These Conditions of Contract for the Purchase of Goods (“Conditions”) may only be varied with the written agreement of the Purchaser. No terms or conditions put forward at any time by the Supplier shall form any part of the Contract unless specifically agreed in writing by the Purchaser.

1. DEFINITIONS

In these Conditions:

1.1 “Purchaser” means Historic Environment Scotland, a statutory corporation established by the Historic Environment Scotland Act 2014 and a registered charity (Scottish Charity number SC047651) having its principal office at Longmore House, Salisbury Place, Edinburgh EH5 1TW which is acting for and on behalf of The Scottish Ministers.

1.2 “Supplier” means the person, firm or company from whom the Purchaser purchases the Goods.

1.3 “Goods” means the goods set out or described in the Purchase Order which are to be supplied to the Purchaser by the Supplier pursuant to or in connection with the Contract.

1.4 “Contract” means the contract between the Purchaser and the Supplier consisting of the Purchase Order, these Conditions and any other documents (or parts thereof) specified in the Purchase Order.

1.5 “Purchase Order” means the Purchaser’s order for the Goods, as set out in the Purchase order form or the Purchaser’s written acceptance of the Supplier’s quotation (as the case may be).

2. THE GOODS

2.1 The Goods shall correspond with their description and shall conform in all respects with any particulars specified in the Contract.

2.2 The Goods shall conform in all respects with the requirements of applicable law (including, without limitation, any statutes, orders, regulations or bye-laws from time to time in force).

2.3 The Goods shall be of satisfactory quality and fit for any particular purpose held out or made known (whether expressly or by implication) by the Purchaser to the Supplier. The Supplier acknowledges and accepts that the Purchaser is relying on the skill and judgement of the Supplier in this respect.

3. THE PRICE & PAYMENT

3.1 The price of the Goods shall be as stated in the Contract and no increase will be accepted by the Purchaser unless agreed in writing by the Purchaser in writing. Such price includes the costs of packaging, insurance and carriage.

3.2 Unless otherwise agreed in writing by the Purchaser, the Supplier shall render a separate invoice in respect of Goods damaged or destroyed in transit or otherwise.

3.3 The Supplier may invoice the Purchaser at any time after the delivery of the Goods and each invoice issued so by the Supplier must contain the Purchase Order number and such other information as is required under the Contract. The Purchaser shall pay each invoice received by it from the Supplier within thirty (30) days of such receipt, with payment being made to the Supplier’s nominated bank account.

3.4 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.

3.5 Notwithstanding Condition 17 of this Contract the Supplier may assign to another person (an “assignee”) the right to receive payment of the Price or any part thereof due to the Supplier under this Contract subject to (i) deduction of sums in respect of which the Purchaser exercises the right of recovery under Condi
tion 16 of this Contract and (ii) the related right of the Purchaser to recover payment of the Price or for handing over invoices, in each case in good time to enable the Purchaser to redirect payments or invoices accordingly. In the absence of such notification, the Purchaser shall be under no obligation to vary its arrangements for payment of the Price or for handling invoices.

3.6 Where, with the agreement of the Purchaser, the Supplier has entered into a sub-contract for the purposes of performing the Contract, the Supplier will cause a term to be included in such sub-contract which requires payment to be made to the Supplier within thirty (30) days of receipt of a valid invoice as defined by the sub-contract requirements. The Supplier shall be responsible for the payment of all sub-contracts and all other costs incurred during the course of the contract.

4. DELIVERY

4.1 The Goods shall be delivered to the location named in the Contract. When accessing any premises operated by or on behalf of the Purchaser, the Supplier shall (and shall procure that its personnel or representatives shall) comply with the Purchaser’s policies and procedures regarding access to and attendance on such premises (including, without limitation, in relation to health and safety and security) and shall comply with any and all instructions issued by the Purchaser’s personnel or representatives with respect to such access and attendance.

4.2 The Supplier shall indemnify the Purchaser in respect of any actions, suits, claims, demands losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of any breach of any of the provisions of this Contract or its sub-contracts, occurring in the course of delivery or installation to the extent that any such damage or injury is suffered by the Supplier or any of its sub-contractors.

4.3 The time of delivery shall be of the essence and failure to deliver by the date(s) specified in the Contract (or if no date is specified, within fourteen (14) days) shall entitle the Purchaser (at the Purchaser’s option) to cancel all or part of the Contract without liability to the Supplier and without prejudice to the Purchaser’s other rights and remedies.

5. PROPERTY AND RISK

Property and risk in the Goods shall (without prejudice to any other rights or remedies of the Purchaser) vest in the Purchaser and become its property the moment of delivery.

6. DAMAGE IN TRANSIT

6.1 On despatch of the Goods, the Supplier shall send an advice note to the Purchaser specifying the Goods despatched, the Goods number, date of despatch, the Goods description, the Goods number and weight and volume. Each delivery shall also be accompanied by a delivery note specifying the Goods number, date of delivery, means of transport, the place and date of despatch, the Goods despatched, the number of packages and their weight and volume. Each delivery shall also be accompanied by a delivery note specifying the Goods number, date of delivery, means of transport, the place and date of despatch, the Goods despatched, the number of packages and their weight and volume. Each delivery shall also be accompanied by a delivery note specifying the Goods number, date of delivery, means of transport, the place and date of despatch, the Goods despatched, the number of packages and their weight and volume.

6.2 The Supplier shall free of charge and as quickly as possible either repair or replace (as the Purchaser shall elect) such of the Goods as may either be damaged in transit or not delivered provided that:

(a) in the case of damage to such Goods in transit the Purchaser shall within thirty (30) days of delivery give notice to the Supplier that the Goods have been damaged; or

(b) in the case of non-delivery the Supplier shall (provided that the Purchaser has been advised of the date of the Goods) within ten (10) days of the date of the Supplier giving notice to the Supplier that the Goods (in whole or in part) have not been delivered.

7. INSPECTION, REJECTION AND GUARANTEE

7.1 The Purchaser (or the Purchaser’s authorised representatives) shall at any time prior to delivery have the right to carry out such inspections or tests as they consider appropriate in the circumstances and the Supplier shall afford all reasonable access, facilities and assistance free of charge at the Supplier’s premises. If following such inspections or testing the Purchaser considers that the Goods (in whole or in part) do not comply with the Contract, the Purchaser shall notify the Supplier and the Supplier shall promptly take such remedial action as is required to make the Goods compliant with the Contract. If, at the time of such inspection or test and no approval given during or after such tests or inspections the Supplier shall constitute a waiver by the Purchaser of any rights or remedies in respect of the Goods, nor shall it reduce the Supplier’s obligations under the Contract.

7.2 Following delivery of the Goods, the Purchaser may (by written notice to the Supplier) reject any of the Goods which it considers do not meet the requirements specified in the Contract. Such notice shall be given within a reasonable time after delivery. If the Purchaser does so reject any of the Goods, the Purchaser shall be entitled (without prejudice to the Purchaser’s other rights and remedies) to:

(a) to have the relevant Goods repaired or replaced (as the Purchaser shall elect) by the Supplier with Goods which comply in all respects with the requirements of the Contract; or

(b) to obtain a refund from the Supplier in respect of the relevant Goods.

7.3 The guarantee period applicable to the Goods shall be twelve (12) months from putting into service or eighteen (18) months from delivery, whichever shall be the shorter (subject to any alternative guarantee arrangements agreed in writing between the Purchaser and the Supplier). If the Purchaser shall within such guarantee period give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use, the Supplier shall (without prejudice to any other rights and remedies which may have become available to the Purchaser either by repair or replacement as the Purchaser shall elect) promptly and without cost to the Purchaser.

7.4 Any Goods rejected or returned by the Purchaser as described in Conditions 7.2 or 7.3 shall be returned to the Supplier at the Supplier’s risk and expense.

8. LABELLING AND PACKAGING

8.1 The Goods shall be packed and marked in accordance with the Purchaser’s instructions and any statutory requirements. The Goods shall be marked with the Purchase Order Number, the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous goods (and all documents relating thereto) shall bear prominent and adequate warnings. The Supplier shall indemnify the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any breach of this Condition 8.1.

8.2 All packaging materials will be considered non-returnable and will be destroyed unless the Supplier’s advice note advises that such materials will be charged for unless returned. The Purchaser accepts no liability in respect of the non-arrival at the Purchaser’s premises of empty packages resulting from returned packaging. The Purchaser may give notice of defect to the Supplier within ten (10) days of receiving notice from the Purchaser that the packages have been despatched. Any packages which have been returned shall be charged for at the rate applicable to new purchases.

8.3 The Supplier represents and warrants that the maximum use has been made of recycled materials in the manufacture of crates, pallets, boxes, cartons, cushioning and other forms of packing, where these forms other packing specifications.

9. CORRUPT GIFTS OR PAYMENTS

9.1 The Supplier shall not offer or give, or agree to give, to any employee or representative of the Purchaser any gift or consideration in return for or with the request of any act or omission of the Supplier or any of its sub-contractors.

9.2 The Supplier shall immediately notify the Purchaser of any act or omission that will not infringe any patent, trade mark, registered design, copyright or other intellectual property right of any third party. The Supplier shall indemnify the Purchaser against all actions, claims, demands, costs, liabilities and expenses which the Purchaser may suffer or incur as a result of or in connection with any breach of this Condition 9.1.

10. PATENTS, INFORMATION AND COPYRIGHT

10.1 Save to the extent that the Goods incorporate designs or other works furnished by the Purchaser, the Supplier warrants that the Goods do not and shall not infringe any patent, trade mark, registered design, copyright or other intellectual property right of any third party. The Supplier shall indemnify the Purchaser against all actions, claims, demands, costs, liabilities and expenses which the Purchaser may suffer or incur as a result of or in connection with any breach of this Condition 10.1.

10.2 The intellectual property rights (including, without limitation, copyright) in any reports, documents, specifications, instructions, plans, drawings, Patents, models or designs (“Materials”) whether in writing or on magnetic or other media shall belong to the Supplier.

(a) furnished to or made available to the Supplier by the Purchaser shall remain vested in the Crown absolutely.

(b) prepared by or on behalf of the Supplier in relation to or connection with this Contract are hereby assigned by the Supplier to the Purchaser as a present assignee (by way of a present assignment) to and in favour of the Crown, such that they shall vest in the Crown absolutely. Save to the extent necessary for the purposes of the Contract, the Supplier shall not (and shall procure that the Supplier’s personnel and representatives shall not) use or disclose any such Materials without the Purchaser’s prior written consent.

10.3 The provisions of this Condition 10 shall apply during the continuance of this Contract and after its termination and for a further period of one (1) year from the date the Contract is terminated.

11. HEALTH AND SAFETY

Historic Environment Scotland is a registered Scottish Charity. Scottish Charity No. SC045925

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The Supplier represents and warrants that (i) the Goods are designed and manufactured in accordance with applicable law and so as to be safe and without risk to the health or safety of persons using the same in accordance with applicable law and so as to be safe and without risk to the health or safety of persons using the same in accordance with applicable law and so as to be safe and without risk to the health or safety of persons using the same in accordance with applicable law and so as to be safe and without risk to the health or safety of persons using the same.

10.1 The Supplier shall undertake, or refrain from undertaking, actions or procedures that may, in the opinion of the Purchaser, cause damage to any species or threatened environments.

11. SUPPLEMENTARY NOTICE

11.1 The Purchaser may terminate the Contract immediately by notice to the Supplier where the Supplier fails to remedy the breach within fourteen (14) days of receiving notice from the Purchaser advising of the breach and requiring it to be remedied.

11.2 The Supplier shall not without the written consent of the Purchaser assign the benefit or burden of the Contract or any part thereof.

11.3 No sub-contracting by the Supplier shall in any way relieve the Supplier of any of the Purchaser's responsibilities under the Contract.

11.4 Where the Supplier enters into a sub-contract for the purpose of performing the Contract, the Supplier shall cause a term to be included in such sub-contract:

11.4.1 which requires payment to be made to the sub-contractor within a specified period not exceeding thirty (30) days from receipt of a valid invoice as defined by the sub-contract, which provides that, for the purpose of payment alone, where the Purchaser has made payment to the Supplier and the invoice includes Goods in relation to which payment has been made by the Purchaser then, to the extent that it relates to such Goods, the invoice shall be treated as valid and payment shall be made to the sub-contractor without deduction.

11.4.2 which notifies the sub-contractor that the contract forms part of a larger contract for the benefit of the Scottish Government and that the Purchaser and the Supplier have any difficulty in securing the timely payment of an invoice that matter may be referred by the sub-contractor to the Historic Scotland Procurement Unit.

11.4.3 in the same terms as that set out in this clause 1.1.3 (including for the avoidance of doubt this clause 11.4) subject only to modification to refer to the correct designation of the equivalent party as the Supplier and sub-contractor as the case may be.

12. INDEMNITY AND INSURANCE

12.1 Without prejudice to any other rights or remedies of the Purchaser under the Contract, the Supplier shall indemnify the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any of the provisions of this Condition.

12.2 The Supplier shall affect with a reputable insurance company a policy or policies of public liability and professional indemnity insurance to cover the Supplier's responsibilities under the Contract.

13. COMPLIANCE

13.1 The Supplier shall (and shall take all reasonable steps to ensure that all of the Supplier's employees and representatives):

(a) perform its obligations under this Contract in accordance with:

(i) all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);

(ii) the Purchaser's equality and diversity policy as provided to the Supplier from time to time; and

(iii) any other requirements and instructions which the Purchaser reasonably imposes in connection with any other obligations imposed on the Purchaser at any time under applicable equality law; and

(b) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Contract. The Supplier shall also undertake, or refrain from undertaking, such acts as the Purchaser requests so as to enable the Purchaser to comply with its obligations under the Human Rights Act 1998.

14. OFFICIAL SECRETS ACTS, CONFIDENTIALITY, AND ACCESS TO INFORMATION

14.1 The Supplier shall (where applicable) comply with and procure that the Supplier's employees comply with the Official Secrets Act 1911-1989 and any other applicable laws and regulations.

14.2 All information related to the Contract will be treated by the Supplier as commercial in confidence. The Supplier shall keep secret and not disclose and shall procure that the Supplier's employees keep secret and do not disclose any such information, except information which is in the public domain (other than in breach of this provision) or where disclosure is required by law or judicial order.

14.3 Where the Supplier provides any confidential information to the Purchaser, the Supplier acknowledges that:

(a) the Purchaser may disclose any information as required by law or judicial order, and may disclose all information obtained by the Purchaser by virtue of the Contract to the Scottish or United Kingdom Parliament or any other department, office or agency of Her Majesty's Government or of the United Kingdom;

(b) that when disclosing such information to either the Scottish Parliament or the United Kingdom Parliament, the Purchaser is unable to impose any restrictions upon the information it discloses to Members of the Scottish Parliament, MSPs, MPs or Members of the United Kingdom Parliament (MPs); and

(c) such disclosure shall not constitute a breach of the Contract.

14.4 The provisions of this Condition 14 shall apply during the continuance of the Contract and after its termination howsoever arising.

15. TERMINATION ON SUPPLIER'S INSOLVENCY OR BREACH

15.1 Without prejudice to any other rights or remedies of the Purchaser under the Contract, the Purchaser shall have the right to immediately terminate the Contract by written notice to the Supplier for the Supplier's or the Supplier's employee's bankruptcy or sequestration, receiver, liquidator or administrator:

(a) where the Supplier is an individual and if a petition is presented for the Supplier's bankruptcy or the sequestration of his estate or a bankruptcy or sequestration order is made against the Supplier, or the Supplier is apparently insolvent, or makes any composition or arrangement with for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if a trustee is appointed to manage the Supplier's affairs, or

(b) where the Supplier is not an individual but is a firm or a number of persons acting together in any capacity, if any event in (a) or (c) of this Condition occurs in respect of the firm or any partner in the firm or any of those persons or a petition is presented for the Supplier to be wound up as an unregistered company, or

(c) where the Supplier is a company, if the company passes a resolution for winding up or dissolution (other than for the purposes of and followed by an amalgamation or reconstruction) or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrator.

16. RECOVERY OF SUMS DUE

16.1 Wherever under the Contract any sum of money is recoverable from or payable by the Supplier, that sum may be deducted from any sum then due, or which at any later time may become due, to the Supplier from the Purchaser under any other agreement or contract between the Supplier and the Purchaser.

17. ASSIGNMENT AND SUB-CONTRACTING

17.1 The Purchaser may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

17.2 The Supplier shall not without the written consent of the Purchaser assigns the benefit or burden of the Contract or any part thereof.

18. NOTICES

Any notice given under or pursuant to the Contract may be sent by hand or by post or by any registered post or by the Official delivery service or transmitted by fax or other means of telecommunication resulting in the receipt of a written communication in permanent form. It shall be deemed to have been received on the day and time when such means of communication would ordinarily be received (having regard to the typical transmission time for that means of communication).

19. DISPUTE RESOLUTION

The parties must attempt in good faith to resolve any dispute between them arising out of or in connection with the Contract. Any dispute or difference arising out of or in connection with the Contract, including any question regarding its existence, validity or termination which cannot be resolved in good faith, shall be determined by the appointment of a single arbitrator to be agreed between the parties, and failing agreement within fourteen (14) days after either party has given to the other a written request to conciliate in the appointment of an arbitrator, by an arbitrator to be appointed by the President of the Law Society of Scotland on the written application of either party. The seat of the arbitration shall be in Scotland. The language used in the arbitral proceedings shall be in English. Any arbitration under this Contract is subject to the Arbitration (Scotland) Act 2010 as amended.

20. HEADINGS

The headings to Conditions shall not affect their interpretation.

21. GOVERNING LAW

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

22. FREEDOM OF INFORMATION

The Purchaser is a Scottish public authority pursuant to its obligations under the Freedom of Information (Scotland) Act 2002 (FOI Act) and is therefore subject to the provisions and obligations in the FOI Act. This means that any person who makes a valid request for recorded information held by or on behalf of the Purchaser will (subject to certain exceptions) be entitled to receive it. For the avoidance of any doubt, nothing in the Contract shall prevent, restrict or prohibit the Purchaser from complying with its obligations under the FOI Act and the Purchaser may disclose any information whatsoever relating or otherwise pertaining to the Contract where it considers that it is required to do so under the FOI Act.

23. BLACKLISTING

The Supplier must not commit any breach of the Employment Relations 1999 Act (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or commit an breach of the Data Protection Act 1998 by unlawfully processing personal data in connection with any of the obligations under the Contract. Any breach of this clause is a material default which shall entitle the Purchaser to terminate the Contract.

SUPPLEMENTAL NOTICE - THIS NOTICE DOES NOT FORM PART OF THE CONDITIONS OF CONTRACT

1. PROTECTING THE ENVIRONMENT

Suppliers to Historic Environment Scotland are requested to satisfy themselves that no product will be supplied or used to the Purchaser to which this clause relates. Suppliers to Historic Environment Scotland are requested to satisfy themselves that no product will be supplied or used to the Purchaser which will endanger the health of the consumers or others, will cause significant damage to the environment during manufacture, use, or disposal, which may be disproportionate amount of energy during manufacture, use, or disposal, which causes unnecessary waste because of over-packaging or because of an unusually short shelf life, or which contains materials derived from threatened species or threatened environments.

2. LATE PAYMENT OF INVOICES

Suppliers to Historic Environment Scotland are requested to address complaints regarding the late payment of invoices to, the first instance of the address of the invoice, and in that second instance to the Historic Environment Scotland, Procurement Unit, Room 3.15, Longmore House, Salisbury Place, Edinburgh, EH1 5SH, telephone 0131 668 8600. This procedure is suggested as the best practical way of ensuring problems of late payment are resolved, and is not intended to interfere with Suppliers' legal rights.

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