

## THAMES WATER UTILITIES LIMITED

### MINOR CAPITAL WORKS - CONDITIONS OF PURCHASE

#### 1 DEFINITIONS

<b>"CDM Regulations"</b>	Construction (Design and Management) Regulations 2015.
<b>"Conditions"</b>	means these minor capital works conditions of purchase.
<b>"Contract"</b>	means the contract between the Purchaser and the Contractor for the provision of the Works incorporating the Purchase Order and these Conditions.
<b>"Contractor"</b>	means the person or company identified as "Vendor" in the Purchase Order.
<b>"Goods"</b>	means the, goods, materials, products, equipment and to the extent applicable computer software and other intellectual property on any specified media (or any part of them) specified in the Purchase Order or provided as part of, or incorporated into, the Works.
<b>"Handover"</b>	handover of the completed Works to the Purchaser when certified as complete by the Purchaser to its reasonable satisfaction. Completion shall require:  (a) completion in accordance with the requirements of the Contract;  (b) the passing of all specified tests on completion or those reasonably required by the Purchaser to test completion including any performance requirements;  (c) delivery to the Purchaser of as built and operation and maintenance information (including the health and safety file under the CDM Regulations), available Goods warranties in favour of the Purchaser from suppliers and evidence of the passing of all relevant tests and of required consents/approvals; and  (d) any specific requirement for completion of the Works as stated in the Purchase Order.
<b>"Intellectual Property Rights"</b>	means all copyright and rights in the nature of copyright, design rights, patents, trade marks, database rights, applications for any of the above, moral rights, rights in confidential information, know-how, domain names and any other intellectual or industrial property rights (and any licences in connection with any of the same) whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world.
<b>"Losses"</b>	means claims, demands, actions, awards, judgments, settlements, costs, expenses, liabilities, damages and losses (including all interest, fines, penalties, management time and legal and other professional costs and expenses).
<b>"Price"</b>	means the price for the Works and (unless stated to the contrary in the Purchase Order) includes the price for the Goods and Services.
<b>"Purchase Order"</b>	means the document entitled 'purchase order' issued by Purchaser, setting out the Purchaser's requirements for the provision of the Works and includes the Schedule setting out contract specific requirements by reference to these Conditions.
<b>"Purchaser"</b>	means Thames Water Utilities Limited.
<b>"Services"</b>	means the services to be provided as set out on the Purchase Order or implied as being necessary to complete the provision of the Goods or the Works, including their design and specification.
<b>"Site"</b>	means the place or places where the Contractor is required to enter to deliver the Goods and/or undertake some or all of the Works and/or Services as specified in the Purchase Order or as instructed by the Purchaser.
<b>"Works"</b>	means the works to be provided as referred to in the Purchase Order, including all inspections, surveys, excavation of trial holes, drilling of boreholes, demolition and construction of any structure above or below ground or provision and installation or removal of any mechanical or electrical plant or machinery. The term 'Works' shall include any structure, plant or machinery so constructed or provided and includes all Services and Goods.

Unless the context otherwise expressly requires, references to "including" or "includes" shall be deemed to have the words "without limitation" inserted after them.

## 2 **OFFER AND ACCEPTANCE**

- 2.1 The Purchase Order together with these Conditions shall constitute an offer by the Purchaser to purchase the Works from the Contractor in accordance with these Conditions and shall be deemed to have been accepted on receipt of an unconditional acceptance from the Contractor, or, where no such acceptance is received, on the commencement of the provision of the Goods and/or Works and/or Services.
- 2.2 The terms of the Purchase Order and these Conditions shall override any conflicting conditions proposed by the Contractor.

## 3 **QUALITY AND PERFORMANCE**

- 3.1 The Contractor shall:
- (a) carry out and complete the Works with all reasonable skill, care and diligence, in accordance with best practice in the Contractor's industry, profession or trade and with sound workmanship; and
  - (b) regularly and diligently progress with the Works.
- 3.2 In carrying out and completing the Works the Contractor shall:
- (a) co-operate with the Purchaser and comply with all reasonable instructions of the Purchaser;
  - (b) use personnel who are suitably skilled and experienced to perform tasks assigned to them and in sufficient number to ensure that the Contractor's obligations are fulfilled in accordance with the Contract;
  - (c) provide all equipment, tools and vehicles and such other items as are required to ensure that the Contractor's obligations are fulfilled in accordance with the Contract;
  - (d) obtain and at all times maintain all necessary licences and consents; and
  - (e) not do or omit to do anything which may cause the Purchaser to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business.
- 3.3 The Contractor shall ensure that the Works:
- (a) correspond with their description and any applicable specification or performance requirement stated in the Purchase Order or documents referred to in the Purchase Order;
  - (b) comprise Goods which vest in the Purchaser (in accordance with Clause 4.3) free from encumbrances and are of satisfactory quality; and
  - (c) comprise Goods which are fit for the purpose for which, to the knowledge or reasonable belief of the Contractor, they are required and in this respect the Purchaser relies on the Contractor's skill and judgment.
- 3.4 The Contractor shall ensure that it and its supply chain comply with (and that the Works comply with):
- (a) all applicable laws, regulations, regulatory requirements and codes of practice of any jurisdiction, as amended and in force from time to time, including those relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods; and
  - (b) all relevant ISO and British Standards and that Goods carry the appropriate CE or (as applicable) UKCA marking; and
  - (c) save to the extent inconsistent with 3.4(a), all Thames Water policies and procedures and standards of which the Contractor is aware having made all reasonable enquiries to ascertain such requirements.
- 3.5 The Contractor shall be responsible for the correctness and completeness of the information it supplies, and shall be liable for the rectification (including the cost thereof) of any faults arising from incorrect or incomplete information.

- 3.6 Save to any extent expressly stated to the contrary in the Purchase Order, the Contractor shall not be responsible for any design included in the Purchaser's requirements stated in the Purchase Order but shall be responsible for any Contractor's proposals stated in the Purchase Order and for completing the design for the Works.
- 3.7 Save to any extent expressly stated to the contrary in the Purchase Order, the Contractor shall be responsible for ascertaining the condition and suitability for the Works of the Site, including the ground and any existing structures.

#### 4 **PROPERTY AND RISK**

- 4.1 Every delivery of Goods shall be accompanied by a delivery note in duplicate carrying full particulars of the Goods and the Purchase Order number. The Purchaser's signature on a delivery note, and the acceptance of Goods on delivery, shall not remove the Contractor's liability in respect of Goods not in accordance with the Contract.
- 4.2 Arisings and equipment or materials to be removed shall remain the property of the Purchaser, but where required by the Purchaser the Contractor shall (as part of the Works) be responsible for removing and disposing of waste arising from the Works.
- 4.3 Upon the earlier of delivery of the Goods to Site or when the Purchaser makes a payment to the Contractor for the Goods, property in the Goods shall pass to the Purchaser, but risk in the Goods shall remain with the Contractor until Handover or the Purchaser takes control of the Goods for its own use. The Purchaser shall not be required to pay for Goods which have not been delivered to the Site but may agree to do so with the benefit of satisfactory security against such Goods not being delivered.
- 4.4 The Contractor remains responsible for any loss or damage to the Works prior to Handover, including any loss or damage to Goods provided by the Purchaser for the Works from the time the Contractor takes possession of them, and shall maintain all risk works insurance until Handover for the full reinstatement value, including the Purchaser as joint insured for the Works and with a non-vitiation clause protecting the Purchaser against loss of insurance through act or omission of the Contractor.

#### 5 **PRICE**

- 5.1 The Contractor shall be deemed to have satisfied himself as to the correctness and sufficiency of the Price for the provision of the Works specified in the Purchase Order (which shall be exclusive of VAT).
- 5.2 The Price stated on the Purchase Order shall be inclusive of all costs and shall remain fixed. No increase in any Price or any additional sum will apply unless the Purchaser has given its prior written agreement.

#### 6 **PAYMENT**

- 6.1 The Contractor shall address invoices to Thames Water Utilities Limited and include on each invoice the Contractor's full company name, company number and address. Value Added Tax (VAT) and the rate of VAT charged shall be shown separately on invoices together with the Contractor's VAT registration number where applicable. Non-compliant invoices may be returned to the Contractor.
- 6.2 For Contracts where the Works are to be completed in less than 45 days, invoices shall be issued following the completion of the Works, unless stage payments have been agreed as set out in the Purchase Order in which case an invoice may be submitted upon completion of the relevant stage or milestone stated in the Purchase Order.
- 6.3 For Contracts where the Works are to be completed in 45 days or more, unless stage payments have been agreed as set out in the Purchase Order, the Contractor shall submit to the Purchaser at monthly intervals commencing within one month after commencing the Works an invoice showing value of work carried out on Site and the basis on which such amount is calculated having regard to the Price and the amount of work carried out. Where stage payments have been agreed as set out in the Purchase Order, invoices may be submitted upon completion of the relevant stage or milestone stated in the Purchase Order.
- 6.4 The final date for payment of a compliant invoice is the last day of the period of 60 days from the end of the month in which the invoice is received (unless otherwise expressly stated on the Purchase Order). Payment of a compliant invoice, or such lesser amount as the Purchaser considers to be due as stated in a pay less notice issued by the Purchaser not later than one day before the final date for payment, shall be made on the final date for payment.
- 6.5 If the Purchaser fails to pay the amount payable by the final date for payment in accordance with these Conditions he shall pay the Contractor interest upon any overdue amount at a rate per annum equivalent to 2% above the base rate for the time being of National Westminster Bank plc. The Contractor acknowledges that by entering into a Contract in accordance with these Conditions the payment date set out in these Conditions or in the Purchase Order shall not be considered grossly unfair to the Contractor under the Late Payment of Commercial Debts (Interest) Act 1998 (as amended).

- 6.6 If as a result of any audit or otherwise, an error is discovered in the amount paid to the Contractor, such error shall be corrected in the next invoice issued by the Contractor. If such error is discovered following the making of the last payment the error shall be notified by one party to the other party as soon as possible setting out the correction to be made and the basis on which it has been calculated. The amount to be paid to or from the Contractor shall, if such notification is not challenged within twenty-eight days, become due for payment twenty-eight days after the date of such notification with the final date for payment being forty-two days after the date of notification. If such notification is challenged the parties shall attempt to agree any amount to be paid. The agreed amount shall be due fourteen days after the date of agreement, with the final date for payment being the last day of the first calendar month after the month in which agreement is reached. If the parties fail to agree the dispute may be referred to resolution in accordance with Clause 21 or 22 below.
- 6.7 Before issuing its final invoice, the Contractor shall discuss it with the Purchaser. Within one month of completion of the Works, the Contractor shall submit its final invoice together with a statement setting out how the final amount due in respect of the Works, as stated in that invoice, has been calculated. The Contractor shall as requested by the Purchaser cooperate with the Purchaser and provide a breakdown of the Price, in such format and detail as reasonably required by the Purchaser, for input into the Purchaser's records management or estimating system, to assist in management reporting and for benchmarking future projects.
- 6.8 Where the Purchase Order requires a performance bond, delivery of the bond in a form to the satisfaction of the Purchaser shall be a condition precedent to any payment being due or payable under the Contract; and if one has not been delivered within 14 days of the date of issue of the Purchase Order the Purchaser may terminate the Contract without being required to make any payment.

## **7 ACCESS AND SECURITY AND PERSONNEL**

- 7.1 The Contractor shall be allowed entry to Sites as necessary as agreed in writing with the Purchaser. The Contractor shall not have exclusive use of Sites unless that is confirmed in the Purchase Order and shall accommodate other contractors and the Purchaser's employees as required by the Purchaser. The Contractor shall conform to all reasonable requests of the Purchaser concerning access and conduct at any Site. Unless otherwise agreed between the parties no work shall be executed on the Site during the night or on Saturdays, Sundays or Public Holidays.
- 7.2 Unless the Contractor's representative is stated in the Purchase Order, the Contractor shall, upon acceptance of the Purchase Order, notify the Purchaser of the name and contact telephone number of the Contractor's representative who shall supervise delivery of the Goods and/or Works and/or Services and receive all instructions and other communications under the Contract from the Purchaser. Communications under the Contract to be given to the Purchaser shall be given to the Purchaser's representative stated in the Purchase Order or such other person as may be notified by the Purchaser from time to time.
- 7.3 Employees of the Purchaser shall not be engaged as employees or agents of the Contractor in connection with the delivery of the Goods and/or Works and/or Services. The Contractor shall not, during the Contract and for a further period of 6 months after the end of the Contract, directly or indirectly solicit or entice away (or attempt to solicit or entice away) any person employed by the Purchaser; but this shall not prevent anyone responding to a national advertising campaign open to all and not specifically targeted at any employee of the Purchaser.
- 7.4 If at any time the Purchaser considers that the performance or conduct of any person involved in the Works or Services is unsatisfactory to the Purchaser, or in the Purchaser's opinion removal or replacement of such a person is required to remove a risk or concern in relation to performance of the Works or Services, the Purchaser shall have the right to require the removal and replacement of such person.

## **8 HEALTH AND SAFETY, CDM REGULATIONS AND COSHH REGULATIONS**

- 8.1 The Contractor shall not commence the Works on Site prior to the Purchaser issuing him with a TWOSA (Thames Water Operational Safety Authorisation), TOCOP (Transfer Of Control Of Premises) or other written authority to do so.
- 8.2 The Contractor shall be responsible for the health, safety and welfare of all persons who may be affected by his activities, and for the adequacy, stability and safety of the Works. The Contractor, its sub-contractors, all employees and agents shall in all dealings with the Purchaser comply with all relevant health and safety legislation, regulations and codes of practice and with the Purchaser's health and safety documents as are notified to the Contractor by the Purchaser from time to time.
- 8.3 Unless stated to the contrary in a Purchase Order, the Contractor is appointed as principal designer and as principal contractor in respect of the Works under the CDM Regulations, where those appointments are required under the CDM Regulations in relation to the Works. If another is appointed to one or both of those roles, the Contractor shall comply with any reasonable request of the principal designer and/or principal contractor. The Contractor shall not commence the Works without first checking that it and the Purchaser have a clear understanding of their roles under the CDM Regulations.

8.4 The Contractor, his sub-contractors, all employees and agents shall observe their specific responsibilities contained in the Control of Substances Hazardous to Health (COSHH) Regulations, 2002 (as amended) which require that suitable and sufficient information is to be provided with appropriate Goods and products such that an assessment of their hazards can be made (e.g. Hazard Warning Data Sheets).

## 9 **INTELLECTUAL PROPERTY**

9.1 The Contractor assigns to the Purchaser, with full title guarantee and free from all third party rights, all Intellectual Property Rights created by or on behalf of the Contractor as part of the Works (including copyright in all drawings reports and other documents and software prepared or developed by the Contractor specifically in the performance of the Contract). The Contractor shall, promptly at the Purchaser's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Purchaser may from time to time require for the purpose of securing for the Purchaser the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Purchaser under this Contract. To the extent that any Intellectual Property Rights existing at the time of the Contract or Intellectual Property Rights arising other than in connection with the Works (together "Background IPR") are required to enable the full benefit and use of Intellectual Property Rights here assigned or documentation provided in connection with the Contract by or on behalf of the Contractor ("the Purpose"), the Contractor shall grant or procure the grant of an irrevocable, non-exclusive, royalty free licence of such Background IPR to the Purchaser for that Purpose; and such licence may be assigned or sub-licensed for such Purpose.

9.2 The Contractor shall on demand indemnify the Purchaser against all Losses incurred by the Purchaser, its employees, officers, agents and contractors arising out of or in connection with any claim, demand or action alleging that the performance of the Services or the receipt or use of the Goods or implementing the outputs of the Works (including reports, design or cost estimate) has infringed any Intellectual Property Rights of a third party, provided always that the Purchaser shall give the Contractor notice as soon as reasonably practicable of any claim or action threatened or brought against the Purchaser and that the Purchaser shall permit the Contractor to conduct at his own expense, but in full consultation with the Purchaser as to the potential outcome, any action that may ensue together with all negotiations for a settlement of such claim or action.

## 10 **FORCE MAJEURE**

10.1 If the requirements of the Purchase Order are delayed or prevented by circumstances beyond the reasonable control of either party including but not limited to natural disaster, Government intervention, strike, lockout, delay by sub-contractors (but only where such delays are beyond the control of the sub-contractor concerned), performance of the Purchase Order shall be suspended. During such suspension the Purchaser shall be free to obtain from any source such Goods and/or Works and/or Services as it deems necessary and to cancel the Purchase Order in whole or in part by the like amount without incurring liability. Performance of the Purchase Order requirements will be resumed as soon as the circumstances causing the delay cease, except where the parties otherwise agree, or the Purchaser no longer requires the Goods and/or Works and/or Services having sourced similar Goods and/or Works and/or Services elsewhere in accordance with this Clause 10. The Purchaser shall pay for such Goods as have been delivered and/or such a sum as may be equitable in respect of Works and/or Services performed prior to suspension or cancellation.

## 11 **LIABILITY**

11.1 The Contractor shall be responsible for and indemnify the Purchaser against (to the extent permitted by law) all Losses arising out of or in connection with:

- (a) any action by a competent authority or third party resulting from any breach by the Contractor; and
- (b) any damage, loss (including theft), injury or death caused by the Works or the Contractor's employees, sub-contractors (at any tier) and agents;

howsoever arising in connection with the Contract.

11.2 The Contractor shall at all times hold:

- (a) in the case of public liability insurance cover, product liability insurance and motor vehicle insurance for damage to third party property, cover of not less than £10 million for each event or series of connected events against its liabilities to the Purchaser and to third parties (but where a different public or product liability or motor insurance requirement is stated in the Purchase Order that requirement shall apply in place of that stated in this Clause 11.2(a)), such insurance extending the benefit of the insurance to the Purchaser through an indemnity to principals clause; and
- (b) where design work and/or professional services are being performed, professional indemnity insurance with a minimum indemnity value of £1 million for any one incident (but where a different professional indemnity insurance requirement is stated in the Purchase Order that requirement shall apply in place of

that stated in this Clause 11.2(b)), such insurance to be maintained for six years after the expiry or termination of the Contract for any reason,

and shall produce to the Purchaser on request all relevant insurance policies and evidence of payment of current premiums..

## 12 **TERMINATION**

12.1 Without limiting its other rights or remedies, the Purchaser may terminate the Contractor's employment under the Contract with immediate effect by giving written notice to the Contractor if:

- (a) the Contractor fails to carry out the Works in accordance with the Contract including compliance with the Purchaser's instructions, and the Purchaser has given seven days' notice to correct the failure and the Contractor fails to do so;
- (b) the Contractor commits an irremediable or persistent breach of the Contract; or
- (c) the Contractor ceases or threatens to cease to trade (either in whole, or as to any part or division involved in the performance of the Contract); becomes insolvent; is unable to pay its debts as they fall due; has a receiver, administrative receiver, administrator or manager appointed of the whole or any part of its assets or business; makes any composition or arrangement with its creditors; or an order or resolution is made for the Contractor to be declared bankrupt or dissolved or to enter liquidation (other than for the purpose of solvent amalgamation or reconstruction); or takes or suffers any similar or analogous procedure to any of the events described in this Clause 12.1(c) in any jurisdiction,

and in the case of any such termination, without limiting the Purchaser's other rights or remedies, the Contractor shall pay to the Purchaser any loss resulting from such termination and all additional costs incurred by the Purchaser in having the Works completed (additional to what it would have paid the Contractor) and the Purchaser shall not be required to make any further payment to the Contractor until such loss and costs can properly be ascertained

12.2 Without limiting its other rights or remedies, the Purchaser may terminate the Contractor's employment under Contract at any time for any reason including his own convenience by giving the Contractor written notice having immediate effect subject to Clause 12.4.

12.3 The Purchaser may at any time suspend performance of the whole or part of the Works for any reason including his own convenience and subsequently order recommencement at a later date. The Contractor shall be reimbursed its reasonable mitigated costs thereby occasioned provided that the Contractor informs the Purchaser of the amount of such costs so far as reasonably practicable before they are incurred, and the suspension is not attributable to any breach by the Contractor.

12.4 Upon any termination the Contractor shall as soon as practicable vacate the Site leaving it safe and tidy and remove its own equipment (but not any Goods) and, subject to Clause 12.1 and any other right of set off, the Contractor shall be paid for work carried out (as a fair proportion of the Price) and for commitments reasonably made to third parties in respect of work not carried out, but in no circumstances shall the Purchaser be required to pay for loss of profit or to pay more than the Price taking account of all payments already made.

## 13 **PURCHASER REMEDIES**

13.1 If the Contractor fails to deliver the Goods and/or perform the Works and/or Services in accordance with the Contract, the Purchaser shall, without limiting its other rights or remedies including the pursuit or any liability for breach of contract, have one or more of the following rights:

- (a) to recover from the Contractor any expenditure incurred by the Purchaser in obtaining substitute goods, works and/or services from a third party;
- (b) to claim damages for any additional costs, loss or expenses incurred by the Purchaser which are in any way attributable to the Contractor's failure to provide Goods and/or Works or Services in accordance with the Contract;
- (c) to require the Contractor to correct or replace any Works found not to be in accordance with the Contract before the end of 12 months from completion of the Works, and to pay all costs reasonably incurred by the Purchaser in remedying any such defect which is not remedied promptly by the Contractor; and
- (d) to reject Goods (in whole or in part) found not to be in accordance with the Contract during the period of 12 months after their delivery, whether or not title has passed, return them to the Contractor at the Contractor's own risk and expense and to require a full refund.

13.2 The Contractor shall comply with all times and periods stated in the Purchase Order and shall, if late in delivering the Goods or in completing the Works and/or Services as compared with such times or periods, be liable to pay liquidated damages to the Purchaser at a rate of 0.5% of the total amount payable under the Purchase Order for the relevant Goods, Works or Services each week of delay (or where a different rate or amount is specified in the Purchase Order, that rate or amount shall apply instead) PROVIDED ALWAYS that:

- (a) if the Contractor is delayed by a force majeure event in accordance with Clause 10 (Force majeure); or
- (b) if the Contractor is delayed by any action of the Purchaser;

he shall be allowed such extension of time for completing the Works and/or Goods and/or Services as is reasonable.

13.3 The Contractor shall be liable for any loss or expense incurred by the Purchaser arising from delayed or incomplete delivery of Goods or failure to carry out the Works in accordance with the Contract and any such loss or expense may be deducted from any monies which may become payable by the Purchaser to the Contractor, without prejudice to the Purchaser's right to recover the full amount of such loss and expense.

13.4 Where required to do so by the Purchaser, the Contractor shall re-perform any Works or Services not carried out to the reasonable satisfaction of the Purchaser at no additional charge.

13.5 The Contractor's performance of the Contract shall be measured and reported against targets or KPIs, and (without limiting or removing any other remedy under the Contract) poor performance addressed, as may be required by the Purchase Order.

#### 14 **CONFIDENTIALITY AND DATA PROTECTION**

14.1 The Contractor shall keep in strict confidence the existence and details of the Contract and all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Contractor, its employees, agents or subcontractors, by the Purchaser and any other confidential information concerning the Purchaser's business or its products or its services which the Contractor may obtain including information obtained during visits to the Purchaser's sites or otherwise. The Contractor shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Contractor's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Contractor. The Contractor shall be responsible for the acts and omissions of its employees, agents and subcontractors as though they were the actions or omissions of the Contractor itself.

14.2 The Contractor shall comply with all relevant data protection laws, and shall not by any act or omission cause the Purchaser to breach data protection laws, in relation to any personal data used or obtained in connection with the Contract.

14.3 To the extent permitted by law the Contractor shall indemnify the Purchaser against all Losses arising out of or in connection with any breach of this Clause 14.

14.4 The Contractor shall not take or use any pictures of the Works or the Site without the Purchaser's consent and shall not publish any picture or articles about the Works or the Site without the Purchaser's consent.

#### 15 **AUDIT**

15.1 In order that the Purchaser may audit the Contractor's compliance with the Contract and the charges payable under a Purchase Order, the Contractor shall, for up to 36 months from the issue of the Contractor's invoice provide the Purchaser and/or its external auditors, on request, at no additional charge with:

- (a) reasonable access to and copies of all accounts and records of the Contractor showing the costs incurred by it in providing the Goods and/or Works and/or Services;
- (b) records and supporting documentation detailing Purchaser-related gifts and hospitality costs, together with other non-attributable gifts and hospitality costs;
- (c) reasonable access to all relevant information, premises, data, IT systems, employees, agents, subcontractors, suppliers and assets at all locations from which obligations of the Contractor are being carried out; and
- (d) all reasonable assistance in carrying out any such audit.

## 16 VARIATIONS

- 16.1 The Contractor shall not substitute materials or vary the Goods and/or Works or Services from that stated in the Purchase Order or referred to therein, except as directed in writing by the Purchaser.
- 16.2 The Purchaser may order variations to the Goods and/or Works or Services provided such variations shall not increase the general scope of the original Goods and/or Works or Services. A fair and reasonable reduction in the Price shall be made for any omission. If the Contractor considers that any such variation justifies an increase to the Price, he shall so notify the Purchaser in writing and await confirmation that the amendment to the Price is agreed before undertaking the variation or await an instruction to proceed with the variation on the basis that any fair and reasonable change to the Price will be agreed or determined later.

## 17 FRAUD, BRIBERY AND CORRUPTION

- 17.1 The Contractor shall procure that all of its business activities in the UK or elsewhere are conducted in compliance with the Bribery Act 2010 and the Criminal Finances Act 2017 and the laws and requirements of all countries or territories in which the Contractor operates, including all anti-bribery and corruptions laws and laws against the facilitation of tax evasion. The Contractor shall not do or omit to do any act that will cause or lead the Purchaser to be in breach of the Bribery Act 2010 and/or any other applicable anti-bribery and/or anti-corruption laws or regulations, or the Criminal Finances Act 2017 by facilitating the evasion of tax. The Contractor shall not receive or agree to receive from any person or offer to agree to give to any person or procure for any person any gift or consideration of any kind as an inducement or reward for doing or not doing anything, or showing favour or disfavour to any person in relation to this Contract. The Contractor shall not engage in the facilitation of tax evasion, nor shall the Contractor conspire with any person to do any of the acts mentioned in this Clause 17.
- 17.2 The Contractor shall, and shall ensure that each of its sub-contractors shall, comply with the Modern Slavery Act 2015 and shall notify the Purchaser as soon as practicable of any non-compliance by the Contractor or its supply chain. Upon the Purchaser's request the Contractor shall provide the Purchaser with a slavery and human trafficking report setting out the steps the Contractor has taken to ensure slavery and human trafficking is not taking place in any part of the Contractor's business or any part of its supply chain.
- 17.3 Any breach by the Contractor of this Clause 17 shall entitle the Purchaser to immediately terminate this Contract and recover from the Contractor the amount of any loss resulting from such termination and recover from the Contractor the amount of value of any such gift, consideration or commission. Further, and without prejudice to the foregoing and/or any other remedy it may have, if the Purchaser has reasonable grounds to believe that any of the Contractor's personnel has committed a fraud or malpractice and/or otherwise acted in breach of the Bribery Act 2010, the Modern Slavery Act 2015, or facilitated the evasion of tax, or failed to have in place reasonable procedures to prevent the facilitation of tax evasion, the Purchaser may, in its sole discretion:
- (a) suspend the delivery of the Goods and/or Works and/or Services; and/or
  - (b) withhold payment of any sums falling due to the Contractor.
- 17.4 To the extent permitted by law the Contractor shall indemnify the Purchaser against all Losses arising out of or in connection with any breach of this Clause 17 and/or any applicable laws, including but not limited to any breach of the Bribery Act 2010 and the Modern Slavery Act 2015, or the Criminal Finances Act 2017.

## 18 ASSIGNMENT

- 18.1 The Contractor shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract (other than as required by the Purchase Order or as necessary for the supply of Goods) without the prior written consent of the Purchaser. The Purchaser may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent. Any agreement or requirement to subcontract any part of the Works (in the Purchase Order or otherwise expressly confirmed in writing) shall not relieve the Contractor of any of his obligations hereunder and the Contractor shall be responsible for the acts and omissions of subcontractors in connection with the Works as if they were its own acts and omissions.

## 19 SEVERANCE

- 19.1 If a court or any other competent authority finds that any provision (or part of any provision) of a Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of that Contract shall not be affected. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

20           **THIRD PARTY RIGHTS**

20.1           A person who is not a party to this Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

21           **ADJUDICATION**

21.1           The Institution of Civil Engineers' Adjudication Procedure (as last amended) shall form part of each Contract to which the Housing Grants, Construction and Regeneration Act 1996 (as amended) applies. If not agreed between the parties, the adjudicator shall be a person appointed by the president or vice president of the Institution of Civil Engineers.

22           **LAW AND JURISDICTION**

22.1           The Contract shall be governed by and construed according to the laws of England and Wales, and the parties hereto submit to the exclusive jurisdiction of the courts of England and Wales.