

General terms and conditions of purchase

The Pensions Regulator

1. Definitions

1.1 In these terms and conditions:

‘Acceptance’ shall mean the acceptance of the Goods and/or Services (as applicable) by the Authority by written confirmation by the Authority that the Goods and/or Services have been delivered and/or performed to the Authority’s reasonable satisfaction.

‘Authority’ shall mean The Pensions Regulator of Napier House, Trafalgar Place, Brighton, Sussex, BN1 4DW.

‘Contract’ shall mean the contract between the Authority and Contractor for the sale and purchase of the Goods and/or the supply and acquisition of the Services (as applicable), consisting of the Purchase Order, these Contract Terms, and any other documents (or parts thereof) referred to in the Purchase Order.

‘Contract Terms’ shall mean these standard terms and conditions of purchase and includes any special terms agreed in writing between the Authority and the Contractor in accordance with Clause 3.1.

‘Contractor’ shall mean the person, firm or company to whom the Purchase Order is issued.

‘Date for Delivery’ shall mean the date for delivery of the relevant Goods and/or Services specified in the Purchase Order.

‘Delivery’ shall mean completion of delivery of all Goods (if any) and all Services (if any) described on the Purchase Order.

‘Force Majeure’ means any event or occurrence which is outside the reasonable control of the party concerned and which is not attributable to any act or failure to take preventative action by that party, including act of God, fire, flood, violent storm, war, revolution or acts of terrorism, but excluding:

- strikes, lock outs or other industrial action whether of the affected party’s own employees or others; or
- the failure by any sub-contractor or agent to perform its obligations under any sub-contract or contract; or
- the failure of supplies of power or other goods and services.

‘Goods’ means the goods to be supplied and delivered by the Contractor under the Purchase Order (including any instalment, component, part of or raw materials used in such goods) and includes any labels, instructions or handbooks relating to such goods.

‘Price’ shall mean the sum stated in the Purchase Order for the supply of the Goods and/or completion of the Services, or the sum calculated in accordance with any schedule attached to

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the Purchase Order together with such additions or deductions as may be allowed under these Contract Terms.

‘Purchase Order’ shall mean the purchase order placed by the Authority with the Contractor for the supply of the Goods and/or Services.

‘Services’ means the services to be supplied and delivered by the Contractor under the Purchase Order and includes any labels, instructions or handbooks relating to such services.

1.2 In these Contract Terms where the context permits references to:

- a) the masculine gender includes the feminine and neuter genders where appropriate;
- b) the singular includes the plural and vice versa;
- c) a person includes a natural person, firm, corporate or unincorporated body (whether or not having separate legal personality);
- d) any enactment order regulation standard or other similar instrument shall be construed as a reference to any subsequent enactment order regulation standard of instrument amending same; and
- e) the words ‘include’ and ‘including’ are to be construed without limitation.

2. General

2.1 A Purchase Order constitutes an offer by the Authority to purchase Goods and/or Services from the Contractor in accordance with these Contract Terms.

2.2 The Contractor shall be deemed to accept these Contract Terms on the earlier of issuing written acceptance of the Purchase Order or by taking any act consistent with fulfilling the Purchase Order.

2.3 These Contract Terms shall apply to the Contract the exclusion of any other terms and conditions that the Contractor seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. Without prejudice to the generality of the foregoing, the Authority will not be bound by any standard or printed terms furnished by the Contractor in any of its documents unless the Contractor specifically states, in writing, separately from such terms that it intends such terms to apply and the Authority expressly agrees to be bound by such terms by notifying the Contractor in writing.

2.4 Without prejudice to Clause 19, the Contractor shall not disclose any details of the Purchase Order (except insofar as it is necessary for the Contractor to fulfil its obligations under the Purchase Order) without the prior written consent of the Authority, which shall not be unreasonably withheld.

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3. Variation

- 3.1 Neither the Authority nor the Contractor shall be bound by any variation or waiver of, or addition to these Contract Terms (in whole or in part) except as agreed by both parties in writing and signed on their behalf.

4. Specification, description, sample and standard

- 4.1 The Contractor shall ensure that all Goods and/or Services (as applicable) conform in all respects (including in relation to quantity, quality, description, packaging and labelling) with:
- a) the provisions of the Contract and in particular the specification, drawings, samples or other descriptions of the Goods and/or Services (as applicable) contained or referred to in the Contract (whether in the Purchase Order or as otherwise agreed in writing by the Authority);
 - b) any European (EU) or International Standards (ISO) specified in the Purchase Order or, where no EU or ISO standard is specified, with the relevant British standards; and
 - c) the requirements of any relevant legislation and regulatory requirements current at the Date for Delivery.

5. Quality

- 5.1 The Contractor shall ensure that all Goods are of satisfactory quality as that expression is defined in the Sale of Goods Act 1979 (as amended by the Sale and Supply of Goods Act 1994) including all the aspects of quality as listed in s.14(2)(B) of the said Act, and shall be free from defects in design, materials and/or workmanship.

6. Fitness for purpose

- 6.1 The Contractor shall ensure that all Goods are fit for any purpose held out by the Contractor or made known to the Contractor by the Authority, expressly or by implication, and whether or not that is a purpose for which such Goods are commonly supplied, and in this respect the Authority relies on the Contractor's skill and judgment.

7. Intellectual property

- 7.1 All intellectual property rights ('IPR') in any materials prepared or supplied by the Authority to the Contractor shall remain the property of the Authority.

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- 7.2 All IPR in materials existing prior to the date of the Purchase Order and which are supplied by the Contractor to the Authority shall remain the property of the Contractor but such IPR are hereby licensed to the Authority to the extent necessary to enable the Authority to use and enjoy the benefit of the Goods and/or Services.
- 7.3 All IPR in materials prepared by or developed by the Contractor in connection with the provision of the Services shall vest with and are hereby assigned by way of present and future assignment to the Authority with full title guarantee.
- 7.4 The Contractor shall, promptly at the Authority's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Authority may from time to time require for the purpose of securing for the Authority the full benefit of the Contract, including all right, title and interest in and to the IPR assigned to the Authority in accordance with Clause 7.3.
- 7.5 The Contractor shall indemnify the Authority from and against all costs, claims proceedings or demands in respect of any infringement of IPR arising out of the sale or use of any Goods and/or Services supplied under the Contract, provided always that the Contractor shall not be required to indemnify the Authority against such infringement where the Goods and/or Services are supplied/performed to the particular design or specification of the Authority.

8. Price

- 8.1 The price of the Goods and the Services shall be as set out in the Purchase Order and (unless stated otherwise) is exclusive of any applicable VAT (which shall be payable by the Authority on receipt of a valid VAT invoice from the Contractor) but inclusive of all costs of packaging, insurance and carriage of the Goods, and all costs and expenses directly or indirectly incurred in connection with the performance of the Services, and any duties, imposts or levies other than VAT.

9. Payment

- 9.1 The Contractor may submit an invoice to the Authority for the Goods and/or Services on or after Delivery has been completed. The Contractor shall submit clearly labelled invoices with the relevant Purchase Order reference, other relevant information and clearly addressed to the Authority's finance team to aid the invoice matching and payment process. Failure to do so may result in late payment for which the Authority will not be held liable.
- 9.2 Subject to the provisions of this Clause 9, the Authority shall pay invoices in full via BACS within thirty (30) days after the receipt by the Authority of a valid invoice, unless, before payment is due, the Authority has rejected all or any part of the Goods and/or Services. Payment shall be made to the bank account nominated in writing by the Contractor.

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9.3 The Authority shall be entitled to deduct from any payment otherwise due to the Contractor any sum that is due to the Authority under the Contract.

10. Delivery

10.1 Time shall be of the essence in respect of delivery of the Goods and performance of the Services in accordance with the Contract and the Purchase Order. Notwithstanding this, if for any reason the Authority requests delivery or performance to be delayed, the Contractor shall agree to such request at no extra cost to the Authority and the provisions of this Clause 10 shall apply to any such revised date for delivery or performance.

10.2 The Contractor shall at its own expense deliver the Goods to the Authority and/or perform the Services at the address and on the date(s) specified in the Purchase Order and unless otherwise specified in the Purchase Order delivery shall include the unloading of any Goods. The Authority reserves the right to amend any delivery instructions.

10.3 Delivery of the Goods and/or the Services shall be deemed to be complete on receipt of the Goods and/or the Services in accordance with all terms of the Contract.

10.4 If the Goods are incorrectly delivered, the Contractor shall be responsible for any additional expense incurred, save where the fault for such incorrect delivery lies with the Authority.

10.5 A delivery note shall accompany each delivery of Goods. All delivery notes shall be clearly marked with the Authority's Purchase Order number and the description and quantity of the Goods concerned.

11. Time of performance

11.1 If the Contractor does not deliver the Goods and/or perform the Services or any part thereof within the time specified in the Contract, then, without limiting any other right or remedy the Authority may have, the Authority shall be entitled to terminate the Contract and purchase other Goods and/or Services of the same or similar description from another supplier to make good such default and recover from the Contractor any costs and expenses reasonably incurred by the Authority in obtaining such substitute Goods and/or Services.

12. Acceptance and rejection

12.1 If any of the Goods, or the packages containing the same, and/or the Services do not comply with the Purchase Order or with any term of the Contract including in respect of quantity, quality or description (and even if any defect is minor), the Authority shall be entitled to reject those Goods and/or Services or any part of them at any time after delivery and/or performance, irrespective of whether the Authority has accepted them.

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- 12.2 Any right or remedy of the Authority under this Clause 12 is without prejudice to any other right or remedy of the Authority, whether or not under the Contract.
- 12.3 If any Goods or Services are not supplied or performed in accordance with the Contract, then the Authority shall be entitled at any time within a 3 month period after the date of delivery of the Goods or performance of the Services (as applicable):
- a) to require the Contractor to repair the Goods or (at the Authority's sole option) to supply replacement Goods or Services in accordance with the Contract within seven days (and the provisions of this Clause 12 shall apply to any such repaired or replaced Goods or Services); or
 - b) irrespective of whether or not the Authority has previously required the Contractor to repair the Goods or to supply any replacement Goods or Services, to treat the Contract as discharged by the Contractor's breach and require the repayment of any part of the Price which has been paid for the Goods and/or Services.

13. Property and risk

- 13.1 The Goods shall become the property of the Authority when they have been delivered in accordance with Clause 10 above without prejudice to the Authority's right to reject the Goods under Clause 12, unless payment for the Goods is made prior to delivery, when it shall pass to the Authority once payment has been made.
- 13.2 Unless otherwise provided for in the Contract the risk in any Goods which are to be delivered by the Contractor to the Authority shall pass to the Authority on Acceptance by the Authority of such Goods.
- 13.3 Where Goods belonging to the Authority are to be sent to the Contractor's works for overhaul, repair or cleaning such Goods shall be at the risk of the Contractor from the time that they are handed over to the Contractor until they have been delivered back to the Authority and, if so provided for on the Purchase Order, repositioned, and reconnected to the satisfaction of the Authority. The property in such Goods shall at all times remain with the Authority and the Contractor shall clearly mark such Goods as belonging to the Authority and keep them separate from all other Goods in the Contractor's possession as far as it is reasonable to do so in order to complete the work specified in the Purchase Order.

14. Force Majeure

- 14.1 Neither the Contractor nor the Authority shall be liable to the other for any failure to fulfil its obligations under the Contract to the extent that and for so long as such a failure is caused by an event of Force Majeure, PROVIDED THAT the party affected shall as soon as reasonably practicable serve notice on other party specifying the circumstances of the Force Majeure event. If such Force Majeure event prevents or delays the delivery of the Goods and/or

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Services for more than one week after the Date for Delivery, the Authority shall be entitled to terminate the Contract by giving the Contractor written notice and in this event, the Authority shall pay to the Contractor such reasonable sum as may be agreed between the parties in respect only of the expenditure actually incurred and commitments entered into by the Contractor in the performance of the Contract up to the date of the Force Majeure notice.

15. Assignment and sub-contracting

- 15.1 The Contractor shall not assign or transfer the whole or any part of its rights or obligations under the Contract.
- 15.2 The Contractor shall not sub-contract any part of the Contract without the Authority's prior written consent, which shall not be unreasonably withheld. Where the Authority's prior written consent is obtained, the Contractor shall be responsible for all Services performed and Goods supplied by sub-contractors of the Contractor as if such Services had been done or such Goods had been supplied by the Contractor.
- 15.3 The Authority shall be entitled to assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- 15.4 Nothing within these Contract Terms shall confer upon any third party the right or benefit to pursue any term of the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

16. Equal opportunities

- 16.1 The Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or any Act of Parliament or statutory modification or re-enactment thereof relating to discrimination in employment. The Contractor shall take all reasonable steps to secure the observance of these provisions by all servants, employees or agents of the Contractor and all sub-contractors permitted under the Contract.

17. Anti-corruption/corrupt gifts or payments

- 17.1 The Contractor undertakes and warrants that neither it nor the Contractor's staff, employees or sub-contractors have offered, given or agreed to give, nor shall offer or give or agree to give to any person, company or firm any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do anything in relation to the obtaining of the Contract or the execution of the Contractor's obligations under the Contract or for showing or forbearing to show favour or disfavour to any person, company or firm in relation to the Contract.

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- 17.2 The Contractor warrants that it has in place, and undertakes that it will comply with, policies and procedures to avoid the risk of bribery (as set out in the Bribery Act 2010) and fraud within its organisation and in connection with its dealings with third parties.
- 17.3 The Contractor warrants that it has not colluded, and undertakes that it will not at any time collude, with any third party relating to its pricing under the Contract and further warrants and undertakes that it has complied, and will at all times comply, with the provisions of the Competition Act 1998 (or equivalent anti-trust legislation or regulations applicable in the countries in which the Contractor operates or is to provide the Services) in connection with this Contract and the provision of the Goods and/or Services. Nothing under this Clause 17.3 is intended to prevent the Contractor from discussing the terms of the Contract and the Contractor's pricing with the Contractor's professional advisors.

18. Liability

- 18.1 Subject to Clause 18.2 below, the total liability of each party to the other, whether in contract, tort, negligence, breach of statutory duty or otherwise, for any direct or indirect loss or damage, costs or expenses arising under or in connection with the Contract shall not exceed 250% of the sum of the Price.
- 18.2 The liability cap in Clause 18.1 above does not apply to the indemnity in Clause 7.5. Nothing in the Contract shall exclude or restrict the liability of either party to the other for death or personal injury resulting from negligence or for fraudulent misrepresentation or in any other circumstances where liability may not be so limited under any applicable law.

19. Confidentiality

- 19.1 The Contractor undertakes to treat as confidential all information relating to:
- a) the business and operations of the Authority;
 - b) the terms and conditions of the Contract; and
 - c) all information relating to third parties obtained through the Contractor's provision of the Goods and/or Services and not disclose or use such information except as may be necessary for the proper provision of the Goods and/or Services.
- 19.2 The Contractor shall ensure that its employees, sub-contractors, and agents comply with confidentiality obligations set out in Clause 19.1.
- 19.3 The provisions of Clauses 19.1 and 19.2 shall not apply to:
- a) any information in the public domain otherwise than through act or default of (or on behalf of) the Contractor, including through disclosure under Clause 24; and

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b) disclosure of any information where this is required by law.

- 19.4 The Contractor acknowledges that, in responding to requests for information in relation to the Contract which are made under the Freedom of Information Act 2000 or any statutory modification or re-enactment thereof or any related guidelines or codes of practice, the Authority shall be entitled to provide information in relation to the Contract, save such information which in the Authority's opinion is exempt information as described within any provisions of Part II of the Freedom of Information Act 2000, and where it is in the public interest to maintain the exemption.
- 19.5 The Contractor shall assist the Authority at no additional charge in meeting the requests for information in relation to the Contract which are made to the Authority in connection with the Freedom of Information Act 2000 or any statutory modification or re-enactment thereof, or any related guidelines or codes of practice. The Authority may from time to time serve on the Contractor an information notice requiring the Contractor within such time and in such form as is specified in the information notice, to furnish to the Authority such information as the Authority may reasonably require relating to such requests for information.
- 19.6 At the request of the Authority at any time, the Contractor shall immediately cease use of any and all materials and property belonging or relating to the Authority, including all Confidential Information, and all copies of the same, then in its possession, custody or control, and shall certify in writing to the Authority that the same has been done, provided that the Contractor shall be entitled to retain one copy of such information if and solely to the extent required for the purposes of satisfying any of its audit and regulatory requirements.
- 19.7 The obligations under this Clause 19 shall remain in force notwithstanding completion, cancellation or termination of the Contract.

20. Termination

- 20.1 Without prejudice to any other rights or remedies, the Authority may at any time by notice in writing summarily terminate the Contract without compensation to the Contractor in any of the following events:
- a) if the Contractor commits any material breach of any of the Contract Terms and that breach (if capable of remedy) is not remedied within seven (7) days of notice being given requiring it to be remedied;
 - b) if the Contractor, being an individual, or, where the Contractor is a firm, any partner in that firm shall at any time become bankrupt, or shall have a receiving order, administration order or interim order made against him, or shall make any composition or scheme of arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so;

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- c) if the Contractor being a company shall pass a resolution or the court shall make an order, that the company shall be wound up (except for the purpose of amalgamation or reconstruction), or if an administrative receiver on behalf of a creditor shall be appointed, or if the court shall make an administration order, or if circumstances shall arise which entitle the court or creditor to appoint an administrative receiver or which entitle the court to make a winding-up order or administration order; 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 the Authority;
- d) if the Contractor commits any breach of Clause 17 above;
- e) if the Contractor fails to comply with The Pensions Act 2004; or
- f) there is a change of control of the Contractor (and for the purposes of this Clause “control” means the ability to direct the affairs of another whether by virtue of the ownership of shares, contract or otherwise).

20.2 The Authority shall be entitled to terminate the Contract at any time by serving seven (7) days’ written notice on the Contractor.

20.3 Provisions of the Contract which either are expressed to survive its expiry or termination or from their nature or context it is contemplated that they are to survive such expiry or termination, shall remain in full force and effect notwithstanding such expiry or termination.

21. Publicity

21.1 Neither the Contractor nor his sub-contractors or assignees shall without prior written consent of the Authority, advertise or publicly announce that the Contractor is providing Goods and/or Services to the Authority or make use of the Authority’s name or brand.

22. Notices

22.1 Notice given under the Contract shall be in writing, sent for the attention of the relevant person named on the Purchase Order and to the relevant address given on the Purchase Order (or such other address or person as the relevant party may notify to the other party) and shall be delivered either personally, by pre-paid, first-class post or by recorded delivery. A notice is deemed to have been received: if delivered personally, at the time of delivery; in the case of pre-paid first class post or recorded delivery, 48 hours from the date of posting. If deemed receipt under this Clause 22.1 is not within the hours of 09:00 to 17:00 on a normal working day in the country specified in the recipient’s address for notices (a “**Working Day**”) the notice will be deemed to be received at 09:00 on the first subsequent Working Day. To prove service of notice, it is sufficient to prove that the envelope containing the notice was properly addressed and posted or handed to the courier.

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23. Governing Law and Jurisdiction

23.1 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) (a “**Dispute**”), shall be governed by, and constructed in accordance with, English law, and the parties hereby irrevocably submit to the exclusive jurisdiction of the English courts to settle any and all Disputes.

24. Transparency

24.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions for the Freedom of Information Act 2000, the content of the Contract is not confidential information. The Authority 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 Freedom of Information Act 2000. Notwithstanding any other term of the Contract, the Contractor hereby gives his consent for the Authority to publish the Contract in its entirety, (but with any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act 2000 redacted) including from time to time agreed changes to the Contract, to the general public.

25. No partnership

25.1 Nothing in the Contract is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way.

26. Information Sharing

26.1 All Central Government Departments and their Executive Agencies and Non Departmental Public Bodies are subject to control and reporting within Government. In particular, they report to the Cabinet Office and HM Treasury for all expenditure. Further, the Cabinet Office has a cross-Government role delivering overall Government policy on public procurement - including ensuring value for money and related aspects of good procurement practice.

26.2 For these purposes, the Authority may disclose within Government any of the Contractor's documentation/information (including any that the Contractor considers to be confidential and/or commercially sensitive such as specific bid information) submitted by the Contractor to the Authority during this Procurement. The information will not be disclosed outside Government. Contractors taking part in this competition consent to these terms as part of the competition process.