

NHS EDUCATION FOR SCOTLAND (NES)  
TERMS AND CONDITIONS OF PURCHASE

These Conditions may be varied only with the written agreement of NES. No terms or conditions put forward at any time by the Seller shall form any part of the Contract unless specifically agreed in writing by NES. Delivery of Goods and Services shall be conclusive evidence that the terms of the Contract apply. Quotations referred to in the contract are referred only for price, delivery and quality.

#### 1. Defined Terms and Interpretation

**"Contract"** means the agreement between NES and the Seller;  
**"Contract Price"** means the monies payable by NES to the Seller for the full and proper performance by the Seller of its obligations under the Contract;  
**"Costs"** includes costs, charges, outgoings of every description;  
**"Goods"** means all goods, materials or articles that the Seller is required to supply under the Contract;  
**"Loss"** includes losses, liabilities, claims, costs, charges and outgoings of every description (including legal expenses), compensation payable under contracts with suppliers and/or customers, loss of normal operating profits, loss of opportunity, loss of goodwill, loss of revenue from related contracts and pure economic loss;  
**"Purchase Order"** means written notification sent to the Seller by NES of an order for any of the Goods under the Contract in accordance with the Specification, which notification may be faxed or in electronic format;  
**"Seller"** means the person, firm or company to whom the Contract is awarded;  
**"Specification"** means a full description of the Goods as referred to, set out in or attached to the Invitation to Offer or, if no such full description is set out in or attached to the Order as set out in or attached to any documentation inviting the Seller to tender for the appointment to provide the Goods;

#### 2. Delivery and Packaging

2.1 Any time or period for delivery, despatch of completion shall be of the essence. All goods supplied against the Contract must be adequately protected against damage and deterioration in transit;  
2.2 Any information relating to the handling of goods upon receipt is to be clearly marked on the exterior packaging and accompanying paperwork;  
2.3 Unless otherwise provided for in the Contract, the Seller shall be responsible for the collection and disposal of all returnable packaging at no cost to NES. The Seller warrants to NES that they conform and will confirm to all laws and regulations governing the disposal of packaging.

#### 3. Contract Price and Payment

3.1 Unless otherwise agreed in writing, all prices shall be firm and fixed for the duration of the Contract, inclusive of carriage and packaging, but exclusive of VAT;  
3.2 Provided Goods or Services have been delivered and comply with the requirements of the Contract, unless otherwise agreed, payment shall be made by BACS within 30 days of submission of a satisfactory invoice;  
3.3 Any Value Added Tax must be shown separately on all invoices;  
3.4 If the Seller fails to mark the Purchase Order Number on the packaging, advice note, invoice and all other correspondence, payment may be delayed. No prompt discount shall be forfeited by NES and no interest shall be payable in respect of late payment.

#### 4. Forms

Unless otherwise agreed in writing by NES and the Seller:

- a delivery note shall accompany each delivery of the Goods;
- invoices shall be rendered on the Seller's own invoice form;
- delivery notes and invoices shall be clearly marked with NES's order number, name and address, and the description and quantity of the Goods.

#### 5. Property and Risk

5.1 Risk in the Goods shall pass to NES when the Goods have been delivered and accepted in accordance with Clause 2;  
5.2 Notwithstanding delivery, property in the Goods shall not have passed from the Seller until the full Contract Price of such Goods has been paid.

#### 6. Right of Rejection

6.1 Goods shall be inspected on behalf of NES within a reasonable time after delivery and may be rejected if found to be defective or inferior in quality to or differing in form or material from the requirements of the Contract, or if they do not comply with any term, whether expressed or implied, of the Contract.

6.2 NES shall notify the Seller of:

- the discovery of any defect within a reasonable time of its discovery and shall give the Seller reasonable opportunities to investigate such defect as long as the Seller acts in a timely manner; and
- shortages or damage caused in transit and found on or within 14 days of delivery or such time as agreed by the Parties.

6.3 NES's right of rejection shall continue irrespective of whether NES has in law accepted the Goods. Taking delivery, inspection, use or payment by NES of the Goods or part of them shall not constitute acceptance, waiver or approval and shall be without prejudice to any right or remedy that NES may have against the Seller;

6.4 Goods so rejected after delivery shall be removed by the Seller at its own expense within 14 days from the date of notification of rejection, otherwise NES may return the rejected Goods at the Seller's risk and expense.

6.4 If NES so elects, the Seller shall free of charge and as quickly as possible either repair or replace such Goods as have been rejected by NES in terms of this Clause 6.

#### 7. Quality

7.1 Goods shall be of first class quality, new, and be supplied strictly in accordance with the Specification, and unless otherwise agreed in writing, shall conform to all relevant standards, specifications and conditions. All work performed by the Seller shall be in accordance with best industry standards and practice.

7.2 Seller warrants its expertise and confirms the accuracy of all statements and representations made in respect of the Goods prior to and subsequent to, the Purchase Order.

7.3 Goods shall be fit and sufficient for the purpose for which such goods are ordinarily used and for any particular purpose made known to the Seller by NES and NES relies on the skill and judgement of the Seller in the supply of the Goods and the execution of the Contract.

#### 8. Health and Safety

In accordance with the requirements of the Health & Safety at Work etc Act 1974, any safety precautions required for the handling of the material covered by the Contract are to be clearly indicated on each consignment.

#### 9. Transfer and Sub-Contracting

9.1 Seller shall not assign the whole or any part of the Contract. With the exception of the carriage of Goods to the Location, the Seller shall not sub-contract

the production or supply of any Goods without the previous consent in writing of NES, such consent not to be unreasonably withheld or delayed.

9.2 If with NES's consent Seller sub-contracts the production or supply of any Goods, every act or omission of the sub-Seller shall for the purposes of the Contract be deemed to be the act or omission of the Seller who shall be liable to NES as if such act or omission had been committed or omitted by the Seller itself.

#### 10. Indemnity

10.1 Without prejudice to any rights and remedies of NES, the Seller shall indemnify NES against all actions, suits, claims, demands, losses, charges, costs and expenses which NES may suffer or incur directly or indirectly from any defect in the Goods or the negligent or wrongful act or omission of the Seller.

10.2 Seller shall effect with a reputable insurance company a policy or policies of insurance covering all the matters which are the subject of indemnity under these Conditions and shall at the request of NES produce the relevant policy or policies together with receipts or other evidence of the latest premium due thereunder.

#### 11. Variation

Seller shall not alter any of the Goods or Services, except as directed in writing by NES. NES shall have the right during the execution of the Contract to direct Seller to add or omit, or otherwise vary, Goods and Services, and Seller shall carry out such variations and be bound by the same conditions, so far as applicable, as though the terms of the amendment were stated in the contract.

#### 12. Environmental Considerations

The Seller shall comply in all material respects with applicable environmental laws and regulations in force from time to time in relation to the Goods or any other matter which is the subject of the Contract.

#### 13. Freedom of Information (FOI)

The Parties acknowledge that the Contract is subject to the principles of the Freedom of Information (Scotland) Act 2002. Notwithstanding any other provisions of the Contract, any or all of the provisions of the Contract may be made publicly available by NES pursuant to the FOI (Scotland) Act 2002.

#### 14. Data Protection Regulations

Both parties agree to adhere to Data Protection Regulations. Data Protection Regulations means the EU Data Protection Directive 95/46/EC, the Directive on Privacy and Electronic Communications 2002/58/EC (as amended by the Citizens Rights Directive 2009/136), the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699) and The EU General Data Protection Regulation, UK Data Protection Bill and ePrivacy Regulations as well as any applicable decisions and guidance made under them together with any other law, statute, directive, regulation, other legislation in whatever form, delegated act (under any of the foregoing), rule or other binding restriction, decision or guidance in force from time to time with regards to the processing of personal data, which may apply to either party in respect of its activities under this agreement

#### 15. Intellectual Property (IP)

15.1 Seller warrants that no Goods or Services supplied against the Contract will infringe any patent, trade mark, registered design, copyright or other intellectual property of any 3<sup>rd</sup> party and shall indemnify NES against all actions, costs, claims, losses, proceedings, expenses and demands which NES may suffer as a result of or in connection with this condition;

15.2 Where development forms part of this contract, right of ownership of any invention, design or IP arising from such development shall be transferred to NES as soon as any such right arises;

15.3 Seller shall treat all information provided by NES as confidential and use such information only for the purposes of fulfilling the Contract. Any data provided by NES shall remain the property of NES.

#### 16. Power to Agree

16.1 Seller warrants to NES that it has all necessary power, corporate standing and authorisation to enter into and be bound by the terms of the Contract and that there are no statutory provisions as at the Commencement Date of the Contract that would conflict with the terms herein contained

16.2 The Seller warrants that the Contract is executed by duly authorised representatives of the Seller.

#### 17. Cancellation

NES shall be entitled to cancel the Contract or any part thereof and/or claim reimbursement for all losses and expenses suffered in the event that:-

17.1 Seller fails to deliver Goods and Services in accordance with Contract terms;

17.2 Seller fails to make satisfactory progress with the Contract so as to jeopardise the purpose of the Contract;

17.3 Seller having been given a reasonable period to rectify the situation fails to provide an adequate or satisfactory service;

17.4 Seller becomes insolvent;

17.5 Seller is subject to a change of control.

#### 18. Suspension

In the event of any interruption of NES's business due to circumstances beyond NES's control such as but not limited to dispute, fire, or accident which would prevent or hinder the use of Goods or Services which are the subject of the Contract, NES shall have the right to suspend until such circumstances have ceased.

#### 19. Law

The Contract shall be governed and construed in accordance with the law of Scotland and both parties hereby irrevocably submit to the jurisdiction of the Scottish Courts. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of NES to take proceedings against the Seller in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.