

## Invitation to Tender (ITT) Brief on the Cobham Hall Storage Scheme

First Issued: 8<sup>th</sup> April 2019

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## 1. Summary Instructions and Details of Contract

SUBJECT	DETAILS
<b>Contract Description</b>	A contract for the design and delivery of a new collections storage scheme in Cobham Hall (For Specification on the Scope of Work and Deliverables see Annex 1)
<b>Programme</b>	To be completed as part of a programme to supplement a storage compression project in Cobham Hall and facilitate the ingress of collections following NMRN site closures.
<b>NMRN Contact during tender period</b>	Clarifications and enquiries during the tender process can be sent to <a href="mailto:Sadie.wilson@nmrn.org.uk">Sadie.wilson@nmrn.org.uk</a> Please note that this email address is different to the submission email.
<b>Date of Tender Return</b>	17 <sup>th</sup> May 2019 Midday Tender's must be submitted to <a href="mailto:tenders@nmrn.org.uk">tenders@nmrn.org.uk</a>
<b>Content for Submission</b>	Content requirements for tender returns are listed in Annex 2 of this ITT.
<b>Last date for Clarifications</b>	7 <sup>th</sup> May 2019 Midday
<b>Annexes</b>	<b>Annex 1 – Tender Specification</b> <b>Annex 2 – Supplier Response Documents</b> <b>Annex 3 – Pricing Approach</b> <b>Annex 4 – Tender Conditions &amp; Contractual Requirements</b> <b>Annex 5 – Terms and Conditions of Contract (separate document)</b>

## 2. Company Overview

2.1 The National Museum of the Royal Navy (NMRN) spans a number of Museums across the UK, detailing the past, present and future of the Royal Navy. This includes:

- NMRN Portsmouth (including HMS Victory and Gallipoli campaign survivor HMS M.33)
- The Royal Marines Museum at Eastney, Portsmouth.
- The Royal Navy Submarine Museum, Gosport, including HM submarines Alliance, Holland 1 and X.24
- Explosion, the Museum of Naval Firepower, Gosport.
- The Fleet Air Arm Museum, Yeovilton, Somerset.
- NMRN Hartlepool with the UK's oldest historic fighting ship still afloat, HMS Trincomalee.
- HMS Caroline, Belfast, Northern Ireland.

Affiliates include HMS Unicorn (Dundee); HMS Wellington (London); the Medusa Trust (Portsmouth); the Coastal Forces Heritage Trust (Portsmouth), Haslar Heritage Trust (Gosport) and the D-Day Story (Portsmouth)

The collection is managed and cared for by the Exhibitions and Collections team and Heritage Directorate who promote Heritage Best Practise in the conservation and care of the collection.

## 3. Project Introduction & Overview

3.1. Following the agreed closure of NMRN collection storage sites, specifically Royal Marines Museum, and an assessment of current storage capability it was identified that investment was required in our existing storage buildings. Cobham Hall is a purpose built collections storage facility in Fleet Air Arm Museum, Yeovilton. The building was built in 1999 and has been occupied by primarily Fleet Air Arm Collections since opening. It has been identified that there is potential within Cobham Hall to improve capacity to enable collections from across the NMRN to be relocated here, including collections from the Fleet Air Arm Museum, the Royal Marines Museum and the Royal Navy Submarine Museum.

3.2 In response to this, the NMRN want to commission the design and delivery of a new storage scheme in a single store room in Cobham Hall. This will improve our capacity to store collections, but also improve our internal access to collections and efficiency to work on and use our collections for the benefit of the organisation.

3.3 The purpose and scope of this ITT and its supporting documents is to explain in further detail the requirements of the NMRN and the procurement process for submitting a tender proposal.

## 4. Tender Process (“Procurement Process”)

This section explains the Procurement Process for tenderers before the submission deadline and the evaluation of tenders after submission. Further information on Tender Conditions & Contractual Requirements are found in Annex 4 and must be read before submission.

### 4.1 Applying before the Submission Deadline

#### 4.1.1 Work Specification

The NMRN wishes to appoint a contractor to undertake the design and delivery of a new storage scheme within a single store room in Cobham Hall

For a full, detailed specification of the services required refer to Annex 1.

#### 4.1.2 Key background documents

Further relevant background documents may be provided to the potential suppliers on request.

The following additional documentation / information is provided as part of this ITT:

- Cobham Hall floor plans

Consultations and site visits are available for contractors before tender submission. Please contact [Sadie.wilson@nrmn.org.uk](mailto:Sadie.wilson@nrmn.org.uk) to arrange.

#### 4.1.3 Timescales

Subject to any changes notified to potential suppliers by the NMRN in accordance with the Tender Conditions, the following timescales shall apply to this Procurement Process:

Activity	Date / time
Issue of Contract Notice / availability of ITT documents	8 <sup>th</sup> April 2019
Contractor site visit	23 <sup>rd</sup> April 2019
Deadline for clarification questions (Clarification Deadline)	Midday 7 <sup>th</sup> May 2019
Deadline for submission of ITT responses by potential suppliers (Tender Response Deadline)	Midday 17 <sup>th</sup> May 2019
Award decision standstill letters issued	27 <sup>th</sup> May 2019
Contract concluded with winning supplier	7 <sup>th</sup> June 2019
Contract start date	10 <sup>th</sup> June 2019

## 4.2. Instructions for Submitting Tenders

4.2.1 The documents that must be submitted to form your tender response are listed in Annex 2 (Supplier Response) to this ITT.

4.2.2 Tender submissions must be sent to [tenders@nrmn.org.uk](mailto:tenders@nrmn.org.uk) before the submission deadline.

4.2.3 The following requirements should be complied with when submitting your response to this ITT:

- Please ensure that you send your submission in good time to prevent issues with technology – late tender responses may be rejected by the NMRN.
- Please ensure that information provided as part of your response is of sufficient quality and detail that an informed assessment of it can be made by the NMRN.
- Do not submit any additional supporting documentation with your ITT response except where specifically requested to do so as part of this ITT. PDF, JPG, PPT, Word and Excel formats can be used for any additional supporting documentation (other formats should not be used without the prior written approval of the NMRN).
- All attachments/supporting documentation should be provided separately to your main tender response and clearly labelled to make it clear as to which part of your tender response it relates.

- If you submit a generic policy / document you must indicate the page and paragraph reference that is relevant to a particular part of your tender response.
- Unless otherwise stated as part of this ITT or its Annexes, all tender responses should be in the format of the relevant NMRN requirement with your response to that requirement inserted underneath.
- Where supporting evidence is requested as 'or equivalent' – you must demonstrate such equivalence as part of your tender response.
- Any deliberate alteration of an NMRN requirement as part of your tender response will invalidate your tender response to that requirement and for evaluation purposes you shall be deemed not to have responded to that particular requirement.
- Responses should be concise, unambiguous, and should directly address the requirement stated.
- Your tender responses to the tender requirements and pricing will be incorporated into the Contract, as appropriate.

#### **4.3. Clarification Requests**

4.3.1 All clarification requests should be submitted to [Sadie.wilson@nmrn.org.uk](mailto:Sadie.wilson@nmrn.org.uk) by the Clarification Deadline, as set out in the Timescales section of this ITT. The NMRN is under no obligation to respond to clarification requests received after the Clarification Deadline.

4.3.2 Any clarification requests should clearly reference the appropriate paragraph in the ITT documentation and, to the extent possible, should be aggregated rather than sent individually.

4.3.3 The NMRN reserves the right to issue any clarification request made by you, and the response, to all potential suppliers unless you expressly require it to be kept confidential at the time the request is made. If the NMRN considers the contents of the request not to be confidential, it will inform you and you will have the opportunity to withdraw the clarification query prior to the NMRN responding to all potential suppliers.

4.3.4 The NMRN may at any time request further information from potential suppliers to verify or clarify any aspects of their tender response or other information they may have provided. Should you not provide supplementary information or clarifications to the NMRN by any deadline notified to you, your tender response may be rejected in full and you may be disqualified from this Procurement Process.

#### **4.4. Evaluation Criteria**

4.4.1 You will have your tender response evaluated as set out below:

**Stage 1:** Tender responses will be checked to ensure that they have been completed correctly and all necessary information has been provided. Tender responses correctly completed with all relevant information being provided will proceed to Stage 2. Any tender responses not correctly completed in accordance with the requirements of this ITT and/or containing omissions may be rejected at this point. Where a tender response is rejected at this point it will automatically be disqualified and will not be further evaluated.

**Stage 2:** If a bidder succeeds in passing Stage 1 of the evaluation, then it will have its detailed tender response to the NMRN's requirements evaluated in accordance with the evaluation methodology set out below.

4.4.2 Award Criteria – Responses from potential suppliers will be assessed to determine the most economically advantageous tender using the following criteria and weightings and will be assessed entirely on your response submitted:

Criteria	Weighting
Quality of Method & Approach	55%
Commercial/ Value for Money	45%

4.4.3 Scoring Model – Tender responses will be subject to an initial review at the start of Stage 2 of the evaluation process. Any tender responses not meeting mandatory requirements or constraints (if any) will be rejected in full at this point and will not be assessed or scored further. Tender responses not so rejected will be scored by an evaluation panel appointed by the NMRN for all criteria other than Commercial using the following scoring model:

Points	Interpretation
<b>0</b>	Very Poor (does not meet any of the requirement) or Very High/Extreme Risk The response is significantly below what would be expected because of one or all of the following: <ul style="list-style-type: none"> <li>• The response indicates a significant lack of understanding</li> <li>• The response fails to meet the requirement</li> </ul>
<b>1</b>	Poor (meets some of the requirement) or Above Average/High Risk The response meets elements of the requirement but gives concern in a number of significant areas. There are reservations because of one or all of the following: <ul style="list-style-type: none"> <li>• There is at least one significant issue needing considerable attention</li> <li>• There is insufficient evidence to demonstrate competence or understanding</li> <li>• The response is light and unconvincing</li> </ul>
<b>4</b>	Fair (meets most, but not all the requirement) or Average Risk The response meets most of the requirement, but there is a least one significant issue of concern or several smaller issues. These would require some further clarification or attention later in the procurement process and may arise through lack of demonstrated capability and/or appropriate evidence. The response therefore shows: <ul style="list-style-type: none"> <li>• Basic understanding of the requirements</li> <li>• Sufficient competence demonstrated through relevant experience</li> <li>• Some areas of concern that require attention</li> </ul>
<b>7</b>	Good (meets the requirement) or Low Risk The response broadly meets what is expected for the criteria. There are no significant areas of concern, although there might be limited minor issues that need further exploration or attention later in the procurement process. The response therefore shows: <ul style="list-style-type: none"> <li>• Good understanding of the requirements</li> <li>• Sufficient competence demonstrated through relevant experience</li> <li>• Some insight demonstrated into the relevant issues.</li> </ul>

<b>9</b>	<p>Very Good (exceeds the requirement) or Very Low Risk</p> <p>The response exceeds what is expected for the criteria. Leave no doubt as to the capability and commitment to deliver what is required. The response therefore shows:</p> <ul style="list-style-type: none"> <li>• Very good understanding of the requirement</li> <li>• Considerable competence demonstrated through relevant experience</li> <li>• Considerable insight into the relevant issues</li> </ul> <p>The response is also likely to propose additional value in several respects above that expected</p>
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4.4.4 Quality & Method of Approach Evaluation – The Quality & Method of Approach will be evaluated using the following criteria by the evaluation panel:

- Relevant skills and experience – Experience in design and delivery of storage schemes for heritage collections.
- Understanding of the Brief – taking into consideration the scope of work and deliverables detailed in Annex 1
- Quality of Method Statement and Approach.

4.4.4 Commercial Evaluation – Your “Overall Price” (as calculated in accordance with requirements of Annex 2 (Pricing Approach) for the goods and/or services will be evaluated by the evaluation panel for the purposes of the commercial evaluation. Prices must not be subject to any pricing assumptions, qualifications or indexation not provided for explicitly by the NMRN as part of the pricing approach. In the event that any prices are expressed as being subject to any pricing assumptions, qualifications or indexation not provided for by the NMRN as part of the pricing approach, the NMRN may reject the full tender response at this point. The NMRN may also reject any tender response where the Overall Price for the goods and/or services is considered by the NMRN to be abnormally low following the relevant processes set out under the EU procurement rules. A maximum offer score will be awarded to the tender response offering the lowest “Overall Price”.

4.4.5 Moderation and application of weightings – The evaluation panel appointed for this procurement will meet to agree and moderate scores for each award criteria. Final scores in terms of a percentage of the overall tender score will be obtained by applying the relevant weighting factors set out as part of the award criteria table above. The percentage scores for each award criteria will be amalgamated to give a percentage score out of 100.

4.4.6 The winning tender response – The winning tender response shall be the tender response scoring the highest percentage score out of 100 when applying the above evaluation methodology



## Annex 1 - Tender Specification

The following sets out a full, detailed specification of the services required by the potential supplier as part of this ITT.

### 1. Scope of Work

To design and deliver a storage scheme suitable for collections allocated to move to Cobham Hall, as well as an effective working space to access collections.

To provide a suitable storage design for collections going into permanent storage, including shelving, rails, picture racking and plan chests etc. Which also provides accessibility to the collection allowing vital collections work to take place, such as auditing, rationalisation and research.

To provide options for adaptability in the future to ensure storage can respond to the reduction or expansion of the collection in storage.

To design a scheme which provides the best value options, meets the collection requirements/deliverables, and provides sustainability in terms of aftercare.

### 2. Deliverables

Table below lists details of collections allocated to move to Cobham Hall, which need to be accommodated in the new storage scheme.

2.1	Uniform	
	2.1.1 Hung Collection	
	Description	Uniform collection stored on hangers, including trousers, coats, shirts and full body overalls 3 rail heights in use, current depth is 78cm, depth requirement no less than 60cm.
	Capacity/size	Rail height 1 = 1.10m @ 52.8 lm [linear m] required Rail height 2 = 1.65m @ 16.35 lm required Rail height 3 = 1.99m @ 4 lm required Total capacity = 72.55m <sup>3</sup>
	Key requirements	Static or mobile Some collections are thick woollen coats so rails need to be able to bear some weight. Potentially collection could be rationalised or chosen to be boxed in the future, option to remove rails and replace with shelves.
	2.1.2 Boxed Collection	
	Description	Boxed collection containing uniform accessories, such as hats, caps, badges, shirts etc Mixed box sizes- largest are 10 no. w103 x d48 x h6cm, smallest are w38 x d33 x h7cm Average current shelf size, which capacity was calculated from, are 44cm height and 78cm depth
	Capacity/size	99 lm 34 m <sup>3</sup>

	Key requirements	Assumed to be incorporated with the railed storage Adjustable height to accommodate range of box sizes
2.2	Art	
	2.2.1 Large Framed works	
	Description	Picture racking for large works of art, memorial boards and framed textiles
	Capacity/size	460m <sup>2</sup> runs Static run between column on south west side, min. 12m <sup>2</sup>
	Key requirements	Assumed mobile and double sided. Some of the memorial boards are heavy and some of the frames are highly decorative, the runs need to accommodate this. Static run to be located between columns, fixed against wall to be used for over size and weight works.
	2.1.2 Small Framed works	
	Description	Small framed works storage/pigeon slot shelving. Average frame size for this shelving is 50cm x 70cm Assumed shelf dimensions used for capacity calculations are 70cm height and 60cm depth [minimum requirement]
	Capacity/size	73 lm 37m <sup>3</sup>
	Key requirements	Mobile or static Potential for collection to be framed and boxed in future, option to adapt for other collections storage
	2.1.2 Boxed art collection	
	Description	Boxed art collection, average of 3 box sizes.
	Capacity/size	Small boxes 40x31x9cm [lxdxh] = 20 boxes Medium boxes 57x39x6cm = 35 boxes Large boxes 80x62x8cm = 35 boxes This roughly equates to 2.1m <sup>3</sup> but suggest an allocation of 7m <sup>3</sup> to allow for expansion
	Key requirements	Mobile or static Most likely to require expansion if we decide to deframe artwork Adjustable height
2.3	Plan Chests	
	Description	To replace 8 old plan chests currently located in the Cobham hall or other sites, to store flat works including plans, drawings and artwork. Number of drawers range between 6-8.
	Capacity/size	8 plan chests minimum [or equivalent drawer no.]
	Key requirements	Mobile or static Can be located within any racking area as appropriate or working space.
2.4	Widespan Racking	

	Description	Storage for large airship models, boxed and crated objects. Max. size models which needs to be accommodated are 3m width x 1.10m height, and 2.6m width x 45cm height
	Capacity/size	50m <sup>3</sup> minimum
	Key requirements	Mobile or static. Adaptable height
2.5	Working Space	
	Description	Accessible space between doors Space for min. 1 person at a desk, plus space to layout a large plan
	Capacity/size	1.25m <sup>2</sup> worktop space. 2.5m <sup>2</sup> including space for chair/person etc.
	Key requirements	Can incorporate plan chests as layout space

### 3. Additional Requirements

#### 3.1 Skills

- Show experience and relevant examples for carrying out similar scope of work
- Experience of working with collection teams to deliver well-coordinated and outstanding work
- Provide Method Statement and Risk Assessment, scheduled work programme and design plans.
- Understanding and implementation of Health and Safety rules and guidelines
- Provide details of handover procedure and warranties related to scope of work

#### 3.2 Budget

The overall budget for all elements of this work, including design, supply of materials, construction and installation plus overheads [excluding VAT] should not exceed £80,000

#### 3.3 Programme

The delivery of this storage scheme is linked to the NMRN Collections Movement Programme, which details that collection will begin to be moved into Cobham Hall from 02/09/19

## Annex 2 – Supplier Response

### Part 1: Checklist

Below is a checklist of the desired content of the tender response to this ITT, in reference to the Specification in Annex 1:

Ref	Content	Ref	Detail	✓
1	CVs & Qual.s	1.1	The professional skills and qualifications of people involved in the project, including the names and CV's of proposed team members, their specific responsibilities and any arrangements for subcontracting.	<input type="checkbox"/>

		1.2	Description of how the lead consultant will seek expertise in the specialisms as stated in 3.1.2 Annex 1	<input type="checkbox"/>
2	Methods	2.1	Specify how the potential supplier will go about planning and executing the referenced tasks 2.1 – 2.7 within the Deliverables set out in Annex 1, namely;	<input type="checkbox"/>
		2.2	Uniform storage	<input type="checkbox"/>
		2.3	Art storage	<input type="checkbox"/>
		2.4	Plan chests	<input type="checkbox"/>
		2.5	Widespan racking	<input type="checkbox"/>
		2.6	Working space	<input type="checkbox"/>
3	H & S	3.1	How the contractor aims to comply with H & S IOSH standards. Please provide detailed description of your method for each deliverable (2.1 – 2.6, Annex 1), together with a template of a Risk Assessment.	<input type="checkbox"/>
		3.2	Provide relevant H & S Qualifications, such as First Aid, Confined Space Training and Working at Height.	<input type="checkbox"/>
4	Heritage Best-Practise	4.1	How the consultant will exercise best practise, in regards to collections storage standards, such as BS EN 16893:2018 <i>Conservation of Cultural Heritage. Specifications for location, construction and modification of buildings or rooms intended for the storage or use of heritage collections</i>	<input type="checkbox"/>
5	Scheduled Work Programme	5.1	Scheduled work programme (in days) for all stages of the work with milestones and dates, including but not limited to; RAMS, Exclusion Zones & Consultations	<input type="checkbox"/>
			Final Design [freeze]	<input type="checkbox"/>
			Manufacture	<input type="checkbox"/>
			Installation	<input type="checkbox"/>
			Snagging and handover	<input type="checkbox"/>
6	Costs (see Annex 4 for Pricing Approach)	6.1	A breakdown of costs for the work and materials as specified in Annex 1.	<input type="checkbox"/>
		6.2	Any travel, subsistence and accommodation cost for the work proposed in Annex 1.	<input type="checkbox"/>
		6.3	Schedule of hourly rates for the proposed labour if relevant, including sub-contractors	<input type="checkbox"/>
7	Insurance	7.1	Full extent of professional insurance or indemnity cover	<input type="checkbox"/>

## Part 2: Confidential/Commercially Sensitive Document Template

Below is a recommended template to allow potential suppliers to indicate any confidential/commercially sensitive information in accordance with the requirements of the Confidentiality and Information Governance section of this ITT.

Specify the precise elements which are considered confidential and/or commercially sensitive

Why do you consider an exemption under the POIA or EIR would apply?

Specify the estimated length of time during which the exemption will apply

### Annex 3 – Pricing Approach

The following sets out information and a recommended template for the content and format of the pricing proposals for a bid.

#### Information

The potential supplier is requested to use terminology consistent with this ITT.

All pricing should be in Pound Sterling (GBP) and Exclusive of VAT.

As part of this ITT the NMRN require two types of pricing proposals;

- 1) A breakdown of costs for the works specified within this ITT (see Annex 1)
- 2) A breakdown of hourly costs for the supplier and any subcontractors, including any travel, subsistence and accommodation.

#### Template

- 1) A breakdown of costs for the works specified within this ITT

The following is a template for the fee proposal breakdown. It is recommended that this breakdown should reference the scheduled works programme, bringing in milestones and dates. Please note this template is a guidance document and therefore is not all encompassing. Stages and Tasks can be added or removed by tenderers where seen fit:

Item	Description	Staff Member	Days	Cost (£) (Lump Sum)	Program & Milestone
<b>1</b>	Stage 1 – [insert]				
1.1	[detail stage 1]		0.25	£X	Week commencing (w/c)
1.2			-		w/c -
<b>2</b>	Stage 2				
2.1					w/c
2.2					
2.3					
	<i>Half-way stage invoice</i>				
<b>3</b>	Stage 3				
3.1					w/c
3.2					
<b>4</b>	Stage 4				
4.1					
4.2					
<b>5</b>	Stage 5				
5.1					
5.2					
	<i>Final invoice</i>				
<b>TOTAL (EXC. VAT)</b>			<b>X Days</b>	<b>£X</b>	<b>w/c – w/end</b>

- 2) A breakdown of hourly costs for the supplier and any subcontractors, including travel, subsistence and accommodation..

Below is a desired template of daily rate costs from the supplier and their sub-contractors:

Staff Member	Daily Rate (£)	Travel (per day or per visit) (£)	Accommodation (per night) (£)	Subsistence (per day) (£)
	£X	£X	£X	£X
	£X	£X	£X	£X
	£X	£X	£X	£X

## Annex 4 – Tender Conditions & Contractual Requirements

### 1. Contracting requirements

1.1 The contracting authority is NMRN Operations, or any NMRN subsidiary companies and other organisations that control or are controlled by the NMRN from time to time.

1.2 The appointed supplier will be expected to travel to Cobham Hall, Fleet Air Arm Museum, Yeovilton.

1.3 The NMRN's contracting and commercial approach in respect of the required goods and/or services is set out at Annex 5 (Terms and Conditions of contract) ("**Contract**"). By submitting a tender response, you are agreeing to be bound by the terms of this ITT and the Contract without further negotiation or amendment.

1.4 The Contract awarded will be for a duration as quantified by the tenderer during the tendering process with an option for an extension if the need arises and on permission by the NMRN.

1.5 In the event that you have any concerns or queries in relation to the Contract, you should submit a clarification request in accordance with the provisions of this ITT by the Clarification Deadline (as defined below in the Timescales section of this ITT). Following such clarification requests, the NMRN may issue a clarification change to the Contract that will apply to all potential suppliers submitting a tender response.

1.6 The NMRN is under no obligation to consider any clarifications / amendments to the Contract proposed following the Clarification Deadline, but before the Tender Response Deadline (as defined below in the Timescales section of this ITT). Any proposed amendments that are received from a potential supplier as part of its tender response shall entitle the NMRN to reject that tender response and to disqualify that potential supplier from this Procurement Process.

## 2. Policy Requirements

2.1 By submitting a tender response in connection with this Procurement Process, potential suppliers confirm that they will, and that they shall ensure that any consortium members and/or subcontractors will, comply with all applicable laws, codes of practice, statutory guidance and applicable NMRN policies relevant to the goods and/or services being supplied.

2.2 For the successful delivery of the work the tenderer should have an in-depth understanding of heritage collections storage.

2.3 The tenderer must also comply with IOSH Health & Safety Standards when on the NMRN's site and when undertaking the tendered work [<http://www.iosh.co.uk/>]. When working in confined spaces or at height, the contractor and/or any sub-contractor must have the necessary relevant training in confined spaces and/or working at height before work commences.

2.4 The Copyright of any information and/or data generated by the awarded supplier as part of the works as set out in this ITT shall be considered as under the ownership of the NMRN.

## 3. General Tender Conditions ("**Tender Conditions**")

3.1 Application of these Tender Conditions – In participating in this Procurement Process and/or by submitting a tender response it will be implied that you accept and will be bound by all the provisions of this ITT and its Annexes. Accordingly, tender responses should be on the basis of and strictly in accordance with the requirements of this ITT.

3.2 Third party verifications – Your tender response is submitted on the basis that you consent to the NMRN carrying out all necessary actions to verify the information that you have provided, and the analysis of your tender response being undertaken by one or more third parties commissioned by the NMRN for such purposes.

3.3 Information provided to potential suppliers – Information that is supplied to potential suppliers as part of this Procurement Process is supplied in good faith. The information contained in the ITT and the supporting documents and in any related written or oral communication is believed to be correct at the time of issue but the NMRN will not accept any liability for its accuracy, adequacy or completeness and no warranty is given as such. This exclusion does not extend to any fraudulent misrepresentation made by or on behalf of the NMRN.

3.4 Potential suppliers to make their own enquires – You are responsible for analysing and reviewing all information provided to you as part of this Procurement Process and for forming your own opinions and seeking advice as you consider appropriate. You should notify the NMRN promptly of any perceived ambiguity, inconsistency or omission in this ITT and/or any in of its associated documents and/or in any information provided to you as part of this Procurement Process.

3.5 Amendments to the ITT – At any time prior to the Tender Response Deadline, the NMRN may amend the ITT. Any such amendment shall be issued to all potential suppliers, and if appropriate to ensure potential suppliers have reasonable time in which to take such amendment into account, the Tender Response Deadline shall, at the discretion of the NMRN, be extended. Your tender response must comply with any amendment made by the NMRN in accordance with this paragraph 3.3.5 or it may be rejected.

3.6 Compliance of tender response submission – Any goods and/or services offered should be on the basis of and strictly in accordance with the ITT (including, without limitation, any specification of the NMRN's requirements, these Tender Conditions and the Contract) and all other documents and any clarifications or updates issued by the NMRN as part of this Procurement Process.

3.7 Format of tender response submission – Tender responses must comprise the relevant documents specified by the NMRN completed in all areas and in the format as detailed by the NMRN in Annex 2 (Supplier Response). Any documents requested by the NMRN must be completed in full. It is, therefore, important that you read the ITT carefully before completing and submitting your tender response.

3.8 Modifications to tender response documents once submitted – You may modify your tender response prior to the Tender Response Deadline by giving written notice to the NMRN. Any modification should be clear and submitted as a complete new tender response in accordance with Annex 2 (Supplier Response) and these Tender Conditions.

3.9 Rejection of tender responses or other documents – A tender response or any other document requested by the NMRN may be rejected which:

- contains gaps, omissions, misrepresentations, errors, uncompleted sections, or changes to the format of the tender documentation provided;
- contains hand written amendments which have not been initialled by the authorised signatory;
- does not reflect and confirm full and unconditional compliance with all of the documents issued by the NMRN forming part of the ITT;
- contains any caveats or any other statements or assumptions qualifying the tender response that are not capable of evaluation in accordance with the evaluation model or requiring changes to any documents issued by the NMRN in any way;
- is not submitted in a manner consistent with the provisions set out in this ITT;



- contains information which is inconsistent with answers already given in the pre-qualification questionnaire completed as part of this Procurement Process or;
- is received after the Tender Response Deadline.

3.10 Disqualification – If you breach these Tender Conditions, if there are any errors, omissions or material adverse changes relating to any information supplied by you at any stage in this Procurement Process, if any other circumstances set out in this ITT, and/or in any supporting documents, entitling the NMRN to reject a tender response apply and/or if you or your appointed advisers attempt:

- to inappropriately influence this Procurement Process;
- to fix or set the price for goods or services;
- to enter into an arrangement with any other party that such party shall refrain from submitting a tender response;
- to enter into any arrangement with any other party (other than another party that forms part of your consortium bid or is your proposed sub-contractor) as to the prices submitted;
- to collude in any other way;
- to engage in direct or indirect bribery or canvassing by you or your appointed advisers in relation to this Procurement Process; or
- to obtain information from any of the employees, agents or advisors of the NMRN concerning this Procurement Process (other than as set out in these Tender Conditions) or from another potential supplier or another tender response, the NMRN shall be entitled to reject your tender response in full and to disqualify you from this Procurement Process. Subject to the “Liability” Tender Condition below, by participating in this Procurement Process you accept that the NMRN shall have no liability to a disqualified potential supplier in these circumstances.

3.11 Tender costs – You are responsible for obtaining all information necessary for preparation of your tender response and for all costs and expenses incurred in preparation of the tender response. Subject to the “Liability” Tender Condition below, you accept by your participation in this procurement, including without limitation the submission of a tender response that you will not be entitled to claim from the NMRN any costs, expenses or liabilities that you may incur in tendering for this procurement irrespective of whether or not your tender response is successful.

3.12 Rights to cancel or vary this Procurement Process - By issuing this ITT, entering into clarification communications with potential suppliers or by having any other form of communication with potential suppliers, the NMRN is not bound in any way to enter into any contractual or other arrangement with you or any other potential supplier. It is intended that the remainder of this Procurement Process will take place in accordance with the provisions of this ITT but the NMRN reserves the right to terminate, suspend, amend or vary (to include, without limitation, in relation to any timescales or deadlines) this Procurement Process by notice to all potential supplier in writing. Subject to the “Liability” Tender Condition below, the NMRN will have no liability for any losses, costs or expenses caused to you as a result of such termination, suspension, amendment or variation.

3.13 Consortium Members and sub-contractors – It is your responsibility to ensure that any staff, consortium members, sub-contractors and advisers abide by these Tender Conditions and the requirements of this ITT.

3.14 Liability – Nothing in these Tender Conditions is intended to exclude or limit the liability of the NMRN in relation to fraud or in other circumstances where the NMRN's liability may not be limited under any applicable law.

#### **4. Mandatory Requirements / Constraints**

4.1 As part of your tender response, you must confirm that you meet the mandatory requirements / constraints, if any, as set out in the NMRN's specification forming part of this ITT. A failure to comply with one or more mandatory requirements or constraints shall entitle the NMRN to reject a tender response in full.

#### **5 Confidentiality and Information Governance**

5.1 All information supplied to you by the NMRN, including this ITT and all other documents relating to this Procurement Process, either in writing or orally, must be treated in confidence and not disclosed to any third party (save to your professional advisers, consortium members and/or sub-contractors strictly for the purposes only of helping you to participate in this Procurement Process and/or prepare your tender response) unless the information is already in the public domain or is required to be disclosed under any applicable laws.

5.2 You shall not disclose, copy or reproduce any of the information supplied to you as part of this Procurement Process other than for the purposes of preparing and submitting a tender response. There must be no publicity by you regarding the Procurement Process or the future award of any contract unless the NMRN has given express written consent to the relevant communication.

5.3 This ITT and its accompanying documents shall remain the property of the NMRN and must be returned on demand.

5.4 The NMRN reserves the right to disclose all documents relating to this Procurement Process, including without limitation your tender response, to any employee, third party agent, adviser or other third party involved in the procurement in support of, and/or in collaboration with, the NMRN. The NMRN further reserves the right to publish the Contract once awarded and/or disclose information in connection with supplier performance under the Contract in accordance with any public sector transparency policies (as referred to below). By participating in this Procurement Process, you agree to such disclosure and/or publication by the NMRN in accordance with such rights reserved by it under this paragraph.

5.5 The use of blanket protective markings of whole documents such as "commercial in confidence" will not be sufficient. By participating in this Procurement Process you agree that the NMRN should not and will not be bound by any such markings.

5.6 In addition, marking any material as "confidential" or "commercially sensitive" or equivalent should not be taken to mean that the NMRN accepts any duty of confidentiality by virtue of such marking. You accept that the decision as to which information will be disclosed is reserved to the NMRN, notwithstanding any consultation with you or any designation of information as confidential or commercially sensitive or equivalent you may have made. You agree, by participating further in this Procurement Process and/or submitting your tender response, that all information is provided to the NMRN on the basis that it may be used by the NMRN in accordance with the provisions of this ITT.

5.7 Tender responses are also submitted on the condition that the appointed supplier will only process personal data (as may be defined under any relevant data protection laws) that it gains access to in performance of this Contract in accordance with the NMRN's instructions and will not use such personal data for any other purpose. The contracted supplier will undertake to process any personal

data on the NMRN's behalf in accordance with the relevant provisions of any relevant data protection laws and to ensure all consents required under such laws are obtained.

## **6. Tender Validity**

6.1 Your tender response must remain open for acceptance by the NMRN for a period of ninety days from the Tender Response Deadline. A tender response not valid for this period may be rejected by the NMRN;

## **7. Payment and Invoicing**

7.1 The NMRN will pay correctly addressed and undisputed invoices within 30 days in accordance with the requirements of the Contract. Suppliers to the NMRN must ensure comparable payment provisions apply to the payment of their sub-contractors and the sub-contractors of their sub-contractors. General requirements for an invoice for the NMRN include:

- A description of the good/services supplied is included.
- The NMRN's reference number/Purchase Order number is included.
- The address must reflect that supplied on the NMRN Purchase Order.

## STANDARD CONDITIONS FOR THE PURCHASE OF GOODS

### NMRN OPERATIONS

A company limited by guarantee and incorporated under number 09988314 with registered charity number 1169061 whose registered office is at National Museum Of The Royal Navy, HM Naval Base, PP66, Portsmouth, Hampshire PO1 3NH (“the **Buyer**”)

#### 1 INTERPRETATION

##### 1.1 Definitions

In these conditions unless the context otherwise requires the following words and expressions shall have the following meanings:

<b>Applicable Data Protection Law</b>	means all applicable data protection laws including the General Data Protection Regulation (EU) 2016/679 (“GDPR”), read in conjunction with and subject to the Data Protection Act 2018, in each case as amended, re-enacted or replaced from time to time;
<b>Confidential Information</b>	all information of the Buyer (in whatever medium including in written, oral, visual or electronic form and whether before or after the date of this Agreement) including all business, financial, commercial, technical, operational, organisational, legal, management and marketing information;
<b>Force Majeure</b>	any act, event, omission or cause or circumstance whatsoever beyond the reasonable control of a Party, including without limitation, the following: <ul style="list-style-type: none"> <li>(a) events outside human control, including earthquake, epidemic, flood, windstorm, fog and other extreme adverse weather;</li> <li>(b) outbreak of hostilities, riot, civil disturbance, acts of terrorism; or</li> <li>(c) an act of any government or authority (including refusal or revocation of any licence or consent);</li> </ul>

<b>Goods</b>	the goods (including any instalment of the goods and any part of them) which the Seller is to supply in accordance with the Agreement;
<b>Intellectual Property</b>	all inventions, patents, utility models, designs (both registered or unregistered and including rights relating to semi-conductor topographies), database rights, copyright and trade marks (both registered and unregistered), together with all rights to the grant of and applications for the same and including all similar or analogous rights and all other rights in the nature of intellectual and industrial property throughout the world and all future rights of such nature;
<b>Order</b>	an order from the Buyer to purchase Goods, together with all other documents referred to in the order;
<b>Parties</b>	the Buyer and the Seller collectively, and “Party” means either of them and their permitted assignees;
<b>Seller</b>	a person who agrees to sell Goods to the Buyer;
<b>Software</b>	any and all computer programs and computer software (of whatever type and in whatever form or media) installed on or supplied with the Goods at the time of delivery and either necessary for their operation in the manner contemplated by the Buyer or otherwise referred to in the Order; and
<b>Specifications</b>	all matters concerning the structure, design, operation, performance and functionality of the Goods (including drawings, designs, patterns, descriptions, technical and functional specifications), and particulars of quantities, weights and dimensions, set out or referred in the Order and (to the extent not inconsistent with the Order) in any manuals, sales materials and other documentation produced by or for the Seller.

## 1.2 Construction

- 1.2.1 In the Agreement, unless otherwise specified or the context otherwise requires:

- (a) words importing the singular only shall include the plural and vice versa;
  - (b) words importing the whole shall be treated as including a reference to any part thereof;
  - (c) reference to the Agreement or to any other document is a reference to the Agreement or to that other document as modified, amended, varied, supplemented, assigned, novated or replaced from time to time as permitted by the provisions of the Agreement; and
  - (d) reference to any legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept, state of affairs or thing shall in respect of any jurisdiction other than England be deemed to include that which most closely approximates in that jurisdiction to the English legal term.
- 1.2.2 Any phrase in the Agreement introduced by the term “include”, “including”, “in particular” or similar expression will be construed as illustrative and will not limit the sense of the words preceding that term.
- 1.2.3 Headings used in the conditions are for reference only and shall not affect its construction or interpretation.

### 1.3 Other references

In the conditions a reference to:

- 1.3.1 **“the Agreement”** means an agreement for the purchase of the Goods consisting of contract documentation as described in condition 2.1, the conditions and any schedules;
- 1.3.2 **“conditions”** means these standard conditions for the purchase of goods and any special conditions agreed in writing by the Parties;
- 1.3.3 **“person”** includes any individual, company, Buyer, corporation, body corporate, government, state or agency of state, trust or foundation, or any association, partnership or unincorporated body of two or more of the foregoing (whether or not having separate legal personality and wherever incorporated or established), and
- 1.3.4 **“written”** or **“in writing”** includes any non-transitory form of visible reproduction of words including email but not fax or any form of messaging via social media or text message..

## 2 BASIS OF THE PURCHASE

- 2.1 The Agreement will be established on the first to occur of the following:
  - 2.1.1 written confirmation or acceptance by the Seller of an Order;

2.1.2 issue by the Buyer of an Order based on a quotation for Goods by the Seller; or

2.1.3 the Seller delivering Goods pursuant to an Order.

The conditions will apply to and be incorporated into the Agreement and prevail over any terms or conditions of the Seller contained or referred to in the Seller's acceptance, confirmation of order or in correspondence or elsewhere, or any inconsistent terms or conditions implied by law, trade custom, practice or course of dealing.

2.2 The Seller may not cancel the Agreement. The Buyer is entitled to cancel the Agreement in whole or in part by giving written notice to the Seller at any time prior to delivery of the Goods in which event the Buyer's sole liability will be to pay to the Seller fair and reasonable compensation for work-in-progress at the time of cancellation but such compensation will not include loss of profits or loss of business (whether direct or indirect and whether actual or anticipated) or any indirect or consequential loss.

2.3 The Buyer may at any time make changes in writing relating to the Order, including changes in the Specifications (including quantities), method of shipment, packing or time or place of delivery. If such changes result in an increase in cost of, or time required for, performance of the Agreement, an equitable adjustment will be made to the price, delivery schedule or both. Any such claim or adjustment must be approved by the Buyer in writing before the Seller proceeds with such changes.

2.4 It is the responsibility of the Seller to acquaint itself with the purposes for which and the environment in which the Goods supplied are to be used.

### **3 DELIVERY, SHIPPING AND LICENCES**

3.1 The date and time for delivery of the Goods shall be as specified in the Order or, if no such date is specified, then delivery shall take place within 28 days of the date of the Order. Unless otherwise stipulated by the Buyer in the Order, deliveries shall only be accepted by the Buyer in normal business hours (Monday to Friday between 9am to 5pm).

3.2 The Goods shall be delivered, packaged properly and securely and, where applicable, in accordance with the reasonable requirements of the Buyer, to the Buyer's place of business or to such other place of delivery as is stated in the Order or otherwise by the Buyer in writing prior to delivery of the Goods. The Seller shall offload and stack the Goods as reasonably directed by the Buyer or its duly authorised representative.

3.3 The Buyer shall not be bound to accept delivery of the Goods by instalments.

3.4 The date and time of delivery shall be of the essence of the Agreement. Failure to deliver the Goods (or any instalment of the Goods, if the Buyer has agreed to accept delivery by instalments) on the due date (and time, if specified) shall entitle the Buyer, at its option and without prejudice to its other rights and remedies, to treat such failure as a breach of condition and:

- 3.4.1 to accept delivery of the Goods at the date and time of actual delivery; or
  - 3.4.2 to reject the Goods when actually delivered; and/or
  - 3.4.3 to cancel or vary delivery of any other Goods not yet delivered under the Agreement; and/or
  - 3.4.4 to receive from the Seller reimbursement of any payments made by the Buyer for rejected or cancelled Goods less a reasonable allowance for use and all costs, losses or expenses incurred by the Buyer which are in any way attributable to the Seller's failure to deliver the Goods on to the due date (and time, if specified), including the cost of obtaining substitute goods from another supplier where applicable, but less any sums reimbursed by the Seller.
- 3.5 If a delivery contains more Goods than the Buyer agreed, the Buyer shall be entitled, without prejudice to any other rights and remedies:
- 3.5.1 to accept delivery of all the Goods delivered, in which case it shall not be bound to pay for the excess; or
  - 3.5.2 to accept delivery of the Goods which should have been delivered, but reject the excess; or
  - 3.5.3 to reject the Goods delivered; and/or
  - 3.5.4 to cancel or vary delivery of any other Goods not yet delivered under the Agreement; and/or
  - 3.5.5 to receive from the Seller reimbursement of any payments made by the Buyer for rejected or cancelled Goods less a reasonable allowance for use and all costs, losses or expenses incurred by the Buyer which are in any way attributable to the Seller's failure to deliver the Goods on to the due date (and time, if specified), including the cost of obtaining substitute goods from another supplier where applicable, but less any sums reimbursed by the Seller.
- 3.6 If a delivery contains fewer Goods than the Buyer agreed, the Buyer shall be entitled, without prejudice to any other rights and remedies:
- 3.6.1 to accept delivery of all the Goods delivered, in which case it shall not be bound to pay for the Goods until all the Goods which were scheduled to be delivered are so delivered; or
  - 3.6.2 to reject the Goods delivered; and/or
  - 3.6.3 to cancel or vary delivery of any other Goods not yet delivered under the Agreement; and/or



- 3.6.4 to receive from the Seller reimbursement of any payments made by the Buyer for rejected or cancelled Goods less a reasonable allowance for use and all costs, losses or expenses incurred by the Buyer which are in any way attributable to the Seller's failure to deliver the Goods on to the due date (and time, if specified), including the cost of obtaining substitute goods from another supplier where applicable, but less any sums reimbursed by the Seller.
- 3.7 Any access to premises and any labour and equipment provided by the Buyer in connection with delivery or installation of the Goods shall be provided to the Seller without acceptance by the Buyer of any liability in respect of any actions, claims, demands, costs and expenses incurred by third parties (including any agent of the Seller) for any loss or damages to the extent that such loss or damage is not attributable to the negligence or other wrongful acts or omission of the Buyer or any of its representatives.
- 3.8 Where the Goods are imported into the United Kingdom whether by the Seller or the Buyer, the Seller shall be responsible for complying with any legislation or regulations governing the exportation of the Goods from the country of origin and the importation of the Goods into the United Kingdom. If any licence or consent of any government or other authority shall be required for the acquisition, carriage or use of the Goods by the Buyer, the Seller shall obtain it at its own expense and if required by the Buyer produce evidence on demand that it has done so. Additional expenses or charges incurred by the Buyer resulting from such failure shall be for the Seller's account.
- 3.9 In any case where goods are sold CIF or FOB or on the basis of other international trade term, the meaning of such term contained in Incoterms as in force at the date when the Agreement is made shall apply except to the extent otherwise agreed in the Agreement. Incoterms means the international rules for the interpretation of trade terms published by the International Chamber of Commerce.

#### 4 **RISK AND TITLE**

- 4.1 Unless otherwise agreed in the Agreement or in Incoterms which the Parties have agreed shall apply to the supply of the Goods, risk of damage to or loss of the Goods and title to the Goods shall pass to the Buyer on delivery, except that where the Buyer makes payment before delivery, title will pass on payment for goods that have already been unconditionally appropriated to the contract and on appropriation for goods which are subsequently unconditionally appropriated; risk will pass on delivery.

#### 5 **ACCEPTANCE AND REJECTION OF THE GOODS**

- 5.1 On and for a reasonable period following delivery, the Buyer shall have a reasonable opportunity to examine and test the Goods.
- 5.2 If, before acceptance, the Goods or any part of them do not in the reasonable opinion of the Buyer conform to the Specifications or are otherwise not in accordance with the warranties and undertakings given by the Seller under condition 7.2 or the implied

terms referred to in condition 7.3, the Buyer shall be entitled, without prejudice to any other rights and remedies:

- 5.2.1 to accept the Goods and receive a reduction in the price of the Goods reasonably appropriate to the diminution in value attributable to the defect: or
  - 5.2.2 to have the defective Goods repaired or modified by the Seller or (as the Buyer shall elect) replaced with fully conforming Goods (which the Seller undertakes to do as quickly as possible), following which the Buyer shall be entitled to examine the Goods again in accordance with condition 5.1; or
  - 5.2.3 to reject the defective Goods; and
  - 5.2.4 to cancel or vary the description, quantity or delivery dates of any remaining Goods to be delivered under the Agreement; and
  - 5.2.5 to receive from the Seller reimbursement of any payments made by the Buyer for rejected or cancelled Goods less a reasonable allowance for use and all costs, losses or expenses incurred by the Buyer which are in any way attributable to the defective and/or rejected Goods, including the cost of obtaining substitute goods from another supplier where applicable, but less any sums reimbursed by the Seller.
- 5.3 Any Goods rejected by the Buyer in accordance with this condition 5 shall be returnable to the Seller at the Seller's risk and expense.

## 6 PRICES AND TERMS OF PAYMENT

- 6.1 The price of the Goods shall be as stated or referred to in the Order or, where no price has been stated or referred to, the price listed in the Seller's relevant published price list current at the date of the Agreement for the quantities of Goods being ordered by the Buyer.
- 6.2 Unless otherwise agreed in writing by the Buyer:
- 6.2.1 the price of the Goods shall be exclusive of value added tax or any other sales tax or duty, but inclusive of all other costs and charges including without limitation those in relation to loading, unloading, delivery, insurance and packaging and all import and export duties; and
  - 6.2.2 no variation in price nor extra charges may be imposed by the Seller, whether caused by variations in costs, fluctuations in exchange rates or otherwise.
- 6.3 Invoices shall be raised by the Seller on or after delivery to the Buyer. Payment of invoices shall be made in accordance with the Managing Public Money rules that apply to the Buyer, and within 90 days of receipt of invoice, but time of payment shall not be of the essence of the Agreement. The Seller shall not be entitled to suspend deliveries of the Goods as a result of sums being outstanding.

6.4 Without prejudice to any other rights or remedy, the Buyer reserves the right to set off any amount owing at any time from the Seller to the Buyer against any amount payable by the Buyer to the Seller under the Agreement or any other agreement between the Parties.

## 7 QUALITY AND LIABILITY

7.1 The Seller acknowledges that precise conformity of the Goods with the Agreement is of the essence of the Agreement.

7.2 The Seller warrants and undertakes as a condition of the Agreement that, from delivery until 12 months from the date of acceptance, the Goods will:

7.2.1 be of the best available design and of the best quality material and workmanship;

7.2.2 conform in all respects with the Specifications;

7.2.3 be free from defects in design, material and workmanship;

7.2.4 be fit and sufficient for the purposes for which the Goods are to be used (for which purposes the Buyer relies on the skill and judgement of the Seller); and

7.2.5 except in so far as may otherwise be indicated by the Specifications, strictly adhere to all applicable laws and the latest relevant British Standard or relevant industry standard or equivalent, where such exist;

7.2.6 comply with all statutory requirements, regulations and voluntary codes of conduct relating to the Goods (and their packaging, packing and delivery) and their sale and supply;

7.2.7 be suitable for use in the environment in which the Buyer intends to use the Goods; and

7.2.8 be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health.

7.3 The rights of the Buyer under these conditions are in addition to the terms implied in favour of the Buyer by the Sale of Goods Act 1979 or otherwise at law or in equity.

7.4 If, during the period of the warranty specified in condition 7.2, the Goods or any part of them do not in the reasonable opinion of the Buyer to conform to the Specifications or are otherwise not in accordance with the warranties and undertakings given by the Seller under condition 7.2 or the implied terms referred to in condition 7.3, the Buyer shall be entitled, without prejudice to any other rights and remedies:

7.4.1 to accept the Goods and receive a reduction in the price of the Goods reasonably appropriate to the diminution in value attributable to the defect:  
or

- 7.4.2 to have the defective Goods repaired or modified by the Seller or (as the Buyer shall elect) replaced with fully conforming Goods (which the Seller undertakes to do as quickly as possible); or
  - 7.4.3 to return the defective Goods; and
  - 7.4.4 to cancel or vary the description, quantity or delivery dates of any remaining Goods to be delivered under the Agreement; and
  - 7.4.5 to receive from the Seller reimbursement of any payments made by the Seller for returned Goods less a reasonable allowance for use and all costs, losses or expenses incurred by the Buyer which are in any way attributable to the defective and/or returned Goods, including the cost of obtaining substitute goods from another supplier where applicable, but less any sums reimbursed by the Seller.
- 7.5 Where the Seller is not the manufacturer of the Goods, the Seller will, in addition to any liability which it might have in respect of the Goods, endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Seller.

## 8 INTELLECTUAL PROPERTY

- 8.1 The Buyer authorises the Seller to use the Intellectual Property of the Buyer for the purposes only of exercising its rights and performing its obligations under the Contract. The Seller will have no other rights whatsoever in respect of the Intellectual Property of the Buyer.
- 8.2 The Seller grants to the Buyer under the Seller's Intellectual Property in the Goods a worldwide, non-exclusive, royalty-free irrevocable licence (with the right to grant sub-licences) to repair (or have repaired) the Goods and to make (or have made) parts for the Goods.
- 8.3 The Seller warrants that neither the Goods, nor their use, resale or importation, infringes the Intellectual Property of any third party except to the extent that any infringements arise from any specifications, drawings, samples or descriptions provided by the Buyer.

## 9 ANTI-BRIBERY AND ANTI-CORRUPTION

- 9.1 The Seller shall:
  - 9.1.1 comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
  - 9.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

9.1.3 have and shall maintain in place throughout the term of this agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate; and

9.1.4 promptly report to the Buyer any request or demand for any undue financial or other advantage of any kind received by the Seller in connection with the performance of this Agreement.

9.2 Breach of this condition 9 shall be deemed a material breach.

9.3 For the purpose of this condition 9 the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively.

## 10 INDEMNITY AND INSURANCE

10.1 The Seller shall indemnify the Buyer against all loss, damages, liability, costs and expenses awarded against or incurred by the Buyer in connection with:

10.1.1 any claim made against the Buyer that the Goods infringe or that their use, resale or importation infringes the Intellectual Property of any other person;

10.1.2 any recall of the Goods or any products incorporating or sold together with the Goods, which is directly or indirectly due to a defect in the Goods; and

10.1.3 any breach by the Seller of the terms of the Agreement,

provided that the Seller shall have no liability to indemnify the Buyer to the extent that any such liability arises from a breach of the Agreement by the Buyer or from work required to be done on or to the Goods or their packaging in accordance with the designs or specifications of the Buyer.

10.2 The Seller shall throughout the period of the Agreement maintain with a reputable insurance company at its own cost:

10.2.1 employer's liability insurance in accordance with any legal requirement for the time being in force; and

10.2.2 a comprehensive policy or policies of professional indemnity and other insurance providing an adequate level of cover in respect of all insurable liability which may be incurred by the Seller under the Agreement, including (without limitation) in respect of death or personal injury, or loss of or damage to property, intellectual property infringement and product liability.

The terms of any insurance policy or the amount of the cover shall not relieve the Seller of any liabilities under the Agreement. It shall be the responsibility of the Seller to

determine the amount of insurance cover that will be adequate to enable the Seller to satisfy any liability referred to in condition 10.2.2.

- 10.3 The Seller shall produce to the Buyer on request copies of all insurance policies referred to in condition 10.2 or other evidence confirming the existence and extent of cover given by those policies, together with receipts or other evidence of payment of the premiums due under those policies.

## 11 CONFIDENTIALITY

- 11.1 The Seller shall use the Confidential information only for the proper performance of its duties under the Agreement and shall not without the Buyer's prior written consent disclose or permit the disclosure of such information except in confidence for the proper performance of its duties under the Agreement to those of its employees, officers and professional advisers who need to have access to it.
- 11.2 The provisions of this condition 11 shall not apply to Confidential Information which: (i) the receiving party can prove was known to the receiving party before receipt; (ii) is in or enters the public domain through no wrongful default by or on behalf of the receiving party with effect from the date when that information enters the public domain; (iii) was received from a third party without obligations of confidence owed directly or indirectly to the disclosing party; or (iv) is required to be disclosed in order to comply with applicable law, to the extent of the required disclosure.
- 11.3 If the receiving Party has reasonable grounds to believe that the disclosing Party is involved in activity that constitutes an offence under the Bribery Act 2010, it may disclose relevant Confidential Information to the Serious Fraud Office (or other relevant government body) without informing the disclosing Party of such disclosure.
- 11.4 Within three (3) days of receipt of a request to do so made at any time and in any event if the Agreement is terminated, the Seller shall promptly return or destroy (at the option of the Buyer) all such Confidential Information.

## 12 DATA PROTECTION

- 12.1 Each Party shall comply with its respective obligations under Applicable Data Protection Law and shall not do or omit to do anything which would cause the other Party to breach Applicable Data Protection Law.
- 12.2 It is not envisaged or intended that any personal data will be transferred between the Parties or processed under this Agreement. However, to the extent that any personal data is processed by the Seller under this Agreement, the Seller shall:
- 12.2.1 process the personal data only in accordance with this Agreement and the Buyer's lawful instructions;
- 12.2.2 implement appropriate technical and organisational measures to protect the personal data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure;

- 12.2.3 only permit the personal data to be processed by persons who are bound by enforceable obligations of confidentiality;
  - 12.2.4 remain entitled to appoint third party sub-processors. Where the Seller appoints a third party sub-processor, it shall, with respect to data protection obligations: (i) ensure that the third party is subject to, and contractually bound by, at least the same obligations as Seller; and (ii) remain fully liable the Buyer for all acts and omissions of the third party;
  - 12.2.5 not transfer or otherwise process the personal data outside the European Economic Area (“EEA”) without obtaining the Buyer's prior written consent;
  - 12.2.6 where consent is granted under condition 12.2.5, the Seller may only process, or permit the processing, of the personal data outside the EEA under the following conditions: (i) the territory has the benefit of a European Commission finding that it provides adequate protection for the privacy rights of individuals; or (ii) the Seller has provided appropriate safeguards, and on condition that enforceable data subject rights and effective legal remedies for data subjects are available; or (iii) the transfer otherwise complies with Applicable Data Protection Law;
  - 12.2.7 notify the Buyer without delay after becoming aware that it has suffered a personal data breach;
  - 12.2.8 at the Buyer’s cost, permit the Buyer (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Seller’s data processing activities to enable the Buyer to verify and/or procure that the Seller is complying with its obligations under this condition 12;
  - 12.2.9 assist the Buyer in responding to requests from data subjects who are exercising their rights under Applicable Data Protection Law;
  - 12.2.10 assist the Buyer in complying with its obligations pursuant to Articles 32-36 of the GDPR (or such corresponding provisions of Applicable Data Protection Law), comprising (if applicable): (i) notifying a supervisory authority that the Buyer has suffered a personal data breach; (ii) communicating a personal data breach to an affected individual; (iii) carrying out an impact assessment; and (iv) where required under an impact assessment, engaging in prior consultation with a supervisory authority; and
  - 12.2.11 unless applicable law requires otherwise, upon termination of this Agreement delete all personal data provided by the Buyer to the Seller.
- 12.3 Each Party acknowledges that the factual description of the subject-matter, duration of the processing, the nature and purpose of the processing, the type of personal data and the categories of data subjects shall be as set out in this Agreement. To the extent that the foregoing is not set out in this Agreement, the Parties shall keep a separate record the relevant particulars.

## 13 TERMINATION

- 13.1 The Agreement may be terminated immediately by the Buyer on written notice to the Seller, without prejudice to any other rights or remedies of the Buyer:
- 13.1.1 if the Seller is in material breach of an obligation under this Agreement and in the case of any breach capable of remedy has failed to remedy the breach within a period of 30 days after receipt of written notice to do so;
  - 13.1.2 if the Seller is dissolved or struck off the register of companies maintained by Companies House or a winding up order is made against the Seller or a meeting is convened, resolution passed or any step taken by the Seller with a view to the winding-up of the Seller except for the purpose of a solvent reconstruction, reorganisation, merger or consolidation;
  - 13.1.3 if a receiver (including fixed charge or court appointed), administrative receiver, manager, insolvency practitioner or similar officer shall be appointed over the whole or a substantial part of the undertaking, property or assets of the Seller;
  - 13.1.4 if the Seller is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
  - 13.1.5 if the Seller enters into (or proposes to enter into) a composition, scheme of arrangement or voluntary arrangement with any of its creditors or otherwise or a moratorium is agreed imposed or declared in respect of or affecting all or a material part of (or of a particular type of) the debts of the Seller;
  - 13.1.6 if notice of intention to appoint an administrator is given by any person (including the Seller's directors, the Seller or any qualifying floating charge holder as defined in the Insolvency Act 1986) or any step is taken by any person with a view to placing the Seller into administration as defined by the Insolvency Act 1986; or
  - 13.1.7 if any event or circumstance occurs which under the law of any relevant jurisdiction has an analogous or equivalent effect to any of the events listed in the above sub-conditions in relation to the Seller.
- 13.2 Termination or expiry of this Agreement for any reason, whether under this condition 13 or not, shall be without prejudice to the accrued rights and liabilities of the Buyer on the date of such termination or expiry.
- 13.3 For the purposes of this condition, a breach shall be considered capable of remedy:
- 13.3.1 if the Party in breach can comply with the provision in question in all respects other than as to the time of performance and
  - 13.3.2 if time of performance is not of the essence.



## 14 GENERAL

### 14.1 Subcontracting and Assignment

- 14.1.1 The Seller may not sub-contract to any other person the performance any of the obligations undertaken by it or the exercise any of the rights granted to it.
- 14.1.2 The Seller may not, without the prior written consent of the Buyer, assign, transfer (in whole or in part) or charge or deal in any manner with this Agreement or the benefit or burden of or the rights under this Agreement.
- 14.1.3 The Buyer may, without the consent of the Seller, assign, transfer (in whole or in part), charge and deal in any manner with this Agreement and the benefit or burden of or the rights under this Agreement.

### 14.2 Force Majeure

- 14.2.1 Provided that it has complied with the provisions of condition 14.2.2 neither Party shall be liable to the other Party for any delay or non-performance of its obligations under the Agreement to the extent that its performance is interrupted or prevented by Force Majeure the effects of which it could not reasonably have avoided.
- 14.2.2 If a Party's performance is affected as set out in condition 14.2.1, it will give written notice to the other Party as soon as reasonably practicable after becoming aware of the relevant circumstances and will use best endeavours to bring the relevant circumstances to an end and to mitigate the effects of the circumstances.
- 14.2.3 For so long as the Seller's performance is affected as set out in condition 14.2.1, the Buyer shall be entitled to obtain the Goods or equivalent goods elsewhere and to reduce the quantity of Goods ordered under the Agreement accordingly.

### 14.3 Amendments

No amendment of the Agreement shall be effective unless it is in writing and signed by or on behalf of each of the Parties.

### 14.4 Waivers and Remedies

- 14.4.1 Except as otherwise stated in the Agreement, the rights and remedies of each Party under the Agreement are in addition to and not exclusive of any other rights or remedies under the Agreement or the general law and may be waived only in writing and specifically.
- 14.4.2 Delay in exercising or non-exercise of any right under the Agreement is not a waiver of that or any other right.

14.4.3 Partial exercise of any right under the Agreement shall not preclude any further or other exercise of that right or any other right under the Agreement.

14.4.4 Waiver of a breach of any term of the Agreement shall not operate as a waiver of breach of any other term or any subsequent breach of that term.

#### 14.5 **Time for payment under Indemnities**

The Seller shall be liable to make payment under any indemnity given by it on demand from the time when the liability being indemnified is incurred by the Buyer, whether or not the Buyer has satisfied or discharged the liability.

#### 14.6 **Severance**

If any provision of the Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect the legality, validity or enforceability in that jurisdiction of any other provision of the Agreement or the legality, validity or enforceability in any other jurisdiction of that or any other provision of the Agreement.

#### 14.7 **Entire Agreement**

14.7.1 The Agreement constitutes the entire agreement between the Parties with respect to the subject matter of the Agreement and supersedes and extinguishes any prior drafts, agreements, undertakings, understandings, promises or conditions, whether oral or written, express or implied between the Parties relating to such subject matter.

14.7.2 Each Party acknowledges to the other that it has not been induced to enter into the Agreement by nor has it relied upon any representation, promise, assurance, warranty or undertaking (whether in writing or not) by or on behalf of the other Party or any other person save for those contained in the Agreement. Accordingly, each of the Parties acknowledges and agrees that the only remedy available to it in respect of the subject matter of the Agreement shall be for breach of contract under the terms of the Agreement and it shall have no right of action against any other Party in respect of any such representation, promise, assurance, warranty or undertaking.

14.7.3 This condition shall not exclude any liability which either Party would otherwise have to the other or any right which either of them may have to rescind the Agreement in respect of any statements made fraudulently by the other prior to the execution of the Agreement or any rights which either of them may have in respect of fraudulent concealment by the other.

#### 14.8 **Survival Of Obligations**

Notwithstanding any provision of the Agreement to the contrary, the provisions of conditions 7, 8, 10, 11 and 14 and any other conditions which expressly or impliedly

survive expiry or termination of the Agreement for any reason whatsoever shall continue in full force and effect after expiry or termination.

#### 14.9 **No Partnership/Agency**

Nothing in the Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the Parties, or to authorise either Party to act as agent for the other, and neither Party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way.

#### 14.10 **Rights of Third Parties**

A person who is not a Party has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or to enjoy the benefit of, any provision of the Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

#### 14.11 **Notices**

14.11.1 All notices between the Parties with respect to the Agreement shall be in writing and signed by or on behalf of the Party giving it. Any notice shall be duly served (i) on delivery if delivered by hand, (ii) 48 hours after sending if sent by first class post or special or recorded delivery (or other “proof of delivery” or “proof of posting” service that Royal Mail may from time to time offer) or (iii) on sending if sent by fax or email (provided that a copy is also sent by post), provided that in each case the notice is sent to the address of the addressee given at the start of the Agreement or such other address as the addressee may from time to time have notified for the purpose of this condition.

14.11.2 Any notice or communication given under the Agreement shall not be validly served if sent by text messaging via mobile phone.

#### 14.12 **Governing Law**

The Agreement and any dispute or claim arising out of or in connection with it (including any non-contractual claims or disputes) shall be governed by and construed in accordance with the laws of England and Wales.

#### 14.13 **Jurisdiction**

In relation to any legal action or proceedings (a) arising out of or in connection with the Agreement or its implementation or effect or (b) relating to any non-contractual obligations arising out of or in connection with the Agreement, each of the Parties irrevocably submits to the exclusive jurisdiction of the English courts and waives any objection to proceedings in such courts on the grounds of venue or on the grounds that proceedings have been brought in an inappropriate forum.

