

## Definitions and Interpretation

### 1. In these Conditions:

- “NY Highways”** means NY Highways of County Hall, Racecourse Lane, Northallerton, DL7 8AD;
- “Conditions”** means these terms and conditions;
- “DPA 2018”** means the Data Protection Act 2018;
- “Data Protection Legislation”** means:
- the GDPR, the UK GDPR, the LED and any applicable national implementing laws, regulations and secondary legislation, as amended or updated from time to time;
  - the DPA 2018 to the extent that it relates to processing of Personal Data and privacy; and
  - all applicable law about the processing of Personal Data and privacy;
- “GDPR”** means the General Data Protection Regulation (Regulation (EU) 2016/679) and “UK GDPR” means the GDPR as implemented into the law of England and Wales, Scotland and Northern Ireland;
- “Goods”** means the goods supplied under the Order;
- “Order”** means NY Highway’s purchase order for the Goods and/or Services;
- “LED”** means the Law Enforcement Directive (Directive (EU) 2016/680);
- “Personal Data”** has the meaning given in the GDPR and where used in these Conditions and/or Order refers to any such Personal Data processed by the Supplier on behalf of NY Highways under these Conditions and/or Order;
- “Services”** means the services supplied under the Order; and
- “Supplier”** means the supplier of the Goods and/or Services.
2. Subject always to Condition 3 below, these Conditions apply to all Orders for the purchase of Goods and/or Services by NY Highways from the Supplier. All other terms and conditions are excluded including any terms and conditions which the Supplier may attempt to apply under any sales offer or other documents. Delivery of Goods and/or performance of the Services by the Supplier to NY Highways shall be deemed to be conclusive evidence of the Supplier’s acceptance of these Conditions.
3. If the Supplier has entered into a separate agreement (“**Agreement**”) with NY Highways in relation to the purchase of Goods and/or Services at NY Highway’s request, then in the event of any conflict or inconsistency between these Conditions and the Agreement, the Agreement shall prevail.
4. No variation of these Conditions shall be effective unless agreed in writing between NY Highways and the Supplier.
5. English law applies to these Conditions and the Order and the courts of England and Wales shall have exclusive jurisdiction.
6. A person who is not a party to this Order has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Order.
7. **Goods**
- Goods must be of the type and quality specified in the Order and correspond with their description, and where relevant must comply with samples previously approved by NY Highways.
  - Goods shall be supplied in such quantities, at such times and in such a manner as NY Highways may direct. Goods shall be delivered at the Supplier’s risk to the address specified in the Order and shall be free from charges for carriage and packaging except where NY Highways agrees to pay such charges in the Order. The Supplier shall be responsible for the off-loading of Goods on delivery. Orders shall be delivered during the NY Highway’s normal business hours. Orders must be delivered in strict accordance with NY Highways delivery instructions and Depot and Site Visitors’ Procedure which is published on NY Highways website at <https://nyhighways.co.uk/suppliers/>. NY Highways do not accept any liability if any delivery of an Order is refused on the grounds that the Supplier has failed to adhere to the delivery instructions.

- Property and risk in the Goods shall pass to NY Highways on delivery except where payment has already been made, when property in the Goods shall pass on payment but risk shall remain with the Supplier until delivery. Goods shall be delivered to the location specified in the Order.
- The Supplier shall provide a delivery note quoting the Order number and giving details of the Goods delivered. NY Highway’s Order number must also be quoted on the invoice.
- If the Goods delivered are not of the specified quality, quantity or type or if they do not comply with any sample previously supplied then NY Highways can either refuse to receive the Goods at all or can reject all or part of them. NY Highways shall notify the Supplier that the Goods are rejected within a reasonable time of delivery. Rejection may be for quality reasons or other valid grounds.
- If any Goods rejected by NY Highways are not removed by the Supplier within seven days from the notice, NY Highways may remove the Goods at the Supplier’s cost. The Supplier shall refund, repair or replace any rejected Goods.
- The Supplier warrants to NY Highways that the Goods will be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose stated by the Supplier or made known to NY Highways at the time the Order is placed; the Goods will be free from defects in design, material and workmanship; the Goods will correspond with any relevant specified sample and will comply with all statutory requirements and regulations relating to the sale of goods.
- If the Supplier does not deliver the Goods within the time specified in the Order NY Highways may cancel the Order, reject the goods and claim damages. Time shall be of the essence where a time or date for delivery is specified in the Order.
- NY Highways shall not be liable for any damage to or deterioration of any rejected Goods whilst in its possession.
- The Supplier must comply with every relevant legal requirement (including EU and UK standards) relating to the manufacture, packaging and delivery of the Goods.
- NY Highway’s rights in these Conditions supplement any warranty or guarantee offered by the Supplier. NY Highways will have the right to require the Supplier to remedy defects in the Goods (by repair or replacement) if within six months of delivery, the Goods become defective because of poor design or workmanship, use of faulty materials or other relevant reason.

### 8. Services

- The Services shall be provided in accordance with the Order and any specification.
- The Services shall be provided to such standards, at such times and in such a manner as NY Highways may direct and with all the skill, care and diligence to be expected of a competent provider of services of a similar kind to the Service.
- The Supplier shall at all times make available sufficient personnel and all other resources as are required for the successful and timely completion of the Services. All personnel providing the Services shall adhere to NY Highways PPE Standard which can be accessed on NY Highways website at <https://nyhighways.co.uk/suppliers/>.
- The Services shall at all times be provided by appropriately supervised, experienced, qualified, trained and competent personnel.
- NY Highways shall have the right to decide whether any person is to be admitted to or is to be removed from NY Highway’s premises or is not to become involved in or is to be removed from involvement in the performance of the Services.
- The Supplier shall carry out all necessary checks with the Disclosure and Barring Service on all staff employed or (if any) volunteers engaged to provide or supervise the provision of the Service if this is a statutory requirement.

### 9. Payment

- Where a price is specified in the Order the price actually chargeable must not exceed it. VAT is excluded from the price and NY Highways shall pay additional amounts in respect of VAT where a valid VAT invoice is provided. Delivery and packaging costs shall be agreed with NY Highways prior to an Order being made. NY Highways will not be liable to pay for any additional costs that have not been agreed prior to the Order being made.

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- 9.2. NY Highways shall accept and process for payment an electronic invoice submitted for payment by the Supplier. Undisputed invoices shall be paid by NY Highways within 30 days of receipt. Payment may be made following delivery.
- 9.3. NY Highways may set off against the price any amount due from the Supplier under this or any other Order.
- 9.4. NY Highways reserves the right to vary its invoicing policy at any time. Any expenses of the Supplier involved in the submission of electronic invoices shall be met by the Supplier.
- 9.5. Except where otherwise agreed by NY Highways, the invoice will be paid by BACS and the remittance advice sent by email or fax. The Supplier shall provide details of its bank account and email address to NY Highways no later than the time of submitting the invoice relating to this Order.

## 10. Indemnity and Insurance

- 10.1. The Supplier shall indemnify NY Highways against all losses, claims and costs arising from injury (including death), loss of or damage to property real or personal arising out of the act or default of the Supplier, its servants, agents or sub-contractors in connection with the Order.
- 10.2. The Supplier shall fully indemnify NY Highways against any expenses arising from any alleged or actual infringement of any proprietary right including but (not limited to) patents, trademarks, copyrights, intellectual or any of the rights arising from the Order.
- 10.3. The Supplier shall maintain satisfactory insurance cover with a reputable insurer in respect of all liabilities, both statutory and contractual, arising from the Order, to a minimum of £5m in respect of any one incident or such higher figure as NY Highways may specify. The Supplier shall produce evidence of such insurance and payment of the current premium to NY Highways on request.
- 10.4. NY Highways, its employees, agents or associated companies shall in no circumstances whatsoever be liable for any loss of profits or indirect or consequential loss howsoever arising from the Order.

## 11. Termination

- 11.1. NY Highways may cancel the Order immediately if the Supplier commits a material breach of this agreement, becomes bankrupt, has a receiver appointed, goes into liquidation or if the Supplier is guilty of any offence under the Bribery Act 2010.

## 12. Assignment and Sub-contracting

- 12.1. The Supplier shall not assign or sub-contract the Order (in whole or in part) without NY Highway's agreement but no consent is necessary for sub-contracting the delivery of the Goods except that any sub-contractor is required to comply with the delivery instructions set out in NY Highways Depots and Site Visitors' Procedure as published on their website at <https://nyhighways.co.uk/suppliers/>. NY Highways may assign the Order without the Supplier's agreement provided that such assignment shall not increase the Supplier's obligations under the Order. This includes any such assignment, novation or disposal of rights and obligation to any legal entity with which NY Highways merges or which is a successor body of NY Highways by reason of statutory or voluntary reorganisation.

## 13. Statutory Requirements

- 13.1. The Supplier shall comply with all relevant anti-discrimination legislation, including but not limited to, the Equality Act 2010.
- 13.2. The Supplier shall, and shall ensure that its agents, employees and sub-contractors shall, in performing its obligations under these Conditions, comply in all respects with the Data Protection Legislation and all subsequent and supporting legislation made pursuant thereto and will indemnify NY Highways against all actions costs expenses claims proceedings and demands which may be brought or made against NY Highways for breach of statutory duty under the Data Protection Legislation which arises from the use disclosure or transfer of Personal Data by the Supplier and its agents, employees and/or sub-contractors.
- 13.3. The Supplier shall, and shall ensure that its agents, employees and sub-contractors shall, not do or permit anything to be done which might jeopardise or contravene NY Highway's compliance with the Data Protection Legislation.
- 13.4. The Supplier shall notify NY Highways immediately if it:
  - 13.4.1. receives a Data Subject Access Request (as defined under the GDPR) or purported Data Subject Access Request; or
  - 13.4.2. becomes aware of a data security breach.

- 13.5. The Supplier shall allow for audits of its data processing activity and premises by NY Highways or NY Highway's designated auditor and authorised representatives and make available to NY Highways all information necessary to demonstrate compliance with its obligations under this Contract and the Data Protection Legislation.

- 13.6. NY Highways is under a statutory duty which may require the release of information under the Freedom of Information Act 2000 ("FOIA") and or the Environmental Information Regulations 2004 ("EIR"). Such information may include matters relating to or arising out of or under this Order. NY Highways shall be entitled to disclose such information in the event that it receives a request to do so and the Supplier shall assist and cooperate with NY Highways (at the Supplier's expense) to enable NY Highways to comply with any information disclosure requirements. NY Highways will not usually disclose information which is subject to an exemption under the FOIA or the EIR however the Supplier acknowledges that the final decision whether to disclose such information will rest with NY Highways and not with the Supplier. Nothing contained in this Order or any documents or negotiations relating to this Order shall prevent NY Highways from disclosing any information which (in NY Highway's reasonable opinion or in accordance with any recommendation, notice or decision of a competent authority) it is required to disclose under the FOIA or the EIR. The Supplier shall indemnify NY Highways against all claims, demands, actions, costs, proceedings and liabilities that NY Highways directly incurs due to the Supplier's or any sub-contractor's breach of this Condition 13.6 or any part of it.

- 13.7. The Supplier shall comply with the requirements of the Health and Safety at Work Act 1974 so far as they apply to the provision of the Service and throughout the Contract Period the Supplier shall have in place a health and safety policy which complies with all statutory requirements.

## 14. General

- 14.1. Any notice or other communication given to a party under or in connection with the Agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to the address specified by NY Highways upon request.
- 14.2. If any provision or part-provision of any Order is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Order. If any provision or part provision of the Order is deemed deleted under this clause then NY Highways may elect at their discretion to negotiate in good faith a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.
- 14.3. Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 14.4. Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 14.5. Except as set out in these Conditions, no variation of the Agreement or any Order arising under it shall be effective unless it is agreed in writing and signed by the parties.
- 14.6. The Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

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