



Standard terms and conditions for the supply of goods and services

1. Definitions.

In these Conditions, the following definitions apply:

Business Day:	A day (other than a Saturday, Sunday or a public holiday) when banks in Guernsey are open for business.
Commencement Date:	Has the meaning set out in clause 3.2.
Conditions:	These terms and conditions (known as STC/G&S/Rev2012) as they may be amended periodically in accordance with clause 15.8.
Contract:	The contract between the States and the Supplier for the supply of Goods and/or Services in accordance with these Conditions.
Deliverables:	All documents, products and materials of whatever description to be supplied by or on behalf of the Supplier (including those supplied by its agents, contractors and employees) in relation to the Services and in any form or media.
Enactment:	Means any Law, Ordinance, Statutory Instrument, Regulation, any European or United Kingdom legislation which has the force of law within Guernsey, and includes subordinate legislation and/or all codes of practice, directions, recommendations made under them.
Goods:	The goods (or any part of them) set out in the Contract.
Goods Specification:	Either, <ul style="list-style-type: none">• the States specification for the Goods; or• the Supplier's specification for the Goods which has been accepted by the States, and which (in either case) is to be the Contract specification for the Goods.
Intellectual Property Rights:	All intellectual property rights of whatever description, whether registered or unregistered, including applications for and renewals or extensions of such rights, in any part of the world and all rights in confidential information.
Order:	The State's purchase order for the supply of Goods and/or Services,

which comprises the State's written acceptance of the Supplier's offer, estimate or quotation.

- Services: The services, including Deliverables, which are to be provided by the Supplier under the Contract and described in the Service Specification and/or Order.
- Service Specification: The specification for the Services to be performed by the Supplier accepted by the States (including any written amendments) and identified in any written specification or described or referred to in the Order.
- States: The States of Guernsey (acting by and through the Treasury and Resources Department or, if different, the Department identified in the Order) whose address for service is at Sir Charles Frossard House La Charroterie St Peter Port Guernsey GY1 1FH.
- Supplier: The person from whom the States purchases the Goods and/or Services whose name and address is set out in the Order.

2. Construction.

In these Conditions, the following rules apply:

- (a) A person includes a natural person, a corporate or unincorporated body (whether or not having separate legal personality).
- (b) References to a party include the personal representatives, successors or assignees of that party.
- (c) References to an Enactment are to that Enactment as it may be amended or re-enacted.
- (d) Any phrase introduced by the terms 'including', 'include', 'in particular' or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to 'writing' or 'written' includes faxes but not e-mails.

3. Basis of contract

- 3.1 An Order issued by the States constitutes the acceptance by the States to purchase Goods and/or Services from the Supplier in accordance with these Conditions and any express terms contained in the Order. In the event of any conflict an express term in the Order takes priority over these Conditions.

- 3.2 The Contract will come into existence on the Commencement Date which is the date on the Order issued to the Supplier. The date for the commencement of the supply of the Services will be the Commencement Date or, if different, the date expressly stated in the Order to be that date.
- 3.3 These Conditions apply to the Contract to the exclusion of all other terms or conditions that the Supplier seeks to impose or incorporate, whether in its quotation or correspondence or which are implied by trade, custom, practice or by a course of dealing.
- 3.4 These Conditions apply to the supply of both Goods and Services unless otherwise expressly specified.

4. Supply of Goods

- 4.1 The Supplier shall ensure that the Goods shall:
- (a) correspond with their description and the Goods Specification;
 - (b) be of satisfactory quality within the meaning of the Sale of Goods Act 1979 (as if that Act applied in Guernsey);
 - (c) be fit for any purpose held out by the Supplier in relation to those Goods and any purpose made known by the States to the Supplier, expressly or by implication, and the States relies on the Supplier's skill and judgment as to fitness for purpose;
 - (d) be free from defects in design, materials and workmanship on delivery and remain so for 12 months after delivery;
 - (e) comply with all applicable Enactments and regulatory requirements relating to the manufacture, safety, labelling, packaging, storage, handling and delivery of the Goods.
- 4.2 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 Contract in respect of the Goods.
- 4.3 The States shall have the right to inspect and test the Goods at any time before delivery.
- 4.4 If following inspection or testing the States reasonably considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 4.1, the Supplier shall promptly take all remedial action as is necessary to ensure compliance.

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

4.6 The States shall have the right to conduct further inspections and tests after the Supplier has carried out any remedial action required under Clause 4.4.

5. Delivery of Goods

5.1 The Supplier shall ensure that:

- (a) the Goods are properly packed and secured in such manner as to enable them to be delivered in good condition;
- (b) each delivery of the Goods is accompanied by a delivery note which shows:
 - (i) the date of the Order,
 - (ii) the Order reference number,
 - (iii) the type and quantity of the Goods (including the code number of the Goods (where applicable)),
 - (iv) any special storage instructions, and
 - (v) if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- (c) if the Supplier requires the States to return any packaging material for the Goods to the Supplier, that fact must be clearly stated on the delivery note. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

5.2 The Supplier shall deliver the Goods:

- (a) on the date specified in the Order or, if no such date is specified, then within 30 days of the date of the Order;
- (b) to the delivery address set out in the Order unless otherwise instructed by the States before delivery (Delivery Location);
- (c) during normal hours of business on a Business Day, unless otherwise instructed by the States.

5.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

- 5.4 If the Supplier delivers less than the quantity of Goods ordered, the States may reject the Goods and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more than the quantity of Goods ordered, the States shall not be liable to pay for the excess Goods.
- 5.5 The Supplier shall not deliver the Goods in instalments without the States' prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the States to any of its remedies contained in these Conditions including those set out in Clause 7.1.
- 5.6 Title and risk in the Goods shall pass to the States on completion of delivery.

6. Supply of Services

6.1 The Supplier shall from

- (a) the Commencement Date or
- (b) the date set out in the Order (as the case may be)

and for the duration of this Contract provide the Services to the States in accordance with the terms of the Contract.

6.2 The Supplier shall meet any performance dates for the Services specified in the Order or otherwise notified to the Supplier by the States prior to the date of the Order.

6.3 In providing the Services, the Supplier shall:

- (a) fully co-operate with the States in relation to the provision of the Services, and comply with all reasonable instructions of the States;
- (b) conscientiously perform the Services with all reasonable skill and care in accordance with current best practice in the supply of those Services;
- (c) use suitably skilled and experienced personnel and apply sufficient resources to perform the Services so to ensure full compliance with the Contract obligations including the Service Specification;
- (d) ensure that the Deliverables conform with the Service Specification, and are fit for any purpose expressly or impliedly made known to the Supplier by the States;

- (e) provide all plant, equipment and other items, (including tools and vehicles) as are required to provide the Services;
- (f) use good quality goods and materials, and ensure that the Deliverables, and all goods and materials supplied and used in the Services, are free from defects in workmanship, installation and design;
- (g) obtain and at all times maintain all necessary licences and consents, and comply with all applicable Enactments and in particular observe all health and safety requirements;
- (h) comply with all security, information technology, fire and other States policies or procedures that may apply in the provision of the Services or whilst Suppliers personnel are at the States premises;
- (i) hold all materials, equipment and tools, drawings, specifications and data supplied by the States to the Supplier (States Materials) in safe custody at the Suppliers own risk, maintain the States Materials in good condition until returned to the States, and not dispose or use the States Materials other than in accordance with the States' written instructions or authorisation.

7. States remedies

7.1 If the Supplier fails to deliver the Goods and/or perform the Services by the applicable date, the States shall, without limiting its other rights or remedies, have one or more of the following rights:

- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (b) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
- (c) to recover from the Supplier any costs incurred by the States in obtaining substitute goods and/or services from a third party;
- (d) where the States has paid in advance for Services that have not been provided by the Supplier and/or Goods which have not been delivered by the Supplier, to have such sums refunded by the Supplier; and
- (e) to claim damages for any additional costs, loss or expenses incurred by the States which are in any way attributable to the Supplier's failure to meet such dates.

7.2 If the Goods are not delivered by the applicable date, the States may, at its option, claim or deduct 5 per cent of the price of the Goods for each week's delay in delivery

by way of liquidated damages, up to a maximum of 20 per cent of the total price of the Goods. If the States exercises its rights under this clause 7.2 it shall not be entitled to any of the remedies set out in clause 7.1 in respect of the Goods' late delivery.

7.3 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 4.1, then, without limiting its other rights or remedies, the States shall have one or more of the following rights, whether or not it has accepted the Goods:

- (a) to reject the Goods (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;
- (b) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
- (d) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- (e) to recover from the Supplier any expenditure incurred by the States in obtaining substitute goods from a third party; and
- (f) to claim damages for any additional costs, loss or expenses incurred by the States arising from the Supplier's failure to supply Goods in accordance with clause 4.1.

7.4 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

7.5 The States' rights under this Contract are in addition to its rights and remedies implied by statute and the customary law.

8. States' obligations

The States shall:

- 8.1 provide the Supplier with reasonable access at reasonable times to the States' premises for the purpose of providing the Services;
- 8.2 provide such information as the Supplier may reasonably request for the provision of the Services and the States considers reasonably necessary for the purpose of providing the Services.

9. Charges and payment

- 9.1 The price for the Goods:
- (a) shall be the price set out in the Order, or if no price is quoted, the price set out in the Supplier's published price list in force at the Commencement Date; and
 - (b) shall be inclusive of the costs of packaging, insurance and carriage of the Goods, unless otherwise agreed in writing by the States. No extra charges shall be effective unless agreed in writing and signed by the States.
 - (c) The charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the States, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 9.2 In respect of Goods, the Supplier shall invoice the States on or at any time after completion of delivery.
- 9.3 In respect of Services, the Supplier shall invoice the States on completion of the Services.
- 9.4 Each invoice (whether for Goods or Services) shall include such supporting information required by the States to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.
- 9.5 In consideration of the supply of Goods and/or Services by the Supplier, the States shall pay the invoiced amounts within 30 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.
- 9.6 All amounts payable by the States under the Contract are exclusive of amounts in respect of valued added tax. At the date of these Conditions no value added tax or other goods and services tax (VAT) is chargeable on Goods and Services and the Supplier shall not charge VAT on any supply (no matter where the Goods or Services are supplied from).
- 9.7 In the event that VAT becomes chargeable in Guernsey, and subject to anything to the contrary contained in the relevant Enactment (and any such provision shall prevail over this clause 9.7), the sums stated in the Order are (unless stated otherwise in the Order) deemed to be expressed exclusive of VAT and the States shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.

- 9.8 If the States fails to pay any amount properly due and payable by it under the Contract, the Supplier shall have the right to charge interest on the overdue amount at the rate of 3 per cent per annum above the base rate for the time being of RBS International Limited accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment. This clause shall not apply to payments that the States disputes in good faith.
- 9.9 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow the States to inspect such records at all reasonable times on request.
- 9.10 The States may, without limiting its other rights or remedies, set off any amount owing to it by the Supplier on any account against any amount payable by the States to the Supplier under the Contract.

10. Intellectual property rights

- 10.1 In respect of the Goods and any goods that are transferred to the States as part of the Services under this Contract, 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 the States, it will have full and unrestricted rights to sell and transfer all such items to the States.
- 10.2 Unless expressly agreed otherwise, the Supplier assigns to the States, free from all third party rights, all Intellectual Property Rights which it holds or owns in relation to or arising from the Services, including the Deliverables.
- 10.3 The Supplier shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Deliverables, of the Services to which any individual is now or may be at any future time entitled under Part IV of The Copyright (Bailiwick of Guernsey) Ordinance, 2005 or any similar provisions of law in any jurisdiction.
- 10.4 The Supplier shall, promptly at the States' request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the States may from time to time require for the purpose of securing for the States the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the States in accordance with clause 10.2.

11. Indemnity

- 11.1 The Supplier shall keep the States indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the States as a result of or in connection with:

- (a) any claim made against the States by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
- (b) any claim made against the States by a third party arising out of, or in connection with, the supply of the Goods or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors;
- (c) any claim made against the States for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services; and
- (d) any claim made against the States for actual or alleged breach by the Supplier of the Data Protection (Bailiwick of Guernsey) Law, 2001.

11.2 For the duration of the Contract and for the following period of six years, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract and shall, on the States' request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

11.3 This clause 11 shall survive termination of the Contract.

12. Confidentiality and Data Protection

12.1 A party (Receiving Party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (Disclosing Party), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain.

12.2 The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party.

12.3 The Supplier shall at all times comply fully with the requirements of the Data Protection (Bailiwick of Guernsey) Law, 2001.

12.4 This clause 12 shall survive termination of the Contract.

13. Termination

13.1 Without limiting its other rights or remedies, the States may terminate the Contract with immediate effect by giving written notice to the Supplier if:

- (a) the Supplier commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of receipt of notice in writing of the breach;
- (b) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts or as having no reasonable prospect of so doing;
- (c) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors or is in a state of désastre;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- (e) the Supplier (being an individual) is the subject of a bankruptcy petition order;
- (f) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier (being a company);
- (h) a floating charge holder over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;

- (i) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier or a receiving order made over its real property;
- (j) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.1(a) to (j) inclusive;
- (k) the Supplier suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business; or
- (l) the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

13.2 Without limiting its other rights or remedies, the States may terminate the Contract:

- (a) in respect of the supply of Services, by giving the Supplier 30 days written notice; and
- (b) in respect of the supply of Goods, with immediate effect by giving written notice to the Supplier, prior to the Delivery of those Goods and in which case the States shall not be required to pay the Supplier compensation for the loss of anticipated profits or any consequential loss.

13.3 In any of the circumstances in these Conditions in which the States may terminate the Contract, where both Goods and Services are supplied, the States may instead terminate part of the Contract in respect of the Goods, or in respect of the Services, and the Contract shall continue in respect of the remaining supply.

14. Consequences of termination

On termination of the Contract or any part of it for any reason:

- 14.1 where the Services are terminated, the Supplier shall immediately deliver to the States all Deliverables, whether or not then complete, and return all States Materials. If the Supplier fails to do so, then the States may without limiting its other rights or remedies enter the Supplier's premises and take possession of them. 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 Contract;
- 14.2 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and

14.3 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

15. General

15.1 Force Majeure

Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under the Contract if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable. If such event or circumstances prevent the Supplier from supplying the Goods and/or Services for more than 12 weeks, the States shall have the right, without limiting its other rights or remedies, to terminate this Contract with immediate effect by giving written notice to the Supplier.

15.2 Assignment and subcontracting:

- (a) The Supplier shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the States.
- (b) The States may at any time assign, transfer, charge, subcontract, or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

15.3 Notices:

- (a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally, sent by fax or sent by prepaid post (using first class where available), recorded delivery or by commercial courier, and in relation to the Supplier at its registered office (if a company) or (in any other case) its principal place of business, and in the case of the States to the address for service given in Clause 1 and marked for the attention of the Chief Officer Treasury and Resources Department.
- (b) Any notice or communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by prepaid post (using first class if available) or recorded delivery, at 10.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.

- (c) This clause 15.3 shall not apply to the service of any proceedings or other documents in any legal action.
- (d) For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

15.4 Waiver and cumulative remedies:

- (a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

15.5 Severance:

- (a) If a court or any other competent authority finds that any provision (or part of any provision) of the Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

15.6 No partnership:

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

15.7 Third parties:

A person who is not a party to the Contract shall not have any rights under or in connection with it.

15.8 Variation:

Any variation, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the States.

15.9 Governing law and jurisdiction:

The Contract, and any dispute or claim 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, Guernsey law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of Guernsey.