

## Purchase Terms and Conditions (Works) - FDIS

### I. Definitions and interpretation

I.1. In this Agreement, the following definitions shall apply:

**Affiliates:** means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;

**Agreement:** means the contract between Mitie and the Supplier for the supply of Works in accordance with these Purchase Terms and Conditions (Works), the Contract Form and any Schedule, Appendix or annexure to such documents (as may be amended pursuant to the terms of the Agreement from time to time);

**Appendix:** means any Appendix to these Purchase Terms and Conditions (Works) or the Contract Form or the purchase order;

**Business Day:** means a day other than a Saturday, Sunday or public holiday at the location where the Works are being delivered;

**Commencement Date:** means the date this Agreement came into force as set out in the Contract Form or, where no such Contract Form exist, the date of the purchase order;

**Contract Form:** means the contract form for Works executed by Mitie and the Supplier and forming part of this Agreement or, where no such form exists, the purchase order issued by Mitie;

**Control:** has the meaning given to it in section 1124 of the Corporation Tax Act 2010 and **Controlled** and **Change of Control** shall be construed accordingly;

**Data Protection Legislation:** means (i) the General Data Protection Regulations (Regulation (EU) 2016/679), the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing laws as amended from time to time; (ii) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy and (iii) all applicable Law about the processing of personal data and privacy;

**Deliverables:** means all documents, products and materials developed by the Supplier and/or its agents, suppliers, sub-suppliers and/or employees as part of or in relation to the Works in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts);

**Direct Losses:** means all damages, losses, indebtedness, claims, actions, expenses, costs (including, without limitation, any reasonable and properly incurred legal or professional services costs), proceedings, demands and charges whether arising under statute, contract or at common law, excluding any Indirect Losses;

**End-Client:** means Mitie's customer at the locations where the Works are to be provided being Defence Infrastructure Organisation (DIO) acting on behalf of the Secretary of State for Defence;

**Goods:** means the goods (or any part of them), including without limitation any Deliverables, set out in the Contract Form;

**Goods Specification:** means any specification for the Goods, including any related plans and drawings, that is agreed in writing by Mitie and the Supplier set out in the Contract Form and/or in a document referred to in the Contract Form;

**Group Company:** means and includes each and any subsidiary or holding company of Mitie and each and any subsidiary of a holding company of Mitie, and any reference to a holding company or a subsidiary means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006;

**Indirect Losses:** means loss of profits and/or revenue, loss of production, loss of business, loss of business opportunity, any special loss or any claim for consequential loss or for indirect loss of any nature;

**Insolvency Event:** means in respect of a person, where: (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or (c) a petition is presented for its winding up (which is not dismissed within fourteen (14) Business Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or (d) a receiver, administrative receiver or

similar officer is appointed over the whole or any part of its business or assets; or (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or (g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or (h) where the person is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or (j) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction.

**Intellectual Property Rights:** means any patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including, without limitation, know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and 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;

**Invoice Instructions:** means the Mitie vendor invoice instructions as are in force at the Commencement Date set out in the Contract Form;

**Key Personnel:** means the individuals appointed or employed by the Supplier from time to time as listed or referenced in the Contract Form;

**Law:** means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgement of a relevant court of law, or directives or requirements applicable to the location of the provision of the Works with which the Supplier is bound to comply;

**Mitie:** means Mitie Limited, a company incorporated and registered in England and Wales with company number 02938041 whose registered office is at Level 12 The Shard, 32 London Bridge Street, London, SE1 9SG;

**Mitie Policies:** means the Mitie standard policies and procedures as are in force at the Commencement Date and as may be amended from time to time (as are set out on the Contract Form and/or a relevant Appendix thereto and, where not provided on the Contract Form or given Appendix thereto, as are available on request), including but not limited to policies and procedures relating to anti-bribery and anti-slavery;

**Price:** has the meaning given to it in Clause 9.1;

**Relevant Requirement:** has the meaning given to it in Clause 15.1.1

**Replacement Services:** means any goods or services ordered by Mitie from a third party supplier in substitution for any of the Works which the Supplier has failed to provide in accordance with the terms of this Agreement following the expiry, termination, partial termination or default on the part of the Supplier, of this Agreement;

**Schedule:** means any Schedule to these Purchase Terms and Conditions (Works) or the Contract Form or the purchase order;

**Services:** means the services, including without limitation any Deliverables, to be provided by the Supplier under this Agreement as set out in the Contract Form;

**Supplier:** means the person or firm from whom Mitie purchases the Works as set out in section 2 of the Contract Form or, where no Contract Form exists, as set out in the purchase order;

**Supplier Personnel:** means those persons (or each individually) employed or engaged by the Supplier (or its suppliers or sub-suppliers) who are wholly or mainly assigned to the provision of the Services or any part thereof;

**TUPE;** means the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended; and

**Works:** means the supply of Goods and/or the provision of Services, as set out in the Contract Form.

1.2. Clause, Schedule, Appendix, annexure and paragraph headings are for ease of reference and shall not affect the interpretation or construction of this Agreement.

- 1.3. If any conflict exists between these Purchase Terms and Conditions (Works) and the Contract Form, the Contract Form shall prevail save in relation to Clause 21.
- 1.4. In this Agreement unless the context otherwise requires, words in the singular shall include the plural and vice versa, words importing a gender shall include all genders and words importing persons shall include bodies corporate, unincorporated associations and partnerships. A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.5. In this Agreement, a reference to a statute, statutory provision or statutory instrument is a reference to it as amended, extended or re-enacted from time to time and to any regulations made under it.
- 1.6. In this Agreement any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.7. Save where explicitly defined in the Agreement, the words in this Agreement shall be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate and otherwise in accordance with their natural meaning.
- 1.8. The parties have had the opportunity to take legal advice on the terms of this Agreement and no term shall, therefore, be construed contra proferentem.

## 2. Introduction and scope

- 2.1. This Agreement is made between Mitie and the Supplier under which Mitie agrees to purchase the Works from the Supplier and the Supplier agrees to provide the Works in accordance with the terms and conditions of this Agreement as may be amended from time to time. No variation to these terms and conditions will form part of this Agreement unless made and accepted by Mitie in writing.
- 2.2. These terms and conditions will apply to the exclusion of any other terms or conditions contained in any other document and/or other communication (whether received prior to or subsequent to the issue of this Agreement) or which are implied by trade, custom, practice or course of dealing used by the Supplier. The provision of any order confirmation and/or acknowledgement and/or the provision of the Works shall constitute acceptance of the terms and conditions of this Agreement.
- 2.3. The benefit (subject to the burden) of an order placed by way of a Contract Form may be taken by any Group Company and these terms and conditions may be enforced by any of them, in each case either as principal or as the duly authorised agent for any of the other Group Companies. This is done to assist the effective processing and administration of each Contract Form and does not in any way affect the Supplier's rights.
- 2.4. The terms and conditions of this Agreement shall apply to the supply of both Goods and Services in so far as they are applicable to the provision of such Works.

## 3. Works

- 3.1. The Works shall be provided in the quantities, by the times and at the locations set out in the Contract Form or otherwise agreed with Mitie in writing and Mitie shall not be obliged to accept any incomplete delivery or any Work in excess of the amounts ordered.
- 3.2. The Supplier shall be the non-exclusive supplier of the Works to Mitie for the term of the Agreement. The Supplier acknowledges that Mitie makes no guarantee or representation as to any minimum value or volume of the Works required during the term of the Agreement.
- 3.3. Unless specifically provided for in the Contract Form, the Supplier shall ensure that the Works are fully compatible with Mitie's equipment and/or property (which for the purpose of this Clause 3.3 shall include the equipment and/or property of the End-Client where applicable).
- 3.4. The Supplier acknowledges that Mitie relies on the skill and judgment of the Supplier in the supply of the Works and the performance of its obligations under the Agreement.
- 3.5. The Supplier shall not depart from the Agreement unless the Supplier has obtained Mitie's written approval to do so. The Supplier shall make any reasonable amendments to the Works required by Mitie and, unless agreed in writing by Mitie, any such amendments shall not increase the Price. If Mitie requires an amendment to the Agreement that would result in

a reduction in the Price, the Supplier shall notify Mitie of the resulting reduction in the Price and shall pass on the monetary value of any such sum, amount or any other benefit received directly to Mitie by way of a cost reduction under the Agreement or a cash payment to Mitie. The parties agree that Mitie may request from the Supplier written evidence assessing the reduction in the Price resulting from the amendment and/or showing how the reduction in the Price was calculated and that it was calculated on a fair and reasonable basis.

- 3.6. Where the Supplier is to provide formal progress reports to Mitie under the Agreement, the Supplier shall provide such reports at the times and in such form as may be specified by or as otherwise requested by Mitie. The submission and acceptance of progress reports shall not prejudice the rights of Mitie under any other provision of the Agreement.
- 3.7. The Supplier shall be deemed to have satisfied itself as regards the nature and extent of the Works, including but not limited to the time necessary to complete the Works, access to the location(s) where the Works are to be provided or performed, and the personnel, information and equipment necessary to provide or perform the Works.
- 3.8. The Supplier shall at all times in its performance of the Works, act in accordance with any relevant specification, law or regulatory requirement and shall supply, where relevant and appropriate or where requested by Mitie, a certificate of conformance with any relevant specification confirming conformance with all appropriate regulatory approvals and health and safety requirements.
- 3.9. The Supplier shall at all times in its performance of the Works have regard to the good reputation of Mitie and the End-Client and in performing the Works shall not damage Mitie's or the End-Client's reputation, goodwill and/or custom.
- 3.10. The Supplier acknowledges that (a) prior to entering this Agreement it (i) had the opportunity to perform its own due diligence in relation to the Works and the requirements of this Agreement; and (ii) it raised all relevant due diligence questions to Mitie and received adequate responses to enable it to determine whether it is able to provide the Works in accordance with the terms of this Agreement; and (b) it has entered the Agreement in reliance on its own due diligence.
- 3.11. Mitie shall not be liable for errors, omissions or misrepresentation of any information it provides to the Supplier save to the extent that such misrepresentations are made fraudulently.
- 3.12. The Supplier shall not be excused from any obligation or be entitled to any additional charges or to increase the Price due to its failure to either verify the accuracy of the information provided by Mitie or properly perform its own due diligence.

#### **4. Provision of the Goods**

- 4.1. The Supplier shall ensure that the Goods shall:
  - 4.1.1. correspond with their description and any applicable Goods Specification set out in the Contract Form;
  - 4.1.2. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by Mitie, expressly or by implication, and in this respect Mitie relies on the Supplier's skill and judgment;
  - 4.1.3. be new, or "as new" if recycled, unused and of recent origin and, where applicable, be free from defects in design, materials and workmanship and remain so for twelve (12) months after delivery or such longer period as (i) stipulated by the manufacturer or (ii) set out in the Schedules, Appendices or annexures to this Agreement. For the avoidance of doubt, the longest period applies; and
  - 4.1.4. comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 4.2. Unless otherwise stated in the Contract Form, where the Goods are to be delivered by the Supplier, the point of delivery shall be when the Goods are removed from the Supplier's transporting vehicle:
  - 4.2.1. on the date specified in the Contract Form or, if no such date is specified, on the date agreed between Mitie and the Supplier;
  - 4.2.2. during Mitie's normal hours of business on a Business Day, or as otherwise instructed in writing by Mitie;
  - 4.2.3. at the location specified in the Contract Form or such other location as instructed in writing by Mitie before delivery, and the Supplier shall offload the Goods as directed by Mitie.

- 4.3. Where the Goods are to be collected by Mitie, the point of delivery shall be when the Goods are loaded onto Mitie's transporting vehicle.
- 4.4. Delivery will be deemed to be incomplete if the Supplier fails to provide Mitie with all the documentation, tools, information or training necessary for the safe and proper operation or intended use of the Goods and Mitie shall have the right to inspect and test the Goods at any time before delivery.
- 4.5. The issue by Mitie of a receipt for the Goods shall not constitute any acknowledgment or acceptance of the condition, quantity or nature of the Goods.
- 4.6. The Supplier must ensure all Goods are suitably packaged, marked in a proper manner and in accordance with any Mitie instructions, statutory requirements and any requirements of the carriers. Mitie shall not be obliged to return any packaging materials for any Goods whether or not they are accepted by Mitie.
- 4.7. If the Goods require the carrying out of tests, installation or training, delivery shall not be deemed to be complete until such tests have been passed, all Goods installed or training delivered to Mitie's unconditional satisfaction and the Supplier shall provide to Mitie upon request with copies of all test reports and all data discovered as a result of testing.
- 4.8. If Mitie installs any Goods supplied to it, the Supplier shall supply in advance of delivery a functional description of each part of the Goods, together with sufficient drawings and instructions to allow Mitie to install, operate and maintain the Goods including details of any special environmental controls required to ensure that the Works meet any relevant specification.

## 5. Provision of the Works

- 5.1. In providing the Works, the Supplier shall:
  - 5.1.1. co-operate with Mitie in all matters relating to the Works, and comply with all instructions of Mitie;
  - 5.1.2. perform the Works with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
  - 5.1.3. use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Agreement;
  - 5.1.4. ensure that the Works and/or Deliverables will conform with all descriptions and specifications set out in the Contract Form, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by Mitie;
  - 5.1.5. provide at its own risk and expense all equipment, tools and vehicles and such other items as are required to provide the Works;
  - 5.1.6. use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Works or transferred to Mitie, will be free from defects in workmanship, installation and design;
  - 5.1.7. obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations (including anti-bribery and anti-slavery laws and regulations); and
  - 5.1.8. observe all health and safety rules and regulations and any other security requirements that apply at any of Mitie's premises (which for the purpose of this Clause includes the End-Client premises where the Works are being provided).
- 5.2. 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 Agreement in respect of the Works.
- 5.3. Where the Contract Form specifies the time of performance or delivery of the Works, time for such performance or delivery shall be of the essence.
- 5.4. The Supplier shall notify Mitie if any delivery or performance is likely to be delayed beyond the date specified in the Contract Form or, if no such date is specified in the Contract Form, beyond the date which had been agreed between Mitie and the Supplier. If the Contract Form provides for the payment of liquidated damages for delays in performance or delivery then these shall apply. If not, then the provisions of Clause 5.5 shall apply.

- 5.5. Where Clause 5.3 applies and time is of the essence, failure by the Supplier to promptly notify Mitie of any likely delay shall entitle Mitie to terminate without liability all or any part of the order set out in the Contract Form. Mitie shall also be entitled to compensation for any Direct Losses resulting from such failure and/or delay. Save where Clause 5.3 applies, if any delay which is promptly notified to Mitie does or is likely to exceed ten (10) days, Mitie shall be entitled to terminate without liability on its part all or any part of the order set out in the Contract Form and/or (unless the delay is due to Force Majeure (as set out in Clause 25 below)) to compensation for any resulting Direct Losses.
- 5.6. In addition to any other right Mitie may have under this Agreement or any other contract between it and the Supplier, Mitie shall be entitled to postpone the date of delivery or performance for whatever period it thinks fit upon giving notice in writing (and for this purpose “in writing” includes any notification issued by email) to the Supplier. The Supplier shall not make any additional charges for providing or performing the Works where Mitie exercises this right, unless the Supplier can demonstrate to the reasonable satisfaction of Mitie, providing a written statement and supporting evidence, that such additional charges are unavoidable due to the proposed postponement. In such circumstances Mitie shall be entitled to terminate the Agreement immediately without any liability whatsoever if it determines (at its sole discretion) that the increase in charges is not reasonable.
- 5.7. If the Works are delivered or performed in instalments, Mitie may treat the Agreement either as a single contract and not severable, or it may elect to terminate the whole of any unfulfilled part of the Agreement without any further liability to the Supplier.
- 5.8. The Supplier shall liaise with Mitie (and any third parties designated by Mitie) regularly and at such intervals as Mitie may request in connection with the Works. The Supplier shall provide Mitie's nominated representative(s) with access to observe performance of the Works at all key stages in their development.
- 5.9. If an inspection by Mitie at any time after delivery by the Supplier establishes that all or any part of the Works supplied does not comply with all the requirements of the Agreement, Mitie may (without limitation) reject the Works supplied, return it to the Supplier and/or require replacement or rectification, or require re-performance of the Works and in each case recover its losses, costs and expenses from the Supplier.
- 5.10. Where the Supplier attends site to carry out the Works and is unable to gain access to the service area or to successfully complete the Works due to access restrictions which the Supplier had not previously been made aware of or due to the acts and/or omissions of authorised representatives of Mitie on site (a “Wasted Journey”), the Supplier undertakes and agrees to use its best endeavours to take all steps to contact an authorised representative of Mitie on site to gain access and/or resolve any on-site restrictions.
- 5.11. In the event of a Wasted Journey where the Supplier has been unable to successfully complete the Works, the Supplier shall only invoice Mitie for its reasonable charges incurred, which shall not exceed the Supplier’s transport only charge.
- 5.12. The Supplier is not entitled to charge any Wasted Journey charge where the Supplier has attempted to attend a site outside of the service times agreed by Mitie in writing or where the Supplier is unable to demonstrate compliance with Clause 5.10. Where service times have not been specified by Mitie, the agreed service times shall be deemed to be 0900 to 1700 hours Monday to Friday (excluding public holidays at the location where the Works are being provided (in the case of Services) or delivered (in the case of Goods)).
- 5.13. The Supplier shall give Mitie not less than 30 days’ written notice where it proposes to alter the scheduled service times agreed by Mitie or, where service times have not been specified, outside of the standard service times set out in Clause 5.12 above. Where the Supplier’s revised service times will no longer satisfy the requirements of Mitie, Mitie reserves the right to terminate this Agreement in accordance with Clause 21.1.
- 5.14. Mitie shall be entitled to deduct from the Price or reclaim from the Supplier any reasonable costs associated with the procurement of any Replacement Services or any costs associated with the Works which the Supplier has failed to provide in accordance with the terms of this Agreement. These costs will include, without limitation, any premium paid and/or transportation or delivery charges required to achieve the timeframe originally specified for the provision of the Works in this Agreement.

## 6. Hazardous goods

- 6.1. If any Works to be provided or performed under the Agreement involve the use of any hazardous substances or requires any special precautions to be taken to ensure safety in handling, transport, storage or use, the Supplier shall prior to delivery furnish Mitie with written details of the nature of those substances and the precautions to be taken and shall ensure that before despatch appropriate instructions and warnings are clearly and prominently marked or securely attached to any containers into which they are packed.

- 6.2. In particular (but without limitation) the Supplier shall provide to Mitie in writing all such data, instructions and warnings as are required to comply with applicable legislation, including without limitation, relating to health and safety and shall indemnify Mitie against any and all liabilities, claims and expenses which may arise as a result of the Supplier's failure to do so.

## 7. Remedies

- 7.1. If the Supplier fails to complete the delivery or performance of any Works in accordance with this Agreement, for any reason other than Force Majeure, without prejudice to any other right and remedies it may have, Mitie shall be entitled to:
- 7.1.1. reject the Works (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
  - 7.1.2. require the Supplier to remedy such defect at its own cost within seven (7) days (or such longer period as Mitie may, at its absolute discretion, agree) including without limitation to repair or replace any rejected Works (in which case the Supplier shall also be liable to Mitie for any costs arising out of any damage caused by the Supplier in remedying such defects and shall also provide free of charge any additional works necessary to remedy the Works);
  - 7.1.3. recover from the Supplier any costs incurred by Mitie in having such defects remedied;
  - 7.1.4. cancel any Works which have not been delivered or provided by the date required and require a full refund of any part of the Price which has been paid;
  - 7.1.5. charge to the Supplier any additional costs, losses or expenses which Mitie may incur due to the Supplier's failure to deliver or perform the correct Works in accordance with this Agreement, including, but not limited to, any additional costs incurred by Mitie in obtaining any Replacement Services from a third party and any payments contractually due to third parties as a result of the Works not being so provided by the specified delivery date; and/or.
  - 7.1.6. withhold payment for the partially or undelivered Works.
- 7.2. Clause 7.1 shall extend to any substituted or remedial services and/or repaired or replacement Works supplied by the Supplier.
- 7.3. Mitie's rights under this Agreement are in addition to its rights and remedies implied by statute and common law.

## 8. Ownership and risk

- 8.1. Subject to Clauses 8.2, 8.3 and 8.4, the risk and title in any Goods which form all or any part of the Works shall pass to Mitie when delivered and the time of delivery shall be determined in accordance with Clauses 4 and/or 5. Risk of loss or damage to the Goods shall remain with the Supplier until delivery even if the Goods have been inspected by Mitie or the property therein may have passed earlier than upon delivery.
- 8.2. Risk of loss or damage to, and title in any Goods rejected by Mitie in accordance with this Agreement shall revert to the Supplier upon notification of that rejection by Mitie.
- 8.3. Any equipment and materials provided by the Supplier for the provision of the Works shall remain the property of the Supplier. Mitie will take all reasonable care of such equipment but no liability is accepted for any loss or damage which is not proven to have directly been caused by the negligence or default of Mitie.
- 8.4. Subject to Clause 8.3, Mitie accepts no liability whatsoever for any equipment and/or materials provided by the Supplier, including for ordinary wear and tear, and the Supplier is expected to provide a replacement if the equipment or materials no longer meet any relevant standard that is expected.

## 9. Price and payment

- 9.1. The price for the Works shall be as set out, described and/or calculated in or pursuant to the Contract Form and will be fixed unless the Contract Form provides otherwise (the "Price"). The Price shall be exclusive of VAT but inclusive of all other taxes, charges and expenses including packaging, shipping, carriage, insurance, testing and delivery of any Goods to the delivery address and any duties, imposts or levies.

- 9.2. The Price for any Works shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Works including achieving the performance metrics detailed in Appendix 5 and, unless otherwise agreed in writing by Mitie, the Price shall include all costs and expenses of the Supplier directly or indirectly incurred in connection with the performance of the Works.
- 9.3. No increase to the Price may be made (whether on account of increased material, labour or transport costs, fluctuations in exchange rates, legislative or regulatory changes, or otherwise) without the prior written consent of Mitie. Mitie shall be entitled to any discount of prompt payment, bulk purchase or volume of purchase customarily granted by the Supplier, whether or not shown on its own terms and conditions of sale.
- 9.4. Unless specified otherwise in the Invoice Instructions (i) the Supplier shall invoice Mitie at any time after 10 Business Days from the end of the month in which the Services were provided and/or Goods were delivered (as applicable) and (ii) the invoice shall clearly state that it is an invoice and include the full name of the Mitie contracting legal entity, the period to which the Price relates, the date, a description of the Works to which the invoice relates, a valid Mitie purchase order number, the Supplier's name and registered company VAT number and such other information as Mitie may reasonably require. Any incomplete invoice will be invalid. For the avoidance of doubt, Mitie shall not be bound by a purchase order for a price other than as set out, described and/or calculated in or pursuant to this Agreement. In the event of a conflict between the price set out in an invoice/purchase order and the Price set out, described and/or calculated in or pursuant to this Agreement, the latter will prevail. The Supplier shall not be entitled to claim any adjustment to the Price arising from any error generated by Mitie in a purchase order.
- 9.5. Mitie shall not be obliged to pay and/or consider any invoice that:
- 9.5.1. does not comply with the Invoice Instructions;
  - 9.5.2. exceeds a valid Mitie purchase order;
  - 9.5.3. is not addressed to the correct Mitie contracting legal entity; and/or
  - 9.5.4. does not quote a valid Mitie purchase order number or is received more than ninety (90) days after the Goods have been delivered and/or Services completed.
- 9.6. Unless the Contract Form provides otherwise, or where the invoice is disputed by Mitie (and for the avoidance of doubt the reasons an invoice may be disputed are not limited to those set out in Clause 9.5), in consideration of the supply of the Works by the Supplier Mitie shall pay all undisputed invoiced amounts within thirty (30) days of receipt of a correctly rendered and valid invoice to a bank account nominated in writing by the Supplier. Except with Mitie's prior written consent, the Supplier shall not factor or assign any invoice submitted to Mitie pursuant to this Agreement.
- 9.7. If Mitie disputes any Supplier invoice (or part thereof) in good faith then Mitie shall notify the Supplier in writing (and for this purpose "in writing" includes any notification issued by email) of such dispute (but no later than 7 days prior to the payment due date) and Mitie may withhold payment of such disputed invoices pending resolution of such dispute in accordance with the terms hereof. The parties agree that this payment mechanism constitutes an adequate mechanism that replaces the regime set out in the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy Economic Development and Construction Act 2009 and Scheme for Construction Contracts, insofar as this legislation applies to the Works being delivered by the Supplier.
- 9.8. If Mitie has agreed to reimburse the Supplier for expenses incurred in the performance of the Services then the Supplier shall provide receipts or such other evidence as Mitie may require to support any claim for such expenses.
- 9.9. Without prejudice to any other right or remedy Mitie may have, Mitie reserves the right to set off any liability of Mitie and/or a Group Company to the Supplier, whether either liability is present or future, liquidated or unliquidated arising under this Agreement or any other agreement which may exist from time to time between them, against any liability of the Supplier to Mitie under this Agreement. All amounts due under this Agreement or against Mitie under any other agreement shall be paid by the Supplier to Mitie in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 9.10. Mitie shall deduct the cost of any Goods which are returned by Mitie or any Services rejected by Mitie from the next payment due to the Supplier. Where the return of any Goods or the rejection of any Services puts the Supplier into a debt position and Mitie is unable to deduct the balance from a payment due, Mitie will issue a debit note and shall require settlement of the debit note by the Supplier within fourteen (14) days of the date of the debit note.
- 9.11. Without prejudice to any rights Mitie has elsewhere in the Agreement, the Supplier shall be liable for any deductions set out in (and calculated in accordance with) the Contract Form and will reduce the value of any invoice issued accordingly



(and, where stated, in accordance with any timescales set in the Contract Form). Where the applicable deductions puts the Supplier into a debt position and Mitie is unable to deduct the balance from a payment due, Mitie will issue a debit note and shall require settlement of the debit note by the Supplier within fourteen (14) days of the date of the debit note.

- 9.12. The Supplier shall not suspend the supply of the Works unless the Supplier is entitled to terminate the Agreement for failure to pay undisputed sums of money.
- 9.13. Interest shall be payable on any amount due and payable under this Agreement (including, without limitation, any rebate) which is not paid by the due date for its payment. Such interest shall accrue on the overdue amount at the rate of 2% per annum above the Bank of England's base rate from time to time and shall be calculated on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. This Clause 9.13 shall not apply to payments that the defaulting party disputes in good faith.
- 9.14. The Supplier shall keep and maintain complete, accurate and up to date records relating to the supply and performance of the Works and the operation of the Agreement, including without limitation, records of:
- 9.14.1. the Works provided and the supply and/or status of such Works;
  - 9.14.2. any expenditure charged, paid and/or reimbursed;
  - 9.14.3. any rebates, discounts or beneficial payment terms in place with the Supplier's sub-Suppliers and/or suppliers (if any) which relate to the Works and/or the Agreement;
  - 9.14.4. compliance with the Mitie Policies and Invoice Instructions; and
  - 9.14.5. any files, documents, correspondence, agreements, specifications, accounts, accounting records (including without limitation, all invoices, purchase orders, rebates, receipts for all charges and expenses) relating to the Works and/or the Agreement,

and shall ensure that its supplier and sub-suppliers (if any) retain the same such records relating to the Works and/or the Agreement.

- 9.15. The records referred to in Clause 9.14 shall be:
- 9.15.1. retained by the Supplier and/or its suppliers and/or sub-suppliers (if any) throughout the duration of the Agreement and for at least sixteen (16) years, or as otherwise agreed between the parties, following the termination of the Agreement;
  - 9.15.2. adequately protected against loss, corruption and/or damage by the Supplier and/or its suppliers (if any) and/or sub-suppliers (if any); and
  - 9.15.3. made available to Mitie and/or Mitie's employer(s) (if any) on twenty-four (24) hours' written notice.
- 9.16. The Supplier shall permit Mitie, its employer(s), its employees, nominated representatives, advisers and independent auditor to examine on twenty-four (24) hours' written notice and within normal working hours such records as are to be kept by the Supplier and/or its suppliers (if any) and/or sub-suppliers (if any) under Clause 9.14 (including access to and inspection of electronically stored information relating to the Works and/or the Agreement) and any other documents in the possession of the Supplier and/or its suppliers (if any) and/or sub-suppliers (if any) relating to the Agreement. Such examination shall be permitted at the offices of the Supplier or at such other places where the records may be kept. If a physical examination takes place the Supplier shall make available to Mitie an office suitable for at least three representatives of Mitie with adequate facilities, including, desks, chairs, personal computer and access to photocopiers and printers. The Supplier and/or its suppliers (if any) and/or sub-suppliers (if any) shall permit Mitie, its employer(s), employees, nominated representatives, advisers and independent auditors to take copies of such records and shall promptly provide proper explanations to any questions raised relating to the contents of these records. The Supplier and/or its suppliers (if any) and/or sub-suppliers (if any) shall afford Mitie such assistance as it shall reasonably require in order to understand the records.
- 9.17. The Supplier shall indemnify Mitie on a continuing basis against any liability, including, without limitation, interest, fines, penalties, expenses or costs incurred, which is levied, demanded or assessed on Mitie at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Agreement. Any amounts due under this Clause 9.18 shall be paid by the Supplier to Mitie not less than five (5) days before the date upon which the tax or other liability is payable by Mitie.

## 10. Continuous improvements

- 10.1. The Supplier undertakes to use its best endeavours to adopt a policy of continuous improvement throughout the term of the Agreement in relation to the Works, pursuant to which it shall regularly review the Works to:
- 10.1.1. improve the quality, scope and efficiency of the Works; and
  - 10.1.2. reduce the Price, any charges and Mitie's costs, without adversely affecting the Works or any standards or levels applicable to the Works.
- 10.2. Without prejudice to its other obligations under this Clause 10, if the Supplier or any of its suppliers and/or sub-suppliers develops or implements for any other customer any new technology or product feature in respect of works similar to the Works, the Supplier shall promptly offer that new technology or product feature to Mitie. The Supplier shall notify Mitie of each such development or implementation in accordance with Clause 27.6.

## 11. Variations

- 11.1. The Supplier shall accept any reasonable variation to the specification for the Works requested by Mitie and, unless agreed in writing by Mitie, any such amendments shall not increase the Price. If Mitie requires an amendment to the Agreement that would result in a reduction in the Price the terms set out in Clause 3.5 shall apply. Where a Price adjustment is agreed in writing by Mitie to reflect the variation such adjustment shall have regard to the rates and prices used in the Agreement or, where these are not relevant, to what is fair and reasonable.
- 11.2. Neither party shall be bound by any variation to the Agreement unless and until it is confirmed in a variation to the Contract Form signed by an authorised representative of each party.
- 11.3. For the avoidance of doubt, if there is a General Change in Law (being a change in Law that comes into force after the Commencement Date which impacts the supply of the Works and performance of the Agreement where such change (i) is of a general legislative nature (including taxation or duties of any sort affecting the Supplier and/or Mitie) or (ii) affects or relates to a Comparable Supply (being the supply of goods or services the same or similar to the Goods or Services including, without limitation, the Deliverables provided by the Supplier to another company)) the Supplier must bear the risk of the change and is not entitled to ask for an increase to the Price or the charges.

## 12. Intellectual property

- 12.1. In respect of the Works and any goods that are transferred to Mitie as part of the Works under this Agreement, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to Mitie, it will have full and unrestricted rights to sell and transfer all such items to Mitie and/or, at Mitie's direction, the End-Client.
- 12.2. The Supplier hereby assigns to Mitie (and, at Mitie's direction, to the End-Client) absolutely by way of present and (to the extent permissible by law) future assignment (which will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Supplier), with full title guarantee and free from all third party rights and at no cost to Mitie, all Intellectual Property Rights which are created by the Supplier or on the Supplier's behalf throughout the term of the Agreement in the products of the Works, including without limitation the Deliverables.
- 12.3. The Supplier grants Mitie a non-exclusive, worldwide, perpetual, transferable, irrevocable, royalty-free licence (including the ability to grant sub-licences) to use, reproduce, modify, develop and maintain all Intellectual Property Rights in the Works which do not belong to Mitie under this Clause 12 and the Supplier shall limit the use in the Works of such Intellectual Property Rights referred to in this clause 12.3 such that they are used only as properly and reasonably required in connection with the supply of the Works for Mitie.
- 12.4. The Supplier shall obtain all releases, waivers and authorisations throughout the world necessary for Mitie and the End-Client to make full and free use of the Works. In particular, the Supplier waives or procures a waiver of any moral rights subsisting in copyright produced for this Agreement.
- 12.5. The Supplier shall, and shall procure that the Supplier's employees, consultants, agents, suppliers and/or sub-suppliers shall do all such further acts and things and execute any such documents as Mitie may require in order to secure the full benefit of the Agreement, including all rights, title and interest in and to the Intellectual Property Rights assigned to Mitie and/or the End-Client in accordance with this Clause 12 and to confirm those releases, waivers and authorisations referred to in Clause 12.4.

- 12.6. The Supplier shall not use or permit the use of any of the intellectual property belonging to Mitie (or Mitie's licensors) or the End-Client, including without limitation logos or other Intellectual Property Rights and all new intellectual property created under this Agreement, without the prior written agreement of Mitie.
- 12.7. The Supplier will indemnify and hold Mitie and the End-Client harmless against any damages (including costs) that may be awarded or agreed to be paid in respect of any claim or action that any Works supplied by the Supplier infringes any intellectual property right of any third parties.
- 12.8. Where a licence in any software for the provision of part of the Works (including, without limitation, the Deliverables) is provided by the Supplier, or the Supplier secures such licence from a third party, such licence shall be in the name of the End-Client (save where Mitie advises that it should be in Mitie's name) in perpetuity with the right to sublicense such licence to any third party nominated by the End-Client (or, where applicable, Mitie) for the purposes of performing any part of the Works (including, without limitation, the Deliverables) which are provided at any time pursuant to this Agreement.

### 13. Warranties

#### 13.1. The Supplier warrants that:

- 13.1.1. it has the full capacity and authority to enter into and perform this Agreement and that this Agreement is executed by a duly authorised representative of the Supplier;
- 13.1.2. it owns or has obtained valid licences, consents, permissions and rights to use, and where necessary to licence to Mitie and/or, where directed by Mitie, the End-Client, any materials reasonably necessary for the fulfilment of all its obligations under this Agreement, including any third party licences and consents in respect of any of the Works;
- 13.1.3. there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its Affiliates that might affect its ability to perform the Agreement;
- 13.1.4. it does not have any contractual obligations which are likely to have a material adverse effect on its ability to perform this Agreement.;
- 13.1.5. all third party warranties and indemnities covering the Works (including the Deliverables) shall be assigned for Mitie's benefit (and/or, where directed by Mitie, the End-Client ) by the Supplier at no extra cost to Mite or the End-Client.
- 13.1.6. all of the Works supplied by it under the Agreement:
- 13.1.6.1. will be in full accordance with any specification set out in the Contract Form, purchase order or which Mitie may provide to the Supplier from time to time;
  - 13.1.6.2. will be provided in accordance with the required service levels or key performance indicators (if any) set out or referred to in the Contract Form, purchase order or which Mitie may provide to the Supplier from time to time;
  - 13.1.6.3. will not infringe any Intellectual Property Rights or other rights of any third party anywhere in the world;
  - 13.1.6.4. will be provided by appropriately qualified and trained personnel with all due skill, care and diligence and to such standards of quality and or/specifications stated in the Contract Form, purchase order or (if none are so stated) as is reasonable for Mitie to expect from the Supplier;
  - 13.1.6.5. will be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and will be fit for any purpose held out by the Supplier or made known to the Supplier by Mitie, expressly or by implication, prior to the date when the Contract Form is signed;
  - 13.1.6.6. where applicable, will be free from all defects in design, material and workmanship and will correspond with any samples provided; and
  - 13.1.6.7. will comply with all applicable statutory and regulatory requirements.

### 14. Compliance

- 14.1. In supplying the Works the Supplier shall, and shall procure that the Supplier's employees, consultants, agents, suppliers and sub-suppliers shall, comply with, all applicable laws (including but not limited to the Bribery Act 2010 and the Modern Slavery Act 2015), standards, guidance, codes of practice (whether voluntary or mandatory), statutory requirements or other regulations and with the Invoice Instructions and the Mitie Policies. In all cases the costs of compliance shall be borne by the Supplier and the Supplier hereby indemnifies Mitie against all losses, costs, expenses, damages, liabilities, demands, claims, actions and proceedings which Mitie may incur arising out of any breach by the Supplier of the provisions of this Clause 14 howsoever arising.
- 14.2. If the Supplier is not the manufacturer the Supplier shall assign the benefit of any warranty or guarantee given by the manufacturer or the Supplier's supplier relating to the Works to Mitie and/or, at Mitie's direction, to the End-Client.
- 14.3. Where any Works supplied under this Agreement are the subject of a guarantee and if within the relevant guarantee period Mitie gives notice in writing to the Supplier of any defect in the design, materials or workmanship of the Works (other than a design made, furnished or specified by Mitie for which the Supplier has in writing disclaimed responsibility), the Supplier shall, as soon as possible, replace or repair (at Mitie's sole option, acting reasonably) the relevant Works so as to remedy the defects without cost to Mitie, provided that Mitie shall, where practicable, within a reasonable period of time of discovery of any defect, return the defective Works or parts of them to the Supplier at the Supplier's risk and expense unless it has been agreed between the parties that the necessary replacement or repair shall be carried out by the Supplier on Mitie's premises (which for this purpose may include, at Mitie's discretion, the premises of the End-Client).
- 14.4. The liabilities of the Supplier under this Clause 14 shall be in addition and without prejudice to any other rights or remedies of Mitie (whether arising in contract, tort, at common law, under statute or otherwise).

## 15. Further obligations

### 15.1. The Supplier shall:

- 15.1.1. comply (and will procure that its employees, agents, suppliers and sub-suppliers comply) with all applicable laws, statutes, regulations, and codes that are applicable, including, without limitation, those relating to equality, health and safety, data protection, tax, anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and the Modern Slavery Act 2015 (the "Relevant Requirements");
- 15.1.2. comply (and will procure that its employees, agents, suppliers and sub-suppliers comply) with the Mitie Policies, Invoice Instructions, any anti-bribery policy and any anti-slavery policy applicable to the Supplier's industry as Mitie or the relevant industry body may update from time to time;
- 15.1.3. access and read on a regular basis throughout the term of the Agreement (and will procure that its employees, agents, suppliers and sub-suppliers access, read and are trained on a regular basis throughout the term of the Agreement) the Mitie Policies, the Invoice Instructions, any anti-bribery policy and any anti-slavery policy applicable to the Supplier's industry as Mitie or the relevant industry body may update from time to time, to ensure that they are familiar with, up to date and aware of any changes or amendments to the Mitie Policies, Invoice Instructions, any anti-bribery policy and any anti-slavery policy which is applicable to this Agreement;
- 15.1.4. have and shall maintain in place throughout the term of this Agreement its own policies, procedures, training and audits to ensure compliance with the Relevant Requirements, the Mitie Policies and the Invoice Instructions, and it will enforce them where appropriate;
- 15.1.5. notify Mitie immediately if for any reason whatsoever it cannot access the Mitie Policies or Invoice Instructions;
- 15.1.6. immediately report to Mitie any actual, potential or suspected breach of the obligations in this Clause 15 including but not limited to requests or demands for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Agreement;
- 15.1.7. be a member of the Safety Schemes in Procurement (SSIP) 'SafeContractor' scheme during the term of this Agreement; and
- 15.1.8. within one month of the date of this Agreement and annually thereafter, certify to Mitie in writing signed by an officer of the Supplier, compliance with this Clause 15 and the Supplier shall provide such supporting evidence of compliance as Mitie may reasonably request.

For the avoidance of doubt, the Supplier and its employees, agents, suppliers and sub-suppliers are deemed to have accessed, read and complied with all Mitie Policies and the Invoice Instructions on a continuing basis throughout the term

of the Agreement unless it has notified Mitie in writing that it is unable to do so before the commencement of this Agreement.

- 15.2. The Supplier shall ensure that any person associated with the Supplier who is performing services or providing goods in connection with this Agreement 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 Clause 15 (the "Relevant Terms"). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to Mitie for any breach by such persons of any of the Relevant Terms.
- 15.3. Breach of this Clause 15 shall be deemed a material breach under Clause 21 and Mitie may terminate all or any part of the Agreement without any liability by notice to the Supplier.
- 15.4. Works, whether supplied directly to Mitie or via Mitie to the End-Client, will be subject to the terms and conditions set out in the 'Special Conditions' in the Contract Form, and such terms are incorporated herein. In the event of any conflict between such documents, the Special Conditions will prevail over these Mitie Purchase Terms and Conditions (Works).

## 16. Personnel

- 16.1. Mitie reserves the right to refuse access to any premises controlled by Mitie (and/or the End-Client) to any person employed by the Supplier or any sub-supplier whose admission would in the opinion of Mitie (or the End-Client) be (i) unsuitable as not being appropriately qualified or trained or (ii) undesirable.
- 16.2. If and when directed by Mitie the Supplier shall provide lists of the names and addresses of all persons who may at any time require permission to access any premises controlled by Mitie in connection with the performance of the Agreement. The Supplier shall also specify the capacities in which such employees are concerned with the Agreement and provide such other particulars as Mitie may reasonably require.
- 16.3. The decision of Mitie on whether any person is to be refused admission to any premises under its control or the End-Client's control and on whether the Supplier has complied with the obligations set out in Clause 16.2 shall be final and conclusive.
- 16.4. The Supplier shall be responsible for any income tax, national insurance contributions or other statutory payments in relation to any and all individuals employed or engaged in the provision of the Works from time to time (the "**Employees**") and will ensure that they are deducted and/or paid to the relevant authorities. The Supplier shall indemnify Mitie against all demands, claims, actions, proceedings, damages, payments, losses, costs, expenses or other liabilities (together "**Losses**") arising out of any claim or assertion that any Employee is or was an employee, servant or worker of Mitie or the End-Client by reason of being engaged in the Works or arising out of any act or omission of the Supplier or any of the Supplier's sub-suppliers, employees or agents in relation to any Employee.
- 16.5. At any time during the continuance of the Agreement Mitie may require the Supplier to provide to Mitie (or any other person nominated by Mitie) within fourteen (14) days, such information as Mitie or Mitie's nominee may reasonably require in connection with the employment or engagement of the Employees and the Supplier warrants the completeness and accuracy of such information (including information required to be provided pursuant to TUPE).
- 16.6. Where TUPE applies on termination (in whole or in part) or expiry of the Agreement (the "TUPE Termination Date") such that the contract of employment of Supplier Personnel transfers to Mitie and/or a third party the Supplier shall indemnify (and shall procure that its suppliers and sub-suppliers shall indemnify) Mitie for any costs, claims, liabilities and expenses incurred or suffered in respect of (i) payments payable to Supplier Personnel (including all wages, pension contributions, bonuses and incentive payments and proportionate holiday pay) in respect of the period prior to the TUPE Termination Date; and (ii) claims arising from the contract of employment including but not limited to any claims relating to unfair dismissal, statutory or contractual redundancy pay, discrimination on grounds of race, sex, disability, religion or belief, sexual orientation, or age, equal pay, unlawful deduction of wages, loss of earnings, industrial or personal injury or otherwise relating to the employment and which result from the act, fault or omission of the Supplier or its suppliers or sub-suppliers prior to the relevant TUPE Termination Date.
- 16.7. The Supplier acknowledges that the Key Personnel of the Supplier listed or referred to in the Contract Form are essential to the proper provision of the Works to Mitie. The Key Personnel shall not be released from supplying the Works without Mitie's prior written agreement, except where this is unavoidable because of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.
- 16.8. Any replacements to the Key Personnel shall be subject to Mitie's prior written agreement. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Works.

## 17. Mitie property

- 17.1. Any property which is issued by or on behalf of Mitie to the Supplier in connection with the Agreement shall remain the property of Mitie and shall be used solely in connection with the Agreement and not for any other purpose without the prior written agreement of Mitie.
- 17.2. All Mitie property shall be deemed to be in good condition when received by or on behalf of the Supplier unless it notifies Mitie to the contrary within five (5) days of the date it receives such property. The Supplier shall return such property promptly to Mitie on the earlier of the completion of the Works or the termination of this Agreement and it shall be responsible for all loss or damage caused to such property from whatsoever cause.
- 17.3. The Supplier may be permitted to use accommodation provided by Mitie. Such accommodation shall be used purely for the purposes of providing the Works. Any such accommodation shall be kept clean and not damaged in any way. The Supplier shall also pay for any services made available to the accommodation and used by the Supplier, including but not limited to electricity, gas, water and telephone lines. The Supplier shall immediately vacate the accommodation when instructed to do so by Mitie. The accommodation shall be left in a clean and tidy condition and in a state of repair equivalent to that it was in when the Supplier was initially given access and any costs incurred by Mitie in repairing the same shall be recoverable from the Supplier as a debt.

## 18. Indemnity

- 18.1. The Supplier shall indemnify Mitie fully from and against all losses, claims, proceedings, demands, charges, actions, damages, costs, expenses and any other liabilities whatsoever suffered or incurred by Mitie and/or any Group Company (including any professional or legal expenses incurred) that may arise out of, or in connection with:
- 18.1.1. the performance or non-performance by the Supplier of its obligations under this Agreement or the presence of any Supplier or any staff on Mitie's premises (which for the purpose of this Clause includes the End-Client premises where the Works are being provided);
  - 18.1.2. any act or omission or negligence of the Supplier (including the Supplier's employees, consultants, agents, suppliers and sub-suppliers) in supplying, installing, testing, commissioning or performing the Works;
  - 18.1.3. any breach of any warranty given by the Supplier in relation to the Works including but not limited to the warranties set out in Clause 13;
  - 18.1.4. any liability Mitie might incur under the Consumer Protection Act 1987 or General Product Safety Regulations 2005 in respect of the Works or any other items in which the Works are incorporated;
  - 18.1.5. any liability to any third party arising in connection with the Works which Mitie may incur whether by court proceedings or by a bona fide out-of-court settlement; and
  - 18.1.6. any breach by the Supplier of the Data Protection Legislation.
- 18.2. The Supplier shall not be liable to Mitie for any damage or injury to the extent that the same is caused by or arises out of Mitie's negligent acts or omissions.
- 18.3. The Supplier shall be liable for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct breach of the Agreement by the Supplier.
- 18.4. Without prejudice to the generality of Clause 18.1, the Supplier indemnifies Mitie against any costs incurred by the End-Client resulting from any breach by the Supplier relating to any applicable Law.

## 19. Insurance

- 19.1. The Supplier shall effect and maintain with a reputable insurance company of good repute the following policies of insurance providing cover consistent at least with the best industry practice of suppliers of Works of the type to be supplied by the Supplier to Mitie, in amounts of not less than those stated on the Contract Form for the period over which the Works are to be performed and for a minimum of twelve (12) years following expiration or earlier termination of the of the later of the Works and the Agreement. In the event that no insurance requirements are set out on the Contract Form (or any Appendix or Schedule referred to on the Contract Form), the following types of insurances will be deemed to have been inserted onto the Contract Form:

- 19.1.1. Employers liability insurance of not less than £5 million per occurrence or the minimum level required by law;

- 19.1.2. Public liability insurance of not less than £10 million per occurrence and unlimited in the annual aggregate;
- 19.1.3. Product liability insurance of not less than £10 million per occurrence and unlimited in the annual aggregate; and
- 19.1.4. Professional indemnity insurance of not less than £5 million per occurrence and a minimum of £10million in annual aggregate.

19.2. The Supplier shall promptly provide to Mitie copies of all insurance policies referred to in Clause 19 or a broker's verification of insurance to demonstrate that such insurances are in place, together with copies of receipts or other evidence of payment of the latest premiums due under those policies.

## 20. Limitation of liability

20.1. Nothing in this Agreement shall exclude or limit either party's liability for:

- 20.1.1. death or personal injury arising from that party's negligence;
- 20.1.2. bribery, fraud or fraudulent misrepresentation;
- 20.1.3. any other liability that cannot be limited or excluded by law; and/or
- 20.1.4. any liability under Clauses 18.1.4.

20.2. Save as set out in Clause 20.1, Mitie's aggregate liability to the Supplier (whether in tort, including gross negligence, or for breach of contract or statutory duty or otherwise) under or in connection with this Agreement, shall be limited to the lesser of:

- 20.2.1. 100% of the price for the Works (including VAT) which have accrued during the previous 12 months; or
- 20.2.2. £100,000 (one hundred thousand pounds),

and Mitie shall not be liable in any circumstances for any Indirect Losses suffered or incurred by the Supplier under or in connection with this Agreement.

## 21. Termination

21.1. Mitie may terminate all or any part of the Agreement without any liability immediately by notice to the Supplier in the following circumstances:

- 21.1.1. if the Supplier breaches any term of the Agreement, the Invoice Instructions or any Mitie Policy and (where in Mitie's reasonable opinion the breach can be remedied without any delay to the time for supply under Clauses 4 or 5) fails to remedy the breach by that time for performance or (if earlier) within five (5) days of Mitie so requiring;
- 21.1.2. the Supplier gives Mitie written notice that it proposes to alter (i) the Price and/or (ii) its scheduled service times (whether pursuant to Clause 5.13 or otherwise) which Mitie considers will no longer be appropriate;
- 21.1.3. in the performance of the Works, the Supplier has contravened Clause 3.8 of the Agreement (including, but not limited to, any contravention of health and safety legislation);
- 21.1.4. if there is a Change of Control of the Supplier;
- 21.1.5. if the Supplier ceases to or threatens to cease to carry on business, the Supplier's financial position is such that either the Supplier, the Supplier's directors, members or creditors as appropriate take or are entitled to take steps to institute formal insolvency proceedings with respect to the Supplier of a type provided for by the Insolvency Act 1986 (or any similar or analogous legislation, whether under English law or otherwise), including without limitation administration, liquidation, administrative receivership, receivership, voluntary arrangement, scheme of arrangement or bankruptcy, or if the Supplier is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 21.1.6. if the Supplier offers or gives, or agrees to give, to any employee, agent or representative of Mitie any gift, inducement or consideration of any kind in connection with this Agreement or any other agreement with Mitie,

or for showing or refraining from showing favour or disfavour to any person in relation to this Agreement or any such other agreement;

- 21.1.7. if the Supplier breaches any of the Relevant Requirements or the Mitie Policies;
  - 21.1.8. if the Supplier or its Affiliates embarrass or bring Mitie and/or the End-Client into disrepute or diminish the public trust in them;
  - 21.1.9. if there is a consistent repeated failure by the Supplier to meet its performance indicators as detailed in this Agreement;
  - 21.1.10. if Mitie rejects a Supplier remedy for defect of Works or the Supplier does not provide such a remedy within the specified time;
  - 21.1.11. a Supplier Insolvency Event occurs;
  - 21.1.12. where Mitie is required to terminate the Agreement (or any part thereof) by Law;
  - 21.1.13. if the End-Client terminates all or part of its contract with Mitie;
  - 21.1.14. any material breach of the Agreement; or
  - 21.1.15. where the End-Client has a right to terminate its contract with Mitie as a result of the acts or omission of the Supplier (or its suppliers or sub-suppliers) which caused or materially contributed to this End-Client right (whether or not the End-Client actually terminates).
- 21.2. Without prejudice to its rights under Clause 21.1, Mitie shall have the right to terminate the Agreement (without any liability to the Supplier) at any time on giving the Supplier at least one (1) months' notice in writing.
- 21.3. On termination of the Agreement for any reason, the Supplier shall immediately deliver to Mitie all Deliverables whether complete or not, and return any materials, equipment, tools, drawings, specifications and data supplied by Mitie to the Supplier. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Agreement. If the Supplier fails to do so, then Mitie may pursue such rights and actions available to it in order to take possession of them.
- 21.4. Clauses 5.14, 6.2, 7.1.3, 7.1.5, 7.1.6, 9.9, 9.13 to 9.16 (inclusive), 12, 15.4, 16.4 to 16.6 (inclusive), 18 to 24 (inclusive) and 27 shall survive termination of this Agreement and any Clauses to these Purchase Terms and Conditions (Works), which are expressly or by implication intended to continue shall survive termination of this Agreement. Any provisions set out in the Contract Form (including all Schedules and Appendices thereto) which expressly or by implication have effect after termination shall survive termination of this Agreement.
- 21.5. Notwithstanding the service of a notice to terminate this Agreement, the Supplier shall continue to fulfil its obligations under the Agreement until the date of expiry or termination of the Agreement.
- 21.6. If the Agreement is terminated for any reason all rights granted to the Supplier under this Agreement will immediately terminate.
- 21.7. Without prejudice to any other rights or remedies of Mitie set out elsewhere in the Agreement, on termination of this Agreement pursuant to Clause 21.1 the provisions of Clauses 5.14, 7.1.3 and 7.1.5 shall apply.

## **22. Transition to another Supplier**

- 22.1. During the period of any termination notice pursuant to this Agreement, and in any case for a reasonable period, to be determined at the sole discretion of Mitie, thereafter, the Supplier shall act professionally and reasonably and, at its own cost, co-operate fully with the transfer of responsibility for and knowledge of the Works to Mitie or to any new supplier(s) of such services and/or goods the same or similar to the Works, and for the purposes of this Clause 22 the meaning of the term "co-operate" shall include, without limitation:
- 22.1.1. liaising with Mitie and/or any new supplier(s), and providing reasonable assistance and advice concerning the Works and their transfer to Mitie or to such new supplier(s);



- 22.1.2. allowing any new supplier(s) access to its business, its records and documents relating to the Works (at reasonable times and on reasonable notice) but not so as to interfere with or impede the provision of the Works by the Supplier; and
  - 22.1.3. providing to Mitie and/or to any new supplier(s) all and any knowledge, information, stock, records or documentation concerning the Works which is reasonably required for the efficient transfer of responsibility for their performance but information which is commercially sensitive to the Supplier or subject to a legally binding confidentiality agreement shall not be provided (and for the purpose of this Clause 22, "commercially sensitive" shall mean information which would, if disclosed to a competitor of the Supplier, give that competitor a competitive advantage over the Supplier and thereby prejudice the business of the Supplier).
- 22.2. The Supplier shall use all reasonable endeavours so as to facilitate the smooth transfer of responsibility for the Works to a new supplier and/or suppliers and/or to Mitie (as the case may be) and the Supplier shall take no action at any time during the term of the Agreement or thereafter which is calculated or intended, directly or indirectly, to prejudice or frustrate or make more difficult any such transfer.

### 23. Dispute resolution

- 23.1. If any dispute arises in connection with the Agreement (a "Dispute"), an authorised representative of the Supplier and Mitie shall, within thirty (30) days of a written request from one party to the other, meet in good faith at a Mitie office to resolve the Dispute.
- 23.2. Subject to Clause 23.5, if the Dispute remains unresolved either the Supplier or Mitie shall refer it to mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure that is in force at the date of the referral. Unless otherwise agreed between the Supplier and Mitie, the mediator will be nominated by CEDR. To initiate the mediation either party may give notice in writing (the "Mediation Notice") to the other requesting a mediation. A copy of the request will be sent to CEDR. The mediation will start not later than sixty (60) days after the date of the Mediation Notice.
- 23.3. The following principles shall apply to the mediation:
- 23.3.1. unless the Supplier and Mitie otherwise agree, all negotiations connected with the Dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of either party in any future proceedings;
  - 23.3.2. if the Supplier and Mitie reach agreement on the resolution of the Dispute, the agreement shall be recorded in writing and binding on them once it is signed by duly authorised representatives of both parties;
  - 23.3.3. failing agreement, the Supplier and Mitie may invite the mediator to provide a non-binding but informative written opinion if the parties provide consent to this in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Agreement without the prior written consent of both parties.
- 23.4. Subject to Clause 23.5, if the parties fail to reach agreement by the conclusion of the mediation then the parties shall be free to commence formal legal proceedings in the courts in relation to the Dispute. Nothing in this Clause 23 shall prevent (i) a party seeking urgent injunctive relief from the courts where it considers this is necessary to protect its position or (ii) Mitie commencing proceedings at any time.
- 23.5. Where Mitie advises the Supplier that the Dispute is connected in any way to any dispute Mitie has with the End-Client (the "End-Client Dispute"), Mitie may elect to (i) require assistance from the Supplier in resolution of the End-Client Dispute by provision of any information and/or documentation reasonably required and attendance at meetings without, in each case, any additional cost or charge to Mitie; and/or (ii) join the Dispute for resolution with the End-Client Dispute (subject to the End-Client agreeing to such joining of the disputes) and the Supplier shall not refuse such joinder ; and/or (iii) require the Dispute to be resolved by means of arbitration (whether for joint resolution with the End-Client Dispute or otherwise) in lieu of legal proceedings in the courts.
- 23.6. Where Clause 23.5(iii) applies:
- 23.6.1. The party initiating the arbitration shall give a written Notice of Arbitration to the other party stating (i) that the dispute is referred to arbitration; and (ii) the particulars of the Agreement out of or in relation to which the dispute arises;

23.6.2. Unless otherwise agreed between the parties, the arbitration and this Clause shall be governed by the provisions of the Arbitration Act 1996;

23.6.3. It is agreed between the parties that for the purposes of arbitration, the arbitrator shall have the power to make provisional awards as provided for in Section 39 of the Arbitration Act 1996; and

23.6.4. It is agreed between the parties that the arbitration process and anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential as between the parties (which for this purpose of this Clause 23.6.4 shall include the End-Client where the Dispute and End-Client Dispute are joined), except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise. No report relating to anything said, done or produced in or in relation to the arbitration may be made beyond the tribunal, the parties, their legal representatives and any person necessary to the conduct of the proceedings, without the concurrence of all the parties to the arbitration.

23.7. The Supplier cannot suspend the performance of Works during any Dispute.

## 24. Confidentiality

24.1. For the purposes of this Clause 24, "Confidential Information" means any information which has been designated as confidential by Mitie and/or the End-Client in writing or which because of its content ought to be considered as confidential (however it is conveyed or on whatever media it is stored), information the disclosure of which would, or would be likely to, prejudice the interests of the End-Client or Mitie, or either of the End-Client or Mitie's trade secrets, Intellectual Property Rights or know-how and all personal data and sensitive data within the meaning of the Data Protection Legislation, but does not include any information:

24.1.1. which was public knowledge at the time of disclosure (otherwise than by breach of this Clause 24);

24.1.2. which was in the possession of the Supplier, without restriction on its disclosure, before receiving it from Mitie;

24.1.3. which is received from a third party (who lawfully acquired it) without restriction on its disclosure;

24.1.4. which is independently developed without access to the Confidential Information: or

24.1.5. which is required by applicable Law or by a court with the relevant jurisdiction provided that (and to the extent permitted by Law) the Supplier notifies Mitie of the full circumstances, the affected Confidential Information and extent of the disclosure.

24.2. The Supplier shall:

24.2.1. not disclose any Confidential Information belonging to Mitie or the End-Client to any person without the prior written consent of Mitie, except to such persons and to such extent as may be necessary for the performance of the Supplier's obligations under the Agreement or except where disclosure is otherwise expressly permitted by the provisions of the Agreement. The Supplier shall immediately notify Mitie if it suspects unauthorised access, copying, use or disclosure of Confidential Information; and

24.2.2. treat all Confidential Information belonging to Mitie or the End-Client as confidential and shall use its best endeavours to prevent its employees, agents, suppliers and sub-suppliers from making any disclosure to any person of any such Confidential Information.

24.3. The Supplier shall ensure that its employees, agents, suppliers, sub-suppliers and professional advisors are aware of the Supplier's confidentiality obligations under the Agreement and that they comply with them. The Supplier staff must enter into a direct confidentiality agreement with Mitie and/or the End-Client at Mitie's request.

24.4. The Supplier must not use any Confidential Information it received from Mitie (or from the End-Client when provided by the End-Client in relation to this Agreement) otherwise than for the purposes of the Agreement.

24.5. If the Supplier fails to comply with this Clause 24 Mitie reserves the right to terminate the Agreement with immediate effect by notice in writing.

24.6. In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of Works under the Agreement, the Supplier undertakes to maintain adequate security arrangements that meet the requirements of professional standards and best practice.

- 24.7. Without prejudice to the preceding provisions of this Clause 24, the Supplier warrants and undertakes that it shall not (and shall ensure that its employees, consultants, agents, suppliers and sub-suppliers shall not) make, or permit any person to make, any statements or responses to public, media or official enquiries concerning this Agreement or the Works without the prior written consent of Mitie.
- 24.8. The Supplier acknowledges that Mitie may share information provided by the Supplier with the End-Client whether or not the Supplier considers such information to be confidential in nature.

## 25. Force majeure

- 25.1. Mitie shall have no liability to the Supplier, or be deemed to be in breach of the Agreement, for delay in performing, or failure to perform, any of its obligations under this Agreement as a consequence of any of the following events, where the event is outside Mitie's reasonable control:
- 25.1.1. flood, storm, severe weather conditions or other natural events;
  - 25.1.2. war, terrorist action, hostilities, revolution, riot or civil disorder;
  - 25.1.3. any destruction, breakdown (permanent or temporary) or malfunction of, or damage to any premises, plant, equipment, materials (including any computer hardware or software or any records) unless by an act or omission of Mitie's employees, agents, suppliers or sub-suppliers;
  - 25.1.4. the introduction of, or any amendment to, a law or regulation, or any change in the interpretation or application by any authority;
  - 25.1.5. any strike, lockout or other industrial action;
  - 25.1.6. any obstruction of any public or private highway or road or any event which prevents or obstructs access to the location;
  - 25.1.7. any breach of contract or default by, or insolvency of, a third party (including an agent or sub-supplier) other than a Group Company or an officer or employee of Mitie or of a Group Company; or
  - 25.1.8. any other event outside Mitie's reasonable control, whether similar or not to any of the foregoing.
- 25.2. Where a force majeure event affects a party's ability to perform its obligations under this Agreement, the affected party shall provide a force majeure notice to the other party and it shall use all reasonable measures practical to reduce the impact of the force majeure event.
- 25.3. Mitie may partially or fully terminate the Agreement if the provision of the Deliverables is materially affected by a force majeure event which lasts for 90 days continuously.

## 26. Assignment and sub-contracting

- 26.1. The Supplier shall not assign, transfer, mortgage, charge, sub-contract or deal in any other manner with all or any of its rights, liabilities or obligations under the Agreement, whether in whole or in part, without first obtaining Mitie's prior written consent. Such consent, if granted shall not release the Supplier from any of its obligations and liabilities which may exist under this Agreement from time to time.
- 26.2. Mitie may assign, transfer or sub-contract any or all of its rights and obligations under this Agreement to another Group Company.

## 27. General

- 27.1. Mitie engages the Supplier as an independent Supplier. Nothing in this Agreement shall create a partnership or the relationship of principal and agent or employer and employee.
- 27.2. The Supplier shall not and shall ensure that the Supplier's personnel, suppliers and sub-suppliers shall not without the prior written consent of Mitie advertise or publicly announce that they are undertaking work for Mitie, nor make any public statement in respect of the End-Client or Mitie, or any of their customers, directors, officers, employees, associates, agents, representatives, suppliers, sub-suppliers or any of Mitie's or Mitie's business arrangements or any of the information obtained by the Supplier throughout the period of this Agreement.

- 27.3. Unless otherwise permitted by this Agreement, each party shall bear its own costs and expenses in connection with the negotiation, preparation, execution and performance of this Agreement and any documents referred to in it.
- 27.4. If any provision of this Agreement is found by any court or administrative body or competent jurisdiction to be or becomes invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of this Agreement, and the invalidity, illegality or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect.
- 27.5. A waiver of Mitie's rights shall not operate as a waiver of any subsequent breach or default and shall only be effective if given in writing. No right, power or remedy conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party and the rights, power or remedy available to that party and the rights, powers and remedies shall be cumulative.
- 27.6. All notices which are required to be given under the Agreement shall be in writing and shall be sent to the address of the recipient set out in the Contract Form or such other address as the recipient may designate by notice given in accordance with the provisions of this Clause 27.6.
- 27.7. Notices may be delivered personally or by first class pre-paid letter and shall be deemed to have been served if by hand when delivered and signed for, if by first class post to an address in the United Kingdom 48 hours after posting and if by first class post to an address elsewhere ninety-six (96) hours after posting. A notice required under this Agreement shall (save where expressly stated otherwise in this Agreement) not be validly given if sent by email or fax.
- 27.8. The Agreement constitutes the entire understanding between Mitie and the Supplier and supersedes all previous agreements between the parties relating to its subject matter. The Supplier has not relied on any representation or promise except as expressly set out in this Agreement.
- 27.9. For the purposes of Section 1(2) of the Contracts (Rights of Third Parties) Act 1999 the parties state that, save as set out in this Agreement, they do not intend any term of the Agreement to be enforced by third parties.
- 27.10. This Agreement and any dispute arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law and, subject to Clause 23, the parties agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims)
- 27.11. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same agreement. No counterpart shall be effective until each party has executed at least one counterpart.
- 27.12. The Supplier must notify Mitie within 36 hours of its receipt of a request for information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004. The Supplier must provide Mitie with full cooperation and all information needed to enable Mitie and/or the End-Client to decide whether to publish the information requested. The extent, content and format of the disclosure is the End-Client's and/or Mitie's decision and does not need to be reasonable.
- 27.13. The Supplier must take action to ensure that neither it nor its staff are placed in the position of an actual or potential conflict of interest where the financial or personal duties of the Supplier or its staff conflict with the duties owed to Mitie under this Agreement. Where there is or may be an actual or potential conflict of interest Mitie may terminate this Agreement immediately by giving written notice to the Supplier or take any steps it thinks are necessary.