

## Conditions of Contract for Supplies

### 1 Interpretation

1.1 In this Agreement, the following words will have the following meanings:

- “Agreement” means these terms and conditions, the Purchase Order, the Tender and (if applicable) the Award Letter;
- “Award Letter” means the letter signed by the Customer which confirms the award of the contract and which may give details of the Goods to be supplied by the Supplier to the Customer in accordance with the terms of this Agreement;
- “Crown” means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales) including, but not limited to, government ministers, government departments, government offices and government agencies;
- “Customer” means the organisation set out in the Invitation to Tender;
- “FOIA” means the Freedom of Information Act 2000;
- “GDPR” means the General Data Protection Regulation (Regulation (EU) 2016/679)
- Information” has the meaning given under section 84 of the FOIA;
- “Invitation to Tender” means the invitation sent to a potential Supplier to submit an Tender
- “Party/Parties” the Supplier and/or the Customer (as appropriate);
- “Premises” will have the meaning given in the Invitation to Tender, Purchase Order, or Award Letter, as applicable, or if such term is not defined it will be the “ Deliver To” address as specified in the Purchase Order;
- “Purchase Order” means the Customer’s order for the Goods which has a unique PO number, and details the Goods to be supplied by the Supplier to the Customer in accordance with the terms of this Agreement;
- “Request for Information” will have the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” will apply);
- “Specification” means any specification for the Goods produced by the Supplier and agreed with the Customer; or supplied to the Supplier by the Customer including any specification contained in the Invitation to Tender, Purchase Order or Award Letter and any documents referred to therein which set out the quantity, description, quality and price of the Goods;
- “Staff” means all persons employed by the Supplier to perform its obligations under this Agreement together with the Supplier’s servants, agents, suppliers and sub-contractors used in the performance of its obligations under this Agreement;
- “Supplier” means the person, firm or company that enters into this agreement with the Customer;

- “Sustainable Development Strategy for Northern Ireland” means the NI Executive’s Sustainable Development Strategy found at: <https://www.daera-ni.gov.uk/publications/sustainable-development-documentation>
- “Tender” means the Supplier's written offer
- “VAT” means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
- “Working Day” means a day (other than a Saturday or Sunday) on which banks are open for business in Northern Ireland.

1.2 Where a capitalised word is not defined in this Agreement it will have the meaning given to it in the Invitation to Tender, Purchase Order or Award Letter.

1.3 In this Agreement unless the context otherwise requires:

1.3.1 references to numbered clauses are references to the relevant clause in this Agreement;

1.3.2 any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;

1.3.3 the headings to the clauses of this Agreement are for information only and do not affect the interpretation of this Agreement;

1.3.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;

1.3.5 where the word ‘including’ is used in this Agreement, it will be understood as meaning ‘including without limitation’.

## **2 Basis of Agreement**

2.1 Signature of the Award Letter by the Customer will constitute an acceptance of the offer contained in the Supplier's Tender and an acceptance of these terms and conditions.

2.2 Any variation to the provisions of this Agreement (including any special terms and conditions agreed between the Parties) will be inapplicable unless in writing and signed by a duly authorised representative of each Party.

## **3 Quality of the Goods to be supplied**

3.1 The Supplier will supply the Goods to the Customer in accordance with the Specification. The Supplier warrants, represents, undertakes and guarantees that the Goods supplied under this Agreement will:

3.1.1 (where applicable) be free from defects (manifest or latent), in materials and workmanship and remain so for 12 months after Delivery;

3.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and comply with any applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods;

3.1.3 conform with the specifications, drawings, descriptions given in quotations, estimates, brochures, sales, marketing and technical literature or material (in whatever format made available by the Supplier) supplied by, or on behalf of, the Supplier;

3.1.4 be free from design defects;

3.1.5 be fit for any purpose held out by the Supplier or made known to the Supplier by the Customer expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgement. The Supplier acknowledges and agrees that the approval by the Customer of any designs provided by the Supplier will not relieve the Supplier of any of its obligations under this sub-clause.

#### **4 Price**

4.1 In consideration of the Supplier's performance of its obligations under this Agreement, the Customer will pay the Price in accordance with this clause, and clause 5, below.

4.2 The price of the Goods will be as stated in the Purchase Order, Award Letter, or Tender (as applicable), and no increase will be accepted by the Customer unless agreed by him in writing before the issue of the Purchase Order.

4.3 All amounts stated are exclusive of VAT and/or any other applicable taxes or levy, which will be charged in addition at the rate in force at the date as shown on the invoice.

4.4 The Price will include the costs of packaging, insurance, delivery, unloading, stacking and carriage of the Goods. No extra charges will be effective unless agreed in writing and signed by the Customer.

#### **5 Payment**

5.1 The Customer will pay the Supplier the Price for the Goods, (plus a sum equal to the VAT chargeable on the supply of the Goods), following delivery of the Goods, no later than 30 days after the receipt of a valid invoice which includes a valid PO number. Where the Supplier enters into a sub-contract with a contractor for the purpose of performing its obligations under the Agreement, it will ensure that a provision is included in such sub-contract which requires payment to be made of all sums due by the Supplier to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.

#### **6 Recovery of Sums Due**

6.1 Wherever under this Agreement any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of this Agreement), that sum may be deducted unilaterally by the Customer from any sum then due, or which at any later time may become due, to the Supplier under this Agreement or under any other agreement or contract with the Customer or with any department, agency or authority of the Crown. The Supplier will not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part.

#### **7 Packaging**

7.1 The Goods will be packed and marked in a proper manner and in accordance with the Customer's instructions and any statutory requirements and any requirements of the carriers. The Supplier will indemnify the Customer and the Crown against all actions, suits, claims, demands, losses, charges, costs and expenses which the Customer or the Crown may suffer or incur as a result of, or in connection with, any breach of this clause.

7.2 All packaging materials will be consistent with the Customer's environmental policy and considered non-returnable.

## **8 Environmental Requirements**

- 8.1 The Supplier will provide the Goods in accordance with the Customer's environmental policy and in accordance with the Sustainable Development Strategy for Northern Ireland.

## **9 Cancellation**

- 9.1 The Customer will have the right to cancel the order for the Goods, or any part of the Goods, which have not yet been delivered to the Customer. The cancellation will be made in writing. Without prejudice to the generality of the foregoing, the Customer will pay the Price (or where applicable, that part of the Price) for Goods which have been delivered to the Customer or at the date of the notice of cancellation are in transit and the costs of materials which the Supplier has purchased to fulfil the order for the Goods and which cannot be used for other orders or be returned to the supplier of those materials for a refund.

## **10 Delivery**

- 10.1 The Supplier will deliver the Goods to the Premises on the Delivery Date at the time specified in the Invitation to Tender, Purchase Order or Award Letter. Any access to premises and any labour and equipment that may be provided by the Customer in connection with delivery will be provided, without acceptance by the Customer of any liability whatsoever and the Supplier will indemnify the Customer and the Crown in respect of any actions, suits, claims, demands, losses, charges, costs and expenses, which the Customer or the Crown may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Supplier or any of his sub-contractors. This indemnity shall be unlimited in respect of death or personal injury caused by the negligence of the Supplier and in all other cases the Supplier's liability under this indemnity shall in no event exceed twice the value of the Agreement.
- 10.2 Each delivery of the Goods will be accompanied by a delivery note which shows the PO number and the type and quantity of the Goods.
- 10.3 Where any access to the Customer's premises is necessary in connection with delivery or installation the Supplier and his sub-contractors will at all times comply with the reasonable requirements of the Customer's security arrangements.

## **11 Non-delivery**

- 11.1 Where (i) the Supplier fails to deliver the Goods in accordance with clause 10.1; or (ii) the Goods do not comply with the provisions of clause 3, then without limiting any of its other rights or remedies, the Customer will be entitled:
- 11.1.1 to terminate the Agreement;
  - 11.1.2 request the Supplier, free of charge, to deliver substitute Goods within the timescales specified by the Customer;
  - 11.1.3 to require the Supplier, free of charge, to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
  - 11.1.4 to reject the Goods (in whole or part) and return them to the Supplier at the Supplier's own risk and expense;
  - 11.1.5 to buy the same or similar Goods from another Supplier;
  - 11.1.6 to recover the element of the cost of buying the Goods from another Supplier which exceed the Price.

## **12 Property**

12.1 Property and risk of the Goods will, without prejudice to any of the rights or remedies of the Customer, pass to the Customer on completion of delivery. Delivery of the Goods will be completed once the completion of unloading the Goods from the transporting vehicle at the Premises has taken place and the Customer has signed for the delivery.

## **13 Guarantee of title**

13.1 The Supplier warrants that:

13.1.1 it has full clear and unencumbered title to all the Goods;

13.1.2 it has full capacity and authority to enter into this Agreement;

13.1.3 at the date of delivery of any of the Goods it will have full and unrestricted right, power and authority to sell, transfer and deliver all of the Goods to the Customer. From that date the Customer will acquire a valid and unencumbered title to the Goods.

## **14 Insurance**

14.1 The Supplier will effect and maintain with a reputable insurance company, a policy or policies of insurance providing an adequate level, and duration, of cover in respect of all risks which may be incurred by the Supplier in respect of its performance of this Agreement, including death, personal injury, loss or damage to property or any other loss. In particular, the Supplier must hold product liability insurance in a sum no less than twice the value of the Agreement.

## **15 Intellectual property indemnity**

15.1 The Supplier will indemnify, and keep indemnified, the Customer in full against all cost, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Customer as a result of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Goods, to the extent that the claim is attributable to the acts or omission of the Supplier, its employees, agents or sub-contractors.

## **16 Assignment and sub-contracting**

16.1 The Supplier will not without the written consent of the Customer assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of this Agreement or any part thereof. The Customer may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier will be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.

16.2 Where the Supplier enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under this Agreement, it will comply with the sub-contractor payment provision in clause 5.1.

16.3 The Customer may assign, novate, or otherwise dispose of its rights and obligations under this Agreement without the consent of the Supplier provided that such assignment, novation or disposal will not increase the burden of the Supplier's obligations under this Agreement.

## **17 Termination**

17.1 Without prejudice to any other right or remedy it might have, the Customer may terminate this Agreement by written notice to the Supplier with immediate effect if:

- 17.1.1 the Supplier is in material breach of any obligation which is not capable of remedy; or
- 17.1.2 the Supplier is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied; or
- 17.1.3 the Supplier becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 17.1.3) in consequence of debt in any jurisdiction.
- 17.1.4 Termination or expiry of this Agreement will not affect clauses 2, 13, 23, 24, 25, 26, 29, 31, 37 and 39.

## **18 Prevention of Corruption**

- 18.1 The Supplier will not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.
- 18.2 If the Supplier, its Staff or anyone acting on the Supplier's behalf, engages in conduct prohibited by clauses 18.1 the Customer may:
  - 18.2.1 terminate the Agreement and recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Goods and any additional expenditure incurred by the Customer throughout the remainder of the Agreement; or
  - 18.2.2 recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of those clauses.

## **19 Prevention of Fraud**

- 19.1 The Supplier will take all reasonable steps, in accordance with good industry practice, to prevent fraud by Staff and the Supplier (including its shareholders, members and directors) in connection with the receipt of monies from the Customer.
- 19.2 The Supplier will notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 19.3 If the Supplier or its Staff commits fraud in relation to this or any other contract with the Crown (including the Customer) the Customer may:
  - 19.3.1 terminate this Agreement and recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Goods and any additional expenditure incurred by the Customer throughout the remainder of the Agreement; or
  - 19.3.2 recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of this clause.

## **20 The Contracts (Rights of Third Parties) Act 1999**

- 20.1 A person who is not a Party to the Agreement will have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior

written agreement of both Parties.

## **21 Health and Safety**

- 21.1 The Supplier will promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Customer will promptly notify the Supplier of any health and safety hazards which may exist or arise at the Premises and which may affect the Supplier in the performance of its obligations under the Agreement.
- 21.2 While on the Premises the Supplier will comply with all health and safety measures.
- 21.3 The Supplier will notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 21.4 The Supplier shall comply with the requirements of the Health and Safety at Work (Northern Ireland) Order 1978 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under the Agreement.
- 21.4 The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work (Northern Ireland) Order 1978) is made available to the Customer on request.

## **22 Discrimination**

- 22.1 The Supplier shall comply with all applicable fair employment, equality of treatment and anti-discrimination legislation, including, in particular, the Employment (Northern Ireland) Order 2002, the Fair Employment and Treatment (Northern Ireland) ) Order 1998, the Sex Discrimination (Northern Ireland) Order 1976 and 1988, the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003, the Equal Pay Act ( Northern Ireland ) 1970, the Disability Discrimination Act1995, the Race Relations (Northern Ireland) Order 1997, the Employment Relations (Northern Ireland) Order 1999 and Employment Rights (Northern Ireland ) Order 1996 Employment Equality (Age) Regulations (Northern Ireland) 2006, Part-time and Fixed-term Workers (Prevention of less Favourable Treatment) Regulation 2000, Fixed-term Employees (Prevention of Less Favourable Treatment) regulations 2002, The Disability Discrimination (Northern Ireland ) Order 2006, The Employment Relations (Northern Ireland) Order 2006, The Equality Act (Sexual Orientation) Regulations (Northern Ireland )2006, The Employment Relations (Northern Ireland) Order 2004, The Work and Families (Northern Ireland) Order 2006, The Disability Discrimination (Northern Ireland) Order 2006, The Employment Relations (Northern Ireland) Order 2004, The Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006, The Employment Relations (Northern Ireland) Order 2004, The Work and Families (Northern Ireland) Order 2006, and shall use his best endeavours to ensure that in his employment policies and practices and in the delivery of the services required of the Supplier under this agreement he has due regard to the need to promote equality of treatment and opportunity between:
- a. persons of different religious beliefs or political opinions;
  - b. men and women or married and unmarried persons;
  - c. persons with and without dependants (including women who are pregnant or on maternity leave and men on paternity leave)
  - d. persons of different racial groups (within the meaning of the Race Relations (Northern Ireland) Order 1997);

- e. persons with and without a disability (within the meaning of the Disability Discrimination Act 1995);
- f. persons of different ages; and
- g. persons of differing sexual orientation.

22.2 The Supplier will take all reasonable steps to secure the observance of clause 22.1 by all Staff.

## **23 GDPR**

23.1 In the event that personal data is being handled the Supplier and its Staff must comply with the requirements of the GDPR as set out in Schedules A and B of the Specification.

## **24 Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989**

24.1 The Supplier will comply with, and will ensure that its Staff comply with, the provisions of:

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) Section 182 of the Finance Act 1989.

24.2 In the event that the Supplier or its Staff fail to comply with this clause, the Customer reserves the right to terminate the Agreement by giving notice in writing to the Supplier.

## **25 Freedom of Information**

25.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and will provide any necessary assistance to the Customer to enable it to comply with all Information disclosure obligations.

## **26 Publicity, Media and Official Enquiries**

26.1 Without prejudice to the Customer's obligations under the FOIA or the Environmental Information Regulations 2004, neither Party will make any press announcement or publicise this Agreement or any part thereof in any way, except with the prior written consent of the other Party.

26.2 Both Parties will take reasonable steps to ensure that their servants, employees, agents, sub-contractors, suppliers, professional advisors and consultants comply with clause 26.1.

## **27 Security**

27.1 The Customer will be responsible for maintaining the security of the Premises in accordance with its standard security requirements. The Supplier and their Staff will comply with all the Customer's security requirements.

## **28 Supplier's Staff**

28.1 The Customer may, by giving written notice to the Supplier, refuse to admit onto, or withdraw permission to remain on the Premises, to any member of the Staff or any person employed or engaged by any member of the Staff.

28.2 The Supplier will comply with any clause 28.1 notice.

28.3 If requested, the Supplier will provide a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Customer's premises in connection with this Agreement.



- 28.4 The Supplier's Staff will comply with any rules, regulations and requirements specified by the Customer.
- 28.5 If the Supplier fails to comply with clause 28.2 within one month of the date of the request, and in the reasonable opinion of the Customer such failure may be prejudicial to the interests of the Crown, then the Customer may terminate the Agreement, provided always that such termination will not prejudice or affect any right of action or remedy which will have accrued or will thereafter accrue to the Customer.
- 28.6 The decision of the Customer in relation to clause 28.1 and 28.2 will be final and conclusive.

## **29 Audit**

- 29.1 The Supplier will keep and maintain until 6 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Goods supplied under it, all expenditure reimbursed by the Customer, and all payments made by the Customer. The Supplier will on request afford the Customer or the Customer's representatives such access to those records as may be reasonably requested by the Customer in connection with the Agreement.

## **30 Transparency**

- 30.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement is not confidential. The Customer will be responsible for determining in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of this Agreement, the Supplier hereby gives his consent for the Customer to publish the Agreement in its entirety, (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to the Agreement, to the general public.

## **31 Confidentiality**

- 31.1 (Subject to clause 24 and 25) each Party will keep confidential and not disclose, and will procure that his employees and the employees of any sub-contractor keep confidential and do not disclose, any information of a confidential nature obtained by him (concerning the other Party) by reason of this Agreement except information which:
- (a) is in the public domain otherwise than by reason of a breach of this provision;
  - (b) is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
  - (c) was in a Party's possession without restriction as to its disclosure prior to receiving such information from the other Party;
  - (d) is required to be disclosed by law (including under the FOIA and Environmental Information Regulations), or for the purposes of audit or regulatory requirements;
  - (e) is necessary for a Party to disclose for the purposes of the performing its obligations under this Agreement (but only to the extent it is necessary to do so);
  - (f) the other Party has given its specific express prior written consent can be disclosed;
  - (g) in the case of the Customer, disclosed to any other government department provided that such government department will comply with confidentiality provisions in respect of such disclosed information which are no less onerous than this clause.
- 31.2 The provisions of this clause will apply during the continuance of this Agreement and after its expiry or termination howsoever arising.

### **32 Force Majeure**

32.1 Neither Party will have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that Party (those circumstances excluding any industrial action occurring within the Supplier's organisation). The Party affected by such circumstances will promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than six months, either Party may terminate this Agreement by written notice to the other Party.

### **33 Entire agreement**

33.1 This Agreement contains the whole agreement between the parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement. Nothing in this clause will exclude liability for fraud or fraudulent misrepresentation.

### **34 Waiver**

34.1 Any waiver or relaxation either partly, or wholly of any of the conditions of the Agreement will be valid only if it is communicated to the other party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract will not constitute a waiver of any right or remedy arising from any other breach of the Agreement.

### **35 Agency, partnership etc**

35.1 This Agreement will not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement. Neither Party will have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

### **36 Remedies cumulative**

36.1 Except as otherwise expressly provided by this Agreement, all remedies available to either Party for breach of this Agreement (whether under this Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy will not be deemed an election of such remedy to the exclusion of other remedies.

### **37 Severance**

37.1 If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision will, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this agreement, and will not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

### **38 Dispute Resolution**

38.1 The parties will attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement. If the dispute cannot be resolved by the parties within a reasonable period, the dispute may, by agreement between the parties, be referred to a neutral adviser or mediator ("the Mediator") chosen by agreement between the parties. If they are unable to agree a Mediator or if the chosen Mediator is unable or unwilling to act either party will be able to apply to an appropriate mediation provider to appoint a Mediator. Within 10 Working Days of appointing the Mediator, the parties will meet with the

Mediator to agree a procedure for negotiations.

- 38.2 All negotiations connected with the dispute will be conducted in confidence and without prejudice to the rights of the parties in any further proceedings. The parties agree to be bound by any written agreement once signed by both parties. If the parties fail to appoint a Mediator, or fail to reach agreement within one month of the Mediator being appointed, either party may exercise any remedy that it has under this Agreement.

### **39 Notices**

- 39.1 Any notice to be given under this Agreement will be in writing and will be sent by first class mail or air mail, or by facsimile or e-mail (confirmed by first class mail or air mail), to the address of the relevant Party set out in the Purchase Order or Award Letter, or such other address or facsimile number as that Party may from time to time notify to the other Party in accordance with this clause.
- 39.2 Notices sent as above will be deemed effectively given on the day when in ordinary course of the means of transmission, it would first be received by the addressee in normal business hours.

### **40 Governing Law and Jurisdiction**

- 40.1 The validity, construction and performance of this Agreement, and all contractual and non contractual matters arising out of it, will be governed by Northern Ireland law and will be subject to the exclusive jurisdiction of the Northern Ireland courts.