

## Commercial in Confidence

### UKAEA Standard Terms and Conditions for the Supply of Goods and Services

#### **Definitions:**

**'Acceptance of the Order'** means the Authority's written acceptance of the Customer's Purchase Order in writing, on the terms of the Quotation.

**'Applicable Law'** means all applicable laws, legislation, statutory instruments, regulations and governmental guidance having binding force whether local or national or international in any relevant jurisdiction.

**'the Authority'** means the United Kingdom Atomic Energy Authority.

**'Business Day'** means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**'Customer'** means the person, firm or company named in the Quotation.

**'Contract'** means the contract between the Authority and the Customer consisting of the Quotation, Acceptance of Order, these conditions, Purchase Order and any other documents (or parts thereof) expressly agreed in writing between the Authority and the Customer.

**'Contract Price'** means the prices exclusive of Value Added Tax payable to the Authority for the full and proper performance of the Contract.

**'Data Protection Laws'** means any national laws, regulations and secondary legislation, as amended or updated from time to time, in the United Kingdom in relation to data privacy and including the United Kingdom General Data Protection Regulation (**UK GDPR**) and the Data Protection Act 2018.

**'Deliverables'** means the deliverables set out in the Scope.

**'Delivery Location'** means in respect of the Goods the Authority's premises at Culham Science Centre, Abingdon, Oxfordshire, OX14 3DB or such other location as the parties may agree at any time after the Authority notifies the Customer that the Goods are ready.

**'Goods'** means such goods as are itemised in the Scope.

**'Intellectual Property Rights'** means patents, rights to inventions, copyright and neighbouring and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**'Parties'** means the Authority and the Customer.

**'Personal Data'** means all personal data, as defined in the UK GDPR.

**'Purchase Order'** means the Customer's order to purchase the Goods and/or Services described in the Scope issued in accordance with the Quotation before the date of expiry stated in the Quotation or such later date as the Authority may agree in writing.

**'Quotation'** means the Authority's quotation for the Work inviting the Customer to place a Purchase Order for acceptance by the Authority.

**'Scope'** means the particulars relating to the Work set out in the Quotation.

**'Services'** means such services as are itemised in the Scope.

**'Work'** means the Goods and/or Services including the Deliverables to be provided as specified in the Scope.

The headings to the following terms and conditions do not affect the interpretation thereof.

#### **1. Scope of the Contract**

1.1 The Authority will carry out the Work in accordance with the Scope. The Work shall be the only work to be carried out by the Authority under the Contract.

1.2 The Authority reserves the right to advise the Customer should the Authority consider that, in its reasonable opinion, an amendment or alteration either is necessary or better serves what is understood by the Authority to be the intended function or purpose of the Work.

1.3 The Authority undertakes to notify and consult the Customer prior to incorporating any changes or alterations to the Work.

#### **2. Completion and Delivery**

2.1 Subject to the provisions of Clauses 1.1, 1.2 and 2.3 herein the Authority shall complete the Work within the timeframes detailed in the Scope.

2.2 Delivery of Goods is completed on the completion of loading where the Delivery Location is the Authority's premises or of unloading of the Goods at the Delivery Location in any other case.

2.3 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence.

2.4 If the Customer fails to take or accept delivery of the Goods within three (3) Business Days of the Authority notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a force majeure event or the Authority's failure to comply with its obligations under the Contract, delivery of the Goods shall be deemed to have been completed at 9.00am on the third Business Day after the day on which the Authority notified the Customer that the Goods were ready (or if that day is not a Business Day, the next Business Day thereafter) and the Authority shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

2.5 If ten (10) Business Days after the day on which the Authority notified the Customer that the Goods were ready for delivery the Customer has not taken or accepted actual delivery of them, the Authority may resell or otherwise dispose of part or all of the Goods and apply the proceeds in or towards settlement of any unpaid balance of the Contract Price and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the Contract Price attributable to the Goods or charge the Customer for any shortfall below the Contract Price attributable to the Goods.

#### **3. Inspection and Rejection of Deliverables**

3.1 The Customer may reject any of the Work comprised in the outputs if it fails to meet the requirements of the Contract, by giving written notice to the Authority. Notice must be given within 15 Business Days of delivery or completion of the Work otherwise the Work shall be treated as accepted. The notice must identify the grounds for the rejection in reasonable detail.

#### **4. Property and Risk**

4.1 The Customer acquires no right or title in the Work until the Customer has made full payment for the Work in accordance with the Contract.

4.2 All Goods comprised in the Work shall be delivered to the Customer 'ex Works' in accordance with Incoterms 2020 published by the International Chamber of Commerce.

#### **5. Payment**

5.1 Payment shall become due and payable to the Authority as detailed in the Quotation and under these terms.

5.2 The Authority payment terms are, subject to the result of a credit check by the Authority, 30 calendar days from the date of the Authority's invoice.

5.3 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Authority to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Authority, pay to the Authority such additional amounts in respect of VAT as are chargeable on the supply of the Goods or Services at the same time as payment is due for the supply of the Goods or Services.

5.4 In the event of early termination of the Contract, the Customer will pay the Authority for Work duly carried out, without prejudice (in the case of termination by the Customer)

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to any other remedy the Authority may have in respect of any termination in breach of the Contract.

### **6. Warranty and Liability**

#### **6.1 Services Warranty**

The Authority shall supply the Services to the Customer in accordance with the Scope in all material respects and warrants that they will be provided using reasonable care and skill.

#### **6.2 Goods Warranty**

The Authority warrants that on delivery the Goods shall:

- i) conform in all material respects with the Scope; and
- ii) be free from material defects in design, material and workmanship.

#### **6.3 Subject to clause 6.4, if:**

- a) the Customer gives notice in writing to the Authority within a reasonable time of discovery (and in any event within 12 months after the delivery of the Goods), that they do not comply with the warranty set out in clause 6.2;
- b) the Authority is given a reasonable opportunity of examining such Goods; and
- c) the Customer (if asked to do so by the Authority) returns such Goods to the Authority's place of business at the Customer's cost;

the Authority shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

#### **6.4 The Authority shall not be liable for the Goods' failure to comply with the warranty set out in clause 6.2 in any of the following events:**

- a) the Customer makes any further use of such Goods after giving notice in accordance with clause 6.3(a);
- b) the defect arises because the Customer failed to follow the Authority's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- c) the defect arises as a result of the Authority following any drawing, design or specification supplied by the Customer;
- d) the Customer alters or repairs such Goods without the written consent of the Authority;
- e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- f) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

#### **6.5 The Authority has given commitments and warranties as regards the Services and the Goods set out in this clause. In view of these commitments and warranties, the terms implied by sections 3, 4, and 5 of the Supply of Goods and Services Act 1982 and sections 13-15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.**

#### **6.6 Except as provided in this clause, the Authority shall have no liability to the Customer in respect of the Services' or Goods' failure to comply with the commitments and warranties set out in clauses 6.1 and 6.2.**

#### **6.7 The entire liability of the Authority for any breach of this Contract or any warranty shall be limited to a sum equal to the Contract Price.**

#### **6.8 Neither Party shall be liable to the other Party for any indirect or consequential loss (including loss of profit), and whether arising from or caused by the negligence or breach of the Contract by either Party or its employees; or otherwise.**

#### **6.9 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following: death or personal injury caused by negligence; fraud or fraudulent misrepresentation; and any other losses which cannot be excluded or limited by Applicable Law.**

### **7. Assignment**

#### **7.1 The Customer shall not assign, transfer, mortgage, charge, subcontract, sublicense, delegate, declare a trust over or deal in any other manner with any or all its rights and obligations under the Contract without the prior written consent of the**

Authority (such consent not to be unreasonably withheld or delayed).

### **8. Intellectual property rights**

#### **8.1 All Intellectual Property Rights in or arising out of or in connection with the Work (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Authority.**

#### **8.2 The Authority grants to the Customer a fully paid-up, worldwide, non-exclusive, royalty-free, non-transferable, perpetual and irrevocable licence for the purpose of receiving and using the Work in its business.**

#### **8.3 The Customer grants the Authority a fully paid-up, non-exclusive, royalty-free, perpetual, non-transferable licence to copy and modify any materials provided by the Customer to the Authority for the term of the Contract for the purpose of providing the Work to the Customer.**

### **9. Data Protection**

#### **9.1 The Authority shall ensure that it complies with the Data Protection Laws as they apply from time to time throughout the term of the Agreement. In particular, where the Authority is processing Personal Data ("Processor") on behalf of the Customer ("Controller") the Processor shall:**

9.1.1 be a data processor subject to the obligations specified under the relevant Data Protection Laws;

9.1.2 only process the Personal Data in accordance with the Controller's written instructions (and not for any other purpose) and in compliance with, and shall not cause the Controller to be in breach of, the Data Protection Laws;

9.1.3 at the Controller's request participate in and provide all reasonable assistance as reasonably requested by the Controller to ensure that the Controller is able to comply with its own obligations under the Data Protection Laws, including maintaining appropriate technical and organisational measures, and conducting data protection impact assessments or prior consultations with respect to any new type of processing proposed under this Agreement;

9.1.4 maintain all appropriate technical and organisational measures to ensure security of the Personal Data including undertaking such reasonable measures (whether by software or hardware) to protect all relevant data (including the Personal Data) from corruption, external interference or unauthorised use, and promptly inform the Controller if Personal Data is lost or destroyed or becomes damaged, corrupted or unusable and as soon as reasonably practicable thereafter restore the Personal Data at the Processor's own expense;

9.1.5 promptly comply with any request from the Controller to provide to the Controller a copy of the Personal Data held by the Processor in the format and on the media reasonably specified by the Controller, and/or to amend, transfer or delete the Personal Data;

9.1.6 ensure its staff and any third parties appointed by the Processor (including any cloud computing service providers or contractors) have committed themselves to appropriate obligations of confidentiality or are under appropriate statutory obligations of confidentiality and at all times act in compliance with Data Protection Laws, and do not transfer the Personal Data outside the European Economic Area or United Kingdom, or to any international organisation without obtaining the express prior written consent of the Controller;

9.1.7 make available all information, access to premises, systems and staff necessary to demonstrate evidence of the Processor's compliance with the Data Protection Laws including allowing access of third party auditors acting under the instruction of the Controller in Agreement to conduct data protection and/or security audits, assessments and inspections concerning the Processor's data protection and security procedures relating to the processing of Personal Data in accordance with Data Protection Laws;

9.1.8 not engage a third-party processor ("Sub Processor") without the specific written authorisation of the Controller and the Processor shall remain fully liable to the

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Controller for performance or non-compliance of any Sub Processor;

9.1.9 ensure that all contracts with any Sub Processors include obligations no less onerous than those in this clause and the Processor shall procure that the Sub Processors have committed themselves to appropriate obligations of confidentiality or are under appropriate statutory obligations of confidentiality, in particular providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of the Data Protection Laws;

9.1.10 inform the Controller promptly without undue delay and in any event within twenty-four hours of becoming aware of: (i) any failure by the Processor and/or a Sub Processor to comply with the provisions of this clause and/or Data Protection Laws in relation to the Personal Data; (ii) and/or any enquiry, complaint, notice or other communication which relates directly or indirectly to the processing of the Personal Data or to compliance with Data Protection Laws by the Processor and/or the Controller and provide the Controller with full co-operation and assistance in relation to any such incident, complaint, notice or communication; and

9.1.11 on termination or expiry of the relevant processing of this Agreement, cease all use of the Personal Data and shall, at the Controller's election, either destroy all Personal Data or transfer all Personal Data to the Controller or a nominated third party (in a mutually agreed format and by a mutually agreed method).

9.2 Each Party shall fully indemnify the other Party without limit, from and against all losses, costs, damages and expenses suffered by the other Party as a result of any failure to comply with the provisions of this clause and the Data Protection Laws.

### **10. Confidentiality**

10.1 In order to protect their respective technical and commercial interests and know-how, the Parties agree that any technical and commercial information (including but not limited to electronic or paper-based information, data, plans, drawings, photographs or software) which is disclosed by one Party to the other Party during the course of the Work, shall be treated by the receiving Party as confidential.

10.2 The receiving Party shall not disclose to any third party any confidential information received from the other Party without the prior written permission of the disclosing Party.

10.3 This provision shall not apply where the receiving Party can show that is or was under a legal obligation to provide such information to a third party, or that such information is or was already in the public domain.

10.4 The obligation of confidentiality under this clause shall apply for five years from the completion or termination of the Contract.

### **11. Force Majeure**

11.1. 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 that Party.

11.2. If any Party is subject to force majeure which thereby affects its ability to perform its obligations under the Contract, it will notify the other Party as soon as is practicable. In such circumstances the Parties will discuss the implications for completion of the Work.

### **12. Termination**

12.1. The Contract may be terminated by either Party giving three (3) months' prior written notice of termination to the other Party.

12.2. The Contract shall terminate in the event of:

(i) a material breach of the Contract by either Party; provided that the Party in breach shall have one (1) calendar month in which to rectify any such breach before such termination takes effect; or

(ii) the appointment of an administrator for, or in the event of the insolvency, winding-up or dissolution of a Party to the Contract.

### **13. Dispute resolution**

13.1. Subject to the provisions of clause 13.2 herein, it is agreed that prior to any formal measures being taken in the event of

a perceived breach of a Party's obligations under the Contract any issue or disagreement which may arise between the Parties concerning the satisfactory discharge of a Party's obligations and/or the interpretation of a provision in the Contract, shall be discussed by nominated representatives of each Party. Should such discussions fail to resolve the matter, then the Parties will refer the issue to a senior manager of each Party within ten (10) working days.

13.2. Should there be no resolution, then the Parties will refer the matter to independent mediation by a person to be jointly appointed and reimbursed equally by both Parties.

### **14. Variation**

14.1. Any variation to the terms of the Contract, including the appendices and Scope, shall only be valid and enforceable when agreed in writing on behalf of both Parties.

### **15. Anti-Corruption and Bribery Act 2010**

15.1. Both Parties shall

(a) comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010; and

(b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK.

### **16. Governing Law**

16.1. Any dispute or claim arising under this Agreement shall be subject to the laws of England and to the exclusive jurisdiction of the English courts.

### **17. Notices**

17.1. All notices and other communications in relation to this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered, e-mailed, or mailed (first class postage prepaid) to the address of the relevant party, as referred to above or otherwise notified in writing. If personally delivered or if e-mailed all such communications shall be deemed to have been given when received (except that if received on a non-working day or after 5.00 pm on any working day they shall be deemed received on the next working day) and if mailed all such communications shall be deemed to have been given and received on the second working day following such mailing.

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