

## HIGHLANDS AND ISLANDS ENTERPRISE TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS AND SERVICES

### 1 Introduction

- 1.1 This document set out the terms and conditions on which Highlands and Islands Enterprise ("HIE") will purchase Goods and/or Services from You, the supplier.
- 1.2 In these terms, some words have particular meanings. These are set out in Clause 16 below.
- 1.3 The following rules of interpretation apply in these terms:
- 1.3.1 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3.2 a reference to a party includes its personal representatives, successors and permitted assigns.
- 1.3.3 a reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- 1.3.4 any words following the terms including, include, in particular, for example or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- 1.3.5 a reference to writing or written excludes fax but not email.

### 2 Basis of contract

- 2.1 Any Order constitutes an offer by Us to purchase Goods or Services in accordance with these Conditions.
- 2.2 The Order shall be deemed to be accepted on the earlier of;
- 2.2.1 You issuing written acceptance of the Order; or
- 2.2.2 any act by You consistent with fulfilling the Order, at which point and on which date the Contract shall come into existence ("**Commencement Date**").
- 2.3 These Conditions apply to the Contract to the exclusion of any other terms that You seek to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing. You waive any right You may otherwise have to rely on any term endorsed upon, delivered with or contained in any of Your documents that are inconsistent with these Conditions.
- 2.4 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

### 3 Supplier Obligations

- 3.1 You will provide the Goods and Services to Our reasonable satisfaction and will act at all times in a diligent and professional manner. The Goods and Services must conform fully to the requirements set out in the Contract Documents.
- 3.2 You will provide the Goods and perform the Services on and by the dates set out in the Contract Documents and, where time of delivery or performance is specified in the Contract Documents, then time of such delivery or performance shall be of the essence of the Contract.
- 3.3 You will not incur any liability on Our behalf nor enter into any contracts or agreements on Our behalf without Our prior approval in writing.
- 3.4 You will ensure that You obtain and maintain any licences and consents required for the provision of Goods or Services, including but not limited to those relating to packing, labelling and carriage of the Goods. You will also ensure You abide by all relevant regulations and legislations pertaining to the provision of Goods or Services.
- 3.5 In performing Your obligations under the Contract, You shall:
- 3.5.1 comply with all applicable laws, states, regulations and codes in place from time to time; and
- 3.5.2 comply with the Mandatory Policies.
- 3.6 We may request a change to any of Our requirements for the Goods or Services at any time. You will notify Us in writing if such change results in a price increase or decrease and parties will agree the scope of, and charges for, such change in writing.
- 3.7 If, at any time, You consider Your performance of any of the obligations under this Contract may conflict with other relationships or obligations, You must inform Us of this. We may then decide (at Our sole discretion acting reasonably) to terminate the Contract immediately by notice in writing and shall be entitled to serve that notice at any time.

### 4 Goods

- 4.1 You shall ensure that the Goods:

- 4.1.1 correspond with their description and any applicable Goods Specification or Contract Documents (as the case may be);
- 4.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by You or made known to You by Us, expressly or by implication, and in this respect We rely on Your skill and judgement; and
- 4.1.3 where they are manufactured products, be free from defects in design, materials and workmanship and remain so for 12 months after delivery.
- 4.2 You shall ensure that at all times You have and maintain all the licences, permissions, authorisations, consents and permits that it needs to carry out Your obligations under the Contract in respect of the Goods.
- 4.3 We may inspect and test the Goods at any time before delivery. You shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect Your obligations under the Contract.
- 4.4 If following such inspection or testing We consider the Goods do not comply or are unlikely to comply with Your undertakings at Clause 4.1, We shall inform You and You shall immediately take such remedial action as is necessary to ensure compliance.
- 4.5 We may conduct further inspections and tests after You have carried out Your remedial actions.

### 5 Delivery of Goods, Title and Risk

- 5.1 You shall deliver the Goods on the date and time, and to the location specified in the Contract Documents unless alternative delivery arrangements have been agreed.
- 5.2 You shall ensure that:
- 5.2.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition; and
- 5.2.2 each delivery of the Goods is accompanied by a delivery note which at least shows the date of the Order, the Order number (if any), the type and quantity of the Goods and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 5.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location. Ownership of the Goods and risk in the Goods will transfer to Us when the Goods are delivered (and off-loaded) in accordance with the Contract Documents and a delivery note acknowledging safe receipt of them is signed.
- 5.4 Following the delivery We will inspect the Goods within a reasonable time and notify You of any defective or missing items. If there are defective or missing Goods or Services then We may, (i) permit You at Your own cost to repair or deliver the missing Goods or re-perform the Services within a specified time; (ii) require You, at Your own cost, to replace such defective Goods within a specified time; or (iii) refuse to pay for such defective or missing Goods or Services. You will uplift defective Goods at Your own expense.
- 5.5 If Goods are delivered in excess of the quantity ordered We will not be bound to pay for such excess and such excess Goods will be uplifted by You.

### 6 Services

- 6.1 You shall:
- 6.1.1 co-operate with Us in all matters relating to the Services, and comply with all Our instructions;
- 6.1.2 perform the Services with the best care, skill and diligence in accordance with best practice in Your industry, profession or trade;
- 6.1.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that Your obligations are fulfilled in accordance with the Contract; and
- 6.1.4 ensure that the Services will conform with all descriptions, standards and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose We expressly or impliedly make known to You.

### 7 Price and payment

- 7.1 The price for the Goods and/or Services shall be as stated in the Contract Documents and shall be deemed to be inclusive of any and all VAT and/or other applicable taxes, all expenses and charges.
- 7.2 No increase to the price may be made without Our prior written consent.

- 7.3 If the Goods and Services are supplied to Our reasonable satisfaction, You may invoice them for the applicable price and We shall pay valid invoices 30 days from receipt.
- 7.4 We may set off any amount owing at any time from You to Us against the price of the Goods or Services payable by Us to You.
- 7.5 We will pay interest on any amount properly due at 4 per cent per annum above the base lending rate of the Royal Bank of Scotland plc from time to time.

## 8 Intellectual property rights

- 8.1 Any Deliverables (including any Intellectual Property Rights in such Deliverables) produced for, in connection with, on behalf of, or at the request of Us shall be owned by is on creation (excluding the Supplier Materials contained within such Deliverables). You hereby assign or agree to assign all those Intellectual Property Rights to us, with full title guarantee and fee from any encumbrances.
- 8.2 Each party will remain the owner of its own materials utilised in the creation or use of the Deliverables or otherwise used for the performance of the Contract.
- 8.3 You shall grant Us a perpetual, irrevocable, worldwide, royalty free, exclusive licence (with the right to grant sub-licences) to use Supplier Materials for the purpose of using and receiving the Goods, Services and Deliverables.
- 8.4 You warrant that neither the Supplier Materials nor the Deliverables, nor any use of any of them will infringe the Intellectual Property Rights of any third party.
- 8.5 We grant You a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy any materials provided by Us to You for the term of the Contract for the purpose of providing Services to us.
- 8.6 You acknowledge that all rights in Customer Materials will remain Our exclusive property.

## 9 Liability, Loss and Insurance

- 9.1 Your total liability to Us shall be limited to the Contractor Liability Cap. Such limit of liability shall not apply to: (i) liability arising under or in connection with Clauses 8 (Intellectual Property); 10 (Confidentiality); and 11.8 (Data Protection), and (ii) any claim by any third party arising out of a breach of the Contract by You.
- 9.2 Our total liability to You shall not exceed the price payable for Good and/or Services under the Contract.
- 9.3 Neither party excludes or limits liability for death or personal injury arising from the breach of duty of such party, fraud or fraudulent misrepresentation, any breach of obligations implied by Section 12 of the Sales of Goods Act 1979, any loss or corruption of data, or any other liability which cannot be excluded or limited by law.
- 9.4 You will pay to Us on demand the amount of any loss, costs and expenses which incur as a result of Your negligence, any breach by You or the Contract, any infringements of a third party's Intellectual Property Rights or any damage to the property or injury or death caused by You in supply of Goods and/or Services.
- 9.5 During the term of the Contract You shall maintain in force insurance policies with reputable insurance companies, against all risks that would normally be insured against by a prudent businessperson in connection with the risks associated with this Contract and to cover the liabilities that may arise under or in connection with the Contract, and shall, on Our request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance. Specific values and types of insurance can be agreed by the parties separately in the Contract Documents.
- 9.6 If You are an individual, You will, if We ask, provide Us with evidence of Your self-employed status. We are entitled to assume that You are self-employed, and You will make sure that We do not have to bear the cost of paying the Inland Revenue or any other Government Department any tax, national insurance or similar payments on the basis that You are not self-employed.

## 10 Confidentiality

- 10.1 Each party undertakes that it shall not disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by Clause 10.2.
- 10.2 Each party may disclose the other party's confidential information: to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors

or advisers to whom it discloses the other party's confidential information comply with this Clause 10 and as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority. Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

## 11 Data protection

- 11.1 The parties agree that the provisions of this Clause 11 will apply unless it is specifically agreed between parties otherwise in the Contract Documents.
- 11.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 11.3 Subject to Clause 11.2 the parties each agree that, for the purposes of Data Protection Legislation if personal data is shared for the purposes of, or in connection with, performing this Contract ("**Protected Data**"), We are the controller, and You are the processor.
- 11.4 If Protected Data is shared between parties Annex A shall describe the subject matter, duration, nature and purpose of the processing, the Protected Data categories, and data subject types.
- 11.5 Without prejudice to the generality of Clause 11.2, 11.3 and 11.4, You shall in relation to any Protected Data processed in connection with the performance by You of Your obligations under the Contract:
- 11.5.1 process that Protected Data only on Our documented written instructions unless You are required by Domestic Law to otherwise process that Protected Data. Where You are relying on Domestic Law as the basis for processing Protected Data, You shall promptly notify Us of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits You from so notifying Us;
- 11.5.2 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Protected Data and against accidental loss or destruction of, or damage to, Protected Data;
- 11.5.3 ensure that all personnel who have access to and/or process Protected Data are obliged to keep the Protected Data confidential; and
- 11.5.4 not transfer any Protected Data outside of the UK unless the prior written consent from Us has been obtained and the following conditions are fulfilled: (i) either party has provided appropriate safeguards in relation to the transfer; (ii) the data subject has enforceable rights and effective legal remedies; (iii) You comply with Your obligations under the Data Protection Legislation by providing an adequate level of protection to any Protected Data that is transferred; and (iv) You comply with Our reasonable instructions notified to You in advance with respect to the processing of the Protected Data;
- 11.5.5 assist Us in responding to any request from a data subject and in ensuring compliance with Your obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 11.5.6 notify Us without undue delay on becoming aware of a Protected Data breach;
- 11.5.7 at Our written direction, delete or return Protected Data and copies thereof to us, on termination of the Contract unless required by Domestic Law to store the Protected Data;
- 11.5.8 maintain complete and accurate records and information to demonstrate Your compliance with this Clause 11 and allow for audits by Us and immediately inform Us if, in Your opinion, an instruction infringes the Data Protection Legislation.
- 11.6 We do not consent to You appointing any third party processor of Protected Data under the Contract.
- 11.7 In relation to the processing of any Personal Data other than the Protected Data by the parties in connection with the Contract, the parties:
- 11.7.1 acknowledge and agree that they are each independent controllers;
- 11.7.2 shall only share Personal Data where it is fair and lawful to do so; and
- 11.7.3 shall otherwise comply with their obligations under Data Protection Law.

- 11.8 You shall indemnify Us and keep Us indemnified against any losses, costs, damages, awards of compensation, any monetary penalty notices or administrative fines for breach of Data Protection Law and/or expenses (including legal fees and expenses) suffered, incurred by us, or awarded, levied or imposed against us, as a result of any breach by You of Your obligations under this Clause. Any limitations or exclusions of liability in the Contract shall not apply to this indemnity.
- 11.9 You shall comply with Your obligations under this Clause at Your cost and expense.
- 12 Termination**
- 12.1 We may tell You if We think You have You have breached any of Your obligations or warranties under the Contract. If such a breach of Contract is capable of remedy, We will give You an opportunity to remedy it to Our satisfaction within 14 days.
- 12.2 If the breach cannot be remedied, or if You fail to do so within the 14 days, We may terminate the Contract in whole or in part immediately by written notice.
- 12.3 If You believe that We have failed to pay a valid undisputed invoice for sums properly due under the Contract, You should notify Us in writing. We will have 21 days from receiving such notification to assess Your claim and make payment if appropriate. If We have not paid Your valid undisputed invoice for sums properly due within 30 days of when We receive Your written notification asking Us to do so, You may terminate the Contract by written notice to Us.
- 12.4 Without affecting any other right or remedy available to Us, We may terminate a Contract with immediate effect, in whole or in part, by giving written notice to You if:
- 12.4.1 You enter into any form of insolvency or bankruptcy proceedings or if We believe that You are unable to pay, or if You cease to pay, Your debts as they fall due;
- 12.4.2 You fail You to comply with Your obligations under Clause 3.5;
- 12.4.3 You fail to comply with Your obligations under Clause 3.7;
- 12.4.4 You suffer a change of Control which has not been pre-approved by Us in writing; or
- 12.4.5 You, as a result of any act or omission, in Our sole opinion, cause damage or risk to Our reputation.
- 12.5 The term of the Contract shall be the term set out in the Contract Documents, but We may terminate the Contract, in whole or in part, at any time by giving You at least 30 days' notice in writing.
- 13 Consequences of termination**
- 13.1 On termination or expiry of the Contract You will provide Us with a report on the work You have carried out under the Contract. We will pay You on a pro rata basis for work that You have completed in accordance with the Contract unless We have terminated the Contract under Clauses 12.1or 12.4and We will have no further loss or liability to You.
- 13.2 On termination of the Contract, You shall immediately deliver to Us all Deliverables whether or not then complete, return all Customer Materials and stop using and destroy any Confidential Information of ours held in paper or electronic form. If You fail to do so, then We may enter Your premises and take possession of them. Until they have been returned or delivered, You shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 13.3 Termination or expiry of the Contract shall not affect the parties' rights and remedies that have accrued as at termination or expiry including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 13.4 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.
- 14 Force majeure**
- 14.1 Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 21 days the party not affected may terminate the Contract by giving written notice to the affected party.
- 15 General**
- 15.1 **Assignment and Subcontracting.** You shall not assign or subcontract any of Your rights and obligations under the Contract without the prior written consent from Us. If We consent to any assignment or subcontracting by You, You shall remain responsible for all the acts and omissions of Your agents and subcontractors as if they were Your own.
- 15.1.1 Subject to clause 15.1, any subcontract You enter into must comply with, and incorporate, the following provisions:
- 15.1.1.1 the subcontract is to be formed between You and the subcontractor. It should be noted in the subcontract that it is a subcontract by you under Contract;
- 15.1.1.2 You, as the contractor, are required to pay the subcontractor, engaged in connection with the Contract, any undisputed sums within thirty (30) days of receiving a valid invoice; and
- 15.1.1.3 if the subcontractor has difficulty in securing payment from You they have the right to refer the matter to Us. Any complaints relating to late payment should be addressed to You in the first instance and in the second instance Us at [hieprocurement@hient.co.uk](mailto:hieprocurement@hient.co.uk).
- 15.2 **Notices.** Any notice given to a You under or in connection with the Contract shall be in writing and shall be given by hand or sent by first class recorded delivery post to the address shown in the Contract Documents. Any notice given to Us under or in connection with the Contract shall be in writing and shall be sent by email and followed up by first class recorded delivery to Our address shown in the Contract Documents. Either party can change its address for notices by telling the other in writing. If sent to the correct address, notices shall be deemed given two business days after the date of posting.
- 15.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this Clause 15.3 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 15.4 **Waiver.** A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
- 15.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 15.6 **Third party rights** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce any term of the Contract.
- 15.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives.
- 15.8 **Governing law.** The Contract shall be governed by and construed in accordance with the law of Scotland and any court action relating to the Contract will take place exclusively in the courts in Scotland.
- 16 Definitions**
- In these terms and conditions, certain words and phrases have defined meanings as set out below.
- 16.1.1 **"Business Day"** means a day other than a Saturday, Sunday or public holiday in Scotland, when banks in Inverness are open for business.
- 16.1.2 **"Business Hours"** means the period from 9.00 am to 5.00 pm on any Business Day.
- 16.1.3 **"Conditions"** means these terms and conditions as amended from time to time.
- 16.1.4 **"Confidential Information"** means, in relation to either party, information of a confidential or proprietary nature (whether in oral, written or electronic form) concerning the business affairs, customers, clients or suppliers of a Party or of any member of its Group including but not limited to information relating to a Party's operations, processes, plans, product information, know-how, designs, trade secrets, software and market opportunities which (a) either Party has marked as confidential or proprietary, or (b) either Party, orally or in writing, has advised the other Party is of a confidential nature, or (c) due to its character or nature, a reasonable person in a like position and under like circumstances would treat as confidential.

- 16.1.5 **"Contract"** means the contract between HIE and you for the supply of Goods or Services or Goods and Services in accordance with these Conditions.
- 16.1.6 **"Contract Documents"** means any commissioning letter, purchase order, these terms and conditions, annex, any responses or clarifications relating to any commissioning letter or purchase order in writing, which includes any email correspondence between HIE and You.
- 16.1.7 **"controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures"**: as defined in the Data Protection Legislation.
- 16.1.8 **"Control"** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be interpreted accordingly.
- 16.1.9 **"Customer Materials"** means all materials, equipment and tools, drawings, specifications and data supplied by us to you.
- 16.1.10 **"Contractor Liability Cap"** means, the higher of: (a) any specific liability cap (whether expressed as a monetary amount or a percentage) expressly agreed by the parties in the Contract Documents; and (b) 150% of the price payable for Goods and/or Service under the Contract.
- 16.1.11 **"Personal Data"** means the personal data being processed by either party pursuant to the terms of the Contract and identified in the Contract Documents and Annex A.
- 16.1.12 **"Data Protection Legislation"** means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR, the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.
- 16.1.13 **"Deliverables"** means all documents, products and materials developed by you or your agents, contractors, and employees for HIE as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).
- 16.1.14 **"Delivery Location"** means the location set out in the Contract Documents that Goods are to be delivered to or any location as otherwise agreed by the parties in writing.
- 16.1.15 **"Domestic Law"**: means the law of the United Kingdom or a part of the United Kingdom.
- 16.1.16 **"Goods"** means the goods (or any part of them) set out in the Order.
- 16.1.17 **"Goods Specification"** means any specification for the Goods, including any related plans and drawings, which is agreed in writing by the parties.
- 16.1.18 **"HIE", "we", "us" or "our"** means Highlands and Islands Enterprise established by the Enterprise and New Towns (Scotland) Act 1990 and having its registered office at An Lòchran, 10 Inverness Campus, Inverness, IV2 5NA.
- 16.1.19 **"Information"** shall have the same meaning as defined in the Freedom of Information (Scotland) Act 2002 (FOISA).
- 16.1.20 **"Intellectual Property Rights"** means any patent, patent application, know how, service mark, trade mark, database right, registered or unregistered design right, copyright or other similar industrial, commercial, or intellectual property right which may subsist in any part of the world.
- 16.1.21 **"Mandatory Policies"** means our business policies and codes as updated from time to time.
- 16.1.22 **"Order"** means our order for the supply of Goods and/or Services, as set out in our purchase order form or in our written acceptance of your quotation, as the case may be.
- 16.1.23 **"Service Specification"** means the description or specification for Services agreed in writing by the parties.
- 16.1.24 **"Services"** means the services, including any Deliverables, to be provided by you under the Contract as set out in the Service Specification.
- 16.1.25 **"Supplier Materials"** means all materials, equipment and tools, drawings, specifications and data supplied by you to us.
- 16.1.26 **"you, your, Supplier"** means the person or firm from whom we purchase the Goods and/or Services.