

## **NRA STANDARD TERMS AND CONDITIONS FOR THE PURCHASE OF DELIVERABLES**

### **1. Definitions**

"Contract" means each and/or any of the NRA's invitation to tender, the Supplier's offer as accepted by the NRA, the agreed specification, the Purchase Order and these terms and conditions.

"Date for Delivery" means the agreed date or dates for delivery or completion of the Deliverables to the NRA, or a nominee of the NRA, or such other date as is acceptable to the NRA and agreed in writing.

"Deliverables" means the goods and/or services ordered pursuant to the Purchase Order and supplied and/or performed or to be supplied and/or performed by the Supplier to the NRA pursuant to the Contract.

"Inspecting Officer" means any person appointed by the NRA for the purpose of carrying out inspections or tests provided for under Clause 5.1.

"Point of Delivery" means the agreed location or locations for performance or delivery of the Deliverables by the Supplier.

"Purchase Order" means the purchase order issued by the NRA to the Supplier to which these terms and conditions attach.

"NRA" means National Roads Authority.

"Supplier" means the recipient of a Purchase Order who, by acknowledging or commencing performance of the Purchase Order, agrees to supply and/or perform the Deliverables in accordance with the Contract.

### **2. Obligations**

2.1 The Supplier shall supply and/or perform the Deliverables in accordance with the Contract.

2.2 The NRA shall pay the agreed price for the Deliverables as detailed in the Purchase Order.

### **3. Representations and Warranties**

3.1 The Supplier hereby represents and warrants that:

(a) it has the power and authority to execute the Contract and deliver and perform its obligations thereunder;

(b) its obligations under the Contract are legally binding;

(c) that where the Deliverables comprise of goods, such goods shall:

(i) correspond with their description;

(ii) be of sound materials and workmanship;

(iii) be equal in all respects to samples provided by the Supplier to the NRA and drawings or specifications provided by either the Supplier or the NRA to the other;

(iv) be capable of any anticipated standard of performance and any other standard of performance specified by the NRA;

(v) be fit for any purpose which it may reasonably be expected that the Deliverables will be used for and be fit for all particular purposes of the Deliverables made known to the Supplier by the NRA either expressly or by implication; and

(vi) the Deliverables shall conform and comply in full with all applicable laws, enactments, orders, regulations and licences; and

(d) that where the Deliverables comprise of services, the Supplier shall:

(i) perform the Deliverables in accordance with the Contract and exercising all reasonable skill, care and diligence reasonably expected of a Supplier experienced in carrying out services of a similar nature, scope and complexity;

(ii) where materials are used, the Supplier shall use its best endeavours to ensure that they are of sufficient quality and fit for the purpose for which they are used; and

(e) its obligations under this Contract and the Deliverables shall be performed and provided in full compliance with all applicable laws, enactments, orders, regulations and licences.

3.2 Neither inspection nor testing before the Date for Delivery, and neither performance, acceptance of the Deliverables nor any payment made by the NRA, shall relieve the Supplier of its obligation to comply with this Clause 3 or with any other provision of the Contract.

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

The Supplier may not directly or indirectly transfer or assign the Contract (or part thereof) without the prior written consent of the NRA and will always be responsible for those acting on its behalf.

### **5. Inspection**

5.1 An Inspecting Officer may inspect and test the Deliverables (including materials and/or other components thereof) at any time during performance or manufacture or processing and prior to the Date for Delivery.

5.2 For this purpose, the Supplier shall provide (at its own cost) to the Inspecting Officer such access to the Deliverables, or materials or parts or components thereof and such facilities and co-operation as are required to carry out such an inspection or test when reasonably requested to do so.

5.3 Following any inspection or test, the Inspecting Officer may notify the Supplier of any deficiencies in the Deliverables. Upon receipt of such notice the Supplier shall, at its own expense, take all necessary steps to remedy the situation and to ensure that the Deliverables comply in every manner with the Contract.

### **6. Delivery and Acceptance**

Where the Deliverables consist of goods:

6.1 The Supplier shall deliver the Deliverables to the Point of Delivery on the Date for Delivery and shall bear all costs and expenses of, or incidental to, carriage save that the NRA will pay customs duty or tax levied in Ireland in respect of Deliverables imported and dispatched directly to NRA.

6.2 The Supplier shall ensure that the Deliverables are suitably packaged having due regard to the nature of the goods.

6.3 If the Deliverables or element thereof consist of a dangerous substance or preparation, a material safety data sheet shall be delivered to the NRA with the Deliverables.

6.4 Title shall pass to NRA on delivery and acceptance of the Deliverables by an authorised representative of NRA, without prejudice to any right of rejection under the Contract. Until delivery, the goods shall be at the risk of the Supplier.

### **7. Right of Rejection**

Where the Deliverables consist of goods:

7.1 If on the Date for Delivery or at any time thereafter, the Deliverables or part thereof do not comply with the Contract, the NRA shall be entitled to reject them by notice to the Supplier and the Supplier shall at its own expense collect the rejected Deliverables from the Point of Delivery or other agreed location.

7.2 Where the NRA rejects such Deliverables it may give notice requiring replacement Deliverables whereupon the Supplier shall be obliged to deliver the replacement Deliverables within the time period stipulated in such notice.

7.3 The Supplier shall reimburse the NRA for expenditure incurred in acquiring replacement Deliverables or purchasing substitute Deliverables.

### **8. Training, Spare Parts and Information**

Where the Deliverables consist of goods:

8.1 The Supplier shall, where requested by the NRA, provide NRA personnel with training in the use and maintenance of the Deliverables.

8.2 If requested, the Supplier shall provide spare parts at a reasonable cost not exceeding that charged under like circumstances to other customers of the Supplier.

8.3 The Supplier shall supply, without any additional cost, all technical drawings, service manuals and/or maintenance specifications specific to the Deliverables, including any relevant updating documents.

### **9. Accounts for Payment**

9.1 The Supplier shall invoice the NRA promptly on delivery or completion of the Deliverables. Such invoice must quote the attached Purchase Order number. The invoice must be addressed to: Accounts Department, National Roads Authority, St. Martins House, Waterloo Road, Dublin 4.

9.2 Payment for the Deliverables will be made in accordance with the Prompt Payment of Accounts Act, 1997, as amended. Incorrect invoices will be returned for correction with consequential effects on the due date of payment in accordance with the Prompt Payment of Accounts Act, 1997 as amended. If any dispute arises in respect of an invoice, or any part thereof, payment of that invoice, or such disputed part thereof, shall be withheld until resolution of the dispute.

9.3 Payment for the Deliverables will only be made when the NRA is in possession of a copy of the Suppliers current Tax Clearance Certificate or C2 Certificate, in accordance with Clause 12.

9.4 Unless otherwise agreed, the NRA shall not be liable to the Supplier for any payment for the Deliverables, or part thereof, until the Deliverables have been received or performed in full in accordance with the Contract.

9.5 Where the Supplier is liable to make any payment to the NRA, the NRA may set off any such amounts due by it against amounts owed to it by the Supplier.

9.6 Any Supplier with an outstanding balance due to them at month-end must send a statement of account to the Accounts Department, National Roads Authority, St. Martins House, Waterloo Road, Dublin 4.

### **10. Intellectual Property**

10.1 All intellectual property rights created or produced pursuant to the Contract shall vest solely in the NRA.

10.2 The Supplier hereby undertakes that all intellectual property rights already subsisting in the Deliverables and in respect of the Contract are owned by it or used with the consent of the owner and hereby indemnifies the NRA against any action, claim or demand for infringement of any intellectual property rights in respect of Deliverables and/ or in respect of royalties or damages arising therefrom.

### **11. Fair Wages**

The Supplier shall comply with all applicable employment legislation and/or regulations or registered employment agreements within the meaning of the Industrial Relations Acts 1946 to 2004, or any amendment thereof.

### **12. Tax Clearance**

The Supplier shall hold and maintain a current tax clearance certificate or C2 certificate from the Revenue Commissioners and shall provide evidence of this to the NRA upon request.

### **13. Termination of Contract**

13.1 The NRA may at any time terminate the Contract, or any part thereof without prejudice to any other right or remedy accruing to the NRA by notice to the Supplier.

13.2 In the event of termination by the NRA pursuant to this Clause 13, the Supplier shall be entitled to payment in respect of such proportion of the Contract properly performed up to the date of termination.

### **14. Waiver**

A waiver by the NRA of any breach of the Contract by the Supplier shall not be considered a waiver of a subsequent breach of the same or any other provision.

### **15. Indemnity**

The Supplier hereby indemnifies and agrees to keep indemnified the NRA from and against all liabilities, claims, actions, proceedings, costs, damages and losses howsoever arising and whatsoever suffered or incurred by the NRA in relation to this Contract.

### **16. Insurance**

The Supplier shall effect and maintain the necessary Employer's Liability Insurance, Public and Product Liability Insurance and all insurances that are required by law. Where the Deliverables comprise of services involving the carrying out of design, the Supplier shall effect and maintain the necessary professional indemnity insurance.

### **17. Dispute Resolution**

In the event of dispute between the NRA and the Supplier, the NRA and the Supplier shall immediately seek to resolve the dispute by negotiation in good faith. If unresolved following 15 days, the NRA may terminate the Contract by notice to the Supplier without prejudice to any other right or remedy accruing to either party.

### **18. Notices**

18.1 Notice may be served on the Supplier by hand delivery or by sending it by post to its registered office or place of business. Notice may be served on the NRA by hand delivery or by sending it by post to Head of Finance & Administration, National Roads Authority, St. Martins House, Waterloo Road, Dublin 4 or such other address as may be notified by the NRA.

18.2 Notices shall take effect on the date of service or such other date specified in the notice. The date of service shall be deemed to be the date of hand delivery or, if posted, 2 days following postage.

### **19. Status**

The NRA and the Suppliers are neither partners nor a joint venture nor is the Supplier able to act as agent of the NRA save to the extent, if any, authorised by the Contract.

### **20. Entire Agreement**

The Contract contains the entire agreement between the parties and supersedes all other representations and the Supplier hereby waives its standard terms and conditions in favour of these terms and conditions.

### **21. Severability**

If any condition, clause or provision of the Contract is or becomes invalid, illegal or unenforceable, the validity, legality or enforceability of the remainder of the Contract shall not in any way be affected or impaired thereby.

### **22. Limitation of Liability**

Subject to law, the NRA's maximum aggregate liability in connection with the Contract, howsoever arising, is limited to €50,000. In no circumstances shall the NRA be liable for any loss of income, profits or contracts or for any special, indirect or consequential loss or damage of any kind howsoever arising.

### **23. Governing Law**

The Contract shall be governed by the laws of Ireland and both parties submit to the exclusive jurisdiction of the Irish Courts.