

Contract :

**The National Library of Scotland
NLS/2
Conditions of contract for the supply of services**

The National Library of Scotland is a registered Scottish Charity. Scottish Charity No SC011086

These Conditions may only be varied with 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

In these Conditions:

'Purchaser' means the entity identified as such in the Purchase Order or Form of Agreement;

'Supplier' means the person, firm or company identified as such in the Purchase Order or Form of Agreement;

'Contract' means, collectively:

- (i) the Purchase Order or Form of Agreement (into which these Conditions are incorporated by reference); and
- (ii) any documents referred to in the Purchase Order or Form of Agreement or these Conditions, including the Specification or Brief and any Schedules annexed to the Purchase Order or Form of Agreement;

'Intellectual Property' means any and all patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

'Materials' means any reports, documents, specifications, instructions, plans, drawings, graphics, models, Software, hardware or designs or any other materials, whether in written, electronic or other form that are provided by the Supplier to the Purchaser in performing the Contract;

'Purchase Order or Form of Agreement' means the agreement identified as such and executed or to be executed by the Parties;

'Services' means the services to be provided by the Supplier as may be identified or referred to in the Purchase Order or Form of Agreement which shall, where the context so implies, include any Materials to be supplied in connection with any such services;

'Parties' means the Purchaser and the Supplier;

'Premises' means the location where the Services are to be performed as specified in the Purchase Order or Form of Agreement;

'Price' means the sum to be paid by the Purchaser in consideration for the Services, as may be amended in accordance with these Conditions from time to time;

"Purchaser Materials" shall have the meaning given to that expression in Condition 16.2;

"Software" means software, applications (including, without limitation, mobile applications) and computer code, whether in source or object code form, together with all technical information, preparatory materials and schematics, user guides, documentation, instructions and further information reasonably required to use such software in accordance with any rights granted under these Conditions;

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"Supplier Materials" shall have the meaning given to that expression in Condition 16.3;

'Specification' or "Brief" means the document identified as such and annexed to the Purchase Order or Form of Agreement; and

'Force Majeure Event' means

(a) war, civil war, armed conflict or terrorism;

(b) nuclear contamination unless in any case the Seller is the source or cause of the contamination;

(c) chemical or biological contamination of the Goods or the Premises from any of the events previously referred to; and

(d) pressure waves caused by devices travelling at supersonic speeds,

which directly causes any party to be unable to comply with all or a material part of its obligations under the Contract.

2. The services

2.1 The Services 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 Services 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 Services shall be fit and sufficient for the purpose for the particular purpose made known to the Supplier by the Purchaser and the Purchaser relies on the skill and judgement of the Supplier in the execution of the Contract.

2.4 The Supplier shall indemnify the Purchaser against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Purchaser arising out of or in connection with:

(a) the Supplier's breach or negligent performance or non-performance of its obligations under this Contract; or

(b) any claim made against the Purchaser by a third party arising out of or in connection with the provision of the Services to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement by the Supplier, its employees, agents or sub-contractors.

3. The price

3.1 The price of the Services shall be as stated in the Purchase Order or Form of Agreement and no increase will be accepted by the Purchaser unless agreed by the Purchaser in writing before the commencement of performance of either party's obligations under the Contract.

3.2 Unless otherwise agreed in writing by the Purchaser, the Supplier shall render a separate invoice in respect of each service provided under the Contract. Payment shall be due 30 days after receipt of each invoice.

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

3.4 Notwithstanding Condition 23 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 its right of recovery under Condition 22 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 (the Purchaser being obliged only to accept such variations as are reasonable, and shall notify the Supplier or such prospective assignee in the event that it considers any proposed variation to be unreasonable), 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 the arrangements for payment of the Price or for handling invoices.

4. Change to contract requirements

- 4.1 The Purchaser may order any variation to any quantity or specification of any part of the Services that for any other reason shall in the Purchaser's opinion be desirable. Any such variation may include (but shall not be restricted to) additions, omissions, alterations, substitutions to the Services and changes in quality, form, character, kind, timing, method or sequence of the provision of Services.
- 4.2 Save as otherwise provided herein, no variation of the specification of the Services as provided for in Condition 4.1 hereof shall be valid unless given or confirmed in the form of an order given by the Purchaser. All such orders shall be given in writing provided that if for any reason the Purchaser shall find it necessary to give any such order orally in the first instance the Supplier shall comply with such oral order which must be confirmed in writing by the Purchaser within 2 working days of the giving of such oral order by the Purchaser, failing which the variation made by such oral order shall cease to have effect on the expiry of the said 2 working day period.
- 4.3 Where any such change in quality or variation of the Services made in accordance with Conditions 4.1 and 4.2 has affected or may affect the costs incurred by the Supplier in providing the Services, the Supplier will notify the Purchaser in writing of the effect which it has had or may have on the said costs and such notification shall be considered by the Purchaser, who shall take all of the facts into account (including such information as may be provided by the Supplier in respect of the effect which such variation has had or may have on the costs incurred by the Supplier in providing the Service) and may authorise such alteration to the Price as is, in the Purchaser's opinion, appropriate and reasonable in the circumstances.

5. Inspection of premises and nature of services

- 5.1 The Purchaser gives no warranty or representation as to the condition of the Premises or available means of access thereto. The Supplier has been afforded the opportunity to inspect the physical and other conditions of, over, under or affecting the Premises and its surroundings and all existing structures thereon (to the extent relevant to the supply of the Services) and shall be deemed to have fully acquainted himself with the same and to have obtained all necessary information as to risks, contingencies and all other circumstances which may influence or affect the provision of the Services. The Purchaser shall, at the request of the Supplier, grant such access as may be reasonable for this purpose.
- 5.2 The Supplier shall not be entitled to any addition to the Price or any relief from its obligations under this Contract or to make a claim in delict or otherwise by reason of any failure on the part of the Supplier to discover or foresee any such condition, risk, contingency or circumstance referred to in Condition 5.1, or of any information provided or statement made by or on behalf of the Purchaser in respect of any such condition, service, risk, contingency or circumstance.
- 5.3 Unless otherwise specified, the Supplier shall provide all plant, tools, material, labour, haulage and any other things necessary to carry out its obligations under the Contract.

6. Supplier's status

- 6.1 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the Purchaser and Supplier, constitute either party the agent of the other, nor authorise either party to make or enter into any commitments for or on behalf of the other. In carrying out any Services associated with the Contract the Supplier shall be acting as principal and not as the agent of the Purchaser. Accordingly:
- (a) the Supplier shall not (and shall procure that his agents and servants do not) say or do anything that might lead any other person to believe that the Supplier is acting as the agent of the Purchaser, and
 - (b) nothing in this Contract shall impose any liability on the Purchaser in respect of any liability incurred by the Supplier to any other person but this shall not be taken to exclude or limit any liability of the Purchaser to the Supplier that may arise by virtue of either a breach of this Contract or any negligence on the part of the Purchaser, or the Purchaser's staff or agents.
- 6.2 The Supplier shall indemnify the Purchaser against any actions, suits, claims, demands, losses, charges, costs and expenses that it may suffer or incur as a result of or in connection with any partnership, joint venture or agency that is purported to have been created by the Supplier's acts or omissions.

7. Supplier's personnel

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- 7.1 The Supplier shall take the steps reasonably required by the Purchaser to prevent unauthorised persons being admitted to the Premises. If the Purchaser gives the Supplier notice that any person is not to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract, the Supplier shall take all reasonable steps to comply with such notice and if required by the Purchaser the Supplier shall replace any person removed under this Condition with another suitably qualified person and procure that any security pass issued to the person removed is surrendered. The giving of such notice by the Purchaser to the Supplier as aforesaid shall not entitle the Supplier to delay, suspend, terminate or withhold the performance of any of its obligations in terms of the Contract and it shall remain bound to timeously implement its obligations in full, whether or not it complies with the terms of the said notice or otherwise.
- 7.2 If and when instructed by the Purchaser, the Supplier shall give to the Purchaser a list of names and addresses of all persons who are or may be at any time concerned with the Services or any part of them, specifying the capacities in which they are so concerned, and giving such other particulars and evidence of identity and other supporting evidence as the Purchaser may reasonably require.
- 7.3 The decision of the Purchaser shall be final and conclusive as to whether any person is to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Supplier's obligations under the Contract and as to whether the Supplier has furnished the information or taken the steps required of the Supplier by this Condition.
- 7.4 The Supplier shall bear the cost of any notice, instruction or decision of the Purchaser under this Condition.

8. Delivery

- 8.1 The Supplier shall make no delivery of materials, plant or other things, nor commence any work on the Premises without obtaining the Purchaser's prior consent. The Supplier shall make delivery at a time agreed between the Supplier and Purchaser.
- 8.2 Any access to the Premises and any labour and equipment that may be provided by the Purchaser in connection with the Services shall be provided without acceptance by the Purchaser of any liability whatsoever and the Supplier shall indemnify the Purchaser and 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 the Supplier's sub-contractors.
- 8.3 The time performance of the Services shall be of the essence. Should it appear to the Purchaser that the Supplier is not proceeding with sufficient expedition to ensure the performance of the Services by the time stipulated in the Purchase Order or Form of Agreement or that such time has already expired, the Purchaser may give the Supplier 5 days written notice to make good such default.
- 8.4 Should the Supplier fail to comply with a notice under Condition 8.3 the Purchaser may then at the expense of the Supplier and without prejudice to any other rights: -
- (a) determine the Supplier's engagement under the Contract pursuant to Condition 21.2 in all respects as if the Supplier had failed to rectify a breach notified to him pursuant to that Condition; or
 - (b) take the Services to be supplied by the Supplier wholly or in part out of the Supplier's hands; or
 - (c) make such modifications, substitutions or additions to this Contract as the Purchaser considers necessary to ensure the satisfactory execution thereof,

and in all of the events described at (a) to (c) above 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 such late performance, including but not limited to any additional expense that may be incurred by the Purchaser in obtaining substitute goods or services from a third party.

9. Access

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- 9.1 Where any access to the Premises is necessary in connection with delivery or installation the Supplier shall, and shall procure that its sub-contractors shall, at all times comply with the reasonable requirements of the Purchaser's Head of Security.
- 9.2 Access to the Premises shall not be exclusive to the Supplier. Without prejudice to the provisions of Condition 5.1, the Supplier acknowledges that it may be afforded only such access as shall enable the Supplier to carry out the Services concurrently with the execution of work or delivery of goods by others. The Supplier shall co-operate with such others as the Purchaser may reasonably require.
- 9.3 The Purchaser shall have the power at any time during the progress of the Services to order in writing or verbally (provided that following a verbal order, the Purchaser shall confirm such order in writing as soon as reasonably practicable thereafter):
- (a) the removal from the Premises of any materials which in the opinion of the Purchaser are either hazardous, noxious or not in accordance with the Contract;
 - (b) the substitution of proper and suitable materials;
 - (c) the removal and proper re-execution notwithstanding any previous test thereof or interim payment therefor of any work which, in respect of material or workmanship, is not in the opinion of the Purchaser in accordance with the Contract.

The Supplier shall comply forthwith with the terms of any such order.

- 9.4 On completion of the Services the Supplier shall remove the Supplier's plant, equipment and unused materials and shall clear away from the Premises all rubbish arising out of the Services or delivery of the Goods and leave the Premises in a neat and tidy condition.

10. Property and risk

Unless otherwise agreed in writing, the risk in any Materials to be supplied pursuant to the Contract shall remain with the Supplier until delivery has been effected in accordance with the Contract. The title in the Materials shall pass to the Purchaser upon the earlier of:

- (a) payment being made by the Purchaser in respect of the Materials (or, where payment is to be made in instalments, payment of the first instalment being made by the Purchaser in respect of the Materials); and
- (b) delivery of the Materials,

and shall thereafter remain the absolute property of the Purchaser. The Supplier shall mark any Materials in which title has so passed in such a way as to clearly identify them as being the property of the Purchaser. The Supplier shall not agree any retention of title provision affecting the Materials in contracts with sub-suppliers.

11. Damage in transit

On dispatch of any consignment of any Materials the Supplier shall send to the Purchaser at the address for delivery of the Materials 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 Materials 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 Materials in transit the Purchaser shall within thirty days of delivery give notice to the Supplier that the Materials 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 Materials) within 10 days of the notified date of delivery give notice to the Supplier that the Materials have not been delivered.

12. Inspection, rejection and guarantee

- 12.1 The Supplier shall permit the Purchaser or the Purchaser's authorised representatives to make any inspections or tests of the Services (including work-in-progress outwith the Premises) that the Purchaser may reasonably require and the Supplier shall afford all reasonable facilities and assistance free of charge at the Supplier's 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 Services.

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- 12.2 The Purchaser may by written notice to the Supplier reject any aspects of the Services performed to date which fail to meet the requirements specified in the Contract. Such notice shall be given within a reasonable time after performance of the Services concerned. If the Purchaser shall reject any of the Services pursuant to this Condition the Purchaser shall be entitled (without prejudice to his other rights and remedies) either:
- (a) to have the Services concerned as quickly as possible either rectified by the Supplier or (as the Purchaser shall elect) replaced or re-performed by the Supplier with Services which comply in all respects with the requirements specified herein; or
 - (b) to obtain a refund from the Supplier in respect of the Services concerned.
- 12.3 The guarantee period applicable to any Materials supplied under this Contract shall be 12 months. 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 Materials 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.
- 12.4 Any Materials rejected or returned by the Purchaser as described in Conditions 12.2 or 12.3 shall be returned to the Supplier at the Supplier's risk and expense.

13. Labelling and packaging

- 13.1 The Materials 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 Materials shall be marked with the number of the Purchase Order or Form of Agreement (if any), 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.
- 13.2 All packaging materials will be considered non-returnable and will be destroyed unless the Supplier's advice note states that such materials will 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 ten days of receiving notice from the Purchaser that the packages have been dispatched notify the Purchaser of such non-arrival.
- 13.3 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.

14. Audit

The Supplier shall keep and maintain until 2 years after the performance of the Services (as the case may be) records to the satisfaction of the Purchaser of all expenditures which are reimbursable by the Purchaser and of the hours worked and costs incurred in connection with any employees of the Supplier paid for by the Purchaser on a time charge basis. The Supplier shall on request afford the Purchaser or his representatives such access to those records as may be required by the Purchaser in connection with the Contract.

15. Corrupt gifts or payments

- 15.1 Each party shall:
- (a) comply with all applicable laws, regulations, codes and guidance relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act 2010 (the "**Relevant Requirements**"); and
 - (b) have and shall maintain in place throughout the term of the Contract, and enforce where appropriate, its own policies and procedures to comply with the Relevant Requirements, including but not limited to adequate procedures under the Bribery Act 2010.
- 15.2 The Supplier shall:
- (a) promptly report to the Purchaser any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Agreement; and

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(b) immediately notify the Purchaser if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier (and the Supplier warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of the Contract).

15.3 The Supplier shall ensure that any person associated with the Supplier who is performing services or providing Materials in connection with the Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this Condition 15 and the Supplier shall ensure the compliance by such persons with such terms.

15.3 The Supplier shall not by itself, or in conjunction with any other person:

(a) corruptly solicit, receive or agree to receive, for himself or for any other person; or

(b) offer or agree to give to any person in the Purchaser's service, or any consultant or contractor who has an appointment with the Purchaser,

any gift or consideration of any kind as an inducement or reward for doing or not doing anything or for showing favour or disfavour to any person, in relation to the Contract or any other contract to which the Purchaser is a party.

15.4 The Supplier shall not enter into this or any other contract with the Purchaser in connection with which commission has been paid or agreed to be paid by him or on his behalf or to his knowledge unless, before any such contract is made, particulars of any such commission, and of the terms and conditions of any agreement for the payment thereof, have been disclosed in writing to the Purchaser.

15.5 The Purchaser may by notice terminate the Supplier's engagement under the Contract if:

(a) he is reasonably satisfied that the Supplier or anyone employed by him or acting on his behalf (whether with or without knowledge of the Supplier) is in breach of this Condition 15; or

(b) the Supplier or anyone employed by him or acting on his behalf is convicted of any offence under the Bribery Act 2010 in relation to this contract or any other contract to which the Purchaser is a party.

15.6 If the Purchaser so terminates the Supplier's engagement under the contract, then the Purchaser shall be entitled to recover the amount or value of any such gift, consideration or commission.

15.7 The Supplier shall indemnify and keep the Purchaser fully indemnified for all time on demand from any and all losses, liabilities, damages, judgements, penalties, fines, costs, charges and expenses (including legal expenses) incurred by reason of any breach of this Condition 15 by the Supplier or any employees, agents or sub-contractors of the Supplier. The indemnity in this Condition 15 shall apply irrespective of cause and notwithstanding the negligence or breach of duty (whether statutory or otherwise) of the Supplier and/or any person working for the Supplier and/or any third party retained by the Supplier.

15.8 For the purpose of this Condition 15,

(a) 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;

(b) a person associated with the Supplier includes but is not limited to any sub-contractor of the Supplier; and

(c) all references to the Supplier shall be deemed to include each group company of the Supplier.

16. Intellectual property

16.1 All Intellectual Property subsisting in any materials supplied or made available to the Supplier by the Purchaser in relation to the performance of the Contract shall be or remain vested in the Purchaser.

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- 16.2 If Materials are created by, or on behalf of, the Supplier in the course of performing the Contract ("**Purchaser Materials**") then the Intellectual Property in the Purchaser Materials will be owned by the Purchaser. The Supplier hereby irrevocably assigns to the Purchaser free from encumbrance and to the fullest extent permitted by law its entire right, title and interest in and to all existing and future Intellectual Property comprised in the Purchaser Materials. If the Intellectual Property in the Purchaser Materials does not vest automatically by operation of law or under the Contract, the Supplier shall hold legal title in such Intellectual Property on trust for the Purchaser and to the Purchaser's order.
- 16.3 Where the Supplier provides Materials, other than Purchaser Materials, to the Purchaser in performing the Contract ("**Supplier Materials**") then the Supplier grants to the Purchaser a perpetual, irrevocable, royalty-free worldwide non-exclusive licence (including the right to grant sub-licences) to use, copy and modify the Supplier Materials for any purpose including to use, and obtain the benefit of, the Services and, to the extent necessary, the Supplier shall obtain all such third party licences as are necessary in order to grant such rights to the Purchaser under this Condition 16.3.
- 16.4 The Supplier shall obtain written absolute waivers from all authors of any Materials of their moral rights arising under the Copyright, Designs and Patents Act 1988 in relation to the Materials and, so far as is legally possible, any broadly equivalent rights such authors may have in any territory of the world.
- 16.5 The Supplier warrants, undertakes and represents that: -
- (a) in performing its obligations under the Contract it will not infringe the Intellectual Property of any third party;
 - (b) the use by the Purchaser of any Materials supplied under the Contract will not infringe the Intellectual Property of any third party;
 - (c) it has capacity, authority and the right to grant the rights granted to the Purchaser under Conditions 16.2 and 16.3,
- and the Supplier shall indemnify and keep indemnified at all times the Purchaser against all or any claims, losses, liabilities, damages, costs and expenses, howsoever arising, incurred by the Purchaser, or for which the Purchaser may become liable, as a result of a breach by the Supplier of any such warranty, representation or undertaking or otherwise as a result of a claim by a third party alleging that the use by the Purchaser of any Materials supplied under the Contract infringes such third party's Intellectual Property.
- 16.6 Without prejudice to Condition 20.2, the Supplier shall not, and shall procure that the Supplier's employees, agents and subcontractors shall not (except to the extent necessary for the implementation of the Contract), without the prior written consent of the Purchaser:
- (a) use any Purchaser Materials other than for the performance of the Contract; or
 - (b) disclose any Purchaser Materials that are not in the public domain (otherwise than by reason of a breach of the Contract) to any third party,
- without the prior written consent of the Purchaser.
- 16.7 The Supplier shall not, except as required by law, issue any public statement, press release, advertisement or other public document relating to the Contract or its subject matter without the prior written approval of the Purchaser.
- 16.8 The Supplier shall, at its own cost, perform (or procure the performance of) all further acts and things, and execute and deliver (or procure the execution or delivery of) all further documents, required by law or which the Purchaser requests, to vest in the Purchaser the full benefit of the rights, title and interest in Intellectual Property assigned to the Purchaser under the Contract and the rights to use Intellectual Property granted under the Contract.
- 16.9 The provisions of this Condition 16 will survive termination of the Contract.

17. Health and safety

- 17.1 The Supplier represents and warrants to the Purchaser that the Supplier is satisfied that all necessary tests and examinations have been made or will be made prior to delivery of any Materials to ensure that the Materials are designed and constructed so as to be safe and without risk to the health or safety of persons using the same, and that the Supplier has made

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available to the Purchaser adequate information about the use for which the Materials have been designed and have been tested and about any conditions necessary to ensure that when put to use the goods will be safe and without risk to health.

- 17.2 The Supplier shall perform the Services in such a manner as to be safe and without risk to the health or safety of persons in the vicinity of the place where the Services are being performed (whether such persons are in the vicinity of the said place at the time when the Services are being performed or otherwise) and in such a manner as to comply with any relevant health and safety or other legislation (including Statutory Instrument, Orders, or Regulations made under the said legislation) and any requirements imposed by a local or other regulatory authority in connection with the performance of services of the type supplied to the Purchaser, whether specifically or generally.
- 17.3 With prejudice to the generality of Condition 17.1 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 breach of Conditions 17.1 or 17.2 hereof.

18. Indemnity and insurance

18.1 Without prejudice to any rights or remedies of the Purchaser or obligations of the Supplier, 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 Services or the negligent or wrongful act or omission of the Supplier. The Supplier shall obtain and maintain insurance cover for the duration of this Contract of a sufficient amount to cover all of the risks referred to in this Condition 18 with an insurance company acceptable to the Purchaser and a satisfactory brokers' certificate of cover and evidence of payment of premiums shall be provided upon request to the Purchaser.

18.2 The Supplier shall have in force and shall require any sub-contractor to have in force:

- (a) employer's liability insurance in a sum not less than £10 million for any one incident,
- (b) public liability insurance for such sum and range of cover as the Supplier deems to be appropriate but covering at least all matters which are the subject of indemnities or compensation obligations under these Conditions in the sum of not less than £2 million for any one incident and unlimited in total, unless otherwise agreed by the Purchaser in writing, and
- (c) professional indemnity insurance covering (inter alia) all its liability hereunder in respect of defects or insufficiency in design and/or professional negligence in carrying out the Services, upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business in the United Kingdom, in an amount of not less than that stated in the Purchase Order or Form of Agreement for each and every claim for a period beginning now and ending 6 years after the last date of completion of the Services

18.3 The policy or policies of insurance referred to in Condition 18.2 shall be shown to the Purchaser whenever the Purchaser requests, together with satisfactory evidence of payment of premiums.

18A. Liability

No act of the Purchaser in connection with the Contract (including termination of the Supplier's engagement hereunder) shall render the Purchaser liable to the Supplier for any claim for any additional remuneration or compensation such as loss of fees, loss of profit, loss of contribution to overhead, loss of expectation, loss of opportunity or any other such similar economic and/or consequential losses.

19. Discrimination

The Supplier shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010, the Equality Act 2006, the Employment Equality (Age) Regulations 2006, the Human Rights Act 1998, the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000, the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof. The Supplier

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shall take all reasonable steps to secure the observance of this Condition by all employees and representatives of the Supplier.

20. Official Secrets Acts, confidentiality, and access to Government information

20.1 The Supplier undertakes to abide and procure that the Supplier's employees abide by the provisions of the Official Secrets Acts 1911 to 1989.

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

20.3 All information related to the Contract with the Supplier will be treated as commercial in confidence by the Client except that:

(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, (MSPs) or Members of the United Kingdom Parliament (MPs). Such disclosure shall not be treated as a breach of this agreement.

20.4 The provisions of this Condition 20 shall apply during the continuance of the Contract and after its termination howsoever arising.

20A. Force majeure

20A.1 Each party shall without delay give written notice to the other if it considers that the manufacture or delivery of the Goods or performance of the Services has been or will be delayed or prevented by the occurrence of a Force Majeure Event.

20A.2 Following notification pursuant to Condition 20A.1, the Purchaser shall determine whether delivery of any Materials or performance of the Services of has been or will be delayed or prevented by the occurrence of a Force Majeure Event, which determination shall be binding upon the Supplier. Where the Purchaser determines that performance of the Services has been or will be delayed or prevented by the occurrence of a Force Majeure Event, it shall give notice to the Supplier to that effect and such obligations shall be suspended until the Purchaser issues an instruction in accordance with Condition 20A.3 or determines the Supplier's engagement under the Contract pursuant to Condition 20A.4.

20A.3 When the Purchaser considers in good faith that the Supplier is capable of resuming performance of any obligations suspended pursuant to Condition 20A.2, it shall give notice to the Supplier to that effect. The time for delivery of the Services shall be adjusted as is reasonably necessary to account for delay arising from such Force Majeure Event and suspension.

20A.4 If the Purchaser determines in good faith that the Supplier will not be capable of resuming performance of its obligations within a reasonable time, the Purchaser by notice in writing may determine the Supplier's engagement under the Contract. Justifiable costs associated with such determination shall be reimbursed by the Purchaser.

21. Termination

21.1 The Supplier shall notify the Purchaser in writing immediately upon the occurrence of any of the following events:

(a) where the Supplier is an individual, on the making of a bankruptcy order against him under Part IX of the Insolvency Act 1986; or on the sequestration of his estate under the Bankruptcy (Scotland) Act 1985; or when he grants a trust deed for his creditors; or

(b) where the Supplier is not an individual but is a partnership, on the making of a winding-up order against it under any provision of the Insolvency Act 1986 as applied by an order under section 420 of that Act; or when sequestration is awarded on the estate or the

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partnership under section 12 of the Bankruptcy (Scotland) Act 1985; or the partnership grants a trust deed for its creditors; or

(c) where the Supplier is a company, when it enters administration within the meaning of Schedule B1 to the Insolvency Act 1986; or on the appointment of an administrative receiver or a receiver or manager of its property under Chapter I of Part III of that Act, or the appointment of a receiver under Chapter II of that Part; or on the passing of a resolution for voluntary winding-up without a declaration of solvency under section 89 of that Act; or on the making of a winding-up order under Part IV or V of that Act; or possession is taken of any of its property under the terms of a floating charge; or

(d) where the Supplier is any of the entities identified in paragraphs (a) to (c) above, it enters into an arrangement, compromise or composition in satisfaction of its debts (excluding a scheme of arrangement as a solvent company for the purposes of amalgamation or reconstruction); or (in the case of a Party which is a partnership) each partner is the subject of an individual arrangement or any other event or proceedings referred to in this Condition; or

(e) the Supplier enters into or is subject to any analogous arrangement, event or proceedings in any other jurisdiction.

21.2 On the occurrence of any of the events described in Condition 21.1 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 his or her affairs within the meaning of Part VII of the Mental Health Act 1983 or of Part V of the Mental Health (Scotland) Act 1984 (or any statutory modification or re-enactment thereof), the Purchaser shall be entitled to terminate this Contract by notice to the Supplier with immediate effect. Thereupon, without prejudice to any other of the Purchaser's rights, the Purchaser may complete the Services or have them completed by a third party, using for that purpose (making a fair and proper allowance therefor in any payment subsequently made to the Supplier) all materials, plant and equipment on the Premises belonging to the Supplier, and the Purchaser shall not be liable to make any further payment to the Supplier until the Services have been completed in accordance with the requirements of the Contract, and shall be entitled to deduct from any amount due to the Supplier the costs thereof incurred by the Purchaser (including the Purchaser's own costs). If the total cost to the Purchaser exceeds the amount (if any) due to the Supplier, the difference shall be recoverable by the Purchaser from the Supplier.

21.3 In addition to the Purchaser's rights of termination under Condition 21.2, the Purchaser shall be entitled to terminate this Contract by giving to the Supplier not less than 30 days' notice to that effect.

21.4 Termination under Conditions 21.2 or 21.3 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 16 and 20.

22. 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.

23. Assignment and sub-contracting

23.1 The Supplier shall not without the written consent of the Purchaser assign the benefit or burden of the Contract or any part thereof.

23.2 No sub-contracting by the Supplier shall in any way relieve the Supplier of any of his responsibilities under the Contract.

23.3 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:

23.3.1 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 sub-contractor's invoice includes Materials and/or Services in relation to which payment has been made by the Purchaser

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then, to the extent that it relates to such Materials and/or Services, the invoice shall be treated as valid and payment shall be made to the sub-contractor without deduction;

23.3.2 which notifies the sub-contractor that the contract forms part of a larger contract for the benefit of the National Library of Scotland 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 Division NLS George IV Bridge Edinburgh EH1 1EW, in which event the Purchaser may (but will not be required to) make payment to the sub-contractor and recover any sums paid to the sub-contractor from the Supplier as a debt; and

23.3.3 in the same terms as that set out in this Condition 23.3 (including for the avoidance of doubt this Condition 23.3.3) 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.

24. Blacklisting

The Supplier must not commit any breach of the Employment Relations 1999 Act (Blacklists) Regulations 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

25. 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, teletext, facsimile transmission or other means of 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 Form of Agreement, or to such other address as the party may by notice to the other have substituted therefor, 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.

26. Arbitration

All disputes, differences or questions between the parties to the Contract with respect to any matter or thing arising out of or relating to the Contract, other than a matter or thing as to which the decision of the Purchaser is under the Contract to be final and conclusive, and except to the extent to which special provision for arbitration is made elsewhere in the Contract, shall be referred to a sole arbitrator mutually chosen by the parties or, failing agreement (within 28 days of either party requesting the other to do so), nominated by the President of the Law Society of Scotland for the time being on the application of either party. The arbitration shall be seated in Scotland and the Arbitration (Scotland) Act 2010 shall apply.

27. Headings

The headings to Conditions shall not affect their interpretation.

28. 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.

29. TUPE (Where Applicable)

Definitions

"**Employment Claims**" means all or any direct or indirect actions, proceedings, claims, demands, costs, expenses (including legal expenses), damages, liabilities and penalties whatsoever;

"**Employment Costs**" means all payments, costs, expenses and outgoings in relation to a Transferring Employee (including salaries, wages, National Insurance contributions, accrued holiday, pension contributions, bonus, PAYE remittances and payments in respect of any other emoluments);

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"Incumbent Supplier" means a supplier already engaged by the Purchaser to provide the Services which are to be provided by the Supplier on the commencement of the contract for Services;

"Purchaser Employee" means an employee of the Purchaser;

"Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

"Relevant Transfer" means a relevant transfer in terms of the Regulations;

"Replacement Supplier" means a supplier engaged by the Purchaser to provide services to replace or in substitution of the Services on the termination of the provision of any of the Services by the Supplier;

"Resigning Employee" means a Purchaser Employee who would have transferred to the Supplier pursuant to the Regulations but for that employee resigning;

"Services" means those services as defined in the Form of Agreement;

"Services Employee" means any person assigned other than on a temporary basis from time to time in the provision of the Services;

"Transfer Date" means the date notified in the Form of Agreement or such other date as agreed between the Purchaser and the Supplier when the Transferring Employees transfer to the Supplier;

"Transferring Employees" means those employees employed by the Purchaser or an Incumbent Supplier and transferring to the Supplier, or its sub-contractor, on the Transfer Date by reason of the Regulations;

"Woodwork Employee" means any individual employed by the Supplier, or its sub-contractor, who claims to have transferred to the Purchaser and/or Replacement Supplier pursuant to the Regulations but who has not been identified as a transferring employee by the Supplier prior to the transfer;

- 1.1 The Purchaser and the Supplier believe that, pursuant to the Regulations, at the Transfer Date, the Supplier, or its sub-contractor, will become the employer of the Transferring Employees. At the expiry of the contract for Services, the Purchaser and the Supplier acknowledge that there may be a transfer from the Supplier, or its sub-contractor, to the Purchaser or the Replacement Supplier.
- 1.2 Subject to a Transferring Employee's right to object to the transfer, the parties shall procure that the contract of employment of each Transferring Employee (excluding terms relating to a provision of an occupational pension scheme insofar as they relate to benefits for old age, invalidity or survivors) will have effect after the Transfer Date as if originally made between the Transferring Employee and the Supplier, or, as appropriate, its sub-contractor.
- 1.3 The Purchaser and the Supplier shall, and the Supplier shall procure that its sub-contractor shall, co-operate generally with each other with a view to securing, in a timely and economical manner, that the Transferring Employees shall become employed by the Supplier on the Transfer Date.

Termination of Services

- 1.4 The Supplier undertakes that:
 - (a) for a period of six months prior to the expiry of the contract for Services; or
 - (b) during the period beginning as soon as it becomes aware that the contract for Services is to terminate earlier than the expiry of its term;

it shall not, and shall procure that its sub-contractor shall not, without the prior written consent of the Purchaser:

- (a) materially vary the terms and conditions of employment of; or

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- (b) increase or decrease the numbers of, redeploy or replace (unless a Services Employee has resigned or been dismissed for gross misconduct and the replacement is employed on materially the same terms and conditions as the Services Employee being replaced);

any of the Services Employees and shall not take any steps to oblige the Purchaser or a Replacement Supplier to do so after the Supplier ceases to employ any of the Services Employees.

1.5 The Supplier shall, and shall procure that its sub-contractor shall:

- (a) during the six months prior the expiry of the contract for Services;
- (b) after the Purchaser has given notice to terminate the contract for Services;
- (c) if the Supplier ceases trading; or
- (d) at any time prior to the expiry of the contract for Services;

and within 20 business days of a written request by the Purchaser, provide to the Purchaser or, at the direction of the Purchaser, the Replacement Supplier, in respect of each Services Employee employed in the Services at that time:

- (e) copies of all contracts of employment and other agreements and policies together with the employment records and full details of the terms and conditions of employment, working arrangements, job description, length of service, notice period (and whether notice to terminate has been served), remuneration, recent and anticipated pay increases, holiday entitlement (including accrued holiday entitlement), pension and life assurance details, other contractual and non-contractual benefits; and
- (f) full details of all employment related disputes and claims, current warnings under any disciplinary procedures, current formal grievances, details of absences from work in excess or likely to be in excess of four continuous weeks in the last six months, trade union membership and recognition, collective agreements, labour disputes and other claims, whether or not any notice of termination has been issued; and
- (g) a list of all of the Services Employees who are due to be the subject of a Relevant Transfer to the Purchaser or Replacement Supplier on termination of the contract for Services, either in part or in whole.

1.6 At least 14 days before the date of a Relevant Transfer to the Purchaser, or the Replacement Supplier, the Supplier shall, and shall procure that its sub-contractor shall, provide to the Purchaser or the Replacement Supplier, in respect of each of the transferring Services Employees, their:

- (a) pay slip data for the most recent month;
- (b) cumulative pay for tax and pension purposes;
- (c) cumulative tax paid;
- (d) tax code;
- (e) voluntary deductions from pay; and
- (f) bank or building society account details for payroll purposes.

1.7 On the date of a Relevant Transfer to the Purchaser, or the Replacement Supplier, the Supplier shall, and shall procure that its sub-contractor shall, provide copies of the terms and conditions of employment (including salaries, pension details and other benefits) of each of the transferring Services Employees to the Purchaser or the Replacement Supplier.

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- 1.8 The Supplier warrants that the information provided under Clause 28.5, Clause 28.6 and Clause 28.7 will be complete and accurate in all respects as at the date the information is provided.
- 1.9 The Supplier will procure that any information that has been given pursuant to Clause 28.5, Clause 28.6 and Clause 28.7 that has changed or become inaccurate in any way will be updated and corrected within 5 working days of the information changing or becoming inaccurate. The Supplier shall be liable for any increase in costs the Purchaser may incur as a result of the inaccurate or late production of data.
- 1.10 The Supplier shall permit the Purchaser to use the information for the purposes of the Regulations and of re-tendering, which shall include such disclosure to potential suppliers as the Purchaser considers appropriate in connection with any re-tendering. The Supplier will, and will procure that its sub-contractor will, co-operate with the re-tendering of the contract by allowing the Replacement Supplier to communicate with and meet the affected employees and/or their representatives.
- 1.11 On demand by the Purchaser, the Supplier shall indemnify and fully reimburse the Purchaser or, as appropriate, a Replacement Supplier, for all time, from and against all Employment Claims incurred, suffered or paid by the Purchaser or, as appropriate a Replacement Supplier, where the cause of the Employment Claim arises out of or in connection with:-
- (a) employment by the Supplier, or its sub-contractor, of any Services Employee, or termination of that employment;
 - (b) anything done or omitted to be done by the Supplier, or its sub-contractor, in respect of any Transferring Employee, whether before or after the Transfer Date;
 - (c) a failure by the Supplier to comply with its obligations under Clause 28.13;
 - (d) (without prejudice to the rights of the Purchaser and/or any Replacement Supplier pursuant to regulation 12 of the Regulations) a breach by the Supplier of its obligations pursuant to Clause 28.5, Clause 28.6 and Clause 28.7;
 - (e) any Purchaser Employee, or third party, at any time as a result of any unlawful or negligent act or omission of the Supplier or its officers, employees or sub-contractors;
 - (f) the resignation by a Resigning Employee, prior to the Transfer Date, as a result of a proposed substantial change by the Supplier, or its sub-contractor, to the terms and conditions of employment or working conditions to apply to that Resigning Employee to his or her material detriment after the Transfer Date or a proposed change by the Supplier, or its sub-contractor, which causes the Resigning Employee to terminate his or her contract of employment in acceptance of a repudiatory breach; and
 - (g) breach by the Supplier, or its sub-contractor, in relation to its obligations under regulation 11, 13 or 14 of the Regulations or any other of its obligations under the Regulations or the contract for Services.
- 1.12 The Supplier shall indemnify and keep indemnified the Purchaser and the Replacement Supplier against all and any Employment Costs (including, but not limited to, any obligation to make employer contributions to any pension scheme in excess of those it would customarily make in relation to employees in its own stakeholder scheme) and any costs associated with the employment or termination thereof of a Woodwork Employee.
- 1.13 All Employment Costs in relation to each Transferring Employee shall be apportioned on a time basis so that the part of the Employment Costs accruing in the period up to the Transfer Date shall be borne and discharged by the Purchaser and the part of the Employment Costs accruing in respect of the period of the Services on or after the Transfer Date shall be borne and discharged by the Supplier.

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The provisions of this Condition 29 shall apply during the continuance of the contract for Services and after its termination howsoever arising.

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Supplementary notice

1. Protecting the environment

Suppliers to the National Library of Scotland are requested to satisfy themselves that no Services will be supplied 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 National Library of Scotland 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 Finance Division George IV Bridge Edinburgh EH1 1EW. Telephone 0131-623-3754. This procedure is suggested as the best 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