

TERMS AND CONDITIONS OF PURCHASE FOR GOODS

REF: JETC1 REVISION 2

DATE: DECEMBER 2018

1. DEFINITIONS

- 1.1. In these Terms and Conditions the following words shall have the following meanings:
- 1.1.1. **'Company'** shall mean Jersey Electricity plc;
 - 1.1.2. **'Contract'** the contract between the Company and the Supplier for the sale and purchase of the Goods being these Terms and Conditions, the Order and any documents referred to in the Order;
 - 1.1.3. **'Data Protection Legislation'** means any legislation relating to the privacy of information in force from time to time in Jersey, including, without limitation, the Data Protection (Jersey) Law 2018 and the General Data Protection Regulation (2016/679).
 - 1.1.3. **'Goods'** any goods which the Company is to purchase from the Supplier (including any of them or any part of them) as set out in the Order;
 - 1.1.4. **'Intellectual Property'** includes inventions, designs (whether or not registrable), patents, databases, trademarks, service marks, logos, copyright, know how and trade secrets;
 - 1.1.5. **'Intellectual Property Rights'** means (in the context of a party) all rights (including moral rights) conferred by law, equity or legislation in relation to Intellectual Property;
 - 1.1.6. **'Order'** any purchase order of the Company for the Goods, incorporating these Terms and Conditions;
 - 1.1.7. **'Supplier'** the person, firm or company who is named in the Order;
 - 1.1.8. **'Terms and Conditions'** these terms and conditions.

2. FORMATION AND INCORPORATION

- 2.1. An Order constitutes an offer by the Company to purchase the Goods in accordance with these Terms and Conditions. An Order shall be deemed to be accepted on the earlier of the Supplier issuing a written acceptance of the Order; and the Supplier doing any act consistent with fulfilling the Order, at which point the Contract shall come into existence. The Company will not be liable for Orders unless they are issued on a printed order form and signed on behalf of the Company.
- 2.2. For the avoidance of doubt, these Terms and Conditions are the only conditions upon which the Company is prepared to deal with the Supplier. No terms and/or conditions endorsed upon delivered with or contained in the Supplier's quotation, acknowledgement or acceptance of Order, specification or similar document will form part of the Contract and the Supplier waives any right which it otherwise might have to rely on such terms and/or conditions.
- 2.3. Any variations to the Order or the Contract shall have no effect unless expressly agreed in writing and signed by an authorised signatory of the Company. For the avoidance of doubt, any alterations, delivery of excess quantities or extension to this Order must only be undertaken on the authority of an official amendment to the Order. Any such amendment must be signed on behalf of the Company.

3. SPECIFICATION

- 3.1. The quantity, quality and description of the Goods shall, subject as provided in the Contract be as specified in the Order and/or in any applicable specification supplied or advised by the Company to the Supplier.
- 3.2. The Supplier shall comply with all applicable standards, regulations and/or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods.
- 3.3. Prior to delivery the Company shall have the right to inspect and test the Goods at all times and where appropriate the Supplier shall not unreasonably refuse any request by the Company to inspect and test the Goods during the manufacture, processing and / or storage at the premises of the Supplier or any third party prior to despatch. If as the result of such inspection or testing the Company is not satisfied that the Goods will comply in all respects with the Contract and the Company so informs the Supplier in writing within 30 days of inspection or testing the Supplier shall take all steps necessary to ensure compliance.
- 3.4. Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Supplier's obligations under the Contract.

4. DELIVERY

- 4.1. The Goods shall be delivered at the Supplier's cost and risk to the Company's place of business and detailed on the Order, or if some other place of delivery is agreed by the Company in writing by delivery of those Goods to that place during the Company's normal office hours. The Supplier shall off-load the Goods at its own risk as directed by the Company.
- 4.2. The Supplier shall deliver the Goods strictly in accordance with the stipulated delivery date or schedule on the Order. Time of delivery of the Goods shall be the essence of the Contract.
- 4.3. The Supplier shall ensure that each delivery of Goods is accompanied by a delivery note which is prominently displayed and which shows, inter alia, the Order number, date of Order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered. The Supplier shall ensure that upon delivery of the Goods that a suitable employee of the Company signs the above delivery note and shall upon signing give a copy of the same to the Company as a receipt of delivery of those same Goods.
- 4.4. The Company shall not be deemed to have accepted the Goods until the Company has had 7 days to inspect the same following delivery.
- 4.5. The Supplier shall supply the Company on delivery of the Goods with all operating and safety instructions, warning notices clearly displayed and other information as may be necessary for their proper use, maintenance and repair for the Company to accept delivery of the Goods.
- 4.6. Unless the Company expressly agrees otherwise in writing, containers and packing must be supplied free but will be returned, if required, at the Supplier's risk and expense.
- 4.7. Where more than one item of Goods is involved in the Order and the Company agrees to accept delivery by instalments, the Contract shall be construed as a separate contract in respect of each instalment. Nevertheless, failure to deliver any instalment shall entitle the Company at its option to treat the Contract as repudiated.
- 4.8. If the Goods are delivered to the Company in excess of the quantities ordered then the Company shall not be bound to pay for the excess and any excess shall be and shall remain at the Supplier's risk and shall be returnable at the Supplier's expense.
- 4.9. The Supplier shall repair or replace Goods damaged or lost in transit free of charge provided the Company gives written notice to the Supplier of the damage or loss within a reasonable time after receipt of a delivery note.

5. RISK/OWNERSHIP

- 5.1. Risk in the Goods shall pass to the Company upon delivery to the Company pursuant to the Contract.
- 5.2. The ownership and title in the Goods shall pass to the Company upon payment for the Goods.

6. PRICE AND PAYMENT

- 6.1. The price payable for the Goods shall be that stated in the Order and unless otherwise stated shall be (a) Inclusive of all charges including, but not limited to, packaging material, packing, shipping, loading, carriage, insurance and delivery of the Goods to the delivery address and any duties, imposts, levies or taxes and (b) Fixed for the duration of the Contract.
- 6.2. No variation in the price of the Goods or extra charges shall be made with regard to the same (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior written consent of the Company.
- 6.3. Payment will be made within 30 (thirty) days of the date of invoice unless the Company wishes to exercise the option of paying earlier to secure any special discounts. A statement of account must be rendered by the end of the second week of the month following the month of delivery or in the case of Orders subject to special discounts, at such periods as may be arranged. Failure to render a statement of account by the due date may delay payment without forfeiture of discount.
- 6.4. Without prejudice to any other right or remedy, the Company reserves the right to set off any amount owing at any time from the Supplier howsoever arising to the Company against any sums payable by the Company to the Supplier under the Contract.
- 6.5. Any payment made is without prejudice to the Company's rights if the Goods supplied against the Order prove to be non-conforming, unsatisfactory, not in accordance with either specification, or an approved sample.

7. THE COMPANY'S PROPERTY

- 7.1. The Intellectual Property Rights in any Intellectual Property provided by the Supplier shall remain vested in the Supplier, and the Supplier grants to the Company and its successors in title an irrevocable royalty free licence to copy and use the Intellectual Property for any purpose relating to the Contract.
- 7.2. The Intellectual Property Rights in any Intellectual Property provided by the Company to the Supplier shall at all times be and remain the exclusive property of the Company and shall be held by the Supplier in safe custody at its own risk and maintained by the Supplier until returned to the Company and shall not be disposed of other than in accordance with the Company's written instructions, nor shall such items be used otherwise than as authorised by the Company in writing.
- 7.3. The Supplier warrants that the sale or use of the Goods by the Company will not infringe any Intellectual Property Right of any third party and the Supplier undertakes to indemnify the Company against all lost damage liability actions proceedings costs claims or expenses (for the avoidance of doubt including any indirect costs and consequential loss) which the Company may suffer or incur by reason or any breach of this warranty.

8. WARRANTIES

- 8.1. The Seller warrants to the Buyer that the Goods shall:
 - 8.1.1. be new and of good quality; and
 - 8.1.2. be fit and sufficient for the purpose for which such Goods are ordinarily used and for any particular purpose made known to the Supplier by the Company or which can be reasonably inferred from this Contract or Order (including being fit for the purpose at the performance levels (if any) set out in an Order) and the Company relies on the skill and judgement of the Supplier; and
 - 8.1.3. be free from defects in design, material and workmanship; and
 - 8.1.4. be free from any and all liens, charges and encumbrances of any kind; and
 - 8.1.5. correspond in every respect with any specifications, drawings, samples or descriptions provided by the Company; and
 - 8.1.6. comply with all statutory requirements and regulations and voluntary codes of conduct relating to the Goods and their sale and supply (including any amendment, modification, reenactment or successor to such legislation).
- 8.2. Any warranty implied by law will apply to the Goods in addition to any warranty in this Contract. In the event of any inconsistency between any express or implied warranty, the most favourable to the Company prevails.
- 8.3. The warranties given by the Supplier in accordance with this clause 8 remain unaffected notwithstanding:-
 - 8.3.1. that design may have been carried out by or on behalf of the Company;
 - 8.3.2. any receipt of, review of or comment or direction on any documents by the Company or its personnel or agents; and / or
 - 8.3.3. any variation.
- 8.4. If the Goods are not delivered on the date they are due or the Supplier does not comply with the express or implied warranties and obligations of this Contract then, without limiting any of its other rights or remedies, the Company shall have the right to any one or more of the following remedies, whether or not it has accepted the Goods:
 - 8.4.1. to terminate the Contract;
 - 8.4.2. to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
 - 8.4.3. 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);
 - 8.4.4. to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
 - 8.4.5. to recover from the Supplier any costs incurred by the Company in obtaining substitute goods from a third party; and / or
 - 8.4.6. to claim damages for any other costs, loss expenses incurred by the Company which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.
- 8.5. These Terms and Conditions shall apply to any repaired or replacement supplied by the Supplier.

9. INDEMNITY

- 9.1. Without prejudice to any other rights of the Company under the Contract, the Supplier shall indemnify and keep indemnified the Company in full from and against all direct, indirect or consequential liability, loss, damages, injury, costs and expenses (including legal

expenses) awarded against or incurred or paid by the Company as a result of or in connection with:-

- 9.1.1. Any claim made against the Company in respect of any liability, loss, damage, cost or expense sustained by the Company's employees or agents or by any customer or third party to the extent that such liability, loss damage, cost or expense was caused by, relates to or arises from the Goods;
- 9.1.2. Any accidents to the Supplier's employees or agents or contractors whether engaged at the Company's premises or elsewhere in execution of this Order, other than an accident caused through the act or default of such person;
- 9.1.3. Any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any defect in the Goods or the negligent or wrongful act or omission of the Supplier.

10. ASSIGNMENT

No part of the Contract may be assigned without first obtaining the Company's permission in writing.

11. CONFIDENTIALITY

- 11.1. The Supplier agrees not to divulge to third parties, without the prior written consent of the Company, any information obtained from or through the Company, unless:-
 - 11.1.1. the information is known to the Supplier prior to obtaining the same from the Company; or
 - 11.1.2. the information is, at the time of disclosure by the Company, then in the public domain through no fault or breach by the Supplier; or
 - 11.1.3. the Supplier is required to disclose such information by rule of law, any governmental or regulatory authority or by a court of competent jurisdiction.
- 11.2. This shall not prevent:
 - 11.2.1. disclosing any such information to the Supplier's employees, agents and subcontractors who need to know it for the purpose of discharging the Supplier's obligations under the Contract (and the Supplier shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract); or
 - 11.2.2. normal communications to the Supplier's bankers, auditors, advisors and any government officers.

12. TERMINATION FOR CONVENIENCE

- 12.1. The Company for its convenience in accordance with this clause may terminate the Supplier's performance under this Contract whenever the Company shall elect. Any such termination shall be effected by delivery to the Supplier of a notice of termination specifying that the Contract is terminated under this clause and the date upon which such termination becomes effective.
- 12.2. Upon receipt of such notice the Supplier shall, unless the notice requires otherwise immediately discontinue production of the Goods under the Order on the date and to the extent specified in the notice.
- 12.3. The Company will pay to the Supplier as full compensation:-
 - 12.3.1. all amounts due and not previously paid to the Supplier for Goods completed in accordance with the Contract prior to such notice; and
 - 12.3.2. a reasonable amount for any Goods then in production, provided that no such adjustment shall be made in favour of the Supplier with respect to Goods which are Supplier's standard stock.
- 12.4. The total sum to be paid to the Supplier under this clause shall not exceed the price of the Order as reduced by the amount of payments otherwise made and will not include any consideration for loss of anticipated profits on the terminated works all claims for which the Supplier waives. Apart from the payment of this sum the Company shall have no liability whatsoever to the Supplier in respect of or arising out of termination of the Contract under this clause.

13. SEVERABILITY

If any provision of this Contract is held by any court or other competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of this Contract and the remainder of the provision in question will not be affected.

14. WAIVER

Save for as expressly set out in this Contract, a provision or right created under this Contract shall not be waived except in writing signed by the party granting the waiver.

15. ANTI-BRIBERY

- 15.1. The Supplier shall:
 - 15.1.1. Comply with all applicable laws, statutes, and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);
 - 15.1.2. Have and shall maintain in place throughout the term of the Contract its own policies and procedures, including adequate procedures to ensure compliance with the Relevant Requirements, and will enforce them where appropriate;
 - 15.1.3. Promptly report to the Company any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of the Contract;
 - 15.1.4. Provide such supporting evidence of compliance as the Company may reasonably request.
- 15.2. Breach of this Clause shall be deemed a material breach of the Contract.
- 15.3. For the purpose of this Clause, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purpose of this Clause, a person associated with the Supplier includes but is not limited to any subcontractor of the Supplier.

16. MODERN SLAVERY

- 16.1. In performing its obligations under the Contract, the Supplier shall:
 - 16.1.1. comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force;
 - 16.1.2. include in contracts with its direct subcontractors and suppliers provisions which are at least as onerous as those set out in this clause 16;
 - 16.1.3. maintain a complete set of records to trace the supply chain of all Goods provided to the Company in connection with the Contract, and permit the Company and its third party representatives to inspect the Supplier's premises, records, and to meet the Supplier's personnel to audit the Supplier's compliance with its obligations under this clause 16.
- 16.2. The Company may terminate the Contract with immediate effect by giving written notice to the Supplier if the Supplier commits a breach of this clause 16.

17. VARIATION

Except as set out in these Terms and 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 Company.

18. THIRD PARTY RIGHTS

No one other than a party to the Contract shall have any right to enforce any of its terms.

19. DATA PROTECTION

- 19.1. Each party shall at all times comply with all applicable provisions of Data Protection Legislation.
- 19.2. The Company shall collect, store, process and delete any personal data in respect of Supplier's in accordance with its [privacy notice](#).

20. FORCE MAJEURE

Neither party shall be in breach of the Contract nor liable for delaying in performing, or failure to perform, any of its obligations under it if such delay or failure results from an event, circumstance or cause beyond its reasonable control. If the period of delay or non-performance continues for four weeks, the party not affected may terminate the Contract by giving 10 calendar days' written notice to the affected party.

21. NOTICES

- 21.1. Any notice given to a party under of in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, or email.
- 21.2. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 21.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00am on the second business day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one business day after transmission.
- 21.3. This clause does not apply to the service or any proceedings or other documents in any legal action, or other method of dispute resolution.

22. GOVERNING LAW AND JURISDICTION

This Contract shall be governed by and construed in accordance with the law of Jersey and the parties hereby submit to the exclusive jurisdiction of the Royal Court of Jersey.

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