

## STANDARD CONDITIONS OF PURCHASE FOR GOODS AND SERVICES

### A. DEFINITIONS

- (1) The State Examinations Commission is hereinafter termed the "Commission". The person, firm or company supplying the goods or services is hereinafter termed the "Supplier".

### B. APPLICABILITY

- (1) Save where the Commission has executed a specific contract with the Supplier for supply of goods or services, in which case such contract shall supersede these Conditions of Purchase, these Conditions of Purchase shall govern every contract for supply of goods and/or services between the Commission and the Supplier. All orders are placed and executed on the understanding that the Supplier is bound by these Conditions of Purchase. Any goods and/or services shall be supplied pursuant to these Conditions of Purchase only, to the total exclusion of any terms and conditions of the Supplier. No quotation or standard terms of business or supply, in any confirmation dockets, invoice, purchase order or other similar document issued by or on behalf of the Supplier shall vary this Agreement or be binding upon the parties.

### C. PRICES

- (1) The price payable shall, unless otherwise stated, be the price ruling at the date of placing the order. Prices shall not be subject to variation except with the written consent of the Commission. The Commission reserves the right to cancel the order either in whole or in part in the event of any increase in the ruling price between the date of placing the order and the date of delivery.
- (2) Unless otherwise stated in the order, payment will be made within 30 (thirty) days of receipt of a valid VAT invoice supported by such information as the Commission may require. Invoicing will be subject to the Late Payments in Commercial Transactions Regulations 2002. In accordance with Government requirements, payments for professional services will be subject to withholding tax as laid down by the Revenue Commissioners. Supplier shall invoice the Commission separately for such interest sum.

### D. DELIVERY AND PACKAGING

- (1) The Supplier, at his own risk and expense, shall deliver the goods properly packed, secured and marked with the applicable order number, or the services (as the case may be), to the location specified in that order, or any alternative subsequently agreed. Each package should be clearly marked with the Supplier's name and the delivery address specified.
- (2) The giving of a receipt by an employee of the Commission or by an employee or agent or the consignee or Commission to any railway Commission, shipment agent, carrier or other person or Commission whomsoever, shall be proof only of actual delivery and not of delivery in good condition and quantity specified.
- (3) The risk in the goods will remain in the Supplier until they are delivered to and are accepted by the Commission. Title to the goods will pass to the Commission on delivery, or upon payment if earlier. Passing of title is without prejudice to any right of rejection of the goods which may accrue to the Commission hereunder. Shortages, breakages or other damage or loss to any consignment from any cause whatsoever prior to delivery to consignee shall not be paid for by the purchaser, all risks and insurance being borne by the Supplier.
- (4) The time of delivery stated in the order is binding upon the Supplier unless otherwise agreed to in writing by the Commission. The Supplier shall perform and complete all services within the time scales set out in the applicable orders or statements of work, or within such other time scales as may be agreed from time to time in writing between the Commission and the Supplier.

### E. QUALITY

- (1) Goods supplied shall be in all respects in accordance with sample and/or the specification of the Commission. Any article found to be inferior in quality, or in any manner defective, will be rejected. Acceptance of delivery shall not preclude the Commission from exercising this right.
- (2) If a substantial proportion of the goods are defective, or do not conform as aforesaid, the Commission may, without prejudice to any other rights and remedies, reserve the right to cancel the order and reject any or all goods already delivered, and the Supplier shall

thereupon repay to the Commission any sums already paid in respect of goods so rejected or not then delivered. Rejected goods will be returned at the Supplier's risk and expense.

- (3) The Supplier shall with all possible speed repair or replace, free of charge, goods damaged or lost in transit provided that the Commission shall give the Supplier written notification of such damage or loss within a reasonable time.
- (4) The Commission reserves the right to inspect any goods before dispatch from the Supplier's premises, but such inspection shall not relieve the Supplier from responsibility or liability nor be interpreted in any way to imply acceptance of such goods. Goods must be to the entire satisfaction and approval of the Commission's Inspector when examined at time of delivery or subsequent thereto of its address for delivery as stated in this order.
- (5) Where it is specified that a sample is to be submitted with the tender, such sample shall, in the event of the tender being accepted and unless otherwise agreed, be taken as the standard by which the supply in bulk shall be governed.
- (6) The Supplier hereby represents, warrants and undertakes that the services shall be supplied in a good and workmanlike manner with all reasonable skill, care, judgement and diligence by personnel sufficiently experienced, competent, qualified and trained to carry out the services.

### F. HEALTH & SAFETY

- (1) All goods, equipment, services and the like, supplied to The Commission, must comply with all applicable Regulatory and Statutory requirements, Irish/EU Standards (whichever is the higher) and any certification where applicable. The goods, equipment, services and the like must be fit for the purpose required. All goods must be supplied with Manufacturer's Instructions, Material Safety Data Sheets, Safety Instructions, etc., as required. All relevant documentation must be forwarded to The Commission before purchase.
- (2) The Supplier shall comply with all the Commission's safety policies and instructions.

### G. CONFIDENTIALITY

In providing the goods and/or performing the services, the Supplier may be exposed to confidential information and materials of the Commission. This document and all information disclosed about the Commission and its businesses are given to the Supplier in confidence. The Supplier, its subcontractors and all other persons involved shall retain in confidence and shall not copy or disclose to any third party, without the Commission's written approval, any information obtained from the Commission or deduced from information obtained from the Commission. The Supplier shall assume responsibility for ensuring the confidentiality of information disclosed to a subcontractor.

### H. INSURANCE

The Supplier undertakes to take out and maintain adequate insurance cover with a reputable insurance Commission against liability which the Supplier or any of its subcontractors may incur under this Agreement, including without limitation the following insurances:

- (i) Employers Liability insurance with a limit of not less than thirteen million euro (EUR13,000,000) for any one claim or series of occurrences;
- (ii) Public and Products Liability insurance with a limit of not less than six million five hundred thousand euro (EUR6,500,000) for any one claim or series of occurrences;
- (iii) Errors and Omissions insurance covering against liability for claims, damages, losses and expenses with a limit of not less than five million euro (EUR5,000,000) for any one claim or series of occurrences;

The Supplier shall produce on request to the Commission a copy of the policy of insurance and evidence that any premiums have been paid. However, neither inspection nor receipt of such copies shall constitute acceptance by the Commission of the terms thereof nor waiver of the Supplier's responsibility thereunder.

### I. INTELLECTUAL PROPERTY

- (1) In consideration of the payment by the Commission to the Supplier of €1.00 (one euro) (the sufficiency of which the Supplier hereby acknowledges), the Supplier hereby grants the Commission, a non-exclusive, perpetual, royalty-free licence to use all intellectual property owned by or licensed to the Supplier which shall be used in the provision of the Goods or Services supplied by the Supplier under this Agreement.
- (2) The Supplier hereby irrevocably assigns to the Commission all right, title and interest in, including all copyright, patents and other proprietary rights in, and all newly created intellectual property made, originated or developed during the course of this Agreement which the Supplier creates (either solely or jointly with others and either on or off the Commission's premises) in connection with this Agreement (the "Commission Materials"). The Commission Materials shall be the exclusive property of the Commission and may not be used by the Supplier for any purpose except for the benefit of the Commission.
- (3) The Supplier hereby represents, warrants and undertakes that it is the owner or licensee of the Goods or Services (as the case may be), that it has all rights, licences and consents legally required to provide the Goods or Services to the Commission and/or to assign the intellectual property in the Commission Materials to the Commission as set forth in this Agreement and that the Commission's receipt and use of the Goods and/or Services (as the case may be) does not and will not infringe any intellectual property rights of any third party.
- (4) Patented articles supplied under the Contract shall be marked in accordance with the provisions of the Patents Acts.
- (5) Copyright of all work accepted by the Supplier under this agreement, remains the property of the Commission. This includes all design, origination, specifications, plans, drawings, finished artwork, source code, and the like produced by the Supplier on the instructions of the Commission.
- (6) Without prejudice to the Commission's other rights, the Supplier agrees to indemnify and to keep indemnified the Commission and hold the Commission harmless from and against all loss, liabilities, damages and expenses (including reasonable legal fees) arising out of or in connection with any action, claim or demand for alleged or actual infringement of any patent, copyright, design right, trade mark, name or other intellectual property right in respect of any Goods or Services supplied under this Agreement, or for royalty or damages in respect thereof.

#### J. INDEMNITY

The Supplier agrees to indemnify and to keep indemnified the Commission and hold the Commission harmless from and against all loss, liabilities, damages and expenses (including reasonable legal fees) arising out of or in connection with the Supplier's negligence, default or breach of this Agreement or of any order, including any act or omission of its personnel or sub-contractors. This Clause J. shall survive termination of this Agreement.

#### K. TERMINATION

- (1) Without prejudice to its other rights, the Commission reserves the right (i) to cancel any order for any reason at any time prior to delivery on giving the Supplier 7 days notice in writing; and (ii) to terminate this Agreement without cause entirely at the Commission's convenience and discretion. Save in the event of breach by the Supplier, the Commission will pay a reasonable price for all work in progress at the date of the cancellation notice, to the extent only that such work in progress cannot reasonably be used by the Supplier in respect of its other customers. The Commission shall not be liable for any other direct or indirect costs, damages or expenses of the Supplier arising from such cancellation.
- (2) This Agreement may be terminated:
  - (i) forthwith if either party commits a material breach of this Agreement and which in the case of a breach capable of being remedied shall not have been remedied within 15 working days of written notice to remedy same;
  - (ii) forthwith by notice in writing to the other party, if that other party is unable to pay its debts or enters into compulsory or voluntary liquidation (other than for the purpose of a bona fide reconstruction or amalgamation), or compounds with or convenes a meeting of its creditors, or has a receiver or manager, or administrative receiver or an administrator or

examiner appointed over its assets, or ceases for any reason to carry on business, or takes or suffers any similar action which in the opinion of the party giving notice, means that the other party may be unable to pay its debts as they fall due.

(iii) by the Commission if the Supplier suffers a force majeure event which persists for 3 consecutive weeks;

(iv) by the Commission if the Supplier commits a breach of Clause G (Confidentiality); or Clause I (Intellectual Property).

(3) Termination shall be without prejudice to any other rights or remedies a party may be entitled to under this Agreement or at law and shall not affect any accrued rights or liabilities of either party.

(4) All provisions of this Agreement which in order to give effect to their meaning need to survive its termination shall remain in full force and effect thereafter.

#### L. GENERAL

(1) It shall be a condition of the contract/business that the Supplier shall produce, as appropriate, either a valid C2 Tax Certificate, a Tax Clearance Certificate or, in the case of Suppliers resident outside the state, a statement from the Revenue Commissioners as to their suitability for appointment on tax grounds.

(2) The Supplier shall not offer any gift or consideration of any kind as an inducement or reward in relation to the obtaining or execution of any purchase order with the Commission. Any breach of this consideration will render the Supplier liable to the cancellation of this and any other order with the Commission and entitle the Commission to recover from the Supplier the amount of any loss resulting from such cancellation.

(3) Subject to these conditions, the provisions of the Sale of Goods Act 1893 and the Sale of Goods and Supply of Services Act 1980 shall apply.

(4) The Commission accepts no liability whatsoever for goods, supplies or services not ordered on the official order form and invoices for such supplies or services not officially ordered will not be honoured.

(5) The Supplier shall not subcontract its rights or obligations under this Agreement without the prior written consent of the Commission.

(6) Nothing in this Agreement shall constitute or be deemed to constitute the Supplier an employee or agent of the Commission or a partnership or joint venture between the Commission and the Supplier for any purpose whatsoever.

(7) If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, all other terms of this Agreement shall remain in full force and effect.

(8) This Agreement constitutes the entire agreement between the parties and supersedes all previous agreements, promises, proposals, representations, understandings and negotiations, whether written or oral, between the parties.

(9) The parties shall do their utmost to resolve any dispute or controversy with respect to the interpretation or application of any provision of this Agreement in an amicable, timely and efficient manner for the purposes of seeking a just and equitable solution. Proposals and information exchanged during informal dispute resolution proceedings will be privileged, confidential and without prejudice to a party's legal position in any formal proceedings.

(10) Both Parties to this Agreement shall seek to resolve any dispute between them arising out of or relating to this Agreement, promptly, amicably and in good faith. Any continuing dispute between the parties regarding the performance of their obligations under this Agreement may be resolved by reference to the following internal dispute resolution procedure:

(i) stage one: reference to the Commission's Representative and to the Supplier's Representative;

(ii) stage two: reference to each Party's stage two representative as named in the Agreement;

(iii) final stage: reference to each Party's stage three representative as named in the Agreement;

The parties agree that in the event that a dispute is not resolved within a period of [seven (7)] days of the referral of such dispute to any stage, as set out above, such dispute shall be escalated to the next stage. Notwithstanding the other provisions of this Clause 10,

neither Party may commence formal legal proceedings without first observing or and exhausting the procedures detailed in this Clause

- (11) This Agreement is governed by and shall be construed in accordance with Irish law.