National Crime Agency - Terms and Conditions of Purchase of Goods and Services

1 Commencement and Duration and Interpretation

1.1 This Contract shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with its terms, until the Termination Date, when it shall terminate automatically without notice.

1.2 The Authority may submit an Order at any time for the Goods and/or Services. An Order constitutes an offer by the Authority to purchase Goods and/or Services from the Supplier in accordance with these Conditions.

1.3 The Order shall be deemed to be accepted on the earlier of (a) the Supplier issuing written acceptance of the Order; or (b) any act by the Supplier consistent with fulfilling the Order, at which point the Order shall be subject to these Conditions.

1.4 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

1.5 The following definitions and rules of interpretation apply in these Conditions.

"Authority"	National Crime Agency
"Authority Confidential Information"	Information classified under the Government Security Classifications as Official-Sensitive, Secret or Top Secret, or information which the Authority has notified the Supplier is to be treated as confidential
"Authority Materials"	all materials, equipment and tools, drawings, specifications and data supplied by the Authority to the Supplier
"Business Day"	a day other than a Saturday, Sunday or public holiday in England.
"Commencement Date"	the date when the Supplier accepts the Authority's offer to purchase the Goods and/or Services
"Conditions"	these terms and conditions as amended from time to time in accordance with clause 19.
"Confidential Information"	Authority Confidential Information or Supplier Confidential Information
"Contract"	the contract between the Authority and the Supplier for the sale and purchase of the Goods and/or Services in accordance with the Contract Details, and these Terms and Conditions.
"Deliverables"	all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).
"Delivery Location"	The location notified by the Authority to the Supplier
"Goods"	the goods (or any part of them) set out in the Purchase Order.
"IPRs"	patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names, rights in get-up and trade dress, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
"Order"	the Authority's order for the supply of Goods and/or Services, as set out in the Authority's Purchase Order form.
"Services"	the services, including any Deliverables, to be provided by the Supplier under the Contract as set out in the Purchase Order
"Specification"	any specification for (i) the Goods, including any related plans and drawings or (ii) the Services (as applicable), that is agreed in writing by the Authority and the Supplier.
"Supplier"	The supplier named in the Purchase Order
"Termination Date"	The termination date named in the Purchase Order or if no termination date is named in the Purchase Order, the date named in a Notice communicated by the Authority to the Supplier
"Termination Notice Period"	14 calendar days or the Termination Notice Period specified by the Authority in the Purchase Order

2 Supply of Goods

2.1 The Supplier shall ensure that the Goods shall:

2.1.1 correspond with their description and any applicable specification;

2.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the Authority, expressly or by implication;

2.1.3 (where they are manufactured products), be free from defects in design, materials and workmanship and remain so for 12 months after delivery; and

2.1.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

2.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

2.3 The Authority may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods in accordance with this Contract despite any inspection or testing.

2.4 If the Authority, following inspection or testing, considers that the Goods do not comply with clause 2.1, the Authority shall inform the Supplier who shall immediately take such remedial action as is necessary to ensure compliance. The Authority may conduct further inspections and tests after the Supplier has carried out its remedial actions.

3 Delivery of Goods

3.1 The Supplier shall ensure that:

3.1.1 the Goods are properly packed and secured as to enable them to reach their destination in good condition;

3.1.2 each delivery of the Goods includes a delivery note showing the Order date, the Order number (if any), the type and quantity of the Goods, special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

3.1.3 the delivery note states any requirement for the Authority to return packaging material to the Supplier. Packaging material shall only be returned to the Supplier at the cost of the Supplier.

3.2 The Supplier shall deliver the Goods:

3.2.1 on the date specified in the Order or, if no such date is specified, then within 10 days of the Order date; and

3.2.2 to the Delivery Location during such hours as instructed by the Authority.

3.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location and acceptance of the Goods by the Authority.

3.4 The Supplier shall not deliver the Goods in instalments without the Authority's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Authority to the remedies set out in clause 5.1.

3.5 Title and risk in the Goods shall pass to the Authority on completion of delivery.

4 Supply of Services

4.1 The Supplier shall meet any performance dates for the Services specified in the Order or that the Authority notifies to the Supplier and time is of the essence in relation to any of those performance dates.

4.2 In providing the Services, the Supplier shall:

4.2.1 co-operate with the Authority in all matters and comply with all instructions of the Authority;

4.2.2 perform the Services in accordance with the relevant Specification and with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;

4.2.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;

4.2.4 ensure that the Services will conform with the relevant Specification, and that the Deliverables shall be fit for any purpose that the Authority expressly or impliedly makes known to the Supplier;

4.2.5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;

4.2.6 use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Authority, will be free from defects in workmanship, installation and design;

4.2.7 obtain and at all times maintain all licences and consents which may be required for the provision of the Services;

4.2.8 observe all health and safety rules and regulations relevant to the Services;

4.2.9 hold all Authority Materials in safe custody at its own risk, maintain such in good condition until returned to the Authority, and not dispose of or use such other than in accordance with the Authority's written instructions or authorisation.

5 Authority remedies

5.1 If the Supplier fails to deliver the Goods or perform the Services by the applicable date (or both), the Authority shall, without impacting other rights or remedies available to it, have any one or more of the following rights and remedies to:

5.1.1 terminate the Contract with immediate effect by giving written notice to the Supplier;

5.1.2 refuse to accept any subsequent Services and/or delivery of the Goods which the Supplier attempts to make;

5.1.3 recover from the Supplier any costs incurred in obtaining substitute goods and/or services from a third party;

5.1.4 require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and/or Goods that it has not delivered; and

5.1.5 claim damages for any additional costs, loss or expenses incurred by the Authority which are in any way attributable to the Supplier's failure to meet such dates.

5.2 If the Supplier has delivered Goods or performed Services that do not comply with the undertakings set out in these Conditions then, without limiting or affecting other rights or remedies available to it, the Authority shall have one or more of the following rights and remedies, whether or not it has accepted the Goods or the Services:

5.2.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;

5.2.2 in relation to Goods, to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense; or

5.2.3 in relation to Services, return the Deliverables to the Supplier at the Supplier's own risk and expense;

5.2.4 in relation to Goods, to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);

5.2.5 in relation to Services, to require the Supplier to provide repeat performance of the Services, or to provide a full refund of the price paid for the Services (if paid)];

5.2.6 in relation to Goods, to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;

5.2.7 to recover from the Supplier any expenditure incurred by the Authority in obtaining substitute goods or services including deliverables) from a third party; and

5.2.8 to claim damages for any additional costs, loss or expenses incurred by the Authority arising from the Supplier's failure to comply with these Conditions.

5.3 These Conditions extend to any substituted or remedial services and/or repaired or replacement goods supplied.

5.4 The Authority's rights and remedies under the Contract are in addition to, and not exclusive of, any rights and remedies implied by statute and common law.

6 Charges and payment

6.1 The Charges for the Goods shall be (a) the price set out in the Order; and (b) inclusive of the costs of packaging, insurance and carriage of the Goods. No extra Charges shall be effective unless agreed in writing and signed by the Authority.

6.2 The Charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Authority, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

6.3 In respect of the Goods, the Supplier shall invoice the Authority on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Authority on completion of the Services.

6.4 Invoices must be sent to the ‘Invoice To’ address stated on the Purchase Order

6.5 Each invoice shall include such supporting information required by the Authority to verify the accuracy of the invoice, including the relevant purchase order number.

6.6 The Authority shall pay each invoice within 30 days of the date of receipt by the Authority of a valid invoice, provided the Supplier has fulfilled the Contract and the Authority has not informed the Supplier that the Authority disputes the invoice. The Authority shall make payment of an undisputed invoice to a bank account nominated in writing by the Supplier.

6.7 All amounts payable by the Authority under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time (VAT). If VAT is chargeable, the Authority shall on receipt of a valid VAT invoice pay such additional amounts in respect of VAT as are chargeable on the supply.

6.8 If a party fails to make payment due to the other party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue sum from the due date until payment, whether before or after judgment. Interest will accrue each date at 8% a year above the Bank of England's base rate from time to time. If payment is disputed in good faith, interest is only payable after the dispute is resolved, on sums found or agreed to be due, from the date the dispute is resolved until payment.

6.9 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services. The Supplier shall allow the Authority to inspect such records at all times on request.

6.10 The Authority may at any time, without notice to the Supplier, set off any liability of the Supplier to the Authority against any liability of the Authority to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.

7 Intellectual property rights

7.1 Subject to clause 7.3, all IPRs in or arising out of or in connection with the Services (other than IPRs in any Authority Materials) shall be owned by the Supplier.

7.2 Subject to clause 7.3, the Supplier grants to the Authority, or shall procure the direct grant to the Authority of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables (excluding Authority Materials) for the purpose of receiving and using the Services and the Deliverables. The Authority is entitled to sub-license the rights granted by this clause 7.2.

7.3 Where Goods and/or Services are made to the Authority’s specification, model, or plans, the IPRs in such, in so far as they relate to the specification, model, or plans, and any improvements or developments thereof shall be the Authority’s absolute property, and the Supplier hereby assigns all such IPRs to the Authority and undertakes to enter into such documentation as required by the Authority to confirm such assignment.

7.4 The Authority grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy any materials provided by the Authority to the Supplier for the term of the Contract for the purpose of providing the Services. The Supplier acknowledges that all rights in the Authority Materials are and shall remain the exclusive property of the Authority.

8 Indemnity and Insurance

8.1 The Supplier shall indemnify the Authority against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses) suffered or incurred by the Authority arising out of or in connection with:

8.1.1 any breach of the Contract;

8.1.2 any claim made against the Authority for actual or alleged infringement of a third party's IPR arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services;

8.1.3 any claim made against the Authority by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods, as delivered, or the Deliverables; and

8.1.4 any claim made against the Authority by a third party arising out of or in connection with the supply of the Goods, as delivered, or the Services.

8.2 During the term of the Contract and for a period of six (6) years thereafter, the Supplier shall maintain in force, with a reputable insurance company (a) employers' liability insurance, product liability insurance and public liability insurance of £5m per event and (b) professional indemnity insurance of at least £1m per event.

8.3 This clause 8 shall survive termination of the Contract.

9 Confidentiality

9.1 Each party undertakes that it shall not at any time disclose to any third party any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 9.2.

9.2 Each party may disclose the other party's confidential information:

9.2.1 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 9; or

9.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority; or

9.2.3 in fulfilment of the functions conferred by the Crime and Courts Act 2013.

9.3 The Supplier shall not use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

10 Compliance with relevant laws and policies

In performing its obligations under the Contract, the Supplier shall comply with all applicable laws, statutes, regulations and codes in force; and comply with any of the Authority's policies as notified.

11 Data protection

The parties will comply with the data processing provisions as set out in the "Data Processing Terms" attached to these Conditions.

12 Termination

12.1 Without affecting any other right or remedy available to it, the Authority may terminate the Contract:

12.1.1 with immediate effect by giving written notice to the Supplier if the Supplier commits a breach of clause 10;

12.1.2 for convenience by giving the Supplier written notice of no less duration than the Termination Notice Period.

12.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if the other party

12.2.1 commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;

12.2.2 takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors, obtaining a moratorium, being wound up (whether voluntarily or by order of the court), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

12.2.3 suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

12.2.4 suffers a deterioration in their financial position so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

13 Consequences of termination

13.1 On termination of the Contract, the Supplier shall immediately deliver to the Authority all Deliverables whether or not then complete, and return all Authority Materials. If the Supplier fails to do so, then the Authority may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

13.2 Termination or expiry of the Contract shall not affect rights and remedies that have accrued as at termination or expiry.

13.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

14 Equality and Diversity

The Supplier shall comply with all equality laws and not unlawfully discriminate against any person or third-party.

15 Transparency

The Supplier acknowledges and agrees that the Authority is subject to transparency legislation (including Part 6 of the Procurement Act 2023) and the Authority may publish a Contract details notice and information regarding the amounts paid to the Supplier.

16 Responsible Procurement

16.1 The Supplier shall pay all it personnel at least the London Living Wage (where based in London) and the Real Living Wage (where based outside London).

16.2 The Supplier shall comply with all anti-bribery laws and modern slavery laws, along with any supplier code of conduct or social value/responsible procurement policies as notified by the Authority.

17 Publicity and Branding

17.1 The Supplier shall not make any advertisement, public statement or press announcement in relation to the Contract or the provision of the Goods or Services without the Authority's prior written consent.

17.2 The Supplier shall not use any of the Authority's Intellectual Property Rights, including the Authority's names, branding, domain names, logos or trade marks on any of its products or services or in any promotional, marketing or similar material or advertising without the Authority's prior written consent.

17.3 The Supplier hereby agrees and acknowledges that the unauthorised use of the Authority's names, branding, domain names, logos and/or trade marks may be breach of Crown copyright or other Crown rights and that legal action may be taken against it in the event of any unauthorised use of such material. All requests for external use of a NCA brand must be approved in writing by the Authority branding team and the Supplier shall in each case seek to obtain such approval in advance of proposed use by submitting an approval request to branding@nca.gov.uk.

17.4 Nothing in this Contract constitutes an endorsement by the Authority of the Supplier's goods or services, and the Supplier shall not conduct itself in a way that implies any endorsement or authorisation by the Authority.

18 Assignment and Subcontracting

The Supplier shall not assign, transfer, mortgage, charge, sub-contract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Authority.

19 Freedom of Information Act

19.1 The Supplier warrants that it has taken steps to ensure that those of its Officers, employees or agents who deal with the Authority are aware that the Authority is not subject to the Freedom of Information Act.

19.2 If the Supplier receives a Freedom of Information Act request relevant to the Authority, the Supplier will inform the Authority within 24 hours and the Supplier will not in response to the request disclose to a third party any information without the written consent of the Authority.

20 Variation

Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives.

21 Waiver

A waiver of any right or remedy is only valid if given in writing and is not a waiver of any subsequent right or remedy. A delay or failure to exercise a right or remedy shall not waive that or any other right or remedy, nor prevent or restrict the further exercise of that or any other right or remedy.

22 Severance

If any provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deleted, but that shall not affect the validity and enforceability of the rest of the Contract. In such circumstances, the parties shall negotiate in good faith to agree a replacement provision that, as far as possible, achieves the intended commercial aim of the original provision.

23 Notices

23.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by pre-paid first-class post or email to the relevant address specified in the Purchase Order.

24 Third party rights

No third party shall have any rights to enforce any term of the Contract.

25 Governing law

The Contract shall be governed and construed according to English law and the parties hereby submit to the exclusive jurisdiction of the English courts.

DATA PROCESSING TERMS ("Terms)

1 Data Protection

1.1 These Terms shall be read alongside and in conjunction with the provisions and definitions set out in the Terms & Conditions for Goods and Services.

1.2 The following definitions apply in these Terms

1.2.1 **Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures**: as defined in the Data Protection Law.

1.2.2 **Data Protection Law**: all applicable data protection and privacy laws in force from time to time in the UK including the UK GDPR, the Data Protection Act 2018 (and regulations made thereunder), the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) and Information Commissioner's guidance and codes of practice.

1.2.3 **Domestic Law**: the law of the United Kingdom or a part of the United Kingdom.

1.2.4 **UK GDPR:** has the meaning given at section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

1.3 Both parties will comply with all applicable requirements of the Data Protection Law. This is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Law.

1.4 The parties acknowledge that for the purposes of the Data Protection Law, the Authority is the Controller and the Supplier is the Processor.

1.5 Without affecting clause 1.3, the Authority will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier and/or lawful collection of the Personal Data by the Supplier on behalf of the Authority for the duration and purposes of the Contract.

1.6 Without affecting clause 1.3, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under the Contract:

1.6.1 process that Personal Data only on the documented written instructions of the Authority unless the Supplier is required by Domestic Law to otherwise process that Personal Data. Where the Supplier is relying on Domestic Law as the basis for processing Personal Data, the Supplier shall promptly notify the Authority of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits the Supplier from so notifying the Authority;

1.6.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Authority, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted);

1.6.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;

1.6.4 not transfer any Personal Data outside of the UK unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:

(a) the Authority or the Supplier has provided appropriate safeguards in relation to the transfer;

(b) the Data Subject has enforceable rights and effective legal remedies;

(c) the Supplier complies with its obligations under the Data Protection Law by providing an adequate level of protection to any Personal Data that is transferred; and

(d) the Supplier complies with reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;

1.6.5 assist the Authority in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Law with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

1.6.6 notify the Authority without undue delay on becoming aware of a Personal Data Breach;

1.6.7 at the written direction of the Authority, delete or return Personal Data and copies thereof to the Authority on termination of the Contract unless required by Domestic Law to store the Personal Data; and

1.6.8 maintain complete and accurate records and information to demonstrate its compliance with these Terms and allow for audits by the Authority or the Authority's designated auditor and immediately inform the Authority if, in the opinion of the Supplier, an instruction infringes the Data Protection Law.

1.7 The Authority does not consent to the Supplier appointing any third party processor of Personal Data under the Contract.