

## The Natural History Museum's Conditions of Purchase (Goods and Services)

### 1. INTERPRETATION

1.1 In these conditions:

**Museum:** means The Trustees of the Natural History Museum.

**Contract:** means the Purchase Order and the Supplier's acceptance of the Purchase Order.

**Goods:** means any goods that the Museum has agreed to buy from the Supplier as referred to in the Purchase Order.

**Purchase Order:** means the Museum's written instruction to the Supplier to supply the Goods and Services on these conditions.

**Services:** means the services specified in the Purchase Order to be carried out for the Museum by the Supplier.

**Supplier:** the entity (and its employees, subcontractors and agents) who agrees to supply the Goods and Services to the Museum.

1.2 A reference to any law is a reference to it as it is in force for the time being taking account of any amendment or re-enactment and including any subordinate legislation for the time being in force made under it.

1.3 A reference to one gender includes a reference to the other gender.

1.4 Condition headings do not affect the interpretation of these conditions.

### 2. APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.4, these conditions are the only conditions upon which the Museum is prepared to deal with the Supplier and they shall govern the Contract to the entire exclusion of all other terms or conditions.

2.2 The Purchase Order shall be deemed to be an offer by the Museum to buy the Goods and Services subject to these conditions and no Purchase

Order shall be accepted until the Supplier either expressly by giving notice of acceptance, or impliedly by fulfilling the Purchase Order, accepts the offer.

2.3 No terms or conditions endorsed upon, delivered with or contained in the Supplier's quotation, acknowledgement or acceptance of the Purchase Order shall form part of the Contract and the Supplier waives any right which it otherwise might have to rely on such terms and conditions.

2.4 Variations to these conditions shall only have effect if expressly agreed in writing by the Museum.

### 3. QUALITY AND DEFECTS

3.1A The Goods shall:

- (a) be of the best available design, quality, material and workmanship;
- (b) be without fault;
- (c) be fit for their intended purpose;
- (d) be in accordance with any applicable laws; and
- (e) conform in all respects with the Purchase Order and any specifications supplied or advised by the Museum to the Supplier.

3.2A The Museum's rights under these conditions are in addition to the statutory conditions implied in favour of the Museum by the Sale of Goods Act 1979.

3.3A At any time prior to delivery of the Goods to the Museum, the Museum shall have the right at all times to inspect and test the Goods.

3.4A If the results of such inspection or testing cause the Museum to be of the opinion that the Goods do not conform or are unlikely to conform with the Purchase Order or to any specifications supplied or advised by the Museum to the Supplier, the Museum shall inform the Supplier and the Supplier shall immediately take

such action as is necessary to ensure conformity and in addition the Museum shall have the right to require and witness further testing and inspection.

3.5A Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Supplier's obligations under the Contract.

3.6A If any of the Goods fail to comply with the provisions set out in condition 3 the Museum shall be entitled to avail itself of any one or more remedies listed in condition 12.

### 3B. SUPPLY OF SERVICES

3.1B The Supplier shall:

- (a) provide the Services with all due care, skill, efficiency, economy and diligence and in accordance with good industry practice;
- (b) make no delivery of materials, plant or other things nor commence any work on the Museum's premises without obtaining the Museum's prior consent;
- (c) perform the Services in compliance with the requirements of all applicable legislation from time to time in force;
- (d) on completion of the Services, remove all plant, equipment, unused materials and rubbish and shall leave the Museum's premises in a neat and tidy condition.

3.2B Nothing in this Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the Museum and the Supplier.

3.3B The Supplier shall commence performance of the Services on the dates stated in the Purchase Order and shall either complete performance of the Services on the date stated in the Purchase Order or continue performance of the Services for the

period stated in the Purchase Order (whichever is applicable).

3.4B The Supplier is deemed to have inspected the premises at which the Services are to be carried out.

3.5B The Supplier shall keep, for 6 years after the Contract has been completed or terminated, full and accurate records of all employees involved in the Contract and all expenses claimed, hours worked and costs incurred by such employees in relation to the Contract. The Supplier shall allow the Museum access to the same at all reasonable times.

3.5B If instructed by the Museum, the Supplier shall provide to the Museum names and addresses of persons involved with the Contract, specifying the capacities in which they are so involved and giving such other information as the Museum may reasonably require. If the Museum gives the Supplier notice that any person is not to be involved in the Contract, the Supplier shall comply with such notice and shall replace any person removed with another suitably qualified person. The Supplier shall take all steps required by the Museum to prevent unauthorised persons being admitted to the Museum's premises.

3.6B The Museum may at any time during the provision of the Services order in writing the removal from the Museum's premises of any materials which, in the opinion of the Museum, are either hazardous or not in accordance with the Contract and the Supplier shall immediately remove and replace the same to the Museum's satisfaction.

#### **4. INDEMNITY AND INSURANCE**

4.1 The Supplier shall keep the Museum indemnified in full against all direct, indirect or consequential (including, without limitation, loss of profit, loss of business, depletion of goodwill and similar losses) liabilities, losses, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Museum as a result of or in connection with:

- (a) the performance or non-performance of this Contract;
- (b) any breach of this Contract;
- (c) any claim made against the Museum in respect of any liability, loss, damage, injury, cost or expense sustained by the Museum's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the performance, non-performance or breach of this Contract; or
- (d) damage to the Museum's property caused by the Supplier.

4.2 The Supplier will effect insurance to cover all of its obligations under condition 4.1 and public liability insurance in the amount of £5 million with an insurer of good repute in the United Kingdom and shall provide evidence to the Museum on request that he has done so.

#### **5. DELIVERY**

5.1 The Goods shall be delivered, carriage paid, to the Museum's place of business or to such other place of delivery as is notified to the Supplier by the Museum in writing prior to delivery of the Goods. The Supplier shall off-load the Goods at its own risk as directed by the Museum.

5.2 The date for delivery shall be specified in the Purchase Order, or if no such date is specified then delivery shall take place within 28 calendar days of the Purchase Order.

5.3 The Supplier shall invoice the Museum upon despatch of the Goods to the Museum.

5.4 The Supplier shall ensure that (a) each delivery is accompanied by a delivery note which shows the number and date of the Purchase Order, the number of packages and their contents and in the case of part delivery, the outstanding balance of the Goods remaining to be delivered; and (b) each package is marked with the number and date of the Purchase Order and a description of its contents and appropriate warnings where those contents are hazardous; and (c) wherever possible it uses recycled packaging materials.

5.5 Time for delivery shall be of the essence.

5.6 The Museum shall only accept deliveries during normal business hours.

5.7 If the Goods are not delivered on the due date or the Goods that are delivered are defective then, without prejudice to any other rights which it may have, the Museum has the right to:

- (a) cancel the Contract in whole or in part;
- (b) refuse to accept the Goods or refuse to accept any subsequent delivery of the Goods that the Supplier attempts to make;
- (c) recover from the Supplier any expenditure reasonably incurred by the Museum in obtaining substitute goods from another supplier; and
- (d) claim damages for any additional costs, losses or expenses incurred by the Museum that are in any way attributable to the Supplier's failure to deliver the Goods on the due date.

5.8 If the Supplier requires the Museum to return any packaging material to the Supplier that fact must be stated to the Museum in writing prior to delivery and any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

5.9 Where the Museum agrees in writing to accept delivery by instalments the Contract shall be construed as a single contract in respect of each instalment. Nevertheless, failure by the Supplier to deliver any one instalment shall entitle the Museum at its option to treat the whole Contract as repudiated.

5.10 If the Goods are delivered to the Museum in excess of the quantities set out in the Purchase Order the Museum shall not be bound to pay for the excess and any excess shall be and shall remain at the Supplier's risk and shall be returnable at the Supplier's expense.

5.11 The Museum shall have 28 days to inspect the Goods following delivery and if the Goods are found to be defective or not in accordance with the Contract the Museum may reject the Goods. The Museum shall also

have the right to reject the Goods as though they had not been accepted for 14 days after any latent defect in the Goods has become apparent.

## **6. RISK/PROPERTY**

6.1 The Goods shall remain at the risk of the Supplier until delivery to the Museum is complete (including off-loading and stacking) when ownership of the Goods shall pass to the Museum.

6.2 If the Museum notifies the Supplier that the Goods are being rejected in accordance with condition 5.11, the risk in the Goods and the ownership of the Goods shall immediately revert back to the Supplier.

6.3 The Supplier shall collect the Goods from the Museum within 14 days of being notified of the rejection. Failure to do so shall entitle the Museum to have the Goods returned to the Supplier at the Supplier's cost.

6.4 The Museum shall not be responsible for any damage to the Goods once ownership has reverted to the Supplier.

## **7. PRICE**

7.1 The price of the Goods and Services shall be stated in the Purchase Order and unless stated otherwise in the Purchase Order shall be inclusive of VAT and all other charges.

7.2 The Museum shall not accept any variation in the price or extra charges.

## **8. PAYMENT**

8.1 The Supplier shall submit invoices in respect of each consignment of delivered Goods and within 30 days after completion of the Services (or as set out in the Purchase Order) and the final date for payment of the invoice shall be 30 days after receipt of the same. Time for payment shall not be of the essence of the Contract.

8.2 Without prejudice to any other right or remedy, the Museum reserves the right to set off any amount owing at any time from the Supplier to the

Museum against any amount payable by the Museum to the Supplier under the Contract. If this Contract is a "construction contract" for the purposes of the Housing Grants Construction and Regeneration Act 1996 (a "Construction Contract") the Museum shall give the Supplier written notice of its intention to withhold payment in relation to the Services with reasons within 5 days of receipt of an invoice.

8.3 If any sum under the Contract is not paid by the final date for payment then, without prejudice to the parties' other rights under the Contract, that sum shall bear interest from the due date until payment is made in full at 3% per annum. The Supplier is not entitled to suspend deliveries of the Goods or provision of the Services as a result of any sums being outstanding unless this Contract is a Construction Contract in which case the Supplier may suspend performance of the Services after giving 28 days' written notice to the Museum if the Museum has not made payment by the final date for payment and has failed to give a withholding notice in accordance with condition 8.2. On receipt of payment the Supplier shall immediately resume performance of the Contract.

8.4 If the Supplier is a subcontractor for the purposes of the construction industry scheme (or any replacement thereof) it warrants that it is entitled to be paid without any deductions in relation to its tax and national insurance contribution liability.

## **9. CONFIDENTIALITY**

9.1 The Supplier shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Supplier by the Museum or its agents and any other confidential information concerning the Museum's business or its products which the Supplier may obtain and the Supplier shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors

as need to know the same for the purpose of discharging the Supplier's obligations to the Museum and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Supplier.

9.2 The Supplier is given notice that the Museum reserves the right to disclose, subject to the provisions of the Freedom of Information Act 2000, such details of contractual processes and prices and any other information provided by or on behalf of the Supplier as the Museum, acting at its sole discretion, shall determine.

## **10. INTELLECTUAL PROPERTY**

10.1 All intellectual property rights in all drawings, specifications and information supplied by the Museum to the Supplier shall remain the property of the Museum and the Supplier is hereby granted a licence to use the same but only for the purposes of providing the Goods and/or the Services.

10.2 The Supplier warrants that the Goods and/or the provision of the Services will not infringe any patent, trade mark, registered design, copyright or other intellectual property rights of any person.

10.3 All intellectual property rights in any drawings, specifications or other information produced by or on behalf of the Supplier in relation to the Goods and/or the Services are hereby assigned to and shall become the property of the Museum.

## **11. TERMINATION**

11.1 The Museum shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Supplier written notice whereupon all work on the Contract shall be discontinued and the Museum shall pay to the Supplier fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss.

11.2 Without prejudice to the generality of condition 11.1 the Museum shall have the right at any time by giving notice in writing to the Supplier to terminate the Contract forthwith if:

(a) the Supplier commits a material breach of any of the terms and conditions of the Contract; or  
(b) any distress, execution or other process is levied upon any of the assets of the Supplier; or  
(c) the Supplier has a bankruptcy order made against him or makes an arrangement or composition with its creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Supplier or notice of intention to appoint an administrator is given by the Supplier or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Supplier or for the granting of an administration order in respect of the Supplier, or any proceedings are commenced relating to the insolvency or possible insolvency of the Supplier; or  
(d) the Supplier ceases or threatens to cease to carry on its business; or  
(e) the financial position of the Supplier deteriorates to such an extent that in the opinion of the Museum the capability of the Supplier adequately to fulfil its obligations under the Contract has been placed in jeopardy. On termination under this condition 11.2, if the Goods and/or the Services have not been provided in accordance with the Contract and the Museum is

unable to procure goods equivalent to the Goods and/or services equivalent to the Services elsewhere for the same price, the increased cost to the Museum of procuring goods equivalent to the Goods and/or services equivalent to the Services shall be payable to the Museum by the Supplier as a debt.

11.3 The termination of the Contract, however arising, shall be without prejudice to the rights of the Museum accrued prior to termination. The conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

## 12. REMEDIES

Without prejudice to any other right or remedy which the Museum may have, if any Goods and/or Services are not supplied in accordance with, or the Supplier fails to comply with, any of the terms of the Contract the Museum shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods have been accepted by the Museum or any of the Services have been provided by the Supplier:

(a) to rescind the Purchase Order;  
(b) to reject the Goods (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Goods so returned shall be paid forthwith by the Supplier;  
(c) at the Museum's option to give the Supplier the opportunity at the Supplier's expense either to remedy any defect in the Goods and/or the Services or to supply replacement Goods and/or Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;  
(d) to refuse to accept any further deliveries of the Goods or provision of Services but without any liability to the Supplier;  
(e) to carry out at the Supplier's expense any work necessary to make the Goods and/or the Services comply with the Contract; and

(f) to claim such damages as may have been sustained in consequence of the Supplier's breach or breaches of the Contract.

## 13. ASSIGNMENT AND SUBCONTRACTING

13.1 The Supplier shall not be entitled to assign the Contract or any part of it without the prior written consent of the Museum.

13.2 The Museum may freely assign the Contract.

13.3 The Supplier shall not be entitled to sub-contract any of its obligations under the Contract without the prior written consent of the Museum.

## 14. CORRUPT GIFTS OR PAYMENTS

The Supplier shall not give, or offer or agree to give, to any employee or representative of the Museum any gift or consideration of any kind as an inducement or reward for doing or refraining from doing any act in relation to the obtaining of the Contract.

## 15. HEALTH AND SAFETY

The Supplier warrants that it has satisfied itself that all necessary tests and examinations have been made or will 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 and safety of persons using the same and that it has made available to the Museum adequate information about the use for which the Goods have been designed and any conditions necessary to ensure that when the Goods are used they will be safe and without risk to health.

## 16. GENERAL

16.1 Each right or remedy of the Museum under the Contract is without prejudice to any other right or remedy of the Museum whether under the Contract or not.

16.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

16.3 Failure or delay by the Museum in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

16.4 Any waiver by the Museum of any breach of, or any default under, any provision of the Contract by the Supplier shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

16.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

16.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

16.7 All notices under the Contract shall be given in writing.

16.8 Where the Supplier is comprised of two or more persons, partners or companies all liability under this Contract shall be assumed jointly and severally by each of those persons, partners or companies comprising the Supplier.

16.9 The Supplier warrants that it has complied with all relevant legislation in the performance of its obligations under this Contract.

16.10 The Supplier will comply with all reasonable instructions of the Museum, and any policy or procedure documents provided by the Museum, in relation to the Contract.