

Purchase Order Terms and Conditions (Rev 01/04/2019)

These Conditions may only be varied only by the written agreement of the Scottish Ministers acting through Scottish Forestry (the Purchaser).

No terms or conditions put forward at any time by the Supplier/Contractor shall form any part of the Contract unless specifically agreed in writing by the Purchaser

1 Definitions

In these Conditions the following expressions shall have the meanings set out opposite them, unless the context requires otherwise:

Alternative Agreement An alternative agreement in writing between the Purchaser and the Supplier/Contractor and signed on behalf of both the Purchaser and the Supplier/Contractor.

Applicable Law means: any law, statute, regulation, by-law or subordinate legislation in force from time to time to which the Supplier/Contractor is subject and/or in any jurisdiction in which the Contract is performed; the common law as applicable to the Supplier/Contractor or the provision of the Services or the Goods from time to time; any binding court order, judgment or decree; any applicable industry code, practice, policy or standard; or any applicable direction, policy, rule or order that is from time to time binding on the Supplier/Contractor or applicable to the provision of the Services or the Goods and that is made or given by any regulatory body having jurisdiction over the Supplier/Contractor or any of its assets, resources or business;

The Purchaser means The Scottish Ministers acting through Scottish Forestry, an executive agency established pursuant to the Forestry and Land Management (Scotland) Act 2018 and having their principal place of business in Scotland at 231 Corstorphine Road, Edinburgh, EH12 7AT

Contract means the contract between the Purchaser and the Supplier/Contractor consisting of the Purchase Order, these conditions and any other documents specified in the Purchase Order;

Control has the meaning given in section 450 of the Corporation Tax Act 2010;

Data Protection Laws means any law, statute, subordinate legislation, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data to which a Party is subject including the Data Protection Act 2018 and any statutory modification or re-enactment thereof and the GDPR;

GDPR means the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC;

Goods means the goods (if any) to be provided by the Supplier/Contractor as described in the Contract;

Personal Data has the meaning given in the Data Protection Laws;

Premises means the location where Goods and/or Services are to be delivered/performed, as specified in the Contract;

Processing has the meaning given in the Data Protection Laws and cognate expressions shall be construed accordingly;;

Purchase Order means the document setting out the Purchaser's requirements for the Contract

Supplier/Contractor means the supplier /contractor named in the Purchase Order;

Services means the services (if any) to be provided and performed by the Supplier/Contractor as described in the Contract;

1 The Goods

1.1 The Goods shall be to the reasonable satisfaction of the Purchaser and shall conform in all respects with the particulars specified in the Contract (and in any variations thereto) and the requirements of all Applicable Law.

1.2 Without prejudice to and in addition to the statutory conditions implied by the Sale of Goods Act 1979 as amended, the Goods shall be fit and sufficient for the purpose for which such are ordinarily used and for any particular purpose made known to the Supplier/Contractor by the Purchaser;

1.3 The Goods shall be packed and marked in a proper manner and in accordance with the Purchaser's instructions and any statutory requirements. The Supplier/Contractor 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. All packaging materials will be considered non-returnable and will be destroyed unless the Supplier/Contractor's advice note states that such materials will be charged for unless returned.

1.4 Property and risk in the Goods shall, without prejudice to any of the rights or remedies of the Purchaser, pass to the Purchaser at the time of delivery.

2 Services

2.1 The Supplier/Contractor shall provide the Services in a diligent and professional manner to the satisfaction of the Purchaser and shall at all times perform the Services dutifully, timeously, in good faith and with due skill and care, all in accordance with the Contract.

2.2 The Supplier/Contractor shall issue such interim reports on progress of the Services as requested by the Purchaser and shall make itself available.

2.3 The Services shall be performed in compliance with all Applicable Law.

3 Delivery

3.1 The Goods and/or Services shall be delivered to the Premises on the date or within the period stated in the Contract, during the Purchaser's usual business hours.

3.2 The time(s) and date(s) of delivery of the Goods and any related Services shall be of the essence

4 Rejection and Guarantee

4.1 The Purchaser may by written notice to the Supplier/Contractor reject any of the Goods which fail to meet the requirements specified in the Contract. Such notice shall be given within a reasonable time after delivery. If the Purchaser rejects any of the Goods the Purchaser shall be entitled (without prejudice to its other rights or remedies) at the Purchaser's option to either have the Goods concerned repaired (or replaced) by the Supplier/Contractor as quickly as possible; or to obtain a refund from the Supplier in respect of the Goods concerned.

4.2 The guarantee period applicable to the Goods shall be 12 months from the putting into service or 16 months from delivery of the Goods, whichever shall be the shorter. If the Purchaser shall within such guarantee period or within 30 days thereafter give notice in writing to the Supplier/Contractor of any defect in the Goods as may have arisen during the guarantee period under proper and normal use the Supplier/Contractor shall (without prejudice to any other rights or remedies of the Purchaser) as quickly as possible remedy such defects (by repair or replacement as the Purchaser shall elect) without cost to the Purchaser.

5 Supplier/Contractor's Status

5.1 In performing the Contract the Supplier/Contractor shall be acting as principal and not as the agent of the Purchaser. The Supplier/Contractor shall not (and shall procure that its agents, employees and representatives do not) say or do anything to lead any person to believe that the Supplier/Contractor is acting as the agent of the Purchaser.

6 Supplier/Contractor's Personnel

6.1 The Supplier/Contractor shall only provide personnel who are employees of the Supplier/Contractor and who possess the appropriate experience, skills and qualifications necessary for the Services to be performed in accordance with the Contract. The Supplier/Contractor shall take steps reasonably required by the Purchaser to prevent unauthorised persons being admitted to the Premises.

7 Price and Payment

- 7.1 The price of the Goods and/or Services, and arrangements regarding when the price is payable, shall be as stated in the Contract and, unless otherwise so stated, shall be exclusive of any applicable VAT (which shall be payable by the Purchaser subject to receipt of a valid VAT invoice). Subject to satisfactory performance by the Supplier/Contractor of its obligations under the Contract, payment will be made within 30 days of receipt and agreement of invoices.
- 7.2 No increase in the price may be made (whether on account of increased material, labour or other costs or otherwise) without the prior written consent of the Purchaser.

8 Intellectual Property

- 8.1 All rights (including ownership in property) in any discoveries, inventions, reports, documents, specifications, software, instructions, plans, drawings, designs, or other materials, whether in writing or on magnetic or other media (materials) which are prepared by or for the Supplier/Contractor in the course of provision of the Services are hereby assigned to and shall vest in the Purchaser (or at its option, the Crown) absolutely. The Supplier/Contractor shall execute any document and do any thing as may be required to ensure that all such rights are so vested in the Purchaser (or at the Purchaser's option, the Crown).

9 Indemnity and Insurance

- 9.1 Without prejudice to any rights or remedies of the Purchaser, the Supplier/Contractor shall indemnify the Purchaser against all actions, claims, demands, losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any damage to property or in respect of any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any negligent or wrongful act or omission of the Supplier/Contractor.
- 9.2 For the term of the Contract and for five years thereafter, the Supplier/Contractor shall have in force and shall require any sub-contractor to have in force with a reputable insurance company (i) employer's liability insurance in accordance with any legal requirements for the time being in force; (ii) public liability insurance for such sum and range of cover as to cover at least all matters which are the subject of indemnities under the Contract in the sum of not less than £1 million for any one incident and unlimited in total, unless otherwise agreed by the Purchaser in writing; and (iii) such additional insurance as is required by the Purchaser in any relevant tender document, specifications or other documentation.

10 Confidentiality

- 10.1 During the period of the Contract and after termination, the Supplier/Contractor shall treat as confidential all information of a confidential nature that may be in or come into its possession by reason of the Contract and which relates to the Purchaser or the activities, affairs, business or customers of the Purchaser or the terms of the Contract. The Supplier/Contractor shall not make use of such information for any purpose other than the performance of its obligations under the Contract nor (except where required by law) disclose any such information to any third party other than to its employees or authorised sub-contractors or agents, and then only to the extent necessary to do so for the proper performance of the Supplier/Contractor's obligations under the Contract.

11 Data Protection

- 11.1 The Supplier/Contractor warrants and represents to the Purchaser that it shall comply with the Data Protection Laws.
- 11.2 Without prejudice to Condition 11.1, the Supplier/Contractor shall:
- 11.2.1 process Personal Data only as necessary in accordance with obligations under the Contract and any written instructions given by the Purchaser (which may be specific or of a general nature), including with regard to transfers of Personal Data outside the European Economic Area unless required to do so by European Union or Member state law or regulatory body to which the Supplier/Contractor is subject; in which case the Supplier/Contractor must, unless prohibited by that law, inform the Purchaser of that legal requirement before processing the Personal Data only to the extent, and in such manner as is necessary for the performance of the Supplier/Contractor's obligations under this Contract or as is required by law;
- 11.2.2 subject to Condition 11.2.1 only process or otherwise transfer any Personal Data in or to any country outside the European Economic Area with the Purchaser's prior written consent;
- 11.2.3 take all reasonable steps to ensure the reliability and integrity of any of its personnel who have access to the Personal Data and ensure that such personnel are: aware of and comply with the terms of this Condition 11; subject to appropriate confidentiality undertakings; informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Purchaser or as otherwise permitted by this Contract;

- 11.2.4 implement appropriate technical and organisational measures in accordance with Article 32 of the GDPR to protect Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure, such measures being appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
- 11.2.5 provide to the Purchaser reasonable assistance including by such technical and organisational measures as may be appropriate in complying with Articles 12-23 of the GDPR;
- 11.2.6 If the Supplier/Contractor engages a sub-contractor for carrying out Processing activities on behalf of the Purchaser, the Supplier/Contractor must ensure that the same data protection obligations as set out in this Contract are imposed on the sub-contractor by way of a written and legally binding contract, in particular providing sufficient guarantees to implement appropriate technical and organisational measures. The Supplier/Contractor shall remain fully liable to the Purchaser for the performance of the sub-contractor's performance of the obligations; and
- 11.2.7 ensure it does not knowingly or negligently do or omit to do anything which places the Purchaser in breach of the Purchaser's obligations under the Data Protection Laws.

12 Term and Termination

- 12.1 The Contract shall take effect on the date set out in the Contract and shall expire on the date set out in the Contract unless it is otherwise terminated in accordance with the provisions the Contract.
- 12.2 The Purchaser may terminate the Contract with immediate effect by giving written notice to the Supplier/Contractor if the Supplier/Contractor:
- 12.2.1 commits a breach of the Contract and, if, in the sole opinion of the Purchaser, the breach is capable of remedy, fails to remedy such breach to the satisfaction of the Purchaser within 30 days of being required by the Purchaser in writing to do so;
- 12.2.2 goes into liquidation or administration, has a receiver appointed over any of its assets or makes a voluntary arrangement or composition with its creditors or, being an individual, there is a petition presented for the Supplier/Contractor's bankruptcy or the sequestration of the Supplier/Contractor's estate or a criminal bankruptcy order is made against the Supplier/Contractor, or if the Supplier/Contractor is apparently insolvent, or makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator or trustee is appointed to manage the Supplier/Contractor's affairs, or dies; or
- 12.2.3 undergoes a change of Control without the prior written approval of the Purchaser
- 12.3 In addition to the Purchaser's rights of termination under Condition 12.2, the Purchaser shall be entitled to terminate the Contract by giving to the Supplier/Contractor not less than 30 days' notice to that effect at any time.
- 12.4 Termination under this Condition shall not prejudice or affect any right of action or remedy which has accrued or shall thereafter accrue to the Purchaser and shall not affect the continued operation of Conditions 5, 10 and 11 and any other Conditions which by their nature should survive termination.

13 Premises

- 13.1 The Supplier/Contractor is deemed to have inspected the Premises prior to agreeing the price for the Goods or Services or commencing the performance of the Contract, whichever is earlier, so as to have understood the nature and extent of the Services to be carried out and Goods to be delivered and is deemed to be satisfied in relation to all matters connected with the Services, Goods and Premises.
- 13.2 The Purchaser shall, at the request of the Contractor/Supplier, grant such access as may be reasonable for this purpose.
- 13.3 Unless otherwise specified, the Contractor/Supplier shall provide all plant, tools, material, labour, haulage and any other things necessary to complete the Contract.
- 13.4 The Contractor/Supplier shall make no delivery of materials, plant or other things nor commence any work on the Premises without obtaining the Purchaser's prior consent.
- 13.5 Where any access to the Premises is necessary in connection with any delivery or installation the Contractor/Supplier and the Contractor/Supplier's sub-contractors shall at all times comply with the reasonable requirements of the Purchaser
- 13.6 Access to the Premises shall not be exclusive to the Contractor/Supplier but only such as shall enable the Contractor/Supplier to carry out the Services concurrently with the execution of work by others. The Contractor/Supplier shall co-operate with such others as the Purchaser may reasonably require.

- 13.7 The Purchaser shall have the power at any time during the term of the Contract to order in writing:
- 13.7.1 the removal from the Premises of any Goods or materials which in the opinion of the Purchaser are either hazardous, noxious or not in accordance with the Contract, and/or
 - 13.7.2 the substitution of proper and suitable Goods or materials, and/or
 - 13.7.3 the removal and proper re-execution notwithstanding any previous test thereof or interim payment thereof of any work which, in respect of material or workmanship is not in the opinion of the Commission in accordance with the Contract.
- 13.8 The Supplier/Contractor shall forthwith comply with any order made under Condition 14.7.
- 13.9 On completion of the Services the Contractor/Supplier shall remove the Contractor/Supplier's plant, equipment and unused materials and shall clear away from the Premises all rubbish arising out of the Goods or Services and leave the Premises in a neat and tidy condition.

14 Health and Safety

- 14.1 The Contractor/Supplier shall perform the Services in such a manner as to be safe and without risk to the health or safety of persons in the vicinity of the place where the Services are being performed (whether such persons are in the vicinity of the said place at the time when the Services are being performed or otherwise) and in such a manner as to comply with any relevant health and safety or other legislation (including Statutory Instrument, Orders, or Regulations made under the said legislation) and any requirements imposed by a local or other regulatory authority in connection with the performance of services of the type supplied to the Purchaser, whether specifically or generally. The Contractor/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.
- 14.2 The Contractor/Supplier represents and warrants to the Purchaser that the Contractor/Supplier is satisfied that all necessary tests and examinations have been made or will be made prior to delivery of the Goods to ensure that the Goods are designed and constructed so as to be safe and without risk to the health or safety of persons using the same, and that the Contractor/Supplier has made available to the Purchaser adequate information about the use for which the Goods have been designed and have been tested and about any conditions necessary to ensure that when put to use the Goods will be safe and without risk to health.
- 14.3 Without prejudice to the generality of Condition 14.2, the Contractor/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 Conditions 14.1 or 14.2.

15 Disputes

- 15.1 The parties must attempt in good faith to resolve any dispute between them arising out of or in connection with the Contract. In the event of any dispute between the parties relating to the terms and conditions of the Contract, the supply of Goods or the provision of the Services either party may serve notice on the other outlining the terms of the dispute which shall propose a time and place for a meeting between the parties where they shall attempt to resolve the dispute. The other party shall respond to such a notice within five business days of receipt.
- 15.2 If the matter is not resolved within ten business days of the service of the notice, the matter may be referred by either party to the appropriate senior person in the Purchaser and Supplier/Contractor for resolution. If the dispute is not resolved within a further ten business days then the dispute shall be determined by the appointment of a single arbitrator to be agreed between the parties, and failing agreement within ten business days after either party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the Scottish Arbitration Centre 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 English. Any under this Condition 15.2 is subject to the Arbitration (Scotland) Act 2010.
- 15.3 Nothing in this dispute resolution procedure shall prevent the parties from seeking from any court of competent jurisdiction an interim order restraining the other party from doing any act or compelling the other party to do any act.

16 General

- 16.1 The Supplier/Contractor shall not assign or sub-contract any of its rights or obligations under the Contract or purport to do so without the prior written consent of the Purchaser.
- 16.2 The Purchaser shall have the right, at its sole option, to assign any of its rights or obligations under the Contract.
- 16.3 Any notice given under the Contract may be given by hand or sent by first class recorded delivery post to the other party at their last known address. Any notice given or served by post will be deemed given on the second business day after the date of posting.
- 16.4 The Supplier/Contractor shall not offer any award, perquisite or emolument whatsoever to any person in the employment of the Purchaser and the Supplier/Contractor shall comply with the Bribery Act 2010. The Contract contains the whole agreement between the parties in respect of the subject matter and supersedes and replaces all prior proposals, agreements, representations and negotiations. No modification or alteration of the Contract shall be validly made unless in writing and signed by or on behalf of both parties hereto.
- 18.5 If an Alternative Agreement is in place governing the supply of the Goods and Services that are the subject of a Purchase Order then the Alternative Agreement shall take precedence over these Conditions.
- 16.6 The Contract shall be governed by and construed in accordance with the law of Scotland and the parties irrevocably submit to the exclusive jurisdiction of the Scottish courts