

Terms and Conditions of Contract for the Purchase of Services

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1. Definitions

- 1.1. In these Terms and Conditions, unless the context requires otherwise.
- 1.2. 'Condition' means the terms and conditions of purchase set out in this document and any special terms and conditions agreed in writing by the HTA.
- 1.3. 'the Contract' is the HTA's offer for the purchase of the services as set out in the Purchase Order and accepted by the Supplier either by confirmation of order or by fulfilling the Purchase Order.
- 1.4. 'the Services' means the services to be provided by the Supplier and specified in the Contract, and if any materials, articles and goods are also to be supplied by the Supplier the Services will include these materials, articles and goods which will be specified in Schedule 1 to these Terms and Conditions.
- 1.5. 'the HTA' means the Human Tissue Authority which will be the buyer of the services under these Terms and Conditions.
- 1.6. 'the Purchase Order'; means the formal request in writing from the HTA setting out the services to be provided by the Supplier which will incorporate these Terms and Conditions.
- 1.7. 'the Supplier' means a person, firm or company who accepts an HTA Purchase Order and enters into a Contract with the HTA.

2. Variation

- 2.1. These Terms and Conditions may only be varied with prior written agreement of the HTA.

3. Goods and special requirements

- 3.1. Where the HTA will purchase materials, articles or goods from the Supplier in accordance with Schedule 1 to these Terms and Conditions, Conditions 5 to 9 inclusive of the HTA's Terms and Conditions for the Purchase of Goods will apply to the Contract.

- 3.2. Where the HTA has any specific requirements for the Supplier in addition to the Services set out in the PO and any materials articles or goods set out in accordance with condition 3.1 these will be specified in Schedule 1.

4. Conditions applicable

- 4.1. These Conditions shall apply to all contracts for the purchase of Services by the HTA to the exclusion of all other terms and conditions including any terms and conditions which the Supplier may purport to apply under any confirmation of order or similar document.
- 4.2. A Contract will come into existence when the Supplier has provided a confirmation of order or fulfilled the requirements of the Purchase Order either in whole or in part.

5. Supplier's status

- 5.1. Nothing in this Contract will be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the HTA and the Supplier.
- 5.2. The Supplier has no authority to bind the HTA in any way and must not hold itself out to have any such authority.

6. Supplier's responsibilities

- 6.1. The Supplier is deemed to have understood the nature and extent of the Services to be carried out and satisfied himself in relation to all matters connected with the Services based on the information and data provided to it by the HTA. The Services will conform to the description in the Purchase Order.
- 6.2. The Services will be performed with reasonable skill, care and diligence, and to the reasonable satisfaction of the HTA or its authorised representative.
- 6.3. The Supplier will ensure that it puts in place, and keeps up to date, any licences or consents necessary for the performance of the Contract. The

Supplier will act in accordance with all applicable legislation in the performance of the Contract.

- 6.4. Where the Services are to be carried out on HTA premises, on completion of the Services the Supplier will remove his plant, equipment and unused materials and will clear away from the HTA premises all rubbish arising out of the Services and leave the HTA premises in the condition as found.
- 6.5. The Supplier will begin performing the Services on xxxxxx (date) and will continue to perform them in accordance with the Contract [until the date specified in the Purchase Order] unless the Contract is terminated in accordance with condition 17.
- 6.6. If the Supplier fails to comply with its responsibilities as set out in conditions 6.1 – 6.5 the HTA can terminate the Contract in accordance with condition 17.1.

7. Change to Contract Requirements

- 7.1. The HTA may order any variation to any part of the Services that is necessary or desirable. The variation may be, but is not limited to, any variation to the quality, quantity or price for the Services or any alteration to the time for performance of any obligation under the Contract. Any such variation requires the consent of the Supplier, such consent not to be unreasonably withheld.
- 7.2. No variation of the Services as provided for in Condition 7.1 will be valid unless it is agreed by both parties and documented in a written form, which may include by email, and acknowledged by both parties. A variation shall be deemed to be effective when the written notice is acknowledged by both parties. A written notice shall specify the variation to the Services, any variation in timescale for the provision of the varied Services and any variation in cost. If a variation is required immediately an order may be given verbally in the first instance and the Supplier will comply with that verbal order. Any verbal order given to the Supplier will be confirmed in writing by the HTA within 5 working days. Any necessary costs incurred by the Supplier acting in accordance with a verbal order which is not confirmed in writing will be borne by the HTA.
- 7.3. The Supplier may request a variation provided that.

- 7.3.1. the Supplier shall notify the HTA in writing of any additional or changed requirement which it considers should give rise to a variation within 7 days of such occurrence first becoming known to the Supplier.
 - 7.3.2. Any proposed variation will be fully supported by a quotation as detailed in Condition 7.4.
 - 7.3.3. The Supplier will bear its own costs in relation to any variation proposed under Condition 7.3.
- 7.4. The Supplier, within 14 days either of being requested by the HTA to vary the Contract under condition 7.1 or where the Supplier requests a variation pursuant to Condition 7.3., must submit a quotation to the HTA, which will contain at least the following information.
- 7.4.1. a description of the varied Services together with the reason for the proposed variation.
 - 7.4.2. the price, where applicable.
 - 7.4.3. details of the impact, if any, on other aspects of the Contract.
- 7.5. The HTA will either approve or can reject at its sole discretion any variation proposed by the Supplier.
- 7.6. If the HTA rejects a proposal of variation made by the Supplier under Condition 7.3, the variation will not be implemented and the original Contract will continue in force.

8. Information

- 8.1. The HTA will provide such information as the Supplier may reasonably require in order to perform the Contract. Any information provided under this Condition will be accurate in all material respects.

9. Supplier's Personnel

- 9.1. The Supplier will provide and maintain personnel of appropriate qualifications and experience to undertake and perform the Services.
- 9.2. The HTA reserves the right, at its sole discretion and on giving the Supplier written notice, to request the removal and/or replacement of any of the Supplier's staff, agents or sub-contractors engaged in providing the Services.
- 9.3. All of the Supplier's staff, agents and sub-contractors employed on work in relation to the Contract must have appropriate qualifications and competencies and be acceptable to the HTA in all respects. Where requested, full particulars of all personnel who are or at any time may be concerned with the Services or any part of them, including names and business addresses, and specifying in what capacity they are so concerned, will be provided to the HTA, provided that this Condition shall not infringe data protection legislation.
- 9.4. The Supplier will ensure that all staff, agents and sub-contractors employed in connection with the provision of the Services, will comply with all health and safety and security arrangements that apply at the HTA's premises. The HTA reserves the right to refuse access to any person employed by the Supplier in relation to the Contract to HTA premises.
- 9.5. The Supplier will take all reasonable steps to ensure that any staff, agents or sub-contractors of the Supplier and any sub-contractor, their servants or agents, employed in the performance of this Contract are entitled to obtain employment in the United Kingdom and are not claiming unemployment benefit or any other benefit payable to persons registered as unemployed.
- 9.6. No changes in the Supplier's key personnel ("Key Personnel") as identified in the Schedule 2 to these Terms and Conditions may be made without the HTA's consent. The Supplier will provide curriculum vitae of Key Personnel to the HTA on request. If any Key Personnel are not available to provide the Services the HTA reserve the right to terminate the Contract immediately. The Supplier shall use all reasonable endeavours to avoid changes of any other personnel (who for the avoidance of doubt shall not be listed as Key Personnel) assigned for work under the Contract.

9.7. The Supplier will bear the reasonable cost of any notice, instruction or decision of the HTA under Condition 9.

10. The price

10.1. In consideration of the provision of the Services by the Supplier the HTA will pay the price as set out in the Purchase Order. The price will remain fixed for the duration of the Services.

10.2. Any costs incurred by the Supplier in connection with provision of the Services in addition to those referred to in Condition 10.1 will be invoiced only after they are agreed with the HTA.

10.3. The HTA will pay VAT on the price of the Services as set out in the Supplier's invoices.

11. Payment

11.1. The HTA will pay the invoices as set out in the Purchase Order or otherwise agreed between the parties.

11.2. Payment will be made within 30 days of receipt and agreement of invoices for Services provided to the satisfaction of the HTA. The HTA's usual method of payment is through the Banks Automated Clearing System (BACS). All payments made by the HTA to the contractor will be through BACS unless the contractor provides advanced written notice to the HTA that this method of payment is not possible or will cause undue inconvenience.

11.3. Wherever under the Contract any sum of money is recoverable from or payable via the Supplier that sum may be deducted from any sum then due or which at any later time may become due to the Supplier under the Contract or under any other agreement or contract with the HTA.

12. Right of Audit

12.1. The Supplier will keep secure and maintain until 6 years after the payment of all sums due under the Contract, or such longer period as may be agreed by the HTA and the Supplier, full and accurate records of the

supply, all expenditure reimbursed by the Supplier and all payments made by the HTA.

- 12.2. The Supplier will grant to the HTA, or its authorised agents, such access to those records as may be reasonably required by the HTA in connection with this Contract.

13. Indemnity and Insurance

- 13.1. Without prejudice to any rights or remedies of the HTA the Supplier will indemnify the HTA against all actions, suits, claims, demands, losses, charges, costs and expenses which the HTA may suffer or incur as a result of or in connection with any damage to property or in respect of any injury, whether fatal or otherwise, to any person which may result directly or indirectly from any defect in the Services provided or any act or omission of the Supplier.
- 13.2. The Supplier will hold an insurance policy or policies with a reputable insurance company covering all matters which are the subject of indemnities under these Conditions. The relevant policy or policies should be made available to the HTA if requested.

14. Intellectual property rights and confidentiality

- 14.1. The Supplier will assign all intellectual property rights and other rights in the products arising out of the Services to the HTA (except any third party or pre-existing intellectual property rights) with full title guarantee and free from all third party rights.
- 14.2. The Supplier will take all necessary steps to ensure the assignment of the intellectual property rights referred to in Condition 14.1 to the HTA.
- 14.3. At the HTA's request the Supplier will take all necessary action to secure a licence for the HTA in relation to any intellectual property rights not assigned to it under Condition 14.1 which are required by the HTA for the use of the Services.
- 14.4. The Supplier shall keep in strict confidence all specifications, instructions, plans, drawings, documents or other material or any other information (whether or not relevant to the Contract) which have been disclosed to the

Supplier by the HTA or its agents and any other confidential information concerning the HTA's business or its products which the Supplier may obtain and the Supplier shall restrict disclosure of such confidential material to such of its employees, servants or agents as need to know for the purpose of discharging the Supplier's obligations to the HTA and shall ensure that such employees, servants or agents are subject to the same obligations of confidentiality as bind the Supplier. This Condition will apply during the continuance of this Contact and after its termination.

15. Freedom of information

15.1. The Supplier acknowledges that the HTA is subject to the requirements of the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIR") and shall assist and cooperate with the HTA (at the Supplier's expense) to enable it to comply with its information disclosure obligations.

15.2. The Supplier will and will procure that its sub-contractors will:

15.2.1. transfer all requests for information to the HTA as soon as practicable and in any event within 3 working days of receiving a request for information,

15.2.2. provide the HTA with a copy of all information held on the HTA's behalf in its possession, or power in the form that the HTA requires within 5 working days (or such other period as the HTA specifies) of the HTA's request; and,

15.2.2. provide all necessary assistance as reasonably requested by the HTA to enable the HTA 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 EIR.

15.3. The HTA will be responsible for deciding at its absolute discretion whether any information requested:

15.3.1. is exempt from disclosure in accordance with the provisions of the FOIA or EIR; or

- 15.3.2. is to be disclosed in response to a request for information, and in no event will the Supplier respond directly to a request for information unless expressly authorised by the HTA to do so.
- 15.4. The Supplier acknowledges that the HTA may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Public Authorities under Part 1 of the FOIA be obliged under the FOIA or EIR to disclose confidential information:
- 15.4.1 in certain circumstances without consulting with the Supplier, or,
- 15.4.2 following consultation with the Supplier having taken its views into account,
- although, without prejudice to the foregoing, the HTA will consult or seek the Supplier's consent where reasonably possible.
- 15.5 Schedule 3 (Commercially Sensitive Information) contains a list of information which the Supplier reasonably considers is exempt from the disclosure requirements under the FOIA, together with the relevant section of FOIA which confers the exemption. If the HTA receives a request for information to release Commercially Sensitive Information, the HTA will:
- 15.5.1. determine in its absolute discretion if it considers the Commercially Sensitive Information to be exempt; and,
- 15.5.2 where reasonably practicable, consult with the Supplier prior to releasing the information.
- 15.6. The Supplier acknowledges that the Commercially Sensitive Information listed in Schedule 3 is of indicative value only and that the HTA may be obliged to disclose it in accordance with Condition 15.4.

16. Data protection

- 16.1. Both parties will comply with their respective obligations under the Data Protection Act 1998 in the performance of the Contract.
- 16.2. Where the Supplier or any of its sub-contractors acts as a Data Processor under the Data Protection Act 1998, for the HTA as a Data Controller, it will act, at all times, in accordance with the HTA's instructions. The

Supplier will and will procure that its sub-contractors will at all times take appropriate organisational, technical and security measures to protect personal data against unauthorised or unlawful data processing and shall guard against accidental loss, destruction, damage, alteration or disclosure.

16.3. The HTA may from time to time serve on the Supplier an information notice requiring the Supplier, within a time frame specified in the information notice, to provide the HTA with such information as it reasonably requires relating to:

16.3.1. compliance by the Supplier or its sub-contractors with the Supplier's obligations to the HTA under these terms and conditions in connection with the processing of personal data; and/or,

16.3.2. the rights of data subjects, including but not limited to subject access rights.

17. Termination

17.1. If the Supplier or the HTA commit a material breach of this Contract and (if such breach is capable of remedy) fail to remedy such a breach within 30 days of being asked in writing to do so, then the party that is not in breach will be entitled to terminate this Contract by notice to the party that is in breach with immediate effect. A breach of Condition 6 will automatically constitute a material breach of the Contract.

17.2. In the event that the HTA terminates this Contract under Condition 17.1 and without prejudice to any other of its rights, the HTA may itself complete the Services or have them completed by a third party and the HTA will not be liable to make any further payment to the Supplier until the Services have been completed in accordance with the requirements of the Contract and it will be entitled to deduct from any amount due to the Supplier reasonable costs incurred by the HTA (including the HTA's own costs). If the total cost to the HTA exceeds the amount (if any) due to the Supplier, the reasonable difference shall be recoverable from the Supplier.

17.3. On termination of this Contract, however arising, the Supplier will immediately deliver to the HTA copies of all information and data

specifications, programmes and other documents existing at the date of termination which the HTA has provided to it for the purposes of the Contract.

- 17.4. In addition to their rights of termination under Condition 17.1 either party shall be entitled to terminate this Contract by giving to the other party not less than 20 working days written notice to that effect.
- 17.5. Termination under Condition 17.1 will not prejudice or affect any right of action or remedy which accrues or will accrue to either party and will not effect the continued operation of Conditions 13, 14, 15, 16, 17 or 26.

18. The Contract (Rights of Third Parties) Act 1999

- 18.1. No person who is not a party to the Contract (including without limitation any employee, officer, agent, representative, or sub-contractor of either the HTA or the Supplier) will have any right to enforce any term of the Contract, which expressly or by implication, confers a benefit on him without the prior agreement in writing of both the HTA and the Supplier, which agreement should specifically refer to this Condition 18.1. This Condition does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act and does not apply to the Crown.

19. Remedies

- 19.1. In addition to the rights and remedies contained in these Conditions and those available under English law if the Supplier fails to provide the Services on the performance dates specified in the Contract the HTA reserves the right to:
 - 19.1.1. terminate the Contract in whole or part without liability to the HTA,
 - 19.1.2. refuse any subsequent performance of the Services,
 - 19.1.3. purchase substitute Services from elsewhere,
 - 19.1.4. hold the Supplier accountable for any loss and additional costs incurred, and,

19.1.5. have all sums previously paid by the HTA to the Supplier under the Contract refunded by the Supplier.

20. Assigning and sub-contracting

- 20.1. The Supplier will not assign or sub-contract any portion of this Contract without the written consent of the HTA.
- 20.2. No sub-contracting by the Supplier will in any way relieve the Supplier of any of his responsibilities under the Contract.

21. Dispute resolution

- 21.1. The parties will each use reasonable endeavours to resolve any dispute or matters in difference as to the construction of this Contract or any matters of whatever nature between the parties arising from or in connection with this Contract by means of prompt discussions in good faith at managerial level appropriate to the dispute in question. Such discussions will not be a precondition to the commencement of proceedings pursuant to the remainder of this Condition.
- 21.2. Any dispute may at any time and by either party be referred in the first instance to the relevant HTA Director, and his/her equivalent at the Supplier.
- 21.3. In the event that a resolution to any dispute cannot be found in terms of Condition 21.2 within 7 days of the referral the dispute may be referred by either party to the Chief Executives or equivalent of both parties.
- 21.4. If the dispute cannot be resolved in accordance with Conditions 21.1 - 21.3, for disputes exceeding £5 000 in value, the HTA and the Supplier will try to choose, by mutual agreement, a neutral advisor or mediator. If they are unable to agree on a mediator within 14 days of one of the parties making a request to the other for mediation, or if the mediator agreed is unable or unwilling to act, either party will apply to the Centre for Effective Dispute Resolution (CEDR) to appoint a mediator.
- 21.5. The HTA and the Supplier will meet with the mediator agreed pursuant to paragraph 21.4 within 14 days of their appointment, to agree the procedure to be followed concerning the mediation negotiations.

- 21.6. If an agreement is not reached within 60 days of the mediator being appointed, or such longer period as the HTA and the Supplier agree then the dispute may be referred to arbitration. The President for the time being of the Law Society shall appoint an independent third party to act as arbitrator.
- 21.7. If the sum in dispute does not exceed £5 000 and it cannot be resolved in accordance with Conditions 21.1 – 21.3 then either party will have the option to pursue the matter through the courts.
- 21.8. The parties will continue to comply with and observe and perform all their obligations under the Contract regardless of the nature of the dispute and not withstanding the referral of the dispute for resolution under this Condition.

22. Severance

- 22.1. If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, that provision will be severed and the remainder will continue in force as if the Contract has been executed with the invalid, illegal or unenforceable provisions eliminated.

23. Force Majeure

- 23.1. Neither party will be liable to the other by reason of any failure or delay in performing its obligations under the Contract which is due to any supervening event, including but not limited to, war, national emergency, flood or earthquake, where there is no practical means available to the party concerned to avoid such failure or delay.
- 23.2. If either party becomes aware of any circumstances of Force Majeure which give rise to any such failure or delay, or which appear likely to do so, that party will promptly give notice of those circumstances as soon as practicable after becoming aware of them and will inform the other party of the period for which it estimates that the failure or delay will continue.
- 23.3. For the purposes of this Condition, 'Force Majeure' means any event or occurrence which is outside the control of the party concerned and which

is not attributable to any act or failure to take preventative action by the party concerned, and will not include any industrial action occurring within the Supplier's organisation or within any sub-contractors organisation.

- 23.4. The party claiming that a Force Majeure event has arisen will take all reasonable steps to minimise the failure or delay in performing its obligations under the Contract.
- 23.5 The HTA reserve the right to terminate the contract with immediate effect if the Force Majeure event lasts for 1 month or more.

24. Waiver

- 24.1. The failure of either party to enforce any provision of the Contract at any time will not affect any future right to require complete performance by the other party nor will the waiver of any individual breach of any provision be taken or held to be a waiver of any subsequent breach of that provision or any other provision.

25. Notices

- 25.1. Any notice given under or pursuant to the Contract may be sent by hand, post, registered post, recorded delivery or transmitted by email, facsimile or any other telecommunication resulting in receipt of a written communication.
- 25.2. Any notice sent in accordance with Condition 25.1. to the address of the party shown on the Purchase Order or to such other address as the party may have specified will be deemed effective on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

26. Law and jurisdiction

- 26.1. This Contract will be governed by and interpreted in accordance with English Law and will be subject to the exclusive jurisdiction of the Courts of England and Wales.

SCHEDULE 1

Materials, articles and Goods to be supplied by the Supplier

Special requirements

(Please set out here any materials, articles or goods to be purchased from the services Supplier and any special requirements e.g regular reports)

SCHEDULE 2

Supplier's Key personnel to be used in delivery of the Services

(Supplier to insert details)

SCHEDULE 3

Commercially Sensitive Information

The Supplier reasonably considers that the following information is exempt from disclosure under the FOIA due to the fact that it is commercially sensitive pursuant to Section 43(1) and (2) of the FOIA: