

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES TO CDS CO-OPERATIVES

The Contract shall be constituted by and comprise only the Contract Documents; no terms or conditions put forward by the Supplier (including terms relating to hire, lease or loan) shall form part of the Contract unless signed by both parties. In the event of conflict, the Order, Terms and Purchaser Specification prevail. Any supply made in response to this Order shall be taken as conclusive acceptance of this term and any inconsistent or additional terms accompanying the supply shall be deleted and ignored.

“Contract”	The contract constituted by the Contract Documents
“Contract Documents”	The order, these terms and conditions and any accompanying specifications/appendices
“Purchaser”	CDS Co-operatives
“Supplier”	The recipient of the Order
“Supply”, “Goods”, “Services” and/or “Works”	The goods, services and consultancy services and/or works as described in the Contract Documents (including without limitation on the face of the Order)
“Terms”	These Terms and Conditions
“Order”	The order issued by the Purchaser for the supply which is the subject of the Contract
“Confidential Information”	Any information (however conveyed or stored) which has been designated as confidential by either Party in writing or that ought to be considered as confidential
“Site”	Any premises or site to which the Supplier has been given access for the Supply
“Contract Price”	The price (net of VAT) as set out in the Order payable to the Supplier by the Purchaser for the Supply

1.2 The headings to the Terms shall not affect their interpretation. The singular includes the plural: one gender includes all others.

2. THE SUPPLY OF GOODS, SERVICES OR WORKS - QUALITY STANDARDS

2.1 The Supply shall be to the reasonable satisfaction of the Purchaser and shall without limitation conform with and fulfil in all respects:

- the Contract Documents
- any variation of the Contract agreed in writing by the parties
- the requirements of any relevant UK or EC statute, order, regulation, directives, standard, code of practice or bye-law from time to time in force which is relevant to the Supply
- any recommendation or representation made by the Supplier
- professional standards which might reasonably be expected of the Supplier

3. TERMS AND PAYMENTS

3.1 Upon presentation of a valid invoice, submitted on completion of the Supply unless otherwise agreed by both parties, payment shall be made within 30 days. VAT will be shown separately on the invoice. The Supplier must submit a VAT invoice as defined by HMRC to be paid VAT.

3.2 The Contract Price will be fixed for the duration of the contract unless otherwise agreed in writing by the Purchaser.

4. DELIVERY AND TIME FOR PERFORMANCE

4.1 Time shall be of the essence. Purchaser must be notified and its prior consent obtained to any extension of time.

4.2 Access to the Site by the Supplier shall be by licence, comply with the reasonable requirements of the Purchaser and be at the Supplier's risk.

4.3 If either party is unable to make or accept the Supply, through

- strike, lockout by employees, war or civil commotion
- cessation or serious interruption of land, sea or air communications or power supplies
- exceptionally adverse weather, fire or other unavoidable cause

It shall immediately notify the other party and then, the disabled party may decline to make or accept the Supply. The Purchaser shall notify the Supplier within 30 days of the end of that period whether it requires the Supply to be recommenced, varied or cancelled (without further liability to either party). Where the Supply is recommenced the Contract shall be varied to extend the time for completion or delivery of the Supply by the period of disability.

4.4 At the completion of the Supply the Supplier shall remove from the Site all materials and equipment brought there by the Supplier which do not form part of the Supply and make good any damage caused in the course of such removal or the Supply.

- 4.5 The consultant shall, while this contract is in force devote such of his time, attention and abilities to the assignment as may be necessary for the satisfactory completion of the assignments as the determined by the Purchaser.

5. PROPERTY RISK AND ACCEPTANCE

- 5.1 Without prejudice to any of the rights or remedies of the Purchaser (including those under Clause 7), property and risk in any Goods shall pass to the Purchaser on delivery or when the Purchaser notifies acceptance in writing where the Goods are to be subject to testing, whichever shall be the later.

6. DESPATCH OF GOODS AND DAMAGE IN TRANSIT

- 6.1 The Supplier shall free of charge and as quickly as possible either repair or replace (as the Purchaser shall elect) Goods which fail to arrive or arrive damaged.

7. INSPECTION AND REJECTION

- 7.1 The Supplier shall assist the Purchaser or his authorised representatives (free of charge) to make any inspections or tests the Purchaser may reasonably require of the Supply at any time prior to acceptance.

- 7.2 The Purchaser may suspend the Supply in whole or in part without paying compensation if the Purchaser is reasonably of the opinion that the Supplier is in breach of the Contract.

- 7.3 The Purchaser may reject the Supply in whole or in part before acceptance if it is not completely in accordance with the Contract or becomes so during any Guarantee Period (including without limitation any slight or minor variation) and in such circumstances may, without prejudice to other rights or remedies:

- have the Supply repaired, re-done or replaced by the Supplier with a supply which complies in all respects with the requirements of the Contract
- require a refund from the Supplier
- make a reasonable deduction from the Contract Price determined by the Purchaser
- have the Supply repaired, re-done or replaced by another supplier and charge to the Supplier any cost or expense to the Purchaser which exceeds any unpaid Contract Price.

8 LABELLING AND PACKAGING

- 8.1 The contents shall be clearly marked. All containers of hazardous goods (and all relevant documents) shall bear prominent and adequate warnings. Product Data Sheets required by law must be provided (in a form suitable for photocopying).

- 8.2 All packaging materials will be considered non-returnable.

9 INTELLECTUAL PROPERTY RIGHTS

- 9.1 The Supply shall not infringe the intellectual property rights of any third party.
- 9.2 All rights (including without limitation ownership and copyright) in any specifications, information, instructions, plans, drawings, patterns, models, designs or other material furnished to or made available to the Supplier by the Purchaser or obtained by the Supplier in connection with the Contract shall remain vested solely in the Purchaser and shall be kept confidential.
- 9.3 Where the Supplier has access to information about people it shall comply with all policies relating to personal data issued to the Supplier by the Purchaser and ensure that in making the Supply the provisions of the Data Protection Act 1998 are observed.
- 9.4 This clause 9 shall apply both during the Contract and after its termination.
- 9.5 The intellectual property rights (including without limitation copyright) in any thing arising out of the Supply shall vest in the Purchaser.

10 HEALTH AND SAFETY

- 10.1 Without prejudice to the generality of Clause 2.1 the Supplier in making the Supply shall have full regard to safety of persons who may be affected in any way and shall comply with the requirements of the Health and Safety at Work Act 1974 and its subordinate regulatory framework, and of any other Acts pertaining to the health and safety of persons.
- 10.2 The Supplier shall conduct all necessary tests and examinations prior to delivery of the Supply to ensure that the Supply is designed, constructed and delivered so as to be safe and without risk to the health or safety of persons using them. The Supplier shall give the Purchaser adequate information about the use for which the Supply has been designed and has been tested and about any conditions necessary to ensure that when put to use the Supply will be safe and without risk to health.
- 10.3 Throughout the progress of any Works, the Supplier shall keep the Site in an orderly state and shall provide and maintain at its own cost all lights, guards, fencing and warning signs, and any other systems required for the protection of the Works and the safety and convenience of the public and others.

11. INDEMNITY AND INSURANCE

- 11.1 Without prejudice to any rights or remedies of the Purchaser (including those under Clause 7) the Supplier shall indemnify the Purchaser against all matters of any kind arising in contract, tort, statute or otherwise directly or indirectly out of the wrongful act, default, breach of contract or negligence of the Supplier, its sub-Suppliers, employees or agents in the course of or in connection with the Contract. Without prejudice to the generality of the foregoing this indemnity shall extend to (and not be limited) in respect of death or injury to persons, damage to property, prevention of corruption, the infringement of intellectual property rights, health and safety, race relations, data protection and Ombudsman investigations.
- 11.2 The Supplier shall effect, with a reputable company, public and employer's liability and other insurances necessary to cover the risks contemplated by the Contract and shall at the request of the Purchaser produce the relevant policy or policies together with receipts or other evidence of payment of the latest premium due

hereunder. Public liability cover of at least £10 million shall be obtained, unless agreed otherwise with the Purchaser. Where the Supply is a supply of consultancy services the Supplier shall maintain professional indemnity insurance during the Contract period and for 6 years afterwards to cover its liability to the Purchaser under the Contract.

- 11.3 Subject to Clause 11.1, the liability of either party howsoever arising under this Contract shall not exceed £100,000 in any one claim and shall exclude indirect loss.

12. RACIAL DISCRIMINATION, OMBUDSMAN INVESTIGATIONS AND HUMAN RIGHTS

- 12.1 The Supplier shall not unlawfully discriminate in the provision of services to the public or in employment or contravene the Human Rights Act 1998 or the Equalities Act 2010. The Supplier shall to the extent relevant to delivery of the Supply comply with the Purchaser's equal opportunities policies, which will be supplied on request. The Supplier shall take all reasonable steps to secure the observance of these provisions by all servants, employees or agents of the Supplier and all sub-Suppliers employed in the execution of the Contract.

13. FREEDOM OF INFORMATION

- 13.1 The Supplier acknowledges that the Purchaser may have obligations relating to the disclosure of information pursuant to the Freedom of information Act 2000.
- 13.2 The Supplier shall use its best endeavours to assist the Purchaser in discharging its obligations under the Freedom of Information Act 2000 arising from any request for information which the Purchaser receives in connection with this Contract, the Supply, Services or Works.

14. PREVENTION OF CORRUPTION

- 14.1 The Purchaser may terminate the Contract and recover all its loss if the Supplier, its employees or anyone acting on the Supplier's behalf do any of the following things:
- offer, give or agree to give to anyone any inducement or reward in respect of this or any other Purchaser contract (even if the Supplier does not know what has been done); or
 - commit an offence under the Prevention of Corruption Act 1889 to 1916; or
 - commit any fraud in connection with this or any other Purchaser contract whether alone or in conjunction with Purchaser members or employees; or collude with other companies and/or organisations to distort the prices and terms offered to the Purchaser.

15. TERMINATION

- 15.1 The Contract shall take effect on the date of acceptance of the order and shall expire automatically on any date agreed in the Order, unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated.

15.2 The Purchaser may also by notice in writing terminate the Contract in whole or in part (and enter upon and expel the Supplier from the Site) if any of the events specified in Clause 15.3 occur. No period of notice shall be required but the notice shall state the date on which it is to take effect.

15.3 The events referred to in Clause 15.2 are:

- the Supplier has failed to make the Supply within the time specified in the Contract
- the Supplier has breached the Contract in a way which the Purchaser reasonably regards as irremediable, which may include, without limitation, repeated and/or persistent remediable breaches of the Contract
- the Purchaser has given the Supplier at least one month's notice to remedy a breach of Contract which can be remedied and the Supplier has failed to do so
- the Supplier has without reasonable cause failed to proceed diligently with or wholly suspends performance of any Services or Works
- the Supplier shall have a receiver appointed over all or substantial part of his or its assets or (if an individual) be declared bankrupt or (if a company) shall go into liquidation or have an administrator appointed to manage its affairs.

15.4 In the event of termination of the Contract or rejection under Clause 7, the Purchaser may engage another Supplier to make the Supply and the Supplier shall be liable to pay the Purchaser as a debt any extra cost that the Purchaser incurs in so doing in excess of any unpaid Contract Price.

15.5 Either party shall have the right to terminate the Contract at any time by giving [3] Months' written notice to the other party.

16. **ASSIGNMENT AND SUB-CONTRACTING, THIRD PARTIES**

16.1 The Supplier shall not without the written consent of the Purchaser assign, sub-contract or dispose of the benefit or burden of the whole or any part of the Contract. No sub-contracting by the Supplier shall in any way relieve the Supplier of any of its responsibilities under the Contract.

16.2 The Contract shall not confer any benefit on any third party.

17 **NON SOLICITATION**

17.1 The Supplier agrees that for a period of six calendar months following the termination of this contract not to hire, contract or take away or cause to be hired, contracted or taken away any employee or independent contractor of the Purchaser.

18 **NOTICES**

18.1 Any notice about the Contract shall be by letter (sent by hand, first class post, recorded or special delivery or by facsimile transmission or electronic mail (confirmed in either case by letter)). Such letter shall be addressed as set out in clause 18.2. Provided a notice is not returned undelivered it shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would be first be received by the addressee in normal business hours.

18.2 The address of each party shall be as set out in the Contract or as sent to the other by notice.

19. DETERMINATION

19.1 All issues arising out of this Contract shall be determined by reference to an independent and neutral expert acting as expert but not as arbitrator.

19.2 Any expert shall be appointed by mutual agreement between the Purchaser and the Supplier.

20. CONFIRMATION

20.1 The Supplier confirms that it has read, understood and agreed the Terms

21. WAIVER

21.1 No delay or omission by the Purchaser in exercising any of its rights or remedies under these terms and conditions or under any other applicable and appropriate law on any occasion shall be deemed a waiver of Contract.

22. CONFIDENTIALITY

22.1 Each Party:

- shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
- shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Contract or except where disclosure is otherwise expressly permitted by the provisions of this Contract.

22.2 In the event that the Supplier fails to comply with this Clause 22, the Purchaser reserves the right to terminate the Contract by notice in writing with immediate effect.

22.3 The provisions in this Clause 22 are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

23. GOVERNING LAW

23.1 These Terms shall be governed by and construed in accordance with English law and the Supplier hereby irrevocably submits to the jurisdiction of the English courts.