



**1. DEFINITIONS**

**1.1** The following definitions and rules of interpretation apply to the Contract:

- a. "CEP" means the Certificate of Eligible Procurement necessary for the Principal and the End-User to authorise purchase of the Goods.
- b. "Contract" means the agreement between the Principal and the Supplier, entered into by Crown Agents as an agent, acting on behalf of the Principal, including these conditions, all plans, drawings or other documents which may be referred to in the Contract and all correspondence in writing between the Supplier and Crown Agents entered into in connection with any bid or request for quote pursuant to which the Goods are being supplied where such correspondence has been entered into by the parties prior to Crown Agents and the Supplier executing the Contract.
- c. "Conditions" means the terms and conditions set out in this document and any other terms and conditions set out in any other document that forms part of the Contract as amended from time to time in accordance with clause 24.
- d. "Contract Price" means the price, payable under the Contract for the full and proper performance of all of the Supplier's obligations under the Contract. Unless otherwise stated in the Contract, the Contract Price shall be fixed.
- e. "Crown Agents" means Crown Agents Japan Limited and/or any subsidiary or affiliate of Crown Agents in each and every case acting as an agent or agents, as the case may be, for and on behalf of the Principal.
- f. "End-User" means the entity named in the Contract who is the intended recipient of the Goods and is intended to benefit from the terms of the Contract.
- g. "ESDP" means Japanese Grant Aid for the Economic and Social Development Programme.
- h. "Goods" means all the goods and, where applicable, shall be deemed to include related services which the Supplier is required under the Contract to supply or in connection with which he is required under the Contract to carry out any service.
- i. "Grant" means the funding to be provided under Japanese Grant Aid for the Economic and Social Development Programme to the Principal.
- j. "Inspector" means the person authorised by Crown Agents or the Principal, to act as Crown Agents and/or the Principal's inspector under the Contract.
- k. "Principal" means the party on whose behalf Crown Agents enters into the Contract. The existence of the Principal as a party to the Contract is hereby disclosed. The name of the Principal shall be stated in the Contract. For the purposes of clause 27, and except as regards clause 11.6, references to the Principal shall be deemed to include the End-User.
- l. "Special Conditions" means the special conditions set out in the Contract.
- m. "Supplier" means the party who undertakes to supply the Goods.

**1.2** In the Conditions, unless the context requires otherwise, the following rules apply:

- a. reference to a **person** includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality).
- b. reference to a party includes its personal representatives, successors or permitted assigns.
- c. A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

- d. any phrase introduced by the terms **including, include, in particular** or any similar expression shall not 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 and e-mails.

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## **2. APPLICATION**

- 2.1 The Conditions apply to the Contract to the exclusion of any other terms or conditions that the Supplier seeks to incorporate, or which are implied by trade, custom, practice or course of dealing.

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## **3. STANDARDS**

- 3.1 The Goods shall be supplied in accordance with the description and specification set out in the Contract.
- 3.2 Where no specification or standard is stated then all Goods shall be supplied in accordance with the relevant JIS Standard, or to a recognised national standard in the country of manufacture acceptable to Crown Agents.
- 3.3 The Supplier shall comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods, including without limitation all applicable statutory and regulatory requirements within the country where the Goods are manufactured and within the End-User's country.
- 3.4 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.

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## **4. ELIGIBILITY**

- 4.1 Unless otherwise expressly stated in the Contract, the Supplier represents and warrants that:

- a. it is not as a matter of law or official regulations in the Principal's country that they are prohibited from having commercial relations with the Principal's country;
- b. it does not owe any taxes to or is engaged in any dispute with any government department or agency in the Principal's country;
- c. the Goods are not partially or wholly manufactured or sourced in a country prohibited from having commercial relations with the Principal's country as a matter of law or official regulation in the Principal's country;
- d. the Principal's country does not, by complying with a decision of the United Nations Security Council, prohibit any import of goods from the country where the Goods are wholly or partially manufactured or any payment to persons or entities in such country;
- e. it is not prevented by any international sanction and/or embargo from performing its obligations pursuant to the Contract.

- 4.2 Goods offered by the Supplier from within the Principal's country shall only be eligible if the Goods shall be imported specifically for the Contract.

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## **5. FUNDING**

- 5.1 The Government of Japan has extended Grant Aid for the Economic and Social Development Programme to the Principal in accordance with a signed Exchange of Notes.

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## **6. ALTERATION OF SPECIFICATIONS, PLANS, DRAWINGS, PATTERNS AND SAMPLES**

- 6.1 The Supplier shall not alter the specifications, plans or drawings of any

part of the Goods unless requested in writing by, or with the prior written agreement of Crown Agents.

- 6.2 In the event that any such alteration requested by Crown Agents involves an alteration in the cost of production, and/or in the period required for delivery, such revision of the Contract Price, and/or of the time for delivery, shall be made in relation to the Goods which are the subject of the alteration, as shall be agreed in writing between Crown Agents and the Supplier. In all other respects the Contract shall remain unaltered.
- 6.3 Where the Contract is for the supply of Goods described in the Contract by reference to the Supplier's proprietary specification, then the Supplier may vary that specification in respect of the Goods, provided that such variation does not affect the price, size, accuracy, quality, function, performance or interchangeability of the Goods. Full particulars of the variation must be immediately notified in writing to Crown Agents.

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## 7. GUARANTEE

- 7.1 The Supplier guarantees that:
- a. unless otherwise stated in the Contract, the Goods shall be new, of satisfactory quality, fit for the purposes for which the Goods are ordinarily used, and for any purposes expressly made known in writing to the Supplier, and suitable for use in the End-User's country;
  - b. the Goods shall have no defect arising from design, materials or workmanship, or from any act or omission of the Supplier, or his sub suppliers and which may develop under proper use of the Goods in the conditions in the End-User's country;
  - c. the Supplier hereby guarantees that the Goods shall remain free of any defect (other than those arising from reasonable wear and tear or improper use, for which

the Supplier is not responsible) for a period of 12 (twelve) months after the Goods or any portion thereof have been delivered to the final destination indicated in the Contract, or 18 (eighteen) months after the date of shipment, whichever is the shorter.

- 7.2 Upon receipt of notification of a claim, the Supplier shall promptly repair or replace any defect in or damage to the Goods (or any part thereof) free of charge including transport charges to the End-User. If it is reasonably practicable or necessary for a defective part to be returned to the Supplier, the End-User shall arrange for it to be returned to the Supplier at the Supplier's cost. Where the Supplier supplies a part in replacement of a defective part, and does not at that time request the return of the defective part, no responsibility for the defective part shall rest with Crown Agents, the Principal or the End-User.
- 7.3 If the Supplier fails to remedy the defect or damage within a reasonable time, Crown Agents or the Principal may, after giving notice to the Supplier, take such remedial action as may be necessary, at the Supplier's risk and expense, without prejudice to any other rights which they may have against the Supplier.
- 7.4 If any of the Goods or part thereof, are not manufactured by the Supplier, the Supplier shall ensure that the sub-contractor or manufacturer of the Goods or such part thereof shall be under the same liability to the Supplier as the Supplier's liability to the Principal under the Contract.
- 7.5 No claim shall be made by the Principal against the Supplier for any kind of indirect or consequential loss including loss of profit.

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## 8. PACKING

- 8.1 The Supplier shall provide such packing as is required to prevent damage to or deterioration of the Goods during transit to and storage at the final destination, and as may reasonably be anticipated as prudent, bearing in mind the final destination of the Goods and their mode of transport and so as to ensure that the Goods reach their destination in good condition. The packing shall be sufficient, without limitation, to withstand rough handling and exposure to extreme temperatures. The cost of such packing shall be included in the Contract Price.
- 8.2 The packing, marking and documentation within and outside the packages shall (without prejudice to clauses 3.3 and 8.1) comply strictly with such special requirements as provided for in the Contract, or in any subsequent instructions and, where appropriate, with any relevant regulations governing the despatch of hazardous cargo by sea, air or overland.
- 8.3 If compliance with an instruction concerning packing which is issued subsequent to the establishment of the Contract, involves an addition or reduction in the Contract Price, and/or in the period required for delivery, such revision of the Contract Price and/or of the time for delivery shall be agreed in writing between Crown Agents and the Supplier. In all other respects the Contract shall remain unaltered.
- 9.2 The Goods shall be inspected at the Supplier's works, or at any other place that the Inspector may reasonably require or approve, and if found defective or inferior in quality to, or differing in form or material from, the requirements of the Contract, may be rejected. The whole of any consignment may be rejected if any proportion, percentage or samples of the Goods or materials comprised therein or samples taken from bulk, are found not to conform in every respect to the requirements of the Contract. The Supplier shall at his own expense and within the time for delivery specified in the Contract replace or make good to the satisfaction of the Inspector any Goods so rejected provided always that if neither replacements nor making good is possible the Supplier shall immediately refund to Crown Agents all monies paid to him on account of any such Goods.
- 9.3 The Supplier shall, if called upon to do so, obtain the Inspector's approval of the manner in which the Supplier proposes to supply or to perform services in relation to each portion of the Goods and shall furnish such drawings and information as the Inspector may require. Where the Contract is for the supply of Goods described in the Contract by reference to the Supplier's proprietary specification, then the Supplier's liability shall be restricted to providing the Inspector with information concerning the material used, the method of manufacture, details of production line tests and inspection procedures.

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## 9. INSPECTION

- 9.1 Where the Special Conditions within the Contract expressly state that the provisions of this clause 9 apply, the details of the scope of inspection shall be set out in the Contract and the following provisions shall apply. These provisions are not in substitution of any Pre-Shipment and/or Price Verification schemes which may be applicable to importation into the End-User's country.
- 9.4 The Supplier shall notify the Inspector at least seven days in advance of the date on which any of the Goods will be ready for inspection. Without limiting the provisions of clause 9.1 of these Conditions, the Inspector may inspect and reject any of the Goods at any earlier stage in course of manufacture or production. If any of the Goods are not presented for inspection at the time notified in accordance with this Clause or if the Inspector rejects any of the Goods, such

that the Inspector is required to undertake additional inspections, Crown Agents shall be entitled, in addition to any other remedies available under the Contract, to deduct from the Supplier's invoices any additional costs of inspection.

- 9.5 Where inspection of any of the Goods, whether completed or in course of manufacture or production, is carried out at the Supplier's works (or, where applicable, at sub-contractor's works), the Supplier shall ensure that the Inspector has full and free access to the said works as and when required for that purpose, and shall provide the Inspector at no cost to the Inspector or Crown Agents with reasonable accommodation and facilities as may be required by him. The Supplier shall also supply, free of charge, all appliances, materials and labour required for inspection purposes.
- 9.6 The Inspector shall not be required to sign any form of waiver or indemnity concerning his presence or actions at the place of inspection.
- 9.7 If any of the Goods, whether completed or in course of manufacture or production, are rejected by the Inspector, they shall be marked or segregated in such manner satisfactory to the Inspector as to ensure their subsequent identification as rejected work.
- 9.8 When independent tests and analyses, in addition to those made by the Inspector on the Supplier's or sub-contractor's premises are considered necessary, such tests or analyses will be made by persons appointed by Crown Agents or the Principal. In the event of failure of the Goods during independent tests and analyses, the Supplier shall bear the cost of supply and transport of samples and the costs of such additional tests and analyses will be borne by the Supplier.
- 9.9 The Supplier shall not send any of the Goods forward for shipment or report the Goods ready for despatch until the

Inspector shall have given his consent by means of the issue of an Inspection Release Note. Such consent shall not release the Supplier from any of his liabilities under the Contract. If delivery of the Goods (including completion of associated services) is not completed by the due date fixed by the Contract by reason of any default of the Supplier then in addition to any liability which may arise to pay liquidated damages, Crown Agents shall be entitled to deduct from the Supplier's invoices, any additional costs of inspection caused by the default of the Supplier.

- 9.10 Notwithstanding any inspection or testing of the Goods, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and Crown Agents shall have the right to conduct further inspections and tests at the Supplier's cost after the Supplier has carried out its remedial actions.

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## 10. DOCUMENTATION

- 10.1 All documentation required in respect of the Goods in accordance with the provisions of the applicable Incoterm shall be provided at the time and in such manner specified in the Contract and/or in accordance with such instructions regarding despatch, invoicing and documentation issued by Crown Agents from time to time.
- 10.2 If an export licence is required from the country of manufacture or export, the provision and costs of provision of such a licence shall be the responsibility of the Supplier.
- 10.3 Notwithstanding the provisions of Incoterms® 2020 and/or the Contract of Carriage entered into by the Supplier in connection with the delivery of the Goods, the Supplier shall promptly pay any demurrage, per diem and detention

charges and any similar charges levied by the carrier and/or by any port authority where such charges are levied as a result of the Supplier's late or non-compliant submission of relevant documentation or where such charges are levied as a result of the Supplier's breach of the Supplier's obligations pursuant to the Contract or as a result of the Supplier's negligence.

- 10.4 Without prejudice to clause 10.3, should Crown Agents or the Principal incur any demurrage costs or other charges referred to in clause 10.3 or incur any expense in connection with dealing with any claim in connection with such charges, Crown Agents shall have the right to recover such charges and expenses from the Supplier as a debt or by way of deductions from any payment owed to the Supplier.

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## 11. DELIVERY

- 11.1 Delivery of the Goods shall be made by the Supplier in the manner and at the time specified in the Contract. Time of delivery is of the essence.
- 11.2 The Supplier shall provide reports on the progress of the Contract in such form as may be required by Crown Agents. If, at any time during the performance of the Contract, the Supplier is unable to deliver the Goods within the time or times specified in the Contract, the Supplier shall immediately give notice of the delay in writing to Crown Agents with an explanation of the cause. The submission and acceptance of these reports and/or notices shall not prejudice the rights of the Principal and/or Crown Agents under the Contract including, without limitation, those rights under clauses 15 and 17.
- 11.3 For the purposes of the Contract, the international rules for the interpretation of trade terms prepared by the International Chamber of Commerce (Incoterms® 2020) shall apply but where they conflict with the express provisions of the Contract, the express provisions shall prevail.

- 11.4 Delivery of the Goods, or any instalment thereof, shall be considered complete only when all the conditions of the Contract have been completed, including when all documentation required to be provided by the Supplier has been received by Crown Agents at the relevant Crown Agents' office referred to in the Contract.

- 11.5 Notwithstanding clause 7.5, if the Goods are not delivered in accordance with the Contract, the Supplier shall be liable for any loss or expense, arising as a result. Neither Crown Agents nor the Principal shall be liable for any expenses arising from non-delivery or delay in delivery due to lack of shipping opportunities or any other cause, and the Goods shall remain at the risk and expense of the Supplier until delivery has been completed in accordance with the Contract.

- 11.6 Notwithstanding the provisions of Incoterms® 2020, where the Supplier is responsible for insurance for the Goods, the Goods shall, unless otherwise stated in the Special Conditions to the Contract, be insured with the Principal named as the beneficiary and Crown Agents as the loss payee. Unless otherwise agreed in writing by Crown Agents, the insurance shall be for 110 per cent of the Contract Price and in accordance with the cover provided by Clauses (A) or (B) of the Institute Cargo Clauses (LMA/IUA) and/or in accordance with cover complying with the Institute War Clauses and/or Institute Strikes Clauses (LMA/IUA). The insurance shall be contracted with a first class underwriters or a first class insurance company, and shall entitle Crown Agents to claim directly from the insurer.

- 11.7 Unless otherwise expressly stated in the Contract, notwithstanding the provisions of Incoterms® 2020 all prices must be exclusive of taxes and duties.

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## 12. INTELLECTUAL PROPERTY RIGHTS

12.1 The Supplier represents and warrants that it has full clear and unencumbered title to the Goods and that at the date of delivery of the Goods it shall have full and unrestricted rights to sell and transfer the Goods to the End-User.

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### 13. USE OF DOCUMENTS, INFORMATION, ETC

13.1 Except with the prior written agreement of Crown Agents, the Supplier shall not disclose the existence of the Contract, or any provision thereof, or any specification, plan, drawing, pattern, sample or information issued or furnished by or on behalf of Crown Agents, to any person, other than a person employed by the Supplier in carrying out the Contract. Disclosure to any such person shall only be to the extent as may be necessary for the purposes of the Contract.

13.2 Except with the prior written agreement of Crown Agents the Supplier shall not make use of any information supplied by Crown Agents or any specification or other thing mentioned in clause 13.1 otherwise than for the purpose of performance of the Contract.

13.3 Specifications, plans, drawings, patterns or samples mentioned in clause 13.1 remains the property of Crown Agents (or the Principal or the End-User as the case may be) and must be returned (with all copies made) to Crown Agents on completion of the Contract.

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### 14. PAYMENT

14.1 The time for payment of the Contract Price after completion of the Supplier's obligations as described in clause 11 in respect of delivery of the Goods, or where part deliveries are indicated in the Contract, in proportion to each part delivery, shall be stated in the Contract. It is Crown Agents' normal practice to use reasonable endeavours to obtain funds from its Principals to settle invoices as

they fall due, but Crown Agents does not itself accept any liability for payment of invoices for Goods under Contracts placed in their capacity as agent for its Principals.

14.2 Should the Contract provide for payment in advance of delivery of the Goods: -

a. Payment shall only be made upon receipt by Crown Agents of a guarantee from a bank acceptable to Crown Agents in the form supplied by Crown Agents which shall provide for an unconditional and irrevocable guarantee of payment on demand, of an amount equal to the amount of the advance payment, or relevant part thereof, in the event of the Supplier's default or breach of the terms of the Contract. All costs associated with the provision of the guarantee shall be for the account of the Supplier;

b. The Goods and all materials from time to time appropriated to the Contract, shall become the property of the Principal, immediately upon payment of any sum under the provisions of this clause or if later, upon the date of purchase or appropriation of such Goods or material by the Supplier. Immediately on purchase of all materials intended for use as the Goods or components thereof the Supplier shall fix thereon the name of the Principal in a conspicuous manner and shall not remove the same without the prior written agreement of Crown Agents. Upon completion of the Goods, all such materials which have not been used for the purpose of the Contract, shall become the property of the Supplier;

c. The Supplier shall, at its own expense and until delivery has taken place in accordance with the Contract, keep the Goods insured. The insurance shall be contracted with a first class underwriters or a first class insurance company, and shall entitle Crown Agents to claim directly from the insurer. Such insurance shall be taken out in an amount equal to the Contract Price of the Goods in respect of which payment has been made, in the currency of the Contract, plus 10 per cent.

d. If the Goods or any part thereof shall be destroyed, damaged or lost, Crown Agents shall on behalf of the Principal receive the sum recovered under the insurance policies and may at its option either:

- (i) apply such sum to reinstating the Goods so damaged, destroyed or lost in accordance with the Contract, or
- (ii) terminate the unperformed balance of the Contract, in which case the Principal shall pay the Supplier such amount as Crown Agents shall consider to be fair and reasonable in all the circumstances.

**14.3** Whenever any sums shall be recoverable from or payable by the Supplier, the sums may be deducted from any sum due to the Supplier, or which may become due under any other contract with the Principal.

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## **15. LIABILITY AND REMEDIES**

**15.1** If the Supplier fails to deliver the Goods by the applicable date, Crown Agents 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 delivery of the Goods which the Supplier attempts to make;
- c. to recover from the Supplier any costs incurred by Crown Agents, the Principal or the End-User in obtaining substitute goods from a third party;
- d. to claim damages for any additional costs, loss or expense incurred by Crown Agents, the Principal or the End-User which are in any way attributable to the Supplier's failure to meet such dates.

**15.2** If the Supplier has delivered Goods that do not comply with any of the conditions in clause 3 and/or any of the guarantees in

clause 7 then, without limiting its other rights or remedies, Crown Agents shall have one or more of the following rights, whether or not the Goods have been accepted:

- 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;
- 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 Crown Agents, the Principal or the End-User in obtaining substitute goods from a third party; and
- f. to claim damages for any additional costs, loss or expenses incurred by Crown Agents, the Principal or the End-User arising from the Supplier's failure to supply the Goods in accordance with the conditions in clause 3 and any of the guarantees in clause 7.

**15.3** The Supplier shall indemnify and keep indemnified Crown Agents and their Principal and the End-User in full against all costs, expenses, damages and losses (whether direct or indirect), including, without limitation, any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by Crown Agents as a result of or in connection with:

- a. any claim made against Crown Agents or against the End-User by a third party for death, personal injury or damage to property arising out of or in connection with, defects in the 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 Crown Agents or against the End-User arising out of, or in connection with, the supply of the Goods, 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; and
- c. any claim made against Crown Agents or against the End-User 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.

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## **16. LIQUIDATED DAMAGES FOR DELAY**

- 16.1** If the Supplier fails to complete delivery within the time or times specified in the Contract, Crown Agents may, at its option, acting on behalf of the Principal, recover from the Supplier as a debt or deduct from any payment owed to the Supplier one per cent of the value of the Goods which are delayed per week by way of liquidated damages up to a maximum of ten per cent of the value of the Goods.
- 16.2** The parties confirm that the sums referred to in clause 16.1 represent a genuine pre-estimate of the Principal's or End-User's loss.
- 16.3** The Supplier shall not be liable to pay liquidated damages pursuant to this clause 16 where delay in delivery of the Goods has been caused by Crown Agents, the End-User or the Principal preventing the Supplier from delivering the Goods.
- 16.4** The Supplier shall not be liable to pay liquidated damages pursuant to this clause 16 where delay in delivery of the Goods is as a result of a Force Majeure event or situation.
- 16.5** Without prejudice to the provisions of clause 11.5, the Supplier shall have no

liability for liquidated damages under this clause 16 in respect of any Contract on FOB/FAS/FCA. terms for any period during which the Goods are packed and ready for despatch but cannot be shipped because of a lack of shipping opportunities or similar cause.

- 16.6** If Crown Agents exercises its rights under clause 16.1, it shall not be entitled to any of the remedies set out in clause 15.1 (b) to (d) inclusive or in clause 15.3 in respect of the Goods' late delivery (but such remedies shall be available in respect of the Goods' condition).
- 16.7** Crown Agents shall have the right to recover or deduct liquidated damages from the Supplier in accordance with this clause 16 notwithstanding the termination of the Contract.

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## **17. TERMINATION**

- 17.1** Without prejudice to any other right or remedy that Crown Agents and/or the Principal may have, Crown Agents may by written notice to the Supplier with immediate effect, terminate the Contract in whole or in part if:
  - a. the Supplier fails to deliver any or all of the Goods within the time or times specified in the Contract;
  - b. the Supplier fails to perform any other obligations under the Contract;
  - c. an order is made or a resolution is passed for the winding up of the Supplier, or an order is made for the appointment of an administrator to manage the affairs, business and property of the Supplier, or such an administrator is appointed, or a receiver is appointed of any of the Supplier's assets or undertaking, or circumstances arise which entitle a court or a creditor to appoint a receiver or manager or which entitle a court to make a winding-up order, or the Supplier takes or suffers any similar or analogous action in consequence of debt, or an

arrangement or composition is made by the Supplier with its creditors or an application to a court for protection from its creditors is made by the Supplier;

- d. the Supplier suspends or ceases, or threatens to suspend or cease, payment of its debts or to carry on all or a substantial part of its business or is unable to pay its debts as they fall due or admits inability to pay its debts;
  - e. the Supplier assigns or sub-contracts any of the rights or obligations of the Contract without the prior written agreement of Crown Agents;
  - f. the Supplier fails to comply within a reasonable time with any notice from Crown Agents requiring him to make good any failure to perform his obligations under the Contract;
  - g. there is any change in the legal personality, nature or control of the Supplier which could, in Crown Agents opinion, affect the liabilities or obligations of the Supplier under the Contract;
  - h. any adverse final judgement is made in respect of any offence relating to the professional conduct of the Supplier;
  - i. the Supplier has, in the opinion of Crown Agents, engaged in a corrupt or fraudulent practice in competing for or obtaining or executing the Contract;
  - j. the Supplier has a conflict of interest as referred to in Clause 20.
- 17.2 Where Crown Agents terminates the Contract in whole or in part for breach or default, Crown Agents may purchase elsewhere goods similar to those in the Contract and the Supplier shall pay Crown Agents any costs over the Contract Price incurred for such goods. The Supplier shall continue performance of that part of the Contract not terminated.
- 17.3 Any provision of the Contract which expressly or by implication is intended to come into or continue in force on or after termination of the Contract including

clauses 1, 2, 6, 7, 8, 12, 13, 15, 16, 17, 19, 20, 21, 22, 23, 25, 26, 27, 28 and 29 shall remain in full force and effect after termination of the Contract.

- 17.4 Termination of the Contract, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.

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## 18. FORCE MAJEURE

- 18.1 For the purposes of this clause, a "Force Majeure event or situation" is an event or situation that is beyond the control of the Supplier that is not foreseeable, is unavoidable, and its occurrence is not due in whole or in part to the negligence or lack of preparation or lack of care on the part of the Supplier.
- 18.2 The Supplier shall not be liable for failure to perform the Contract to the extent that such failure is as a direct result of a Force Majeure event or situation provided the Supplier notifies Crown Agents in writing within five (5) days of such event or situation arising specifying the nature and extent of the event or situation and the cause thereof. Unless otherwise directed by Crown Agents in writing, the Supplier shall use all reasonable endeavours to mitigate the effect of the Force Majeure event or situation to carry out its obligations under the Contract in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.
- 18.3 The Supplier cannot claim relief if the Force Majeure event or situation is attributable to the Supplier's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure event or situation.
- 18.4 The Supplier cannot claim relief if the Force Majeure event or situation is one where a reasonable supplier should have foreseen and provided for the cause in question.

18.5 In case of dispute as to whether or not a Force Majeure event or situation has arisen, Crown Agents' opinion shall be final.

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## 19. NOTICES

19.1 A notice or other communication given to a party under this Contract shall be in writing and shall be given in any manner set forth below to the following address:

a. For Crown Agents:

to the physical address, fax number or e-mail address provided by Crown Agents in the Contract documentation

b. For the Supplier:

to either the physical address, fax number or e-mail address provided by the Supplier in any bid, quote or Contract Acknowledgement sent to Crown Agents.

19.2 If a notice or other communication has been properly sent or delivered in accordance with this clause it will be deemed to have been received as follows:

- a. if delivered by commercial courier, on the date and at the time of signature of the courier's receipt;
- b. if sent by facsimile transmission, at the time of transmission (it being agreed that the burden of proving receipt may be met solely by a transmission report generated by the sender's facsimile machine); or
- c. if sent by e-mail, at the time of transmission (it being agreed that the burden of proving receipt will be on the sender and will not be met solely by a read receipt or sent items report generated by the sender's computer).

19.3 If deemed receipt is not within business hours meaning (unless otherwise agreed in writing by the Supplier and Crown Agents) 9.00 am to 5.30 pm Monday to Friday (on a day that is not a public holiday in the

place of receipt), the notice or other communication is deemed to have been received when business next starts in the place of receipt.

19.4 For the purposes of this clause all times are to be read as local time in the place of deemed receipt.

19.5 Either party may by notice to the other change the address, facsimile number or e-mail address details at which notices or other communications are to be given to it.

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## 20. CONFLICT OF INTEREST

20.1 Neither the Supplier nor any of the Supplier's officers, employees, agents or sub-contractors shall engage in any personal, business or professional activity which conflicts or could conflict with any of the Supplier's obligations under the Contract.

20.2 Without prejudice to the provisions of clause 17.1, the Supplier shall notify Crown Agents immediately of any actual or potential conflict together with recommendations as to how the conflict can be avoided.

20.3 The Supplier shall ensure that its officers, employees, agents and sub-contractors comply with provisions of this clause

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## 21. CORRUPTION AND FRAUDULENT PRACTICES

21.1 The Government of Japan requires that, under Contracts funded by the Grant, bidders and Suppliers observe the highest standard of ethics during the procurement and execution of such Contracts. In this regard the Government of Japan shall demand that the End-User and the Agent shall reject a bid if it determines that the bidder has engaged in corrupt and fraudulent practices in competing for the Contract in question. The Government of Japan shall recognise a Supplier as ineligible, for a period determined by the

Government of Japan, to be awarded a Contract funded by the Grant if it at any time determines that the Supplier has engaged in corrupt and fraudulent practices in competing for, or in executing any other contracts funded by the Grant or other Japanese Official Development Assistance.

21.2 When the authorities concerned of the Government of Japan decide to impose against a Supplier such administrative sanctions as debarment, exclusion of goods manufactured etc, from Japanese government procurement, the Government of Japan may ask the End-User and the Agent to exclude the Goods manufactured by the sanctioned Supplier from the procurement under the Grant, for the period of sanctions by such authorities concerned of the Government of Japan.

21.3 The Supplier warrants that it has not and shall not:

- a. offer or agree to give any person working for or engaged by the Principal or the End-User or Crown Agents any gift or other consideration, which could act as an inducement or a reward for any act or failure to act connected to the Contract, or any other agreement with the Supplier, including the award of the Contract to the Supplier and any of the rights and obligations contained within it; nor
- b. enter into the Contract if it has knowledge that, in connection with it, any money has been, or will be, paid to any person working for or engaged by the Principal or the End-User or Crown Agents by or for the Supplier, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to Crown Agents and accepted by Crown Agents in writing before execution of the Contract.

21.4 The Supplier shall if requested by Crown Agents, make a declaration in a form

acceptable to Crown Agents that it has not made any bribe or facilitation payment on Crown Agents' behalf or on behalf of the End-User or the Principal.

21.5 If the Supplier (including any Supplier employee, subcontractor or agent, in all cases whether or not acting with the Supplier's knowledge) breaches:

- a. any of the provisions of this clause 21; or
  - b. any of the provisions of the Bribery Act 2010, or any similar legislation in relation to this Contract or any contract with the Principal or Crown Agents,
- Crown Agents may terminate the Contract by written notice with immediate effect.

21.6 Any termination under clause 21.5 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to Crown Agents, the Principal or the End-User.

21.7 Notwithstanding clause 29 (Dispute Resolution), any dispute relating to:

- a. the interpretation of clauses 18.5, 21.3 to clause 21.7 inclusive; or
  - b. the amount or value of any gift, consideration or commission
- shall be determined by Crown Agents and the decision shall be final and conclusive.

21.8 Crown Agents will not make payments to bank accounts in countries where the Supplier is not domiciled unless the Supplier provides written evidence satisfactory to Crown Agents that the payment is not contrary to the taxation laws and/or foreign exchange controls of the Supplier's country of domicile. Crown Agents reserves the right to refuse to make payments to such bank accounts in any event.

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## 22. NO WAIVER

22.1 No failure or delay by Crown Agents or their Principal or the End-User to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. 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.

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### 23. ENTIRE AGREEMENT

23.1 The Contract (together with the documents referred to in it) constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in them and supersedes any previous agreement or understanding between the parties relating to such matters. Each of the parties represents and agrees that in entering into the Contract it does not rely on and will have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to the Contract or not) other than as expressly made in the Contract. No variation of the Conditions shall be effective unless expressly agreed in writing by Crown Agents and the Supplier.

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### 24. VARIATION

24.1 No variation in or modification of the terms of the Contract shall be made except by written amendment signed by both Crown Agents and the Supplier.

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### 25. SEVERANCE

25.1 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity

and enforceability of the other provisions of the Contract shall not be affected.

25.2 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 valid, legal and enforceable.

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### 26. ASSIGNMENT AND SUB-CONTRACTING

26.1 The Supplier shall not assign or sub-contract in whole, or in part, or otherwise dispose of any interest in the Contract, without the prior agreement in writing of Crown Agents.

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### 27. THIRD PARTY RIGHTS

27.1 The parties to the Contract agree that the End-User is intended to benefit from and enforce the terms and conditions of the Contract as if it were the Principal save in respect of the terms and conditions set out in clause 11.6 and save that only one of Crown Agents, the Principal or the End-User may recover damages from the Supplier in respect of a specific loss. The consent of the End-User is not required to rescind or vary the Contract at any time. If for any reason, an End-User is prevented from enforcing the Contract in the manner envisaged by this clause, Crown Agents shall have the right, but not the obligation, to enforce the relevant terms and conditions of the Contract against the Supplier.

27.2 Except as expressly provided elsewhere in the Conditions, a person who is not a party to the Contract shall not have any rights under Article 537 of the Civil Code of Japan to enforce any term of this agreement, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Article.

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## **28. SET OFF**

- 28.1 The Supplier shall not be entitled to assert any credit, set-off or counterclaim against Crown Agents, the Principal or the End-User in order to justify withholding payment of any such amount in whole or in part. Crown Agents, the End-User and the Principal may, without limiting its other rights or remedies, set off any amount owing to them by the Supplier against any amount payable by them to the Supplier.
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## **29. DISPUTE RESOLUTION**

- 29.1 In the case of any dispute or claim in relation to this Contract, the parties shall use their reasonable efforts to negotiate in good faith and settle amicably such dispute or claim through negotiation. If any such dispute or claim cannot be settled within 28 days, either party may commence court proceedings in relation to the dispute or claim pursuant to clauses 29.2 and 29.3 below.

### **29.2 Governing Law**

This 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 the law of Japan, excluding the United Nations Convention on Contracts for the International Sale of Goods.

### **29.3 Jurisdiction**

Each party irrevocably agrees that the Tokyo District Court shall have exclusive jurisdiction as the court of the first instance to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).