

NETWORK RAIL 1

Network Rail Conditions of Contract for the Purchase of Goods [Brief description]

Contract No. [Insert]

CONTRACT AGREEMENT

This Contract is made the [Insert] day of [Insert] **between:**

- (1) **NETWORK RAIL INFRASTRUCTURE LIMITED** a company registered in England and Wales as company number 2904587 whose registered office is at 1 Eversholt St, London, NW1 2DN ("**Network Rail**"); and
- (2) [Insert] a [company registered in under number whose registered] office is at [Insert] (the "**Supplier**").

Whereas Network Rail is desirous that certain Goods should be provided, namely

[Insert]

and has reached agreement with the Supplier on the terms of a contract for the supply of such Goods.

Now this Contract witnesseth as follows:

- 1 In this Contract words and expressions shall have the same meanings as are respectively assigned to them in the Conditions hereinafter referred to.
- 2 The following documents shall form and be read and construed as part of this Contract, and in the case of any ambiguity or discrepancy shall have the following order of priority:
 - 2.1 this Contract Agreement;
 - 2.2 Schedule of Post Tender Amendments;
 - 2.3 Appendix;
 - 2.4 Contract Specific Conditions;
 - 2.5 Conditions;
 - 2.6 Specification; and
 - 2.7 Pricing Document,all of which are annexed hereto and together form the Contract.
- 3 In consideration of the payments to be made by Network Rail to the Supplier as hereinafter mentioned the Supplier hereby covenants with Network Rail to supply the Goods in conformity in all respects with the provisions of the Contract.
- 4 The parties hereby agree that the Contract Price shall be [.....in words.....] £[.....] (excluding VAT, payable in addition as appropriate) or such other sum as shall become payable in accordance with the Contract.
- 5 Network Rail hereby covenants to pay to the Supplier in consideration of the supply of Goods the Contract Price at the times and in the manner prescribed by the Contract.

NETWORK RAIL 1

In witness whereof the parties hereto have caused this Contract to be executed in duplicate on the date first stated above, as follows:

For agreements executed using the DocuSign electronic signature process, the digital certification for the signatures of both Parties can be found at the end of the contract documentation.

THE COMMON SEAL of)
NETWORK RAIL INFRASTRUCTURE)
LIMITED was affixed to this DEED in the)
presence of:)

Authorised signatory

OR

SIGNED for and on behalf of)
NETWORK RAIL INFRASTRUCTURE)
LIMITED)
by:)

Authorised signatory

Printed Name.....

THE COMMON SEAL of)
[Insert])
was affixed to this DEED in the presence of:)

Director

Printed Name.....

Director/Company Secretary

Printed Name.....

OR

SIGNED as a DEED for and on behalf of)
[Insert])
By)

Director

Printed Name.....

Director/Company Secretary

Printed Name.....

NETWORK RAIL 1

OR

SIGNED for and on behalf of)
[Insert])
By)

Director

Printed Name.....

Director/Company Secretary

Printed Name.....

NETWORK RAIL 1

SCHEDULE OF POST TENDER AMENDMENTS

The following comprise the post tender amendments expressly agreed between Network Rail and the Supplier and form part of this Contract:

None

NETWORK RAIL 1

APPENDIX

(Note: Relevant clause numbers are shown in brackets)

Appendix

- | | | |
|----------|--|---|
| 1 | Network Rail supplies materials to be incorporated in the Goods (clause 15.2): | [Shall apply/Shall not apply] |
| 2 | Addresses for Service (clause 20) | <p>Network Rail:
Company Secretary
1 Eversholt St
London NW1 2DN</p> <p>With a copy to:</p> <ol style="list-style-type: none">1. notices@networkrail.co.uk; and2. Network Rail Representative by email. <p>Supplier: [Insert]</p> |
| 3 | Information Security (clause 26) | [Not applicable / Applicable (Supplier is connecting into Network Rail's network or has access to Network Rail's information classified as Internal or above)] |

NETWORK RAIL 1

Table of Contents

Contract Agreement

Schedule of Post Tender Amendments

Appendix

Conditions:

- 1 Interpretation
- 2 Specification
- 3 Delivery
- 4 Invoices
- 5 Payment
- 6 Payment on Net Weight
- 7 Intellectual Property Rights
- 8 Assignment and Sub-letting
- 9 Quality Assurance
- 10 Rejection and Replacement
- 11 Value Added Tax etc
- 12 Confidentiality and Audit Rights of Comptroller and Auditor General
- 13 Termination
- 14 Warranty
- 15 Title and Risk
- 16 Free Materials and Samples
- 17 Statutory and Other Regulations
- 18 Set-off
- 19 Waiver
- 20 Notices
- 21 Governing Law and Jurisdiction
- 22 Rights of Third Parties
- 23 Compliance
- 24 Freedom of Information
- 25 Corporate Tax
- 26 Information Security
- 27 London Living Wage

Contract Specific Conditions

Specification

Pricing Document

CONDITIONS

1 Interpretation

1.1 In the Conditions, where the context admits:

“Agreed Rail Industry Period” means each or any of Network Rail’s thirteen accounting periods in a Contract Year;

“Appendix” means the appendix annexed to and forming part of the Contract;

“Conditions” means clauses 1 to 27 of these Network Rail Conditions for the Purchase of Goods together with any Contract specific conditions;

“Confidential Information” means any information which has been designated as confidential by either Party in writing or that ought reasonably to be considered as confidential, however it is conveyed, including information that relates to the business, affairs, developments, trade secrets, know-how, personnel, affiliates and suppliers (including Sub-contractors) of either Party, including IPRs, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as “confidential”) or which ought reasonably to be considered to be confidential;

“Contract” means the agreement concluded between Network Rail and the Supplier and includes the documentation referred to in clause 2 of the Contract Agreement;

“Contract Agreement” means the formal agreement executed by Network Rail and the Supplier recording the terms of the Contract in the relevant form annexed hereto;

“Contracting Authority” means any contracting authority as defined in Regulation 4 of The Utilities Contracts Regulations 2016;

“Contract Price” means the price exclusive of VAT accepted by Network Rail as payable to the Supplier for the supply of Goods in accordance with the Contract;

“Contract Year” means the period from 00.00 hours on 1 April until 24.00 hours on 31 March;

“Crown” means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Government and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government and particular bodies and government agencies;

“Goods” means the goods and/or equipment and/or materials supplied under the Contract;

“Greater London Area” means the area administered by the Greater London Authority or any relevant person or body which replaces the Greater London Authority;

“Intellectual Property” means all intellectual and industrial property and all rights therein in any part of the world including, without limiting the generality of the foregoing, any patent, patent application, trademark, trademark application,

NETWORK RAIL 1

registered design, registered design application, trade name, trade secret, business name, discovery, invention, process, formula, know-how, specification, improvement, technique, copyright, unregistered design right, technical information or drawing including rights in computer software, database rights, topography rights;

“**London Living Wage**” means the basic hourly rate which is set as the London Living Wage by the Mayor of London and/or the Greater London Authority and/or another relevant person, body or agency (before tax, other deductions and any increase for overtime), as may be revised from time to time by the Mayor of London, the Greater London Authority or another relevant person, body or agency.

“**Month**” means calendar month;

“**Party**” means the Supplier or Network Rail (as appropriate) and “Parties” shall mean both of them;

“**Schedule of Post Tender Amendments**” means the attached schedule of amendments to the Contract expressly agreed between Network Rail and the Supplier;

“**Specification**” means any specifications, drawings, samples and/or patterns referred to in the document annexed hereto in accordance with which the Goods are to be supplied, and any modifications thereof that may be agreed;

“**Supplier**” means the person or persons who by the Contract undertakes or undertake to supply Goods and his or their successors and/or permitted assignees;

“**Warranty Period**” means the warranty period stated in the Specification annexed hereto or if not so stated, twelve months from the date on which the Goods are actually delivered (if the Goods are delivered in consignments from the date on which each consignment is actually delivered).

- 1.2 The headings in the Conditions shall not affect their interpretation. References to statutory provisions shall be construed as references to those provisions as amended or re-enacted or as their application is modified by other provisions from time to time, and shall include references to any provisions of which they are re-enactments (whether with or without modification).

2 Specification

Without prejudice to or limitation of Network Rail's statutory rights, the Goods supplied shall comply in all respects with Network Rail Standards, Railway Group Standards and the Specification and if no Specification is referred to in the Contract the Goods shall be of the best quality appropriate for the purpose (if any) specified by Network Rail.

3 Delivery

- 3.1 The Supplier shall deliver the Goods in accordance with the provisions of the Contract and any specified delivery date, and time of delivery shall be of the essence of the Contract. Network Rail will be under no obligation to accept or pay for quantities of Goods delivered in excess or in advance of the quantity, date or rate (as appropriate) stipulated by such requirements.
- 3.2 The Supplier shall notify Network Rail immediately it becomes aware (and in any event no later than two working days after it should have become aware) of any

NETWORK RAIL 1

occurrence outside its control (including, without limitation, any delay or default by Network Rail) which it reasonably considers will delay the delivery of the Goods. Provided that the Supplier has so notified Network Rail, Network Rail shall consider whether at its discretion any extension of time is to be granted. If Network Rail decides that an extension of time is appropriate, it shall inform the Supplier by notice of the extension granted and the new date(s) for the delivery of the Goods.

- 3.3 Unless otherwise provided in the Contract, no charge shall be made by the Supplier for packing cases and packing materials or for delivery to the specified place of delivery.
- 3.4 Network Rail may instruct a change in the delivery date, and unless the instruction is unreasonable the Supplier shall deliver the Goods in accordance with the new delivery date and clauses 3.1 and 3.2 shall apply as if the new date was the date originally specified.
- 3.5 Each delivery shall be accompanied by a delivery advice note. Such advice shall specify the purchase order number, Contract reference number, Network Rail's catalogue number, a description of the Goods, the number of packages and such other particulars, including the method of despatch, as it may be appropriate to supply.

4 Invoices

- 4.1 Sums contained in invoices shall be calculated in accordance with the Contract Price and Pricing Document. Invoices must include the correct purchase order number and be addressed to "Network Rail, Accounts Payable, P.O. Box 4145, Manchester M60 7WZ" or, if no supporting documentation is attached, original computer-generated pdf invoices can be emailed to invoices@networkrail.co.uk. Unless otherwise agreed in writing, invoices must be dated and issued no earlier than the delivery date of each consignment of Goods, and must show the delivery advice note number and any applicable trade or settlement discount.

5 Payment

- 5.1 Without prejudice to its rights under clauses 10 and 19, Network Rail shall, in respect of Goods which have been properly supplied and delivered in accordance with clause 3 and for which Network Rail has received an invoice submitted in accordance with clause 4 and clause 11, pay the Supplier in respect of that invoice no later than 28 days from receipt. If the Supplier's invoice does not comply with the requirements of clause 4 and clause 11, Network Rail shall be under no obligation to pay the same.
- 5.2 If any sum under the Contract is not paid by the final date for payment then, without prejudice to the parties' other rights under the Contract, that sum shall bear simple interest from the final date for payment until payment is made in full at a rate of 4% per annum above the Bank of England Base Rate current at the date that a payment under this Contract becomes overdue. The Supplier is not entitled to suspend deliveries of the Goods as a result of any sums being outstanding.

6 Payment on Net Weight

Where the Contract Price is calculated by reference to the weight of the Goods, payment will

NETWORK RAIL 1

be made on the net weight of the Goods only.

7 Intellectual Property Rights

- 7.1 The legal and beneficial ownership of all Intellectual Property which the Supplier has supplied to Network Rail in accordance with the Contract and which the Supplier has created and/or developed for the purposes of performing its obligations under the Contract shall belong to the Supplier. The Supplier hereby grants to Network Rail an irrevocable, royalty-free, non-exclusive licence to use all rights, titles and interest in any such Intellectual Property for any purposes whatsoever in connection with Network Rail's permitted business provided that the Supplier shall have no liability for any use of the Intellectual Property other than for the purposes for which it was originally intended. Network Rail may grant sub-licences out of the said licence.
- 7.2 The Supplier shall use its reasonable endeavours to arrange the grant of a licence for Network Rail to use any Intellectual Property relevant to the Goods which is owned by a third party. This undertaking by the Supplier shall not terminate upon expiry or termination of the Contract. The arranging of such grant of licence shall be at the cost and expense of Network Rail upon such terms and conditions as are agreed between Network Rail and the owner of the Intellectual Property.
- 7.3 The Supplier shall indemnify Network Rail against all loss, damage, costs and expenses for which Network Rail is or becomes liable as a result of any infringement or alleged infringement by the Supplier of any third party's intellectual property rights.
- 7.4 Network Rail may assign the licence granted under this clause 7.

8 Assignment and Sub-letting

- 8.1 Network Rail shall not assign charge or transfer this Contract or any of its rights under it without the prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed), provided that the Supplier's consent shall not be required where it is between Network Rail and its direct or indirect holding companies and its direct or indirect subsidiaries (within the meaning of s1159 Companies Act 2006).
- 8.2 The Supplier shall not assign charge or transfer this Contract or any of its rights under it without the prior written consent of Network Rail (such consent not to be unreasonably withheld or delayed).
- 8.2 The Supplier shall not sublet the whole or any part of the Contract without the prior written consent of Network Rail which consent shall not be unreasonably withheld or delayed.

9 Quality Assurance

- 9.1 Where the Specification and/or Product Acceptance Certificates specify quality assurance classifications (QA1 to QA5) for the Goods, the Supplier shall comply with the specified level of quality assurance required for each product and allow Network Rail access to carry out its quality assurance checks.
- 9.2 The Supplier shall give Network Rail's representatives access at all reasonable times to its premises and allow such representatives to carry out inspections of its

NETWORK RAIL 1

quality systems and production methods and, if deemed necessary by Network Rail, to inspect, examine and test the Goods both during and after their manufacture and the materials being used in their manufacture.

- 9.3 Any costs incurred by the Supplier in complying with the quality standards required by Network Rail shall be borne by the Supplier.
- 9.4 Copies of all inspection and test certificates, and certificates of conformity, must be supplied to Network Rail by the Supplier. Failure by the Supplier to comply with this clause will entitle Network Rail to reject the Goods under clause 10.
- 9.5 The Supplier shall ensure that the terms of each relevant subcontract or supply agreement entitle it to exercise identical rights in respect of its sub-contractors and suppliers as Network Rail is allowed to exercise against the Supplier under this clause.

10 Rejection and Replacement

- 10.1 Without prejudice to or limitation of its statutory rights Network Rail may, at any time prior to payment for the relevant Goods, notwithstanding the use or continued use by Network Rail of the Goods after any right to reject them has arisen, reject by notice in writing (without liability to Network Rail) any Goods which, in the reasonable opinion of Network Rail, are not of satisfactory quality and/or fit for their purpose and/or in accordance with the Specification and/or the Purchase Order. Any Goods not so rejected shall be deemed to have been accepted by Network Rail.
- 10.2 The Supplier shall remove the rejected Goods within fourteen days of the date of Network Rail's notice of rejection, failing which Network Rail may (at its sole option) deliver them to the Supplier, in either case at the Supplier's cost and risk.
- 10.3 Where such rejected Goods form part of a series of consignments, nothing in this Contract shall prevent Network Rail from accepting subsequent consignments if the Goods contained within such subsequent consignments are acceptable to Network Rail.

11 Value Added Tax etc.

- 11.1 Network Rail shall pay to the Supplier upon receipt of a valid VAT invoice, in addition to the Contract Price, a sum equal to the Value Added Tax properly chargeable on the value of the supply of Goods provided in accordance with the Contract.
- 11.2 Any overpayments by Network Rail to the Supplier in respect of VAT shall be a sum of money recoverable from the Supplier in accordance with clause 18, and the Supplier shall issue a valid VAT credit note in an appropriate amount to Network Rail.
- 11.3 If any dispute, difference or question arises between either Network Rail or the Supplier and the Commissioners of Customs and Excise in relation to any tax chargeable, or alleged to be chargeable, in connection with the Contract, Network Rail and the Supplier shall render to one another such support and assistance as may be necessary to resolve the dispute, difference or question. In the event that any amount is paid by Network Rail to the Supplier in respect of VAT which is not properly chargeable, the Supplier shall repay such amount to Network Rail.

NETWORK RAIL 1

- 11.4 Where under the Contract one party has agreed to reimburse or indemnify the other in respect of any payment made or costs incurred by the other then the first party shall also reimburse any VAT paid by the other which forms part of its payment made or cost incurred to the extent that such VAT is not available for credit for the other or any person with which the reimbursed or indemnified party is treated as a member of a group for VAT purposes, as input tax, under sections 25 and 26 of the Value Added Tax Act 1994.

12 Confidentiality and Audit Rights of Comptroller and Auditor General

- 12.1 All information obtained by the Parties in the course or conduct of this Contract, including the existence of this Contract, shall be held confidential and shall not be divulged by the Parties to any third party save to the extent necessary to effect the Supply of Goods and then only on the basis that the recipient of such information shall be bound by similar confidentiality obligations to those undertaken by the Parties. The Supplier shall not issue any press release or other public document containing or make any public statement containing or otherwise disclose to any other person who is not a party information that relates to or is connected with or arises out of this Contract or the matters contained in it without the prior written approval of Network Rail as to its content and the manner and extent of its publication.
- 12.2 Nothing in this Contract shall prevent Network Rail disclosing the Supplier's Confidential Information:
- 12.2.1 to the Crown, any other Contracting Authority or any government department. All government departments receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments on the basis that the information is confidential and is not disclosed to a third party which is not part of the Crown, any Contracting Authority or any government department.
 - 12.2.2 for the purpose of the examination and certification of Network Rail's accounts; or
 - 12.2.3 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which Network Rail has used its resources.
- 12.3 The Contractor shall and shall procure that its subcontractors shall provide such access to its or their books and records as may be required from time to time by the Comptroller and Auditor General of the National Audit Office for the purpose of their audit and examination of the accounts of Network Rail and its group companies, the Department for Transport and the consolidated set of financial statements for the UK public sector.

13 Termination

- 13.1 For the purposes of this Contract, the Supplier is "Insolvent" if the Supplier:
- 13.1.1 enters into an arrangement, compromise or composition in satisfaction of the Supplier's debts (excluding a scheme of arrangement as a solvent company for the purposes of

NETWORK RAIL 1

- amalgamation or reconstruction); or
- 13.1.2 without a declaration of solvency, passes a resolution or makes a determination that the Supplier be wound up; or
 - 13.1.3 has a winding up order or bankruptcy order made against it; or
 - 13.1.4 has appointed to the Supplier an administrator or administrative receiver or documents are filed with a court of competent jurisdiction for the appointment of an administrator or notice of intention to appoint an administrator is given by the Supplier or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
 - 13.1.5 is the subject of any analogous arrangement, event or proceedings in any other jurisdiction; or
 - 13.1.6 (additionally, in the case of a partnership) any partner is the subject of an individual arrangement or any other event or proceedings referred to in clauses 13.1.1 to 13.1.5.
- 13.2 If the Supplier is Insolvent, Network Rail may, without prejudice to any other rights it may have, terminate the Contract forthwith by written notice. In that event the Supplier shall be liable to Network Rail for all additional costs, expenses, losses and damages incurred by Network Rail arising from such termination.
- 13.3 Without prejudice to Network Rail's rights to obtain replacement Goods under clauses 10 and 14, if:
- 13.3.1 the Supplier commits any material breach or series of breaches which amount to a material breach of the Contract and fails to remedy such breach within fourteen days of being given written notice to do so by Network Rail; or
 - 13.3.2 the Supplier fails to perform its obligations under the Contract with due diligence or to comply with the delivery dates specified (or any extension thereof granted in accordance with clause 3),
- Network Rail may forthwith terminate the Contract by written notice and shall thereupon be entitled (without prejudice to any other rights it may have):
- (a) to ask the Supplier to recover within fourteen days from Network Rail's safe storage at the Supplier's own risk and expense any of the Goods already delivered but which cannot in Network Rail's opinion be effectively or commercially used by reason of the non-delivery of Goods still undelivered under the Contract, or if not collected within fourteen days to return such Goods to the Supplier at the Supplier's risk and expense and to recover any payments made to the Supplier in respect of the Goods so returned; and
 - (b) to recover from the Supplier any additional direct cost reasonably incurred by Network Rail in obtaining other goods in lieu of those so returned and those not delivered because of the termination of the Contract.
- 13.4 Network Rail may terminate this Contract at any time subject to giving 30 days

NETWORK RAIL 1

written notice to the Supplier.

- 13.5 Where Network Rail, in the exercise of the powers contained in clauses 13.4 or 13.7 terminates this Contract, the following provisions shall take effect:
- 13.5.1 Network Rail shall pay the value of Goods delivered up to the date of termination calculated in accordance with the provisions of the Pricing Document plus the nett cost of any material and work in progress, which shall be made available to Network Rail if required, that the Supplier cannot utilise elsewhere;
- 13.5.2 The Supplier shall not be entitled to payment of any other loss and/or damage arising from such termination, including but not limited to loss of profit.
- 13.6 Termination of the Contract shall not prejudice or affect any right or remedy which shall have accrued or shall accrue thereafter to Network Rail.
- 13.7 Network Rail may terminate this Contract in the event that it considers any of the circumstances set out in regulations 89(1)(a) or (c) of the Utilities Contracts Regulations 2016 SI 2016/274 ("UCR") or regulations 73(1)(a) or (c) of the Public Contracts Regulations 2015 SI 2015/102 ("PCR") as amended from time to time as applicable have arisen.
- 13.8 Network Rail may terminate this Contract in the event that it considers any of the circumstances set out in regulation 89(1)(b) of UCR or regulation 73(1)(b) of PCR as applicable have arisen. Termination of this Contract by Network Rail pursuant to this clause 13.8 shall be deemed to be a material breach which the Supplier has failed to remedy and the provisions of clause 13.3 shall apply.
- 13.9 The Supplier shall notify Network Rail in writing immediately upon becoming aware of the circumstances referred to in clause 13.8 applying.

14 Warranty

- 14.1 Without prejudice to Network Rail's other rights and remedies, if during the Warranty Period any defect occurs in any of the Goods due to the material, workmanship or design of the Goods not being in accordance with the Contract, the Supplier shall replace or repair such defective Goods at its own expense.
- 14.2 The Supplier shall, immediately following notification by Network Rail of any defect in the Goods, submit to Network Rail written proposals for the repair or replacement of the Goods and state the time required for such repair or replacement. If these proposals are not received by Network Rail within fourteen days of Network Rail's notification, or are not acceptable to Network Rail, repair or replacement may be arranged by Network Rail from an alternative source at the Supplier's expense.
- 14.3 Any Goods replaced or repaired under clause 14.1 shall be subject to the full Warranty Period which shall run from the actual date of delivery of the Goods following their repair or replacement and clause 14.1 shall apply for the full Warranty Period.

15 Title and Risk

- 15.1 Title in the Goods will pass to Network Rail (notwithstanding the absence of delivery)

NETWORK RAIL 1

upon payment to the Supplier of the Contract Price. Where payment is made in respect of part only of the Goods, title in that part will pass to Network Rail (notwithstanding the absence of delivery) upon payment to the Supplier of the invoice issued by the Supplier relating to that part. Provided that the foregoing shall not apply where Network Rail supplies materials to be incorporated in the Goods in which case clause 15.2 shall apply as stated in the Appendix.

- 15.2 Where this clause 15.2 applies, without prejudice to the rights of Network Rail under clause 10, title to the Goods shall vest in Network Rail from the time of commencement of their manufacture and in such case title to all materials and other items which the Supplier shall acquire or allocate for incorporation in such Goods shall vest in Network Rail from the time the materials or other items are so acquired or allocated.
- 15.3 No Goods, materials or other items referred to in clause 15.2 or any Goods in respect of which payment has been made by Network Rail prior to delivery shall be, except in compliance with the Contract, removed from the Supplier's premises without the prior written consent of Network Rail and the Supplier shall set aside and separately identify and clearly mark the Goods as owned by Network Rail and, if required by Network Rail, shall display a notice with the Goods to the effect that such Goods are the absolute property of Network Rail and may not be removed from the Supplier's premises without the prior written consent of Network Rail.
- 15.4 In any case, the Goods shall be at the Supplier's risk until they are delivered to Network Rail notwithstanding that payment may have already been made and title passed to Network Rail and the Supplier shall be responsible for any loss thereof or damage thereto and for arranging and paying for the storage, handling and insurance of the same, which insurance shall be endorsed in the name of and protect the interests of Network Rail on an "all risks" basis and shall also provide cover for loss or damage in transit.
- 15.5 The Supplier hereby agrees to indemnify Network Rail against any and all loss damage liability claims proceedings legal costs and professional fees and other expenses of any nature whatsoever incurred or suffered by Network Rail as a result of any breach by the Supplier of its obligations under this Contract.

16 Free Materials and Samples

- 16.1 Network Rail may (with the Supplier's agreement) provide the Supplier with materials free of charge (the "free materials") in which case if the cost of such materials has been included in the Contract Price, the Contract Price shall be reduced by a reasonable amount in respect of such cost as reasonably specified by Network Rail.
- 16.2 The Supplier shall be liable for and shall indemnify Network Rail against any loss or damage however caused to the free materials in the full value thereof and keep them insured whilst they are in the Supplier's possession and shall from time to time when so required by Network Rail produce to Network Rail the insurance policy and receipts for the premiums. If any of the free materials should be lost, destroyed or damaged, the Supplier shall apply all monies received under such insurance policies in respect of such loss, destruction or damage in or towards the replacement or repair of the lost, destroyed or damaged free materials.

NETWORK RAIL 1

- 16.3 Ownership of and title to the free materials shall at all times and for all purposes vest solely in Network Rail. The Supplier shall ensure that all free materials are properly labelled as the property of Network Rail, and kept separate from any materials owned or in the possession of the Supplier or any materials supplied to it by persons other than Network Rail. In the event of the Contract allowing the Supplier to mix such materials with other materials, no goods or items incorporating such materials shall be vested in any third party without Network Rail's prior written consent.
- 16.4 If any samples, patterns, gauges, jigs, tools, dies, drawings, templates, materials or other items are supplied to the Supplier by Network Rail for use in connection with the Contract, they will be sent to the Supplier carriage paid and, when requested by Network Rail, the Supplier shall return them carriage paid to the address notified by Network Rail. The Supplier shall be responsible for their safe custody and return and for any loss of or damage to them howsoever caused (excepting only fair wear and tear).

17 Statutory and Other Regulations

- 17.1 The Supplier shall comply in all respects with the law, including, without limitation, common law, Acts of Parliament, rules, orders, regulations and/or bye-laws of any Minister, department or office of Her Majesty's Government, local authority and/or of any public service or authority.
- 17.2 The Supplier shall ensure that the Goods are suitably packed and identified at the time of their delivery with reference to the hazards attaching to them in accordance with statutory requirements.

18 Set-off

Without prejudice to Network Rail's other rights and remedies, Network Rail may deduct from any sums due to the Supplier under the Contract an amount equivalent to any sum due from the Supplier to Network Rail (whether such sums are due to Network Rail under the Contract or under any other agreement between the Supplier and Network Rail) and may also deduct any sum of money that is recoverable from or payable by the Supplier under the Contract from any sum due or which at any time thereafter may become due under any other agreement between Network Rail and the Supplier.

19 Waiver

No failure to exercise or delay in exercising any right, power or remedy under or in connection with the Contract shall operate as a waiver thereof, and no single or partial exercise of any right, power or remedy shall preclude any further or other exercise thereof, or the exercise of any other right or remedy.

20 Notices

- 20.1 The addresses for service of the parties shall be the relevant Addresses for Service set out in the Appendix. Any notice required to be given by a party shall be in writing and service shall be effected either:
- 20.1.1 personally, in which case service shall be deemed effective on delivery; or

NETWORK RAIL 1

- 20.1.2 by prepaid recorded delivery post, in which case service shall be deemed effective two working days after the day after posting.

21 Governing Law and Jurisdiction

- 21.1 The Contract shall be governed by and construed in accordance with the laws of England and Wales and all disputes, claims or proceedings between the parties relating to the validity, construction or performance of the Contract shall be subject to the non-exclusive jurisdiction of the English courts.
- 21.2 No claims shall be brought under the Contract after the expiry of twelve years from the date of delivery of the Goods (or, in the case of Goods replaced under clause 10 or 14, from the date of delivery of such replacement Goods).

22 Rights of Third Parties

No person other than those persons who are parties to this agreement; or their respective successors in title and/or assignees; shall have any rights to enforce any term of this agreement, whether or not any such term expressly or impliedly purports to confer any benefit upon such person.

23 Compliance

General

- 23.1 The Supplier shall comply with all applicable anti-bribery, anti-corruption and anti-slavery legislation including, without limitation, the Bribery Act 2010 and Modern Slavery Act 2015.
- 23.2 The Supplier shall comply with Network Rail's Code of Business Ethics and Code of Conduct, corporate hospitality, conflicts of interests and speak out (whistleblowing) policies and any updates thereof.

Bribery Act Compliance

- 23.3 The Supplier shall maintain and enforce its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with all applicable anti-bribery and anti-corruption legislation. Adequate procedures shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of the Act).
- 23.4 The Supplier shall use reasonable endeavours to ensure that all persons associated with the Supplier (as defined by section 8 of the Bribery Act 2010) including any subcontractors and suppliers comply with this clause.

Modern Slavery Act Requirements

- 23.5 The Supplier shall implement due diligence procedures for its own suppliers, subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.
- 23.6 The Supplier shall use reasonable endeavours not to purchase any raw materials, resources or products from any country that has been sourced from producers or manufacturers using forced labour in its operations or practice.

NETWORK RAIL 1

Remedies

23.7 Any breach of this clause shall be deemed a material breach under this Contract.

24 Freedom of Information

24.1 The Supplier acknowledges that:

24.1.1 Network Rail may be required, under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 (collectively, the “**Information Acts**”), to disclose information relating to the subject matter of this Contract; and

24.1.2 notwithstanding any other provision in this Contract, Network Rail shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the Information Acts.

24.2 The Supplier shall provide all necessary assistance and cooperation as reasonably requested by Network Rail to enable it to comply with its obligations under the Information Acts.

25 Corporate Tax

25.1 The Supplier shall keep (and shall procure that its Sub-Contractors keep) records of all expenditure, costs and other outgoings incurred in the performance of its obligations under this Contract, to enable, validate and support claims and compliance requirements made by Network Rail under UK tax legislation with particular reference, but not limited to, reliefs provided under the Capital Allowances Act 2001 (“CAA2001”). In particular, but without limitation, the Supplier shall provide (and shall procure that any Sub-Contractors provide) a breakdown of costs at a sufficiently granular level to enable identification of costs attributable to assets qualifying for tax relief under CAA2001.

25.2 The Supplier shall provide (and shall procure that its Sub-Contractors provide) such records in the form that Network Rail may request and such other documentation as they may have in their possession for the purposes set out in Clause 25.1 above.

26 Information Security

The Supplier shall comply with Network Rail's Security Principles for Supplier Selection and Management Standard when stated as being applicable in the Appendix.

27 London Living Wage

27.1 The Supplier shall and shall also procure that its relevant sub-contractors (if any) shall:

27.1.1 ensure that none of its workers or its subcontractor's workers engaged in the performance of the Contract_in the Greater London Area (but not otherwise) and who would also satisfy the eligibility criteria set by the Living Wage Foundation (or any replacement thereof) is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage; and

NETWORK RAIL 1

- 27.1.2 co-operate and provide all reasonable assistance to Network Rail in monitoring the effect of the London Living Wage.
- 27.2 If the London Living Wage increases during the term of this Contract, the Supplier shall not be entitled to adjust the Contract Price and the Parties agree and acknowledge that any increases in the London Living Wage anticipated during the term of this Contract have been factored into the Contract Price.
- 27.3 Any failure by the Supplier to comply with the provisions of clause 27.1 shall be treated as a material breach under this Contract.

NETWORK RAIL 1

CONTRACT SPECIFIC CONDITIONS

None

NETWORK RAIL 1

SPECIFICATION

As a minimum, insert a detailed description of the Goods and the detailed specification that they are required to meet. Specify the purpose for which the Goods are intended to be used. Use or refer to Railway Group Standards, Network Rail Standards, European Standards and the Supplier's specifications as appropriate. Also specify the delivery date (or dates) and locations for delivery.

NETWORK RAIL 1

PRICING DOCUMENT

As a minimum, list all of the Goods and prices, ensuring they tie-in with the requirements and descriptions provided in the foregoing Specification.