

# SUPPLY AND INSTALLATION (PURCHASE) OF COMPUTER EQUIPMENT

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## **1. DEFINITIONS**

- 1.1 'Acceptance Date' shall be the date certified by the Supervising Officer as the date when the Equipment and Software have passed the Acceptance Tests and the Equipment and Software have been completed in accordance with the Contract.
- 1.2 'Acceptance Tests' shall mean the tests included in the Contract to be carried out by the Contractor and/or such other tests as may be agreed in writing between the Customer and the Contractor to be carried out after delivery to the Premises and before the Acceptance Date.
- 1.3 'Completion Date' shall mean the date included in the Contract or where not so specified, the date included in the Programme of Work as the date upon which the Works are to be completed in accordance with the Contract.
- 1.4 'Contract' shall mean the agreement between the Customer and the Contractor for the execution of the Works, including therein all documents to which reference may properly be made in order to ascertain the rights and obligations of the parties.
- 1.5 'Contractor' shall mean the person, firm or company named as such in the Contract as responsible for carrying out the Works and shall include the Contractor's legal personal representatives, successors and permitted assigns.
- 1.6 'Contract Price' shall mean that sum so named in the Contract together with any additions thereto or deductions there from agreed in writing under the Contract.
- 1.7 'Customer' shall mean the person, firm or company named as such in the Contract for whom the Works are to be carried out and shall include the Customer's legal personal representatives, successors and permitted assigns.
- 1.8 'Equipment' shall mean all materials, plant and hardware supplied by the Contractor, including basic level machine control facilities, for inclusion in the Works.
- 1.9 'Factory Tests' shall mean the tests included in the Contract to be carried out prior to delivery to ensure that the Equipment and Software comply with the requirements specified.
- 1.10 'Premises' shall mean the place or places other than the Contractor's premises to which the Equipment and Software are to be delivered or where work is to be done.
- 1.11 'Programme of Work' shall mean the timing and sequence of events agreed between the Customer and Contractor for the performance of the Contract.
- 1.12 'Software' shall mean all operating systems, compilers, utilities and other programs and associated documentation provided by the Contractor for inclusion in the Works.
- 1.13 'Sub-Contractor' shall mean any person, firm or company to whom any part of the Contract has been sub-let in accordance with the Contract and its legal representatives, successors and permitted assigns.
- 1.14 'Supervising Officer' shall mean the person for the time being or from time to time duly appointed by the Customer and notified in writing to the Contractor, to act as the Customer's representative for the purpose of the Contract or in default of such notification the Customer.
- 1.15 'Warranty Period' shall have the meaning given in Clause 23.1.
- 1.16 'Works' shall mean and include the supply, delivery, installation, testing and setting to work of the Equipment and Software and all other work required to be carried out by the Contractor under the Contract.

## **2. SUPPLY AND INSTALLATION**

The Customer shall purchase and the Contractor shall sell to the Customer the Equipment and supply and install the Equipment on the terms and conditions of this Agreement.

## **3. CONTRACTOR TO INFORM HIMSELF FULLY AND STANDARD OF WORK**

The Contractor shall be deemed to have examined the Premises, the requirements specified and these Conditions. No claim from the Contractor for additional payment will be allowed on the grounds of misinterpretation of any matter relating to the Premises, the requirements specified or these Conditions on which the Contractor could reasonably have satisfied himself by a visit to the Premises, reference to the Supervising Officer or such other means as may be appropriate. The Works shall be in accordance with the Contract. To the extent that the standard of the Works has not been specified in the Contract, the Contractor shall use good quality materials, techniques and standards and execute the Contract with the care, skill and diligence required in accordance with best computing practice.

## **4. THE PREMISES**

### **4.1 Preparation and Provision**

- 4.1.1 The Contractor shall supply adequate information in sufficient time to enable the Customer to prepare the Premises for the Works and to provide:-
- (i) a suitable supply of electric current and such other mains services
  - (ii) all other required electrical and mechanical items and fittings (other than the Equipment and Software)

(iii) such facilities and environmental conditions as are defined in the Contract.

- 4.1.2 The Customer at his own expense shall ensure that such preparation and provision are made in accordance with the Programme of Work. In the event that such preparation and provision are unsuitable for the purpose of the Works as the result of an act or default of one party, then any reasonable costs thereby incurred by the other party shall be recoverable.

## **4.2 Access**

- 4.2.1 The Supervising Officer shall afford to the authorised personnel of the Contractor at all reasonable times and with prior agreement, such access to the Premises (but not necessarily sole access) as may be necessary for the inspection thereof and for the execution of the Works, provided always that the Supervising Officer shall have the right to refuse to admit to, or order the removal from, the Premises of any person employed by or acting on behalf of the Contractor or Sub-Contractor who, in the opinion of the Supervising Officer (which shall be final) is not a fit and proper person to be on the Premises. Action taken under this Clause shall forthwith be confirmed in writing to the Contractor by the Supervising Officer and shall not relieve the Contractor of his obligations under the Contract.
- 4.2.2 The Contractor must take reasonable care to ensure that, in the execution of the Works, he does not interfere with the operations of the Customer, his employees or any other contractor employed on the Premises.

## **4.3 Permission to Work**

The Contractor may work on the Premises only with the permission of the Supervising Officer.

## **5. MISTAKES IN INFORMATION**

- 5.1 The Contractor shall be responsible for and shall pay extra costs occasioned by any discrepancies, errors or omissions in drawings, documentation or other information supplied in writing by him, whether they have been approved by the Customer or not, provided that such discrepancies, errors or omissions are not due to inaccurate drawings or information and decisions supplied in writing to the Contractor by the Customer.
- 5.2 The Customer shall be responsible for and shall pay any extra costs directly occasioned by any discrepancies, errors or omissions in the drawings, information and decisions supplied in writing to the Contractor by the Customer.

## **6. PROGRAMME OF WORK**

- 6.1 The Works shall be carried out in accordance with the Programme of Work.
- 6.2 If the Programme of Work is not sufficiently detailed to meet the requirements of both parties, the Contractor shall within 21 days of entering into the Contract, submit to the Supervising Officer for his approval a detailed programme showing the number of days or weeks required for each separate stage to ensure that the Completion Date is achieved.
- 6.3 On receipt of the detailed programme, the Supervising Officer shall either:-  
(i) Signify his approval in which event it will form the Programme of Work,  
or  
(ii) reject the programme stating his reasons for doing so and require that the programme be amended and resubmitted by the Contractor.
- Approval, rejection and resubmission of the detailed programme (or amended programme) shall be effected without undue delay and within a time-scale which takes into account the total time available for the Works.

## **7. DELIVERY AND INSTALLATION**

No deliveries shall be made to the Premises without the prior permission of the Supervising Officer. The Contractor shall be responsible for the delivery of the Equipment and Software to the Premises and shall receive them thereon and shall provide all labour, materials and plant required for the off-loading, placing in position of the Equipment and Software and for all other purposes of the Contract. The Contractor shall be responsible for the safe custody of the Equipment and Software and his other equipment until the Acceptance Date, after which the Contractor shall remove his other equipment leaving the Premises and the Works in a clean and tidy condition and the Works ready for operational use.

## **8. VARIATIONS**

- 8.1 The Customer may at any time before the Acceptance Date require the Contractor to undertake any reasonable revision to the Programme of Work including the Completion Date and/or to undertake any reasonable alteration or addition to or omission from the Works or any part thereof (hereinafter referred to as a `Variation'). In the event of such a Variation being required, the Customer shall formally request the Contractor to state in writing the effect such Variation will have on the Works and what adjustment, if any, will be required to the Contract Price and/or to the Programme of Work. The Contractor shall furnish such details within 14 days of receipt of the Customer's request or such other period as may be agreed. The Contractor shall not vary the Works in any respect unless instructed in writing to do so by the Customer.
- 8.2 A Variation under Sub-Clause 8.1 shall not invalidate the Contract but if such Variation involves an increase or decrease in the cost to the Contractor of carrying out the Works and/or a change to the Programme of Work an appropriate adjustment to the Contract Price shall be made. The Contractor shall satisfy the Customer as to the reasonableness of changes to the Programme of Work and of the extra costs or savings resulting from Variations under this Clause.

## **9. EXTENSION OF TIME FOR COMPLETION**

If, after the date of the award of the Contract, the Contractor shall have been delayed or impeded by any act or omission of the Customer, and providing the Contractor shall without delay have notified the Customer in writing of such delay or impedance, the Supervising Officer shall grant the Contractor from time to time in writing such extension of time as may be reasonable and the Completion Date shall be amended accordingly. This clause is without prejudice to the provisions of this Contract relating to acts of Force Majeure provided in Clause 32.

## **10. DELAYS**

### **10.1 Delays by the Contractor and Liquidated Damages**

If the Contractor fails to complete the Works by the Completion Date (or such revised date as may be agreed or granted in accordance with Clauses 8 and 9) and the Customer shall have suffered a loss, the Customer shall have the right to deduct from the Contract Price the percentage stated in the Appendix to these Conditions of the Contract Price of the Works or of such portion or portions only of the Works as cannot in consequence of the said failure be put to the use intended for each week between the Completion Date or revised Completion Date and the actual Acceptance Date. However the amount so deducted shall not in any case exceed the maximum percentage stated in the Appendix of the Contract Price of the Works or of such portion or portions of the Works and such deduction shall be in full satisfaction of the Contractor's liability for the said failure. The Contractor and Customer agree that such sum is a genuine pre-estimate of the Customer's loss arising from any such delay.

### **10.2 Delays by the Customer**

All additional expenses reasonably incurred by the Contractor by reason of the Contractor being prevented from or delayed in proceeding with the Works by the Customer or some other contractor employed by the Customer or by reason of suspension of the Works by the Customer (otherwise than in consequence of some default on the part of the Contractor) shall be reimbursed to the Contractor by the Customer provided that no claim shall be made under this Clause unless the Contractor has, within 14 days after the event giving rise to the Claim, given notice to the Customer of his intention to make such a claim.

## **11. FACTORY TESTS**

- 11.1 Subject to giving the Contractor reasonable notice, the Customer shall be entitled at all reasonable times during manufacture to inspect, examine and test at the Contractor's works the materials and workmanship and performance of all the Equipment and Software to be supplied under the Contract and if part of the said Equipment and Software is being manufactured elsewhere the Contractor shall obtain for the Customer permission to inspect, examine and test as if the said Equipment and Software were being manufactured at the Contractor's works. Such inspection, examination or testing shall not release the Contractor from any of his obligations under the Contract.
- 11.2 The Contractor shall give the Customer 14 days' written notice of the date on and the place at which any Equipment or Software that is subject to Factory Tests will be ready for testing and if the Customer shall decline or fail to attend at the place so named and on the date which the Contractor has stated in his notice, the Contractor may proceed with the Factory Tests, which shall be deemed to

have been made in the Customer's presence, and shall forthwith forward to the Customer duly certified copies of the test readings.

The Customer shall give the Contractor notice in writing of his intention to attend the Factory Tests.

- 11.3 Where the Contract provides for Factory Tests, the Contractor shall, except where otherwise specified, include in the Contract Price for such assistance, labour, materials, electricity, fuel, stores, apparatus and instruments as may be requisite and may reasonably be required to carry out the Factory Tests efficiently.
- 11.4 As and when the Equipment and Software have passed the Factory Tests, the Customer shall notify the Contractor in writing to that effect.
- 11.5 If after inspecting, examining or the testing of any Equipment and Software, the Equipment and Software or any part thereof is defective, or not in accordance with the Contract, the Customer may reject the said Equipment and Software or any part thereof by giving to the Contractor within 14 days of the date of such inspection, examination or testing, notice in writing of such rejection, stating therein the grounds upon which such rejection is based.
- 11.6 If any Equipment or Software fails to pass the Factory Tests or is rejected under Sub-Clause 11.5 such Equipment and Software shall be tested again within a reasonable time upon the same terms and conditions save that all reasonable expenses to which the Customer may be put by the repetition of the tests shall be reimbursed to the Customer by the Contractor.

## **12. ACCEPTANCE TESTS**

- 12.1 The Contractor shall give to the Customer in writing seven days' prior notice or such shorter notice as may be agreed, of the date when he will be ready to commence the Acceptance Tests. Unless otherwise specified in the Contract the Contractor shall provide all necessary equipment, labour and things of all kinds required to carry out the Acceptance Tests. Unless otherwise agreed, the tests shall take place on the said date(s) or on such date(s) as the Customer shall notify the Contractor in writing.
- 12.2 If the Customer fails to attend on the appointed date(s) for the Acceptance Tests the Contractor shall be entitled to proceed in his absence and the said tests shall be deemed to have been made in the presence of the Customer and copies of all documents produced as a result of the tests shall be made available to the Customer.
- 12.3 If, in the opinion of the Customer, the Acceptance Tests are being unreasonably delayed, he may by notice in writing require the Contractor to make the said tests within 7 days from receipt of the said notice and the Contractor shall make the said tests on such date(s) within the said 7 days as the Contractor may fix and of which he shall give reasonable notice to the Customer. If the Contractor fails to make such tests within the time aforesaid, the Customer may himself proceed to make the said tests. All the Acceptance Tests so made by the Customer shall be at the risk and expense of the Contractor unless the Contractor shall establish that the said tests were not being delayed in which case such tests so made shall be at the risk and expense of the Customer.
- 12.4 If the Equipment and Software or any portion thereof fails to pass the Acceptance Tests, repeat tests shall be carried out within a reasonable time upon the same terms and conditions but at the sole expense of the Contractor. In the event that the repeat tests show that the Equipment and Software are not in accordance with the Contract, then the Customer shall have the right to:-
- (i) require the Contractor to supply, free of charge, such additional or replacement Equipment and Software as may be necessary to enable the Equipment and Software to pass the Acceptance Tests;
  - or
  - (ii) accept and retain such of the Equipment and Software as he may consider expedient at such reduced prices as may be agreed between the Customer and the Contractor;
  - or
  - (iii) reject the Equipment and Software where it is not in accordance with the Contract whereupon the Contractor shall refund all of the Contract Price paid at that date, without prejudice to the Customer's other rights and remedies

## **13. ACCEPTANCE CERTIFICATE**

- 13.1 As soon as the Works have been completed in accordance with the Contract and have passed the Acceptance Tests, the Supervising Officer shall issue an Acceptance Certificate which will state the Acceptance Date and any outstanding defects in the Works. The Contractor undertakes to rectify such defects without delay.
- 13.2 If by agreement between the Customer and the Contractor any part of the Works shall be satisfactorily completed in advance of the remainder, the Supervising Officer may issue an Acceptance Certificate in respect of that part.
- 13.3 The Customer reserves the right not to issue an Acceptance Certificate for that part of the Works for

which operating manuals and other relevant documentation have not been supplied.

#### **14. PATENTS, DESIGNS AND COPYRIGHT**

14.1 The Contractor shall fully indemnify and hold the Customer harmless against all actions, claims, demands, proceedings, damages, costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of any intellectual property rights, including without limitation, any patent, registered or unregistered design right, trade mark, or copyright by the use or possession of the Equipment and Software supplied by the Contractor under the Contract, subject to the following:-

- (i) the Customer shall promptly notify the Contractor in writing of any alleged infringement of which he has notice;
- (ii) the Customer must make no admissions without the Contractor's consent;
- (iii) the Customer, at the Contractor's request and expense shall allow the Contractor to conduct and/or settle all negotiations and litigation and give the Contractor all reasonable assistance. The costs incurred or recovered in such negotiations or litigation shall be for the Contractor's account.

14.2 If at any time any allegation of infringement of any patent, registered design or copyright is made in respect of the Equipment and Software or in the Contractor's reasonable opinion is likely to be made, the Contractor may at his own expense modify or replace the Equipment and Software, without detracting from overall performance, the Contractor making good to the Customer any loss of use during modification or replacement, so as to avoid the infringement. The provisions of Clause 8 shall then take effect as if the Customer had required a Variation, save that the Contractor shall not be entitled to request any increase to the Contract Price.

#### **15. STANDARD OF PERFORMANCE**

The Contractor shall ensure that the Equipment and Software maintain the standard of performance specified in the Contract and demonstrated in the Acceptance Tests for either:-

- (i) the period of the maintenance contract if the Equipment and/or Software are to be maintained by the Contractor;
- or
- (ii) the Warranty Period if the Equipment and/or Software are not to be maintained by the Contractor.

If the Customer can demonstrate that the Standard of Performance specified in the Contract has not been maintained due to the fault of the Contractor then, notwithstanding prior acceptance of the Equipment and Software in accordance with Clauses 12 and 13, the Contractor shall forthwith, at his own expense, provide to the Customer such replacement or additional items of Equipment and Software as may be necessary to achieve the standard of performance specified in the Contract.

#### **16. ASSIGNMENT AND SUBLETTING**

- 16.1 Neither party shall assign the Contract or any of its rights or obligations thereunder without first having received the written approval of the other party (provided that the Customer may assign the benefit of the Contract to any of his associated or subsidiary companies or to any leasing or financing company of his choice).
- 16.2 The Contractor shall not sub-Contract the Contract or any part thereof without having first obtained the written permission of the Customer provided that this restriction shall not apply to sub-Contracts for materials or minor details or any part of the work to be performed or materials or equipment to be supplied for which the sub-Contractor is named in the Contract.
- 16.3 The Contractor shall be responsible for the acts, defaults and omissions of its sub-Contractors, whether approval has been given to their appointment under this Clause or not, as if they were his own and any consent given under this Clause shall not relieve the Contractor of any of his obligations under the Contract.

#### **17. INDEMNITY AND INSURANCE**

- 17.1 The Contractor shall indemnify and keep indemnified the Customer, against injury (including death) to any persons or loss of or damage to any property which may arise out of the act, default or negligence of the Contractor, a Sub-Contractor, their employees or agents in consequence of the Contractor's obligations under the Contract and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

- 17.2 The Customer shall indemnify and keep indemnified the Contractor for the duration of the Contract against injury (including death) to any persons or loss of or damage to any property (excluding the Software) which may arise out of the act, default, or negligence of the Customer or any contractor employed by the Customer (other than the Contractor or a Sub-Contractor) and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.
- 17.3 Without thereby limiting their responsibilities under Sub-Clauses 17.1 and 17.2 each party shall insure with a reputable insurance company against all loss of and damage to property and injury to persons (including death) arising out of or in consequence of its obligations under the Contract and against all actions, claims, demands, costs and expenses in respect thereof, save only as is set out in the exception in Sub-Clause 17.4.
- 17.4 The liability of the parties under Sub-Clause 17.1 or 17.2 as appropriate, shall exclude damage or injury (other than injury including death resulting from negligence) consequent upon design, formula, specification or advice. Except in respect of personal injury and death to a person due to negligence for which no limit applies, the liability of the parties under this Agreement shall not exceed the sums specified in the Appendix to these Conditions in respect of any event or series of connected events.
- 17.5 The Contractor shall insure until the Acceptance Date with a reputable insurance company the Equipment and Software (including associated documentation) for all risks of physical loss or damage for a value equal to the replacement costs of the Equipment and Software. Such sums include an allowance for the additional costs, charges and expenses of reconstituting or recompiling the Software and associated documentation. The Contractor shall supply to the Customer written evidence that such cover is in force for the required period.

## **18. CONSEQUENTIAL LOSS**

Save as expressly stated elsewhere in the Contract and except as regards liability for death or personal injury caused by its negligence, neither party shall be liable to the other for consequential loss or damage, loss of revenue, opportunity or contract or goodwill.

## **19. TERMS OF PAYMENT**

- 19.1 The Contractor shall be entitled to claim payment of the percentage payments detailed in the Appendix to these Conditions of the Contract Price of the Works or any part thereof on the issue of an Acceptance Certificate therefor under Clause 13. The remaining percentage of the Contract Price shall become due on completion by the Contractor of his obligations under Clause 23. (Warranty Period.)
- 19.2 If at any time at which any payment would fall to be made under Sub-Clause 19.1, there shall be any defect due to the fault of the Contractor in or affecting any portion of the Works in respect of which such payment is claimed, the Customer shall have the right to retain the whole of such payment, provided that in the event of such defect being of a minor character and not such as to affect the use of the Works or the said portion thereof for the purpose intended without serious risk, the Customer shall not retain a greater sum than represents the cost of making good the said defect. Any sum retained by the Customer under this Clause shall be paid to the Contractor upon the said defect being made good.
- 19.3 The Contractor shall be entitled to invoice the Customer at the times and in the manner specified in the Contract.. Provided that the invoice was one which under the Contract the Contractor was entitled to submit the Customer shall pay the Contractor within the period of days specified in the Contract from the date of receipt of the invoice, and in default of such specification, 30 days from the date of invoice, subject to any right of deduction which the Customer may have by way of setoff or abatement. If the Customer does make any such deduction then he shall notify the Contractor accordingly in writing with reasons.
- 19.4 The Customer reserves the right to withhold payment against any invoice which is not submitted in accordance with the Contract or which covers or purports to relate to Equipment, Software or services which have not been provided in accordance with the Contract and shall forthwith notify the Contractor accordingly in writing.
- 19.5 All sums payable under this Agreement shall be exclusive of value added tax, if any, which shall be paid by the Customer to the Contractor in addition, with the Contract Price as provided above.

## **20. FIXED PRICE**

Unless otherwise agreed the Contract Price shall not be varied by reason of any rise or fall in the cost of materials, labour or transport above or below the cost ruling at the date of the Contract.

## **21. OWNERSHIP**

The Equipment or any part thereof shall become the property of the Customer on payment of the sums due following the issue of the Acceptance Certificate.

## **22. RECOVERY OF SUMS DUE**

- 22.1 Whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor, the same may be deducted from any sum then due or which at any time thereafter may become due to the Contractor under this or any other contract with the Customer.
- 22.2 Exercise by the Customer of his rights under this Clause shall be without prejudice to any other rights or remedies available to the Customer under the Contract.

## **23. WARRANTY PERIOD**

- 23.1 The Contractor shall be responsible for making good with all possible speed at his own expense any defect in or damage to any portion of the Works which may develop during a period of 12 calendar months after the Acceptance Date (hereinafter referred to as 'the Warranty Period'), where this results in a failure of the Works to fulfil the functions or meet the level of performance in the Contract or arises from either:-
- (i) defective materials, including Software, workmanship or design (other than a design furnished or specified by the Customer and for which the Contractor has disclaimed responsibility within a reasonable time, after the receipt of the Customer's instructions) or
  - (ii) any act or omission of the Contractor done or omitted during the Warranty Period.
- 23.2 If any such damage or defect be not remedied within a reasonable time, the Customer may proceed to do the work at the Contractor's risk and expense but without prejudice to any other rights which the Customer may have against the Contractor in respect of the failure of the Contractor to remedy such defect or damage.
- 23.3 Where a defect involves a fault inherent in the design of the Works the Contractor shall at his own expense promptly carry out such redesign as may be necessary to prevent a recurrence of the defect and upon completion of such redesign shall rectify the fault in the Works. Any such redesign shall be accomplished in such a manner as to ensure that the performance and operation of the Works is not down-graded by virtue of such redesign from the standard as accepted by the Customer under Clause 12 (Acceptance Tests). The Warranty Period of 12 calendar months shall thereupon be renewed in respect of the Works or any portion thereof subject to such redesign and rectification.
- 23.4 If the replacements or renewals are such that they may affect the performance of the Works or any portion thereof, the Customer may within one calendar month of such replacement or renewal give to the Contractor notice in writing requiring that the Acceptance Tests be made in which case such tests shall be carried out as provided in Clause 12.
- 23.5 The provisions of this Clause shall not apply to any defect or damage which arises or develops as a result of any alteration to the Works made by the Customer or any negligent act or omission of the Customer.

## **24. TERMINATION**

- 24.1 If the Contractor becomes insolvent or bankrupt or has a receiving order or administration order made against it or compounds with its creditors, or being a corporation commences to be wound up (not being a member's voluntary winding up for the purposes of reconstruction or amalgamation), or carries on its business under an administrator or administrative receiver for the benefit of its creditors or any of them, then the Customer shall have the right forthwith by notice in writing to the Contractor or to the administrator, administrative receiver or to the liquidator or to any person in whom the Contract shall have become vested terminate the Contract. Alternatively the Customer may at his sole option give such administrator, administrative receiver, liquidator or other person the option of carrying out the Contract subject to its providing a guarantee for the due and faithful performance of the Contract in such form and up to such amount as the Contractor shall decide. In the event of the Contract being terminated under this Clause the Customer shall have the right by prior notice to the Contractor to enter that Contractor's premises for the sole purpose of removing any item, equipment or materials which are its property and which are clearly marked and identified as such. The exercise by the Customer of its rights under this Clause shall not prejudice any of its rights or obligations accrued prior to termination and the provisions referred to in the Clause relating to Termination for Default as continuing obligations shall apply.
- 24.2 If the Customer shall become insolvent or bankrupt or have a receiving order or administration order made against it or compound with its creditors or being a corporation commence to be wound up not

- being a member's voluntary winding up for the purpose of reconstruction or amalgamation, or carry on its business under an administrator or administrative receiver for the benefit of its creditors or any of them, the Contractor shall be at liberty to terminate the Contract forthwith by notice in writing to the Customer or to the administrative receiver or administrator or liquidator or to any person in whom the Contract may become vested. In the event of termination under this Sub-Clause the Contractor shall have the right, by prior notice to the Customer, to enter the Premises for the purpose only of removal of any items of equipment or materials which are clearly marked as being the property of the Contractor.
- 24.3.1. Either party may terminate this Contract forthwith by written notice to the other effective from the date of service of such notice if:
- (a). there is a breach by the other party of any provision of the Contract which expressly entitles the party not in breach to terminate the Contract.
  - b) there is a material or persistent breach by the other party of any other term of the Contract, which is not remediable, or if it is remediable has not been remedied within 30 days of the service of written notice to the defaulting party specifying the breach and requiring it to be remedied.
- 24.3.2. On termination other than for the default of the Contractor the Customer shall pay to the Contractor the proportion of the Contract Price payable in respect of the materials supplied and/or services performed by the Contractor up to the date of termination together with the costs of the commitments already entered into by the Contractor at the date of termination of the Contract less the amount of any payments already made to the Contractor up to the date of termination. If the amount of payments already made to the Contractor at the date of termination exceeds the sum due to the Contractor under this sub-Clause then the Contractor shall repay the balance due to the Customer. Any such payment shall be in full satisfaction of the Contractor's rights to payment, compensation or damages in respect of the termination or the breach of Contract giving rise to the right of termination.
- 24.3.3. On payment of the sum due under sub-Clause 24.3.2 above the Contractor shall transfer to the Customer the benefit of all work done and the property in all materials (including without limitation the Equipment) supplied by the Contractor or his sub-Contractors or sub-suppliers in the performance of the Contract up to the date of termination which benefit shall include any rights in any licensed or developed software and licensed firmware so far as the rights in the same have already accrued to the Customer under the Contract or will do so on the payment under sub-Clause 24.3.2 above.
- 24.3.4. If the Contract is terminated by reason of the default of the Contractor the Customer shall be entitled to the like benefits and ownership of materials as are stated in sub-Clause 24.3.3 above. The Customer shall only pay to the Contractor the proportion of the Contract Price payable in respect of the work done and /or services performed by the Contractor up to the date of termination after deduction of payments already made to the Contractor, the costs reasonably incurred by the Customer in obtaining the completion of the work to be performed under the Contract by others and any damages which may be payable by the Contractor in respect of the termination or the breach of the Contract giving rise to the right to termination. If the amount due to the Contractor is less than the amount which the Customer is entitled to deduct then the Contractor shall pay the balance to the Customer.
- 24.3.5. Following the termination of the Contract neither party shall have any further rights or obligations in relation to the other party other than those stated in this Clause and in the Clauses listed in sub-Clause 24.3.6 below which shall continue in full effect. Subject to sub- Clause 24.3.2 above termination shall not however affect the rights of action and remedy of the parties which shall have accrued at the date of termination or shall thereafter accrue.
- 24.3.6. The clauses below shall survive termination of this Agreement from any cause:
- Confidentiality
  - Publicity
  - Waiver
  - Infringement Indemnity
  - Governing Law and Jurisdiction
  - Intellectual property rights
  - Property in materials
  - Conditions and warranties relating to the goods supplied and/or services provided under the Contract.
- 24.4. The exercise of rights under this Clause shall not prejudice any existing rights or obligations of either party.
- 25. STATUTORY AND OTHER REGULATIONS**
- 25.1. The Contractor shall in all matters relating to the performance of the Contract comply with all Acts of

- Parliament and with all orders, regulations and bye-laws made with statutory authority by Government Departments or by local or other authorities. The Contractor shall also observe through his staff and work people any rules applicable to the Premises where the Works are carried out. The Customer shall on request afford all reasonable assistance to the Contractor in obtaining information as to local conditions. The Contractor shall not in the performance of the Contract in any manner endanger the safety or unlawfully interfere with the convenience of the public. The cost to the Contractor in meeting the requirements of this Sub-Clause shall be included in the Contract Price, except as provided under Sub- Clause 25.3.
- 25.2 The Contractor shall give the Customer such prior written notice as the Customer may require of the delivery under the Contract of any goods having a toxic hazard or other hazard to the safety or health of persons or property, identifying those hazards and giving full details of any precautions to be taken by the Customer on the delivery of such goods and their subsequent storage or handling.
- 25.3 In the event that either party incurs costs to which he would not otherwise be liable due to the other party's failure to comply with any law or any order, regulation or bye-law having the force of law, the amount of such costs shall be reimbursed by the other party.
- 25.4 The Contractor undertakes that he and his employees, agents and sub-Contractors will at all times comply with all health and safety requirements relating to the carrying out of the work under the Contract. Such requirements include in addition to statutory laws and regulations any codes of practice and British Standards or their equivalent relating to Health or Safety which may be applicable to the performance of the Contract. In the performance of the Contract the Contractor shall conform to all relevant environmental standards, guidelines and Codes of Practice and shall take all practical steps in the design of the work to be performed under the Contract to minimise any risk to the environment.

## **26. WAIVER**

Any failure by the Customer to insist at any time upon the performance of any of the terms, provisions or undertakings of the Contractor contained in the Contract or to exercise any rights thereunder shall not constitute or be construed as a waiver thereof or a relinquishment of the Customer's rights to require the future performance of any such term, provision or undertaking but the obligation of the Contractor with regard to the same shall continue in full force and effect.

## **27. CONFIDENTIALITY AND DATA PROTECTION**

- 27.1 Each party shall treat the Contract and any information it may have obtained or received in relation thereto or arising out of or in connection with the performance of the Contract or its negotiation or relating to the business or affairs of the other as private and confidential and neither party shall publish or disclose the same or any particulars thereof without the prior written consent of the other or as may be permitted under the later provision of this Clause.
- 27.2 The obligations expressed in sub-Clause 1 above shall not apply to any information which:
- (a) is or subsequently comes into the public domain otherwise than by breach of this Clause
  - (b) is already in the possession of the receiving party without an accompanying obligation of confidentiality
  - (c) is obtained from a third party who is free to divulge the same
  - (d) is independently and lawfully developed by the recipient or its sub-Contractor outside the scope of the Contract.
- 27.3 So far as it may be necessary for the performance of the Contract or for the operation and maintenance of the subject matter of the Contract each party may divulge any information to be kept confidential under sub-Clause 1 of this Clause to their employees, agents and approved sub-Contractors, if any, on a "need to know" basis but undertake that they will ensure compliance by such employees, agents, and sub - Contractors with the obligations as to confidentiality expressed in this Clause and will be responsible to the other party for any failure by any employee, agent or sub-Contractor to comply with such obligations whether such employee, agent or sub-Contractor was aware of them or not.
- 27.4 Both parties shall ensure that they, their employees, agents and sub-Contractors shall observe the requirements of the Data Protection Act 1998 and any amendments or revisions thereto in the provision and use of the subject matter of the Contract and shall comply with any request made or direction given to the other which is directly due to the requirements of such Act.
- 27.5 The provisions of this Clause shall continue in perpetuity.

## **28. CONSUMABLE SUPPLIES**

The Customer reserves the right to procure magnetic media and any other consumable supplies to be used on and suitable for the Equipment from the Contractor or such other source as the Customer may deem appropriate, such procurement from a source other than the Contractor shall not invalidate any rights of the Customer under these Conditions.

**29. MAINTENANCE**

- 29.1 If required by the Customer before the end of the Warranty Period the Contractor shall enter into a separate contract for the maintenance of the Equipment and Software on terms and conditions to be agreed.
- 29.2 If a maintenance contract commences on the Acceptance Date the maintenance charges during the Warranty Period shall reflect the Contractor's obligations under Clause 23.

**30. SPARES**

- 30.1 The Contractor shall make available to the Customer on request and with reasonable despatch and at reasonable prices, all spares and replacement parts as the Customer shall require for the Equipment.
- 30.2 The Contractor shall maintain a supply of such spares or replacement parts for a period of seven years from the Acceptance Date, such spares or replacement parts to be fully compatible with but not necessarily identical to similar items previously supplied.
- 30.3 If during this period the Contractor or his Sub-Contractors intend to discontinue the manufacture of spares or replacement parts for the Equipment the Contractor shall forthwith give notice to the Customer of such intention and afford the Customer the opportunity (which shall be exercised within 3 months) of ordering at reasonable prices such quantities of such spares or replacement parts as the Customer shall reasonably require in relation to the anticipated life of the Equipment. Alternatively the parties may agree within the said period of 3 months upon a price at which the Contractor will sell to the Customer such drawings, patterns, specifications and other information as he may have in his possession and as the Customer shall require to enable him to make or have made such spares or replacement parts.
- 30.4 If during the above-mentioned period of seven years the Contractor (in the absence of agreement as aforesaid) either:-
- (i) fails to make available to the Customer with reasonable despatch and at reasonable prices all such spares or replacement parts as the Customer shall require for the Equipment; or
  - (ii) becomes insolvent or has a receiving order made against him or commences to be wound up (not being a member's voluntary winding up for the purpose of reconstruction) then the Contractor shall so far as he is legally entitled so to do and if so required by the Customer as soon as reasonably practicable deliver to the Customer free of charge such drawings, patterns, specifications and other information as are referred to in Sub-Clause 30.2 and which the Customer shall be entitled to retain for such time only as is necessary for the exercise by the Customer of his rights under this Clause and which if the Contractor so requires shall be returned by the Contractor to the Contractor in good order and condition (fair wear and tear excepted) and at the Customer's cost and expense.
- 30.5 If the Customer shall exercise his right under Sub-Clause 30.4 of this Clause the Contractor shall also grant to the Customer without payment of any royalty or charge full right and liberty to make or have made spares or replacement parts as aforesaid and for such purposes only to use, make and have made copies of all drawings, patterns, specifications and other information supplied by the Contractor to the Customer pursuant to the Contract.
- 30.6 The Customer undertakes for himself and on behalf of his servants and agents that all drawings, patterns, specifications and other information obtained from the Contractor under this Clause shall be kept confidential and will not be divulged except to such persons as it may be necessary to divulge the same to, for the purpose of making or having made spares or replacement parts as aforesaid.

**31. SOFTWARE**

- 31.1 The Contractor shall be responsible for providing in accordance with the Contract all Software and associated documentation necessary for the satisfactory operation of the Equipment.
- 31.2 Where the provision of the Software is subject to separate licensing arrangements the terms of any such licence(s) shall be in accordance with the licence(s) specified in the Appendix.
- 31.3 Where the provision of the Software is not subject to separate licence arrangements:-
- 31.3.1 The Contractor hereby grants to the Customer a perpetual right to use the Software (whether modified as hereinafter provided or not) on the Equipment.
  - 31.3.2 The Customer shall in perpetuity have the right to modify or add to any of the Software without reference or obligation to the Contractor except that modifications and additions during the Warranty Period shall be agreed with the Contractor.
  - 31.3.3 Subject to the provisions of Clause 14 and this Clause, all patent, registered and unregistered design

- rights, copyright and other intellectual property rights of the Contractor in the Software shall remain vested in the Contractor.
- 31.3.4 The Customer shall have copyright and other intellectual property rights in any modifications or additions made to the Software, if any of the foregoing are produced by the Customer or written on a bespoke basis for the Customer hereunder by the Contractor, which shall vest in the Customer on their creation, but the Customer shall in no case acquire copyright in the Software itself. The Contractor shall execute all documents necessary to effect such ownership.
- 31.3.5 The Customer shall not assign or sub-licence to any third party or cause or permit any third party to have the use of the Software, including any translation, compilation, adaptation, enhancement or any other version of the Software, without prior notice to Contractor.
- 31.3.6 In addition to his obligations under Clause 23, the Contractor shall provide Software maintenance services and system support as defined in the Contract.
- 31.3.7 If in meeting his obligations under Sub-Clause 31.3.6 the Contractor for his own purposes modifies any of the Software supplied under the Contract and such modification adversely affects the level of performance of the Equipment and Software then the Contractor shall, at his own expense, provide such items of equipment as may be necessary to return the level of performance of the Equipment and Software to that specified in the Contract.
- 31.3.8 The Customer shall only make so many copies of the Software or any portion thereof as are reasonably necessary for operational security, back ups and use.
- 31.3.9 The Customer reserves the right to use other software on the Equipment supplied under this Contract, provided this does not affect the Contractor's obligations under Clause 23.
- 31.3.10 The Customer may use the Software only on the Equipment. If the Software cannot be used because the Equipment or any part thereof is temporarily inoperable then the Customer may, without any additional payment to the Contractor but at the Customer's risk and expense, use the Software on any other compatible equipment until the Equipment becomes operable.
- 31.3.11 The Customer may not transfer the Software permanently to other equipment without the written consent of the Contractor which shall not be unreasonably withheld. Where such equipment is compatible such consent shall be granted without any additional charges.
- 31.3.12 The Contractor may, at the request of the Customer and on terms to be agreed, provide to the Customer a copy of the source coding of the Software together with all necessary associated documentation. The Contractor shall deposit the source coding of the Software with a third party escrow agent at the request of the Customer at any time on payment by Contractor and Customer of half of the fees of such agent each.
- 31.3.13 Notwithstanding the provisions of Sub-Clause 31.3.12, if the Contractor fails to provide the maintenance and support services specified in Sub-Clause 31.3.6, then the Contractor shall provide to the Customer at no additional charge a copy of the source coding of the Software together with all necessary associated documentation, without prejudice to any escrow arrangement in place.
- 31.3.14 In the event only that the source coding is provided under the provisions of Sub-Clause 31.3.13 the Customer's use of the source coding shall be restricted to the purpose of maintaining the Software.

## **32. FORCE MAJEURE**

- 32.1 For the purpose of the Contract the term Force Majeure shall mean:
- (a) war and other hostilities including terrorist activities, (whether war be declared or not) invasion, act of foreign enemies, mobilisation, requisition or embargo
  - (b) rebellion, revolution, insurrection, military or usurped power or civil war
  - (c) riot, commotion or disorder except where solely restricted to employees of the Contractor or its sub-Contractors or subsuppliers
  - (d) earthquake, flood, fire or other natural physical disasters except to the extent that any such disaster is caused by, or its effects contributed to by, the party claiming force majeure. Force majeure shall not include a general industrial dispute or failure by approved sub-contractors.
- 32.2 If either party considers that any circumstance of Force Majeure has occurred which may affect materially the performance of its obligations then he shall forthwith notify the other in writing to that effect giving full details of the circumstances giving rise to the Force Majeure event.
- 32.3 Neither party shall be considered to be in default of its obligations under the Contract to the extent that it can establish that the performance of such obligations is prevented by any circumstance of Force Majeure which arises after the date of the Contract and which was not foreseeable at the date of the Contract.
- 32.4 If the performance of the obligations of either party under the Contract is so prevented by circumstances of Force Majeure and shall continue to be so prevented for a period of less than 30 days then during that period the Contract shall be considered as suspended. Upon the ending of the Force Majeure event the Contractual obligations of the parties shall be reinstated with such reasonable

modifications to take account of the consequences of the Force Majeure event as may be agreed between the parties or, in default of such agreement, as may be determined by an Expert appointed under this Agreement.

Notwithstanding such suspension the Contractor shall use his reasonable endeavours to assist the Customer in the performance of the Contract.

- 32.5 If performance of the obligations of either party under the Contract is so prevented by circumstances of Force Majeure and shall continue to be so prevented for a period in excess of 30 days then the Contract shall be terminated by mutual consent and, subject to sub-Clause 32.6 below neither party shall be liable to the other as a result of such termination.
- 32.6 If the Contract is so terminated then subject to the transfer to the Customer of the benefit referred to in sub-Clause 32.7 below the Customer shall pay to the Contractor such reasonable sum as may be agreed between the parties or in default of agreement as may be determined by Expert Determination in accordance with this Agreement in respect of costs incurred and commitments already entered into by the Contractor at the date of the Force Majeure notice, less the amount of any payments already made to the Contractor at the date of the Force Majeure notice. If the amount of such advance payments made to the Contractor exceeds the sum due to the Contractor under this sub-Clause then the Contractor shall repay the balance to the Customer
- 32.7 The Contractor shall transfer to the Customer the benefit of all work done by him or his approved sub-Contractors if any and sub-suppliers in the performance of the Contract up to the date of the Force Majeure notice, and if applicable it shall include the rights in any licensed and developed software and licensed firmware so far as the rights in the same have accrued to the Contractor prior to the Force Majeure notice or will do so on the payment under sub-Clause 32.6 above.

### **33. ATTACHMENTS TO THE EQUIPMENT**

The Customer shall have the right to attach to the Equipment free of charge any equipment not supplied by the Contractor. If the Customer notifies the Contractor in writing of the intention to make such attachment, it shall be a duty on the Contractor to notify the Customer forthwith if they have or subsequently receive any information to show that such attachment is or could be detrimental to the efficient operation of the equipment. In the event that the attachment is made by the Customer and the Contractor can prove that such attachment is adversely affecting the Equipment, then the Contractor shall be entitled to be reimbursed any associated costs which he can prove have arisen as a result of the attachment.

### **34. TRAINING**

The Contractor shall provide instruction in the use of the Equipment and Software for the Customer's personnel in accordance with the requirements of the Contract. Unless otherwise specified no charge shall be made for such instruction but the Customer shall be responsible for paying any travel or living expenses necessarily incurred by the Customer's personnel attending such instruction.

### **35. PUBLICITY**

Neither party shall without the written consent of the other (the giving of which consent shall be at the sole discretion of that party) advertise, publicly announce or provide to any other person information relating to the existence or details of the Contract or use the other party's name in any format for any promotion, publicity, marketing or advertising purpose.

### **36. OPERATING MANUALS**

The Contractor shall supply to the Customer all operating manuals and other documentation necessary for the satisfactory operation of the Equipment and Software or as specified in the Contract. If, after the Acceptance Date, the operating manuals and documentation need updating or replacing the Contractor shall supply such updates or replacements to the Customer at reasonable prices unless free updates and/or fixes were offered in the Contract.

### **37. NOTICES**

- 37.1 Any notice or other communication which either party is required by the Contract to serve on the other party shall be sufficiently served if sent to the other party at its address as specified in the Contract either
- (a) by hand;
  - (b) by registered or first class post or recorded delivery
- or

(c) by facsimile or electronic mail transmission confirmed by registered, first class post or recorded delivery within 24 hours of transmission.

37.2. Notices are deemed to have been served as follows: delivered by hand; on the day when they are actually received, sent by post or recorded delivery; two working days after posting, sent by facsimile or electronic mail; on the day of transmission if transmitted before 16.00 hours on the working day, but otherwise 09.00 hours on the following working day, provided in each case that the required confirmation is sent.

**38. NO THIRD PARTY RIGHTS**

Nothing in this Contract shall confer, nor is it intended to confer, any enforceable right on any third party under the Contracts (Rights of Third Parties) Act 1999 except as otherwise expressly so stated.

**39. EXPERT DETERMINATION**

Where under the Contract any issue is to be determined by an Expert then:

- (a) either party may give 7 days' notice in writing to the other requiring expert determination by an Expert to be agreed between the parties or nominated as referred to below
- (b) within 14 days of the receipt of such notice the parties shall have agreed on the choice of an Expert or in default of agreement the Expert shall be nominated by the President for the time being of the British Computer Society on the application of either party
- (c) the Expert shall act in accordance with such procedure as the Expert may in his sole discretion decide provided that he shall act impartially as between the parties
- (d) the Expert shall reach a decision within 56 days of his appointment, which decision shall except in the case of fraud be final and binding on the parties
- (e) the Expert shall sit as an expert and not as an arbitrator.

The Expert shall not be liable for anything done or omitted to be done in the discharge or purported discharge of his duties as an Expert unless the act or omission was done in bad faith.

**40. DISPUTE RESOLUTION**

40.1 If any dispute or difference whatsoever shall arise between the parties in connection with or arising out of the Contract, except any matter which under the Contract is to be referred to Expert Determination, either party may give the other 7 days notice to resolve the dispute or difference through Alternative Dispute Resolution (ADR) in accordance with the mediation procedure of the Centre for Dispute Resolution. If the parties fail to agree terms of settlement of their dispute or difference within 56 days of the receipt of such notice or the party to whom the notice was given refuses to participate in the ADR procedure then the matter shall be litigated, without prejudice to either party's right at any time to obtain immediate interim court relief.

40.2 The parties submit to the exclusive jurisdiction of the English courts in connection with any dispute hereunder.

**41. LAW**

Unless otherwise agreed in writing between the parties, the Contract shall be subject to and construed and interpreted in accordance with English Law.

**APPENDIX**

Delays by the Contractos

**CLAUSE 10.1**

- (i) Percentage of the Contract Price to be deducted as damages for each week of delay between the agreed Completion Date and the actual Acceptance Date .....%
- (ii) Maximum percentage of the Contract Price which the deductions may not exceed .....%

Indemnity and Insurance

**CLAUSE 17.4**

The liability of the parties under Sub-Clause 17.1 and 17.2 in respect of any one act or

default shall not exceed

.....%  
Terms of Payment

**CLAUSE 19.1**

Percentage of the Contract Price  
to be paid on the issue of an  
Acceptance Certificate under  
Clause 13

**CLAUSE 31**

Software licences forming part  
of the Contract

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*CIPS Model P*  
*Revised November 2002*

# SUPPLY AND INSTALLATION (PURCHASE) OF COMPUTER EQUIPMENT

Clause No	Title
1	DEFINITIONS
2	THE PREMISES
3	MISTAKES IN INFORMATION
4	INSPECTION TESTING AND ACCEPTANCE
5	DELIVERY
6	PATENTS, DESIGNS AND COPYRIGHT
7	ASSIGNMENT AND SUB-LETTING
8	LIABILITY FOR ACCIDENT AND DAMAGE
9	TERMS OF PAYMENT
10	OWNERSHIP
11	WARRANTY PERIOD
12	INSOLVENCY AND BANKRUPTCY
13	STATUTORY AND OTHER REGULATIONS
14	CONFIDENTIALITY
15	MAINTENANCE
16	SOFTWARE
17	FORCE MAJEURE
18	ATTACHMENTS TO THE EQUIPMENT
19	TRAINING
20	PUBLICITY
21	MANUALS
22	TERMINATION
23	LAW

## **1. DEFINITIONS**

- 1.1 'Customer' shall mean the person, firm or company named as such in the Contract to whom the Equipment is to be supplied and shall include the Customer's legal personal representatives, successors and permitted assigns.
- 1.2 'Contractor' shall mean the person, firm or company named as such in the Contract as responsible for supplying the Equipment and shall include the Contractor's legal personal representatives, successors and permitted assigns.
- 1.3 'Contract' shall mean the agreement between the Customer and the Contractor including therein all documents to which reference may properly be made in order to ascertain the rights and obligations of the parties.
- 1.4 'Equipment' shall mean all materials, plant, and hardware supplied by the Contractor under the Contract.
- 1.5 'Software' shall mean the computer programs and associated documentation necessary to operate the Equipment.
- 1.6 'Contract Price' shall mean the sum so named in the Contract together with any additions thereto or deductions therefrom agreed in writing under the Contract.
- 1.7 'Premises' shall mean the place or places other than the Contractor's premises to which the Equipment is to be delivered or where work is to be done as described under the Contract.

## **2. THE PREMISES**

### **Preparation and Provision**

- 2.1 The Contractor shall sell to the Customer and install the Equipment on the terms and conditions of this Contract. The Contractor shall supply adequate information in reasonable time to enable the Customer to provide adequate environmental and operational conditions for the Equipment and the Customer shall suitably prepare the Premises prior to the delivery and installation of the Equipment and Software.
- 2.2 Any reasonable additional costs incurred by the Contractor due to the Customer's failure suitably to prepare the Premises (except where such failure results from the Contractor's failure to comply with Clause 2.1) shall be borne by the Customer.

- 2.3 Access  
The Customer shall, with his prior agreement, provide such reasonable access to the Premises as the Contractor may require for the purposes of the Contract.
- 3. MISTAKES IN INFORMATION**  
The Contractor and the Customer shall each be responsible for the accuracy of drawings, documentation and information supplied by him to the other party and shall pay to the other party any extra costs occasioned by any discrepancies, errors or omissions therein.
- 4. INSPECTION TESTING AND ACCEPTANCE**  
4.1 The Contractor shall complete all agreed inspection and testing of the Equipment and Software prior to despatch or at the Customer's Premises, as required by the Contract.  
4.2 When the Equipment and Software have been delivered and installed in accordance with the Contract and have passed all agreed inspection and testing required under the Contract, it will be accepted by the Customer.
- 5. DELIVERY**  
The Contractor shall deliver (and install where necessary) the Equipment and Software by the date specified in the Contract.
- 6. PATENTS, DESIGNS AND COPYRIGHT**  
The Contractor shall indemnify the Customer against all claims, damages, costs and expenses claimed or incurred by reason of any infringement of any patent, design or registered design right, copyright or other intellectual property right by the Customer's use or possession of the Equipment and Software supplied under the Contract.
- 7. ASSIGNMENT AND SUBLETTING**  
Except where otherwise provided by the Contract, the Contractor shall not assign, pledge, transfer or sublet the Contract or any part thereof without the prior written consent of the Customer.
- 8. LAIBILITY FOR ACCIDENT AND DAMAGE**  
8.1 The Contractor shall indemnify the Customer against and insure against injury (including death) to any person or loss of or damage to any property which arises out of the act, default or negligence of the Contractor, his agents or sub-contractors or by reason of defective design or workmanship in the Equipment and Software.  
8.2 The Contractor shall not be liable to the Customer for:-  
(i) damage to property or injury to persons resulting from improper use or handling of the Equipment and Software by the Customer, his employees or agents  
(ii) any loss of profit or contracts or other consequential losses contingent upon the said damage or injury.
- 9. TERMS OF PAYMENT**  
The Contract Price shall become due for payment when the Equipment and Software have been accepted in accordance with Clause 4.2. Payment will be made within 30 days of receipt by the Customer of a correct invoice from the Contractor.
- 10. OWNERSHIP**  
The Equipment shall become the property of the Customer on payment of all sums due.
- 11. WARRANTY PERIOD**  
The Contractor shall be responsible for making good with all possible speed at his own expense any defect in or damage to the Equipment and Software or to any portion thereof which may develop during a period of 12 months after acceptance (hereinafter referred to as the "Warranty Period") which results from:-  
(i) a failure to comply with Contract, including without limitation, defective materials, workmanship or design (other than a design furnished or specified by the Customer and for which the Contractor has disclaimed responsibility within a reasonable time after receipt of the Customer's instructions);  
or

(ii) any act or omission of the Contractor done or omitted during the Warranty Period.

**12. INSOLVENCY AND BANKRUPTCY**

If the Contractor shall become insolvent or bankrupt or make an arrangement with his creditors to go into liquidation, the Customer shall have the right forthwith on written notice to terminate the Contract.

**13. STATUTORY AND OTHER REGULATIONS**

The Contractor shall comply at his own expense with all Acts of Parliament and all statutory orders, regulations and bye-laws applicable to the Contract. The Contractor shall also observe at his own expense all regulations applicable to the Premises, details of which will be provided by the Customer.

**14. CONFIDENTIALITY**

The Contractor and the Customer shall keep confidential any information obtained under the Contract and shall not divulge the same to any third party without the consent in writing of the other party.

**15. MAINTENANCE**

If required by the Customer, the Contractor shall enter into a separate contract for the maintenance of the Equipment and Software on terms and conditions to be agreed. Maintenance charges during the first year after the acceptance of the Equipment and Software shall reflect the Contractor's obligations under Clause 11.

**16. SOFTWARE**

Unless otherwise stated in the Contract, the Contractor hereby grants the Customer a perpetual licence to load and use the Software on the Equipment.

**17. FORCE MAJEURE**

Neither party shall be liable for failure to perform its obligations under the Contract if such failure results from circumstances beyond the party's reasonable control.

**18. ATTACHMENTS TO THE EQUIPMENT**

The Customer shall have the right to attach to the Equipment free of charge any equipment not supplied by the Contractor unless the Contractor shall prove to the satisfaction of the Customer that such attachment would be incompatible with and detrimental to the efficient operation of the Equipment.

**19. TRAINING**

The Contract Price shall include for instruction of the Customer's personnel in the use of the Equipment and Software in accordance with the requirements of the Contract.

**20. PUBLICITY**

Neither the Contractor nor his sub-contractors shall, without prior written consent of the Customer, advertise or publicly announce that he is undertaking work for the Customer.

**21. MANUALS**

The Contract Price shall include for the provision by the Contractor to the Customer, by not later than the date for delivery of the Equipment and Software, of one set of all documents necessary for the installation, operation and maintenance of the Equipment and Software.

**22. TERMINATION**

Either party shall have the right to terminate the Contract if the other party is in fundamental breach of the Contract and does not rectify such breach within 14 days of receipt of notification thereof in writing.

**23. LAW**

The Contract shall be construed and interpreted in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the English courts.

**24. NO THIRD PARTY RIGHTS**

Nothing in this Agreement shall confer, nor is it intended to confer, any enforceable right on any thirdparty under the Contracts (Rights of Third Parties) Act 1999 except as otherwise expressly so stated.

# Notes for Guidance

## 1. INTRODUCTION

*The objective of the publication of Model Conditions of Contract for the Supply and Installation of Computer Equipment by the Chartered Institute of Purchasing and Supply is to provide a contractual basis upon which the Customer can purchase his requirements and the Contractor supply them. The original Conditions were published in 1979. The Conditions were then revised in 1987, a version which incorporated amendments and additions recommended by a review group representing users and suppliers. They were further revised in November 2002 to reflect legal changes when they were also merged with Model Form for Supply and Installation of Telecommunications Equipment ( T M). Thus this Model P may also be used where telecommunications equipment is purchased as well as computer equipment. Where any additional provisions are required for telecommunications equipment they are noted below.*

*As with any set of conditions, it is necessary both to understand the intention of the conditions and to apply them in their proper context.*

*For this reason, these Notes for Guidance are issued to buyers as an aid when using the Model Conditions but it must be understood that they do not form part of, or legally interpret the Conditions in any way.*

*The Model Conditions aim to achieve a middle ground between buyer and seller being biased in favour of neither. Some buyers or sellers will prefer to have their own conditions drafted which are in their favour to a much greater extent.*

*It is stressed that these are Model Conditions and can be added to or amended to suit the requirements of particular contracts by agreement between the parties concerned. However, in order to secure the advantages of uniformity, it is recommended that such alterations be kept to a minimum.*

*Model Conditions have been published for the following. This list includes this set:-  
Supply and Installation (Purchase) of Computer Equipment - CIPS Model P  
Servicing (Maintenance) of Computer Equipment - CIPS Model M  
Licence Agreement for the Use of Computer Software Products - CIPS Model L  
Software Development - CIPS Model SD  
Support and Maintenance of Bespoke Software - CIPS Model S(M)  
Hire of Computer Staff - CIPS Model CS  
Facilities Management of Computer Operations - CIPS Model FM  
Procurement of IT Systems - CIPS Model IT*

## 2. INVITATIONS TO TENDER

*Specific reference to the Conditions or a copy of the Conditions should be included in all invitations to tender. If amendments or additions to the Conditions are required, these should be listed on a separate schedule.*

*NB It is essential that the Customer completes the Appendix before inviting tenders. Tenderers may amend or add to the conditions included in the enquiry and these amendments and additions should be separately detailed as part of their tender. However, they will not be binding on the Customer unless accepted by him and incorporated in the Contract.*

## 3. COMMENT ON CLAUSES

*The buyer's notice is drawn to the following clauses to which, it is felt, particular notice should be given.*

### **Clause 1.4**

*Contracts are usually (a) by a formal Agreement incorporating the applicable conditions, specification, schedules, drawings, etc or (b) without a formal Agreement, the tender and its acceptance, together with the other relevant correspondence, being relied upon as*

*constituting the Contract between the parties. Whichever method is used, it is essential that reference to any conditions, other than those agreed to be applicable to the Contract, is withdrawn in writing.*

**Clause 1.9**

*If Factory Tests are not required by the Customer, this Sub-Clause and Clause 11 should be deleted.*

**Clause 1.10**

*Sufficient details of the Premises should be included in the invitation to tender to enable the tenderer to take due account of all physical and environmental factors.*

**Clause 1.11**

*If the Works or portions thereof are required by the Customer to be completed by certain dates, these should be specified in the invitation to tender.*

**Clause 1.14**

*The Supervising Officer should be appointed and notified as soon as possible after the placing of the Contract.*

**Clause 3**

*The arrangements for examining the Premises should be specified by the Customer in the invitation to tender.*

**Clauses 4.2.1 and 4.3**

*Any special regulations or procedures (ie working hours, permits to work etc) for obtaining access to the Premises should be specified by the Customer in the invitation to tender.*

**Clause 6**

*The basic Programme of Work should be agreed before the Contract is placed (see Note on Clause 1.11 above).*

**Clause 7**

*'his other equipment' is intended to cover equipment used for installation and testing of the Works but not forming part of the Works.*

**Clause 8.1**

*Any alteration to equipment ranges could affect the Customer's operations but with the speed of technological development in the computer industry, changes may be deemed necessary by the manufacturer. The last sentence of this clause is designed to ensure that the Customer is aware of such changes and can accommodate them.*

**Clause 8.2**

*The test of reasonableness for extra costs in the last sentence of this clause could be evidence that the costs appear in the Contractor's standard price list.*

**Clause 9**

*Granting of an extension of time by the Customer under this clause does not automatically entitle the Contractor to additional expenses under Clause 10.2 which would be claimed separately if justified.*

**Clause 10.1**

*Relevant details should be entered by the Customer in the Appendix to the Conditions. The percentages would ideally represent the anticipated losses that the Customer would incur in the event of delay by the Contractor and must not in any circumstances be penal otherwise the clause is an unenforceable, void penalty clause. It is difficult to determine any general level but percentages ranging from a minimum of ½% of the Contract Price per week up to a maximum of 10% of the Contract Price are common. It should be borne in mind that the liquidated damages clause limits the extent of the Contractor's liability for damages for delays and generally eliminates any claim for damages at large in law for such delays.*

NB *If the Contract requires time to be of the essence, an appropriate clause should be substituted for Clause 10.1. Such a clause would be similar to the following:-*

**TIME OF THE ESSENCE**

*The time for delivery and/or completion of the work to be performed under the Contract shall be of the essence of the Contract." The only purpose of a "time of the essence" Clause is to give the innocent party the right to reject the goods and terminate the Contract for a breach of a condition if there is not strict compliance with the time stipulated for the performance of the obligation. Thus a delay of only one day would be sufficient. Although the right to reject and terminate may be useful if goods are wanted for a seasonal trade or for showing at a particular exhibition, the more common reason for the buyer rejecting is that he no longer wants the goods because the market for their re-sale has fallen and he would make a loss if he accepted them.*

*This does not apply to a normal commercial Contract for the supply of hardware and software or other similar Contracts where the equipment/software is for the Customer's own use. The Customer's remedy will normally be to recover damages for delay. Often the Clause will not therefore be required. If, exceptionally, there is some particular reason for requiring delivery or completion by a specific date, and if late there would be no value to the Customer in taking delivery/accepting completion, then the Clause could usefully be included. Ordinarily time will not be of the essence where the Contract provides for liquidated damages for delay and the granting of extensions of time.*

**Clause 10.2**

*See comment on Clause 9.*

**Clause 11**

*This clause and Clause 1.9 should be deleted if factory tests are not required by the Customer.*

**Clause 12**

*It is essential that the content of and procedure for carrying out the Acceptance Tests are clearly defined in the Contract. If any special tests are required by the Customer, these should be specified in the invitation to tender.*

**Clause 13.1**

*Special retentions may be held to cover major outstanding defects (see Clause 19.2).*

**Clause 15**

*It is essential that the standard of performance required of the Equipment and Software is clearly defined in the invitation to tender.*

**Clause 16**

*This Clause is straightforward. It allows the Customer the right to assign the benefit of the Contract to other members of his group or even to a finance or leasing company of its choice without being required to obtain consent. However no assignment is permitted in other circumstances without consent. Some suppliers will want to alter this so they can assign if the Customer is unreasonably withholding consent.*

**Clause 17**

*This clause may require amending by the Customer to suit his own particular insurance policies and requirements. If the clause in the model conditions is used, the sum required under Clause 17.4 must be entered in the Appendix to the Conditions. The model conditions state that neither party is liable to the other for consequential loss and other liability is limited to the sum so specified in the Appendix. Many Customers, however, in their standard conditions of purchase would seek to ensure the Contractor is liable for all reasonably foreseeable loss arising from any breach of the contract by the Contractor so modification to this and similar provisions may be needed. The compromise in this model form reflects the liability limits in most suppliers' contracts.*

**Clause 19.1**

*The percentage of the Contract Price due on acceptance should be entered in the Appendix to the Conditions.*

**Clause 19.3**

*The Customer's payment procedures must be clearly defined in the invitation to tender. The period of 30 days may need to be amended to suit these procedures. The details of the percentages to be paid and the events against which payment is to be made must be specified elsewhere in the Contract since they will clearly vary. This Clause allows the Customer to deduct amounts for defects, work not properly performed etc. Otherwise payment is to be made within 30 days or the date in the Contract. Some Customers may wish to extend this period but they must be careful if the Contract is one to which the Late Payment of Commercial Debts (Interest) Act 1998 applies and should take legal advice. 4% above base rate has been specified. It is possible that the Customer could, even if the Contract is subject to the Act, replace the statutory rate of 8% under the 1998 Act with a lower figure provided that the Contract gives the Contractor a substantial remedy or deters late payment, and is fair and reasonable.*

*The present CIPS term on "undue delay" in payment has been omitted. If it is considered appropriate to give the unpaid Contractor an additional remedy then there should be a definite period stated after which the Contractor could exercise the right to suspend - say another 30 days. In any event breach by the Contractor of the payment would probably be considered a material breach, giving the right to terminate if payment was not made within another 30 days.*

**Clause 19.5**

*The conditions do not require the buyer to pay interest on over due sums as few buyers would require such a provision in their conditions, although suppliers would wish to do so. Suppliers however will have the benefit of the right to charge statutory interest and collection charges under the Commercial Debts (Interest) Act 1998 and subsequent late payment legislation.*

**Clause 21**

*If a substantial part of the Contract Price is due to be paid before acceptance, it is recommended that ownership should pass to the Customer at that time and the clause amended accordingly, but the Contractor should be required to keep the Equipment insured up to the Acceptance Date. Contractors may want a more complex retention of title clause requiring the goods be kept separate from the Customer's other goods until payment is made, be marked as the Contractor's property and enabling the Contractor to enter the Customer's premises to retrieve the goods if payment is not made. Legal advice should be sought on retention of title clauses to seek to ensure they remain enforceable and are not void as comprising a registrable charge.*

**Clause 23**

*The implications of maintenance on the Warranty Period should be considered in relation to Clause 29. A 12 month Warranty Period is suggested but may vary from contract to contract. If there is significant software in the Equipment and there are concerns about date changes then a date warranty along the lines of the year 2000 BSI Y2K warranty or if currency is involved a "euro compliance" warranty may be appropriate. They are not given in the model form.*

**Clause 24**

*Where Software as well as Equipment is supplied it is advisable to have the Contractor sign a source code escrow deposit agreement with the Customer and an escrow agent such as NCC Services ([www.nccglobal.com](http://www.nccglobal.com)) for the deposit of the sourcecode accessible, inter alia, on liquidation of the Contractor otherwise the Customer would be unable to maintain the Software thereafter. Such third party deposit is used because a clause requiring the Contractor on liquidation to hand the Customer to the source code could be set aside by the liquidator of the Contractor as an onerous contract under the Insolvency Act 1986.*

**Clause 24.3**

*Termination for breach: this Clause departs significantly from the previous CIPS form in that it sets out the rights and obligations of the parties if termination is due to the default of the Purchaser or to the default of the Supplier. The previous version addressed only termination for insolvency.*

*The list of continuing obligations is only a guide; there may be others depending upon the terms of the particular Contract.*

**Clause 25.1**

*Any Customer's rules and regulations regarding the Premises should be clearly stated in the invitation to tender.*

**Clause 27.1**

*This is an important Clause especially with any form of IT Contract. . If confidential information is to be disclosed during the course of negotiations then a separate agreement covering this should be made and signed prior to the information being released.*

**Clause 28**

*The consumable supplies referred to in this clause are future operating supplies such as magnetic tapes, disks etc and do not form part of the Works.*

**Clause 29**

*This clause gives the Customer the right to enter into a maintenance contract in addition to or in lieu of the Warranty Period. Buyers are advised to determine their maintenance philosophy at the time of negotiating the purchase contract.*

**Clause 31.1**

*It should be clearly stated in the invitation to tender what software the Contractor is expected to supply.*

**Clause 31.2**

*Many computer firms expect the Customer to sign a separate licence for software, and this clause caters for this situation and care should be taken to avoid conflict and duplication between the licence and these Conditions. Details of other licence(s) should be entered in the Appendix to these Conditions.*

**Clause 38**

*This clause ensures that the effects of the Contracts (Rights of Third Parties) Act 1999 are mitigated. The Act allows third parties named in a contract or benefiting from it to sue for breach of contract in place of the original party but where no third party is clearly intended to be conferred then no such benefit will arise, hence the wording of this clause.*

*Telecommunications : Where this Model Form is used for the purchase of telecommunications equipment an additional clause such as the following may be used which appeared in the previous model TM which this replaces:-*

*"Notwithstanding the provisions of Clause 33, where the Equipment is to be connected to a telecommunications network or circuit run under statutory licence by a public or private telecommunications operator, it is:*

- (i) the Contractor's responsibility at his expense to obtain approval for the connection and any additional cost incurred in modifying the Equipment and Software to obtain such approval shall be borne by the Contractor, and*
- (ii) the Customer's responsibility to arrange for the connection to be made, to pay any connection charge and to comply with any conditions relating to the connection".*

*In other respects the Model Form is useful for either computer or telecommunications equipment supplies or both.*

**Clause 31.3**

*This clause covers Software not covered by separate licences and includes all the relevant clauses which are not found elsewhere in these Conditions.*

**Clause 31.3.4**

*It is slightly favourable to the Customer insofar as if the Customer pays the Contractor for bespoke software modifications the ownership of the rights therein vests in the Customer. Most Customers will want such a provision as they have paid for the work to be undertaken. If major software development work is to be undertaken the separate model form for bespoke software development should be used.*

**Clause 31.3.5**

*Most Customers when they wish to sell on Equipment or transfer it as part of a corporate reconstruction or amalgamation will desire a right to pass on the Software too. This clause enables this where notice is given. Some Contractors however may want a right of veto and would prefer to charge a fee for such transfers so may want a more pro-contractor version of the clause.*

**Clause 31.3.6**

*The software support required by the Customer should be clearly stated in the invitation to tender.*

**Clause 32**

*The Clause is longer than the previous CIPS versions. However it is essential to define Force Majeure, to state what is to happen if an event of Force Majeure occurs and how the rights and obligations of the parties are to be affected. Force Majeure is defined restrictively and it is for the Contractor to establish that the event prevents him from performing the Contract. If necessary other events could be included but it is strongly suggested that "beyond the Contractor's control" should never be used it is too broad a term. Some Contractors like to include strikes and industrial disputes as force majeure but most Customers would dispute such categorisation.*

*There is provided an initial period of suspension; the period could be lengthened if considered appropriate. If the force majeure event is then past the parties' rights are adjusted. It should not be left to agreement of the parties without a thirdparty reference as otherwise the obligation is unenforceable. If the event continues then the Contract is terminated by mutual consent; the supplier is then paid for the work he has done provided that the purchaser is given the benefit of this.*

**Clause 34**

*The Customer should indicate his training requirements in the invitation to tender.*

**Clause 36**

*The number of copies of manuals and documentation required by the Customer should be specified in the invitation to tender.*

**Clause 37**

*Notice may be provided by email and indeed fax under this clause as long as it is confirmed on paper as provided in this provision.*

**Clause 39**

*This Clause is a suggestion to overcome the problem that there are Clauses under the CIPS Contract forms where the parties are required to agree on some issue e.g. Force Majeure, Training, Maintenance. Unless there is provision for a third party to decide should the parties not agree, then such a Clause is not enforceable under English law. The name of a suitable nominating body should be included e.g. the British Academy of Experts or the British Computer Society in the case of an IT Contract (as here). For telecommunications contracts an expert from the Institution of Electrical Engineers might be included in the clause instead of the British Computer Society.*

*The period of 56 days is a maximum and the parties may want to see a shorter period included..*

**Clause 40**

*The Agreement provides for preliminary non-binding mediation, failing which disputes go to court. Most UK companies and their advisers agree that court litigation is cheaper than formal arbitration under the Arbitration Act. However arbitration is confidential so a considered judgment must be made in each case.*

*If the contract does not specify arbitration then disputes go to court and it is best in any event to specify which country's courts have jurisdiction (here English courts are chosen) and in clause 40 which country's laws apply to the contract (whether arbitration or litigation are chosen).*

*If arbitration is preferred then the following should be substituted:-*

## DISPUTE RESOLUTION ALTERNATIVE

1. If any dispute or difference whatsoever shall arise between the parties in connection with or arising out of the Contract, except any matter which under the Contract is to be referred to Expert Determination, either party may give the other 7 days notice to resolve the dispute or difference through Alternative Dispute Resolution (ADR) in accordance with the mediation procedure of the Centre for Dispute Resolution. If the parties fail to agree terms of settlement of their dispute or difference within 56 days of the receipt of such notice or the party to whom the notice was given refuses to participate in the ADR procedure then the matter shall be referred to Arbitration in accordance with sub-Clause 2.
2. Subject to sub-Clause 3 below if any dispute or difference which may arise between the parties in connection with or arising out of the Contract is referred to ADR mediation, but is not so settled as specified in sub-Clause 1, then either party shall give notice to the other and such dispute or difference shall be referred to Arbitration. The parties shall agree on the appointment of a single arbitrator within 14 days after the date of such notice or in default of agreement the arbitrator shall be nominated on the application of either party by the President for the time being of the Chartered Institute of Arbitrators. The Arbitration shall be conducted in accordance with the then current Arbitration Rules as published by the Chartered Institute of Arbitrators and in accordance with the Arbitration Act 1986.
3. There are excluded from Arbitration any proceedings brought by one party against the other which arise out of the failure by that other party to comply with the provisions of any binding agreement setting out the terms upon which the dispute or difference was settled as a result of or following from the ADR mediation procedure referred to in sub- Clause 1 above."

*This alternative Clause provides for a two-stage process of dispute resolution. The first stage is ADR mediation under the auspices of the CEDR. If in a defined time this is not successful then the dispute is referred to arbitration under the rules of the Institute of Arbitrators.*

*The only exception to the initial stage of ADR is if the Contract specifically provides for Expert Determination to resolve a specific issue. This is also the case with the started litigation clause in the Model Form. Sub-paragraph 3 is included to deal with the problem that if the Contract contains an arbitration Clause then all disputes must go to arbitration which would prevent one party from going to court, unless the other party agreed or did not object. Immediate reference to either the courts or arbitration is contrary to modern purchasing practice and indeed the Civil Procedure Rules 1998, so the first step should be to ADR.*

*One view is that arbitration under the 1996 Act is more flexible and retains the advantage of privacy as opposed to the courts. It is to be preferred generally therefore to the courts.*

### **Clause 41**

*If other than English law is to apply (eg Scottish), this clause should be amended accordingly.*

## **ENTIRE AGREEMENT:**

*No Clause has been included because usually an entire agreement Clause is to the benefit only of the Contractor. The purpose of such a Clause is to prevent either party from relying on statements made or documents issued pre-Contract which are not included in the Contract but which in some circumstances would be regarded in law as misrepresentations and to ensure no documents such as pre-contract letters, assurances, tenders, specifications etc are part of the Agreement. It is more likely in practice that such statements will be made or documents issued by the Customer in the course of trying to conclude the sale. It therefore has the effect of preventing the Customer from relying on these in any action for misrepresentation. If the Customer however wants important documents such as its statements of requirements to be part of the contract rather than relying on the absence of the entire agreement the Customer must incorporate such documents by express reference in the contract. In addition pre-contract warranties should ideally also be expressly stated in the Contract.*

*End of Notes.*

*Last revised by Susan Singleton, Singletons Solicitors, ([www.singlelaw.com](http://www.singlelaw.com)) who asserts her right to be identified as author pursuant to the Copyright, Designs and Patents Act 1988.*