

Terms and Conditions of Contract for Supplies Assumptions and Omissions

- This is for a goods only contract, and although installation may be a feature of the purchase, there should not be any TUPE risk.
- This is for 'off-the-shelf' goods and therefore there should not be drawings or specific design information that the Customer will want to rely on or Intellectual property. For bespoke goods, additional contract provisions may be required and legal advice should be sought on a case-by-case basis.
- Delivery is assumed not to be in instalments. There is an implied term in the Sale of Goods Act 1979 which provides that unless the contract specifies the goods may be delivered in instalments, the customer is not obliged to accept delivery in instalments. If instalments are required then this must be set-out in the Specification and in the Award Letter/Purchase Order.
- The contract assumes the Supplier neither requires access to nor prior inspection of the Customer's premises to fulfil the contract.
- Acceptance criteria are not covered, however the contract includes express rights to reject goods which are defective (as the Sale of Goods Act 1979 provides that once goods have been accepted, these rights are lost).
- 'Time is of the essence' is not included as in most cases it would be disproportionate to reject delivery and claim damages if the goods are delivered late. Where this is a requirement, it should be stated in the Award letter. Where delivery is late, the clause 11 of the contract provides a number of alternative remedies including rejection of the goods or termination of the contract.
- The goods will be delivered in accordance with the Customer's environmental policy.
- Further information required by the Customer from the supplier for the purposes of responding to FOI requests should be stated in 26.2 (default is 5 days).
- Liability for indirect and consequential loss is not covered on the basis it seems disproportionate for the value of the contracts and many suppliers resist such a term. A damages claim would still extend to losses naturally flowing from the breach or which were in the reasonable contemplation of the parties at the time the contract was made. If a specific loss was a concern, this should be specified in the award letter as a direct loss.
- Liquidated damages are not included; standard clause if unlikely to be appropriate across the board and if the amount was deemed to be a penalty it would be void. A clause may also prevent the CO from being able to reject goods for late delivery. Any justifiable liquidated damages required should be discussed with legal and specified in the Award letter.