

TERMS & CONDITIONS OF CONTRACT FOR THE PURCHASE OF GOODS AND/OR SERVICES

These Conditions may only be varied with the written agreement of SNIFFER. No terms or conditions put forward at any time by the Contractor shall form any part of the Contract unless specifically agreed in writing by SNIFFER.

1. DEFINITIONS

In these Conditions:

'SNIFFER' means the Scotland & Northern Ireland Forum For Environmental Research (Company No. SC149513).

'Contractor' means the person, firm or company to whom the Contract is issued.

'Contract' means the contract between SNIFFER and the Contractor incorporating these Conditions.

'Goods' means the apparatus, materials, equipment, machinery, and things to be provided as specified in the Contract.

'Services' means the services to be provided by the Contractor as specified in the Contract, and subject to such modification as may subsequently be made in accordance with the Contract, or otherwise by agreement in writing between the parties.

'Premises' means the location to which Goods are to be delivered, or, where relevant, Services are to be performed, as specified in the Contract.

'delivery' means completion of delivery of the Goods to the Premises and/or completion of carrying out the Services as the case may be, and 'delivered' shall be construed accordingly.

'Intellectual Property Rights' means patents, designs, copyright, applications for any of the foregoing, know-how and other similar rights and obligations, whether registrable or not, and whether registered or not, in the United Kingdom or abroad.

'Works' means all (or, whether the context so admits, any) data, designs, drawings, inventions, photographs, reports, specifications or any other material or works of whatsoever nature conceived, developed, made or otherwise produced in the course of, or otherwise arising from the performance of, the Contractor's obligations under the Contract.

2. DELIVERY OF GOODS AND/OR PERFORMANCE OF SERVICES

- 2.1 Completing the delivery of the Goods, and performing the Services, by the date(s) set out in the Contract is of the essence of the Contract.
- 2.2 When delivered, the Goods shall comply with all legal requirements and all and any specifications stated in the Contract.
- 2.3 Once the Goods have been delivered and/or the Services performed (as the case may be) to SNIFFER's satisfaction in accordance with the Contract, SNIFFER shall give written confirmation to the Contractor to that effect. Until such confirmation is given SNIFFER shall not be deemed to have accepted the Goods or the performance of the Services and even if that confirmation is given SNIFFER can still reject the Goods and/or Services if it discovers any latent defect at any time thereafter, without prejudice to SNIFFER's rights to claim damages.
- 2.4 The risk of any loss or destruction of or any damage to the Goods shall pass to SNIFFER as soon as delivery takes place.
- 2.5 Except where condition 2.6 applies, title to the Goods will pass to SNIFFER when delivery takes place.

SNIFFER Service Conditions
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- 2.6 Notwithstanding condition 2.5, title to the Goods will pass to SNIFFER before delivery at the time of payment, if payment is for any reason made by SNIFFER for the Goods prior to the date of delivery. If the Goods are delivered or paid for in instalments then the provisions of conditions 2.5 and 2.6 shall apply to each instalment or item of the Goods so delivered or paid for.
- 2.7 The Contractor shall carry out and complete the Services with due diligence and reasonable skill and care, and in accordance with the best current professional, technical and, where relevant, scientific knowledge and practice, and with relevant legislation.
- 2.8 The Contractor shall procure that any software forming part of the Goods and/or Works conforms to such IT standards and specifications as may be set out in the Contract.
- 2.9 The Contractor shall be responsible for the management and carrying out of the Services including the provision of all necessary personnel, accommodation, equipment and services.
- 2.10 The Contractor shall make no delivery of Goods nor commence any work at the Premises without obtaining SNIFFER'S prior consent.
- 2.11 Access to the Premises shall not be exclusive to the Contractor but only such as shall enable him to carry out the Services concurrently with the execution of work by others. The Contractor shall co-operate with such others as SNIFFER may reasonably require.
- 2.12 SNIFFER shall have the power at any time during the progress of the Services to order in writing:
- a) the removal from the Premises of any materials which in the opinion of SNIFFER are either hazardous, noxious or not in accordance with the Contract;
 - b) the substitution of proper and suitable materials;
 - c) the removal and proper re-execution notwithstanding any previous test thereof or interim payment therefore of any work which, in respect of material or workmanship is not in the opinion of SNIFFER in accordance with the Contract.
- 2.16 On completion of the Services the Contractor shall remove his plant, equipment and unused materials and shall clear away from the Premises all rubbish arising out of the Services and leave the Premises in a neat and tidy condition.
- 2.17 The Contractor shall at all times comply with all relevant health and safety legislation and employment laws, including all European, national and local laws, regulations, subordinate legislation, codes of practice or guidance notes in existence or formally proposed during the term of this Contract concerning the health, safety, training and competence of any person or persons engaged in work under the Contract.
- 2.18 The Contractor hereby undertakes to carry out its own comprehensive risk assessment concerning the health, safety, training and competence of its employees or any person or persons engaged in work under the Contract.

3. CONTRACTOR'S PERSONNEL

- 3.1 The Contractor shall make available for the purposes of the Contract any individuals named within the Contract as key personnel to complete the deliverables specified, and shall not make changes without the prior written approval of SNIFFER.
- 3.2 The Contractor will deploy in the performance of the Contract only suitably qualified, trained, experienced and (where appropriate) supervised staff.
- 3.3 The Contractor shall ensure that all his personnel are and will be engaged in relation to the Contract on terms which provide for all Intellectual Property Rights in Works created by such personnel to vest in the Contractor.

3.4 If so requested by SNIFFER, the Contractor shall, within seven days of such request, provide to SNIFFER the names of all personnel who will be carrying out any part of the Contract. The Contractor shall also provide for each such person the capacities in which they are involved, their relevant qualifications and experience, and any other information reasonably requested by SNIFFER relevant to their suitability for performing the Contract.

3.5 If SNIFFER reasonably considers that any person who is working for the Contractor in relation to the carrying out of the Contract is not suitably qualified or competent, SNIFFER may request that that person's involvement with the Contract ceases. The Contractor shall comply with any such request immediately.

4. LIAISON AND SUPERVISION

4.1 SNIFFER and the Contractor will each appoint a Nominated Officer, who will together provide a formal link between the two parties on all matters. SNIFFER's Nominated Officer may be referred to as its Project Manager. Meetings shall be convened by either party as necessary to monitor the progress of the Contract.

5. INSPECTION OF PREMISES AND NATURE OF SERVICES

5.1 The Contractor is deemed to have inspected the Premises before tendering so as to have understood the nature and extent of the Services to be carried out and satisfied himself in relation to all matters connected with the Services and Premises.

5.2 SNIFFER shall, at the request of the Contractor, grant such access as may be reasonable for this purpose.

6. ALTERATION OF SERVICE REQUIREMENTS

6.1 SNIFFER reserves the right to alter the requirements of the Services, as detailed in the Contract or otherwise, should this at any time become necessary. Any such variation may include (but shall not be restricted to) additions, omissions, alterations, substitutions and changes in quality, form, character, kind, timing, method or sequence of the Service deliverables. In the event of any such alteration payment under the Contract shall be subject to fair and reasonable adjustment to be agreed between SNIFFER and the Contractor in accordance with SNIFFER's contract variation procedures. All alterations to Services requirements requested by the Contractor shall require the prior written permission of SNIFFER in accordance with SNIFFER's contract variation procedures.

7. CONTRACTOR'S STATUS

7.1 Nothing in the Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between SNIFFER and the Contractor.

7.2 The Contractor shall not, (and shall procure that its agents and servants do not) say or do anything that might lead to any other person to believe that the Contractor is acting as the agent of SNIFFER.

7.3 Nothing in the Contract shall impose any liability on SNIFFER in respect of any liability incurred by the Contractor to any other person but this shall not be taken to exclude or limit any liability of SNIFFER to the Contractor that may arise by virtue of either a breach of this Contract or any negligence on the part of SNIFFER, its staff or agents.

8. PRICE, PAYMENT ARRANGEMENTS AND AUDIT

8.1 SNIFFER shall pay to the Contractor such sums as are specified in the Contract in accordance with the payment schedule set out in the Contract. Invoices must quote the Contract reference number and should be addressed to Jill Ogle-Skan, SNIFFER Information Manager, First Floor, Greenside House, 25 Greenside Place, Edinburgh, EH1 3AA.

8.2 Unless otherwise stated in the Contract, payment will be made within 30 days of receipt of the agreed invoice, for work completed to SNIFFER's satisfaction.

8.3 Value Added Tax, where applicable and consequently payable by SNIFFER, shall be shown separately on all invoices as a strictly net extra charge.

- 8.4 The price specified in the Contract is inclusive of the Contractor's costs in delivering Goods to the Premises including carriage and insurance.
- 8.5 SNIFFER may reduce payment in respect of any invoice if the Contractor has failed to provide or has provided inadequately the Goods or Services to which the invoice relates, without prejudice to any other of SNIFFER's rights or remedies.
- 8.6 The Contractor shall keep and maintain until 2 years after delivery has been completed records to the satisfaction of SNIFFER of all expenditure which is reimbursable by SNIFFER and of the hours worked and costs incurred by the Contractor or in connection with any personnel of the Contractor paid for by SNIFFER on a time charge basis. The Contractor shall on request afford SNIFFER or its representatives such access to those records as may be required by SNIFFER in connection with the Contract.

9. INTELLECTUAL PROPERTY

- 9.1 The Contractor warrants and undertakes that nothing done by the Contractor in the performance of his obligations under this Contract shall infringe any Intellectual Property Rights held by any third party, and, without prejudice to the generality of condition 10.2, the Contractor shall indemnify SNIFFER against all actions, claims, demands, costs, expenses and losses made against or incurred by SNIFFER as a result of or in connection with any such infringement or any breach of this Condition.
- 9.2 All Intellectual Property Rights in, and ownership of, the Works shall vest in and be the property of SNIFFER. By entering into the Contract, the Contractor assigns, makes over and transfers all right, title and interest to the Works, and the Intellectual Property Rights therein to SNIFFER, and shall execute or procure the execution of, any deed or document, and do all other things necessary, to ensure that all right, title and interest, present and future, in and to the Works and the Intellectual Property Rights therein vests in SNIFFER as aforesaid.

10. WARRANTIES AND INDEMNITY

- 10.1 Without prejudice to any warranties about the Goods or Services implied by law, the Contractor warrants to SNIFFER that:
- a) the Goods will be delivered and the Services performed in exact compliance with any specification forming part of the Contract;
 - b) the Goods will be of satisfactory quality, fit for the purpose for which SNIFFER intends to use them as disclosed in the Contract or for their normal purposes if none is disclosed and in accordance with any sample shown to or seen by SNIFFER prior to entering into the Contract;
 - c) the Services will be provided using due care, skill, accuracy and attention.
- 10.2 Without prejudice to any of SNIFFER's rights or remedies, the Contractor shall indemnify SNIFFER against all actions, suits, claims, demands, losses, charges, costs and expenses that SNIFFER may suffer or incur, and which arise, directly or indirectly, from any breach by the Contractor of condition 10.1 or any failure on the Contractor's part to perform the Contract in accordance with its terms.
- 10.3 Without prejudice to such other rights as SNIFFER might have under statute or at law, the Contractor shall also be liable, in the event of any breach of contract, for all indirect consequential loss following from the breach.

11. DISCLOSURE OF INFORMATION

- 11.1 The Contractor shall keep secret and not disclose and shall procure that his employees keep secret and do not disclose any information of a confidential nature obtained by him by reason of this Contract except information which is in the public domain otherwise than by reason of a breach of this provision.

12. TERMINATION

12.1 The Contractor shall notify SNIFFER in writing immediately upon the occurrence of any of the following events:

- (a) where the Contractor is an individual and if a petition is presented for the Contractor's bankruptcy or the sequestration of his estate or a criminal bankruptcy order is made against the Contractor, or he makes any composition or arrangements with or for the benefit of creditors, or makes any conveyance or assignation for the benefit of creditors, or if an administrator or trustee is appointed to manage his affairs; or
- (b) where the Contractor is not an individual but is a firm, or a number of persons acting together in any capacity, if any event in (a) or (c) of this Condition occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Contractor to be wound up as an unregistered company; or
- (c) where the Contractor is a company, if the company passes a resolution for the winding-up or the court makes an administrative order or a winding-up order, or the company makes a composition or arrangements with its creditors, or an administrator, administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any property under the terms of a floating charge.

12.2 On the occurrence of any of the events described in condition 12.1, or if the Contractor shall have committed a material breach of this Contract (including a failure to deliver the Goods or any item thereof or to perform the Services or any part thereof by the due date of delivery in terms of the Contract, or to perform the Services to SNIFFER's reasonable satisfaction), and (if such breach is capable of remedy) shall have failed to remedy such breach within 30 days (or such other period as may reasonably be specified by SNIFFER) after service of written notice specifying the breach and requiring it to be remedied, or, where the Contractor is an individual, if he shall die or be adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health (Scotland) Act 1984 (or any consolidation or replacement of the same), SNIFFER shall be entitled to terminate this Contract by notice to the Contractor with immediate effect.

12.3 Without prejudice to any other rights or remedies of SNIFFER, in the event of the Contract being terminated by SNIFFER in accordance with condition 12.2 by reason of the Contractor's breach of this Contract, SNIFFER shall be under no obligation to make any payment to the Contractor for such period as is reasonable for SNIFFER to assess the loss and/or damage suffered as a result of the termination. After such period, SNIFFER may set off against any sums otherwise due to the Contractor, or recover as a debt, the amount of loss and/or damage that SNIFFER has reasonably assessed as resulting from the termination of the Contract.

12.4 In addition to its rights of termination under condition 12.2 SNIFFER shall be entitled to terminate the Contract by giving to the Contractor not less than 30 days notice to that effect. In the event of such termination, the Contractor shall, if required to do so by SNIFFER, prepare and submit to SNIFFER a report on the work done prior to the termination and making such recommendations as may be based on the work done prior to termination.

12.5 Termination under conditions 12.2 and 12.4 shall not prejudice or affect any right or remedy which shall have accrued or shall thereupon accrue to SNIFFER.

12.6 Termination of the Contract shall be without prejudice to any provision intended to operate thereafter, including without prejudice to the foregoing generality conditions 8.6, 9.1, 9.2, 10.1, 10.2 and 10.3.

12.7 The Contractor will return to SNIFFER promptly upon the termination of this Contract (howsoever occurring) any document, papers, materials or information supplied by or obtained from SNIFFER in connection with the Contract, or extracted from such documents, papers, materials or information.

12.8 Where the Contract has been terminated pursuant to condition 12.4, the Contractor may retain any documents, papers, materials or information which shall be requested by him to prepare any report required pursuant to Condition 12.4. Promptly upon submission of such report to SNIFFER, the Contractor will return any documents, papers, materials or information which he may have retained in terms of this Condition to SNIFFER.

13. CORRUPT GIFTS OR PAYMENTS

- 13.1 The Contractor shall not offer or give, or agree to give, to any employee or representative of SNIFFER any consideration of any kind as an inducement or reward for doing or refraining from doing, any act in relation to the obtaining or execution of this or any other contract with SNIFFER or for showing or refraining from showing favour or disfavour to any person in relation to this or any such contract.

14. RACIAL DISCRIMINATION

- 14.1 The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976 or any statutory modification or re-enactment thereof relating to discrimination in employment. The Contractor shall take all reasonable steps to secure the observance of these provisions by all servants, employees or agents of the Contractor and all sub-contractors employed in the execution of the Contract.

15. GENERAL

- 15.1 The Contractor shall not assign, transfer or dispose of any of its rights or obligations under the Contract.
- 15.2 Unless permitted by the Contract, the Contractor shall not sub-contract any portion of the Contract without prior written permission of SNIFFER. Sub-contracting any portion of the Contract shall not relieve the Contractor of any obligation or duty attributable to it under the Contract.
- 15.3 Wherever under this Contract any sum of money is recoverable from or payable by the Contractor, that sum may be deducted from any sum then due, or which at any later time may become due, to the Contractor under this Contract or under any other agreement or contract with SNIFFER.
- 15.4 Any notice given under or pursuant to the Contract may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted by telex, facsimile transmission or other means of telecommunication resulting in the receipt of a written communication in permanent form and if so sent or transmitted to the address of the party shown in the Contract, or to such other address as the party may by notice to the other have substituted therefor, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.
- 15.5 If any provision of the Contract is unenforceable, such unenforceability shall not affect the enforceability of the remainder of the Contract.
- 15.6 No delay by SNIFFER in enforcing or expressing any right, either arising out of the Contract or any right in respect of any breach of the Contract by the Contractor, shall constitute a waiver of such right.
- 15.7 No waiver by SNIFFER of any breach of the Contractor's obligations shall constitute a waiver of any other prior or subsequent breach.
- 15.8 Neither the Contract nor these Conditions may be varied except by agreement in writing signed by persons having authority to do so on behalf of SNIFFER and the Contractor.
- 15.9 All disputes, differences or questions between the parties to the Contract with respect to any matter or thing arising out of or relating to the Contract, other than a matter or thing as to which the decision of SNIFFER is under the Contract to be final and conclusive, and except to the extent to which special provisions for arbitration is made elsewhere in the Contract, shall be referred to a single arbiter to be mutually chosen by the parties or, failing agreement, nominated by the President of the Law Society of Scotland for the time being on the application of either party. Any such reference to arbitration shall be deemed to be an agreement to refer to arbitration within the meaning of the Arbitration (Scotland) Act 1894.
- 15.10 The headings to Conditions shall not affect their interpretation.

15.11 These Conditions shall be governed by and construed in accordance with Scottish law and the Contractor hereby irrevocably submits to the jurisdiction of the Scottish courts. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of SNIFFER to take proceedings against the Supplier in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.