

REGISTERS OF SCOTLAND CONDITIONS OF CONTRACT FOR THE PURCHASE OF GOODS RoSTC1

These Conditions may be varied only by 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:

- “Charges” means the charges payable for the Goods as specified in the Purchase Order;
- 'Contract' means the contract between the Purchaser and the Supplier consisting of the Purchase Order, these Conditions and other documents (or parts thereof) specified in the Purchase Order;
- “Data Protection Legislation” means (i) unless and until it is no longer directly applicable in the UK, the General Data Protection Regulation (*Regulation (EU) 2016/679*) and any applicable national implementing laws, as amended from time to time (ii) the Data Protection Act 2018 (subject to Royal Assent) to the extent that it relates to processing of personal data and privacy; and (iii) any applicable laws relating to processing of personal data and privacy
- “Date of Delivery” means that date by which the Goods must be Delivered to the Purchaser, as specified in the Purchase Order;
- “Deliver” means hand over the Goods to the Purchaser at the address and on the date specified in the Purchase Order. Delivered and Delivery shall be construed accordingly.
- “Dispute Resolution Procedure” means the dispute resolution procedure set out in Condition 20;
- “Expiry Date” means the date for expiry of the Contract as set out in the Purchase Order;
- “Goods” means the goods to be provided by the Supplier to the Purchaser as specified in the Purchase Order;
- “Procurement Rules” means all procurement legislation and statutory guidance applicable in Scotland at the relevant time, including (without limitation) the Public Contracts (Scotland) Regulations 2015 and the Procurement Reform (Scotland Act) Act 2014;
- 'Purchase Order' means the document setting out the Purchaser's requirements for the Contract and the specification of the Goods (including as to quantity, description and quality);
- 'Purchaser' means The Keeper of the Registers of Scotland;
- 'Supplier' means the person, firm or company who supplies the Goods under the Contract.

2 TERM

- 2.1 The Contract shall take effect on the date specified in the Purchase Order and shall expire on the Expiry Date unless terminated early in accordance with the provisions of this Contract.

3 SUPPLY OF GOODS

- 3.1 The Supplier shall supply the Goods to the Purchaser subject to and in accordance with the terms and conditions of the Contract.
- 3.2 The Supplier shall co-operate with the Purchaser in all matters relating to the supply of Goods and comply with all the Purchaser's instructions.
- 3.3 The Supplier shall supply the Goods in conformity with the quantity, quality and specification set out in the Purchase Order. The Supplier warrants, represents, undertakes and guarantees that the Goods supplied under the Contract shall:
- 3.3.1 be free from defects (manifest or latent), in materials and workmanship and remain so for 12 months after Delivery;
 - 3.3.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and comply with any applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods;
 - 3.3.3 conform with the specifications, drawings, descriptions given in quotations, estimates, brochures, sales, marketing and technical literature or material (in whatever format made available by the Supplier) supplied by, or on behalf of, the Supplier;
 - 3.3.4 be free from design defects;
 - 3.3.5 be fit for any purpose held out by the Supplier or made known to the Supplier by the Purchaser expressly or by implication, and in this respect the Purchaser relies on the Supplier's skill and judgement. The Supplier acknowledges and agrees that the approval by the Purchaser of any designs provided by the Supplier shall not relieve the Supplier of any of its obligations under this sub-clause
- 3.4 The Supplier shall not unreasonably refuse to take any steps necessary to comply with any request by the Purchaser to inspect or test the Goods during manufacture, processing or storage at the premises of the Supplier or any third party prior to despatch, and to provide the Purchaser with any facilities reasonably required by the Purchaser for inspection or testing.
- 3.5 If as a result of inspection or testing the Purchaser is not satisfied that the goods will comply in all respects with the Contract, and the Purchaser so informs the Supplier within seven days of inspection or testing, the Supplier shall take such steps as are necessary to ensure compliance.

4 CANCELLATION

- 4.1 The Purchaser shall have the right to cancel an order for Goods, or any part of the Goods, which have not yet been Delivered to the Purchaser. The cancellation shall be made in writing. Without prejudice to the generality of the foregoing, the Purchaser shall pay such Charges as may be due for (i) Goods which have been Delivered to the Purchaser; (ii) Goods which, on the deemed date of service of the notice of cancellation, are already in transit, and (iii) the costs of materials which the Supplier has purchased to fulfil the order for the Goods and which cannot be used for other orders or be returned to the supplier of those materials for a refund. For the avoidance of doubt the Purchaser shall not be liable for any loss of anticipated profits or any consequential loss.

5 DELIVERY

- 5.1 The Supplier shall Deliver the Goods to the Purchaser on or by the Date of Delivery. Unless otherwise agreed in writing by the Purchaser, Delivery shall be to the address specified in the Purchase Order. Delivery of the Goods shall be completed once the unloading of the Goods from the transporting vehicle at the Delivery address has taken place and the Purchaser has signed for the Delivery.
- 5.2 The time of delivery of the Goods is of the essence of the Contract.
- 5.3 Any access to the Purchaser's premises and any labour and equipment that may be provided by the Purchaser in connection with Delivery of the Goods shall be provided without acceptance by the Purchaser of any liability in respect of any claims, costs and expenses incurred by third parties for any loss of damages to the extent that such loss or damage is not attributable to the negligence or other wrongful act of the Purchaser or its servant or agent. The Supplier shall indemnify the Purchaser in respect of any claims, demands, losses, charges, costs and expenses, which the Purchaser may incur as a result of or in connection with any damage or injury occurring in the course of Delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Supplier.
- 5.4 Delivery of the Goods shall be accompanied by a delivery note which shows the Purchase Order Number and the type and quantity of the Goods and, in the case of part Delivery, the outstanding balance remaining to be Delivered. For the avoidance of doubt, the signing of a delivery note by the Purchaser is not an acknowledgement of the condition or quantity of the Goods. The Purchaser shall not be deemed to have accepted the Goods until the Purchaser has had a reasonable time to inspect the Goods following Delivery.
- 5.5 Unless otherwise stipulated by the Purchaser in the Purchase Order, Deliveries shall only be accepted by the Purchaser during normal business hours.
- 5.6 Where (i) the Supplier fails to Deliver the Goods or part of the Goods or (ii) the Goods or part of the Goods do not comply with the provisions of clause 3, then without limiting any of its other rights or remedies implied by statute or common law, the Purchaser shall be entitled:
- 5.6.1 to terminate the Agreement;
 - 5.6.2 to request the Supplier, free of charge, to deliver substitute Goods within the timescales specified by the Purchaser;
 - 5.6.3 to require the Supplier, free of charge, to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);

5.6.4 to buy the same or similar Goods from another supplier and

5.6.5 to recover any expenses incurred in respect of buying the Goods from another supplier which shall include but not be limited to administration costs, chargeable staff time and extra delivery costs.

6 RISK AND OWNERSHIP

6.1 Without prejudice to any other rights or remedies of the Purchaser, title and risk in the Goods shall pass to the Purchaser when Delivery of the Goods is complete.

7 LABELLING AND PACKAGING

7.1 The Goods shall be packed and marked in a proper manner and in accordance with any instructions specified in the Purchase Order, any statutory requirements and any requirements of the carriers. All packaging materials shall be considered non-returnable. The Supplier shall indemnify the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses which the Customer may suffer or incur as a result of, or in connection with, any breach of this Condition 7.1

7.2 The Supplier shall use its best endeavours to ensure that all packaging is made from recycled materials and/or is recyclable or can be incinerated for energy recovery.

7.3 The Supplier shall ensure that any hazardous Goods have prominent and suitable, warnings and are handled by appropriately trained personnel in compliance with statutory requirements.

8 CHARGES, PAYMENT AND RECOVERY OF SUMS DUE

8.1 In consideration of the supply of the Goods by the Supplier, the Purchaser shall pay the Charges. Unless otherwise agreed in writing by the Purchaser, the Charges as set out in the Purchase Order shall include every cost and expense directly or indirectly incurred by the Supplier in connection with the supply of the Goods, including but not limited to the costs of packaging, insurance, delivery, unloading, stacking and carriage.

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

8.3 The Supplier shall invoice the Purchaser as specified in the Purchase Order. Each invoice shall include such supporting information as is reasonable required by the Purchaser to verify the accuracy of the invoice, including the relevant Purchase Order Number. Payment of all sums properly due will be made by the Purchaser within 30 days of receipt of a valid and undisputed invoice.

8.4 If there is a dispute between the Parties as to the amount invoiced, the Purchaser shall pay the undisputed amount. Any disputed amounts may, at the Purchaser's option, be referred to the Dispute Resolution Procedure.

8.5 If a valid and undisputed invoice is not paid by the Purchaser by the due date, the Supplier is requested to address complaints regarding late payment of invoices in the first instance to the addressee of the invoice and, in the second instance to the

Financial Accounting Director, Meadowbank House, 153 London Road, Edinburgh EH8 7AU. . Interest shall be payable by the Purchaser on the late payment of any undisputed sums due and properly invoiced at the rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.

- 8.6 The Purchaser shall be entitled to set off against the Charges, or against any sums owed to the Supplier under any other agreement or contract with the Purchaser, any sums owed to the Purchaser by the Supplier.

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 of any kind as an inducement or reward for doing or refraining from doing or for having done or refrained from doing, any act in relation to the obtaining or execution of this Contract or any other contract with the Purchaser or for showing or refraining from showing favour or disfavour to any person in relation to this or any such contract.

- 9.2 The Supplier must not commit or attempt to commit any offence:

9.2.1 under the Bribery Act 2010; or

9.2.2 of fraud, uttering, or embezzlement at common law.

- 9.3. Breach of this Condition 9 is a material default which shall entitle the Purchaser to terminate the Contract with immediate effect.

10 INTELLECTUAL PROPERTY RIGHTS

10.1 In this Condition “Intellectual Property Rights” means copyright, patents, trademarks, design rights (whether registerable or otherwise), database rights, domain names, trade or business names, moral rights and other similar rights or obligations.

10.4 The Supplier hereby grants to the Purchaser a perpetual, royalty-free, irrevocable, non-exclusive licence to use all Intellectual Property Rights in the Goods or in any materials accompanying the Goods to the extent that it is necessary to fulfil its obligations under this Contract.

10.5 The Supplier shall indemnify, and keep indemnified, the Purchaser in full against all costs, expenses, damages and losses (whether direct or indirect), including any reasonable legal and other professional fees awarded against or incurred or paid by the Purchaser as a result of or in connection with any claim made against the Purchaser for actual or alleged infringement of a third party’s intellectual property arising out of, or in connection with, the supply or use of the Goods, to the extent that the claim is attributable to the acts or omission of the Supplier.

11 LIABILITY

- 11.1 Neither party excludes or limits liability to the other party for:
- (a) death or personal injury caused by its negligence;
 - (b) fraud or fraudulent misrepresentation by it;
 - (c) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979; or
 - (d) any other matter which, by law, may not be excluded or limited
- 11.2 Subject always to Conditions 11.1 and 11.5 the annual aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of this Contract, the supply of, or failure to supply, the Goods, negligence, breach of statutory duty or otherwise, shall not exceed a sum equal to 125% of the Charges paid or payable to the Supplier
- 11.3 The Supplier's liability under the indemnity in Condition 10.5 shall be unlimited.
- 11.4 The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by the Purchaser if and to the extent that it is caused by the negligence or wilful misconduct of the Purchaser or by breach by the Purchaser of its obligations under the Contract.
- 11.5 In no event shall the Supplier be liable to the Purchaser for any:
- (a) loss of profits, business, revenue or goodwill; and/or
 - (b) indirect or consequential loss or damage
- 11.6 The Supplier shall (and shall ensure that any subcontractor shall) have in force insurance with a reputable insurance company to an adequate level of cover in respect of all risks which may be incurred by the Supplier arising out of the Contract, including death or personal injury, loss or damage to property or any other loss. On request the Supplier shall immediately show to the Purchaser the insurance policy(s) or a broker's verification of insurance to demonstrate that appropriate cover is in place, together with evidence that the most recent premiums have been paid.

12 FORCE MAJEURE

- 12.1 Neither party shall have any liability under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from circumstances beyond the reasonable control of the party affected. Each party shall promptly notify the other party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than [two months], either party may terminate the Contract by written notice to the other Party

13 BLACKLIST

- 13.1 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 any breach of the Data Protection Act 1998 by unlawfully processing personal data in connection with any blacklisting activities.
- 13.2 Breach of this Condition is a material default which shall entitle the Purchaser to terminate the Contract with immediate effect.

14 CONFIDENTIALITY

- 14.1 The Supplier shall keep secret and not disclose any Purchaser's or third party's information of a confidential nature obtained by reason of this Contract except information which is in the public domain otherwise than by reason of a breach of this provision.
- 14.2 The Supplier will take all reasonable precautions to prevent the loss of such confidential information including, without limitation, only taking such copies of confidential information as are reasonably necessary for the performance of the Contract. The Supplier shall inform the Purchaser immediately if any of the Purchaser's confidential information is lost or mislaid.
- 14.3 The Supplier acknowledges that the Purchaser is subject to obligations under the Freedom of Information (Scotland) Act 2002 ("FOISA") and the Environmental Information Regulations 2004 ("EIR"). The Supplier will assist and co-operate with the Purchaser (at the Supplier's expense) to enable the Purchaser to comply with these disclosure requirements. The Supplier acknowledges that the Purchaser may be required to disclose information held by the Purchaser in relation to the Supplier, the Contract or any other recorded information to anyone who makes a valid request under FOISA. Information held by the Purchaser may only be withheld as a result of the exemptions in FOISA.
- 14.4 The Supplier may designate information provided to the Purchaser as "confidential" or "commercially sensitive" however the Supplier acknowledges that the Purchaser may still be obliged to disclose such information in accordance with Condition 17.3. The Purchaser shall take reasonable steps, where appropriate, to give the Supplier advance notice of such disclosure or, failing that, draw the fact of disclosure to the attention of the Supplier after such disclosure.
- 14.5 The Purchaser 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 in Scotland or the United Kingdom, and their servants or agents. Such disclosure shall not be treated as a breach of this Contract.
- 14.6 The provisions of this Condition 14 shall apply during the continuance of this Contract and after its termination howsoever arising.

15 DATA PROTECTION

- 15.1 For the purposes of this Condition 15, the terms “Data Processor”, “Personal Data”, and “Processing” will have the meanings prescribed in Data Protection Legislation
- 15.2 Both parties will duly observe all their obligations under the Data Protection Legislation which arise in connection with the Contract.
- 15.3. Notwithstanding the general obligation in Condition 15.2, where the Supplier is Processing Personal Data as a Data Processor on behalf of the Purchaser then the provisions of the Schedule shall apply, and the Schedule is incorporated into and forms part of this Contract.

16 TERMINATION

- 16.1 Subject to the provisions of Condition 4, the Purchaser shall be entitled to terminate this Contract at any time by giving to the Supplier not less than 30 days’ written notice to that effect.
- 16.2 Without prejudice to any other right or remedy it might have, the Purchaser may terminate the Contract in whole or in part before Delivery or after Delivery (where only part of the Goods have been Delivered) by written notice to the Supplier with immediate effect if the Supplier:
- 16.2.1 is in material breach of any obligation under the Contract which is not capable of remedy;
 - 16.2.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;
 - 16.2.4 undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010;
 - 16.2.5 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator is appointed in respect of the whole or any part of the Supplier’s assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action to any of the actions detailed in this Condition 16.2.5 in consequence of debt in any jurisdiction; or
 - 16.2.6 fails to comply with legal obligations in the fields of environmental, social or labour law.
- 16.3 The Purchaser may also terminate the Contract in the event that:
- 16.3.1 the Contract has been subject to substantial modification which would have required a new procurement procedure in accordance

with regulation 72(9) (modification of contracts during their term) of The Public Contracts (Scotland) Regulations 2015;

16.3.2 the Supplier has, at the time of contract award, been in one of the situations referred to in regulation 58(1) (exclusion grounds) of The Public Contracts (Scotland) Regulations 2015, including as a result of the application of regulation 58(2) of those regulations, and should therefore have been excluded from the procurement procedure; or

16.3.3 the Contract should not have been awarded to the Supplier in view of a serious infringement of the obligations under the Treaties and the Directive 2014/24/EU that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union.

In this Condition, 'the Treaties' has the meaning given in the European Communities Act 1972.

16.4 Termination under Conditions 16.1, 16.2 and 16.3 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Purchaser.

17 BREXIT

17.1 If a Brexit Trigger Event occurs, either party may:

17.1.1 subject always to Condition 15.3.1, require the other party to negotiate in good faith an amendment to this Contract to alleviate the Brexit Trigger Event; and

17.1.2 if no such amendment is made to this agreement within 30 days, terminate this agreement by giving the other party not less than 30 days' written notice.

17.2 If the Supplier is requesting a variation in the Charges as a consequence of a Brexit Trigger Event then the Supplier must submit written evidence of the justification for any requested increase including:

17.2.1 a breakdown of the profit and cost components that comprise the relevant Charges;

17.2.2 details of the movement in the different identified cost components of the relevant Charges;

17.2.3 reasons for the movement in the different identified cost components of the relevant Charges; and

17.2.4 evidence that the Supplier has attempted to mitigate against the increase in the relevant cost component

17.3 Brexit Trigger Event means any of the following events occurring at any time after the UK ceases to be a Member State of the European Union

17.3.1 a substantial adverse impact on a party's ability to perform the Contract in accordance with its terms and the law;

17.3.2 an increase in the costs incurred by a party in performing the agreement of at least []%]

18 ASSIGNATION AND SUB-CONTRACTING

18.1 The Supplier shall not assign or sub-contract any portion of the Contract without the prior written consent of the Purchaser. Sub-contracting any part of the Contract shall not relieve the Supplier of any obligation or duty attributable to him under the Contract.

18.2 Where the Purchaser has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Supplier to the Purchaser on request as soon as reasonably practicable.

18.3 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:

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

18.3.2 which notifies the sub-contractor that the contract forms part of a larger contract for the benefit of the Registers of Scotland and that should the sub-contractor have any difficulty in securing the timely payment of an invoice that matter may be referred by the sub-contractor to the Head of Procurement, Registers of Scotland, Meadowbank House, 153 London Road, Edinburgh EH8 7AU; and

18.3.3 in the same terms as that set out in this Condition 18.3 (including for the avoidance of doubt this Condition 18.3.3) 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.

19 NOTICES

19.1 Any notice to be given under the Contract shall be in writing and may be served by personal delivery, first class recorded or e-mail to the address of the relevant party set out in the Purchase Order, or such other address as that party may from time to time notify to the other party in accordance with this Condition:

19.2 Notices served as above shall be deemed to have been received:

19.2.1 if delivered personally, at the time of delivery

19.2.2 in the case of first class recorded post 48 hours from the date of posting

19.2.3 in the case of an email when sent unless an error message is received.

20 DISPUTE RESOLUTION

20.1 The parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each party.

20.2 If the dispute cannot be resolved by the parties within one month of being escalated as referred to in Condition 19.1, the dispute may by agreement between the parties be referred to a neutral adviser or mediator (the "Mediator") chosen by agreement between the parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.

20.3 If the parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either party may exercise any remedy it has under applicable law.

21 GOVERNING LAW

21.1 These Conditions shall be governed by and construed in accordance with Scottish law and the Supplier hereby irrevocably submits to the jurisdiction of the Scottish courts.