

## **NPL GENERAL CONDITIONS OF PURCHASE**

### **1. Interpretation**

In these Conditions:

- (a) "NPL" means NPL Management Limited, a company wholly owned by the Department for Business, Energy & Industrial Strategy (BEIS);
- (b) "the Contractor" means the person who undertakes to supply the Articles and/or to perform the Services for NPL under the Contract, and, where the Contractor is an individual or a partnership, the expression shall include the personal representatives of that individual or of the partners, as the case may be, and shall also include any person to whom the benefit of the Contract may be assigned by the Contractor with the prior written consent of NPL;
- (c) "the Contract" means the agreement between NPL and the Contractor for the supply of the required articles and/or performance of the required services; including these General Conditions of Purchase, any special conditions of contract and all specifications, plans, drawings and other documents that are relevant to the said supply and/or the said performance;
- (d) "the Articles" means all articles that the Contractor is required to supply under the Contract and, unless otherwise agreed, any required installation, commissioning and testing of such articles;
- (e) "the Services" means all services that the Contractor is required to perform under the Contract, including, unless otherwise agreed, any installation, commissioning and testing of the Articles;
- (f) "the Contract Price" means the price (exclusive of Value Added Tax) payable to the Contractor by NPL under the Contract for the full and proper performance by the Contractor of its part of the Contract;
- (g) "NPL Property" means anything issued or otherwise furnished in connection with the Contract by or on behalf of NPL or its authorised representative;
- (h) "the Arising Results" means all inventions, patents and applications therefor, copyright (including computer software), designs, drawings, reports, information and know-how that are produced or acquired by the Contractor (and by any subcontractor) during and in the course of the performance of the Contract;
- (i) "Party" means a party to the Contract;
- (j) "the Parties" means the parties to the Contract;
- (k) "loss" includes destruction;
- (l) "month" means a calendar month;
- (m) "person" includes a corporation.

### **2. Acts by NPL**

Any decision, act or other thing that NPL is required or authorised to take or do under the Contract may be taken or done by any person authorised by NPL, either generally or specifically, to take or do that decision, act or other thing.

### **3. Service of Notice**

Any notice or other communication that NPL is required to give under the Contract will be sufficiently given if sent by recorded or registered post to the last known address of the Contractor.

### **4. Amendments and Variations**

No amendment or variation in the terms of the Contract will be valid unless previously agreed in writing by NPL and the Contractor and no payment will be made for any unauthorised work.

### **5. Transfer and Sub-Letting**

The Contractor shall not give, bargain, sell, assign, sub-let or otherwise dispose of the Contract or any part thereof without NPL's prior written consent.

### **6. Payment**

- (1) On submission of a correct invoice quoting NPL's contract and/or purchase order number and confirming that the property in the Articles has passed to NPL or its agent, NPL shall pay the Contract Price (or, as the case may be, such part of the Contract Price as relates to the supply of the Articles) to the Contractor.
- (2) The Contractor shall, at such times and in such manner as are specified in the Contract, submit invoices to NPL for the performance of the Services. All such invoices for the performance of the Services shall show the period and the part of the Services for which payment is claimed, together with any agreed rates for payment.
- (3) On submission of a correct invoice quoting NPL's contract and/or purchase order number and confirming that the Services (or, as the case may be, such part of the Services as is specified in the invoice) have been performed, NPL shall pay the Contract Price (or such part of the Contract Price as relates to the performance of the Services or, as the case may be, such part of the Services as is specified in the invoice) to the Contractor.
- (4) If, for the purpose of performing the Contract, the Contractor enters into a contract for the supply of goods or services to the Contractor by a third party, the Contractor shall include in that contract a term that requires the Contractor to pay for those goods or services within thirty (30) working days of the Contractor receiving a correct invoice from that third party.

### **7. Packaging**

Unless otherwise specified in the Contract, all containers (including packing cases, boxes, tins, drums and wrappings) supplied by the Contractor shall be considered as non-returnable and their cost as having been included in the Contract Price.

### **8. Recovery of Sums Due**

- (1) Whenever any sum of money shall be recoverable from or payable by the Contractor under the Contract, NPL may deduct the said sum from any sum that is then due (or which at any time thereafter may become due) to the Contractor under the Contract or under any other contract with NPL.
- (2) Any overpayment by NPL to the Contractor of any charges (and associated Value Added Tax) for the Articles and/or Services shall be a sum of money recoverable from the Contractor.

## **9. Value Added Tax and Other Taxes**

- (1) NPL shall pay to the Contractor, in addition to the Contract Price, a sum equal to the Value Added Tax chargeable on the value of the supply of the Articles (if any) under the Contract and on the value of the Services (if any) performed under the Contract.
- (2) Any invoice or other request for payment of monies due to the Contractor under the Contract shall, if he is a taxable person, be in the same form and contain the same information as if the same were a tax invoice for the purposes of Regulations made under the Finance Act 1972.
- (3) The Contractor shall, if so requested by NPL, furnish such information as may reasonably be required by NPL as to the amount of Value Added Tax chargeable on any of the Articles and any of the Services and payable by NPL to the Contractor in addition to the Contract Price. Any overpayment of any Value Added Tax by NPL to the Contractor shall be a sum of money recoverable from the Contractor for the purposes of Condition 8.
- (4) The Contractor shall be responsible for payment of all other taxes and duties chargeable on the value of the supply of the Articles (if any) under the Contract and on the value of the Services (if any) performed under the Contract.
- (5) The Contractor shall promptly supply to NPL:
  - (a) all information concerning the tax status of the Contractor that is relevant to the supply of the Articles (if any) under the Contract and the performance of the Services (if any) under the Contract; and
  - (b) all certificates of exemption of the Contractor from any taxes and duties chargeable on the value of the supply of the Articles (if any) under the Contract and on the value of the Services (if any) performed under the Contract.

## **10. The Contractor's Personnel**

- (1) NPL reserves the right to refuse to admit any person employed by the Contractor or by a subcontractor to premises occupied by or on behalf of NPL, whose admission would, in the opinion of NPL, be undesirable.
- (2) Upon request by NPL, the Contractor shall provide to NPL a list specifying:
  - (a) the names and addresses of all persons who may at any time require admission in connection with the performance of the Contract to any premises occupied by or on behalf of NPL; and
  - (b) the nature of the work to be performed by such persons and such other particulars as NPL may require.
- (3) If the Contractor fails to comply with Clause (2) of this Condition and if NPL believes that such failure is prejudicial to NPL's interests, then NPL may terminate the Contract at any time by written notice to the Contractor. Such termination shall not prejudice or affect any right of action or remedy which shall have accrued, or shall accrue thereafter, to NPL.
- (4) The decision of NPL as to whether any person is to be refused admission to such premises and as to whether the Contractor has failed to comply with Clause (2) of this Condition shall be final and conclusive.
- (5) The Contractor shall indemnify NPL against any loss, damage or injury arising from any failure by the Contractor's employees or subcontractors to comply with any of NPL's rules, regulations and procedures that are drawn to their attention.

## **11. Use of Documents and Information from NPL**

- (1) The Contractor shall not disclose the Contract or any term thereof to any person other than a person employed by the Contractor in the performance of the Contract or any subcontractor, supplier or other person concerned with the performance of the Contract. Such disclosure shall be made in confidence and shall only extend as far as is necessary for the purpose of the performance of the Contract.
- (2) The Contractor shall not make use of the Contract or any information issued or furnished by or on behalf of NPL otherwise than for the purpose of the performance of the Contract. Save as provided for in Clause (3) of this Condition, the Contractor shall not make any article (or part thereof) similar to the Articles for any other purpose.
- (3) Subject to any rights of third parties, nothing in this Condition shall prevent the use for any purpose by the Contractor of any specifications, plans, drawings and other documents, the rights in which vest in the Contractor otherwise than as a result of work carried out under the Contract.
- (4) Any samples, patterns, specifications, plans, drawings, or other documents issued by or on behalf of NPL for the purpose of the performance of the Contract shall remain the property of NPL. The Contractor shall return the same to NPL on completion or earlier termination of the Contract.

## **12. Confidentiality**

- (1) The Contractor shall treat as confidential and shall not disclose to any third party:
  - (a) all information provided by NPL to the Contractor for the performance of the Contract, and
  - (b) the Arising Results,except that the Contractor may disclose the said information and the Arising Results to any person employed by the Contractor in the performance of the Contract and any subcontractor, supplier or other person concerned with the performance of the Contract. Such disclosure shall be made in confidence and shall only extend as far as is necessary for the purpose of the performance of the Contract.
- (2) The Contractor shall take all necessary precautions to ensure that all such information is treated as confidential by the Contractor's employees, agents and subcontractors.
- (3) NPL shall treat as confidential all unpublished information that is produced by the Contractor outside the Contract and that is made available to NPL during the performance of the Contract.
- (4) This Condition shall apply during the performance of the Contract and after the completion or earlier termination of the Contract.
- (5) This Condition shall not apply to any information that either Party can show:
  - (a) was at the time of receipt in the public domain or subsequently became part of the public domain through no breach of the Contract;
  - (b) was already in the receiving Party's possession at the time of receipt and was not acquired directly or indirectly from the disclosing Party; or
  - (c) was lawfully acquired by the receiving Party from others who had full rights to disclose it to the receiving Party.

## **13. Publicity**

- (1) NPL shall not issue press releases or other forms of publicity concerning the supply of the Articles to NPL or the performance of the Services for NPL without prior consultation with the Contractor if the name of the Contractor is mentioned in such press releases or other forms of publicity.
- (2) Unless otherwise agreed in writing with NPL, the Contractor, shall not issue (and shall be responsible for ensuring that the Contractor's employees, agents and subcontractors do not issue) any press releases or other forms of publicity concerning the supply of the Articles to NPL or the performance of the Services for NPL.

#### **14. Progress Reports**

- (1) The Contractor shall provide to NPL any progress reports required under the Contract at such times and in such forms as are specified in the Contract or as may otherwise be agreed by the Contractor and NPL.
- (2) The submission and acceptance of such progress reports shall not prejudice the rights of NPL under any other terms of the Contract.

#### **15. Arising Results**

- (1) Subject to any rights that are owned by the Contractor as a result of any work performed outside the Contract and subject to the rights of any third party, the Arising Results shall be the property of NPL and NPL may use (and authorise others to use) the Arising Results for any purpose. The Contractor hereby assigns the future copyright in the Arising Results (or any part thereof) to NPL.
- (2) The Contractor shall, as may be reasonably necessary, assist NPL to obtain any patent or other registered protection in respect of the Arising Results and shall ensure that its employees agents and subcontractors do all such acts (including the prompt signature of relevant documents) as shall be required for such purpose.
- (3) NPL may publish any of the Arising Results with due acknowledgement of the work performed by the Contractor in the supply of the Articles and/or the performance of the Services.
- (4) The Contractor shall not reproduce or disseminate the Arising Results to any third party for any purpose other than the performance of the Contract without the prior written consent of NPL.
- (5) The Contractor shall only use the Arising Results for the purpose of the performance of the Contract and shall not use the Arising Results for any other purpose without the prior written consent of NPL.
- (6) The Contractor hereby waives all moral rights in respect of the Arising Results and shall obtain a waiver of such moral rights from any subcontractor engaged in the performance of the Contract.

#### **16. NPL Property**

- (1) All NPL Property shall remain the property of NPL and shall only be used in the performance of the Contract and for no other purpose whatsoever unless otherwise agreed in writing with NPL.
- (2) All NPL Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies NPL to the contrary within the period of fourteen (14) days (or such other period of time as may be specified in the Contract) from the date of receipt of the NPL Property by the Contractor.

- (3) The Contractor undertakes to return all NPL Property to NPL on completion or earlier termination of the Contract and shall be responsible for all loss thereof or damage thereto (excluding fair wear and tear) from whatever cause to the full amount of such loss or damage.

#### **17. Loss or Damage to any Property of NPL**

Without prejudice to Condition 16 and any terms in the Contract concerning loss of, or damage to, the Articles, the Contractor shall, unless otherwise provided for in the Contract, make good or, at the option of NPL, pay compensation for, all loss of, or damage to, any property of NPL that is:

- (a) caused by the Contractor or the Contractor's employees, agents or subcontractors, and
- (b) arises from the presence of the Contractor or the Contractor's employees, agents or subcontractors in connection with the performance of the Contract on any site occupied by or on behalf of NPL,

except that this Condition shall not apply to the extent that the Contractor is able to show that any such damage was not caused or contributed to by the Contractor's negligence or default or the negligence or default of the Contractor's employees, agents, or subcontractors.

#### **18. Liability**

- (1) The Contractor shall not be liable for any loss, damage or delay suffered by NPL to the extent that such loss, damage or delay is attributable to instructions given by or on behalf of NPL.
- (2) Subject to Clause (1) of this Condition, the Contractor shall indemnify NPL and its employees and agents against:
  - (a) any loss of, or damage to, any physical property of NPL or of its employees or agents and any physical injury (including injury resulting in death) sustained by the employees or agents of NPL as a result of any negligent act or omission of the Contractor's employees, agents or subcontractors during the performance of the Contract;
  - (b) any claim, demand, or liability made against or incurred by NPL or any of NPL's employees or agents in respect of any loss of, or damage to, any property of the Contractor's employees, agents or subcontractors or injury (including injury resulting in death) sustained by the Contractor's employees, agents or subcontractors as a result of any negligent act or omission of the Contractor's employees, agents or subcontractors during the performance of the Contract; and
  - (c) any claim, demand or liability made against or incurred by NPL or any of NPL's employees or agents in respect of any loss, damage or injury (including injury resulting in death) sustained by any other third party as a result of any negligent act or omission (or any other breach of professional duty of care) of the Contractor's employees, agents or subcontractors during the performance of the Contract.
- (3) The Contractor shall effect with a reputable insurance company a policy or policies of insurance covering all liabilities of the Contractor under the Contract in the sum of at least five hundred thousand pounds (or such larger sum as may be specified in the Contract) in respect of any one incident and unlimited in the total number of incidents. The Contractor shall, on request by NPL, produce the relevant policy or policies of insurance, together with a receipt or other evidence of payment of the latest premium due under each such policy.
- (4) The Contractor shall reimburse NPL for all reasonable payments or additional payments by NPL to third parties which have become necessary as a direct consequence of delay in the

performance of the Contract which the Contractor had failed to remedy after being given reasonable notice thereof by NPL in writing, provided always that NPL shall take all reasonable steps to minimise the need to make such payments and shall not claim for any payments arising as a result of NPL's failure to take such reasonable steps.

- (5) Nothing in the Contract shall impose any liability on any employees or agents of NPL in their personal capacities.

#### **19. Indemnities against Infringement of Intellectual Property**

- (1) The Contractor shall indemnify NPL against all actions, claims, demands, costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of any copyright, patent, registered design or other intellectual property right used by or on behalf of the Contractor for the purpose of performance of the Contract, provided that any such infringement or alleged infringement is not knowingly caused by, or contributed to, by any act of NPL.
- (2) NPL shall indemnify the Contractor against all actions, claims, demands, costs, charges and expenses arising from or incurred by reason or any infringement or alleged infringement of any copyright, patent, registered design or other intellectual property right used at the request of NPL by the Contractor in the performance of the Contract.

#### **20. Break**

NPL shall, in addition to its rights under any other terms of the Contract, have the right to terminate the Contract at any time by giving the Contractor written notice to expire at the end of the period of notice specified for the purpose of this Condition in the Contract or, if no such period is specified, at the end of one (1) month. Such termination shall be without prejudice to the rights of the Parties accrued prior to the date of termination. In the event of such termination:

- (a) NPL shall indemnify the Contractor against commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of such termination; and
- (b) NPL shall not be liable to make any payment under this Condition which, when taken together with any sums paid or due or becoming due to the Contractor under the Contract, shall exceed such total sum as would have been payable under the Contract if the Articles and/or the Services had been delivered and/or performed in accordance with the terms of the Contract.

#### **21. Termination for Breach**

Either Party shall have the right to terminate the Contract by written notice to the other Party if the other Party is in breach of any of the terms of the Contract and such breach shall not have been remedied to the satisfaction of the aggrieved Party within a period of thirty (30) days of written notification of such breach. Such termination shall be without prejudice to the rights of the Parties accrued prior to the date of termination.

#### **22. Termination for Insolvency**

NPL may, without compensation to the Contractor, terminate the Contract at any time by written notice to the Contractor if the Contractor:

- (a) being an individual (or, where the Contractor is a firm, any partner in that firm), (i) becomes bankrupt, or (ii) has a receiving order or administration order made against him, or (iii) makes any composition or arrangement with or for the benefit of his creditors, or (iv) makes any conveyance or assignment for the benefit of his creditors or purports to do so, or (v) any application is made against him under any bankruptcy act for sequestration of his estate, or

- (b) being a company, (i) is the subject of a proposal for a voluntary arrangement, or (ii) has a petition for an administration order or a petition for a winding up order brought against it, or (iii) passes a resolution for a winding up order, or (iv) makes any composition, arrangement, conveyance or assignment for the benefit of its creditors or purports to do so, or (v) has a receiver or any other person appointed in respect of its undertaking or of all or any of its property,

provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to NPL.

### **23. Termination for Corrupt Gifts and Payments of Commission**

- (1) The Contractor shall not:
- (a) offer or give or agree to give to any person employed by or on behalf of NPL any gift or consideration of any kind as an inducement or reward for doing or not doing any act in relation to the obtaining or execution of the Contract or any other contract with NPL or for showing or not showing favour or disfavour to any person in relation to the Contract or any other contract with NPL; or
  - (b) enter into the Contract or any other contract with NPL in connection with which commission (other than such commissions or bonuses as are payable by the Contractor to the Contractor's own employees under the terms of their contracts of employment) has been paid by the Contractor or on the Contractor's behalf, or to his knowledge, unless, before the Contract is made, particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to NPL.
- (2) In the event of any breach of this Condition by the Contractor or by anyone employed by the Contractor or acting on the Contractor's behalf (whether with or without the Contractor's knowledge), NPL shall have the rights to terminate the Contract at any time by written notice to the Contractor and to recover from the Contractor the amount of any loss resulting from such termination and/or to recover from the Contractor the amount or value of any such gift, consideration or commission. Upon such termination, NPL shall be free of any obligation to accept or pay for the Articles and/or the Services.
- (3) In any dispute, difference or question arising in respect of: this Condition, the decision of NPL shall be final and conclusive.

### **24. Waiver**

The failure of either Party at any time to enforce any term of the Contract shall in no way affect its right thereafter to require complete performance by the other Party, nor shall the waiver of any breach of any term be taken or held to be a waiver of any subsequent breach of any such term or be a waiver of the term itself.

### **25. Severability**

If any term, condition, clause or other provision of the Contract that is not of a fundamental nature in the operation of the Contract is held to be illegal or unenforceable, the validity or enforceability of the remainder of the Contract shall not be affected thereby.

### **26. Special Conditions**

In the event of any conflict or inconsistency between these General Conditions and any special conditions contained in the, such special conditions shall prevail.

### **27. Compliance with Statutes and Regulations**



- (1) The Contractor shall be responsible for ensuring that all operations and activities carried out by the Contractor pursuant to the Contract comply at all times with all relevant laws and statutes.
- (2) The Contractor shall take all reasonable steps to ensure that all operations and activities carried out pursuant to the Contract by the Contractor's employees, agents and subcontractors comply at all times with all relevant laws and statutes.

### **28. Novation**

NPL may novate the Contract and all rights and obligations under it to BEIS or any person or organisation nominated by BEIS.

### **29. Arbitration**

- (1) Either Party may, after fourteen (14) days written notice to the other Party, refer any dispute, difference or question between the Parties with respect to any matter arising out of or relating to the Contract (except where the decision of NPL is expressed to be final and conclusive in the Contract) to a single arbitrator to be agreed by the Parties for that purpose, or, in the absence of such agreement, to be appointed at the request of either Party by the President of the London Chamber of Commerce.
- (2) Such reference shall be deemed to be a submission to arbitration under the Arbitration Act 1996 as amended or any statutory modification or re-enactment thereof.

### **30. Law**

The Contract shall in all respects be construed as a contract made in England, subject to the laws of England and to the exclusive jurisdiction of the courts of England.