A contract between

and

for

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Conditions of Contract (available separately)

Notes about this contract are printed in boxes like this one. They are not part of the contract.

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Based on the
NEC Professional Services Contract 2nd Edition June 1998, and
NEC Engineering and Construction Short Contract, 1st Edition July 1999
PART C1: AGREEMENTS AND CONTRACT DATA

Form of Offer and Acceptance

The Purchaser, identified in the acceptance signature block, has solicited offers to enter into a contract for the procurement of:

……………………………………………….

The tenderer, identified in the offer signature block, has examined the documents listed in the tender data and addenda thereto as listed in the tender schedules, and by submitting this offer has accepted the conditions of tender. (Delete paragraph if not required)

By the representative of the tenderer, deemed to be duly authorized, signing this part of this form of offer and acceptance, the tenderer offers to perform all of the obligations and liabilities of the Supplier under the contract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the conditions of contract identified in the Contract Data.

THE OFFERED TOTAL OF THE PRICES INCLUSIVE OF VALUE ADDED TAX IS

……………………………………………….

……………………………………………..……………………..Rand (in words); R

……………………………………………..……………………..Rand (in figures)

Enter an amount above only if the total of the Prices column in the Price List includes all the work included in the offer.

This offer may be accepted by the Purchaser by signing the acceptance part of this form of offer and acceptance and returning one copy of this document to the tenderer before the end of the period of validity stated in the tender data, whereupon the tenderer becomes the party named as the Supplier in the conditions of contract identified in the Contract Data.

Signature(s)

Name(s)

Capacity

for the tenderer

(Name and address of organization)
Acceptance

By signing this part of this form of offer and acceptance, the Purchaser identified below accepts the tenderer’s offer. In consideration thereof, the employer shall pay the Supplier the amount due in accordance with the conditions of contract identified in the contract data. Acceptance of the tenderer’s offer shall form an agreement between the Purchaser and the tenderer upon the terms and conditions contained in this agreement and in the contract that is the subject of this agreement.

The terms of the contract, are contained in:

Part C1 Agreements and contract data, (which includes this agreement)
Part C2 Pricing data
Part C3 Scope of work.

and drawings and documents or parts thereof, which may be incorporated by reference into Parts C1 to C3 above.

Deviations from and amendments to the documents listed in the tender data and any addenda thereto as listed in the tender schedules as well as any changes to the terms of the offer agreed by the tenderer and the employer during this process of offer and acceptance, are contained in the schedule of deviations attached to and forming part of this agreement. No amendments to or deviations from said documents are valid unless contained in this schedule.

The tenderer shall within two weeks after receiving a completed copy of this agreement, including the schedule of deviations (if any), contact the Purchaser’s agent (whose details are given in the contract data) to arrange the delivery of any bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the conditions of contract identified in the contract data. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.

Notwithstanding anything contained herein, this agreement comes into effect on the date when the tenderer receives one fully completed original copy of this document, including the schedule of deviations (if any). Unless the tenderer (now Supplier) within five working days of the date of such receipt notifies the Purchaser in writing of any reason why he cannot accept the contents of this agreement, this agreement shall constitute a binding contract between the parties.¹

Signature(s)
Name(s) ___________________________ ___________________________
Capacity ___________________________ ___________________________
for the Purchaser
__________________________ (Name and address of organization)
Name and signature of witness ___________________________ Date ____________

¹ As an alternative, the following wording may be used:
Notwithstanding anything contained herein, this agreement comes into effect two working days after the submission by the Purchaser of one fully completed original copy of this document including the schedule of deviations (if any), to a courier-to-counter delivery / counter-to-counter delivery / door-to-counter delivery / door-to-door delivery / courier service (delete that which is not applicable), provided that the employer notifies the tenderer of the tracking number within 24 hours of such submission. Unless the tenderer (now Supplier) within seven working days of the date of such submission notifies the Purchaser in writing of any reason why he cannot accept the contents of this agreement, this agreement shall constitute a binding contract between the parties.
Schedule of Deviations

Notes:

1. The extent of deviations from the tender documents issued by the Purchaser before the tender closing date is limited to those permitted in terms of the conditions of tender.
2. A tenderer’s covering letter shall not be included in the final contract document. Should any matter in such letter, which constitutes a deviation as aforesaid, become the subject of agreements reached during the process of offer and acceptance, the outcome of such agreement shall be recorded here.
3. Any other matter arising from the process of offer and acceptance either as a confirmation, clarification or change to the tender documents and which it is agreed by the Parties becomes an obligation of the contract shall also be recorded here.
4. Any change or addition to the tender documents arising from the above agreements and recorded here, shall also be incorporated into the final draft of the Contract.

1. Subject ____________________________________________________________

Details ___________________________________________________________________

2. Subject ____________________________________________________________

Details ___________________________________________________________________

3. Subject ____________________________________________________________

Details ___________________________________________________________________

4. Subject ____________________________________________________________

Details ___________________________________________________________________

By the duly authorised representatives signing this schedule of deviations, the Purchaser and the tenderer agree to and accept the foregoing schedule of deviations as the only deviations from and amendments to the documents listed in the tender data and addenda thereto as listed in the tender schedules, as well as any confirmation, clarification or changes to the terms of the offer agreed by the tenderer and the Purchaser during this process of offer and acceptance.

It is expressly agreed that no other matter whether in writing, oral communication or implied during the period between the issue of the tender documents and the receipt by the tenderer of a completed signed copy of this Agreement shall have any meaning or effect in the contract between the parties arising from this agreement.
Contract Data

Part one - Data provided by the Purchaser

Statements given in all contracts

1 General

- The conditions of contract are the core clauses and the clauses for main option ____________, and secondary options ____________ of The CIDB Supply Contract, 2nd edition September 2005 attached to this Contract Data 2.

- The goods are __________________________________________________________

- The Purchaser is
  Name __________________________________________________________
  Address __________________________________________________________

- The Adjudicator is
  Name __________________________________________________________
  Address __________________________________________________________
  Tel No. ___________________ Fax No. ___________________
  E mail __________________________________________

- The Goods Information is in the document called “Scope of Work” and in the documents and drawings referred to by it.

- The Terms of Delivery are:
  Term abbreviation: __________________ Location: __________________

NOTE (delete this note and its box once complied with) The Terms of Delivery will be selected from the latest version of INCOTERMS published by the International Chamber of Commerce in Paris. This determines each Party’s costs, risks and insurance requirements incidental to the delivery from Supplier to Purchaser. There are four groupings of Incoterms (1990), thus:

<table>
<thead>
<tr>
<th>Group</th>
<th>Category</th>
<th>Term abbreviations</th>
</tr>
</thead>
<tbody>
<tr>
<td>E</td>
<td>departure</td>
<td>EXW</td>
</tr>
<tr>
<td>F</td>
<td>main carriage unpaid</td>
<td>FCA, FAS, FOB</td>
</tr>
<tr>
<td>C</td>
<td>main carriage paid</td>
<td>CFR, CIF, CPT, CIP</td>
</tr>
<tr>
<td>D</td>
<td>arrival</td>
<td>DAF, DES, DEQ, DDU, DDP</td>
</tr>
</tbody>
</table>

- The language of this contract is English.

- The law of the contract is the law of the Republic of South Africa subject to the jurisdiction of the courts of the Republic of South Africa.

- The period for reply to a communication is ______________________________

2 Or available from (name of CIDB office and contact person, tel no etc.) _______________________
2 The Parties main responsibilities

- The Supplier provides the following additional documentation at the time of delivery:

  1 [______________________________]
  2 [______________________________]

3 Time

- The starting date is _________________________

  NOTE: This date should be the later of the Contract Date, or the date of signing of the Form of Agreement, or the date of opening the Letter of Credit, or the date of confirmation of the Letter of Credit, as appropriate.

- The delivery date is stated in data for the selected main option

4 Testing and Defects

- The warranty period is ____________ weeks after Delivery.
- The defect correction period is ________ weeks.

5 Payment

- The method and conditions of payment are:

  [______________________________]

NOTES: (delete these notes and the box once complied with)

For foreign supply, one of the following could be used:

- Open account
- Bank collections
- Letters of Credit

(Users should seek appropriate guidance before deciding which method to use and check the position relevant to exchange control regulations. Extensive details required for each method could also be given here or cross referenced to a separate Appendix.)

For local supply, the following examples are given:

- Electronic payment in full to Supplier's nominated South African bank account within 30 days of receipt of an acceptable Tax Invoice, or
- Electronic payment in full less 2.5% early settlement discount if paid to Supplier's nominated South African bank account within 7 days of receipt of an acceptable Tax Invoice.

(Note that the second statement implies that, if payment is not received by the Supplier within the stated 7 days, the Supplier is due the amount in full and would be entitled to invoice for the early settlement discount as well as for interest on late payment at the rate stated below.)

- The interest on late payment is ____________ % per complete week of delay.

  Enter an interest rate only if a rate of 0.5% per complete week of delay is less than the current commercial interest rate.

- The currency of this contract is ____________________________
6 Compensation events

If there are additional compensation events
• These are additional compensation events:
  1 ______________________________________________________________
  2 ______________________________________________________________

8 Liabilities indemnities and insurance

• The Supplier is not liable to the Purchaser for loss of or damage to the Purchaser's property for any amount in excess of: ___________________

• The Supplier's liability to the Purchaser arising after the end of the warranty period and after low performance and delay damages due have been paid (subject to the exceptions) is limited to: _____________________________

• The period from the end of the warranty period after which the Supplier has no further liability to the Purchaser is___________________________

• The amount of cover for the replacement of Materials provided by the Purchaser is___________________________

9 Termination and disputes

• The tribunal is _________________________________________________

If the tribunal is arbitration
• The arbitration procedure is _______________________________________

Statements for selected option clauses

NOTE (delete this note and its box once complied with) For the Optional statements which follow, first delete those which are not to be used, then delete the “If ….” heading for those which are to be used.

Option A:
• If the Terms of Delivery require delivery to the final destination, the final destination is___________________________
  The delivery date is:
NOTE: The delivery date may be specified for a single delivery / shipment, or for several partial deliveries / shipments, for a specific date, or for a range of acceptable delivery periods.

Option G:
- If the Terms of Delivery require delivery to the final destination, the final destination is stated on each Batch Order.
- The delivery date is stated in each Batch Order
- The end date is ________________________________

Option X1
- The amount of the performance bond is ________________________________ (in words) ( ___________________________________________________ )

Option X3
- The Purchaser pays for the items listed below in the currencies and at the Bank stated (The following schedule may need to be expanded and provided as an Appendix in cases where complex currency arrangements apply)

<table>
<thead>
<tr>
<th>Items (from Price List)</th>
<th>Currency</th>
<th>Bank</th>
<th>Maximum payment</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tbody>
</table>

- The exchange rates are those published in ________________ on ___________ (date).

Option X5
- The proportions used to calculate the Price Adjustment Factor are

<table>
<thead>
<tr>
<th>Proportion</th>
<th>linked to the index for</th>
<th>prepared by</th>
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<td>0.</td>
<td>non - adjustable</td>
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<td>1. 00</td>
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</tbody>
</table>

Option X7
- The base date for indices is ________________________________
- The designed working life is ____________ years from the end of the warranty period

Option X8
- Delay damages are ______________ per day

Option X9
- The amounts for low performance damages are

<table>
<thead>
<tr>
<th>Amount</th>
<th>Performance level</th>
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<tbody>
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</tbody>
</table>

Option X11
- The Purchaser's Representative is
Name
________________________________________________________

Address
________________________________________________________

Tel No. ___________ Fax No. ___________ E mail_____________

- The authority of the Purchaser's Representative is _______________________

Option X12
- The Supplier is to submit a first programme for acceptance within __________ weeks of the Contract Date.
- The Supplier submits revised programmes at intervals no longer than _______ weeks.

Option X13
- The quantity discount and quantity ranges are:

<table>
<thead>
<tr>
<th>Quantity range (units)</th>
<th>Supplier's quantity discount</th>
</tr>
</thead>
<tbody>
<tr>
<td>less than zero</td>
<td></td>
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<tr>
<td>from to</td>
<td>%</td>
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<tr>
<td>from to</td>
<td>%</td>
</tr>
<tr>
<td>greater than</td>
<td>%</td>
</tr>
</tbody>
</table>

Option Z
- The additional conditions of contract are:

Z1 _______________________________________
Contract Data

Part two - Data provided by the Supplier

Statements given in all contracts

1 General

• The Supplier is

  Name

  Address

  a company / close corporation / partnership duly incorporated in accordance with the laws of the Republic of ______________________ (delete complete as applicable)

• The key people are

  (1) Name  _________________________________________________
      Job   _________________________________________________
      Responsibilities __________________________________________
      Qualifications __________________________________________
      Experience  ______________________________________________

  (2) Name  _________________________________________________
      Job   _________________________________________________
      Responsibilities __________________________________________
      Qualifications __________________________________________
      Experience  ______________________________________________

  (add further names as required)

6 Compensation events

• If a compensation event affects the goods and ancillary services provided by the Supplier, the percentage for overheads and profit added to the Supplier's payments

  • for people is: ________________, and
  • for Materials, Equipment and work done by Subcontractors is: __________

If the Supplier is to provide Goods Information

• The Supplier’s Goods Information is in __________________________

NOTE (delete this note and its box once complied with)

For the optional statements which follow, delete those which are not to be used.
Option A

• The Price List is in ______________________________

• The tendered total of the Prices is ______________________ (excluding VAT) (in words) ______________________________

If the Supplier is to decide the delivery date for the whole of the goods

• The delivery date for the whole of the goods is_____________

Option G

• The Price List is in ______________________________

Option X12

If a programme is to be identified in the Contract Data

• The programme identified in the Contract Data is ______________________
### PART C2: PRICING DATA

**Price List -- Type 1**

For *goods* offered from local suppliers and / or with inclusive prices

**Pricing instructions**

This price list has columns for quantity, rate and price. Entries in these columns are made as follows:

If the *Supplier* is to be paid an amount for the *goods* (and services), which is a fixed price for an item or a fixed price for each of a series of items, the tendering supplier enters the amount in the price column only, the other two columns being left blank.

If the *Supplier* is to be paid an amount for the *goods* (and services) which is the unit rate for each item multiplied by the quantity of the item supplied, (i.e. a 'Bill of Quantities' arrangement) - the tendering supplier enters the rate which is then multiplied by the quantity (which has been entered either by the *Supplier* or by the *Purchaser*) to produce the Price which is also entered.

If the *Supplier* is to be paid an amount for an item of the *goods* (or services) which is the rate multiplied by the quantity supplied - whatever that quantity turns out to be (i.e. a 'schedule of rates' arrangement) - the tendering supplier enters the rate only, the other two columns being left blank. The tendering supplier’s offer cannot include a total of the prices which covers all the items which the *Supplier* has to supply if any of the supply is dealt with using items with a rate only. Rate only entries must not be made for work covered by other items.

<table>
<thead>
<tr>
<th>Item</th>
<th>Description of the <em>goods</em> (and services)</th>
<th>Quantity</th>
<th>Rate</th>
<th>Price</th>
</tr>
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<tr>
<td><strong>Total (if applicable)</strong></td>
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</table>

Signature of tenderer: _____________________________________________________

Note: In case of discrepancy between unit rate and total, the unit rate shall prevail.
Price List -- Type 2

For goods offered from abroad

Pricing instructions

If the Supplier is to be paid an amount for the goods and services which is a fixed price for an item or a fixed price for each of a series of items, the tendering supplier enters the amount in the price column (Col 8) only, the other columns being left blank. This fixed price will be relative to the Terms of Delivery code (FOB, CIF, DDP etc.) stated in the Contract Data.

If the Supplier is to be paid an amount for the goods and services which is the unit rate for each item multiplied by the quantity of the item supplied, (i.e. a ‘Bill of Quantities’ arrangement) - the tendering supplier enters the rate which is then multiplied by the quantity (which has been entered either by the Supplier or by the Purchaser) to produce the Price which is also entered in column 8. If the goods are supplied FOB (port) enter the rate in column 4 only. If DDP applies enter rates in columns 4, 5, 6 and 7 and calculate the Price by multiplying the rate in column 7 by the quantity.

If the Supplier is to be paid an amount for an item of the goods and services which is the rate multiplied by the quantity supplied - whatever that quantity turns out to be (i.e. a ‘schedule of rates’ arrangement) - the tendering supplier enters the relevant rates only, the “quantity” and “Price” columns being left blank. The tendering supplier’s offer cannot include a total of the prices which covers all the items which the Supplier has to supply if any of the supply is dealt with using items with a rate only. Rate only entries must not be made for work covered by other items.

Price List

<table>
<thead>
<tr>
<th>Item</th>
<th>Description of the goods (&amp; services if applicable)</th>
<th>Quantity</th>
<th>Unit rate FOB or FCA port or place of loading</th>
<th>Unit rate CIF port of entry or CIP named place</th>
<th>Cost of importation</th>
<th>Unit rate delivered to final destination</th>
<th>Price of the goods / services</th>
</tr>
</thead>
</table>

Total (if applicable)

Signature of tenderer: _____________________________________________________

Note: In case of discrepancy between unit rate and total, the unit rate shall prevail.

---

3 Specify port or place.
4 Currencies to be used in accordance with Conditions of Tender.
5 Specify port of entry (CIF) or specify border point or place of destination (CIP).
6 This would include wharfage, landing charges, customs duties and import surcharge.
# Pro forma Batch Order

For use with Option G only

<table>
<thead>
<tr>
<th>Batch Order No.</th>
<th>Contract No.</th>
</tr>
</thead>
</table>

To the Supplier

<table>
<thead>
<tr>
<th>Tel</th>
<th>Fax</th>
<th>E mail:</th>
</tr>
</thead>
</table>

Please supply the following Batch in accordance with the above referenced contract which includes the Data stated in this Batch Order

<table>
<thead>
<tr>
<th>Goods &amp; services selected from the Price List for this Batch Item</th>
<th>Description</th>
<th>Unit</th>
<th>Qty</th>
<th>Rate</th>
<th>Price</th>
</tr>
</thead>
<tbody>
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</table>

Total for this Batch Order

<table>
<thead>
<tr>
<th>The final destination is</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>The delivery date is</th>
</tr>
</thead>
</table>

Amplify the Goods Information, if necessary, regarding anything to be provided by either Party to the other, and any particular plans or interfaces for this Batch.

<table>
<thead>
<tr>
<th>The Purchaser is represented for this Batch Order by</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address (if different to that given above)</td>
</tr>
<tr>
<td>Tel</td>
</tr>
<tr>
<td>-----</td>
</tr>
</tbody>
</table>

Accepted by the Supplier (Print name)

<table>
<thead>
<tr>
<th>Supplier</th>
<th>Signed:</th>
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Date

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PART C3: SCOPE OF WORK

PURCHASER’S GOODS INFORMATION

1 DESCRIPTION OF THE GOODS AND SERVICES

The Goods Information should be a complete and precise statement of the Purchaser’s requirements. If it is incomplete or imprecise there is a risk that the Supplier will interpret it differently to the Purchaser’s intention. Information provided by the Supplier should be listed in the Goods Information only if the Purchaser is satisfied that it is required, it is part of a complete statement of the Purchaser’s requirements and is consistent with the other parts of the Goods Information.

General description of the goods

1 The goods are

(Repeat the description given in Contract Data)

2 MANAGEMENT AND START UP

The Supplier shall:

1

3 ENGINEERING, AND THE SUPPLIER’S DESIGN

3.1 Introduction and the Purchaser’s design

Design services & activity matrix

1 The design of the goods is generally being undertaken as follows:

Design stage: Concept, feasibility and overall process

Undertaken by:

4 PACKING, TRANSPORT AND DELIVERY / OFFLOADING

4.1 Packing

The Supplier shall

Packing and marking

1
5 INCIDENTAL SERVICES

NOTE: Typically the services would be provided by the Supplier ancillary to sale of the goods. They could include installation, commissioning, provision of technical assistance, training and software implementation, transportation and insurance

The Supplier shall:

Liaison with local authorities

6 SPECIFICATIONS AND DRAWINGS

6.1 Specifications

Particular specifications provided by the Purchaser

List of standardised specifications

Variations to standardised specifications

6.2 Drawings

List the drawings that apply to this contract.

<table>
<thead>
<tr>
<th>Drawing number</th>
<th>Revision</th>
<th>Title</th>
</tr>
</thead>
<tbody>
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</tbody>
</table>
The strategy for choosing the form of contract starts with a decision between two main options, one of which must be chosen.

Options B, C, D, E and F used in other NEC documents are not used in this CIDB Supply Contract.

The following secondary option clauses should then be considered. It may not be necessary to use any of them.

Options X1 to X13 are not used in the CIDB Supply Contract.

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CORE CLAUSES

1 General

Actions

10
10.1 The Purchaser and the Supplier shall act as stated in this contract and in a spirit of mutual trust and co-operation.

Identified and defined terms

11
11.1 In the conditions of contract, terms identified in the Contract Data are in italics, and defined terms have capital initials.

11.2 (1) The Parties are the Purchaser and the Supplier.

(2) Others are people or organisations who are not the Purchaser, the Adjudicator, the Supplier or any employee, subcontractor or supplier of the Supplier.

(3) The Contract Date is the date when this contract came into existence as determined in accordance with the law of the contract.

(4) To Provide the Goods means to do the work necessary to provide the goods in accordance with this contract including all incidental work, services and actions which this contract requires.

(5) Goods Information is information which specifies and describes the goods and services ancillary to the supply of the goods, or states any constraints on how the Supplier Provides the Goods and is either

- in the documents which the Contract Data states it is in, or
- in an instruction given in accordance with this contract.

(6) The Terms of Delivery are the trade terms stated in the Contract Data selected from the edition applicable at the Contract Date of INCOTERMS published by the International Chamber of Commerce, Paris.

(7) The Delivery Date is the delivery date stated in the Delivery Schedule unless later changed in accordance with this contract.

(8) Materials are items to be included in the goods.

(9) Equipment is items provided by the Supplier, used by the Supplier to Provide the Goods and not included in the goods.

(10) A Defect is

- a part of the goods or services ancillary to the supply of the goods which is not in accordance with the Goods Information, or
- a part of the goods designed by the Supplier which is not in accordance with the applicable law, or the Supplier’s design which has been accepted by the Purchaser.
Interpretation and the law

12.1 When a term from INCOTERMS is used in this contract, the rules and definitions applicable to that term in INCOTERMS are deemed incorporated into this contract.

12.2 This contract is governed by the law of the contract.

Communications

13.1 Each communication which this contract requires has effect when it is received in a form that can be read, copied and recorded at the last address notified by the recipient for receiving communications. Writing by the Purchaser and the Supplier is in the language of this contract.

13.2 If this contract requires the Purchaser or the Supplier to reply to a communication, unless otherwise stated in this contract, the responder replies within the period for reply.

13.3 The Purchaser replies to a communication submitted or resubmitted by the Supplier to the Purchaser for acceptance. If the reply is not acceptance, the Purchaser states reasons and the Supplier resubmits the communication within the period for reply taking account of these reasons. A reason for withholding acceptance is that more information is needed in order to assess the Supplier's submission fully.

The Purchaser's authority and delegation

14.1 The Purchaser may give an instruction to the Supplier which changes the Goods Information, the Terms of Delivery or the final destination.

14.2 The Purchaser's acceptance of a communication from the Supplier or of the Supplier's work or the goods does not change the Supplier's responsibility to Provide the Goods or the Supplier's liability for the Supplier's design.

14.3 The Purchaser after notifying the Supplier, may delegate any of the Purchaser's actions and may cancel any delegation. A reference to an action of the Purchaser in this contract includes an action by the Purchaser's delegate.

Early warning

15.1 The Supplier and the Purchaser give an early warning by notifying the other as soon as either becomes aware of any matter which could

- increase the total of the Prices,
- delay delivery, or
- impair the performance of the goods in use.

The Supplier and the Purchaser co-operate in making and considering proposals for how the effect of each matter which has been notified as an early warning can be avoided or reduced.

15.2 Either the Purchaser or the Supplier may instruct the other to attend an early warning meeting. Each may instruct other people to attend if the other agrees.

15.3 At an early warning meeting those who attend co-operate in
• making and considering proposals for how the effect of each matter which has been notified as an early warning can be avoided or reduced,
• seeking solutions that will bring advantage to all those who will be affected, and
• deciding upon actions which they will take and who, in accordance with this contract, will take them.

15.4 The Purchaser records the proposals considered and decisions taken at an early warning meeting and gives a copy of the record to the Supplier.

Ambiguities and Inconsistencies

16.1 The Purchaser or the Supplier notifies the other as soon as either becomes aware of an ambiguity or inconsistency in or between the documents which are part of this contract. The Purchaser gives an instruction resolving the ambiguity or inconsistency.

Health and safety

17.1 The Supplier acts in accordance with the health and safety requirements stated in the Goods Information.

Illegal and impossible requirements

18.1 The Supplier notifies the Purchaser as soon as the Supplier becomes aware that the Goods Information requires the Supplier to do anything which is illegal or impossible. If the Purchaser agrees that it is illegal or impossible, the Purchaser gives an instruction to change the Goods Information appropriately.

2 The Parties' main responsibilities

The Purchaser's obligations

20.1 The Purchaser provides information, services and things that this contract requires the Purchaser to provide and provides them as stated in this contract.

20.2 The Purchaser takes over the goods from the Supplier in accordance with the Terms of Delivery.

The Supplier's obligations

21.1 The Supplier

• Provides the Goods in accordance with the Goods Information,

• does not manufacture goods which the Supplier has designed specifically for this contract until the Purchaser has accepted that the design complies with the Goods Information,

• warrants that the goods are fit for the purpose stated in the Goods Information or, if not so stated, fit for the purpose to which goods similar to the goods are used in the final destination and other locations stated in the Goods Information,
warrants that the goods and Materials are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless stated otherwise in the Goods Information, and

warrants that the goods and Materials conform to the authoritative standard for them applicable at the Contract Date and appropriate to the goods’ and Materials’ country of origin, if an applicable standard for the goods or Materials is not stated in the Goods Information.

21.2 The Supplier transports, insures, and passes risk of loss and damage to the goods to the Purchaser in accordance with the Terms of Delivery. The cost of the Supplier’s obligations for transport, insurance and delivery is included in the Prices.

21.3 The Supplier provides the documentation listed in the Contract Data at the time of delivery.

Packing

22

22.1 The Supplier packs the goods in a manner that is designed to prevent damage or deterioration during transit to the final destination.

22.2 The Supplier packs the goods taking account of rough handling, exposure to extreme temperatures, salt, precipitation during transit, open storage, the final destination and the absence of heavy handling facilities at certain points in transit or on arrival.

Subcontracting

23

23.1 If the Supplier subcontracts work, the Supplier is responsible for Providing the Goods as if the Supplier had not subcontracted. This contract applies as if a subcontractor’s employees and equipment were the Supplier’s.

23.2 If the Purchaser instructs the Supplier to, the Supplier submits the name of each proposed subcontractor to the Purchaser for acceptance. A reason for not accepting the proposed subcontractor is that the subcontractor’s appointment will not allow the Supplier to Provide the Goods. The Supplier does not appoint a proposed subcontractor until the Purchaser has accepted the subcontractor.

Access to the work

24

24.1 The Supplier provides access for the Purchaser and others notified by the Purchaser to work being done for this contract and to stored Materials.

Co-operation

25

25.1 The Supplier co-operates with Others as necessary for delivery of the goods, and in obtaining and providing information which they need in connection with the goods.

Approval from Others

26

26.1 The Supplier obtains approval of his design and delivery arrangements from Others where necessary.

Instructions
27.1 The Supplier obeys an instruction which is in accordance with this contract and is given to the Supplier by the Purchaser.

3 Time

Starting and delivery 30

30.1 The Supplier does not start work until the starting date and does the work so that delivery of the goods and performance of ancillary services is on or before the Delivery Date.

30.2 The Supplier does not deliver the goods until the Supplier has complied with requirements stated in the Goods Information as to be completed by the Supplier before delivery.

30.3 The Supplier provides evidence of delivery of the goods to the Purchaser in the form of the Supplier's delivery note duly endorsed by the authorising stamp and signature of the person delegated by the Purchaser to receive the goods.

Access to the final destination 31

31.1 If the Terms of Delivery require delivery to be made by the Supplier to the final destination, the Purchaser allows access to and use of it to the Supplier on or reasonably before the Delivery Date or as later agreed between them. The Purchaser allows access to and use of the final destination to the Supplier as necessary for other work in this contract.

31.2 The Purchaser and the Supplier provide services and other things as stated in the Goods Information. Any cost incurred by the Purchaser as a result of the Supplier not providing the facilities and services stated is assessed by the Purchaser and paid by the Supplier.

Instructions to stop or not to start any work 32

32.1 The Purchaser may instruct the Supplier to stop or not to start any work and may later instruct the Supplier to restart or start it.

4 Testing and Defects

Tests and inspections 40

40.1 This clause only governs tests and inspections required by the Goods Information and the applicable law.

40.2 The Supplier and the Purchaser provide records, data sheets, materials, facilities and samples for tests and inspections as stated in the Goods Information.

40.3 The Supplier and the Purchaser notify the other of each of their tests and inspections before it starts and afterwards notifies its results. The Supplier notifies the Purchaser in time for a test or inspection to be arranged and done before doing work which would obstruct the test or inspection. The Purchaser may watch any test done by the Supplier.
40.4 If a test or inspection shows that any work has a Defect, the Supplier corrects the Defect and the test or inspection is repeated.

40.5 The Purchaser does the Purchaser's tests and inspections without causing unnecessary delay to the work or to a payment that is conditional upon a test or inspection being successful.

40.6 The Purchaser assesses the cost incurred by the Purchaser in repeating a test or inspection after a Defect is found. The Supplier pays the amount assessed.

**Testing and inspection before and after delivery**

41.1 The Supplier does not deliver any goods which the Goods Information states are to be tested or inspected before delivery until the Purchaser has notified the Supplier that the goods have passed the test or inspection.

41.2 Acceptance of the goods by the Purchaser at the time of delivery is also subject to inspection by the Purchaser for loss and damage to the goods. Unless instructed otherwise by the Purchaser, the Supplier promptly replaces loss of and repairs damage to the goods arising from the inspection.

**Searching for and notifying Defects**

42.1 The Purchaser may instruct the Supplier to search for a Defect.

42.2 Until the end of the warranty period, the Purchaser notifies the Supplier of each Defect which the Purchaser finds. In the notice the Purchaser states whether the defective goods are to be replaced by goods which are free of Defects, or that the Defect may be corrected as stated in this contract.

**Correcting Defects**

43.1 The Supplier corrects Defects whether or not the Purchaser notifies the Supplier of them.

43.2 After delivery the Supplier corrects notified Defects or replaces the defective goods before the end of the defect correction period. This period begins at the later of delivery or when the Defect is notified. The Purchaser gives the Supplier access to and use of the defective goods as needed for correcting a Defect.

**Accepting Defects**

44.1 The Supplier or the Purchaser may propose to the other that the Goods Information should be changed so that a Defect does not have to be corrected.

44.2 If the Supplier and the Purchaser are prepared to consider the change, the Supplier submits a quotation for reduced Prices or an earlier Delivery Date or both to the Purchaser for acceptance. If the Purchaser accepts the quotation, the Purchaser gives an instruction to change the Goods Information, the Prices and the Delivery Date accordingly.

**Uncorrected Defects**

45.1 If the Supplier has not corrected a notified Defect within its defect correction period, the Purchaser assesses the cost of having the Defect corrected or the defective goods replaced by other people and the Supplier pays this amount.
5 Payment

Assessing the amount due

50.1 The Supplier assesses the amount due and applies to the Purchaser for payment.

50.2 The Supplier's invoice includes details of how the amount due has been assessed, and is accompanied by all other documentation which this contract requires be provided at the time of delivery of the goods or ancillary services.

50.3 The amount due is

- the Price for Goods and Services Delivered since the last assessment of the amount due,
- plus other amounts to be paid to the Supplier (including any tax which the law requires the Purchaser to pay to the Supplier),
- less amounts to be paid by or retained from the Supplier.

50.4 The Purchaser corrects any wrongly assessed amount due and notifies the Supplier of the correction before paying the Supplier. Shortages, loss of and damage to the goods notified by the Purchaser at the first inspection after delivery of the goods is taken into account in the Purchaser's correction of the assessed amount due, unless the Supplier has already rectified such loss and damage.

Payment

51.1 Unless another period is stated in the method and conditions of payment, the Purchaser pays each amount due within 30 days after receipt of an invoice from the Supplier for payment.

51.2 Interest is paid if a payment is late or includes a correction of an earlier payment. Interest is assessed from the date by which the correct payment should have been paid until the date when it is paid. Interest is calculated at the rate stated in the Contract Data or, if none is stated, at 0.5% of the delayed amount per complete week of delay.

51.3 Payments are in the currency of this contract unless otherwise stated in this contract.

6 Compensation events

Compensation events

60.1 The following are compensation events:

(1) The Purchaser gives an instruction changing the Goods Information except
- a change made in order to accept a Defect or
- a change to the Goods Information provided by the Supplier for the Supplier's design which is made at the Supplier's request or to comply with other Goods Information provided by the Purchaser.

(2) The Purchaser gives an instruction changing the Terms of Delivery.

(3) The Purchaser gives an instruction to stop or not to start any work.

(4) The Purchaser changes a decision which the Purchaser has previously communicated to the Supplier.

(5) The Purchaser instructs the Supplier to search for a Defect and none is found.

(6) The Purchaser does not allow access to and use of the final destination to the Supplier as necessary for delivery and for other work included in this contract.

(7) The Purchaser gives an instruction changing the final destination.

(8) The Purchaser does not provide something which the Purchaser is to provide by the date for providing it stated in this contract.

(9) The Purchaser notifies a correction to an assumption about a compensation event which the Purchaser has previously stated.

(10) A loss of or damage to the goods and Materials arising from

- fault of the Purchaser,
- Purchaser's design,
- Materials provided by the Purchaser, or
- an action after delivery of the goods which is not an action of the Supplier.

(11) The Purchaser does not reply to a communication from the Supplier within the period required by this contract.

(12) The Purchaser withholds an acceptance (other than an acceptance of a quotation for accepting a Defect) for a reason not stated in this contract.

(13) A test or inspection done by the Purchaser causes unnecessary delay.

(14) The Purchaser does not provide materials, facilities and samples for tests as stated in the Goods Information.

(15) An event which
• delays delivery by more than two weeks,
• the Supplier could not have reasonably prevented or controlled,
• an experienced supplier would have judged, at the Contract Date, to have such a small chance of occurring that it would have been unreasonable to have allowed for it, and
• is not one of the other types of compensation event stated in this contract.

In assessing this event the first two weeks are excluded.

(16) A breach of contract by the Purchaser, which is not one of the other compensation events in this contract.

(17) Additional compensation events (if any) stated in the Contract Data.

Notifying compensation events

61.1 The Supplier notifies to the Purchaser an event which has happened or which the Supplier expects to happen as a compensation event if

• the Supplier believes that the event is a compensation event,
• it is less than two weeks since the Supplier became aware of the event and
• the Purchaser has not notified the event to the Supplier.

61.2 The Prices and the Delivery Date are not changed if the Purchaser decides that an event notified by the Supplier

• arises from a fault of the Supplier,
• has not happened and is not expected to happen,
• has no effect upon the amount of the Supplier’s costs or upon planned delivery or
• is not one of the compensation events stated in this contract.

If the Purchaser decides otherwise, the Purchaser instructs the Supplier to submit a quotation for the event. The Purchaser notifies the decision to the Supplier, or instructs the Supplier to submit a quotation within one week of the Supplier’s notification to the Purchaser of the event.

61.3 If the Purchaser decides that the Supplier did not give an early warning of the event which the Supplier could have given, the Purchaser notifies that decision to the Supplier when instructing the Supplier to submit a quotation.

61.4 If the Purchaser decides that the effects of a compensation event are too uncertain to be forecast reasonably, the Purchaser states assumptions about the event when instructing the Supplier to submit a quotation. Assessment of the event is based on these assumptions. If any of them is later found to have been wrong, the Purchaser notifies a correction.

61.5 A compensation event is not notified after the end of the last warranty period.
## Quotations for compensation events

### 62

**62.1** A quotation for a compensation event comprises proposed changes to the Prices or rates and any delay to the Delivery Date assessed by the Supplier. The Supplier submits details of the Supplier's assessment with each quotation. The Supplier submits a quotation within one week of being instructed to do so by the Purchaser or, if no such instruction is received, within two weeks of the notification of a compensation event.

**62.2** The Purchaser may instruct the Supplier to submit a quotation for a proposed instruction or a proposed changed decision. The Supplier does not put a proposed instruction or a proposed changed decision into effect.

**62.3** The Purchaser replies within one week of the Supplier's submission. For a proposed instruction or proposed changed decision, the Purchaser's reply is

- notification that the instruction or changed decision will not be given,
- notification of the instruction or changed decision as a compensation event and acceptance of the quotation or
- notification of the instruction or changed decision as a compensation event and notification that the Purchaser does not agree with the quotation.

For other compensation events, the Purchaser's reply is

- acceptance of the quotation or
- notification that the Purchaser does not agree with the quotation.

**62.4** If the Purchaser does not agree with the quotation, the Supplier may submit a revised quotation within one week of the Purchaser's reply. If the Purchaser does not agree with the revised quotation or if none is received, the Purchaser assesses the compensation event and notifies the assessment to the Supplier.

**62.5** The Purchaser may instruct the Supplier to submit alternative quotations based upon different ways of dealing with the compensation event which are practicable. The Supplier submits the required quotations to the Purchaser and may submit quotations for other methods of dealing with the compensation event which the Supplier considers practicable.

## Assessing compensation events

### 63

**63.1** For a compensation event which only affects the quantities of items shown in the Price List, the change to the Prices is assessed by multiplying the changed quantities of items by the appropriate rates in the Price List.

**63.2** For other compensation events the changes to the Prices are assessed by forecasting the effect of a compensation event upon the amount of the Supplier's costs or, if the compensation event has already occurred, the assessment is based upon the amount of Supplier's costs due to the event which the Supplier has incurred.
Effects on the Supplier's costs in Providing the Goods (excluding any tax which the Supplier can recover) are assessed separately for the cost of

- people who are employed by the Supplier,
- Materials,
- subcontracted work,
- Equipment,
- transport, freight and insurance, and
- importation.

Equipment is assessed as amounts paid for hired Equipment and an amount for the use of Equipment owned by the Supplier which is the amount the Supplier would have paid if the Equipment had been hired.

The Supplier shows how each of these effects is built up in each quotation for a compensation event. The percentages for overheads and profit stated in the Contract Data are applied to the assessed effect of the event on the amount of the Supplier's costs for Supplier's people, Materials, work done by subcontractors and Equipment, but are not applied to the Supplier's costs for transport, freight, insurance and importation.

63.3 The effects of compensation events upon the amount of the Supplier's costs are assessed at open market or competitively tendered prices with deductions for all discounts, rebates and taxes which can be recovered. The following are deducted from the assessment of compensation events:

- payments for events for which this contract requires the Supplier to insure and
- other payments made to the Supplier by insurers.

63.4 A delay to the Delivery Date is assessed as the length of time that, due to the compensation event, delivery is forecast to be delayed.

63.5 If the Purchaser has decided and notified the Supplier that the Supplier did not give an early warning of a compensation event which an experienced supplier could have given, the event is assessed as if the Supplier had given an early warning.

63.6 Assessment of the effect of a compensation event includes risk allowances for cost and time for matters which are at the Supplier's risk under this contract.

63.7 Assessments are based on the assumptions that the Supplier reacts competently and promptly to the compensation event and that additional payment and time due to the event are reasonably incurred.

63.8 A compensation event which is an instruction to change the Goods Information in order to resolve an ambiguity or inconsistency is assessed as if the Prices and the Delivery Date were for the interpretation most favourable to the Party which did not provide the Goods Information.

63.9 Only a decision of the Adjudicator can change the assessment of a compensation event after the Purchaser has either accepted a quotation for it or notified an assessment for it.
7 Title

Passing of title 70

70.1 Whatever title the Supplier has to the goods passes to the Purchaser at the same time as the risk of loss and damage to the goods is transferred to the Purchaser, unless stated otherwise in the Contract Data.

70.2 The risk of loss and damage to the goods is transferred from the Supplier to the Purchaser when the Supplier has fulfilled the Supplier's obligations in this contract to deliver the goods.

70.3 The Supplier ensures that when title to the goods passes to the Purchaser at the times stated in this contract, the title is full and unencumbered.

Marking goods before delivery 71

71.1 If this contract identifies that title passes before delivery, the Supplier's title to the goods or Materials passes to the Purchaser when the Purchaser has marked them as for this contract.

71.2 The Purchaser marks goods and Materials before delivery if

- this contract identifies them for payment before delivery, and
- the Supplier has prepared them for marking as the Goods Information requires.

Confidentiality 72

72.1 The Parties do not disclose information obtained in connection with this contract except when necessary to carry out their duties under this contract.

8 Liabilities, indemnities and insurance

Limitation of liability 80

80.1 The Supplier is not liable to the Purchaser for loss of revenue or loss of profit except as provided for in this contract if the Purchaser terminates for reasons 1, 2, 3, 4, or 5.

80.2 For any one event the liability of the Supplier to the Purchaser for loss of or damage to the Purchaser's property is limited to the amount stated in Contract Data.

80.3 The Supplier's liability to the Purchaser under or in connection with this contract arising after

- the end of the applicable warranty period and
- low performance and delay damages due have been paid

is limited, except in respect of the Supplier's causing

- death of or injury to a person
- loss of or damage to third party property, and
- infringement of an intellectual property right,
to the amount stated in the Contract Data. The Supplier has no further liability to the Purchaser after the period stated in the Contract Data.

80.4 Exclusion or limitation of liability in this contract applies in contract, negligence and otherwise and to the maximum extent permitted in law.

Indemnities 81

81.1 The Purchaser indemnifies the Supplier against claims, proceedings, compensation or costs payable which are the unavoidable result of the goods or which arise from

- any fault, negligence, breach of statutory duty,
- infringement of an intellectual property right, or
- interference with any legal right

by the Purchaser or by any person employed by or contracted to the Purchaser except the Supplier.

81.2 The Supplier indemnifies the Purchaser against other

- losses and claims in respect of
  - death of or injury to a person and
  - loss of or damage to property (other than the goods and Materials), and
- claims, proceedings, compensation and costs payable

arising from or in connection with the Supplier's Providing the Goods.

81.3 The liability of one Party to indemnify the other is reduced to the extent that events which are the other Party's responsibility contributed to the losses, claims proceedings compensation and costs.

Insurance cover 82

82.1 The Supplier provides insurances in a freely convertible currency against loss of or damage to the goods and Materials arising at any stage in the supply of the goods. The Supplier does not provide the insurance which the Purchaser is to provide as required by the Terms of Delivery.

82.2 The insurance names the Purchaser as beneficiary and provides cover for the

- full replacement cost, including the amount stated in the Contract Data for the replacement of any Materials provided by the Purchaser, and for the
- time period required by the Terms of Delivery.

82.3 In addition the Supplier provides insurance against

- loss of or damage to Equipment,
- liability for loss of or damage to property (except the goods and Materials), and
- liability for bodily injury to or death of a person (not an employee of the Supplier)
arising from or in connection with the Supplier’s Providing the Goods, and against any additional risks stated in the Contract Data.

**Insurance policies**

83.1 The Supplier submits policies and certificates for insurance which the Supplier is to provide to the Purchaser for acceptance as the Purchaser instructs. A reason for not accepting the policies and certificates is that they do not comply with this contract.

83.2 Insurance policies include a waiver by the insurers of their subrogation rights against directors and other employees of every insured except where there is fraud.

83.3 The Parties comply with the terms and conditions of the insurance policies.

**If the Supplier does not insure**

84.1 The Purchaser may insure a risk which this contract requires the Supplier to insure if the Supplier does not submit a required policy or certificate when instructed by the Purchaser to do so. The cost of this insurance to the Purchaser is paid by the Supplier.

**9 Termination and disputes**

90.1 If a Party wishes to terminate, that Party notifies the other giving details of the reason. The Purchaser issues a termination certificate promptly if the reason complies with this contract. After a termination certificate has been issued, the Supplier does no further work to complete the supply of the goods or ancillary services.

90.2 Either Party may terminate if the other Party has

- become insolvent or its equivalent (Reason 1) or
- assigned this contract (Reason 2).

90.3 The Purchaser may terminate if the Purchaser has notified the Supplier that the Supplier has defaulted in one of the following ways and the Supplier has not stopped defaulting within two weeks of the notification.

- Substantially failed to comply with this contract (Reason 3).
- Substantially hindered the Purchaser (Reason 4).
- Substantially broken a health or safety regulation (Reason 5).

The Purchaser may terminate for any other reason (Reason 6).

90.4 The Supplier may terminate if

- the Purchaser has not made a payment within ten weeks of receipt of the Supplier’s application for it (Reason 7) or
- the Purchaser has instructed the Supplier to stop or not to start any substantial work or all work for a reason which is not the Supplier’s fault and an instruction allowing the work to restart or start has not been given within eight weeks (Reason 8).
### Procedures on termination

**91.1** On termination, the *Purchaser* may employ other people to complete the supply of the *goods* and ancillary services. If applicable, the *Supplier* leaves the *final destination* and removes the Equipment.

### Payment on termination

**92.1** The amount due on termination includes

- an amount due assessed as for normal payments,
- the cost of Materials ordered by the *Supplier* specifically for the *goods*, which cannot be resold or used elsewhere and of which the *Supplier* has to accept delivery, and
- any amounts retained by the *Purchaser*.

**92.2** If the *Purchaser* terminates for Reason 1, 2, 3, 4 or 5, the amount due on termination also includes a deduction of the forecast additional cost to the *Purchaser* of completing the supply of the *goods* and ancillary services.

### Settlement of disputes

**93.1** A dispute under or in connection with this contract, which the Parties have not resolved, is decided by the *Adjudicator*. Either Party may submit a dispute to the *Adjudicator* for decision if

- the Party notified the other Party of the dispute within four weeks of becoming aware of it and
- between two and four further weeks have passed since the notification.

**93.2** In reaching a decision, the *Adjudicator* takes into account information which each Party provides to the *Adjudicator* within two weeks of the submission.

**93.3** The *Adjudicator* notifies the Parties of the decision and of the reasons for it within four weeks of the submission.

**93.4** Unless and until the *Adjudicator* has given a decision on the dispute, the Parties proceed as if the matter was not disputed. The decision is binding until the dispute is finally determined by the *tribunal* or by agreement.

### The *Adjudicator*

**94.1** The *Adjudicator* acts impartially. The *Adjudicator* decides the dispute as independent adjudicator and not as arbitrator. The *Adjudicator*’s decision is enforceable as a matter of contractual obligation between the Parties and not as an arbitral award. The Parties pay the *Adjudicator*’s charges in equal shares.

**94.2** Any communication between a Party and the *Adjudicator* is communicated also to the other Party. If the *Adjudicator*’s decision includes assessment of a cost effect or a delay, the *Adjudicator* makes the assessment in the same way as a compensation event is assessed.

**94.3** If the *Adjudicator* resigns or is unable to act, the Parties choose a new adjudicator jointly.

### Reference to the

**95**
tribunal

95.1 A Party may refer a dispute to the tribunal if

- the Party is dissatisfied with the Adjudicator’s decision or
- the Adjudicator did not notify a decision within the time allowed

except that neither Party may refer a dispute to the tribunal unless the referring Party has notified the other Party of its intention to do so not more than four weeks after the end of the time allowed for the Adjudicator’s decision.
MAIN OPTION CLAUSES

Option A: Priced contract with Price List

Identified and defined terms 11

11.2 (11) The Prices are the amounts stated in the Price column of the Price List. Where a quantity is stated for an item in the Price List, the Price is calculated by multiplying the quantity by the applicable rate.

(12) The Price for Goods and Services Delivered is the total of

- the Price for each lump sum item in the Price List which the Supplier has delivered and,
- where a quantity is stated for an item in the Price List, an amount calculated by multiplying the quantity which the Supplier has delivered by the applicable rate.

In this clause, delivered items means items which

- are without Defects which would prevent the Purchaser from using the goods for the purpose for which they are intended, and.
- which have been delivered in accordance with the Supplier's obligations for delivery in this contract.

Assessing compensation events 63

63.10 Assessments for changed Prices for compensation events are in the form of changes to the Price List

Option G: Term contract

Identified and defined terms 11

11.2 (13) The Prices are the amounts calculated by multiplying the quantity by the rate for each item on the Price List selected for the Batch

(14) The Price for Goods and Services Delivered for each Batch is the total of the amounts obtained by multiplying the quantity by the rate for each item stated in the Batch Order.

In this clause, delivered items means items which

- are without Defects which would prevent the Purchaser from using the goods for the purpose for which they are intended, and.
- which have been delivered in accordance with the Supplier's obligations for delivery in this contract.

(15) A Batch is a collection of items selected from the Price List.

(16) A Batch Order is an instruction given by the Purchaser to the Supplier to provide a Batch.
Interpretation and the law

12.3 Unless it is stated to apply to the supply of the whole of the goods and ancillary services, each reference in this contract to delivery, the Delivery Date, and the warranty period applies to any Batch of the goods and services included in a Batch Order.

The Purchaser's obligations

20.3 The Purchaser provides a Batch Order to the Supplier for each Batch the Purchaser requires. A Batch Order may be issued by the Purchaser at any time before the end date.

20.4 Each Batch Order includes

- items selected from the Price List
- notification as a compensation event of items not on the Price List and
- Contract Data and other information specific to the Batch Order.

If the Batch Order contains items not on the Price List, the Purchaser instructs the Supplier to submit the Supplier's quotation of the final total of the Prices for the Batch.

Compensation events

60.2 The Purchaser may give an instruction changing a Batch Order. Each such instruction is a compensation event.

Assessing compensation events

63.13 Assessments for changed Prices for compensation events are in the form of changes to the Price List, or to the Batch Order or to both the Price List and the Batch Order.

SECONDARY OPTION CLAUSES

Option X1: Performance bond

Performance bond

X1.1 The Supplier gives the Purchaser a performance bond provided by a bank or insurer, which the Purchaser has accepted, in the form set out in the Goods Information and for the amount stated in the Contract Data. If the bond was not given by the Contract Date, it is given to the Purchaser within four weeks of the Contract Date. A reason for not accepting the bank or insurer is that its commercial position is not strong enough to carry the bond.

Option X2: Parent company guarantee

Parent company guarantee

X2.1 If a parent company owns the Supplier, the Supplier gives to the Purchaser a guarantee of the Supplier's performance in the form set out in the Goods Information. If it was not given by the Contract Date, it is given within four weeks of the Contract Date.

Option X3: Multiple currencies
Multiple currencies  X3.1  The Supplier is paid in currencies other than the currency of this contract for the items listed in the Contract Data. The exchange rates are used to convert from the currency of this contract to other currencies.

Payments  X3.2  Payments to the Supplier in currencies other than the currency of this contract

- do not exceed the maximum amounts stated in the Contract Data. (Any excess is paid in the currency of this contract,) and
- are made by the Purchaser, subject to receipt of compliant supporting documentation, either
  - directly to the bank stated in the Contract Data (payment method 1), or
  - in the currency of this contract at the spot rate of exchange at which payment is made overseas, providing the Employer is notified before 12:00 three working days prior to payment being made (payment method 2). If the Employer is not notified by the time stated, the Employer pays at the spot rate of exchange at which the forward cover contract was cancelled in the market.

Forward cover  X3.3  Unless otherwise instructed, only the Purchaser may provide forward cover in the foreign exchange market.

Option X4: Importation

Payment of importation charges  X4.1  For each item supplied from outside the Purchaser's country, the components of the cost of importation shown in the price schedule are paid at cost by the Purchaser to the Supplier, or paid directly by the Purchaser to the relevant authority or the authority's appointed agent.

X4.2  The Supplier provides original documentation to the Purchaser in support of the amount due. This documentation includes:

- Overseas suppliers' invoice.
- Bill of Entry duly endorsed by the importation authority.
- Customs work sheets, showing VAT, duties and surcharges.
- Air Waybill or Bill of Lading with associated landing, delivery and forwarding order.
- Invoice from the importing clearing agent showing airline fees, landing charges, wharfage and dock dues.
- If requested by the Purchaser, packing lists for cases and their contents.
- Other documentation associated with importation which may be requested by the duly authorised authority.

X4.3  The Purchaser is not liable to the Supplier for any cost or delay which the Supplier incurs as a result of matters arising from importation of the goods or Materials.
Option X5: Price adjustment for inflation

Defined terms

X5.1 (a) The Base Date Index (B) is the latest available index before the base date.

(b) The Latest Index (L) is the latest available index before the assessment of an amount due.

(c) The Price Adjustment Factor is the total of the products of each of the proportions stated in the Contract Data multiplied by (L-B)/B for the index linked to it.

Price Adjustment Factors

X5.2 If an index is changed after it has been used in calculating a Price Adjustment Factor, the calculation is repeated and a correction included in the next assessment of the amount due.

X5.3 The Price Adjustment Factor calculated at the Delivery Date is used for assessing the amount due after this date.

Compensation events

X5.4 If the rates and Prices in the Price List are adjusted due to a compensation event, the Supplier’s payments for compensation events are assessed using the Supplier’s payments current at the time of assessing the compensation event adjusted to base date by dividing by one plus the Price Adjustment Factor for the last assessment of the amount due.

If adjustments are made with each invoice submitted:

Price adjustment

X5.5 Each amount due includes an amount for price adjustment which is the sum of

- the Price for Goods and Services Delivered assessed on an invoice multiplied by the Price Adjustment Factor applicable at the time of delivery of the items included in the invoice, and
- correcting amounts, not included elsewhere, which arise from changes to indices used for assessing previous amounts for price adjustment.

If Prices stated in the Price List are adjusted on each anniversary of the Contract Date:

Price adjustment factor

X5.6 On each anniversary of the Contract Date, the Supplier calculates a price adjustment factor equal to (L-B)/B, where L is the last published value of the index and B is the last value of the index published before the Contract Date.

Price adjustment

X5.7 The rates and Prices in the Price List are adjusted at each anniversary by multiplying the rates and Prices applicable at the Contract Date by the price adjustment factor applicable at the anniversary date.

Assessing the amount due

X5.8 Each amount due is assessed at the rates and Prices applicable at the last anniversary before the goods or service is delivered in accordance with the Terms of Delivery.
Option X6: Extending the warranty period

Extending the warranty period X6.1 If a Defect arises after delivery and before the end of the warranty period, the Purchaser may notify the Supplier of an extension to the warranty period equal to the period during which the goods do not perform as stated in the Goods Information.

X6.2 If parts of the goods are replaced as a result of a Defect arising before the end of the warranty period, the Purchaser may notify the Supplier that the extended warranty period applies to the replaced parts of the goods.

X6.3 The Purchaser notifies the Supplier of extensions to the warranty period within four weeks of the Defect arising. In any case, the period between first delivery of the goods and the end of the extended warranty period does not exceed twice the original warranty period stated in the Contact Data.

Final acceptance of the goods X6.4 The Purchaser issues a certificate of acceptance at the later of the end of the last warranty period and the end of the last defects correction period.

X6.5 The certificate of acceptance is either a list of Defects that the Purchaser has notified before the end of the warranty period, or extended warranty period, which the Supplier has not corrected or, if there are no such Defects, a statement that there are none.

Option X7: Spare and replacement parts

Spare and replacement parts X7.1 The Supplier makes available for purchase the spares and replacement parts stated in the Goods Information and needed by the Purchaser to maintain the goods during its designed working life.

X7.2 Unless otherwise agreed between the Parties, the purchase price of the spares and replacement parts is the Supplier's costs applicable at the time of purchase to which the percentages for overheads and profit stated in the Contract Data are applied.

Option X8: Delay damages

Delay damages X8.1 The Supplier pays delay damages at the rate stated in the Contract Data for each day from the Delivery Date until delivery in terms of this contract has been completed.

X8.2 If the Delivery Date is delayed after delay damages have been paid, the Purchaser repays the overpayment of damages with interest. Interest is assessed from the date of payment to the date of repayment.

Option X9: Low performance damages

X9.1 If at the end of the warranty period the goods show low performance with respect to a performance level stated in the Contract Data, the Supplier pays the amount of low performance damages stated in the Contract Data.
Option X10: Transfer of rights (e.g. in contracts for the supply of software)

X10.1 The Purchaser owns the Supplier’s rights over material prepared for this contract by the Supplier except as stated otherwise in the Goods Information. The Supplier obtains other rights for the Purchaser as stated in the Goods Information and obtains from a Subcontractor equivalent rights for the Purchaser over the material prepared by the Subcontractor. The Supplier provides to the Purchaser the documents that transfer these rights to the Purchaser.

X10.2 The Supplier may use material supplied by the Supplier under this contract for other work and may retain for the Supplier’s own use copies of material provided to the Purchaser. In using this material the Supplier complies with the restrictions and obligations stated in the Goods Information.

Option X11: Purchaser’s Representative

X11.1 The Purchaser’s Representative acts on behalf of the Purchaser with the authority set out in the Contract Data.

Option X12: Provision of a programme

Defined term

X12.1 The Accepted Programme is the programme identified in the Contract Data or the latest programme accepted by the Purchaser. The latest programme accepted by the Purchaser supersedes previous Accepted Programmes.

The programme

X12.2 If the Accepted Programme is not identified in the Contract Data, the Supplier prepares and submits a first programme to the Purchaser for acceptance within the period stated in the Contract Data. The Purchaser accepts or gives reasons for not accepting a first programme or a revised programme within two weeks of submission by the Supplier.

X12.3 A programme submitted by the Supplier includes and shows

- the Delivery Date,
- planned delivery,
- for each operation, a method statement which identifies the Equipment and other resources which the Supplier plans to use,
- the order and timing of
  - the operations which the Supplier plans to do in order to Provide the Goods, and
  - the work of the Purchaser and Others either as stated in the Goods Information or as later agreed with them by the Supplier,
- the dates when the Supplier plans to complete work needed to allow the Purchaser and Others to do their work,
- provisions for
• float,
• time risk allowances,
• health and safety requirements,
• the procedures set out in this contract,

• the dates when, in order to Provide the Goods in accordance with the Supplier's programme, the Supplier will need

• acceptances,
• Materials and other things to be provided by the Purchaser, and
• access to the final destination.

• other information which the Goods Information requires the Supplier to show on the Accepted Programme.

X12.4 A reason for not accepting a programme is that

• the Supplier's information which it shows are not practicable,
• it does not include the information which this contract requires
• it does not represent the Supplier's plans realistically or
• it does not comply with the Goods Information or with other procedures set out in this contract.

Revising the programme

X12.5 Each revised programme shows

• the actual progress achieved on each operation since the last revision and its effect upon the timing of the remaining work,
• the effects of implemented compensation events and of notified early warning matters,
• how the Supplier plans to deal with any delays and to correct notified Defects and
• any other changes which the Supplier proposes to make to the Accepted Programme.

X12.6 The Supplier submits a revised programme to the Purchaser for acceptance

• within the period for reply after the Purchaser has instructed the Supplier to,
• when the Supplier chooses to and, in any case,
• at no longer interval than the interval stated in the Contract Data from the Contract Date until delivery of the whole of the goods and services.

Assessing the amount due

X12.7 If no programme is identified in the Contract Data, one quarter of the Price for Goods and Services Delivered is retained from payments due to the Supplier until the Supplier has submitted a first programme to the Purchaser for acceptance showing the information that this contract requires.

Assessing compensation events

X12.8 The Purchaser assesses a compensation event using the Purchaser's own assessment of the programme for the remaining work if
• there is no Accepted Programme or
• the Supplier has not submitted a revised programme for acceptance as required by this contract.

Option X13: Quantity discounts (used only with Option G)

X13.1 The Supplier includes in assessments of the amount due a discount on the Price of goods delivered for each Batch Order in accordance with the percentage discount and quantity ranges stated in the Contract Data.

Option Z: Additional conditions of contract

Z1.1 The additional conditions of contract stated in the Contract Data are part of this contract.