receive and make use of the Deliverables.

8.3 Any new IPR created by or on behalf of the Supplier under the Order is owned by the Buyer.

8.4 Neither party has the right to use the other party's IPRs, including any use of the other party's names, logos or trademarks, except as provided in this clause 8 or otherwise agreed in writing.

8.5 The Supplier indemnifies the Buyer against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result of any claims by a third party that the Deliverables breach its IPRs. Such liability is unlimited.

9 Force Majeure

9.1 Either party affected by an event outside of its control ("Force Majeure Event") is excused from performing its obligations under the Order while its inability to perform continues, provided that it:

9.1.1 notifies the other party of the Force Majeure Event; and

9.1.2 uses all reasonable measures to reduce the impact of the Force Majeure Event.

9.2 The Buyer can terminate the Order if the provision of the Deliverables is materially affected by a Force Majeure Event which lasts for 90 days continuously.

9.3 In the event of termination under clause 9.2, each party must cover its own losses.

10 Confidentiality

10.1 Each party shall keep secure and confidential all information supplied at any time in connection with the Order.

10.2 Neither party shall disclose, use or exploit such information without the other party's written consent, except:

10.2.1 in accordance with the Order;

10.2.2 as required by the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 or any other law or order of a court;

10.2.3 where the information was given to it by a third party without the obligation of confidentiality;

10.2.4 where the information was in the public domain at the time of the disclosure or has since entered the public domain other than as a result of a breach of this clause 10;

10.2.5 where the information was independently developed without access to the information;

10.2.6 on a confidential basis to its professional advisers on a need-to-know basis; or

10.2.7 to the Serious Fraud Office where it has reasonable grounds to believe that the other party is involved in activity that may be a criminal offence under the Bribery Act 2010.

10.3 This clause 10 shall remain in force notwithstanding completion, cancellation or termination of the Order.

11 Insurance

11.1 The Supplier must, at its own cost, obtain and maintain suitable insurance and any additional insurances required in the Order.

12 Disputes

12.1 Where a dispute connected with an Order or these Order Terms cannot be resolved by good faith negotiations, the Parties can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If mediation does not resolve the Dispute, the Dispute must be resolved using clause 12.2.

12.2 The Supplier agrees that the Buyer has the exclusive right to refer any dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English. If the Buyer does not refer the dispute to arbitration, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to determine the dispute, grant interim remedies or any other provisional or protective relief.

12.3 The Supplier cannot suspend the performance of the Order during any dispute.

13 Compliance

13.1 In complying with its obligations under these Order Terms, the Supplier shall and shall procure that its staff shall, act in accordance with NHS values as set out in the NHS Constitution from time to time.

13.2 The Supplier must comply with all applicable law relating to bribery, corruption and fraud, and must create, maintain and enforce adequate policies and procedures to ensure such compliance.

13.3 The Supplier must follow all applicable equality law in performing their obligations under the Order.

13.4 The Supplier must comply with all applicable law regarding health and safety.

13.5 The Supplier must perform its obligation under the Buyer's current environmental policy when at the Buyer's premises, which the Buyer must provide.

13.6 The Supplier will comply with the Buyer's code of conduct in relation to responsible procurement ([Link](#)).

13.7 The Supplier must not breach any tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any interest or any fines.

13.8 The Supplier must report any actual or suspected breach of the Order Terms to the Buyer as soon as it is aware of such breach.

14 Conflicts of Interest

14.1 The Supplier must take action to ensure that neither the Supplier nor the Supplier's staff are placed in the position of an actual or potential conflict of interest.

14.2 The Supplier must promptly notify the Buyer of any conflict of interest.

14.3 The Buyer can terminate the Order immediately by giving notice in writing to the Supplier or take any steps it thinks are necessary where there is or may be an actual or potential conflict of interest.

15 General

15.1 No third parties may use the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Order Terms unless stated in the Order Terms. This does not affect third party rights and remedies that exist independently.

15.2 If any part of the Order Terms is prohibited by Law or judged by a court to be unlawful, void or unenforceable, it must be removed from the Order Terms as much as required and rendered ineffective as far as possible without affecting the rest of the Order Terms, or whether it's valid or enforceable.

15.3 The Order and Order Terms do not create a partnership, joint venture or employment relationship between the Parties.

15.4 A partial or full waiver or relaxation of the Order Terms is only valid if it is stated to be a waiver in writing to the other party.

15.5 Either party can request a variation to the Order. Such variation is only effective if agreed in writing and signed by both Parties.

15.6 All notices must be in writing and are considered effective on the working day of delivery as long as they're delivered before 5:00pm on a working day. Otherwise the notice is effective on the next working day. An email is effective when sent unless an automated error message is received. Notices must be sent to the relevant address in the Order.

15.7 These Order Terms and any issues arising out of, or connected to them, are governed by English law.