

TERMS AND CONDITIONS FOR PURCHASE OF GOODS AND SERVICES

1 TERMS

In these terms and conditions of purchase (the **"Terms and Conditions"**), **"CITB, we, our"** means the Construction Industry Training Board, **"Supplier, you, your"** means the person, firm or company to whom this document and/or purchase order is addressed to. This contract is placed on the Terms and Conditions that appear below and any other terms and conditions which CITB have notified to the Supplier in writing (**"Contract"**). CITB does not accept and hereby rejects any terms or conditions quoted or offered by the Supplier unless expressly accepted in writing by CITB's Commercial Contracts Team. If the Supplier is not prepared to supply goods (**"Goods"**) or services (**"Services"**) (hereinafter collectively referred to as **"Deliverables"**) on these Terms and Conditions, the Supplier should return this Contract endorsed as 'Rejected' and not take any steps to supply the Deliverables.

2 THE DELIVERABLES

- 2.1 The quantity, quality, scope and description of the Deliverables shall conform in all respects with: (i) any samples provided by either party; (ii) any particulars specified in this Contract; and/or (iii) any variations agreed by us in writing thereto as per the details in Appendix A.
- 2.2 The Deliverables shall conform in all respects with the requirements of any statutes, orders, regulations and bye-laws from time to time in force.
- 2.3 The Deliverables shall be: (i) of satisfactory quality; (ii) free from defects in material and workmanship; and (iii) fit and sufficient for the purpose for which such Deliverables are ordinarily used and for any particular purpose made known to the Supplier by CITB. CITB relies on the Supplier's skill and judgement in the supply of the Deliverables and the execution of this Contract.
- 2.4 Any Services shall be performed by appropriately qualified and trained personnel using reasonable skill and care and to a high standard of quality in accordance with good industry practice.

3 THE PRICE

- 3.1 The price of the Deliverables shall be as stated in the purchase order and below in Appendix A and no increase in price will be accepted by CITB unless agreed in writing.
- 3.2 The Supplier must e-mail to CITB their invoice with the correct purchase order, as provided by CITB, to apinvoices@citb.co.uk. Invoices submitted by post or facsimile will not be processed or paid.
- 3.3 CITB will pay all valid, undisputed invoices submitted by the Supplier within 30 calendar days of receipt of the invoice. Invoices must only be sent after the Deliverables have been delivered.
- 3.4 Where the Supplier is claiming any expenses, evidence of such expenses claimed must be submitted with the Supplier's invoice together with any timesheets where CITB have agreed to pay the Supplier on a time and materials basis.
- 3.5 CITB will not be obliged to pay any invoices which do not comply with our travel and expenses policies (copies of which are available on request) and within the provisions of this clause 3. Any invalid invoice will be returned to the Supplier.
- 3.6 The purchase order number must be quoted by the Supplier on their invoice and on all other documentation and correspondence relating to the Deliverables.
Invoices which do not quote our CITB's purchaser order number will not be paid.

4 DELIVERY

- 4.1 The Deliverables shall be delivered to the address or as communicated in writing to the Supplier in the relevant purchase order. Any access to premises and any labour and equipment that may be provided by the Supplier in connection with delivery

or installation shall be provided without acceptance by CITB of any additional cost or liability whatsoever unless due to the negligence of CITB or our servants or agents. The Supplier shall indemnify CITB in respect of any action, fine, claim, demand, damage, loss, charge, cost and expense of whatever nature which CITB may suffer or incur as a result of or in connection with any damage or injury occurring in the course of delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Supplier's or any of the Supplier's servants, agents or sub-contractors.

- 4.2 The time of delivery shall be of the essence and the Supplier's failure to deliver on time shall enable CITB (at our option) to release ourselves from any obligation to accept and pay for the Deliverables and/or to cancel all or part of this Contract, or any purchase order, in either case without prejudice to CITB's other rights and remedies.

5 RISK AND TITLE

- 5.1 Property, and risk in the Goods shall pass to Us at the time of delivery.
- 5.2 The title in the Goods shall pass to CITB upon delivery unless payment for the Goods is made prior to delivery in which case it shall pass to CITB once payment has been made in whole or in part.

6 FAULTY DELIVERABLES

- 6.1 Where the Deliverables are defective, do not comply with the requirement of the purchase order or specifications sets out in writing and/or the Supplier is otherwise in breach of these Terms and Conditions, CITB may within one (1) month of delivery of the Deliverables or other longer period as is reasonably necessary for CITB to discover any breach or (if longer) the period usually offered by the Supplier under their guarantee: (i) have the Deliverables repaired or replaced by the Supplier at your cost; or (ii) reject the Deliverables in whole or in part and recover any sums paid to the Supplier.
- 6.2 Any Deliverables rejected or returned by CITB shall be returned to the Supplier at the Supplier's own risk and expense.

7 COMPLIANCE WITH LAWS AND POLICIES

- 7.1 In performing its obligations under this Contract, the Supplier shall comply to all applicable laws, statutes, regulations and codes from time to time in force (**"Applicable Laws"**).
- 7.2 The Supplier shall notify CITB in writing should any changes to the Deliverables be required as a result of changes to the Applicable Laws.

8 ANTI-BRIBERY AND CORRUPTION

- 8.1 The Supplier shall and shall procure that persons associated with it or other persons who are providing the Deliverables in connection with this Contract shall:
 - (i) comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**"Relevant Requirements"**);
 - (ii) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
 - (iii) have and shall maintain in place throughout the term of this Contract its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements;
 - (iv) promptly report to CITB any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Contract;
 - (v) immediately notify CITB (in writing) if a foreign public official becomes an officer or employee of the Supplier or

acquires a direct or indirect interest in the Supplier (and the Supplier warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this Contract).

8.2 The Supplier will be directly liable to CITB for any breach by any person associated with the Supplier who is performing Services in connection with this Contract whether or not acting within the Supplier's knowledge.

8.3 Breach of this clause 4 shall be deemed a material breach entitling CITB to terminate this Contract forthwith by providing written notice with immediate effect and without further liability.

9 OWNERSHIP RIGHTS

All rights (including ownership and copyright) in any specifications, instructions, plans, drawings, patterns, models, designs or other material furnished to or made available to the Supplier by CITB or created by the Supplier for CITB pursuant to this Contract shall be and remain the sole property of CITB and the Supplier shall not (except to the extent necessary for the implementation of this Contract) without our prior written consent use or disclose any such specifications, plans, drawings, patterns, models, designs, materials or any other information (whether or not relevant to this Contract) which the Supplier may obtain in connection with this Contract and in particular, the Supplier shall not refer to CITB, this Contract or use any trademark belonging to CITB in any advertisement without our prior written agreement.

10 CONFIDENTIALITY

10.1 For the purpose of this clause, "Confidential Information" means any information acquired by the Supplier before, on or after the date this Contract that is of a confidential nature, whether in writing or otherwise, including information relating to the business, affairs, properties, assets, practices, plans and strategy, Intellectual Property Rights, know-how, personnel, customers, clients and suppliers of CITB. It shall also include all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed by CITB to the Supplier pursuant to this Contract.

10.2 The Supplier undertakes that it shall not disclose to any third party and shall not use for any purpose other than the performance of its obligations under this Contract any Confidential Information relating to CITB, this Contract and the Goods / Services.

10.3 Notwithstanding any other provision of this Contract, the disclosing party may disclose Confidential Information, without liability for such disclosure, to the extent that such disclosure is:

- (i) required to be made pursuant to applicable law, government authority, duly authorised subpoena or court order ("Order") in which case the receiving party will, if allowed under such Order, provide prompt notice to the disclosing party and endeavour, if allowed under such Order, to give the disclosing party an opportunity to respond prior to such disclosure;
- (ii) required to be made to a court or other tribunal in connection with the enforcement of the receiving party's rights under this Contract; or
- (iii) approved by the prior written consent of the disclosing party.

10.4 The provision of this clause 10 shall apply during the term of this Contract and indefinitely after its expiry or termination.

11 FREEDOM OF INFORMATION

11.1 The Supplier acknowledges that CITB is subject to the requirements of the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIRs") and shall assist and cooperate with the CITB (at the Supplier's expense) to comply with its obligations under the FOI and EIRs.

11.2 The Supplier shall and shall procure that its sub-contractors shall:

- (i) transfer any Request for Information (as defined in s84 of

the FOIA) to CITB as soon as practicable after receipt and in any event within 2 working days of receiving a request;

- (ii) provide CITB with a copy of all Information (as defined in s84 of the FOIA) in its possession in the form CITB requires within 5 working days (or such other period as CITB may specify) of CITB requesting that Information; and

- (iii) provide all necessary assistance as requested by CITB to enable CITB to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA, or regulation 5 of the EIRs.

11.3 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised in writing to do so by CITB.

11.4 The Supplier acknowledges that CITB at its own absolute discretion may disclose Information (including confidential information) without consulting or obtaining consent from the Supplier.

11.5 The CITB shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOI) to the extent that it is permissible and reasonably practicable for it to do so but (notwithstanding any other provisions in this Contract) the CITB shall be responsible for the determining in its absolute discretion whether any confidential information and/or any other Information is exempt from disclosure in accordance with the FOI and/or the EIRs.

12 INTELLECTUAL PROPERTY RIGHT

12.1 For the purpose of this clause:

- (i) "Background IPR" means any Intellectual Property Rights existing at the effective date of the Contract;
- (ii) "Intellectual Property Rights" means patents, rights to inventions, copyright and related rights, trademarks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all existing and future rights capable of present assignment, applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;
- (iii) "Foreground IPR" means any Intellectual Property Rights coming into existence on or after the effect date of this Contract.

12.2 The Supplier warrants that the supply of the Services will not infringe the Intellectual Property Rights of any third party and shall indemnify and keep indemnified CITB against all liability, costs, expenses, loss or damages CITB may incur directly or indirectly as a result of such infringement.

12.3 The Background IPR shall remain vested in the party in whom it was vested immediately prior to the effective date of this Contract.

12.4 The Supplier hereby grants to CITB a non-exclusive, royalty free, perpetual licence to use such of the Supplier's Background IPR as CITB reasonably requires to derive the full benefit from the Services.

12.5 All Foreground IPR which exists in or may be created in connection with the Services on or after the effective date of this Contract shall vest in CITB. CITB hereby grants to the Supplier a non-exclusive, royalty free, perpetual licence to use the Foreground IPR for the purposes only of the performance of this Contract and the Supplier shall indemnify and keep indemnified CITB against any liability, costs, expenses, loss or damages CITB may incur directly or indirectly as a result of its use of the Foreground IPR.

12.6 The provision of this clause shall apply during the continuance

of this Contract and indefinitely after its expiry or termination.

13 INDEMNITY

13.1 You will indemnify Us in respect of all claims, losses, damages, fines or costs of whatever nature, including but not limited to loss of profits, loss of anticipated savings and all other consequential losses, arising directly or indirectly from:

- (i) any breach of any warranty, term or condition contained herein;
- (ii) non-delivery, late delivery or short delivery;
- (iii) damage to property or injury to any person that arises from any defect in the Deliverables or their packaging or from your performance of this Contract and/or any Order;
- (iv) misleading or inaccurate information contained in any associated instructions or documentation;
- (v) infringement or alleged infringement of any patent, trade mark, copyright, design right or other intellectual property rights; and/or
- (vi) any other act or omission by You, your servants, agents or subcontractors in relation to this Contract.

13.2 Each party's total liability in contract, tort, (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the total sum of the price paid or payable for the Deliverables.

13.3 Nothing in this Contract shall be construed to limit or exclude the liability of the Supplier or employees of the Supplier whilst acting in the course of their employment for:

- (i) death or personal injury caused by its negligence;
- (ii) fraud or fraudulent misrepresentation;
- (iii) any liability to the extent it cannot be limited or excluded by law.

14 TERMINATION

14.1 Without prejudice to any other remedy, CITB shall be entitled to terminate the Contract including all or any part of the Deliverables by giving two (2) weeks written notice at any time.

14.2 CITB shall be entitled to terminate the Contract without liability to the Supplier by giving written notice to the Supplier at any time if the Supplier ceases or threatens to cease to carry on business, or has a receiver appointed, becomes subject to an administrative order or goes into liquidation (other than for the purposes of amalgamation or reconstruction) or makes any voluntary arrangement with its creditors or CITB has reasonable grounds for believing that any of these events is about to occur in relation to the Supplier.

14.3 CITB shall be entitled to terminate the Contract without liability to the Supplier by giving written notice to the Supplier at any time if the Supplier either refuses or fails to deliver the Deliverables strictly in accordance with either the terms of the purchase order, any delivery schedules, or is in breach of any material provision of the Contract.

14.4 Either party may totally or partially cancel an order or delay delivery or performance during any period in which: its performance is prevented or hindered by circumstances beyond its reasonable control including but not limited to requisitions by Government Authority, war, strike, lock-out, plant break-down, riots, disease, act of God, storm; or the need to comply with legislation or reasonably anticipated legislation has the effect of preventing or hindering delivery of the Deliverables.

15 INSTALMENTS

Where the Deliverables are to be delivered in instalments, each delivery shall constitute a separate order and failure by the Supplier to deliver any one or more of the instalments in accordance with these Terms and Conditions or any claim by CITB in respect of any one or more instalments shall entitle CITB to treat this Contract as a whole as repudiated.

16 FORCE MAJEURE

16.1 Neither party will be deemed to be in breach of the Contract or otherwise liable to the other in any manner whatsoever for any failure or delay in performing its obligations under the Contract due to circumstances beyond its reasonable control ("**Force Majeure**") including, but not limited to, acts of God, fire, flood, lightening, war, revolution, acts of terrorism provided that it has given details of the Force Majeure event to the other party as soon as reasonably practicable.

16.2 If either party becomes aware of a Force Majeure event or occurrence which gives rise to, or is likely to give rise to, any such failure or delay on its part as described in clause 16.1, it shall immediately notify the other by the most expeditious methods then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.

16.3 If the Force Majeure continues for more than 2 weeks either party may give written notice to the other to terminate the Contract. The notice to terminate must specify a termination date not less than seven (7) days after the date on which the notice is given.

17 ASSIGNMENT

The Supplier shall not assign or sub-contract their rights or obligations unless CITB have consented in writing. Where CITB provides such consent, the Supplier shall remain jointly and severally liable with the sub-contractor or assignee for their acts and omissions.

18 VARIATION

18.1 Save as expressly otherwise provided in these Terms and Conditions, no variation to the Contract will be effective unless it is in writing and signed by a duly authorised representative on behalf of each of the parties. This includes any request by the Supplier to change the scope of the Deliverables from those set out in the original purchase order.

18.2 In the event of any conflict or inconsistency between the terms specified in this Contract and the terms of any separate written purchase order between the parties, these Terms and Conditions shall take precedence over the terms specified in the purchase order to the extent of the conflict or inconsistency.

19 WAIVER

A delay in exercising or failure to exercise a right or remedy under or in connection with any of the Terms and Conditions shall not constitute a waiver of, or prevent or restrict future exercise of, that or any right or remedy, nor will the single or partial exercise of a right or remedy prevent or restrict further exercise of that or any other right or remedy unless expressly confirmed in writing and signed by the authorised representative and only in the circumstances and for the purpose for which it was given and will not waive any other rights, remedy, breach or default.

20 SEVERABILITY

In the event of any term or condition of this Contract being deemed or held to be void or unenforceable, such term or condition will be deemed to be severed from this Contract and will not affect the remainder of the Contract which will continue in full force and effect.

21 EXCLUSION OF THIRD PARTY RIGHTS

No term herein, express or implied is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Contract and any resultant purchase order.

22 NOTICES

Any notice given under or pursuant to this Contract shall be in writing and delivered by hand or next working day delivery service to the address on the purchase order and by email communication to commercialcontracts@citb.co.uk resulting in the receipt of a written communication in permanent form. Any notice shall be deemed to have been signed on signature of a delivery receipt or at the time the notice is left at the proper

address where delivered during normal business hours or if delivered after 5pm, the next working day.

23 SURVIVAL OF TERMS

The provisions of clauses 2 (The Deliverables), 5 (Risk and Title) 6 (Faulty Deliverables), 7 (Compliance with Laws and Policies), 8 (Anti-Bribery and Corruption), 9 (Ownership Rights), 10 (Confidentiality), 11 (Freedom of Information), 12 (Intellectual Property Rights), 13 (Indemnity), 14 (Termination), 17 (Assignment), 18 (Variation), 19 (Waiver), 21 (Exclusion of Third Party Rights), 24 (Governing Law) and 25 (Jurisdiction) shall survive any termination of these Terms and Conditions.

24 GOVERNING LAW

This Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

25 JURISDICTION

Each party irrevocably agrees that the courts of England and Wales have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.

These Terms and Conditions are signed by and between the parties by their authorised representatives as follows:

CITB

Signature: _____

Name: _____

Title: _____

Date: _____

Supplier

Signature: _____

Name: _____

Title: _____

Date: _____

Appendix A -