

TERMS AND CONDITIONS OF PURCHASE

1. INTRODUCTION

- 1.1 Every contract between the PPA and the Contractor for the purchase of articles and/or the carrying out of any service automatically incorporates these Conditions to the exclusion of any conditions stipulated or referred to by the Contractor. No amendments will bind the PPA unless confirmed in writing by the PPA. The PPA's employees and agents are not authorised to agree any other terms. The Contractor's acceptance of the PPA's order will be construed as acceptance of these Conditions.
- 1.2 The Contractor must forward an acknowledgment of the PPA's order within 7 days of its receipt. The Contract will be formed on the PPA receiving the acknowledgement or, if earlier, delivery of the Articles or the carrying out of the service by the Contractor, which will be deemed to be an express acceptance by the Contractor of all these Conditions.
- 1.3 The PPA may vary these Conditions at any time on giving the Contractor not less than 4 weeks' written notice of the variation signed by a Director or the Chief Executive of the PPA and such varied conditions will apply as from the expiration of the notice period.

2. INTERPRETATION ETC

- 2.1 In these Conditions :-

Contract means the agreement concluded between the PPA and the Contractor comprising these Conditions and any special terms agreed in writing by the PPA together with all directions instructions specifications, plans, drawings and other documents relevant to the Contract.

Articles means all articles equipment (including computer hardware) and other items which the Contractor is required under the Contract to supply or in connection with which he is required under the Contract to carry out any Services.

Contractor means the person who by the Contract undertakes to supply the Articles or to render Services for the PPA as is provided by the Contract; where the Contractor is an individual or a partnership the expression includes the personal representatives of that individual or of the partners (as the case may be); the expression also includes any person to whom the benefit of the Contract may be assigned by the Contractor with the consent of the PPA.

PPA means the Prescription Pricing Authority.

PPA's representative means the person duly authorised by the PPA to act for the purposes of the provision.

Price means the price exclusive of value added tax, payable to the Contractor by the PPA under the Contract for the full and proper performance by the Contractor of the Contract.

Services means any service which the Contractor is required under the Contract to provide, perform, or carry out.

- 2.2 For the avoidance of doubt **loss** includes destruction; **month** means calendar month and **person** includes a corporation.
- 2.3 The masculine includes the feminine and neuter, the singular includes the plural, and vice versa; references to any enactment, order, regulation or other similar instrument will be construed as a reference to it as amended.
- 2.4 Any notice or other communication which the PPA is required or authorised by the Contract to give or make to the Contractor will, without prejudice to any other method giving or making it, be sufficiently given or made if it is sent by post in a prepaid letter addressed to the Contractor at his last known place of abode or business and that notice or communication will be deemed to have been given or made on the date being two days after the letter was despatched.

3 THE ARTICLES AND THE SERVICES ETC

- 3.1 The quantity and description of the Articles will be as set out in the PPA's order and they must be to the PPA's satisfaction. The Contractor will ensure that all the Articles are manufactured, stored, tested and packed in accordance with all British or European standards applicable to them and that all the Articles are of satisfactory quality and fit for the purpose to which the PPA intends to put them.
- 3.2 The Services will be provided as set out in the PPA's order and must be provided to the PPA's satisfaction. The Contractor will ensure that the Services are provided by properly qualified staff of the Contractor in accordance with the highest standards of current established practice and in compliance with the requirements of all relevant statutes and other regulations which may from time to time be in force.
- 3.3 All representations, statements or warranties made or given by the Contractor, its employees or agents (whether orally or in writing or in any of the Contractor's brochures, catalogues or advertisements) regarding the quality and fitness for purpose of the Articles and/or regarding the performance or provision of the Services will be deemed to be express conditions of the Contract.

4. ALTERATION OF REQUIREMENTS

4.1 The PPA may from time to time alter its requirements. The Articles and/or Services will be in accordance with its requirements as so altered. Where the alteration involves a material alteration in the cost of or delivery of or in the period required for the production of any Articles which are affected by the alteration or in the time for performance of or the manner of performance and delivery of the Services, such revision of the Price or of the time for delivery of those Articles or the time or manner of performance or delivery of those Services will be made as may be appropriate. Except as aforesaid, the Contract will remain unaltered.

5. PACKAGES

5.1 Unless otherwise agreed in writing all containers (including packing cases, boxes, tins, drums and wrappings) supplied by the Contractor will be considered as non-returnable and their cost as having been included in the Price.

6. INSPECTION

6.1 The PPA may (but is not obliged to do so) inspect or arrange for the inspection of the Articles, or any of them, either in course of production or afterwards at the Contractor's premises or otherwise at any reasonable time. The Contractor will procure that the PPA's representative has full and free access to the premises as and when required and will provide free of charge all such accommodation and facilities in connection with the inspection as the PPA may require, and all appliances, materials and labour required for inspection purposes.

7. PROGRESS REPORTS

7.1 The Contractor will render reports on the progress of the Contract in the form at the frequency required by the PPA. The submission and acceptance of these reports will not prejudice the PPA's rights under Condition 14 (Default).

8. INVOICES

8.1 Invoices in respect of any of the Articles and/or any of the Services will be rendered at the time and in the manner required by the PPA. The Price will be inclusive of all duties payable.

9. VALUE ADDED TAX

9.1 The PPA will pay to the Contractor, in addition to the Price, a sum equal to the value added tax ("VAT") chargeable on the value of the supply of goods and services provided in accordance with the Contract on the Contractor producing a valid VAT invoice.

9.2 The Contractor will on request furnish such information as may be required by the PPA as to the amount of VAT chargeable on the value of goods and services supplied in accordance with the Contract and payable by the PPA to the Contractor in addition to the Price. Any

overpayments by the PPA to the Contractor will be a sum of money recoverable from the Contractor for the purposes of Condition 10.

10. THE PPA'S RIGHT OF SET OFF

The PPA may set off against any sum due to the Contractor under the Contract (including any VAT payable) amounts due from the Contractor whether under the Contract or under any other contract or arrangement.

11. PPA PROPERTY

11.1 All PPA property issued in connection with the Contract ("Issued Property") will remain the PPA's property whether paid for by or charged against the Contractor or not, and will be used in the execution of the Contract and for no other purpose whatsoever without the PPA's specific prior written approval. On request the PPA will notify the Contractor of the current value of the Issued Property.

11.2 The Contractor will be responsible for the safe custody and return of Issued Property, whether or not incorporated in the Articles or used in providing the Services, and will be responsible for all loss of or damage to it from whatever cause (except as provided below) until re-delivered in accordance with the PPA's instructions.

11.3 Neither the Contractor nor any Sub-Contractor nor any other person, will have a lien on Issued Property for any sum due to the Contractor, Sub-Contractor or other person, and the Contractor will ensure that the PPA's title and the exclusion of any such lien, are brought to the notice of all Sub-Contractors and other persons dealing with Issued Property.

12. LOSS OF OR DAMAGE TO THE ARTICLES

12.1 The Contractor is responsible for the Articles and any materials equipment fittings or things ("Materials") acquired or allocated by him for incorporating in them and for any Materials acquired or allocated by him for the performance or delivery of the Services until delivery and performance has been effected in accordance with Condition 13 and will make good any loss of or damage to the Articles or any such Materials however occasioned which may occur before such delivery.

12.2 The provisions of Condition 12.1 will apply notwithstanding that the Articles and/or Materials concerned may have been inspected in accordance with the Contract or that the property in them may have passed from the Contractor to the PPA or its agent earlier than upon delivery.

12.3 The Contractor will also be responsible in all respects for any Article which under Condition 16 the PPA rejects after delivery and such responsibility will take effect upon the Contractor removing the Article in accordance with Condition 16.3 or upon the returning of the Article to the Contractor in accordance with Condition 16.4 or, if he fails so to remove the Article, or if the PPA does not exercise the right to return the Article, on the expiry of the eighth working day from his receipt of notification of rejection of the Article.

13. DELIVERY/PERFORMANCE

- 13.1 The Contractor will hand over the Articles to the PPA or its agent and/or perform and deliver the Services (as the case may be) at the time(s) and at the place(s) and in the manner specified in the Contract or in orders (written or printed out by computer) issued under the Contract. Time of delivery and/or performance (as the case may be) will be of the essence of the Contract.
- 13.2 When handing over the Articles, the Contractor will ensure that the Articles are properly packed and secured as may be stipulated in the Contract and will comply with any additional instructions which from time to time the PPA may give with regard to the transportation of the Articles.
- 13.3 When the Contract or any order issued under the Contract specifies that the Articles will be handed over ex-works or despatched f.o.r. or f.a.s. or f.o.b. or f.d.d. the Contractor will hand over or despatch the Articles accordingly, consigning them to such destinations as the PPA may require.
- 13.4 When the Articles are handed over in accordance with Condition 13.1 delivery will occur on their being so handed over. When the Articles are handed over or despatched in accordance with Condition 13.3 delivery will occur on their going into the possession of the PPA or its agent. Unless otherwise specifically agreed in writing the property in the Articles passes to the PPA upon delivery in accordance with this Condition 13.4.
- 13.5 When after delivery an Article is rejected that Article will be considered as not having been delivered and the property in that Article will return to the Contractor.

14. DEFAULT

- 14.1 If the Articles or any of them are not delivered within the time(s) specified in the Contract and/or the Services are not provided within the time(s) specified in the Contract the PPA may without prejudice to any other rights or remedies, by notice to the Contractor determine the Contract either as respects the Articles which have not been delivered and/or the Services which have not been provided in accordance with the Contract at the time of such determination, or as respects all the Articles and Services to which the Contract relates other than those delivered or performed in accordance with the Contract before that time.
- 14.2 Where the PPA has determined the Contract under Condition 14.1 the PPA may replace all or any of the Articles and/or Services as respects which the Contract is so determined by purchasing other articles and/or Services of the same or similar description, or in respect of the Articles by allocating other articles of the same or similar description in the PPA's possession or control to the purposes for which the Articles

replaced are required and there will be recoverable from the Contractor the amount by which the aggregate of the cost of purchasing articles and/or Services in this way and of the value of any articles allocated as aforesaid exceeds the amount which would have been payable to the Contractor in respect of all the Articles and/or Services so replaced if they had been delivered and performed in accordance with the Contract.

15. ACCEPTANCE

- 15.1 Acceptance of an Article will take place when the PPA confirms acceptance of the Article in accordance with any procedure specifically agreed in writing. The PPA will not be deemed to have accepted any Article until after the PPA has actually inspected the Article after delivery and ascertained that it is in accordance with the Contract.
- 15.2 Acceptance of the performance of a Service will take place when the PPA confirms acceptance in accordance with any procedure specifically agreed in writing. The PPA will not be deemed to have accepted that a Service has been performed in accordance with the terms of the Contract until after the Service has been fully performed and the PPA have had a reasonable opportunity of assessing the performance of the Service.
- 15.3 The Contractor agrees to allow the PPA to return any Article which is not in accordance with the Contract at any time up to 12 months after delivery notwithstanding that the Article may have already been accepted by the PPA and in such circumstances the provisions of Condition 16 will apply.

16. REJECTION

- 16.1 The PPA may reject any Article which on inspection is found not to conform with the requirements of the Contract. The PPA may reject any Services where the performance of such Services does not conform with the requirements of the Contract.
- 16.2 The PPA may reject the whole of any consignment of the Articles if inspection shows that either a material proportion or percentage of the Articles in that consignment or samples taken indiscriminately from that consignment, whether of the Articles or of the material in the Articles do not conform with the requirements of the Contract.
- 16.3 When under this Condition the PPA rejects any Article or consignment after delivery, the Contractor will at his own expense remove from the PPA each and every rejected Article and will do so within eight working days from receipt of notification of rejection.
- 16.4 If the Contractor fails to remove the Articles or any of them in accordance with Condition 16.3 the PPA may return the rejected Articles to the Contractor at the Contractor's risk, the cost of carriage being recoverable from the Contractor or the PPA may dispose of them as it thinks fit.

- 16.5 When under this Condition the PPA rejects any Article or consignment after delivery, the Contractor at the PPA's option either will at his own expense deliver in the place of each and every rejected Article, an Article which conforms with the requirements of the Contract and will do so within the period for delivery stipulated in the Contract or within such further reasonable period as the PPA may allow, or repay the Price to the PPA in both cases without prejudice to the PPA's other rights and remedies.
- 16.6 When under this condition the PPA rejects the performance of a Service the Contractor at the PPA's option either will at his own expense perform and provide the Service to conform with the requirements of the Contract and will do so by the due date as specified in the Contract for the performance of the Service and within such further reasonable period as the PPA may allow or repay the Price to the PPA in both cases without prejudice to the PPA's other rights and remedies.
- 16.7 If any of the Articles whether completed or in course of production is rejected on inspection by the PPA, the same will, if the PPA so requires, be marked in such a manner satisfactory to the PPA as to ensure its subsequent identification as a rejected Article.

17. DAMAGE TO PROPERTY

- 17.1 Without prejudice to the provisions of Condition 11 (Issue of PPA Property) and Condition 12 (Loss of or Damage to the Articles) the Contractor will make good or, at the PPA's option pay compensation for, all damage occurring to any property of the PPA, its employees, agents or invitees occasioned by the Contractor, or by his employees' agents or Sub-Contractors, provided that this Condition will not apply to the extent that the Contractor is able to show that any such damage was not caused or contributed to by his neglect or default or the neglect or default of his employees', agents or Sub-Contractors.

18. CONTRACTOR'S PERSONNEL

- 18.1 The Contractor will ensure that the Contractor and his employees, agents, sub-contractors and invitees, fully comply with all rules and regulations notified to the Contractor by the PPA from time to time for the conduct of personnel on any premises occupied by the PPA.
- 18.2 The Contractor will indemnify the PPA its employees, agents and invitees against loss and/or damage to property or bodily injury sustained by the PPA or its employees, agents or invitees by reason of any act or neglect of the Contractor or his employees, agents, sub-contractors or invitees in performing the Contract or otherwise arising.
- 18.3 The Contractor will insure all its employees, agents, and Sub-Contractors engaged in the performance of the Contract against any

injuries suffered by them in the course of carrying out their duties pursuant to the Contract and unless such injury is due to the negligence of the PPA and its employees or agents will indemnify the PPA against all actions, claims and demands in respect of such injury.

19. INSOLVENCY, CHANGE IN CONTROL ETC

The PPA may at any time by notice in writing summarily determine the Contract without compensation to the Contractor in any of the following events:-

- 19.1 If the Contractor, being an individual, or, where the Contractor is a firm, any partner in that firm, at any time presents or has presented against him a bankruptcy petition, or has an administration order made against him, or makes any composition or arrangement with or for the benefit of his creditors, or makes any conveyance or assignment for the benefit of his creditors, or purports to do so, or anything analogous thereto occurs in relation to the Contractor in any other jurisdiction; or
- 19.2 if the Contractor, being a company, convenes a meeting for the purpose of considering a resolution that the Contractor be wound up, or a petition is presented for the winding up or the placing into administration of the Contractor or if a receiver or manager on behalf of a creditor is appointed, or if circumstances arise which entitle the Court or a creditor to appoint a receiver or manager or which entitle the Court to make a winding-up order, or anything analogous thereto occurs in relation to the Contractor in any other jurisdiction; or
- 19.3 if there is a change in control in the Contractor as defined by Section 416 of the Income and Corporation Taxes Act 1988. **PROVIDED ALWAYS** that such determination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the PPA.

20. TERMINATION

- 20.1 The PPA may determine the Contract at any time by giving to the Contractor not less than two weeks' notice in writing and upon the expiration of the notice the Contract will be determined without prejudice to the rights of the parties accrued to the date of determination but subject to the operation of the following provisions of this Condition.
- 20.2 The PPA may at any time before the expiration of the notice exercise such of the following powers as it considers (in its absolute discretion) to be expedient:-

20.2.1 To direct the Contractor, where production has not been commenced, to refrain from commencing production; and/or

20.2.2 to direct the Contractor to complete in accordance with the Contract all or any of the Articles, or any part or component in the course of manufacture at the expiration of the notice and to deliver the same at such time(s) as may be mutually agreed on, or, in default of agreement, at the time(s) provided by the Contract; and/or

20.2.3 to direct that the Contractor promptly on receipt of such notice:-

20.2.3.1 takes such steps as will ensure that the production rate of the Articles and parts and components is reduced as rapidly as possible;

20.2.3.2 as far as possible consistent with Condition 20.2.3.1. concentrates work on the completion of parts and already in a partly manufactured state;

20.2.3.3 determines on the best possible terms such sub-contracts and orders for materials and parts and components bought out in a partly manufactured or wholly manufactured state as have not been completed, observing in this connection any direction given under Condition 20.2.2 and Conditions 20.2.3.1 and 20.2.3.2 as far as may be possible.

20.3 The PPA will compensate the Contractor against any commitments, liabilities or expenditure which are reasonable and properly chargeable by the Contractor in connection with the Contract but only to the extent to which the Contractor can show that the said commitments, liabilities or expenditure would otherwise represent an unavoidable loss by the Contractor by reason of the determination of the Contract **PROVIDED THAT** in the event of the Contractor not having fully and properly observed any direction given to him under Condition 19.2 the PPA will not pay any sums in excess of those which the PPA would have paid had the Contractor observed that direction.

20.4 The PPA will not in any case be liable to pay under the provisions of this Condition any sum which, when taken together with any sums paid or due or becoming due to the Contractor under the Contract, exceeds the total price of the Articles payable under the Contract.

20.5 The Contractor will in any sub-contract or order made or placed by him in connection with or for the purpose of the Contract take power to determine such sub-contract or order in the event of the determination of the Contract by the PPA under this Condition upon the terms of Condition 20.1 to 20.5 inclusive.

21. **RACE AND SEX DISCRIMINATION**

- 21.1 The Contractor will not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976, the Sex Discrimination Act 1975 or the Disability Discrimination Act 1995 or any statutory modification or re-enactment of them relating to discrimination in employment.
- 21.2 The Contractor will take all reasonable steps to secure the observance of the provisions of Condition 21.1 by all employees or agents of the Contractor and all Sub-Contractors employed in the execution of the Contract.

22. TRANSFER AND SUB-LETTING

- 22.1 The Contractor will not give, bargain, sell, assign, sub-let, or otherwise dispose of the Contract or any part of it or the benefit or advantage of the Contract or any part of it to a third party without the PPA's specific prior written consent.

23. CORRUPT GIFTS AND PAYMENTS OF COMMISSION

- 23.1 The Contractor will not:-

23.1.1 offer or give or agree to give to any servant, employee, agent, representative of the PPA or any other person acting in any way on behalf of the PPA, any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this or any other contract for the PPA or for showing or forbearing to show favour or disfavour to any person in relation to this or any other contract for the PPA;

23.1.2 enter into this or any other contract with the PPA in connection with which commission has been paid or agreed to be paid by him or on his behalf, or to his knowledge, unless before the contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the PPA.

- 23.2 In the event of any breach of this Condition by the Contractor or by anyone employed by him or acting on his behalf (whether with or without the knowledge of the Contractor) or the commission of any offence by the Contractor or by anyone employed by him or acting on his behalf under the Prevention of Corruption Act 1889 to 1916, in relation to this or any other contract for the PPA, the PPA may summarily terminate the Contract by notice in writing to the Contractor provided always that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the PPA and the PPA may recover from the Contractor the amount or value of any such gift, consideration or commission.

23.3 Where the Contract has been determined under Condition 23.2 the powers given by Condition 14.2 will apply as if there had been a failure in delivery.

23.4 In any dispute difference or question arising in respect of:-

23.4.1 the interpretation of this Condition (except so far as the same may relate to the amount recoverable from the Contractor under Condition 22.2 in respect of any loss resulting from such determination of the Contract); or

23.4.2 the right of the PPA to determine the Contract; or

23.4.3 the amount or value of any such gift, consideration or commission.

The decision of the PPA will be final and conclusive.

24. USE OF DOCUMENTS, INFORMATION ETC

24.1 Except with the PPA's specific prior written consent the Contractor must not disclose the Contract or any part of it to any person other than a person employed by the Contractor in the carrying out of the Contract or any Sub-Contractor, supplier or other person concerned with the same. Such disclosure must be made in confidence and may extend only so far as may be necessary for the purposes of the Contract.

24.2 Except with the PPA's specific prior written consent the Contractor must not make use of the Contract or any information issued or furnished by or on behalf of the PPA otherwise than for the purpose of the Contract.

24.3 Subject to any rights of third parties, nothing in this Condition will, however, constrain the use for any purpose by the Contractor of any specifications, plans, drawings and other documents, the rights of which vest in him otherwise than as a result of work carried out under this Contract.

24.4 Any samples or patterns or any specifications, plans, drawings, or any other documents issued by or on behalf of the PPA for the purposes of the Contract remain the property of the PPA and must be returned on completion of the Contract.

24.5 The Contractor will at all times comply with the provisions of the Data Protection Act 1984 and will take all reasonable steps to ensure that all employees or agents of the Contractor and all Sub-Contractors employed in the execution of the Contract comply with such provisions.

25. INTELLECTUAL PROPERTY: SOFTWARE LICENCE

25.1 All inventions, design concepts and systems discovered or created by the Contractor his employees or agents and which arise out of or in

connection with the Contract will belong absolutely to the PPA and the Contractor hereby assigns all such inventions, designs, concepts and systems and all the intellectual and industrial property rights in them to the PPA.

- 25.2 In the event that a third party alleges that the Contractor is infringing in some way its intellectual property rights and makes a claim or demand against the PPA or brings an action against the PPA then the Contractor will indemnify the PPA immediately on demand against all costs (including all professional costs on a full indemnity basis and the cost of lost management time) claims, expenses, damages and liabilities suffered or incurred by or on behalf of the PPA and arising out of or in connection with any such actual or threatened claim demand or action.
- 25.3 If any of the Articles to be supplied and/or Services to be provided pursuant to the Contract contain, comprise or require software and/or firmware then the Contractor confirms that unless otherwise specifically agreed in writing the PPA will have an indefinite, unconditional, irrevocable, non-exclusive licence to use such software and/or firmware and the intellectual property rights therein and further confirms that all such software and firmware will be free from error, of satisfactory quality and fit for its purpose.
- 25.4 All Articles to be supplied and/or Services to be provided will not in any way be adversely affected by the change in the Millennium and will continue to operate without any interruption, delay or the need for any modification.

26. INDEMNITY

- 26.1 The Contractor will immediately on demand indemnify the PPA against all costs (including all professional costs on a full indemnity basis and the cost of lost management time) claims, expenses, damages and liabilities suffered or incurred by or on behalf of the PPA and arising out of or in connection with any failure or delay by the Contractor his employees or agents properly and fully to perform his obligations under the Contract and/or the negligence or otherwise of the Contractor his employees or agents.

27. MISCELLANEOUS

- 27.1 The construction and performance of these conditions will be governed by English law.
- 27.2 The parties hereby submit to the non-exclusive jurisdiction of the English court.
- 27.3 If any of these Conditions is declared void, invalid or unenforceable then the remainder of these Conditions will take effect as if the offending provision had been modified in such a way as to be valid and effective or, failing which was never included.

27.4 The PPA may freely assign the benefit of these Conditions.