



National Audit Office

National Audit Office

NAO Purchase Order Terms and Conditions

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1 Introduction

The Order is issued subject to these Conditions, which govern both the Order and all business dealings between the National Audit Office and the Supplier relating to the Order. The National Audit Office Order Number must be quoted on all communications in connection with the Order. Failure to do so may result in delayed processing, acceptance and payment.

2 Correspondence

All correspondence relating to the Order except invoices covered by 3 below must be addressed to the National Audit Office at the address set out in the Order.

3 Invoices

All invoices must:

- 3.1 bear the Order number plus any additional number allocated;
- 3.2 quote your VAT registration number; and
- 3.3 be sent to Accounts Payable, Finance, National Audit Office at 157-197 Buckingham Palace Road, London SW1W 9SP

4 Definitions

In this Contract:

- 4.1 **'NAO'** means the National Audit Office, a body corporate created pursuant to Section 20 of the Budget Responsibility and National Audit Act 2011
- 4.2 **'Conditions'** means these terms and conditions for the purchase of the Deliverables;
- 4.3 **'Confidential Information'** means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, IPR and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA.;
- 4.4 **'Contract'** shall mean the contract concluded by commencement of work under the Order or, if earlier, any acceptance of the Order communicated by you to the NAO (whether in writing, orally or otherwise), whose terms shall comprise these Conditions;
- 4.5 **'Deliverables'** shall mean any services or goods or materials provided pursuant to the Order;
- 4.6 **'Force Majeure'** shall mean any event or occurrence which is outside the reasonable control of either party including (but not limited to) governmental regulations, fire, flood or any disaster.
- 4.7 **'IPR'** means all present and future patents, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off

4 NAO Purchase Order Terms and Conditions

- 4.8 **'Order'** shall mean the purchase order;
- 4.9 **'Regulations'** means the Public Contracts Regulations 2015;
- 4.10 **'you'** or **'your'** shall mean the person or body appearing against the word **'Supplier'** on the front of the Order.

The headings used in these Conditions are for convenience and reference only and shall not affect their interpretation.

5 Delivery Title and Risk

- 5.1 You must deliver the Deliverables, together, in the case of goods or materials, with a detailed delivery note quoting an Order number, by the date specified in the Order or, if none, by any reasonable time specified by the NAO. If stated in the Order, time shall be of the essence with regard to dates specified by the NAO for the supply of Deliverables.
- 5.2 Title in the Deliverables shall vest in the NAO upon delivery or upon payment by the NAO of the price for those deliverables, if earlier.
- 5.3 Risk in Deliverables shall remain with you until the Deliverables are delivered to the NAO and signed for as accepted by an authorised signatory of the NAO provided that if the Deliverables are subsequently rejected by the NAO for any reason whatsoever (whether or not the NAO is entitled to do so in accordance with these Conditions) and the NAO gives you notice of such rejection, then risk in the Deliverables shall pass back to you forthwith.
- 5.4 If at any time deliveries under this Contract are suspended due to the

happening of a Force Majeure event, then, without prejudice to its rights of termination or cancellation under clauses 19 and 20, the NAO may at its discretion postpone delivery of the Deliverables for the period of suspension or such longer period as the NAO may require, in which event the NAO's payment obligations shall be postponed for the equivalent length of time.

6 Specification

- 6.1 The NAO is relying on your skill and judgment to, as appropriate depending on the nature of the Deliverables, select and/or provide it with suitable materials or perform services satisfactorily and in either event in accordance with the Order.
- 6.2 You shall comply with all applicable regulations or legal requirements (as appropriate depending on the nature of the Deliverables) concerning the production, packaging and delivery of any goods or materials and/or the performance of any services.
- 6.3 You shall at all times comply with all reasonable instructions and directions of the NAO given in connection with the Order.
- 6.4 You warrant that the Deliverables will be produced or provided by appropriately qualified and trained personnel, who shall act with due competence, care and diligence and that any services that are part of the Deliverables will be provided in accordance with best practice in your industry and to such high standard of quality as it is reasonable of the NAO to expect in the circumstances.

- 6.5 You warrant that the Deliverables will be of satisfactory quality, free from defects and fit for the purposes for which they are required by the NAO and all Deliverables will comply in every respect with all specifications, designs or requirements provided or notified by the NAO to you.

7 Rights

- 7.1 You warrant that the Deliverables will be original and will not infringe any third party's IPR or be in any other way contrary to law or any relevant regulatory code. In the case of pre-existing works bought in by you and supplied as part of the Deliverables you will procure at your expense that the NAO is granted a worldwide licence to use such works for all purposes for the full terms of the relevant IPR.

8 Ownership of IPR in deliverables

- 8.1 Except in the case of pre-existing IPR which may be supplied as part of the Deliverables and where consent to include such IPR has been obtained from the NAO and except where otherwise stated in the Order, the NAO shall be the owner of any and all IPR in the Deliverables and you hereby assign, by way of future assignment, such IPR upon delivery or payment of the price of the Deliverables, whichever first occurs, and, unless otherwise specified overleaf, you agree to deliver the same to the NAO and do all such things required by the NAO to effect the assignment when so requested at no further charge.

9 Packaging

- 9.1 All Deliverables must be packed securely so as to be delivered to the NAO in perfect condition and, without prejudice to this, in the event that the Deliverables are not delivered in good condition it shall be deemed that they were not packed in accordance with this provision.
- 9.2 Packaging material shall be supplied free of charge and shall not be returnable unless the NAO has so agreed in writing prior to the time of delivery provided this does not conflict with any of the NAO's duties under applicable UK waste regulations.
- 9.3 Packaging shall be in accordance with any requirements specified from time to time by the NAO and all Deliverables supplied shall carry such information as is specified by the NAO.
- 9.4 Unless specifically stated on the front of the Order, the NAO shall not be required to retain packaging material and may return or reject Deliverables in accordance with these conditions whether or not it retains such packaging.

10 Safe Custody

- 10.1 You shall take good care of all Deliverables and any items entrusted to you by the NAO, identify all such items as the NAO's and return them to the NAO on demand.

11 Prices and payment

- 11.1 All prices specified in the Order by the NAO are and shall remain fixed and, unless provision for variation of prices is expressly stated on the front sheet

of the Order form, no variation is permitted. Unless agreed otherwise and stated on the front of the Order all expenses and disbursements are included within the price stated.

- 11.2 The benefit of all commissions, discounts, volume and other rebates must be passed on to the NAO.
- 11.3 Unless otherwise stated on the front of the Order, you may not issue any invoice under the Contract until all Deliverables have been delivered to the NAO under this Contract.
- 11.4 The NAO shall pay all undisputed invoices within thirty (30) days of receipt. Payment shall be made by means of BACS transfer to the bank account notified by you, the Supplier.
- 11.5 The NAO may set off any amount you owe to the NAO against any amount it owes you under this contract.
- 11.6 The NAO shall consider and verify any invoices for payment submitted by you in a timely fashion and the NAO acknowledges that undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed.

12 Indemnities

- 12.1 You undertake to indemnify and hold harmless the NAO, its clients and their respective assigns and licensees, from and against all and any costs (including without limitation legal costs), claims, expenses, actions, proceedings or damages incurred or suffered by them or any of their employees, agents or contractors as a result of any breach of your obligations, warranties, agreements and undertakings in this Contract.

- 12.2 This clause 12 is subject to any limit of liability stated in the Order.

- 12.3 However, any limit of liability shall not apply in respect of any death or personal injury caused by your negligence, any fraud or fraudulent misrepresentation committed by you or any breach of clauses 7.1 or 23.5.

13 Confidentiality

- 13.1 You acknowledge that the Order and its subject matter are confidential to the NAO and shall not be disclosed or publicised to any third party by you for any reason without the NAO's express prior written consent.
- 13.2 You undertake not to use the name, logo, trademarks or other identity of the NAO (or any client of the NAO for whom the Deliverables are to be supplied) for any advertising or publicity purposes or otherwise without the NAO's express prior written consent.
- 13.3 You shall not without the NAO's express prior written consent copy, publicise or make available to any third party any Confidential Information supplied by the NAO for the purposes of the Order.

14 Freedom of Information and Environmental Regulations

- 14.1 You acknowledge that the NAO is subject to the requirements of the Freedom of Information Act 2000 ("FOIA") (and any subordinate legislation made under this Act) and the Environmental Information Regulations 2004 ("EIR") (and any subordinate legislation made under this Act) and shall assist and co-

operate with the NAO (at your expense) to enable the NAO to comply with these requirements.

- 14.2 If you are subject to FOIA and/or the EIR and you receive a request for information in respect of the Contract, you shall notify the NAO within 2 working days and seek the views of the NAO before responding to any such request for information.
- 14.3 In respect of any request for information received by the NAO in respect of the Contract, The NAO shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of this Contract, you hereby give your consent for the NAO to publish the Contract in its entirety, including from time to time agreed changes to the Contract, to the general public.
- 14.4 In respect of any request for information received by the NAO in respect of the Contract, the NAO may consult with you to inform its decision regarding any exemptions but the NAO shall have the final decision in its absolute discretion.

15 Data protection

- 15.1 In this clause 15, the terms 'data controller', 'data processor', 'process' and 'personal data' have the same meaning as in the Data Protection Act 1998 ("DPA 1998").
- 15.2 The NAO shall be the data controller and you shall be the data processor of all personal data made available by

the NAO to you or generated or obtained by you as a consequence of your performance of this agreement.

- 15.3 You shall take all measures as are necessary to ensure that in performing your obligations under this agreement you do not commit any breach of the DPA 1998 or the Computer Misuse Act 1990 nor cause any breach of the DPA 1998 or the Computer Misuse Act 1990 on the part of the NAO or any third person or body.
- 15.4 Save as is necessary to comply with clause 15.3, you shall not process personal data under the Contract except on the express instruction of the NAO.
- 15.5 You shall co-operate with the NAO and take such action as the NAO reasonably requires to enable the NAO to comply with its obligations under the DPA 1998. You further undertake to notify the NAO as soon as reasonably required or in any event within 24 hours if the Contractor believes there may have been any breach of security in relation to personal data.

16 Rejection of deliverables

- 16.1 Notwithstanding any deemed acceptance of Deliverables and without prejudice to its statutory or common law rights, the NAO shall be entitled (acting reasonably) to reject any Deliverables before or after delivery if the same do not conform to sample or are defective in workmanship or otherwise not of satisfactory quality, not fit for their purpose or not in accordance with the

Order or any drawings or specifications supplied by the NAO

16.2 Where so rejected:

16.2.1. such Deliverables shall after notice thereof to you be held by the NAO at your sole risk and expense until you shall collect the same;

16.2.2. the NAO may terminate the Contract forthwith; and

16.2.3. you will repay in full to the NAO whatever has already been paid to you in that regard unless the NAO agrees in writing to allow you to arrange prompt correction, completion or replacement of any Deliverables to the NAO's satisfaction at your own expense (including transportation charges).

17 Insurance

17.1 The risk of damage or injury to property or to third parties in the course of performance of the Contract in any part of the world (including the risk of loss or damage in transit to any of the Deliverables in your possession or control, third party risks and employer's liability insurance (or similar) in respect of all employees, agents, representatives and sub-contractors of yours who shall at your request or directions be on the NAO's premises or elsewhere at any time for or in connection with the provision of the Deliverables) shall be yours. The NAO recommends that you take out full indemnity insurance to cover such risks and if requested by the NAO or stated in the Order you shall take out such insurance.

18 Assignment and sub-contracting

18.1 You may not assign or sub-contract any of your rights or obligations under the Contract without the prior written consent of the NAO.

18.2 Any sub-contract awarded by you must contain suitable provisions to impose, as between you and the other party to the sub-contract—

(i) requirements to the same effect as those which clauses 11.4 and 11.6 require to be imposed as between the parties to the Order and the Contract; and

(ii) a requirement for the sub-contractor to include in any sub-contract which it in turn awards suitable provisions to impose, as between the parties to that sub-contract, requirements to the same effect as those required by this clause 18.2 (ii).

19 Termination

19.1 Without prejudice to its other rights the NAO shall have the right to cancel the Order and to terminate the Contract if:

19.1.1. you commit a breach of this Contract and (if the breach is remediable) fail to remedy the breach within 7 days of written notice to do so; or

19.1.2. you become insolvent, bankrupt, enter into liquidation, enter into a voluntary arrangement, appoint a receiver or such similar event save for the purposes of a solvent

reconstruction or
amalgamation; or

19.1.3. the Order and/or Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of the Regulations; or

19.1.4. the provisions of regulation 73(1) (b) and/or (c) of the Regulations apply.

20 Cancellation or interruption

- 20.1 The Order may be cancelled by the NAO at any time prior to the NAO's acceptance of all the Deliverables, upon written notice to you. In such event, the NAO will pay you, in lieu of the price specified on the front of the Order, the direct non-cancellable costs incurred up to that point by you and any direct non-cancellable costs committed to the performance of your obligations hereunder prior to such cancellation provided, however, that the total amount of such costs shall not exceed the price specified on the Order. The NAO will not be responsible to you for any cancellation fees or penalties unless provided for on the Order or in a separate written agreement in respect of the Order signed by the NAO and you.
- 20.2 Should the NAO or its clients be effected by a Force Majeure event, the NAO may, without incurring any additional liability to you, serve notice on you identifying the relevant event

and anticipated delay and altering the date or dates for delivery of the Deliverables until the event or circumstances causing the stoppage, interruption or restriction have ceased. If delivery or performance has been suspended for any such reason the NAO shall not be liable to make any payment to you until the Deliverables are supplied. If such Force Majeure event continues for a period in excess of 2 months, either party may terminate the Agreement by notice in writing with immediate effect.

21 Security of information

- 21.1 You shall comply with, and shall ensure that your Staff comply with, the provisions of:
- (a) the Official Secrets Acts 1911 to 1989;
 - (b) the Security Policy Framework published by the Cabinet Office; and
 - (c) Section 182 of the Finance Act 1989.
- 21.2 In the event that you or your Staff fail to comply with this clause, the NAO reserves the right to terminate the Contract by giving notice in writing.

22 Governing terms, law and jurisdiction

- 22.1 The terms included in the Order and these Conditions, and no other terms, shall govern the Contract and shall prevail over any other terms or conditions referred to orally or in correspondence between the NAO and you unless the NAO and you have negotiated other contract terms under the contract reference number printed on the Order in which case these shall prevail.

- 22.2 The terms of this Contract shall be interpreted in all respects in accordance with English law and the parties submit to the non-exclusive jurisdiction of the English courts in all matters pertaining thereto.
- 22.3 Upon termination of this contract for whatsoever reason clauses 1, 4, 5, 7, 8, 12, 13, 14, 15, 16, 17, 18, 21 and 22 shall continue to apply between the parties.

23 Other provisions

- 23.1 All notices, orders and instructions provided to you under the Order shall be regarded as properly served if sent by hand, post, fax or email to you at your address on the front of the Order.
- 23.2 All waivers and variations of this contract must be in writing and signed by both parties.
- 23.3 If a provision, or part of a provision, is found to be illegal or unenforceable, the remainder of this Contract shall continue in effect to the maximum possible extent.
- 23.4 Only these Conditions apply to this Contract. No other Conditions which you seek to impose or which may be implied by a course of dealing shall apply.
- 23.5 You shall do nothing to incur or that would cause the NAO to incur any liability under the Bribery Act 2010 and shall comply with the NAO's ethics and anti-bribery policies.
- 23.6 Any provision within these Conditions granting rights or privileges to the NAO shall be construed as granting those rights and privileges jointly to the NAO and to the Comptroller and Auditor General (each of whom may exercise or enforce them) but to no other third party.