



# OGTC General Terms & Conditions of Purchase for Goods and/or Services

---



## DEFINITIONS

- 1.1 “Company” shall mean “The Oil & Gas Technology Centre Limited” registered in Scotland under number SC531384 whose registered office is at 20 Queens Road, Aberdeen, Scotland, AB15 4XT.
- 1.2 “Conditions” means the General Terms and Conditions of purchase set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Company and the Contractor.
- 1.3 “Consequential Loss” means any loss or anticipated loss of profit, loss or anticipated loss of revenue, business interruption, loss of use of any equipment, loss of any contract or other business opportunity and any other loss of a similar nature.
- 1.4 “Goods” means the items to be provided in accordance with the Purchase Order.
- 1.5 “Purchase Order” means the contract formed by the acceptance of the Purchase Order document and shall incorporate these conditions of purchase as may be amended by special conditions referred to in the Purchase Order document.
- 1.6 “Contractor” means the person(s), firm or company named in the Purchase Order and engaged by Company for the supply of Goods and/or execution of Services defined in the Purchase Order and includes the Contractor’s legal personal representatives, successors and assignees.
- 1.7 “Services” means the services, if any, to be supplied by the Contractor in accordance with the Purchase Order.
- 1.8 “Specification” includes any plans, drawings, standards, data or other information relating to the Goods or Services.
- 1.9 The Contractor shall be deemed to have accepted the Purchase Order and its Conditions as soon as it commences to perform any of its obligations hereunder.
- 1.10 These Conditions shall have precedence over any other conditions appearing on any acceptance form or other document emanating from the Contractor which shall have no effect except to the extent that they confirm the Purchase Order or are expressly agreed in writing by the Company.

## 2. SPECIFICATIONS

- 2.1 The quantity, quality and description of the Goods and the Services shall, subject as provided in these Conditions, be as specified in the Purchase Order and/or in any applicable Specification supplied by the Company to the Contractor or agreed in writing by the Company.
- 2.2 Any Specification supplied by the Company to the Contractor, or specifically produced by the Contractor for the Company, in connection with the Purchase Order, together with the copyright, design rights or any other intellectual property rights in the Specification, shall be the exclusive property of the Company. The Contractor shall not disclose to any third party or use any such Specification except to the extent it is or becomes public knowledge through no fault of the Contractor, or as required for the purpose of the Purchase Order.



### **3. PRICE OF THE GOODS AND SERVICES**

- 3.1 The price of the Goods and the Services shall be stated in the Purchase Order and be based on the quotation supplied by the Contractor as a result of the enquiry from the Contractor and, unless otherwise stated, shall be:-
- i) Exclusive of any applicable value added tax (which shall be payable by the Company subject to receipt of a value added tax invoice); and
  - ii) Inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the delivery address and any duties, imposts or levies other than value added tax
- 3.2 All prices specified in the Purchase Order shall be fixed and firm and not subject to escalation for the duration of the Purchase Order.

### **4. TERMS OF PAYMENT**

- 4.1 Unless otherwise stated in the Purchase Order, payment shall be made within thirty (30) days after receipt by the Company of a proper invoice, on the condition that the Goods are fit for purpose, in accordance with the Purchase Order requirements and full certification for the Goods (if required) has been received.
- 4.2 Contractor's invoice must detail the amounts and descriptions specified in the Purchase Order. Failure to comply with this provision will entitle Company to reject such non-conforming invoices.
- 4.3 The Company shall be entitled to set off against the invoice any sums owed to the Company by the Contractor.

### **5. DELIVERY**

- 5.1 Delivery of the goods and services shall be to the named destination on the Purchase Order. The delivery method shall be stated on the Purchase Order in accordance with Incoterms 2010. If a premium delivery charge is included on the Purchase Order, and the delivery date is not met, a standard delivery charge will replace the premium delivery charge.
- 5.2 Where the date of delivery is to be specified after placing the Purchase Order, the Contractor shall give the Company reasonable notice of the specified date.
- 5.3 If the Goods are to be delivered or the Services are to be performed by instalments, the Purchase Order will be treated as a single contract and not several.
- 5.4 The Company shall be entitled to cancel any Purchase Order without liability and reject any Goods delivered which are not in accordance with the Purchase Order. If it is necessary to return the Goods to the Contractor, then the cost of returning the Goods will be met by the Contractor.
- 5.5 The Contractor shall supply the Company in good time with any instructions, letters of conformity, material certificates or other information required to enable the Company to accept delivery of the Goods and/or performance of the Services.



- 5.6 If the Goods are not delivered or the Services are not performed on the due date, without prejudice to any other remedy, the Company shall be entitled to deduct from the price or (if the Company has paid the price) to claim from the Contractor by way of liquidated damage for delay, 1% of the contract value for every week's delay, up to a maximum of 10%.

## **6. RISK AND TITLE**

- 6.1 Risk of damage to or loss of the Goods shall pass to the Company upon delivery to the Company in accordance with the Purchase Order.
- 6.2 The property in the Goods shall pass to the Company upon delivery, unless payment for the Goods is made prior to delivery, when it shall pass to the Company once payment has been made and the Goods have been appropriated to the Purchase Order.

## **7. WARRANTIES AND LIABILITY**

- 7.1 The Contractor warrants to the Company that the Goods will comply with all statutory requirements and regulations relating to the sale of the Goods.
- 7.2 During a period of 24 months after the time of dispatch or 18 months after installation, (whichever period expires first), the Contractor shall, at his own expense, repair or replace the Goods or Services or any part thereof found to be defective due to faulty design, material, equipment or workmanship (other than design specified in detail by the Company) or to any act or omission of the Contractor. If the Contractor is unable or refuses to undertake any re-performance which has been requested by the Company, the Company shall be entitled (without prejudice to any other rights and remedies it may have under the Purchase Order) to undertake any re-performance itself or to procure a third party to undertake such re-performance and, in either instance, recover all costs (including incidental costs) of such re-performance from the Contractor. For substituted or repaired items the prevailing guarantee will be extended from the date of replacement.
- 7.3 The Contractor shall indemnify the Company against all liability, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the Company as a result of or in connection with:-
- i) breach of any warranty given by the Supplier in relation to the Goods or the Services;
  - ii) any claim that the Goods infringe, or their importation, use or resale infringes the patent, copyright, design right, trademark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any Specification supplied by the Contractor;
  - iii) any liability under the Consumer Protection Act 1987 in respect of the Goods;
  - iv) any act or omission of the Contractor or its employees, agents or sub-contractors in supplying, delivering or installing the Goods or performing the Services; or



v) any defect in the Goods or Services provided.

7.4 The Contractor shall indemnify the Company against all loss or damage to property or liability for injuries (including death) sustained by anyone, including Contractor's and Company's employees and third parties, arising out of or in connection with the Goods and/or Services covered by the Purchase Order.

7.5 The Contractor shall take out and maintain, with a first class insurance company, insurance adequate to cover its liabilities hereunder and to fulfil any requirements of local government or other appropriate bodies.

7.6 The Company shall not be responsible to the Contractor for Consequential Loss. The Contractor shall not be liable to the Company for Consequential Loss other than for sums receivable by the Company under insurance policies carried by the Contractor.

## **8. FORCE MAJEURE**

8.1 Neither the Contractor nor the Company shall be liable to the other or be deemed to be in breach of the Purchase Order by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Goods or Services, if the delay or failure was beyond that party's reasonable control.

## **9. TERMINATION**

9.1 The Company shall be entitled to cancel the Purchase Order in respect of all or part only of the Goods and/or the Services by giving notice to the Contractor at any time in which event the Company's sole liability shall be to pay to the Contractor the price for the Goods or Services in respect of which the Company has exercised its right of cancellation, less the Contractor's net saving of cost arising from cancellation.

9.2 The Company shall be entitled to terminate the Purchase Order without liability to the Contractor by giving notice to the Contractor at any time if:-

i) The Contractor fails to comply with any of the terms of the Purchase Order;

ii) The Contractor makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or, being a company, becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction);

iii) An encumbrance takes possession of, or a receiver is appointed to, any of the property or assets of the Contractor;

iv) The Contractor ceases, or threatens to cease, to carry on business; or

v) The Contractor reasonably apprehends that any of the events mentioned above is about to occur in relation to the Contractor and notifies the Contractor accordingly.



## **10. CONFIDENTIALITY**

10.1 The Contractor acknowledges and accepts that the information contained in the documents provided by the Contractor in connection with the Purchase Order is confidential and shall not be divulged to any third party or to be used for any other purpose than the performance of the Purchase Order without the prior written consent of the Contractor.

## **11. GENERAL**

### **11.1 Assignment**

11.1.1 The Purchase Order is personal to the Contractor and the Contractor shall not assign or transfer or purport to assign or transfer to any other person any of its rights or sub-contract any of its obligations under the Purchase Order.

11.1.2 Sub-tier suppliers shall not be used without the prior consent of Company. Contractor shall ensure that the terms of the Purchase Order and any associated specifications are imposed on the sub-tier supplier.

### **11.2 Notices**

11.2.1 Any notice required or permitted to be given by either party to the other in connection with the Purchase Order shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. Such notices shall be deemed effective within 48 hours of despatch.

### **11.3 Waiver**

11.3.1 None of the provisions of the Purchase Order will be considered waived by the Contractor unless such waiver is given in writing by the Contractor. No such waiver shall be a waiver of past or future defaults, breach or modifications of any of the terms, provisions, conditions or covenants of the Purchase Order unless expressly set forth in such waiver.

11.3.2 If any provision of the Conditions of the Purchase Order are held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Purchase Order and the remainder of the provision in question shall not be affected hereby.

### **11.4 Resolution of Conflict/Applicable Law**

11.4.1 In the event of any dispute arising under or in connection with the Purchase Order or the supply of the Goods or Services then every effort shall be made to resolve and agree such a dispute by discussion between the parties. If, after a maximum period of 2 months, unless otherwise agreed by the parties, there is a failure to reach agreement, the dispute shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of the Law Society of Scotland.



11.4.2 The Purchase Order shall be governed by and interpreted and construed in accordance with the laws of Scotland.

11.4.3 Unless otherwise specified, all quotations, contract documents, certification, data and drawings shall be supplied in the English Language.

## **12. BUSINESS ETHICS**

12.1 In connection with this Contract, Contractor shall not pay or give, offer to pay or give, promise to pay or give, or authorise the payment or giving of any money, fee, commission, remuneration or other thing of value to or for the benefit of any person, including Government Officials, in order to influence an act or decision of any person or Government Official, or cause any person or Government Official to act or fail to act in violation of his lawful duty, or cause any person or Government Official to influence an act or decision of the government, for the purpose of securing an improper advantage, or in violation of any applicable law, decree, ordinance, rule, regulation or order, including without limitation the UK Bribery Act 2010 and the U.S. Foreign Corrupt Practices Act and any other anti-corruption laws, applicable to either Party, its Affiliates, its directors, officers, employees, consultants or agents. Contractor agrees and acknowledges that Company, itself or through its duly appointed representatives, shall have the right to inspect and audit any and all books and records of Contractor relating to Contractor's compliance with its obligations under this Clause 12. In the event of a violation of this clause 12, Company shall have the right to terminate this Contract immediately upon written notice to Contractor. This termination right is without prejudice to other remedies which Company may have under this Contract or its governing law.

12.2 Contractor shall require its Affiliates, its subcontractors and its and their respective directors, officers, employees, consultants and agents to comply with the obligations of clause 12 in connection with this Contract.

## **13. ENTIRE AGREEMENT**

13.1 The Purchase Order and all documents referred to therein as varied by any amendment shall constitute the entire agreement between the parties and consequently supercede any previously agreed terms and conditions.

## **14. VARIATION**

14.1 All amendments to Purchase Orders must be agreed in writing by both the Contractor and the Company.