

**NATIONAL MUSEUMS SCOTLAND STANDARD TERMS & CONDITIONS  
CONDITIONS OF CONTRACT FOR THE PURCHASE OF GOODS**

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**These Conditions may be varied only by the written agreement of the Purchaser. No terms or conditions put forward at any time by the Supplier shall form any part of the Contract unless specifically agreed in writing by the Purchaser.**

**1. DEFINITIONS**

1.1 In these Conditions:

*'Purchaser'* means National Museums Scotland;

*'Supplier'* means the person, firm or company to whom the Contract is issued;

*'Goods'* means any such goods as are to be supplied to the Purchaser by the Supplier (or by any of the Supplier's sub-contractors) pursuant to or in connection with this Contract;

*'Contract'* means the contract between the Purchaser and the Supplier consisting of the Purchase Order, these Conditions and any other documents (or parts thereof) specified in the Purchase Order;

*'Purchase Order'* means the document setting out the Purchaser's requirements for the Contract.

1.2 References to statutory provisions or enactments shall include references to any amendment, modification, extension, consolidation, replacement or re-enactment of any such provision or enactment (whether before or after the date of this Contract), to any previous enactment which has been replaced or amended and to any regulation, instrument or order or other subordinate legislation made under such provision or enactment.

**2. THE GOODS**

2.1 The Goods shall be to the reasonable satisfaction of the Purchaser and shall conform in all respects with any particulars specified in the Contract and in any variations thereto.

2.2 The Goods shall conform in all respects with the requirements of any statutes, orders, regulations or bye-laws from time to time in force.

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

2.4 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.

**3. THE PRICE AND PAYMENT**

3.1 The price of the goods shall be as stated in the Contract and no increase shall be accepted by the Purchaser unless agreed by them in writing before the execution of the Contract.

3.2 Unless otherwise agreed in writing by the Purchaser, the Supplier shall render a separate invoice in respect of each consignment delivered under the Contract.

3.3 Subject to the Purchaser being satisfied that the Supplier is or has been carrying out their duties, obligations and responsibilities under this Contract, payment shall be due 30 days after receipt of the correct invoice.

3.4 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.

3.5 The price of goods should include the costs of packaging, insurance and carriage of the goods. No extra charges shall be effective unless agreed in writing by the Purchaser.

3.6 The Supplier shall invoice the Purchaser for the Goods on or at any time after the completion of delivery.

3.7 Notwithstanding Condition 18 of this Contract the Supplier may assign to another person (an "assignee") the right to receive payment of the price or any part thereof due to the Supplier under this Contract subject to (i) deduction of sums in respect of which the Purchaser exercises the right of recovery under Condition 17 of this Contract and (ii) all the related rights of the Purchaser under this Contract in relation to the recovery of sums due but unpaid. The Supplier shall notify or procure that any assignee notifies the Purchaser of any variations to the arrangements for payment of the price or for handling invoices, in each case in good time to enable the Purchaser to redirect payments or invoices accordingly. In the absence of such notification the Purchaser shall be under no obligation to vary its

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arrangements for payment of the Price or for handling invoices.

#### 4. DELIVERY

- 4.1 The Goods shall be delivered to the place named in the Contract. Any access to premises and any labour and equipment that may be provided by the Purchaser in connection with delivery shall be provided without acceptance by the Purchaser of any liability whatsoever and the Supplier shall indemnify the Purchaser in respect of any actions, suits, claims, demands losses, charges, costs and expenses which the Purchaser 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 their sub-contractors.
- 4.2 Where any access to the premises is necessary in connection with delivery or installation the Supplier and their sub-contractors shall at all times comply with the reasonable requirements of the Purchaser's Head of Security.
- 4.3 The time of delivery shall be of the essence and failure to deliver within the time promised or specified shall enable the Purchaser (at their option) to release themselves from any obligation to accept and pay for the Goods and/or to cancel all or part of the Contract therefore, in either case without prejudice to their other rights and remedies.

#### 5. PROPERTY AND RISK

- 5.1 Property and risk in the Goods shall without prejudice to any of the rights or remedies of the Purchaser (including the Purchaser's rights and remedies under Condition 7 hereof) pass to the Purchaser at the time of delivery.
- 5.2 Where the Purchaser supplies any goods or articles to the Supplier e.g. for modification, copying or repair these will continue to be the property of the Purchaser at all times. Those articles must be kept confidential and secure at all times. While those articles are in the Suppliers custody they must not be used, copied or disseminated electronically or otherwise except in the performance of the contract. The Purchaser retains copyright and any other available intellectual property rights in any plans, design drawings, computer programs, compilations of data, specifications or the like which are supplied to the Supplier.

The Supplier shall indemnify the Purchaser against any loss, and account any profit made through breach of this provision.

#### 6. DAMAGE IN TRANSIT

On dispatch of any consignment of the Goods the Supplier shall send to the Purchaser at the address for delivery of the Goods an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. The Supplier shall free of charge and as quickly as possible either repair or replace (as the Purchaser shall elect) such of the Goods as may either be damaged in transit or having been placed in transit fail to be delivered to the Purchaser provided that:

(a) in the case of damage to such Goods in transit the Purchaser shall within 30 days of delivery give notice to the Supplier that the Goods have been damaged;

(b) in the case of non-delivery the Purchaser shall (provided that the Purchaser has been advised of the dispatch of the Goods) within ten days of the notified date of delivery give notice to the Supplier that the Goods have not been delivered.

#### 7. INSPECTION, REJECTION AND GUARANTEE

7.1 The Supplier shall permit the Purchaser or their authorised representatives to make any inspections or tests they may reasonably require and the Supplier shall afford all reasonable facilities and assistance free of charge at their premises. No failure to make complaint at the time of such inspection or tests and no approval given during or after such tests or inspections shall constitute a waiver by the Purchaser of any rights or remedies in respect of the Goods.

7.2 The Purchaser may by written notice to the Supplier reject any of the Goods which fail to meet the requirements specified in the contract. Such notice shall be given within a reasonable time after delivery to the Purchaser of Goods concerned. If the Purchaser shall reject any of the Goods pursuant to this Condition the Purchaser shall be entitled (without prejudice to their other rights and remedies) either:

(a) to have the Goods concerned as quickly as possible either repaired by the Supplier or (as the Purchaser shall elect) replaced by the

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Supplier with Goods which comply in all respects with the requirements specified herein; or

(b) to obtain a refund from the Supplier in respect of the Goods concerned.

7.3 The guarantee period applicable to the Goods shall be 12 months from putting into service or 18 months from delivery, whichever shall be the shorter (subject to any alternative guarantee arrangements agreed in writing between the Purchaser and the Supplier). If the Purchaser shall within such guarantee period or within 30 days thereafter give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use the Supplier shall (without prejudice to any other rights and remedies which the Purchaser may have) as quickly as possible remedy such defects (whether by repair or replacement as the Purchaser shall elect) without cost to the Purchaser.

7.4 Any Goods rejected or returned by the Purchaser as described in Conditions 7.2 or 7.3 shall be returned to the Supplier at the Supplier's risk and expense.

### **8. LABELLING AND PACKAGING**

8.1 The Goods shall be packed and marked in a proper manner and in accordance with the Purchaser's instructions and any statutory requirements and any requirements of the carriers. In particular the Goods shall be marked with the Purchase Order Number, the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous goods (and all documents relating thereto) shall bear prominent and adequate warnings. The Supplier shall indemnify the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any breach of this Condition.

8.2 All packaging materials shall be considered non-returnable and shall be destroyed unless the Supplier's advice note states that such materials shall be charged for unless returned. The Purchaser accepts no liability in respect of the non-arrival at the Supplier's premises of empty packages returned by the Purchaser unless the Supplier shall within 10 days of receiving notice from the Purchaser that the

packages have been dispatched notify the Purchaser of such non-arrival.

8.3 The Supplier represents and warrants that the maximum use has been made of recycled materials in the manufacture of crates, pallets, boxes, cartons, cushioning and other forms of packing, where these fulfil other packing specifications.

### **9. CORRUPT GIFTS OR PAYMENTS**

The Supplier shall not offer or give, or agree to give, to any employee or representative of the Purchaser any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other contract with the Purchaser or for showing or refraining from showing favour or disfavour to any person in relation to this or any such Contract. The attention of the Supplier is drawn to the criminal offences created by the Prevention of Corruption Acts 1889 to 1916.

### **10. INTELLECTUAL PROPERTY RIGHTS**

10.1 It shall be a condition of the Contract, except to the extent that the Goods incorporate designs furnished by the Purchaser, that nothing done by the Supplier in the provision of the Goods shall infringe any patent, trade mark, registered design, copyright or other right in the nature of intellectual property of any third party and the Supplier shall indemnify the Purchaser against all actions, claims, demands, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any breach of this Condition.

10.2 All rights (including ownership and copyright) in any reports, documents, specifications, instructions, plans, drawings, patents, models or designs whether in writing or on magnetic or other media:

(a) Furnished to or made available to the Supplier by the Purchaser shall remain vested in the Purchaser absolutely.

(b) Prepared by or for the Supplier for use, or intended use, in relation to the performance of this Contract are hereby assigned to and shall vest in the Purchaser absolutely, and (without prejudice to Condition 15.2) the Supplier shall not and shall procure that their servants and agents shall not (except to the extent necessary for the implementation of this Contract)

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without the prior written consent of the Purchaser use or disclose any such reports, documents, specifications, instructions, plans, drawings, patents, models, designs or other material as aforesaid or any other information (whether or not relevant to this Contract) which the Supplier may obtain pursuant to or by reason of this Contract, except information which is in the public domain otherwise than by reason of a breach of this provision, and in particular (but without prejudice to the generality of the foregoing) the Supplier shall not refer to the Purchaser or the contract in any advertisement without the Purchaser's prior written consent.

10.3 The provisions of this Condition 10 shall apply during the continuance of this Contract and after its termination howsoever arising.

### 11. HEALTH AND SAFETY

The Supplier represents and warrants to the Purchaser that the Supplier has satisfied themselves that all necessary tests and examinations have been made or shall be made prior to delivery of the Goods to ensure that the Goods are designed and constructed so as to be safe and without risk to the health or safety of persons using the same, and that they have made available to the Purchaser adequate information about the use for which the Goods have been designed and have been tested and about any conditions necessary to ensure that when put to use the goods shall be safe and without risk to health. The Supplier shall indemnify the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser suffer or incur as a result of or in connection with any breach of this Condition.

### 12. INDEMNITY AND INSURANCE

12.1 Without prejudice to any rights or remedies of the Purchaser (including the Purchaser's rights and remedies under Condition 7 hereof) the Supplier shall indemnify the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any damage to property or in respect of any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any defect in the Goods or the negligent or wrongful act or omission of the Supplier.

12.2 The Supplier shall effect with a reputable insurance company a policy or policies of insurance covering all the matters which are the subject of indemnities under these Conditions and shall at the request of the Purchaser produce the relevant policy or policies together with receipts or other evidence of payment of the latest premium due thereunder.

12.3 Where the Supplier engages a sub-contractor the supplier shall either ensure that the insurance requirements as specified in Clause 12.2 extend to cover the legal liabilities of the sub-contractor or that the sub-contractor holds its own insurance which complies with Clause 12.2.

### 13. DISCRIMINATION

The Supplier shall not unlawfully discriminate against any person within the meaning of the Equality Act 2010 in its activities relating to the Contract or any other contract with the Purchaser.

### 14. BLACKLISTING

The Supplier must not commit any breach of the Employment Relations Act 1999 (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or commit any breach of the Data Protection Act 1998 by unlawfully processing personal data in connection with any blacklisting activities. Breach of this clause is a material default which shall entitle the Purchaser to terminate the Contract.

### 15. OFFICIAL SECRETS ACTS, CONFIDENTIALITY, AND ACCESS TO GOVERNMENT INFORMATION

15.1 The Supplier undertakes to abide and procure that their employees abide by the provisions of the Official Secrets Acts 1911-1989.

15.2 The Supplier shall keep secret and not disclose and shall procure that their employees keep secret and do not disclose any information of a confidential nature obtained by them by reason of the Contract except information which is in the public domain otherwise than by reason of a breach of this provision.

15.3 All information related to the Contract with the Supplier shall be treated as commercial in confidence by the Purchaser except that:

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(a) The Supplier may disclose any information as required by law or judicial order to be disclosed.

(b) The Purchaser may disclose any information as required by law or judicial order to be disclosed, further the Purchaser may disclose all information obtained by the Purchaser by virtue of the Contract to the Scottish or United Kingdom Parliament or any other department, office or agency of Her Majesty's Government in Scotland or the United Kingdom, and their servants or agents, when disclosing such information to either the Scottish Parliament or the United Kingdom Parliament it is recognised and agreed by both parties that the Purchaser shall, if the Purchaser sees fit, disclose such information but is unable to impose any restrictions upon the information that the Purchaser provides to Members of the Scottish Parliament, (MSP's) or Members of the United Kingdom Parliament (MP's) such disclosure shall not be treated as a breach of this agreement.

15.4 The provisions of this Condition 15 shall apply during the continuance of the Contract and after its termination howsoever arising.

#### **16. TERMINATION**

16.1 Without prejudice to any other rights or remedies of the Purchaser under the Contract the Purchaser shall have the right forthwith to terminate the Contract by written notice to the Supplier or the appropriate trustee in bankruptcy or sequestration, receiver, liquidator or administrator:

(a) where the Supplier is an individual and if a petition is presented for the Supplier's bankruptcy or the sequestration of their estate or a criminal bankruptcy order is made against the Supplier, or the Supplier is apparently insolvent, or makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator or trustee is appointed to manage the Supplier's affairs; or

(b) where the Supplier is not an individual but is a firm or a number of persons acting together in any capacity, if any event in (a) or (c) of this Condition occurs in respect of the firm or any partner in the firm or any of those persons or a petition is presented for the Supplier to be wound up as an unregistered company; or

(c) where the Supplier is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or the court makes an administration order or a winding up order, or the company makes a composition or arrangement with its creditors, or an administrator, administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge.

16.2 On the occurrence of any of the events described in Condition 16.1 or, if the Supplier shall have committed a material breach of this Contract and (if such breach is capable of remedy) shall have failed to remedy such breach within 30 days of being required by the Purchaser in writing to do so or, where the Supplier is an individual if the Supplier shall die or be adjudged incapable of managing their affairs within the meaning of the Adults with Incapacity (Scotland) Act 2000 or the Mental Health (Care and Treatment) (Scotland) Act 2003, the Purchaser shall be entitled to terminate this Contract by notice to the Supplier with immediate effect.

16.3 The Purchaser may terminate the Contract in the event that:

(a) the Contract has been subject to substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) (modification of contracts during their term) of The Public Contracts (Scotland) Regulations 2015;

(b) the Supplier has, at the time of contract award, been in one of the situations referred to in regulation 58(1) (exclusion grounds) of The Public Contracts (Scotland) Regulations 2015, including as a result of the application of regulation 58(2) of those regulations, and should therefore have been excluded from the procurement procedure; or

(c) the Contract should not have been awarded to the Supplier in view of a serious infringement of the obligations under the Treaties and the Directive 2014/24/EU that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union.

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In this Condition, 'the Treaties' has the meaning given in the European Communities Act 1972.

- 16.4 The Purchaser may also terminate the Contract in the event of a failure by the Supplier to comply in the performance of the Contract with legal obligations in the fields of environmental, social and employment law.
- 16.5 In addition to the Purchaser's rights of termination under Condition 16.2, 16.3 and 16.4, the Purchaser shall be entitled to terminate this Contract by giving to the Supplier not less than 30 days' notice to that effect.
- 16.6 Termination under Condition 16.2, 16.3, 16.4 or 16.5 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Purchaser and shall not affect the continued operation of Conditions 10 and 15.

#### 17. RECOVERY OF SUMS DUE

Wherever under the Contract any sum of money is recoverable from or payable by the Supplier, that sum may be deducted from any sum then due, or which at any later time may become due, to the Supplier under the Contract or under any other agreement or contract with the Purchaser.

#### 18. ASSIGNATION AND SUB-CONTRACTING

- 18.1 The Supplier shall not without the written consent of the Purchaser assign the benefit or burden of the Contract or any part thereof.
- 18.2 No sub-contracting by the Supplier shall in any way relieve the Supplier of any of their responsibilities under the Contract.
- 18.3 Where the Supplier enters into a sub-contract for the purpose of performing the Contract, the Supplier shall cause a term to be included in such sub-contract:
- (a) Which requires payment to be made to the sub-contractor within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the sub-contract requirements and provides that, for the purpose of payment alone, where the Purchaser has made payment to the Supplier and the invoice includes Goods in relation to which payment has been made by the Purchaser then, to the extent that it relates to

such Goods, the invoice shall be treated as valid and payment shall be made to the sub-contractor without deduction.

(b) Which notifies the sub-contractor that the contract forms part of a larger contract for the benefit of the Purchaser and that should the sub-contractor have any difficulty in securing the timely payment of an invoice that matter may be referred by the sub-contractor to finance.queries@nms.ac.uk.

(c) In the same terms as that set out in this Condition 18.3 (including for the avoidance of doubt this Condition 18.3.c) subject only to modification to refer to the correct designation of the equivalent party as the Supplier and sub-contractor as the case may be; and

(d) Which binds the sub-contractor to the same terms and conditions of the Contract jointly and severally with the Supplier in relation to the Purchaser.

#### 19. EXCLUSION OF OTHER TERMS

None of the terms or conditions of the Supplier shall form any part of the Contract unless expressly agreed to in writing by the Purchaser and in the event of any conflict between this Condition and any of the terms and conditions of the Supplier issues prior to or after the date of issue of these Conditions, this Condition shall prevail notwithstanding any other equivalent provision to the contrary.

#### 20. NON-WAIVER

The failure or delay of the Purchaser to insist upon strict performance of any provision of the Contract, or failure of the Purchaser to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by the Contract. A waiver of any default shall not constitute a waiver of any subsequent default. No waiver of any of the provisions of the Contract shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing in accordance with Condition 21.

#### 21. NOTICES

Any notice given under or pursuant to the Contract may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted by telex, telemessage, facsimile transmission or other means of

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telecommunication resulting in the receipt of a written communication in permanent form and if so sent or transmitted to the address of the party shown on the Purchase Order, or to such other address as the party may by notice to the other have substituted therefore, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

### **22. DISPUTE RESOLUTION**

22.1 The parties must attempt in good faith to resolve any dispute between them arising out of or in connection with the Contract.

22.2 Any dispute or difference arising out of or in connection with the Contract, including any question regarding its existence, validity or termination which cannot be resolved in good faith, is subject to the Arbitration (Scotland) Act 2010 and shall be determined by the appointment of a single arbitrator to be agreed between the parties, and failing agreement within 14 days after either party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the Scottish Arbitration Centre on the written application of either party. The seat of the arbitration shall be in Scotland. The language used in the arbitration proceedings shall be in English.

### **23. HEADINGS**

The headings to Conditions shall not affect their interpretation.

### **24. GOVERNING LAW**

These Conditions shall be governed by and construed in accordance with Scottish law and the Supplier hereby irrevocably submits to the jurisdiction of the Scottish courts. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the Purchaser to take proceedings against the Supplier in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.

## **SUPPLEMENTARY NOTICE**

### **1. PROTECTING THE ENVIRONMENT**

Suppliers to the NMS are requested to satisfy themselves that no product shall be supplied or used in the Supply of Goods to the Purchaser which will endanger the health of the consumers or others, will cause significant damage to the environment during manufacture, use, or disposal, which consumes a disproportionate amount of energy during manufacture, use, or disposal, which causes unnecessary waste because of over-packaging or because of an unusually short shelf life, or which contains materials derived from threatened species or threatened environments.

### **2. LATE PAYMENT OF INVOICES**

Suppliers to the NMS are requested to address complaints regarding late payment of invoices to, in the first instance, the addressee of the invoice and, in the second instance to the Director of Finance & Planning, National Museums Scotland, Chambers Street, Edinburgh, EH1 1JF. This procedure is suggested as the most practical way of ensuring problems of late payment are resolved, and is not intended to interfere with Suppliers' legal rights.

**THIS NOTICE DOES NOT FORM PART OF THE CONDITIONS OF CONTRACT**