

GUIDANCE NOTE ON USE OF THE MODEL GOODS CONTRACT

THIS GUIDE IS FOR INFORMATION PURPOSES ONLY AND
DOES NOT CONSTITUTE LEGAL ADVICE

INTRODUCTION TO THIS GUIDE

The Office of Government Procurement ‘Model Goods Contract’ (the “Goods Contract”) provides a template contract for use in public procurement competitions for routine low to medium risk goods. The Goods Contract will be issued with and form part of the Model Goods Request for Tenders and certain provisions **MUST** be completed by the Contracting Authority **before the RFT is published**.

The Contracting Authority must complete various parts of the document in addition to the insertion or completion of Schedules **before execution of the Contract**. With the exception of the specific clauses of the Goods Contract that are expressly left open to the Contracting Authority to complete, amend or delete, the Contracting Authority must not amend or delete any provisions or parts of this Goods Contract without first having consulted the Office of Government Procurement (the “OGP”) in writing.

As the Contracting Authority is referred to as “the Client” in the Goods Contract, this term is used in these Guidance Notes, as appropriate.

The Goods Contract is designed to be used within the following parameters:

1	For contracts above the EU threshold using the open procedure. The Goods Contract can also be used for contracts having a value below the relevant EU thresholds.
2	For the procurement of routine low to medium risk Goods only. Where the goods are bespoke or if the Contracting Authority has concerns with regard to any aspect relating to subject matter of the procurement, then legal or other appropriate advices should be sought.
3	The Goods Contract is not suitable for use for procurements in respect of ICT, for which specific legal advices should be sought.
4	The Goods Contract is drafted for use with the OGP ‘Model Goods Request for Tenders’ (the “RFT”).
5	The Goods Contract is not suitable for use in public procurement competitions relating to works or services.
6	The Goods Contract reflects the position as at December 2020The Goods Contract may be revised from time to time and Contracting Authorities are advised to ensure that they are using the most up-to-date version and follow the advice or directions of the OGP with regard to the introduction and use of revised editions. This edition can be identified, as noted on each page, by the following reference: GoodsContractGuidanceFebruary2021
7	The Goods Contract is drafted on the basis that the European Communities (Protection of Employees’ Rights on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003) is not applicable.

This Guidance Note assumes a familiarity with and knowledge of the procurement process. Where information is available to assist practitioners further, this is referenced in the document. This is a generic document to assist practitioners in completing the Goods Contract. This is not a guide on how to run a procurement competition. This Guidance Note does not constitute legal advice.

The following link will bring you to the OGP website where you can find the procurement guidelines.

<https://ogp.gov.ie/public-procurement-guidelines-for-goods-and-services/>

Defined terms in the Goods Contract have the same meaning in this Guide.

INTRODUCTION

The aim in drafting the Goods Contract is to provide a template that will be amended only in respect of:

- the details on the agreement page;
- Terms and Conditions (Schedule A) where indicated at clauses 2D, 2E, 3B, 3C, 3F, 6.A.6, 6.A.7, 7E, 7F, 9C, 10A,12B and 25;
- the Specifications (Schedule B);
- the Charges (Schedule C); and
- the Service Levels (Schedule D).

Schedule A, 'Terms and Conditions', is drafted to be applicable for all Goods coming under the definition of "routine low to medium risk".

The terms set out in Schedule A are non-negotiable and not to be amended save as indicated above.

Given the modular structure of the contract, it can be used in multiple situations so as to cater for the needs of diverse Contracting Authorities.

Attention is drawn to the fact that the RFT is drafted to link with the Goods Contract and it provides, as a condition of tender, that the Goods Contract be used.

Cover Page: The Variable Elements for Each Contract

The cover page of the contract contains variable elements including:

- the date of contract;
- details of the contract parties;
- reference to and identification of the tender documents;
- reference to the specification and charges (details of which are to be included by the Client in Schedules B and C);
- contact details for the Client and Contractor;
- a listing of the documents contained in the contract in order of precedence;
- the Term of the contract; and
- execution by the authorised officers of the Client and the Contractor.

Contracting Authorities should follow the instructions noted on the document and then delete the instructions.

Date

The date of execution of the contract should be inserted here. This relates to the Term of the Goods Contract and execution.

Note also the provisions of the RFT at paragraph 2.1.2:

“No contractual rights in relation to the Contracting Authority will exist unless and until a formal written Goods Contract has been executed by or on behalf of the Contracting Authority.”

Parties

The parties to the contract must be accurately set out here. The full legal name of both the Client and the Contractor should be inserted. For example, in the case of central Government, the legal entity will be the relevant Minister and not the Department. In the case of the Contractor, the legal entity should mirror the Submission and tax clearance certificate. The legal name is not necessarily the same as the name a company trades under. If in doubt, the Client may request a Company Registration Office print out for Irish companies.

Recitals

Recitals A and B describe the tender documentation. The description of any tender documents should be clearly identified by title, date and the Official Journal of the European Union reference number. The tender documents are incorporated by reference into the contract.

Agreement Page

Clause 1 provides for a hierarchy of documents for the contract in the following order:

- i) The Agreement (cover page, recitals, execution page and Schedules A to D);
- ii) The Client’s RFT (to include any clarifications); and

iii) The Contractor's Submission (to include any clarifications).

While in some circumstances, where a bespoke solution is sought, the Contracting Authority may wish to consider providing that the Contractor's Submission may take precedence over the RFT, for the competitions envisaged by the Goods Contract, the RFT takes precedence.

Clause 2 sets out the details of the Goods to be supplied. These will be detailed (pursuant to the provisions of the tender documentation) in Schedule B. Schedule B should be as detailed as possible for clarity and to avoid disputes post contract. The RFT linked to the Goods Contract is so structured that the Client's requirements are clearly set out in one place within the RFT – Appendix 1: Requirements and Specifications. By extension the Submission should have all the Contractor's proposals relating to the specification in one place. Accordingly this information should be easily replicated into Schedule B.

Clause 3 sets out where the Charges are to be detailed (in Schedule C). For clarity, Schedule C should be as detailed as possible. The RFT linked to the Goods Contract is so structured that the Client's requirements are clearly set out in one place within the RFT – Appendix 2: Pricing Schedule. By extension, the Submission should have all the Contractor's payment proposals in one place. Accordingly this information should be easily replicated into Schedule C.

Clause 4 sets out contact details for each organisation. Clause 11 (Schedule A) provides that there should be regular liaison between the contacts and at Clause 14 it is agreed that *"the Parties will from time to time agree primary and alternative contact persons and details for the purposes of this Clause 14"*.

Clause 5 defines the Term of the Goods Contract – a fixed Term with an option to extend the Term by agreement between the parties, subject to the Client's obligations under public procurement law. Contracting Authorities should delete the option to extend if an extension to the Term is not envisaged. It is recommended that legal advice be sought on any extension not set out in this clause.

Clauses 6-10 inclusive set out the broad principles as to how the contract is to be interpreted.

Execution

The contract comes into being on the date that it is executed for or on behalf of the Client (see paragraph 2.1.2 of the RFT). The contract should be executed by the authorised party in accordance with the legal status of that party. For example, in the case of a company this might be the person authorised by the Board of Directors; in the case of central Government, this will be the person authorised under the Ministers and Secretaries Act 1924 (Section 15(4)).

The contract should be executed in duplicate first by the Contractor and then, when returned to the Client, executed in duplicate for the Client in accordance with delegated signing authority. The date of execution by or on behalf of the Client is the date that should be inserted where indicated. The counterpart is returned to the Contractor.

In order to streamline the process and to avoid unnecessary delay, the contract may be executed by e-signature with hard copy of contracts to follow by post.

SCHEDULE A: TERMS AND CONDITIONS

1. Contractor's Obligations

Clause 1A obliges the Contractor to perform its obligations under the contract with due care, skill and diligence (with a specified obligation on the Contractor in relation to agents and Subcontractors), to ensure that the Goods conform to all aspects of the Specifications and to ensure compliance with statutory requirements, industry practice, local security arrangements and applicable laws.

Clause 1B benchmarks the Contractor's obligations against the Specifications (which at Schedule B encompasses the Client's Requirements and Specifications under its RFT (Appendix 1) and the Contractor's Submission for giving effect to the Requirements and Specifications, as accepted). Schedule B should be clearly drafted to reflect the deliverables required and the manner in which these are to be provided.

In clause 1B, the drafting is fluid so as to allow the Client to provide the Contractor with further obligations that must be complied with during the Term, including:

- policies, protocols and guidelines;
- good industry practice and applicable laws;
- security arrangements; and
- ongoing directions.

Where feasible however, such requirements should be included in the Client Requirements and Specifications in its RFT.

Policies, protocols and guidelines can be user-specific and can deal with, variously:

- issues and constraints due to policies and standards;
- current and proposed related project activities;
- security and confidentiality;
- sensitivity to other interests;
- employment equity;
- protection of the environment;
- conservation of resources; and
- other relevant concerns for any given Client.

Clause 1C provides that the Contractor is deemed to be the prime contractor under the Goods Contract and is liable for its agents and subcontractors.

Clause 1D This provision takes into account the provisions of Regulation 57 of the European Union (Award of Public Authority Contracts) Regulations 2016 (Statutory Instrument 284 of 2016) (the "Procurement Regulations"), whereby the Client reserves the right to require a Contractor to immediately replace a sub-contractor where the provisions of Regulation 57 apply. The Contractor is required to include in every contract a right to terminate a sub-contract where any of the exclusion

grounds set out in Regulation 57 apply to a sub-contractor and a requirement that the sub-contractor in turn includes a provision having the same effect in any sub-contract.

Clause 1E confirms the ‘arms-length’ premise upon which the Contractor is acting (i.e. the Contractor is an independent contractor – that neither party is an employee or, is acting on behalf of the other or is the agent of the other for any purpose.

Clause 1F acknowledges that the Contractor may be dependent on the Client to facilitate the Contractor in carrying out its duties, having regard to the Contract Management provisions in clause 11 of the Goods Contract.

Clause 1G, states that the Contractor agrees that information relating to, and the performance of, the Goods Contract may be passed to the OGP for analysis and reporting of spend data.

2. The Goods

Clause 2A allows for some flexibility with regard to delivery requirements. Where possible these should be set out in the Specifications (Schedule B) to avoid confusion.

Clause 2.B.1 identifies the point at which the Client will assume responsibility for the Goods (the point of delivery), **clause 2.B.2** imposes an obligation on the Contractor to unload the Goods and **clause 2.B.3** imposes an obligation to package and mark the Goods in accordance with the Client’s and statutory requirements. Where possible these requirements can be set out in Schedule B.

Clause 2.B.4 deals with delivery by installments.

Clauses 2.B.5 and **2.B.6** deal with Goods delivered in excess of those ordered and Goods delivered before the delivery time specified. As risk passes on delivery (see clause 4.A) this clause is important in that it provides that the risk in over-delivered Goods remains with the Contractor.

Clause 2C provides that Contractor pre-printed terms and conditions are disallowed. This is important so as to ensure that there is no inadvertent amendment of the contract provisions – for example, by an official signing a delivery docket that contains printed terms and conditions.

Clause 2D Contracting Authorities must choose whether to use Clause 2D or Clause 2E If the application of this clause is confirmed when the RFT is published, the clause makes time of delivery to be of the essence in the Goods Contract. This must be decided on a case-by-case basis. The effect of this clause (if its application is confirmed when the RFT is published) is that, if the Contractor is late in delivering the Goods (even by one day), the Contractor may terminate the Goods Contract and claim damages. Contractors may consider this clause to be very severe and it may add to the costs of the Goods (the provision must be flagged in the RFT). See clause 2E below, the liquidated damages clause, which can be used as an alternative (less draconian) method of ensuring timely delivery of Goods.

Clause 2E: Contracting Authorities must choose whether to use Clause 2D or Clause 2E. This clause provides for liquidated damages and an entitlement to termination where delivery dates are not complied with by the Contractor. This condition provides (if its application is confirmed when the RFT is published) that if delivery is late the Contractor may withhold a percentage of the payments. If this option is required, the relevant retention percentages must be set out in this clause by the Contracting Authority prior to publication of the RFT.

3. Inspection of Goods

Clause 3A provides the Client with a right to inspect/test Goods either completed or in the process of manufacture. There is a specific provision that failure to identify difficulties during the inspection/testing does not preclude the Client from rejecting the Goods after delivery.

Clause 3B provides for rejection of Goods that fail to meet the provisions of the Specifications. The clause goes on to provide that rejection of Goods may constitute a termination event (at the discretion of the Client) wherein the Goods are returned or the Client may allow repair or replacement by the Contractor of the rejected Goods. The relevant time period should be inserted where indicated, before issue of the RFT.

Clause 3C places obligations on the Contractor in respect of removal of rejected Goods. The relevant time period should be inserted by the Contracting Authority where indicated, before issue of the RFT.

Clauses 3D states that the Client is deemed to accept the Goods if this is expressed in writing or fails to reject the Goods.

Clause 3E confirms that a receipt note for Goods does not constitute acceptance of the Goods by the Client.

Clause 3F provides for a guarantee to be given by the Contractor in respect of the Goods, for a period as specified in the clause, and an obligation on the Contractor to remedy (repair or replace) defects without charge. There is a time limit provided for, so that defects not notified within the guarantee period or within 14 calendar days after the end of the guarantee period are not covered. The required guarantee period must be set out (for example, 12 months, 18 months or as appropriate for the Goods in question).

These provisions will be known to the Contractor at RFT stage and so all parties will be clear as to their respective obligations.

4. Risk and Title

Clause 4A provides that risk in the Goods transfers to the Client on delivery (see clause 2 above). Title from the Contractor to the Client must be free of any third party claim.

Clause 4B provides that title in the Goods passes to the Client on payment for the Goods.

5. Payment

The Goods Contract is designed to cater for a wide variety of procurement situations. Accordingly, provision is made to allow local arrangements as to invoicing (to include supporting documentation necessary to sanction invoices) to be carried out on a case-by-case basis. Provision is made for payment when genuinely due; the conditions set out at clause 5B are to ensure payment against delivery to a satisfactory standard.

There may be occasions where the Parties may agree that charges be paid on invoicing, with 'issues' settled later whether by way of set off or by way of suit for damages for breach of contract. There

would be nothing to prevent waiver of the discharge terms at 5B so as to allow for this, but this should be done in writing.

Clause 5 gives protection and an immediate remedy to the Client and an obligation to act reasonably would apply.

Clause 5A provides that payment be made in the manner set out in Schedule C. Invoicing arrangements are to be agreed between the parties. Schedule C should set out the payment process, any milestone conditions, relevant deliverables where payment is contingent on these, appropriate rates, etc.

Clause 5B provides for the terms upon which payment will be made, including (**Clause 5.B.1**) compliance by the Contractor with the terms of the Goods Contract and with the contract management procedures put in place under clause 11A of the Goods Contract; and (**Clause 5.B.2**) a requirement that the Contractor provides a valid invoice when required (importantly, Contractor pre-printed terms and conditions are disallowed). Supporting documentation to confirm what constitutes a valid invoice is a matter for each Client as to what it needs for its own accounting procedures.

Clause 5.B.3 provides for queries relating to the invoice and/or the Goods raised by the Client.

Clause 5.B.4 deals with tax clearance certificate requirements and the obligation on the Contractor to comply with all EU and domestic taxation law.

Clause 5C sets out Client's obligations under the European Communities (Late Payment in Commercial Transactions) Regulations, 2012.

Clause 5D provides for a setting off of any sums due to the Client from the Contractor under the Goods Contract or under any other contract that the Contractor has with the Client where agreed between the parties. The clause also deals with overpayments and the obligation to repay.

Clause 5E deals with the cost of instruction to the Client's personnel where required.

Clause 5F provides that the Contractor is responsible for any taxes applicable to the provision of the Goods.

6. Warranties, Representations and Undertakings

A warranty is an assurance by one party to another in respect of certain facts. Breach of a warranty gives rise to a right to recover damages but does not entitle the injured party to repudiate a contract.

Clause 6A.1 - 6.A.5 sets out a series of warranties to be given by the Contractor in respect of its authority to enter the Goods Contract (including conflict of interest checks), its understanding of obligations in respect of the Goods Contract and its understanding in respect of its legislative obligations pursuant to the Goods Contract.

Clause 6.A.6 refers to the inspection of the Contractor's premises prior to the submission of the Contractor's submission. This clause is to be deleted and replaced with "Not Used" if it is not applicable.

Clause 6.A.7 For completeness, the date of the "Declaration as to Personal Circumstances of Tender" in Clause 6.A.7 should be completed before execution of the Goods Contract.

Clause 6.A.8 provides that the Client is under no obligation to purchase any minimum number or value of goods.

Clause 6B sets out the obligations (including insurance requirements) of the Contractor in respect of Goods that are on its premises belonging to the Client as, whilst title passes with payment, risk passes on delivery (clause 4).

Clause 6C deals with quality and fitness for purpose of the Goods for the purposes set out in the Specifications (to include as described in the Submission). The provisions of the Sale of Goods Acts 1893 and 1980 are not limited or excluded under the Goods Contract.

Clause 6D requires all necessary consents to be in place. These will be competition-specific. Clause 6D requires the Contractor to indemnify the Client for any direct, indirect or consequential loss which arises from a breach by the Contractor of a third party's intellectual property rights.

Clause 6E imposes an obligation on the Contractor to notify the Client of any change in the statements made in this clause and to comply with the Client's directions, which could include termination of the Agreement.

The warranties and representations are general in nature and can apply to many contract situations. Should any contract-specific warranties be required to be inserted these should be appropriate to the specific Goods being provided, and be reasonable and proportionate.

Should a Contractor seek to exclude statutory rights, legal advice should be sought. There may be occasions, depending on the bespoke nature of the Specifications, where a Client can accede to such a position. Statutory protections should not be disclaimed without good reason.

7. Remedies

Clause 7A imposes a liability and indemnity obligation on the Contractor. This clause is specified to survive termination of the Agreement.

Clause 7B deals with indirect losses and excludes liability for both Parties in this regard, save for fraud, personal injury, death or the intellectual property rights indemnity set out in clause 6D.

Clause 7C gives the Client a right to seek any excess price from the Contractor in the event that the Client has to order the Goods from an alternative contractor because the Contractor fails to deliver Goods of approved quality.

Clause 7D confirms that (unless expressly provided for to the contrary) all remedies to either party are cumulative and may be exercised together or separately and that using one remedy does not exclude the option to use another at the same time or later.

Clause 7E This clause is to be completed before the RFT is published. If its application is confirmed when the RFT is published, this clause sets out the Contractor's limit of liability. The Contractor's liability for breach of the intellectual property provisions is not subject to the limit on liability set out in this clause 7E. The actual limit and the formula to calculate that limit (if there is to be a limitation) is decided on a case-by-case basis. The acceptable limit will depend on the nature and value of the Goods and any considerations as to security or confidentiality that may apply. By inserting a cap on

liability, the Client and the Contractor share the risk, and advice on appropriate levels can be sought from the *State Claims Agency, Risk Unit, Treasury Building, Grand Canal Street, Dublin 2: Tel: (01) 238 4900*. NOTE: If no liability cap is inserted and the risk to the Contractor is open-ended, this may result either in a higher cost, to factor in the risk exposure, or to non-participation in the competition.

Advices should be sought from the State Claims Agency as to what is reasonable having regard to the relevant market. While the formula in Clause 7E is a percentage of the Charges, this may not be appropriate in every case. Guidance from the State Claims Agency can be sought.

Essentially, the placing of a liability cap is a form of risk sharing for the Client and Contractor and consequently this will impact on costs.

Tenderers generally will weigh the cost of insuring against the liability exposure for them in the Goods Contract and so costings matrices will take the risk allocation into account.

In deciding on the risk allocation, Contracting Authorities should consider:

- Is a blanket cap on all liability sufficient?
- Should there be separate ceilings for different elements of potential liability? For example, if a general cap of say 120% of Charges paid is acceptable there might nonetheless be certain provisions (say security protocol for access to certain facilities) where a specified monetary cap is set in respect of liability for breach of that provision, regardless of the amount of the Charges (whether higher or lower). Where this option is under consideration, Contracting Authorities should seek legal advice.
- Should the cap reflect insurance coverage?

Clause 7F (if its application is confirmed when the RFT is published) deals with retention of payment in the event of unsatisfactory performance by the Contractor. If retention is required, the relevant retention percentage must be set out by the Contracting Authority in this clause 7F before publication of the RFT.

8. Confidentiality

Confidentiality is generally of critical importance in State contracts.

Clause 8A applies to both the Client and the Contractor, and the clauses sets out permitted disclosures of confidential information under the Goods Contract.

Clause 8B imposes a general obligation on the Contractor to comply with reasonable directions of the Client with regard to confidentiality.

Where police checks are part of any security protocols and where such checks disclose information in relation to personnel engaged on a contract on which a Contracting Authority considers that it might need to act, it is imperative that legal advice be sought.

Given the provisions of the European Communities (Public Authorities' Contracts) (Review Procedures) Regulations 2010 (Statutory Instrument 130 of 2010), as amended by the European Communities (Public Authorities' Contracts) (Review Procedures) (Amendment) Regulations 2015 (Statutory

Instrument 192 of 2015) (the “Remedies Regulations”) in regard to a declaration of ineffectiveness, as a precautionary measure, provision is made for the execution of a standalone Confidentiality Agreement duly executed, when contracting, so that in the event of a declaration of ineffectiveness being secured against any contract awarded, all obligations in respect of confidentiality, data protection and other security related matters should, all things being equal, be protected and survive notwithstanding the status of the Goods Contract.

A template model confidentiality agreement is appended at Appendix 6 of the RFT.

Clause 8C states that the Client will consult with the Contractor in respect of any requests for information under the Freedom of Information Act, 2014.

Clause 8D states that clause 8 will survive expiry, for whatever cause (expiry, completion, termination for breaches etc.). As a general position, the Confidentiality Agreement should not be limited in time.

9. Force Majeure

Clause 9A defines Force Majeure Events (strikes and labour disputes are specifically noted not to be Force Majeure Events).

Clause 9B makes provision for what happens in the event of a Force Majeure Event. Each party may rely on events outside of its control to excuse a failure or delay in performance of its obligations under the Goods Contract provided that they have done all necessary to alleviate the impact of the Force Majeure Event and they must resume the Goods Contract obligations as soon as is reasonably possible.

Clause 9C Before issuing the RFT, the Contracting Authority should specify for how long the Force Majeure Event may continue before either party can exercise their option to terminate the Goods Contract, on fourteen (14) days notice. This time limit should be inserted in clause 9C. This should be considered in conjunction with clause 10A.

Clause 9D makes it clear that the Client is relieved from any obligation to make payments under the Goods Contract, save to the extent accrued sums due and owing remain payable during a period of a Force Majeure Event.

10. Termination

Clause 10A is a without fault termination provision which allows termination of the Goods Contract on notice. Before publication of the RFT the Contracting Authority must specify the notice periods required (such notice should be reasonable) and, as the lead in time to termination for convenience may impact on costings, these details must be inserted into clause 10A. In the event of such termination neither party is entitled to compensation.

Clause 10.B.1 provides either party with the right to terminate for serious breach of contract or a series of breaches of contract, where either the party in breach cannot remedy the breach(es), or has not remedied the breach(es). The primary obligation of the Client is to make payment in accordance with the Goods Contract terms.

Clause 10.B.2 gives the Parties the right to terminate on certain specified events including the Contractor becoming insolvent or bankrupt.

Clause 10C gives the Client the right to terminate in circumstances where during the term of the Goods Contract any of the excluding circumstances set out in Regulation 57 of the Procurement Regulations apply to the Contractor.

Clause 10D covers antecedent and accrued rights. Where costs have been incurred for contract purposes these are to be taken into account on termination. Where upfront costs are likely these should have been identified in the tender pricing and the invoicing arrangements. If for the purposes of any particular contract a Contracting Authority will require specific contract provisions to apply, say to address upfront costs and consequences for termination, these can be included in Schedule C (Charges).

11. Contract Management

Clause 11A is a general requirement for contact persons to liaise in respect of the performance of the Goods Contract. The term is drafted in fluid language to allow the Client to have its reporting protocols and contract management requirements addressed. Discharge of Charges is subject to any contract management requirements (which could include timelines for deliverables, progress stage reports or similar) being met.

Clause 11B confirms that the Contractor will advise the Client's Contact of any matter that might impact on the performance of the Goods Contract, including delivery times and that the Contractor will comply with the reasonable directions of the Client.

Clause 11C allows a right of inspection (subject to notice) to the Client of the Contractor's premises, lands, records and facilities related to the provision of the Goods, both before, during and after manufacture, to assess compliance with the contract terms. In certain sectors, compliance with the obligations under employment protection law or with certain social and ethical requirements in the Specifications may be a core feature of contract compliance for the Client.

Clause 11D requires the Contractor to maintain in force the insurances required in the RFT for the term and to provide proof of premiums paid.

12. Disputes

Clause 12 sets out the Dispute resolution to be adopted by the parties in the event of a dispute arising during the Term of the Goods Contract. The Dispute process (**clauses 12B - 12F**) provides that the parties escalate the Dispute to appropriate levels within the parties' respective organisations before referencing the Dispute to a mediator, if the parties so agree. The parties shall share the costs of the mediator equally, whilst each party shall discharge their own witness or expert expenses.

Clause 12G states that the obligations of the parties shall not cease, be suspended or be delayed arising from the reference of a dispute to mediation.

13. Governing Law, Choice of Jurisdiction and Execution

Clause 13A provides that the Goods Contract is to be governed by Irish law and that the Irish courts have exclusive jurisdiction.

Clause 13B provides for an obligation to execute the Goods Contract in duplicate and contains a confirmation that the persons executing the Goods Contract are duly authorised officers.

14. Notices

Clause 14 provides for the manner in which notices and written communications in respect of the Goods Contract are to be made.

The registered offices of a company can be used as the address where a notice must be served (this simplifies a checking procedure for the Client in that they can simply check the registered office with the Companies Registration Office). If there is recent history of communication between the parties, any such notice can also be emailed, or posted (registered post) to the person nominated as the Contractor contact at the most recent email address or postal address in use between the parties, notifying them that a notice has been served on the registered offices.

15. Assignment and Subcontract

This clause prevents either party from assigning or subcontracting any part of the Goods Contract without the written consent of the other party. Any public procurement law implications should be considered (in accordance with legal advice) before consenting to any assignment.

16. Entire Agreement

This clause confirms that all the terms of the agreement between the parties are in the Goods Contract. It seeks to exclude an argument that there are oral terms 'agreed' but not included in the written contract. It also excludes any previous exchange of correspondence not specifically incorporated (whether physically or by reference) into the Goods Contract as signed.

17. Severability

This clause ensures, as far as possible, that the Goods Contract will not become void in its entirety if any provision in the Goods Contract is found to be invalid, illegal or unenforceable for any reason.

18. Waiver

This clause is drafted to provide for a situation where a right or obligation under the Goods Contract is waived: for example, the Client decides to agree to accept Goods which are in some way below specification (perhaps at a lower price). In agreeing to such a waiver the Client must take account of its obligations under public procurement law. This acceptance needs to be without prejudice to the

contractual remedies available under the Goods Contract and the clause here provides that such acceptance is not a waiver of rights under the Goods Contract into the future.

19. Non-exclusivity

This clause allows the Client to purchase Goods from another Contractor during the currency of the Goods Contract should that be necessary.

20. Media

This clause restricts the Contractor from making public statements, advertising or disclosing anything about the Goods Contract without the prior written consent of the Client. This ensures that the Client can 'manage' publicity appropriately.

21. Conflicts, Registrable Interests and Corrupt Gifts

Clause 21A contains a confirmation from the Contractor that it has carried out a conflict of interest check and that there are no such conflicts. An ongoing obligation to report any such conflicts is imposed on the Contractor for the Term of the Goods Contract.

Clause 21B sets out an obligation on the Contractor to disclose registrable interests and confirmation that the Contractor will not offer or agree to give gifts to public servants or civil servants to induce or reward them in respect of actions or forbearance from action in relation to this or any public contract.

Clause 21C makes reference to the obligations under the Prevention of Corruption Acts 1889 to 2010 and gives the Contractor the right to terminate the Goods Contract for breaches of Clause 21C and to recoup any losses arising from the cancellation.

The Contractor is obliged to comply with directions of the Client.

22. Access to Premises

Clause 22A states that the Client's premises are available to the Contractor for the sole purpose of performing its obligations under the Goods Contract. The Contractor is granted a non-exclusive licence, and agrees to vacate the premises on termination of the Goods Contract.

Clause 22B states that the Contractor shall permit Client access to its premises in accordance with the Goods Contract.

23. Non Solicitation

Both parties agree that for a period of 12 months after the Term, neither party shall engage the employees of the other (save for publicly advertised posts).

24. Change Control Procedure

Clause 24 outlines the procedures to be adopted if there is to be a change to the Goods Contract. Any such amendments are subject to the Client's obligations at law. No costs will be incurred with regard to any proposed "change" without the written consent of the Client.

25. Data Protection and Security

The Data Protection Laws (as defined in the Contract) regulate the use of information which relates to an identified or identifiable natural person ('Personal Data').

As each contract is specific to the Contracting Authority, the Data Protection Officer ("DPO") for the Contracting Authority should be consulted when completing this clause. Clause 25 survives termination and/or expiry of the Contract.

An information note on the General Data Protection Regulation published by the OGP can be found at the following link.

<https://ogp.gov.ie/information-notes/>

The obligations of the Contractor with regard to the use or "processing" of Personal Data are set out here. These obligations include a general requirement, at Clause 25(B), that the Contractor comply with the Data Protection Laws.

Clause 25(C) contains an acknowledgment that the Client is the Data Controller and the Contractor is a Data Processor i.e. the Contractor processes Personal Data on behalf of the Client. There may be circumstances however where this is not an appropriate description of the role of the Contractor, such as where the Contractor acts as a Data Controller in its own right. Contracting Authorities should consult with their DPO with regard to the classification of the Contractor's role in connection with the Agreement. Clause 25(C) also refers to the content of Schedule F. Contracting Authorities are required to populate Schedule F with the type and nature of the Personal Data to be provided to the Contractor in connection with the Agreement. This description of data at Schedule F should be as detailed as possible.

The remainder of Clause 25 further details the Contractor's data processing obligations in connection with the Agreement and the restrictions placed on such data processing. In particular:

Clause 25(D) provides that the Contractor shall not transfer Personal Data outside of the European Economic Area unless the Contractor has obtained the prior written consent of the Client to the transfer of data and complies with the other requirements listed in Clause 25(D)(4); and

Clause 25(M) deals with the Contractor's ability to appoint a third party processor of Personal Data in connection with provision of the Services. If the Contractor is permitted to appoint a third party processor then the identity of the third party processor should be inserted into the template wording provided at Clause 25(M).

The Contracting Authority's DPO should be consulted with regard to the completion of Clause 25.

26. Additional Conditions

Clause 26 is designed to allow the Contracting Authority to take account of project/sector specific circumstances. If the option to apply clause 26 is taken by the Contracting Authority, then this should be included in the form of contract at Appendix 5 to the RFT, **before** publication of the RFT by the Contracting Authority. The inclusion of this clause could impact on pricing.

SCHEDULE B: GOODS – THE SPECIFICATIONS

This Schedule should include the Requirements and Specifications from the RFT as reflected in the Submission and accepted by the Client, including any operational policies, guidelines and protocols. It should be as detailed as possible for clarity and to avoid disputes post contract. The Goods RFT linked to the Goods Contract is so structured that the Client's requirements are clearly set out in one place within the RFT – in Appendix 1: Requirements and Specifications. Thus by extension the Submission should have all the Contractor's proposals relating to the Specifications in one place. Accordingly this information should be easily replicated into Schedule B.

Where the RFT and/or Submission include options to be accepted and decided upon by the Client, the final accepted deliverables and manner in which these are to be provided should be clearly set out.

Details to be set out could include:

- Goods deliverables and quality standards;
- Security;
- Sectoral or industry requirements (for example, health & safety) ;
- Licences;
- Reporting obligations and contract management;
- Milestones;
- Quality assurance;
- Locations;
- Key personnel and their role; and
- Key assumptions. (These may include Client obligations/dependencies. As these may not be clear at RFT date, this can be completed at contract stage.)

SCHEDULE C: CHARGES

This Schedule should be as detailed as possible. The Goods RFT linked to the Goods Contract is so structured that the Client's requirements are clearly set out in one place within the RFT – in Appendix 2: Pricing Schedule. By extension, the Submission should have all the Contractor's payment proposals in one place. Accordingly this information should be easily replicated into Schedule C.

This Schedule should also set out the payment process, any milestone conditions, relevant deliverables where payment is contingent on these, appropriate rates, etc.

Where the RFT and/or the Submission include options to be accepted and decided upon by the Client which impact on the pricing model finally applying, the final accepted pricing structure should be clearly set out.

SCHEDULE D: SERVICE LEVELS

To be completed at RFT stage by the Contracting Authority, if required, or when completing the Goods Contract.