

**PURCHASE ORDER CONDITIONS OF CONTRACT  
for the purchase of goods and/or services**

**Reference Number: TfL Group [081107]**

**1. Definitions**

In these conditions of contract, unless the context indicates otherwise, the expression:

“Contract” means the contract between the Purchaser and the Contractor for the supply of the Goods and/or the Services and comprises these conditions of contract, the Purchase Order, where appropriate any Delivery Request Form and any specification, description, drawing or sample of the Goods or Services, delivery schedule or other document referred to in the Contract;

“Contractor” means the person, firm or company to whom the Purchase Order is addressed and includes any assignee permitted by the Purchaser;

“Delivery Request Form” means the Purchaser’s form under which the Purchaser requests Goods and/or Services as specified on such form to be delivered and/or performed under the terms of a Purchase Order which is expressed to be a framework agreement’;

“Goods” means the goods (if any) to be provided by the Contractor as specified in the Purchase Order;

“Losses” means all costs (including legal costs and costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings and judgments;

“Purchase Order” means the Purchaser’s order form (which is subject to these conditions) setting out details such as the specification, quantity, price, delivery time, place, date and invoicing requirements which may be expressed either:

(i) to be a framework agreement covering a period during which the Contractor undertakes to provide Goods and/or Services upon receipt of a Delivery Request Form or at specified times; or

(ii) as a single order;

“Purchaser” means the member of the TfL Group named in the relevant Purchase Order acting for itself and/or for any other member of the TfL Group, as indicated in the Purchase Order;

“Purchaser Contact” means the person named on the Purchase Order in relation to queries about this Contract or any other person notified in writing to the Contractor from time to time;

“Services” means the services and/or works (if any) to be provided by the Contractor as specified in the Purchase Order; and

“TfL Group” means Transport for London and all its subsidiaries (as defined in section 736 of the Companies Act 1985) from time to time and reference to “any member of the TfL Group” shall refer to TfL or any such subsidiary;

“VAT” means value added tax as provided for in the Value Added Tax Act 1994 and any tax replacing the same or of a similar nature.

## **2. Acceptance of Purchaser’s Conditions of Contract**

- 2.1 The Contractor shall be deemed to have accepted all the terms and conditions of the Contract to the exclusion of any other terms or conditions contained in any quotation, tender, acknowledgement, acceptance of order, delivery note, or any other document of the Contractor 48 hours after issue of the Purchase Order or delivery of the Goods and/or performance of the Services, whichever is sooner, unless agreed otherwise in writing by the Purchaser.

## **3. Agreement to provide Goods and/or Services**

- 3.1 The Contractor shall provide the Goods and/or the Services and the Purchaser shall pay the Contractor in accordance with the Contract. The Contractor shall not depart from any aspect of the Contract unless approval to do so has been obtained in writing from the Purchaser Contact.
- 3.2 It is the responsibility of the Contractor to acquaint itself with the purposes for which the Goods and/or Services are supplied.
- 3.3 The Contractor warrants to the Purchaser that the Goods:
- 3.3.1 will be of satisfactory quality and fit for any purpose held out by the Contractor or made known to the Contractor (orally or in writing) at the time the Contract is made;
  - 3.3.2 will be free from defects in design, material and workmanship;
  - 3.3.3 will correspond in every respect with any relevant specification, sample, drawing and/or description which form part of the Contract;
  - 3.3.4 will comply with all applicable quality assurance standards, statutory requirements and regulations relating to the Goods.
  - 3.3.5 will be so formulated, designed, constructed, finished and packaged so as to be safe and without risk to health.

- 3.4 The Contractor warrants to the Purchaser that the Services will be performed by appropriately qualified, trained and experienced personnel, with due care, skill and diligence, to such a high standard of quality as it is reasonable for the Purchaser to expect in all the circumstances, and in accordance with all relevant standards and statutory requirements and regulations relating to the provision of the Services.
- 3.5 The Contractor warrants to the Purchaser that the Goods and any equipment or systems forming part of or used in the provision of the Goods and/or Services or on which they may be reliant shall be capable of supporting the euro and shall not have their functionality or performance affected, made inoperable or more difficult to use:
- 3.5.1 by reason of any date related input or processing in or on any part of such Goods, equipment or systems; or
- 3.5.2 as a result of the introduction of the euro as a currency in certain EU member states.

#### **4. Timber Standards**

- 4.1 The Contractor shall ensure so far as reasonably practicable that any timber used in the Goods or in the delivery of the Services (including but not limited to timber hoardings) is recycled, reclaimed or is certified as sustainable timber by the Forest Stewardship Council or equivalent and shall retain documentary evidence of the same.

#### **5. Variations and Additional Changes**

- 5.1 The Contract may only be varied or amended with the written agreement of the Parties.
- 5.2 Unless otherwise stated in the Purchase Order, the price of the Goods and/or Services shall be fixed for the duration of the Contract and no variation in the price nor extra charges can be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior written consent of the Purchaser.

#### **6. Assignment and Sub-Contracting**

The Contractor shall not without the prior written consent of the Purchaser assign or sub-contract all or any part of the Contract.

#### **7. Records and Quality Assurance**

- 7.1 The Contractor shall, and shall procure that its subcontractors shall, maintain a true and correct set of records including personnel records pertaining to all activities relating to their performance of the Contract and all transactions related thereto. The Contractor agrees, and shall procure that its subcontractors agree, to retain all such records for a period of not less than 6 years after completion of performance under the Contract. The Purchaser shall have the right to audit any and all such records at any

- time during, and during the 6 year period following completion of, the performance of the Contract.
- 7.2 The Contractor shall maintain an effective and economical program for quality, planned and developed in conjunction with any other functions of the Contractor necessary to satisfy the Contract requirements.
- 7.3 The Contractor shall permit the Purchaser's authorised representatives access and facilities (as required and when notified) for the purpose of systems and product quality audits.
- 8. Inspections and Tests**
- 8.1 The Contractor shall give the Purchaser's authorised representatives access at all reasonable times to the Contractor's premises and permit such representatives to inspect and test the Goods to be supplied during the manufacture thereof and the material and any equipment to be used in the manufacture. If part or the whole of the Goods are being manufactured on other premises the Contractor shall obtain permission for the Purchaser to inspect and test as if the Goods were being manufactured on the Contractor's premises.
- 8.2 Such representatives shall have the right to reject any Goods or part thereof which in their opinion fails to meet the specification contained in the Contract.
- 8.3 All inspection, tests and analysis of material that may be required by the Purchaser shall be undertaken at the Contractor's expense.
- 8.4 Notwithstanding any such inspection or testing, the Contractor will remain fully responsible for the Goods and the provisions of this condition shall not release the Contractor from any of its obligations under the Contract.
- 9. Specialist Tooling**
- 9.1 All jigs, tools, fixtures, moulds, patterns and/or equipment ("specialist tooling") (if any) which is supplied, or paid for by the Purchaser or developed at the Purchaser's expense shall remain or become the Purchaser's property.
- 9.2 The Contractor shall be responsible for maintaining specialist tooling in good condition and except in respect of fair wear and tear shall immediately replace at its own cost any such items which are lost, damaged or destroyed. In addition the Contractor shall be responsible for adequate insurance for full replacement value of all specialist tooling against loss damage or destruction.
- 9.3 Whilst such specialist tooling is on the Contractor's premises the Contractor shall clearly label it as the Purchaser's property.
- 9.4 The Contractor may not at any time move specialist tooling from their premises or dispose of specialist tooling belonging to the Purchaser without prior written approval from the Purchaser Contact.

- 9.5 The Purchaser shall have the option to purchase any specialist tooling which is not the Purchaser's property as mentioned in the above paragraphs at a fair price less any sum already paid by the Purchaser towards the cost of specialist tooling.
- 9.6 The Contractor may not use any such specialist tooling for the production, manufacture or design of any materials other than those contracted for with the Purchaser.

## **10. Responsibility for Goods and Insurance**

The Contractor shall be responsible for and insure against the loss, destruction and damage of Goods completely or partially manufactured and for all materials acquired by or delivered to the Contractor in connection with the Contract whether or not the property of the Contractor or the Purchaser and until such time as the Goods are delivered to and accepted by the Purchaser and/or the Services are completed.

## **11. Indemnity and Insurance**

- 11.1 Subject to Condition 11.2, the Contractor is responsible for and shall indemnify, keep indemnified and hold harmless the Purchaser and the other members of the TfL Group (including their respective employees, sub-contractors and agents) ("**the Indemnified Party**") against all Losses which the Indemnified Party incurs or suffers as a consequence of any direct or indirect breach or any negligent performance of the Contract by the Contractor (or any of its employees, agents or sub-contractors) (including in each case any non-performance or delay in performance of the Contract) or of any breach of statutory duty, misrepresentation or misstatement by the Contractor (or any of its employees or sub-contractors).
- 11.2 The Contractor is not responsible for and shall not indemnify the Purchaser for any Losses to the extent that such Losses are caused by any breach or negligent performance of any of its obligations under the Contract by the Purchaser and/or any other member of the TfL Group including by any of their respective employees or agents.
- 11.3 Without prejudice to its obligations in Conditions 11.1 and 11.2 above the Contractor shall comply with all statutory obligations to maintain insurance and shall at its sole cost arrange and maintain with a reputable insurer or insurers authorised to underwrite such risk in the United Kingdom public liability and products liability insurance which in each case provides indemnity of not less than £5,000,000 (five million pounds) for any one incident or series of incidents arising out of any one event in respect of liability for death of or injury to any person and loss of or damage to property, such insurance to contain an "indemnity to principals" provision.

- 11.4 The sum of £5,000,000 (five million pounds) in Condition 11.3 above shall be reduced to £2,000,000 (two million pounds) where the sums payable to the Contractor under this Purchase Order do not exceed £50,000 and that the Goods and/or Services are not directly connected with the provision of transport or with any interface with the Purchaser's customers (whether such interface is physical or virtual).
- 11.5 The Contractor shall provide to the Purchaser upon reasonable notice evidence that the policies of insurance referred to in Condition 11.3 (including statutory insurances) are in force.

## **12. Delivery and Acceptance**

- 12.1 The Goods shall be delivered at the Contractor's cost and the Services shall be performed, at the place, on the date or dates and within the times stated in the Contract.
- 12.2 The Contractor acknowledges that i) time for delivery and/or performance of the Services, and ii) precise conformity of the Goods and/or Services with the Contract (including but not limited to quantity and quality) is of the essence of the Contract and that any breach of this condition (however slight) is deemed a material breach and shall entitle the Purchaser to reject the Goods and/or Services (or part thereof) or terminate the Contract.
- 12.3 On delivery the Purchaser shall not be deemed to have accepted all or part of the Goods and/or Services (whether or not an advice note is signed) until the Purchaser has had reasonable opportunity to inspect and/or test the same.
- 12.4 The Contractor and the Purchaser agree that where there is a breach of a condition or warranty (whether express or implied) by the Contractor the Purchaser's remedies are not to be limited in any way notwithstanding the fact that the breach of the condition may be slight.
- 12.5 Property in the Goods shall pass to the Purchaser upon delivery of the Goods at the place specified in the Purchase Order or the Delivery Request Form as the case may be without prejudice to any rights of rejection which the Purchaser may have.
- 12.6 Where the Goods are supplied by weight all containers, cases or packaging shall be deducted from the gross weight and only the net weight of the goods supplied shall be invoiced and paid for. No charge shall be made for any containers, cases or packaging. If the Contractor desires the return of any containers, cases or packaging the advice note shall be clearly marked to that effect whereupon the Purchaser, without incurring any legal liability, shall make such return at the Contractor's expense and risk.

### **13. Advice Notes, Invoices and Payment**

- 13.1 An advice note bearing all information required by the Purchaser including the Purchase Order or Contract number, any Delivery Request Form number and a description of the Goods (including part numbers if any) and/or Services shall be delivered by the Contractor accompanying the Goods and/or Services and a duplicate shall be posted to the place of delivery at the time of dispatch. If requested by the Purchaser, the Contractor shall provide a certificate of conformity.
- 13.2 An invoice bearing all information required by the Purchaser including the Purchase Order or Contract number, any Delivery Request Form number, supplier code, delivery address and a brief description of the Goods and/or Services (including part numbers, if any) shall be sent by the Contractor to the address for invoices contained in the Purchase Order after the delivery of Goods and/or performance of the Services. Invoices shall be clear, concise, accurate and adequately descriptive to avoid delays in processing and subsequent payment. VAT shall be identified as a separate item and the Contractor shall comply with any other invoicing requirements specified in writing by the Purchaser.
- 13.3 If the invoice is approved, it will be paid within thirty days of receipt of invoice. The Purchaser's obligation to pay the Contractor shall be conditional upon the Contractor providing the Purchaser with their bank account details. Payments shall be made by Bank Transfer (Bank Automated Clearance System BACS) or such other method that the Purchaser may choose from time to time.
- 13.4 The Contractor undertakes to pay all its sub-contractors (and shall ensure that its sub-contractors undertake to pay their sub-contractors) within thirty days of receiving an undisputed invoice relating to the Goods and/or Services supplied under this Contract.

### **14. Defects**

- 14.1 The Contractor shall replace free of charge to the Purchaser any Goods or any part thereof which is found within a period of twelve months (or other period stated in the Purchase Order) after the date the Goods were delivered to be defective. Defective Goods shall be returned at the Contractor's expense and risk.
- 14.2 The Contractor shall as required re-perform free of charge to the Purchaser any Services or any part thereof which in the Purchaser's reasonable opinion fails to meet the standards set out in Condition 3 and the Purchase Order as the case may be.
- 14.3 Nothing in this condition shall prejudice any rights which the Purchaser may have including rights of rejection and termination.

## **15. Attendance at the Purchaser's Premises**

While on the Purchaser's premises, or at any other location where the Goods are to be delivered or the Services performed the Contractor and its employees and agents shall comply with all of the Purchaser's health and safety and security requirements and all other policies, standards and requirements of the Purchaser that are relevant to the performance of the Contract and the Purchaser reserves the right to refuse to admit to its premises any person who fails to comply with such requirements. The Purchaser Contact may instruct any of the Contractor's employees or agents to leave the Purchaser's premises at anytime for any reason.

## **16. Delivery Request Forms**

- 16.1 Where a Purchase Order is expressed to be a framework agreement, the Purchaser may from time to time send to the Contractor Delivery Request Forms requesting such Goods and/or Services as the Purchaser may specify and stating when and where such Goods and/or Services shall be provided.
- 16.2 The Purchaser shall not be bound by any order or request for Goods and/or Services or any variation thereof unless issued on one of the Purchaser's official Delivery Request Forms.
- 16.3 Any Delivery Request Forms from the Purchaser to the Contractor shall be subject to and governed by these conditions of contract.

## **17. Framework Duration**

- 17.1 In the event these conditions of contract are used in respect of a framework agreement, unless otherwise stated, the Contract will run for a period of twelve months from the date of the Purchase Order and shall continue thereafter subject to three months notice in writing of termination by either party up to a maximum period of twenty four months when the Contract will automatically expire.
- 17.2 Notwithstanding Condition 17.1, if the Purchaser continues to send Delivery Request Forms to the Contractor under the Contract any supplies made by the Contractor shall be subject to and governed by these conditions of contract provided that if there are then no dealings between the parties under the Contract for a period of eighteen consecutive months, the Contract will be deemed to have expired.

## **18. Termination of Contract**

- 18.1 The Purchaser may by notice in writing to the Contractor terminate the Contract immediately if the Contractor fails at any time to perform the Contract with due diligence and expedition or if the Contractor breaches the Contract in any other way or if the Contractor becomes bankrupt or insolvent or has a receiving order made against it or being a company, is

ordered by the court to be wound up or if it passes or purports to pass a resolution to enter into liquidation (whether compulsory or voluntarily) or if it ceases or threatens to cease to carry on its business for any reason. Upon such termination, the Purchaser shall be at liberty to enter into any agreement with such other persons, companies or firms as the Purchaser may think fit in respect of the provision of the Goods and/or Services and the Purchaser shall be entitled to recover from the Contractor all costs and damages incurred by the Purchaser in consequence of the termination of the Contract.

- 18.2 The termination or expiry of the Contract shall not prejudice or affect any right of action or remedy which has accrued or shall accrue to either party.

## **19. Intellectual Property**

- 19.1 All royalties or other sums payable to any third party in respect of the use of any intellectual property right (which term includes any patent, patents application, database rights, know how, trade mark or name, service marks, design right, registered design, copyright or other similar industrial or commercial right) necessary for the performance of the Contract shall be paid by the Contractor.
- 19.2 The Contractor warrants that it owns all intellectual property rights in all documents, drawings, computer software and other work specifically prepared or developed by the Contractor under the Contract ("the Materials") and that the use by the Purchaser of the Materials shall not infringe the rights of any third party.
- 19.3 The Contractor hereby assigns the Materials with full title guarantee to the Purchaser and waives all moral rights in relation to the same.
- 19.4 The Contractor shall provide the Purchaser with copies of all materials and or documents relied upon or referred to in the creation of the Materials with a perpetual, irrevocable, royalty-free and transferable licence free of charge to use such works in connection with the use of the Materials.
- 19.5 All intellectual property rights in all items including, without limitation, documents, drawings, data, computer software and any other materials and/or supplied by the Purchaser to the Contractor in connection with the contract shall remain the property of the Purchaser (to the extent that such rights are owned by the Purchaser).

## **20. Confidentiality**

- 20.1 The Contractor undertakes to maintain in strictest confidence and not to disclose to any third party without the prior written consent of the Purchaser any trade or business secret or other information by its nature or expressed to be confidential supplied by the Purchaser to the Contractor. The provisions of this will survive any termination of the Contract for a period of five years from termination.

## **21. Advertising, TfL logos and 2012 Games**

- 21.1 The Contractor shall not without the prior written consent of the Purchaser announce or publicise that it provides the Goods and/or Services to the Purchaser.
- 21.2 The Contractor shall not (without the prior written approval of the London Organising Committee of the Olympic Games Limited (“LOCOG”) in each case) represent that any Goods or Services provided under the Contract have been endorsed or approved by the Purchaser, the British Olympic Association, the British Paralympic Association, LOCOG or any other official Olympic or Paralympic body, or that the Contractor (including any of its products or services) are in any way associated with those organisations, the Olympic Games and/or Paralympic Games, or London 2012, including by publishing or issuing any statement (factual or otherwise) about the Contractor’s provision of the Goods or Services to the Purchaser.
- 21.3 The Contractor shall have no right (save where expressly permitted under the Contract or with the Purchaser’s prior written consent) to use any trade marks, trade names, logos or other intellectual property rights of the TfL Group

## **22. Corrupts Gifts and Payment of Commission**

The Contractor shall, and shall procure that its subcontractors shall, not pay any commission, fees or grant any rebates to any employee, officer or agent of the Purchaser nor favour employees, officers or agents of the Purchaser with gifts or entertainment of significant cost or value nor enter into any business arrangement with employees, officers or agents of the Purchaser other than as a representative of the Purchaser, without the Purchaser’s written approval. The Purchaser shall have the right to audit any and all such records necessary to confirm compliance with this Condition at any time during performance of the Contract and during the 6 year period following completion of performance. Breach of this Condition shall entitle the Purchaser to terminate the Contract and other contracts between the Contractor and any member of the TfL Group immediately.

## **23. Right to Withhold/Recover Payment**

Any payment made by the Purchaser under the Contract including the final payments under the Contract shall not prevent the Purchaser from recovering any amount over paid or wrongfully paid however such payment may have arisen including but not limited to those paid to the Contractor by mistake of law or of fact. The Purchaser shall be entitled to withhold such amount from any sums due or which may become due to the Contractor from the Purchaser or the Purchaser may recover such amount as a debt.

## **24. Statutory Requirements**

- 24.1 The Contractor shall in the performance of the Contract (at no additional cost to the Purchaser) ensure compliance in all respects with relevant and binding UK and Community Laws or any other regulation or by-law from time to time in force which is or may become applicable during the period the Contract is in force.
- 24.2 Without limiting the generality of Condition 24.1, the Contractor shall not unlawfully discriminate, and shall procure that its employees and agents do not unlawfully discriminate, within the meaning and scope of the Sex Discrimination Act 1975, Race Relations Act 1976, Disability Discrimination Act 1995 and any amendments to or re-enactments of those statutes.
- 24.3 The Contractor acknowledges that the Purchaser and TfL are under a duty by virtue of a direction under section 404(2) of the Greater London Authority Act 1999 to have due regard to the need to:
- 24.3.1 promote equality of opportunity for all persons irrespective of their race, sex, disability, age, sexual orientation or religion;
  - 24.3.2 eliminate unlawful discrimination; and
  - 24.3.3 promote good relations between persons of different racial groups, religious beliefs and sexual orientation

and the Contractor shall assist and co-operate with the Purchaser and TfL where possible to enable the Purchaser and TfL to satisfy their duty.

## **25. Conflict of Interest**

The Contractor acknowledges and agrees that it does not have an interest in any matter where there is or is reasonably likely to be a conflict of interest with the provision of the Goods and/or Services and that it shall not act for any person, organisation or company where there is or is reasonably likely to be such a conflict of interest. The Contractor shall undertake ongoing and regular conflict of interest checks throughout the duration of the Contract and shall notify the Purchaser in writing immediately on becoming aware of any actual or potential conflict of interest with the performance of the Contract.

## **26. Set-Off**

The Purchaser will be entitled but not obliged at any time or times to set off any liability of the Contractor to the Purchaser against any liability of the Purchaser to the Contractor.

## **27. Protection of Personal Data**

The Contractor shall comply with all of its obligations under the Data Protection Act 1998 and, if Processing Personal Data (as such terms are defined in section 1(1) of that Act) on behalf of the Purchaser, shall only

carry out such Processing for the purposes of providing the Goods and/or Services in accordance with the Contract and shall act in accordance with instructions from the Purchaser.

## **28. Dispute Resolution**

The Purchaser and the Contractor shall use their best efforts to negotiate in good faith and settle any dispute or difference that may arise out of or relate to the Contract before resorting to litigation. The Contractor shall continue to provide the Goods and/or Services in accordance with the Contract and without delay or disruption while a dispute or disagreement is being resolved.

## **29. Rights of Third Parties**

- 29.1 Save that any member of the TfL Group has the right to enforce the terms of the Contract in accordance with the Contracts (Rights of Third Parties) Act 1999 (“Third Party Act”), the Parties do not intend that any of the terms of the Contract will be enforceable by virtue of the Third Party Act by any person not a party to it.
- 29.2 Notwithstanding Condition 29.1, the Parties are entitled to vary or rescind the Contract without the consent of any or all members of the TfL Group.

## **30. Freedom of Information**

- 30.1 The Contractor acknowledges that TfL is subject to the Freedom of Information Act 2000 (“the Act”) and all subordinate legislation made under it, together with the Environmental Information Regulations 1992 (and any other provisions that replace these) and agrees to assist and cooperate with the Purchaser to enable the Purchaser to comply with its obligations under such legislation including, without limitation, providing to the Purchaser such information as the Purchaser may reasonably request concerning the Contract.
- 30.2 The Contractor acknowledges that the Purchaser may be obliged under the legislation referred to in Condition 30.1 to disclose information without consulting or obtaining consent from the Contractor.
- 30.3 This condition 30 will survive the expiry or termination of the Contract.

## **31. Illegality and Severability**

If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed from the Contract and the remaining provisions shall continue in full force and effect as if the Contract had been executed without the invalid, illegal, or unenforceable provision.

**32. Waiver**

The failure of either party to insist upon strict performance of any provision of the Contract, or the failure or delay of either party to exercise any right or remedy to which it is entitled under the Contract, does not constitute a waiver of such right or remedy and shall not cause a diminution of the obligations established by the Contract.

**33. Governing Law**

The Contract shall be governed by and construed in accordance with English Law and is subject to the exclusive jurisdiction of the English Courts provided that the Purchaser has the right to enforce a judgment and/or to take proceedings in any other jurisdiction in which the Contractor is incorporated or in which any assets of the Contractor may be situated.