Construction Industry Development Board

The Supply Contract

2nd Edition September 2005

(Second Edition of CIDB document 1021)

Supply Contract

A contract between

....

....

....

and

....

....

....

for

....

....

....

Notes about this contract are printed in boxes like this one. They are not part of the contract.

Based on the
NEC Engineering and Construction Contract 2nd Edition (November 1995),
NEC Professional Services Contract 2nd Edition June 1998, and
NEC Engineering and Construction Short Contract, 1st Edition July 1999

PART C1: AGREEMENTS AND CONTRACT DATA

Form of Offer and Acceptance

Form of Offer and Acceptance

The *Purchaser*, identified in the acceptance signature block, has solicited offers to enter into a contract for the procurement of:

……………………………………………….
The tenderer, identified in the offer signature block, has examined the documents listed in the tender data and addenda thereto as listed in the tender schedules, and by submitting this offer has accepted the conditions of tender. (Delete paragraph if not required)

By the representative of the tenderer, deemed to be duly authorized, signing this part of this form of offer and acceptance, the tenderer offers to perform all of the obligations and liabilities of the *Supplier* under the contract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the conditions of contract identified in the Contract Data.

THE OFFERED TOTAL OF THE PRICES INCLUSIVE OF VALUE ADDED TAX IS

……………………………………………….
……………………………………………..……………………..Rand (in words); R
………..……………….(in figures)

> **Enter an amount above only if the total of the Prices column in the Price List includes all the work included in the offer.**

This offer may be accepted by the *Purchaser* by signing the acceptance part of this form of offer and acceptance and returning one copy of this document to the tenderer before the end of the period of validity stated in the tender data, whereupon the tenderer becomes the party named as the *Supplier* in the conditions of contract identified in the Contract Data.

Signature(s)

_____   --

Name(s)

_____   --

Capacity

_____   --

for   the
tenderer

_____
(Name and address of organization)

Acceptance

By signing this part of this form of offer and acceptance, the *Purchaser* identified below accepts the tenderer's offer. In consideration thereof, the employer shall pay the *Supplier* the amount due in accordance with the conditions of contract identified in the contract data. Acceptance of the tenderer's offer shall form an agreement between the *Purchaser* and the tenderer upon the terms and conditions contained in this agreement and in the contract that is the subject of this agreement.

The terms of the contract, are contained in:

> Part C1 Agreements and contract data, (which includes this agreement)
> Part C2 Pricing data
> Part C3 Scope of work.

and drawings and documents or parts thereof, which may be incorporated by reference into Parts C1 to C3 above.

Deviations from and amendments to the documents listed in the tender data and any addenda thereto as listed in the tender schedules as well as any changes to the terms of the offer agreed by the tenderer and the employer during this process of offer and acceptance, are contained in the schedule of deviations attached to and forming part of this agreement. No amendments to or deviations from said documents are valid unless contained in this schedule.

The tenderer shall within two weeks after receiving a completed copy of this agreement, including the schedule of deviations (if any), contact the *Purchaser's* agent (whose details are given in the contract data) to arrange the delivery of any bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the conditions of contract identified in the contract data. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.

Notwithstanding anything contained herein, this agreement comes into effect on the date when the tenderer receives one fully completed original copy of this document, including the schedule of deviations (if any). Unless the tenderer (now *Supplier)* within five working days of the date of such receipt notifies the *Purchaser* in writing of any reason why he cannot accept the contents of this agreement, this agreement shall constitute a binding contract between the parties.[1]

Signature(s)

Name(s)

Capacity

for the
Purchaser

(Name and address of organization)

Name and
signature of
witness   Date

Upon acceptance by the *Purchaser* of the *Supplier's* offer, a contract will come into existence.

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[1] As an alternative, the following wording may be used:
Notwithstanding anything contained herein, this agreement comes into effect two working days after the submission by the *Purchaser* of one fully completed original copy of this document including the schedule of deviations (if any), to a courier-to-counter delivery / counter-to-counter delivery / door-to-counter delivery /door-to-door delivery /courier service (delete that which is not applicable), provided that the employer notifies the tenderer of the tracking number within 24 hours of such submission. Unless the tenderer (now *Supplier)* within seven working days of the date of such submission notifies the *Purchaser* in writing of any reason why he cannot accept the contents of this agreement, this agreement shall constitute a binding contract between the parties.

Schedule of Deviations

Notes:

1. The extent of deviations from the tender documents issued by the *Purchaser* before the tender closing date is limited to those permitted in terms of the conditions of tender.
2. A tenderer's covering letter shall not be included in the final contract document. Should any matter in such letter, which constitutes a deviation as aforesaid, become the subject of agreements reached during the process of offer and acceptance, the outcome of such agreement shall be recorded here.
3. Any other matter arising from the process of offer and acceptance either as a confirmation, clarification or change to the tender documents and which it is agreed by the Parties becomes an obligation of the contract shall also be recorded here.
4. Any change or addition to the tender documents arising from the above agreements and recorded here, shall also be incorporated into the final draft of the Contract.

1   Subject _____

Details _____

2   Subject _____

Details _____

3   Subject _____

Details _____

4   Subject _____

Details _____

By the duly authorised representatives signing this schedule of deviations, the *Purchaser* and the tenderer agree to and accept the foregoing schedule of deviations as the only deviations from and amendments to the documents listed in the tender data and addenda thereto as listed in the tender schedules, as well as any confirmation, clarification or changes to the terms of the offer agreed by the tenderer and the Purchaser during this process of offer and acceptance.

It is expressly agreed that no other matter whether in writing, oral communication or implied during the period between the issue of the tender documents and the receipt by the tenderer of a completed signed copy of this Agreement shall have any meaning or effect in the contract between the parties arising from this agreement.

Contract Data

Part one - Data provided by the *Purchaser*
Statements given in all contracts

1   General

- The *conditions of contract* are the core clauses and the clauses for main option
  _____, and secondary options _____ of The CIDB
  Supply Contract, 2nd edition September 2005 attached to this Contract Data[2].

- The *goods* are
  _____

- The *Purchaser* is

  Name
  _____
  Address
  _____

- The *Adjudicator* is

  Name
  _____
  Address
  _____

  Tel No.   _____ Fax No._____
  E mail   _____

- The Goods Information is in the document called "Scope of Work" and in the
  documents and drawings referred to by it.

- The Terms of Delivery are:
  Term abbreviation: _____ Location: _____

NOTE *(delete this note and its box once complied with)* The Terms of Delivery will be selected from the latest version of INCOTERMS published by the International Chamber of Commerce in Paris. This determines each Party's costs, risks and insurance requirements incidental to the delivery from *Supplier* to *Purchaser*. There are four groupings of Incoterms (1990), thus:

Group	Category	Term abbreviations
E	departure	EXW
F	main carriage unpaid	FCA, FAS, FOB
C	main carriage paid	CFR, CIF, CPT, CIP
D	arrival	DAF, DES, DEQ, DDU, DDP

- The *language of this contract* is English.

- The *law of the contract* is the law of the Republic of South Africa subject to the
  jurisdiction of the courts of the Republic of South Africa.

- The *period for reply* to a communication is _____

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[2] Or available from (name of CIDB office and contact person, tel no etc.) _____

2   The Parties main responsibilities

- The *Supplier* provides the following additional documentation at the time of delivery:

    1   _____

    2   _____

3   Time

- The *starting date* is _____

NOTE: This date should be the later of the Contract Date, or the date of signing of the Form of Agreement, or the date of opening the Letter of Credit, or the date of confirmation of the Letter of Credit, as appropriate.

- The *delivery date* is stated in data for the selected main option

4   Testing and Defects

- The *warranty period* is _____ weeks after Delivery.

- The *defect correction period* is _____ weeks.

5   Payment

- The *method and conditions of payment* are:

_____--

NOTES: *(delete these notes and the box once complied with)*
    For foreign supply, one of the following could be used:
- Open account
- Bank collections
- Letters of Credit
(Users should seek appropriate guidance before deciding which method to use and check the position relevant to exchange control regulations. Extensive details required for each method could also be given here or cross referenced to a separate Appendix.)

For local supply, the following examples are given:
- Electronic payment in full to *Supplier*'s nominated South African bank account within 30 days of receipt of an acceptable Tax Invoice, or
- Electronic payment in full less 2.5% early settlement discount if paid to *Supplier*'s nominated South African bank account within 7 days of receipt of an acceptable Tax Invoice.
(Note that the second statement implies that, if payment is not received by the Supplier within the stated 7 days, the Supplier is due the amount in full and would be entitled to Invoice for the early settlement discount as well as for interest on late payment at the rate stated below.)

- The interest on late payment is _____ % per complete week of delay.

Enter an interest rate only if a rate of 0.5% per complete week of delay is less than the current commercial interest rate.

- The *currency of this contract* is _____

6   Compensation events

If there are additional compensation events
- These are additional compensation events:

1   _____

2   _____

8   Liabilities indemnities and insurance

- The *Supplier* is not liable to the *Purchaser* for loss of or damage to the *Purchaser*'s property for any amount in excess of : _____

- The *Supplier*'s liability to the *Purchaser* arising after the end of the *warranty period* and after low performance and delay damages due have been paid (subject to the exceptions) is limited to: _____

- The period from the end of the *warranty period* after which the *Supplier* has no further liability to the *Purchaser* is _____

- The amount of cover for the replacement of Materials provided by the *Purchaser* is _____

NOTE *(delete this note and its box once complied with)* For the Optional statements which follow, first delete those which are not to be used, then delete the **"If …. "** heading for those which are to be used.

If the *Supplier* is to provide additional insurances
- The *Supplier* provides these additional insurances

1   Insurance against: _____

         The cover is _____-

2   Insurance against _____

         The cover is _____

9   Termination and disputes

- The *tribunal* is _____

If the *tribunal* is arbitration
- The arbitration procedure is _____

Statements for selected option clauses

NOTE *(delete this note and its box once complied with)*
For the optional statements, which follow, delete those that are not to be used.

Option A:
- If the Terms of Delivery require delivery to the *final destination*, the *final destination* is _____

- The *delivery date* is:

Item (from Price List)	delivery date

> NOTE: The *delivery date* may be specified for a single delivery / shipment, or for several partial deliveries / shipments, for a specific date, or for a range of acceptable delivery periods.

Option G:

- If the Terms of Delivery require delivery to the *final destination*, the *final destination* is stated on each Batch Order.

- The *delivery date* is stated in each Batch Order

- The *end date* is _____

Option X1

- The amount of the performance bond is _____ (in words) (_____)

Option X3

- The *Purchaser* pays for the items listed below in the currencies and at the Bank stated *(The following schedule may need to be expanded and provided as an Appendix in cases where complex currency arrangements apply)*

Items (from Price List)	Currency	Bank	Maximum payment

- The *exchange rates* are those published in _____ on _____ (date).

Option X5

- The proportions used to calculate the Price Adjustment Factor are

Proportion	linked to the index for	prepared by
0.		
0.		
0.		
0.	non - adjustable	
1. 00		

- The *base date* for indices is _____

Option X7

- The *designed working life* is _____ years from the end of the *warranty period*

Option X8

- Delay damages are _____ per day

Option X9

- The amounts for low performance damages are

Amount	Performance level
	for
	for
	for
	for

Option X11

- The *Purchaser's Representative* is

Name

_____
Address

_____

Tel No.   _____ Fax No.   _____ E mail_____

Option X12

- The authority of the *Purchaser*'s *Representative* is _____

- The *Supplier* is to submit a first programme for acceptance within _____ weeks of the Contract Date.

- The *Supplier* submits revised programmes at intervals no longer than _____ weeks.

Option X13

- The quantity discount and quantity ranges are:

Quantity range (units)		*Supplier*'s quantity discount
less than		zero
from	to	%
from	to	%
greater than		%

Option Z

- The *additional conditions of contract* are:

Z1 _____

Contract Data

Part two - Data provided by the *Supplier*

Statements given in all contracts

1   General

- The *Supplier* is

  Name

  _____
  Address

  _____

  a company / close corporation / partnership duly incorporated in accordance with the laws of the Republic of _____ *(delete complete as applicable)*

- The key people are

  (1) Name   _____
  Job
  Responsibilities   _____

  Qualifications   _____
  Experience   _____

  (2) Name   _____
  Job
  Responsibilities   _____

  Qualifications   _____
  Experience   _____

  (add further names as required)

6   Compensation events

- If a compensation event affects the *goods* and ancilliary services provided by the *Supplier*, the percentage for overheads and profit added to the *Supplier*'s payments

  - for people is: _____, and
  - for Materials, Equipment and work done by Subcontractors is: _____

  If the *Supplier* is to provide Goods Information
- The *Supplier's* Goods Information is in _____

NOTE *(delete this note and its box once complied with)*
For the optional statements which follow, delete those which are not to be used.

Option A

- The Price List is in _____

- The tendered total of the Prices is _____ (excluding VAT) (in words) _____

    If the *Supplier* is to decide the *delivery date* for the whole of the *goods*
    - The *delivery date* for the whole of the *goods* is_____

Option G

- The Price List is in _____

Option X12

If a programme is to be identified in the Contract Data
- The programme identified in the Contract Data is _____

PART C2: PRICING DATA

Price List -- Type 1

For *goods* offered from local suppliers and / or with inclusive prices

Pricing instructions

This price list has columns for quantity, rate and price. Entries in these columns are made as follows:

If the *Supplier* is to be paid an amount for the *goods* (and services), which is a fixed price for an item or a fixed price for each of a series of items, the tendering supplier enters the amount in the price column only, the other two columns being left blank.

If the *Supplier* is to be paid an amount for the *goods* (and services) which is the unit rate for each item multiplied by the quantity of the item supplied, (i.e. a 'Bill of Quantities' arrangement) - the tendering supplier enters the rate which is then multiplied by the quantity (which has been entered either by the *Supplier* or by the *Purchaser*) to produce the Price which is also entered.

If the *Supplier* is to be paid an amount for an item of the *goods* (or services) which is the rate multiplied by the quantity supplied - whatever that quantity turns out to be (i.e. a 'schedule of rates' arrangement) - the tendering supplier enters the rate only, the other two columns being left blank. The tendering supplier's offer cannot include a total of the prices which covers all the items which the *Supplier* has to supply if any of the supply is dealt with using items with a rate only. Rate only entries must not be made for work covered by other items.

Price List

Item	Description of the *goods* (and services)	Quantity	Rate	Price
Total (if applicable)				

Signature of tenderer: _____

Note: In case of discrepancy between unit rate and total, the unit rate shall prevail.

Price List -- Type 2

For *goods* offered from abroad

Pricing instructions

If the *Supplier* is to be paid an amount for the *goods* and services which is a fixed price for an item or a fixed price for each of a series of items, the tendering supplier enters the amount in the price column (Col 8) only, the other columns being left blank. This fixed price will be relative to the Terms of Delivery code (FOB, CIF, DDP etc.) stated in the Contract Data.

If the *Supplier* is to be paid an amount for the *goods* and services which is the unit rate for each item multiplied by the quantity of the item supplied, (i.e. a 'Bill of Quantities' arrangement) - the tendering supplier enters the rate which is then multiplied by the quantity (which has been entered either by the *Supplier* or by the *Purchaser*) to produce the Price which is also entered in column 8. If the goods are supplied FOB (port) enter the rate in column 4 only. If DDP applies enter rates in columns 4, 5, 6 and 7 and calculate the Price by multiplying the rate in column 7 by the quantity.

If the *Supplier* is to be paid an amount for an item of the *goods* and services which is the rate multiplied by the quantity supplied - whatever that quantity turns out to be (i.e. a 'schedule of rates' arrangement) - the tendering supplier enters the relevant rates only, the "quantity" and "Price" columns being left blank. The tendering supplier's offer cannot include a total of the prices which covers all the items which the *Supplier* has to supply if any of the supply is dealt with using items with a rate only. Rate only entries must not be made for work covered by other items.

Price List

1	2	3	4	5	6	7	8
Item	Description of the *goods* (& services if applicable)	Quantity	Unit rate FOB or FCA port or place of loading[3]	Unit rate[4] CIF port of entry or CIP named place[5]	Cost of importation[6].	Unit rate delivered to *final destination*	Price of the *goods* / services
Total (if applicable)							

Signature of tenderer: _____
Note: In case of discrepancy between unit rate and total, the unit rate shall prevail.

---

[3] Specify port or place.
[4] Currencies to be used in accordance with Conditions of Tender.
[5] Specify port of entry (CIF) or specify border point or place of destination (CIP).
[6] This would include wharfage, landing charges, customs duties and import surcharge

Pro forma Batch Order

For use with Option G only

Batch Order No.		Contract No.	

To the *Supplier*			
Tel		Fax		E mail:	

Please supply the following Batch in accordance with the above referenced contract which includes the Data stated in this Batch Order

Goods & services selected from the Price List for this Batch Item Description	Unit	Qty	Rate	Price
Total for this Batch Order				

The *final destination* is	

The *delivery date* is	

Amplify the Goods Information, if necessary, regarding anything to be provided by either Party to the other, and any particular plans or interfaces for this Batch.

The *Purchaser* is represented for this Batch Order by	
Address (if different to that given above)	
Tel		Fax		E mail:	

Accepted by the *Supplier* (Print name)	Signed:
Date	

PART C3: SCOPE OF WORK

PURCHASER'S GOODS INFORMATION

1 DESCRIPTION OF THE *GOODS* AND *SERVICES*

> The Goods Information should be a complete and precise statement of the *Purchaser's* requirements. If it is incomplete or imprecise there is a risk that the *Supplier* will interpret it differently to the *Purchaser's* intention. Information provided by the *Supplier* should be listed in the Goods Information only if the *Purchaser* is satisfied that it is required, it is part of a complete statement of the *Purchaser's* requirements and is consistent with the other parts of the Goods Information.

General description of the *goods*

1 The *goods* are

(Repeat the description given in Contract Data)

2 MANAGEMENT AND START UP

The *Supplier* shall:

1

3 ENGINEERING, AND THE *SUPPLIER'S* DESIGN

3.1 Introduction and the *Purchaser's* design

Design services & activity matrix

1 The design of the *goods* is generally being undertaken as follows:

Design stage: Undertaken by:
Concept, feasibility and overall process

4 PACKING, TRANSPORT AND DELIVERY / OFFLOADING

4.1 Packing

The *Supplier* shall

Packing and marking

1

5 INCIDENTAL SERVICES

NOTE: Typically the services would be provided by the Supplier ancillary to sale of the goods. They could include installation, commissioning, provision of technical assistance, training and software implementation, transportation and insurance

The *Supplier* shall:

Liaison with local authorities   1

2

6 SPECIFICATIONS AND DRAWINGS

6.1 Specifications

Particular specifications provided by the *Purchaser*

List of standardised specifications

Variations to standardised specifications

6.2 Drawings

List the drawings that apply to this contract.

Drawing number	Revision	Title

Conditions of contract

CONTENTS

CORE CLAUSES

1   General

Actions   **10**
                             10.1   The *Purchaser* and the *Supplier* shall act as stated in this contract and in a spirit of mutual trust and co-operation.

Identified and   **11**
defined terms   11.1   In the *conditions of contract*, terms identified in the Contract Data are in *italics,* and defined terms have capital initials.

                             11.2   (1) The Parties are the *Purchaser* and the *Supplier.*

                             (2) Others are people or organisations who are not the *Purchaser*, the *Adjudicator*, the *Supplier* or any employee, subcontractor or supplier of the *Supplier*.

                             (3) The Contract Date is the date when this contract came into existence as determined in accordance with the *law of the contract*.

                             (4) To Provide the Goods means to do the work necessary to provide the *goods* in accordance with this contract including all incidental work, services and actions which this contract requires.

                             (5)   Goods Information is information which specifies and describes the *goods* and services ancillary to the supply of the *goods*, or states any constraints on how the *Supplier* Provides the Goods and is either

                             • in the documents which the Contract Data states it is in, or
                             • in an instruction given in accordance with this contract.

                             (6)   The Terms of Delivery are the trade terms stated in the Contract Data selected from the edition applicable at the Contract Date of INCOTERMS published by the International Chamber of Commerce, Paris.

                             (7) The Delivery Date is the *delivery date* stated in the Delivery Schedule unless later changed in accordance with this contract.

                             (8) Materials are items to be included in the *goods.*

                             (9) Equipment is items provided by the *Supplier*, used by the *Supplier* to Provide the Goods and not included in the *goods*.

                             (10) A Defect is
                             • a part of the *goods* or services ancillary to the supply of the *goods* which is not in accordance with the Goods Information, or
                             • a part of the *goods* designed by the *Supplier* which is not in accordance with the applicable law, or the *Supplier*'s design which has been accepted by the *Purchaser.*

Interpretation and the law	**12**
	12.1 When a term from INCOTERMS is used in this contract, the rules and definitions applicable to that term in INCOTERMS are deemed incorporated into this contract.
	12.2 This contract is governed by the *law of the contract*.
Communications	**13**
	13.1 Each communication which this contract requires has effect when it is received in a form that can be read, copied and recorded at the last address notified by the recipient for receiving communications. Writing by the *Purchaser* and the *Supplier* is in the *language of this contract.*
	13.2 If this contract requires the *Purchaser* or the *Supplier* to reply to a communication, unless otherwise stated in this contract, the responder replies within the *period for reply*.
	13.3 The *Purchaser* replies to a communication submitted or resubmitted by the *Supplier* to the *Purchaser* for acceptance. If the reply is not acceptance, the *Purchaser* states reasons and the *Supplier* resubmits the communication within the *period for reply* taking account of these reasons. A reason for withholding acceptance is that more information is needed in order to assess the *Supplier's* submission fully.
The *Purchaser's* authority and delegation	**14**
	14.1 The *Purchaser* may give an instruction to the *Supplier* which changes the Goods Information, the Terms of Delivery or the *final destination*.
	14.2 The *Purchaser's* acceptance of a communication from the *Supplier* or of the *Supplier*'s work or the *goods* does not change the *Supplier's* responsibility to Provide the Goods or the *Supplier*'s liability for the *Supplier*'s design.
	14.3 The *Purchaser* after notifying the *Supplier*, may delegate any of the *Purchaser*'s actions and may cancel any delegation. A reference to an action of the *Purchaser* in this contract includes an action by the *Purchaser*'s delegate.
Early warning	**15**
	15.1 The *Supplier* and the *Purchaser* give an early warning by notifying the other as soon as either becomes aware of any matter which could

- increase the total of the Prices,
- delay delivery, or
- impair the performance of the *goods* in use.

The *Supplier* and the *Purchaser* co-operate in making and considering proposals for how the effect of each matter which has been notified as an early warning can be avoided or reduced.

15.2   Either the *Purchaser* or the *Supplier* may instruct the other to attend an early warning meeting. Each may instruct other people to attend if the other agrees.

15.3   At an early warning meeting those who attend co-operate in

- making and considering proposals for how the effect of each matter which has been notified as an early warning can be avoided or reduced,
- seeking solutions that will bring advantage to all those who will be affected, and
- deciding upon actions which they will take and who, in accordance with this contract, will take them.

15.4 The *Purchaser* records the proposals considered and decisions taken at an early warning meeting and gives a copy of the record to the *Supplier*.

Ambiguities and Inconsistencies

16

16.1 The *Purchaser* or the *Supplier* notifies the other as soon as either becomes aware of an ambiguity or inconsistency in or between the documents which are part of this contract. The *Purchaser* gives an instruction resolving the ambiguity or inconsistency.

Health and safety

17

17.1 The *Supplier* acts in accordance with the health and safety requirements stated in the Goods Information.

Illegal and impossible requirements

18

18.1 The *Supplier* notifies the *Purchaser* as soon as the *Supplier* becomes aware that the Goods Information requires the *Supplier* to do anything which is illegal or impossible. If the *Purchaser* agrees that it is illegal or impossible, the *Purchaser* gives an instruction to change the Goods Information appropriately.

2   The Parties' main responsibilities

The *Purchaser*'s obligations

20

20.1 The *Purchaser* provides information, services and things that this contract requires the *Purchaser* to provide and provides them as stated in this contract.

20.2 The *Purchaser* takes over the *goods* from the *Supplier* in accordance with the Terms of Delivery.

The *Supplier*'s obligations

21

21.1 The *Supplier*

- Provides the Goods in accordance with the Goods Information,

- does not manufacture *goods* which the *Supplier* has designed specifically for this contract until the *Purchaser* has accepted that the design complies with the Goods Information,

- warrants that the *goods* are fit for the purpose stated in the Goods Information or, if not so stated, fit for the purpose to which goods similar to the *goods* are used in the *final destination* and other locations stated in the Goods Information,

- warrants that the *goods* and Materials are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless stated otherwise in the Goods Information, and

- warrants that the *goods* and Materials conform to the authoritative standard for them applicable at the Contract Date and appropriate to the *goods'* and Materials' country of origin, if an applicable standard for the *goods* or Materials is not stated in the Goods Information.

21.2 The *Supplier* transports, insures, and passes risk of loss and damage to the *goods* to the *Purchaser* in accordance with the Terms of Delivery. The cost of the *Supplier*'s obligations for transport, insurance and delivery is included in the Prices.

21.3 The *Supplier* provides the documentation listed in the Contract Data at the time of delivery.

Packing   **22**

22.1 The *Supplier* packs the *goods* in a manner that is designed to prevent damage or deterioration during transit to the *final destination*.

22.2 The *Supplier* packs the *goods* taking account of rough handling, exposure to extreme temperatures, salt, precipitation during transit, open storage, the final destination and the absence of heavy handling facilities at certain points in transit or on arrival.

Subcontracting   **23**

23.1 If the *Supplier* subcontracts work, the *Supplier* is responsible for Providing the Goods as if the *Supplier* had not subcontracted. This contract applies as if a subcontractor's employees and equipment were the *Supplier's.*

23.2 If the *Purchaser* instructs the *Supplier* to, the *Supplier* submits the name of each proposed subcontractor to the *Purchaser* for acceptance. A reason for not accepting the proposed subcontractor is that the subcontractor's appointment will not allow the *Supplier* to Provide the Goods. The *Supplier* does not appoint a proposed subcontractor until the *Purchaser* has accepted the subcontractor.

Access to the work   **24**

24.1 The *Supplier* provides access for the *Purchaser* and others notified by the *Purchaser* to work being done for this contract and to stored Materials.

Co-operation   **25**

25.1 The *Supplier* co-operates with Others as necessary for delivery of the *goods*, and in obtaining and providing information which they need in connection with the *goods*.

Approval from   **26**
Others
26.1 The *Supplier* obtains approval of his design and delivery arrangements from Others where necessary.

Instructions   **27**

	27.1	The *Supplier* obeys an instruction which is in accordance with this contract and is given to the *Supplier* by the *Purchaser.*

3   Time

Starting and delivery   **30**

	30.1	The *Supplier* does not start work until the *starting date* and does the work so that delivery of the *goods* and performance of ancillary services is on or before the Delivery Date.
	30.2	The *Supplier* does not deliver the *goods* until the *Supplier* has complied with requirements stated in the Goods Information as to be completed by the *Supplier* before delivery.
	30.3	The *Supplier* provides evidence of delivery of the *goods* to the *Purchaser* in the form of the *Supplier*'s delivery note duly endorsed by the authorising stamp and signature of the person delegated by the *Purchaser* to receive the *goods.*

Access to the *final destination*   **31**

	31.1	If the Terms of Delivery require delivery to be made by the *Supplier* to the *final destination*, the *Purchaser* allows access to and use of it to the *Supplier* on or reasonably before the Delivery Date or as later agreed between them. The *Purchaser* allows access to and use of the *final destination* to the *Supplier* as necessary for other work in this contract.
	31.2	The *Purchaser* and the *Supplier* provide services and other things as stated in the Goods Information. Any cost incurred by the *Purchaser* as a result of the *Supplier* not providing the facilities and services stated is assessed by the *Purchaser* and paid by the *Supplier*.

Instructions to stop or not to start any work   **32**

	32.1	The *Purchaser* may instruct the *Supplier* to stop or not to start any work and may later instruct the *Supplier* to restart or start it.

4   Testing and Defects

Tests and inspections   **40**

	40.1	This clause only governs tests and inspections required by the Goods Information and the applicable law.
	40.2	The *Supplier* and the *Purchaser* provide records, data sheets, materials, facilities and samples for tests and inspections as stated in the Goods Information.
	40.3	The *Supplier* and the *Purchaser* notify the other of each of their tests and inspections before it starts and afterwards notifies its results. The *Supplier* notifies the *Purchaser* in time for a test or inspection to be arranged and done before doing work which would obstruct the test or inspection. The *Purchaser* may watch any test done by the *Supplier*.

	40.4	If a test or inspection shows that any work has a Defect, the *Supplier* corrects the Defect and the test or inspection is repeated.
	40.5	The *Purchaser* does the *Purchaser*'s tests and inspections without causing unnecessary delay to the work or to a payment that is conditional upon a test or inspection being successful.
	40.6	The *Purchaser* assesses the cost incurred by the *Purchaser* in repeating a test or inspection after a Defect is found. The *Supplier* pays the amount assessed.
Testing and inspection before and after delivery	**41** 41.1	The *Supplier* does not deliver any *goods* which the Goods Information states are to be tested or inspected before delivery until the *Purchaser* has notified the *Supplier* that the *goods* have passed the test or inspection.
	41.2	Acceptance of the *goods* by the *Purchaser* at the time of delivery is also subject to inspection by the *Purchaser* for loss and damage to the *goods*. Unless instructed otherwise by the *Purchaser*, the *Supplier* promptly replaces loss of and repairs damage to the *goods* arising from the inspection.
Searching for and notifying Defects	**42** 42.1	The *Purchaser* may instruct the *Supplier* to search for a Defect.
	42.2	Until the end of the *warranty period,* the *Purchaser* notifies the *Supplier* of each Defect which the *Purchaser* finds. In the notice the *Purchaser* states whether the defective *goods* are to be replaced by *goods* which are free of Defects, or that the Defect may be corrected as stated in this contract.
Correcting Defects	**43** 43.1	The *Supplier* corrects Defects whether or not the *Purchaser* notifies the *Supplier* of them.
	43.2	After delivery the *Supplier* corrects notified Defects or replaces the defective *goods* before the end of the *defect correction period.* This period begins at the later of delivery or when the Defect is notified. The *Purchaser* gives the *Supplier* access to and use of the defective *goods* as needed for correcting a Defect.
Accepting Defects	**44** 44.1	The *Supplier* or the *Purchaser* may propose to the other that the Goods Information should be changed so that a Defect does not have to be corrected.
	44.2	If the *Supplier* and the *Purchaser* are prepared to consider the change, the *Supplier* submits a quotation for reduced Prices or an earlier Delivery Date or both to the *Purchaser* for acceptance. If the *Purchaser* accepts the quotation, the *Purchaser* gives an instruction to change the Goods Information, the Prices and the Delivery Date accordingly.
Uncorrected Defects	**45** 45.1	If the *Supplier* has not corrected a notified Defect within its *defect correction period,* the *Purchaser* assesses the cost of having the Defect corrected or the defective *goods* replaced by other people and the *Supplier* pays this amount.

5   Payment

Assessing the   **50**
amount due

50.1   The *Supplier* assesses the amount due and applies to the *Purchaser* for payment.

50.2   The *Supplier*'s invoice includes details of how the amount due has been assessed, and is accompanied by all other documentation which this contract requires be provided at the time of delivery of the *goods* or ancillary services.

50.3   The amount due is

- the Price for Goods and Services Delivered since the last assessment of the amount due,
- plus other amounts to be paid to the *Supplier* (including any tax which the law requires the *Purchaser* to pay to the *Supplier*),
- less amounts to be paid by or retained from the *Supplier.*

50.4   The *Purchaser* corrects any wrongly assessed amount due and notifies the *Supplier* of the correction before paying the *Supplier*. Shortages, loss of and damage to the *goods* notified by the *Purchaser* at the first inspection after delivery of the *goods* is taken into account in the *Purchaser*'s correction of the assessed amount due, unless the *Supplier* has already rectified such loss and damage.

Payment   **51**

51.1   Unless another period is stated in the *method and conditions of payment*, the *Purchaser* pays each amount due within 30 days after receipt of an invoice from the *Supplier* for payment.

51.2   Interest is paid if a payment is late or includes a correction of an earlier payment. Interest is assessed from the date by which the correct payment should have been paid until the date when it is paid. Interest is calculated at the rate stated in the Contract Data or, if none is stated, at 0.5% of the delayed amount per complete week of delay.

51.3   Payments are in the *currency of this contract* unless otherwise stated in this contract.

6   Compensation events

Compensation   **60**
events

60.1   The following are compensation events:

(1) The *Purchaser* gives an instruction changing the Goods Information except

- a change made in order to accept a Defect or
- a change to the Goods Information provided by the *Supplier* for the *Supplier*'s design which is made at the *Supplier*'s request or to comply with other Goods Information provided by the *Purchaser*.

(2) The *Purchaser* gives an instruction changing the Terms of Delivery.

(3) The *Purchaser* gives an instruction to stop or not to start any work.

(4) The *Purchaser* changes a decision which the *Purchaser* has previously communicated to the *Supplier*.

(5) The *Purchaser* instructs the *Supplier* to search for a Defect and none is found.

(6) The *Purchaser* does not allow access to and use of the *final destination* to the *Supplier* as necessary for delivery and for other work included in this contract.

(7) The *Purchaser* gives an instruction changing the *final destination.*

(8) The *Purchaser* does not provide something which the *Purchaser* is to provide by the date for providing it stated in this contract.

(9) The *Purchaser* notifies a correction to an assumption about a compensation event which the *Purchaser* has previously stated.

(10) A loss of or damage to the *goods* and Materials arising from

- fault of the *Purchaser,*
- *Purchaser*'s design,
- Materials provided by the *Purchaser,* or
- an action after delivery of the *goods* which is not an action of the *Supplier*.

(11) The *Purchaser* does not reply to a communication from the *Supplier* within the period required by this contract.

(12) The *Purchaser* withholds an acceptance (other than an acceptance of a quotation for accepting a Defect) for a reason not stated in this contract.

(13) A test or inspection done by the *Purchaser* causes unnecessary delay.

(14) The *Purchaser* does not provide materials, facilities and samples for tests as stated in the Goods Information.

(15) An event which

- delays delivery by more than two weeks,
- the *Supplier* could not have reasonably prevented or controlled,
- an experienced supplier would have judged, at the Contract Date, to have such a small chance of occurring that it would have been unreasonable to have allowed for it, and
- is not one of the other types of compensation event stated in this contract.

In assessing this event the first two weeks are excluded.

(16) A breach of contract by the *Purchaser*, which is not one of the other compensation events in this contract.

(17) Additional compensation events (if any) stated in the Contract Data.

Notifying compensation events

61

61.1 The *Supplier* notifies to the *Purchaser* an event which has happened or which the *Supplier* expects to happen as a compensation event if

- the *Supplier* believes that the event is a compensation event,
- it is less than two weeks since the *Supplier* became aware of the event and
- the *Purchaser* has not notified the event to the *Supplier.*

61.2 The Prices and the Delivery Date are not changed if the *Purchaser* decides that an event notified by the *Supplier*

- arises from a fault of the *Supplier*,
- has not happened and is not expected to happen,
- has no effect upon the amount of the *Supplier*'s costs or upon planned delivery or
- is not one of the compensation events stated in this contract.

If the *Purchaser* decides otherwise, the *Purchaser* instructs the *Supplier* to submit a quotation for the event. The *Purchaser* notifies the decision to the *Supplier,* or instructs the *Supplier* to submit a quotation within one week of the *Supplier's* notification to the *Purchaser* of the event.

61.3 If the *Purchaser* decides that the *Supplier* did not give an early warning of the event which the *Supplier* could have given, the *Purchaser* notifies that decision to the *Supplier* when instructing the *Supplier* to submit a quotation.

61.4 If the *Purchaser* decides that the effects of a compensation event are too uncertain to be forecast reasonably, the *Purchaser* states assumptions about the event when instructing the *Supplier* to submit a quotation. Assessment of the event is based on these assumptions. If any of them is later found to have been wrong, the *Purchaser* notifies a correction.

61.5 A compensation event is not notified after the end of the last *warranty period.*

Quotations for compensation events	**62**	
	62.1	A quotation for a compensation event comprises proposed changes to the Prices or rates and any delay to the Delivery Date assessed by the *Supplier*. The *Supplier* submits details of the *Supplier*'s assessment with each quotation. The *Supplier* submits a quotation within one week of being instructed to do so by the *Purchaser* or, if no such instruction is received, within two weeks of the notification of a compensation event.
	62.2	The *Purchaser* may instruct the *Supplier* to submit a quotation for a proposed instruction or a proposed changed decision. The *Supplier* does not put a proposed instruction or a proposed changed decision into effect.
	62.3	The *Purchaser* replies within one week of the *Supplier*'s submission. For a proposed instruction or proposed changed decision, the *Purchaser*'s reply is

- notification that the instruction or changed decision will not be given,
- notification of the instruction or changed decision as a compensation event and acceptance of the quotation or
- notification of the instruction or changed decision as a compensation event and notification that the *Purchaser* does not agree with the quotation.

For other compensation events, the *Purchaser*'s reply is

- acceptance of the quotation or
- notification that the *Purchaser* does not agree with the quotation.

	62.4	If the *Purchaser* does not agree with the quotation, the *Supplier* may submit a revised quotation within one week of the *Purchaser*'s reply. If the *Purchaser* does not agree with the revised quotation or if none is received, the *Purchaser* assesses the compensation event and notifies the assessment to the *Supplier*.
	62.5	The *Purchaser* may instruct the *Supplier* to submit alternative quotations based upon different ways of dealing with the compensation event which are practicable. The *Supplier* submits the required quotations to the *Purchaser* and may submit quotations for other methods of dealing with the compensation event which the *Supplier* considers practicable.
Assessing compensation events	**63**	
	63.1	For a compensation event which only affects the quantities of items shown in the Price List, the change to the Prices is assessed by multiplying the changed quantities of items by the appropriate rates in the Price List.
	63.2	For other compensation events the changes to the Prices are assessed by forecasting the effect of a compensation event upon the amount of the *Supplier*'s costs or, if the compensation event has already occurred, the assessment is based upon the amount of *Supplier*'s costs due to the event which the *Supplier* has incurred.

Effects on the *Supplier*'s costs in Providing the Goods (excluding any tax which the *Supplier* can recover) are assessed separately for the cost of

- people who are employed by the *Supplier*,
- Materials,
- subcontracted work,
- Equipment,
- transport, freight and insurance, and
- importation.

Equipment is assessed as amounts paid for hired Equipment and an amount for the use of Equipment owned by the *Supplier* which is the amount the *Supplier* would have paid if the Equipment had been hired.

The *Supplier* shows how each of these effects is built up in each quotation for a compensation event. The percentages for overheads and profit stated in the Contract Data are applied to the assessed effect of the event on the amount of the *Supplier*'s costs for *Supplier*'s people, Materials, work done by subcontractors and Equipment, but are not applied to the *Supplier*'s costs for transport, freight, insurance and importation.

63.3   The effects of compensation events upon the amount of the *Supplier*'s costs are assessed at open market or competitively tendered prices with deductions for all discounts, rebates and taxes which can be recovered. The following are deducted from the assessment of compensation events:

- payments for events for which this contract requires the *Supplier* to insure and
- other payments made to the *Supplier* by insurers.

63.4   A delay to the Delivery Date is assessed as the length of time that, due to the compensation event, delivery is forecast to be delayed.

63.5   If the *Purchaser* has decided and notified the *Supplier* that the *Supplier* did not give an early warning of a compensation event which an experienced supplier could have given, the event is assessed as if the *Supplier* had given an early warning.

63.6   Assessment of the effect of a compensation event includes risk allowances for cost and time for matters which are at the *Supplier*'s risk under this contract.

63.7   Assessments are based on the assumptions that the *Supplier* reacts competently and promptly to the compensation event and that additional payment and time due to the event are reasonably incurred.

63.8   A compensation event which is an instruction to change the Goods Information in order to resolve an ambiguity or inconsistency is assessed as if the Prices and the Delivery Date were for the interpretation most favourable to the Party which did not provide the Goods Information.

63.9   Only a decision of the *Adjudicator* can change the assessment of a compensation event after the *Purchaser* has either accepted a quotation for it or notified an assessment for it.

7   Title

Passing of title   **70**

70.1   Whatever title the *Supplier* has to the *goods* passes to the *Purchaser* at the same time as the risk of loss and damage to the *goods* is transferred to the *Purchaser*, unless stated otherwise in the Contract Data.

70.2   The risk of loss and damage to the *goods* is transferred from the *Supplier* to the *Purchaser* when the *Supplier* has fulfilled the *Supplier*'s obligations in this contract to deliver the *goods*.

70.3   The *Supplier* ensures that when title to the *goods* passes to the *Purchaser* at the times stated in this contract, the title is full and unencumbered.

Marking *goods*   **71**
before delivery   71.1   If this contract identifies that title passes before delivery, the *Supplier's* title to the *goods* or Materials passes to the *Purchaser* when the *Purchaser* has marked them as for this contract.

71.2   The *Purchaser* marks *goods* and Materials before delivery if

- this contract identifies them for payment before delivery, and
- the *Supplier* has prepared them for marking as the Goods Information requires.

Confidentiality   **72**

72.1   The Parties do not disclose information obtained in connection with this contract except when necessary to carry out their duties under this contract.

8   Liabilities, indemnities and insurance

Limitation of liability   **80**

80.1   The *Supplier* is not liable to the *Purchaser* for loss of revenue or loss of profit except as provided for in this contract if the *Purchaser* terminates for reasons 1, 2, 3, 4, or 5.

80.2   For any one event the liability of the *Supplier* to the *Purchaser* for loss of or damage to the *Purchaser*'s property is limited to the amount stated in Contract Data.

80.3   The *Supplier*'s liability to the *Purchaser* under or in connection with this contract arising after

- the end of the applicable *warranty period* and
- low performance and delay damages due have been paid

is limited, except in respect of the *Supplier*'s causing

- death of or injury to a person
- loss of or damage to third party property, and
- infringement of an intellectual property right,

to the amount stated in the Contract Data. The *Supplier* has no further liability to the *Purchaser* after the period stated in the Contract Data.

80.4   Exclusion or limitation of liability in this contract applies in contract, negligence and otherwise and to the maximum extent permitted in law.

Indemnities   **81**

81.1   The *Purchaser* indemnifies the *Supplier* against claims, proceedings, compensation or costs payable which are the unavoidable result of the *goods* or which arise from

- any fault, negligence, breach of statutory duty,
- infringement of an intellectual property right, or
- interference with any legal right

by the *Purchaser* or by any person employed by or contracted to the *Purchaser* except the *Supplier.*

81.2   The *Supplier* indemnifies the *Purchaser* against other

- losses and claims in respect of
    - ❑   death of or injury to a person and
    - ❑   loss of or damage to property (other than the *goods* and Materials), and
- claims, proceedings, compensation and costs payable

arising from or in connection with the *Supplier*'s Providing the Goods.

81.3   The liability of one Party to indemnify the other is reduced to the extent that events which are the other Party's responsibility contributed to the losses, claims proceedings compensation and costs.

Insurance cover   **82**

82.1   The *Supplier* provides insurances in a freely convertible currency against loss of or damage to the *goods* and Materials arising at any stage in the supply of the *goods.* The *Supplier* does not provide the insurance which the *Purchaser* is to provide as required by the Terms of Delivery.

82.2   The insurance names the *Purchaser* as beneficiary and provides cover for the
- full replacement cost, including the amount stated in the Contract Data for the replacement of any Materials provided by the *Purchaser*, and for the
- time period required by the Terms of Delivery.

82.3   In addition the *Supplier* provides insurance against

- loss of or damage to Equipment,
- liability for loss of or damage to property (except the *goods* and Materials), and
- liability for bodily injury to or death of a person (not an employee of the *Supplier*)

arising from or in connection with the *Supplier's* Providing the Goods, and against any additional risks stated in the Contract Data.

Insurance policies 83

83.1 The *Supplier* submits policies and certificates for insurance which the *Supplier* is to provide to the *Purchaser* for acceptance as the *Purchaser* instructs. A reason for not accepting the policies and certificates is that they do not comply with this contract.

83.2 Insurance policies include a waiver by the insurers of their subrogation rights against directors and other employees of every insured except where there is fraud.

83.3 The Parties comply with the terms and conditions of the insurance policies.

If the *Supplier* does 84
not insure 84.1 The *Purchaser* may insure a risk which this contract requires the *Supplier* to insure if the *Supplier* does not submit a required policy or certificate when instructed by the *Purchaser* to do so. The cost of this insurance to the *Purchaser* is paid by the *Supplier*.

9   Termination and disputes

Termination and 90
reasons   for 90.1 If a Party wishes to terminate, that Party notifies the other giving
termination   details of the reason. The *Purchaser* issues a termination certificate promptly if the reason complies with this contract. After a termination certificate has been issued, the *Supplier* does no further work to complete the supply of the *goods* or ancillary services.

90.2 Either Party may terminate if the other Party has

- become insolvent or its equivalent (Reason 1) or
- assigned this contract (Reason 2).

90.3 The *Purchaser* may terminate if the *Purchaser* has notified the *Supplier* that the *Supplier* has defaulted in one of the following ways and the *Supplier* has not stopped defaulting within two weeks of the notification.

- Substantially failed to comply with this contract (Reason 3).
- Substantially hindered the Purchaser (Reason 4).
- Substantially broken a health or safety regulation (Reason 5).

The *Purchaser* may terminate for any other reason (Reason 6).

90.4 The *Supplier* may terminate if

- the *Purchaser* has not made a payment within ten weeks of receipt of the *Supplier's* application for it (Reason 7) or
- the *Purchaser* has instructed the *Supplier* to stop or not to start any substantial work or all work for a reason which is not the *Supplier's* fault and an instruction allowing the work to restart or start has not been given within eight weeks (Reason 8).

Procedures on termination	**91**	
	91.1	On termination, the *Purchaser* may employ other people to complete the supply of the *goods* and ancillary services. If applicable, the *Supplier* leaves the *final destination* and removes the Equipment.
Payment on termination	**92**	
	92.1	The amount due on termination includes

- an amount due assessed as for normal payments,
- the cost of Materials ordered by the *Supplier* specifically for the *goods*, which cannot be resold or used elsewhere and of which the *Supplier* has to accept delivery, and
- any amounts retained by the *Purchaser.*

	92.2	If the *Purchaser* terminates for Reason 1, 2, 3, 4 or 5, the amount due on termination also includes a deduction of the forecast additional cost to the *Purchaser* of completing the supply of the *goods* and ancillary services.
Settlement of disputes	**93**	
	93.1	A dispute under or in connection with this contract, which the Parties have not resolved, is decided by the *Adjudicator*. Either Party may submit a dispute to the *Adjudicator* for decision if

- the Party notified the other Party of the dispute within four weeks of becoming aware of it and
- between two and four further weeks have passed since the notification.

	93.2	In reaching a decision, the *Adjudicator* takes into account information which each Party provides to the *Adjudicator* within two weeks of the submission.
	93.3	The *Adjudicator* notifies the Parties of the decision and of the reasons for it within four weeks of the submission.
	93.4	Unless and until the *Adjudicator* has given a decision on the dispute, the Parties proceed as if the matter was not disputed. The decision is binding until the dispute is finally determined by the *tribunal* or by agreement.
The *Adjudicator*	**94**	
	94.1	The *Adjudicator* acts impartially. The *Adjudicator* decides the dispute as independent adjudicator and not as arbitrator. The *Adjudicator*'s decision is enforceable as a matter of contractual obligation between the Parties and not as an arbitral award. The Parties pay the *Adjudicator*'s charges in equal shares.
	94.2	Any communication between a Party and the *Adjudicator* is communicated also to the other Party. If the *Adjudicator*'s decision includes assessment of a cost effect or a delay, the *Adjudicator* makes the assessment in the same way as a compensation event is assessed.
	94.3	If the *Adjudicator* resigns or is unable to act, the Parties choose a new adjudicator jointly.
Reference to the	**95**	

tribunal   95.1   A Party may refer a dispute to the *tribunal* if

- the Party is dissatisfied with the *Adjudicator*'s decision or
- the *Adjudicator* did not notify a decision within the time allowed

except that neither Party may refer a dispute to the *tribunal* unless the referring Party has notified the other Party of its intention to do so not more than four weeks after the end of the time allowed for the *Adjudicator*'s decision.

MAIN OPTION CLAUSES

Option A: Priced contract with Price List

Identified and defined terms	**11** 11.2	(11) The Prices are the amounts stated in the Price column of the Price List. Where a quantity is stated for an item in the Price List, the Price is calculated by multiplying the quantity by the applicable rate.

(12) The Price for Goods and Services Delivered is the total of

- the Price for each lump sum item in the Price List which the *Supplier* has delivered and,
- where a quantity is stated for an item in the Price List, an amount calculated by multiplying the quantity which the *Supplier* has delivered by the applicable rate.

In this clause, delivered items means items which

- are without Defects which would prevent the *Purchaser* from using the *goods* for the purpose for which they are intended, and.
- which have been delivered in accordance with the *Supplier*'s obligations for delivery in this contract.

Assessing compensation events	**63** 63.10	Assessments for changed Prices for compensation events are in the form of changes to the Price List

Option G: Term contract

Identified and defined terms	**11** 11.2	(13) The Prices are the amounts calculated by multiplying the quantity by the rate for each item on the Price List selected for the Batch

(14) The Price for Goods and Services Delivered for each Batch is the total of the amounts obtained by multiplying the quantity by the rate for each item stated in the Batch Order.

In this clause, delivered items means items which

- are without Defects which would prevent the *Purchaser* from using the *goods* for the purpose for which they are intended, and.
- which have been delivered in accordance with the *Supplier*'s obligations for delivery in this contract.

(15) A Batch is a collection of items selected from the Price List.

(16) A Batch Order is an instruction given by the *Purchaser* to the *Supplier* to provide a Batch.

Interpretation and the law	**12**	
	12.3	Unless it is stated to apply to the supply of the whole of the *goods* and ancillary services, each reference in this contract to delivery, the Delivery Date, and the *warranty period* applies to any Batch of the *goods* and *services* included in a Batch Order.
The *Purchaser*'s obligations	**20**	
	20.3	The *Purchaser* provides a Batch Order to the *Supplier* for each Batch the *Purchaser* requires. A Batch Order may be issued by the *Purchaser* at any time before the *end date*.
	20.4	Each Batch Order includes

- items selected from the Price List
- notification as a compensation event of items not on the Price List and
- Contract Data and other information specific to the Batch Order.

If the Batch Order contains items not on the Price List, the *Purchaser* instructs the *Supplier* to submit the *Supplier*'s quotation of the final total of the Prices for the Batch.

Compensation events	**60**	
	60.2	The *Purchaser* may give an instruction changing a Batch Order. Each such instruction is a compensation event.
Assessing compensation events	**63**	
	63.13	Assessments for changed Prices for compensation events are in the form of changes to the Price List, or to the Batch Order or to both the Price List and the Batch Order.

SECONDARY OPTION CLAUSES

Option X1: Performance bond

Performance bond	X1.1	The *Supplier* gives the *Purchaser* a performance bond provided by a bank or insurer, which the *Purchaser* has accepted, in the form set out in the Goods Information and for the amount stated in the Contract Data. If the bond was not given by the Contract Date, it is given to the *Purchaser* within four weeks of the Contract Date. A reason for not accepting the bank or insurer is that its commercial position is not strong enough to carry the bond.

Option X2: Parent company guarantee

Parent company guarantee	X2.1	If a parent company owns the *Supplier*, the *Supplier* gives to the *Purchaser* a guarantee of the *Supplier's* performance in the form set out in the Goods Information. If it was not given by the Contract Date, it is given within four weeks of the Contract Date.

Option X3: Multiple currencies

Multiple currencies	X3.1	The *Supplier* is paid in currencies other than the *currency of this contract* for the items listed in the Contract Data. The *exchange rates* are used to convert from the *currency of this contract* to other currencies.

Payments	X3.2	Payments to the *Supplier* in currencies other than the *currency of this contract*

- do not exceed the maximum amounts stated in the Contract Data. (Any excess is paid in the *currency of this contract*,) and
- are made by the *Purchaser,* subject to receipt of compliant supporting documentation, either
  - ❑ directly to the bank stated in the Contract Data (payment method 1), or
  - ❑ in the *currency of this contract* at the spot rate of exchange at which payment is made overseas, providing the *Employer* is notified before 12:00 three working days prior to payment being made (payment method 2). If the *Employer* is not notified by the time stated, the *Employer* pays at the spot rate of exchange at which the forward cover contract was cancelled in the market.

Forward cover	X3.3	Unless otherwise instructed, only the *Purchaser* may provide forward cover in the foreign exchange market.

Option X4:   Importation

Payment of importation charges	X4.1	For each item supplied from outside the *Purchaser*'s country, the components of the cost of importation shown in the price schedule are paid at cost by the *Purchaser* to the *Supplier*, or paid directly by the *Purchaser* to the relevant authority or the authority's appointed agent.
	X4.2	The *Supplier* provides original documentation to the *Purchaser* in support of the amount due. This documentation includes:

- Overseas suppliers' invoice.
- Bill of Entry duly endorsed by the importation authority.
- Customs work sheets, showing VAT, duties and surcharges.
- Air Waybill or Bill of Lading with associated landing, delivery and forwarding order.
- Invoice from the importing clearing agent showing airline fees, landing charges, wharfarge and dock dues.
- If requested by the *Purchaser,* packing lists for cases and their contents.
- Other documentation associated with importation which may be requested by the duly authorised authority.

	X4.3	The *Purchaser* is not liable to the *Supplier* for any cost or delay which the *Supplier* incurs as a result of matters arising from importation of the *goods* or Materials.

Option X5:   Price adjustment for inflation

Defined terms	X5.1	(a) The Base Date Index (B) is the latest available index before the *base date.*
		(b) The Latest Index (L) is the latest available index before the assessment of an amount due.
		(c) The Price Adjustment Factor is the total of the products of each of the proportions stated in the Contract Data multiplied by (L-B)/B for the index linked to it.
Price Adjustment Factors	X5.2	If an index is changed after it has been used in calculating a Price Adjustment Factor, the calculation is repeated and a correction included in the next assessment of the amount due.
	X5.3	The Price Adjustment Factor calculated at the Delivery Date is used for assessing the amount due after this date.
Compensation events	X5.4	If the rates and Prices in the Price List are adjusted due to a compensation event, the *Supplier's* payments for compensation events are assessed using the *Supplier's* payments current at the time of assessing the compensation event adjusted to *base date* by dividing by one plus the Price Adjustment Factor for the last assessment of the amount due.

If adjustments are made with each invoice submitted:

Price adjustment	X5.5	Each amount due includes an amount for price adjustment which is the sum of

- the Price for Goods and Services Delivered assessed on an invoice multiplied by the Price Adjustment Factor applicable at the time of delivery of the items included in the invoice, and
- correcting amounts, not included elsewhere, which arise from changes to indices used for assessing previous amounts for price adjustment.

If Prices stated in the Price List are adjusted on each anniversary of the Contract Date:

Price adjustment factor	X5.6	On each anniversary of the Contract Date, the *Supplier* calculates a price adjustment factor equal to (L-B)/B, where L is the last published value of the index and B is the last value of the index published before the Contract Date.
Price adjustment	X5.7	The rates and Prices in the Price List are adjusted at each anniversary by multiplying the rates and Prices applicable at the Contract Date by the price adjustment factor applicable at the anniversary date.
Assessing the amount due	X5.8	Each amount due is assessed at the rates and Prices applicable at the last anniversary before the *goods* or service is delivered in accordance with the Terms of Delivery.

Option X6:   Extending the *warranty period*

Extending the *warranty period*	X6.1	If a Defect arises after delivery and before the end of the *warranty period,* the *Purchaser* may notify the *Supplier* of an extension to the *warranty period* equal to the period during which the *goods* do not perform as stated in the Goods Information.
	X6.2	If parts of the *goods* are replaced as a result of a Defect arising before the end of the *warranty period*, the *Purchaser* may notify the *Supplier* that the extended *warranty period* applies to the replaced parts of the *goods.*
	X6.3	The *Purchaser* notifies the *Supplier* of extensions to the *warranty period* within four weeks of the Defect arising. In any case, the period between first delivery of the *goods* and the end of the extended *warranty period* does not exceed twice the original *warranty period* stated in the Contact Data.
Final acceptance of the *goods*	X6.4	The *Purchaser* issues a certificate of acceptance at the later of the end of the last *warranty period* and the end of the last *defects correction period*.
	X6.5	The certificate of acceptance is either a list of Defects that the *Purchaser* has notified before the end of the *warranty period,* or extended *warranty period*, which the *Supplier* has not corrected or, if there are no such Defects, a statement that there are none.

Option X7:   Spare and replacement parts

Spare and replacement parts	X7.1	The *Supplier* makes available for purchase the spares and replacement parts stated in the Goods Information and needed by the *Purchaser* to maintain the *goods* during its *designed working life*.
	X7.2	Unless otherwise agreed between the Parties, the purchase price of the spares and replacement parts is the *Supplier's* costs applicable at the time of purchase to which the percentages for overheads and profit stated in the Contract Data are applied.

Option X8:   Delay damages

Delay damages	X8.1	The *Supplier* pays delay damages at the rate stated in the Contract Data for each day from the Delivery Date until delivery in terms of this contract has been completed.
	X8.2	If the Delivery Date is delayed after delay damages have been paid, the *Purchaser* repays the overpayment of damages with interest. Interest is assessed from the date of payment to the date of repayment.

Option X9: Low performance damages

	X9.1	If at the end of the *warranty period* the *goods* show low performance with respect to a performance level stated in the Contract Data, the *Supplier* pays the amount of low performance damages stated in the Contract Data.

Option X10:   Transfer of rights (e. g. in contracts for the supply of software)

X10.1   The *Purchaser* owns the *Supplier*'s rights over material prepared for this contract by the *Supplier* except as stated otherwise in the Goods Information.   The *Supplier* obtains other rights for the *Purchaser* as stated in the Goods Information and obtains from a Subcontractor equivalent rights for the *Purchaser* over the material prepared by the Subcontractor. The *Supplier* provides to the *Purchaser* the documents that transfer these rights to the *Purchaser*.

X10.2   The *Supplier* may use material supplied by the *Supplier* under this contract for other work and may retain for the *Supplier*'s own use copies of material provided to the *Purchaser*.   In using this material the *Supplier* complies with the restrictions and obligations stated in the Goods Information.

Option X11: *Purchaser's Representative*

X11.1   The *Purchaser*'s *Representative* acts on behalf of the *Purchaser* with the authority set out in the Contract Data.

Option X12: Provision of a programme

Defined term   X12.1   The Accepted Programme is the programme identified in the Contract Data or the latest programme accepted by the *Purchaser*.   The latest programme accepted by the *Purchaser* supersedes previous Accepted Programmes.

The programme   X12.2   If the Accepted Programme is not identified in the Contract Data, the *Supplier* prepares and submits a first programme to the *Purchaser* for acceptance within the period stated in the Contract Data. The *Purchaser* accepts or gives reasons for not accepting a first programme or a revised programme within two weeks of submission by the *Supplier*.

X12.3   A programme submitted by the *Supplier* includes and shows

- the Delivery Date,
- planned delivery,
- for each operation, a method statement which identifies the Equipment and other resources which the *Supplier* plans to use,
- the order and timing of

  ❑ the operations which the *Supplier* plans to do in order to Provide the Goods, and
  ❑ the work of the *Purchaser* and Others either as stated in the Goods Information or as later agreed with them by the *Supplier,*

- the dates when the *Supplier* plans to complete work needed to allow the *Purchaser* and Others to do their work,
- provisions for

❑ float,
❑ time risk allowances,
❑ health and safety requirements,
❑ the procedures set out in this contract,

• the dates when, in order to Provide the Goods in accordance with the *Supplier*'s programme, the *Supplier* will need

❑ acceptances,
❑ Materials and other things to be provided by the *Purchaser,* and
❑ access to the *final destination*.

• other information which the Goods Information requires the *Supplier* to show on the Accepted Programme.

X12.4   A reason for not accepting a programme is that

• the *Supplier's* information which it shows are not practicable,
• it does not include the information which this contract requires
• it does not represent the *Supplier's* plans realistically or
• it does not comply with the Goods Information or with other procedures set out in this contract.

Revising the programme   X12.5   Each revised programme shows

• the actual progress achieved on each operation since the last revision and its effect upon the timing of the remaining work,
• the effects of implemented compensation events and of notified early warning matters,
• how the *Supplier* plans to deal with any delays and to correct notified Defects and
• any other changes which the *Supplier* proposes to make to the Accepted Programme.

X12.6   The *Supplier* submits a revised programme to the *Purchaser* for acceptance

• within the *period for reply* after the *Purchaser* has instructed the *Supplier* to,
• when the *Supplier* chooses to and, in any case,
• at no longer interval than the interval stated in the Contract Data from the Contract Date until delivery of the whole of the *goods* and *services.*

Assessing the amount due   X12.7   If no programme is identified in the Contract Data, one quarter of the Price for Goods and Services Delivered is retained from payments due to the *Supplier* until the *Supplier* has submitted a first programme to the *Purchaser* for acceptance showing the information that this contract requires.

Assessing compensation events   X12.8   The *Purchaser* assesses a compensation event using the *Purchaser's* own assessment of the programme for the remaining work if

- there is no Accepted Programme or
- the *Supplier* has not submitted a revised programme for acceptance as required by this contract.

Option X13:   Quantity discounts (used only with Option G)

X13.1   The *Supplier* includes in assessments of the amount due a discount on the Price of *goods* delivered for each Batch Order in accordance with the percentage discount and quantity ranges stated in the Contract Data.

Option Z: Additional conditions of contract

Z1.1   The *additional conditions of contract* stated in the Contract Data are part of this contract.