

# **NHS conditions of contract for the supply of services**

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## Interpretation

- 1 In these conditions of contract the following definitions shall apply:

*The authority* means the NHS Purchasing and Supply Agency, an executive agency of the Department of Health, or the health authority placing the contract. *Health authority* means a health authority, special health authority or NHS trust, as the case may be.

*The contract* means the agreement concluded between the authority and the contractor, including all specifications, patterns, contractor's samples, plans, drawings and other documents incorporated or referred to therein.

*The contractor* means the person who by the contract undertakes to supply the services to the authority as provided for in the contract. Where the contractor is an individual or partnership the expression shall include the personal representatives of that individual or of the partners.

*The contract price* means the price exclusive of value added tax that is payable to the contractor by the authority under the contract for the full and proper performance by the contractor of its part of the contract.

*The services* means the services and the goods that the contractor is required to supply under the contract.

*Personal data* has the same meaning as in section 1(3) of the Data Protection Act 1984.

Unless the context otherwise requires it, reference to any statute, order, regulation or other similar instrument shall be construed as a reference to the statute, order, regulation or instrument as amended or re-enacted by any subsequent statute, order, regulation or instrument.

- 2 The heading to these conditions shall not affect their interpretation.

## Agency

- 3 Subject to condition 4, where the NHS Purchasing and Supply Agency has negotiated the contract with the contractor such negotiation has been undertaken by the Agency in its capacity as agent for the authority, so that it incurs no personal liability on the contract or on any other contract resulting from such negotiation.

- 4 Where exceptionally the NHS Purchasing and Supply Agency makes it clear in its official order that it is placing the order on its own account as principal, condition 3 shall not apply and the NHS Purchasing and Supply Agency shall be the authority with all the rights and liabilities of the authority under the contract.

## Variation of conditions

- 5 The services shall be supplied solely in accordance with these conditions. All other contractual terms which in any way add to, vary or contradict these conditions upon which the contractor may seek to rely or otherwise impose on the authority shall be excluded and shall not form part of the contract (whether or not such other contractual terms post-date these conditions) unless the authority has specifically agreed in writing to be bound by any of such other contractual terms.

No later version shall be binding unless it has been agreed in writing and signed by an authorised representative of the authority.

## **Performance**

- 6 The contractor shall carry out the services to the satisfaction of the authority in accordance with the service specification.

## **Timing**

- 7 Time shall be of the essence with regard to the obligations of the contractor under the contract.

## **Staff**

- 8 The contractor must employ sufficient staff to ensure that the services are provided at all times and in all respects in accordance with the service specification. The contractor must ensure that a sufficient reserve of staff is available to meet the service specification during holidays or absences.
- 9 The contractor must employ for the purposes of this contract only such persons as are careful, skilled and experienced in the duties required of them and must ensure that every such person is properly and sufficiently trained and instructed and carries out the services with regard to:
- the task that person has to perform
  - all relevant provisions of the contract
  - all relevant rules, policies, procedures and standards of the authority
  - fire risks and fire precautions
  - the need for those working in the National Health Service to observe the highest standards of hygiene, courtesy and consideration
  - the requirements of the Health and Safety at Work Act 1974 and other relevant legislation and codes of practice.
- 10 The contractor shall provide its staff with a form of identification that is acceptable to the authority and which staff shall display on their clothing at all times when they are on the authority's premises.
- 11 The contractor shall instruct its staff not to smoke on the premises except where it is expressly permitted to do so.
- 12 The contractor shall remove from the premises any of its staff where the authority requests this on grounds of efficiency or public interest.

## **Termination**

- 13 In addition to its rights under any other provision of the contract the authority may terminate the contract at any time by giving the contractor three months' written notice. Upon the expiration of the notice the contract shall terminate without prejudice to the rights of the parties accrued to the date of termination.

## Default by contractor

- 14** Without prejudice to any other right or remedy, if the contractor does not provide the services in accordance with the specification or at the times specified in the contract the authority may:
- require the contractor to remedy the default within such time as the authority may specify by providing or providing again (as the case may be) without further charge to the authority such part of the services to the service specification
  - without terminating the whole of the contract terminate the contract in respect of part of the services only and thereafter provide or procure the provision of such part of the services itself
  - itself provide or procure the provision of the services until it is satisfied that the contractor is able to carry out the services in accordance with these conditions
  - terminate the contract.
- 15** If the cost to the authority of executing or procuring such services or part of them exceeds the amount that would have been payable to the contractor for executing or procuring such services, such excess shall be paid by the contractor to the authority in addition to any other sums payable by the contractor to the authority in respect of the breach of contract.
- 16** All or any of the remedies in conditions 14 and 15 may be exercised by the authority in respect of any default by the contractor.

## Price and payment

- 17** The contract price for the services shall be net, i.e. after the deduction of all agreed discounts. The amount of any early settlement discounts shall be shown separately in the contract.
- 18** An invoice shall be rendered on the contractor's own invoice form to the authority at monthly intervals clearly marked with the authority's order number.
- 19** Invoices shall show the period and the amount of the services for which payment is claimed together with the agreed charging rates and any other details the authority may determine as being part of the service specification.
- 20** The authority shall pay the contract price to the contractor, by BACS (Bank Account Clearing System) if the authority so chooses, within 30 days of the receipt of the services or a valid invoice, whichever is later.
- 21** Whenever under the contract any sum of money shall be recoverable from or payable by the contractor the same may be deducted from any sum then due or which at any time thereafter may become due to the contractor under the contract or under any other contract with the authority.
- 22** If for any reason the contract comes to an end otherwise than at the end of a completed calendar month the authority must pay in respect of the partly completed calendar month  $\frac{1}{365}$ th of the annual contract price for each completed day worked by the contractor in the partly completed calendar month.

## **Indemnity**

- 23** Neither Party shall be liable to the other Party for any loss or damage, costs or expenses incurred or suffered by the other Party as a result of any breach of the terms of the Contract, unless the same were in the reasonable contemplation of the Parties at the time when they entered into the Contract.

Except in the case of death or personal injury caused by negligence, and fraudulent misrepresentation or in other circumstances where liability may not be so limited under any applicable law, the liability of either Party under or in connection with the Contract, whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall not exceed the sum of £5 million for any one incident in any one Year.

The Contract Price of the Services under the Contract has been negotiated and agreed on the basis that the Parties may limit their liability to each other as set out in the Contract and the Parties each confirm that they will themselves bear or insure against any loss for which the other Party has limited its liability under the Contract.

## **Insurance**

- 24** The contractor shall insure against its liability under condition 23 with a minimum limit of indemnity of £5 million in any insurance year or such other sum as may be agreed between the contractor and the authority.

## **Racial and sexual discrimination**

- 25** The contractor shall not unlawfully discriminate within the meaning of the Sex Discrimination Act 1975 or the Race Relations Act 1976 or any enactment relating to discrimination in employment and shall take all reasonable steps to secure the observance of this condition by all its staff or agents employed in the performance of the contract.

## **Severability**

- 26** If any provision of the contract is or becomes illegal, void or invalid, that shall not affect the legality and validity of its other provisions.

## **Waiver**

- 27** The failure of either party to seek redress for breaches or to insist on strict performance of any provision of the contract or the failure of either party to exercise any right or remedy to which it is entitled under the contract shall not constitute a waiver thereof and shall not cause a diminution of the obligations under the contract.
- 28** No waiver of any provision of the contract shall be effective unless it is agreed to by both parties in writing.
- 29** No waiver of any default shall constitute a waiver of any subsequent default.

## **Accrued rights and remedies**

- 30** Neither the expiration nor the termination of the contract shall prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue either to the authority or to the contractor.

## **Variation of services**

- 31** The authority may at any time vary or add to the service specification in accordance with this condition and no such variation or addition shall affect the continuation of the contract.
- 32** The authority shall give the contractor at least one month's written notice of any variation or addition. The notice shall give details of the variation or addition and the date on which it is to take effect.

## **Transfer and sub-contracting**

- 33** Neither party shall assign the whole or any part of the contract. The contractor shall not sub-contract the supply of any services without the previous consent in writing of the authority, such consent not to be unreasonably withheld.

## **Patents etc**

- 34** The contract price shall include all payments made or to be made to any third party in respect of any right, patent, design, trademark or copyright used for the purpose of performing the contract.
- 35** The contractor shall indemnify the authority against any costs or claims arising from any infringement of any right, patent, design, trademark or copyright.

## **Confidentiality**

- 36** The contractor and its staff must not disclose to any person (other than a person authorised by the authority) any information acquired by them in connection with the contract.
- 37** Without prejudice to the generality of condition 36, the contractor and its staff must not disclose to any person (other than a person authorised by the authority) any information acquired by them in connection with the provision of the services which concerns:
- the authority, its staff or its procedures
  - the identity of any patient at any of the authority's hospitals or other establishments
  - the medical condition of or the treatment received by any patient.

## **Data protection**

- 38** The contractor must protect personal data in accordance with the provisions and principles of the Data Protection Act 1984 and the Data Protection Act 1998 and in particular the contractor must ensure compliance with the authority's security arrangements and ensure the reliability of its staff who have access to any personal data held by the authority. In addition, if the contractor is required to access or process

personal data held by the authority, the contractor shall keep all such personal data secure at all times and shall only process such data in accordance with instructions received from the authority.

The contractor shall indemnify the authority and the Secretary of State for Health against all claims and proceedings and all liability, loss, costs and expenses incurred in connection therewith made or brought by any person in respect of any loss, damage or distress caused to that person as a result of the contractor's unauthorised and/or unlawful processing or the contractor's destruction and/or damage to any personal data held by the contractor, its employees or agents.

## **Inducements to purchase**

- 39** The contractor shall not offer to any health authority or its representatives as a variation of the conditions of the contract, or as an agreement collateral to it, any advantage other than a cash discount against the contract price.
- 40** The authority shall be entitled to terminate the contract and to recover from the contractor the amount of any loss resulting from such termination in the following circumstances:
- if the contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any action in relation to the obtaining or execution of the contract or any other contract with the authority or any health authority, or for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the authority or any health authority
  - if the like acts shall have been done by any person employed by it or acting on its behalf (whether with or without the knowledge of the contractor)
  - if in relation to the contract or any other contract with the authority or any health authority the contractor or any person employed by it or acting on its behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916, or shall have given any fee or reward to any officer of the authority which shall have been exacted or accepted by such officer under colour of his office or employment and is otherwise than such officer's proper remuneration.

## **Insolvency**

- 41** The authority may at any time by notice in writing summarily terminate the contract without compensation to the contractor in any of the following events:
- if the contractor being an individual (or where the contractor is a firm, any partner in that firm) shall at any time become bankrupt or shall have a receiving order, administration order or interim order made against him, or shall make any composition or scheme of arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or if in Scotland he shall become insolvent or notour bankrupt, or any application shall be made for sequestration of his estate, or a trust deed shall be granted by him for the benefit of his creditors
  - if the contractor being a company shall pass a resolution, or the courts shall make an order, that the company shall be wound up (except for the purposes of

amalgamation or reconstruction), or if an administrative receiver on behalf of a creditor shall be appointed, or if the courts shall make an administration order, or if circumstances shall arise that entitle the courts or a creditor to appoint an administrative receiver, or which entitle the courts to make a winding-up order or administration order

provided always that such termination shall not prejudice or affect any right of action or remedy that shall have accrued or shall accrue thereafter to the authority.

## **Publicity**

- 42 The contractor shall not advertise or publicly announce that it is supplying services or undertaking work for the authority without the prior written consent of the authority, such consent not to be unreasonably withheld.

## **Use of agreements**

- 43 Upon receiving a written request the authority may allow the contractor to use NHS purchase agreements for goods and services. Should the authority allow such use it is on the understanding that the goods or services so purchased by the contractor against these agreements are only for the performance of the contract. The authority retains the right to withdraw consent for the use of any agreement instantly at any time without giving any period of notice and without giving any reason. All information received by the contractor concerning NHS purchase agreements shall be held in confidence in accordance with conditions 36 and 37.

## **Law**

- 44 The parties shall accept the non-exclusive jurisdiction of the English courts and agree that the contract is to be governed and construed according to English law.

## **NHS Purchasing and Supply Agency catalogue - electronic trading**

- 45 The main function of the NHS Purchasing and Supply Agency catalogue is to illustrate the comprehensive range of goods and services available on the Agency's contracts in a user-friendly fashion.

Contractors will supply product details of the goods and services supplied under the contract in a form and upon media specified by the authority. It shall be the responsibility of the contractor to ensure that all such details are correct as at the date upon which they are delivered to the authority and that such details do not contain any data or statement which gives rise to any liability on the part of the authority following publication of the same in accordance with this clause. The contractor warrants that such details are complete and accurate as at the date they are delivered to the authority and that in the event such details cease to be complete and accurate then the contractor shall promptly notify the authority in writing of any modification or addition to or any inaccuracy or omission in such product details.

The authority shall reproduce the product details provided by the contractor in the NHS Purchasing and Supply Agency catalogue, which shall be made available upon the National Health Service internal communications network in electronic format.

Before "going live" the authority will submit a copy of the relevant sections of the Agency's catalogue to the contractor for approval and the contractor undertakes to approve the same without unnecessary delay.

Subject to condition 34, the contractor grants to the authority a licence to use and exploit the product details provided as aforesaid for the purpose of illustrating the range of goods and services available under the NHS Purchasing and Supply Agency contracts for an indefinite period subject to the contractor notifying the authority in writing that it no longer wishes such product details to be included in the Agency's catalogue.

If requested in writing by the authority, the contractor and the authority, shall forthwith negotiate in good faith an agreement to use such electronic trading system as the authority may specify in its request. For the purposes of this condition, "electronic trading system" shall include, without limitation, Electronic Data Interchange with such message standards and protocols as the authority may specify and the world wide web.

The contractor shall indemnify the Agency from and against all liability of the contractor arising out of or in connection with any statement relating to the goods and services or information or material on or description of the goods and services provided by or on behalf of the contractor which is included in the Agency's catalogue or associated material.

## **Year 2000 compliance**

**46** The contractor warrants that the services and/or goods which it is required to provide to the authority under the terms of this contract and the equipment and systems which will be used by the contractor to provide such services and/or goods, insofar as they relate to the contractor's own business operations, are Year 2000 compliant. For the purposes of this Agreement:

"Year 2000 compliance" shall mean the ability for continued normal use of the goods, services, equipment and systems such that neither the performance nor the functionality of the goods, services, equipment and systems will be affected by any changes to the Date Format caused by the advent of the Year 2000.

"Date Format" shall mean the field configuration, which contains the date information within any part of the goods, services, equipment and systems.

## **Mediation**

**47** If any dispute arises out of these Conditions (other than in relation to any matter in which the authority has a discretion which is exercised in accordance with the terms of these Conditions and which shall be final and conclusive) the parties will use all of their respective reasonable endeavours to resolve it by negotiation. If negotiations fail to resolve such dispute the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. To initiate mediation a party shall give notice in writing (a "Mediation Notice") to the other party requesting mediation of the dispute and shall send a copy thereof to CEDR asking CEDR to nominate a mediator in the event that the parties shall not be able to agree such appointment by negotiation. The mediation shall commence within 28 days of the Mediation Notice being served. Neither party will terminate such mediation until each party has made its opening presentation and the mediator has met each party separately for at least one hour. Thereafter paragraph 14 of the CEDR Model Mediation Procedure will apply. Neither party will commence legal proceedings against the other until thirty days after such mediation of the dispute in question has failed to resolve the dispute.

## Third party rights

- 48** Except as otherwise provided in this contract, including without limitation clause 28, this contract is intended and agreed to be solely for the benefit of the contractor and the authority and no third party shall acquire any benefit, claim or rights of any kind whatsoever pursuant to, under, by or through this contract.

## Environmental considerations

- 49** The contractor shall comply in all material respects with applicable environmental laws and regulations in force from time to time in relation to the products/services the subject of the contract. Where the provisions of any such legislation are implemented by the use of voluntary agreements or codes of practice, the contractor shall comply with such agreements or codes of practice as if they were incorporated into English law subject to those voluntary agreements being cited in the tender documentation. Without prejudice to the generality of the foregoing, the contractor shall:-

- comply with all reasonable stipulations of the authority aimed at minimising the packaging in which the products the subject of the contract, or any products supplied by the contractor to the authority as part of performance of the services, are supplied;
- promptly provide such data as may reasonably be requested by the authority from time to time regarding the weight and type of packaging according to material type used in relation to all products supplied to the authority under or pursuant to the contract;
- comply with all obligations imposed on it in relation to the products/services the subject of the contract by the Packaging Waste Regulations 1997 (or any other equivalent legislation giving effect in any part of the European Economic Area to the Packaging and Packaging Waste Directive 94/62/EC);
- label all products supplied to the authority under the contract, and the packaging of those products, to highlight environmental and safety information as required by applicable UK and EU legislation;
- unless otherwise agreed with the authority, insofar as any products supplied under the contract comprise or include electrical or electronic equipment, manage the said equipment and associated consumables at end of life to facilitate recovery, treatment and recycling and provide any information which the authority may reasonably require from time to time regarding the costs of such activity;
- promptly provide all such information regarding the environmental impact of any products supplied or used under the contract as may reasonably be required by the authority to permit informed choices by end users;
- where goods are imported into the United Kingdom then for the purposes of the Producer Responsibility Obligations (Packaging Waste) Regulations 1997 (as amended) the Contractor shall assume the rolled-up obligations for all the activities performed outside the United Kingdom in relation to the goods and the packaging which is used for the containment, protection, handling, delivery and presentation of the goods in addition to any other obligations he may have pursuant to the said Regulations.

The contractor shall meet all reasonable requests by the authority for information evidencing the contractor's compliance with the provisions of this clause.