

**THE SCOTTISH GOVERNMENT
SCOTTISH GOVERNMENT TERMS AND CONDITIONS 5
(SGTC5)
CONDITIONS OF CONTRACT FOR THE SALE OF GOODS**



These Conditions may only be varied with the written agreement of the Seller. No terms or conditions put forward at any time by the Purchaser shall form any part of the Contract unless specifically agreed in writing, by the Seller.

1. DEFINITIONS etc

1.1 In these Conditions of Contract:-

1.1.1 'Contract' means the agreement between the Seller and the Purchaser constituted by the Seller's acceptance of the Purchaser's offer to purchase the Goods;

1.1.2 'Contract Price' means the price payable by the Purchaser in respect of the purchase of the Goods, as such price may be stated in the Contract or otherwise agreed between the parties; together with any Value Added Tax or any other charges, duties or taxes which may be levied or due in respect of the Goods or their supply or the Contract Price;

1.1.3 'Goods' means any goods of whatsoever nature supplied by the Seller to the Purchase pursuant to or in connection with the Contract;

1.1.4 'Purchaser' means the individual, firm, company or other organisation or body contracting to purchase any goods from the Seller; and

1.1.5 'Seller' means the Scottish Ministers.

2. THE CONTRACT

2.1 The Contract shall not be varied in any manner whatsoever except with the written agreement of the Seller. Without prejudice to the generality of the foregoing, the failure of the Seller to insist upon strict performance of any term of the Contract, or the failure of the Seller to exercise any right or remedy to which it is entitled in terms of or in respect of any term of the Contract, shall not be taken as agreement on the part of the seller to any variation of any term part of the Contract.

2.2 No representation, statement or warranty given by any agent, employee or representative of the Seller, whether made in writing or orally and whether made before or after the parties entered into the Contract, will modify, vary or supersede any term of the Contract (except insofar as they modify, vary or supersede same in writing in accordance with the provisions of Clause 2.1).

The Contract constitutes the whole agreement between the Seller and the Purchaser, and in entering into the Contract, the Purchaser shall be deemed not to have relied on, and waives any claim in respect of any breach of; or misrepresentation (whether negligent or otherwise) contained in, any such representation, statement or warranty.

3. THE GOODS

- 3.1 The Purchaser acknowledges that he has had an opportunity to examine the Goods prior to entering into the Contract. Accordingly, whether the Purchaser has taken that opportunity, the Purchaser shall be deemed to purchase the Goods subject to all defects and imperfections affecting same and with notice of all such defects and imperfections. The Purchaser shall not be entitled to reject (either in whole or in part) the Goods because of any defects or imperfections in the Goods, or to claim any compensation or damages of whatsoever nature in respect of any such defects or imperfections.
- 3.2 All conditions, terms and warranties implied by, or expressly stated to apply to contracts of a type like the Contract by, statute or common law which may lawfully be excluded from the Contract are hereby so excluded.
- 3.3 Any representation, statement or warranty concerning the Goods or their condition or quality made by any agent, employee or representative of the Seller, whether in writing or orally and whether before or after the Contract was entered into, shall be deemed to have been made for guidance only, and no warranty or guarantee in respect of the accuracy of any such representation, statement or warranty is given or is to be implied. Any such representation, statement or warranty may not be accurate and the Purchaser shall be deemed not to have relied on, and waives any claim in respect of any breach of, or misrepresentation (whether negligent or otherwise) contained in, any such condition, representation, statement or warranty.
- 3.4 The Purchaser shall be deemed not to have relied upon, and shall not in the future rely upon, the skill and judgement of the Seller or any of the Seller's agents, employees or representatives to any extent in selecting the Goods or in determining their quality or condition or suitability for any purpose.
- 3.5 Any description of the Goods given by the Seller, whether orally or in writing and whether before or after the Contract is entered into, is given by way of identification only, and shall not result in the sale of the Goods in such a manner as to constitute a sale by description, nor shall any such description be deemed to import any statement or representation concerning the Goods or their quality or condition.
- 3.6 The Seller shall have no liability to the Purchaser for any loss or damage howsoever caused (including loss or damage caused by the negligence of the Purchaser, its agents, employees or representatives) arising out of or in connection with the purchase, possession, use or resale by the Purchaser of the Goods provided that nothing in this Clause shall exclude the liability of the Seller for death or personal injury resulting directly from the negligence of the Seller, its agents, employees or representatives.

4. PRICE AND PAYMENT

- 4.1 The Seller shall provide to the Purchaser a priced invoice in respect of the Contract Price as soon as reasonably practical after the Contract has been entered into. The Purchaser shall pay the amount shown on the invoice as being payable by it to the Seller within 14 days of the date of the invoice. The time within which the Purchaser is to pay for the Goods shall be of the essence of the Contract.
- 4.2 In this Condition 4, 'invoice' includes an electronic invoice meeting all the requirements set out in regulation 70A of the Public Contracts (Scotland) Regulations 2015 or regulation 44A of the Concession Contracts (Scotland) Regulations 2016.

5. DELIVERY

Unless an alternative method of delivery is agreed between the Seller and the Purchaser in writing, the Purchaser shall collect the Goods from the offices, store or other premises of the Seller notified to him by the Seller, the time and date of such collection to be agreed between the parties provided always that:-

- 5.1 the Purchaser shall not be entitled to collect the Goods until payment in full of the Contract price has been made to the Seller, and
- 5.2 the Purchaser shall collect the Goods within 10 days of the date on which the Purchaser makes payment of the Contract price to the Seller.

6. SECURITY AND ACCESS TO SELLER'S PREMISES

- 6.1 Any access to, or occupation of, the Seller's premises which the Seller may grant the Purchaser from time to time is on a non-exclusive licence basis free of charge. The Purchaser must use the Seller's premises solely for the purpose of performing its obligations under the Contract and must limit access to the Seller's premises to such individuals as are necessary for that purpose.
- 6.2 The Purchaser must comply with the Seller's policies concerning Baseline Personnel Security Standard checks and such modifications to those policies or replacement policies as are notified to the Purchaser from time to time.
- 6.3 The Purchaser must notify the Seller of any matter or other change in circumstances which might adversely affect future Baseline Personnel Security Standard clearance.
- 6.4 At the Seller's written request, the Purchaser must provide a list of the names and addresses of all persons who may require admission to the Seller's premises in connection with the Contract, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Seller may reasonably request.

6.5 The Purchaser must ensure that any individual Purchaser Representative entering the Seller's premises has completed the process for obtaining Baseline Personnel Security Standard clearance. The Purchaser acknowledges that the Seller has the right to deny entry to any individual that has not completed the process for obtaining Baseline Personnel Security Standard clearance.

6.6 In accordance with the Seller's policies concerning visitor access, entry to the Seller's premises may be granted to individual Purchaser Representatives for the purposes of meetings, notwithstanding that the process for obtaining Baseline Personnel Security Standard clearance has not commenced or completed.

6.7 The Seller may, by notice to the Purchaser, refuse to admit onto, or withdraw permission to remain on, the Seller's premises any Purchaser Representative whose admission or continued presence would, in the opinion of the Seller acting reasonably, be undesirable.

6.8 The Seller must provide advice and assistance acting reasonably to the Purchaser to facilitate the Purchaser's compliance with this clause.

6.9 All decisions of the Seller under this clause are final and conclusive.

6.10 Breach of this clause by the Purchaser is a breach for the purposes of condition 7.2 (Termination).

In this Condition 6 the following terms have the meanings given to them below:

'Baseline Personnel Security Standard' means the pre-employment controls for all civil servants, members of the Armed Forces, temporary staff and government contractors generally.

'Purchaser Representatives' means all persons engaged by the Purchaser in the performance of its obligations under the Contract including:

- its employees and workers (including persons employed by a third party but working for and under the control of the Purchaser); and
- its agents, Purchasers and carriers.

7. RISK AND PROPERTY

7.1 Risk in the Goods shall pass from the Seller to the Purchaser at the time of collection of the Goods by or on behalf of the Purchaser from the Seller, or on delivery of the Goods by the Seller to the Purchaser or a third party on behalf of the Purchaser, whichever shall be applicable and which, in both cases, shall be immediately prior to the loading of the Goods onto or into the means of transport being used to transport the Goods from the premises of the Seller to those of the Purchaser or the third party accepting delivery on behalf of the Purchaser. In the event that the Purchaser (or any third party acting on behalf of the Purchaser) does not collect the Goods or accept delivery of them at the

time agreed between the parties, or within the period referred to in Clause 5.2, then risk in the Goods shall pass to the Purchaser at such agreed time or on the expiry of the period referred to in Clause 5.2, whichever shall be the earlier, notwithstanding that delivery of the Goods has not taken place or that the Goods have not been collected.

- 7.2 The property in the Goods shall not pass from the Seller to the Purchaser until the Seller has received payment in full of the Contract Price.
- 7.3 The Purchaser shall not sell or otherwise transfer or purport to sell or otherwise transfer the property (or any other interest) in, or grant any security over or otherwise enter into any transaction or dealing of whatsoever nature concerning the Goods to or with any third party until property in the Goods has passed to the Purchaser in accordance with the provisions of this Clause.

8. TERMINATION

The Seller may, without prejudice to any other right or remedy which he may have, terminate the Contract with immediate effect by written notice to the Purchaser in the event that:-

- 8.1 any payment due by the Purchaser to the Seller is not made by the due date;
- 8.2 the Purchaser commits (knowingly or otherwise) any other breach of these Conditions of Contract; or
- 8.3 if the Purchaser is a limited company, an administrator, administrative receiver, manager, or receiver is appointed to it, or over all or any part of the property which may from time-to-time be comprised in the property and undertaking of it, or it passes a resolution that it be wound up, or a Court makes an order that it be wound up; or
- 8.4 if the Purchaser is an individual, a petition is presented for the sequestration of the estate of the Purchaser, or he is apparently insolvent or makes any arrangement with or for the benefit of creditors, or makes any conveyance or assignation or composition for the benefit of creditors or if a trustee is appointed to manage his affairs; or
- 8.5 if the Purchaser is a partnership or firm or a number of persons acting in whatever capacity, any of the events referred to in Clause 8.3 or 8.4 occur in respect of the partnership or firm or any such person, or a petition is presented that the Purchaser be wound up as an unlimited company.

9. INDEMNITY

Without prejudice to any other right or remedy which the Seller may have, the Purchaser shall indemnify the Seller against all actions, claims, costs, demands, expenses and losses which may be made against or incurred by the Seller as a result of or in connection with any damage to property or any injury to any person (whether fatal or otherwise) which arises from any defect in the Goods or their possession, use or resale by the Purchaser or any other party or any negligent or wrongful act or omission of the Purchaser.

10. DISCRIMINATION

The Purchaser must not unlawfully discriminate against any person within the meaning of the Equality Act 2010 in its activities relating to the Contract or any other contract with the Seller.

11. BLACKLISTING

The Purchaser must not commit any breach of the Employment Relations Act 1999 (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or commit any breach of the Data Protection Act 1998 by unlawfully processing personal data in connection with any blacklisting activities. Breach of this clause is a material default which shall entitle the Seller to terminate the Contract.

12. DISPUTE RESOLUTION

12.1 The parties must attempt in good faith to resolve any dispute between them arising out of or in connection with the Contract.

12.2 Any dispute or difference arising out of or in connection with the Contract, including any question regarding its existence, validity or termination which cannot be resolved in good faith, shall be determined by the appointment of a single arbitrator to be agreed between the parties, and failing agreement within 14 days after either party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the Scottish Arbitration Centre on the written application of either party. The seat of the arbitration shall be in Scotland. The language used in the arbitral proceedings shall be in English.

12.3 Any arbitration under 12.2 is subject to the Arbitration (Scotland) Act 2010.

13. NOTICES

Any notice or other document given under or pursuant to the Contract may be delivered personally or sent by post or registered post or recorded delivery post or transmitted by telex, teletext, facsimile or other means of telecommunication resulting in the receipt of a written communication in permanent form and if so delivered or sent or transmitted to the address of the party concerned as shown in the documents making up the Contract, or to such other address as that party may be written notice to the other have substituted therefor, shall be deemed to be given and received on the first business day immediately following the day on which it was so delivered or sent or transmitted.

13A. TRANSPARENCY

The Parties acknowledge that, except for any Information which is exempt from disclosure in accordance with the provisions of the FOISA, the content of the Contract is not confidential information and the Purchaser hereby gives its consent for the Seller to publish the Contract in its entirety to the general public (but with any Information that is exempt from disclosure in accordance with the FOISA redacted) including any changes to the Contract agreed from time to time.

14. HEADINGS

The headings to Conditions shall not affect their interpretation.

15. LAW AND JURISDICTION

15.1 These Conditions of Contract, and the Contract, shall be governed by and interpreted in accordance with the Law of Scotland.

15.2 The Purchaser and the Seller each submit to the non-exclusive jurisdiction of the Scottish courts insofar as not already subject thereto.

