

## Part 2 Section 2: Payment Equipment Terms

### 1. Introduction

- 1.1 The Buyer wishes to procure and the Supplier has agreed to supply certain Payment Equipment (and related services) under the Call-off Contract and each PE Order Form.

### 2. Definitions

- 2.1 In this Section, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions) and the Definitions in Part 1 of this Call - off Schedule 23:

<b>'Additional Charges'</b>	means the amounts so specified in the Call-Off Schedule 5 (Pricing Details) or a PE Order;
<b>'Delivery Place'</b>	means the place for delivery (and where relevant installation) of PE specified in the PE Order;
<b>'Leased PE'</b>	has the meaning given in Paragraph 4.1 below:
<b>'Payment Equipment' (or 'PE')</b>	means the payment terminal devices, machines, equipment, and/or software programs (including POS and MPOS equipment or equivalent, credit card terminals, EFTPOS terminal (or by the older term as PDQ)) set out in the Specification and ordered by the Buyer as may be supplemented in the Call-Off Contract or in any PE Order. For the avoidance of doubt the PE shall be <b>"Deliverables"</b> for the purposes of the Call-Off Contract;
<b>'PE Charges'</b>	means the PE Fees and any Additional Charges (exclusive of any applicable VAT) payable to the Supplier by the Buyer under the Call-Off Contract for the full and proper performance by the Supplier of its obligations under this Schedule and Section, which amounts must not be greater than the amounts provided for in the Framework Contract from time to time;
<b>'PE Fee'</b>	means the amount specified in the PE Order;
<b>'Finish Date'</b>	means the date so specified in the Order Form as may be updated from time to time in a PE Order or as varied by the application of Paragraph 5.5;

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<b>"PE Order"</b>	means the form specifying the item (or items) of PE that the Buyer requires from the Supplier (and which the Supplier will provide) under the Call-Off Contract which will be in the form set out in the Annex below;
<b>"PE Specific Maintenance"</b>	(a) topping up of any consumables between routine maintenance visits;  (b) repairs outside of normal routine maintenance but excluding costs occasioned by wilful damage, neglect, accident damage or top ups of consumables between routine maintenance visits; and  (c) replacements of any components which wear out due to fair wear and tear during the Supply Period, except where such replacement is occasioned by the lack of care or abuse of the PE item by the Buyer;
<b>"PE Terms"</b>	means the terms and conditions of supply set out in Part 1 of this Call-Off Schedule 23 and in this Section 2;
<b>"Printables"</b>	has the meaning given in Paragraph 5.5; and
<b>"Sold PE"</b>	has the meaning given in Paragraph 4.1 below.

### **3. Exclusion or Modification of certain Core Terms**

3.1 When the Parties have entered into a Call-Off Contract which incorporates the terms in this Section, the following Core Terms are modified in respect of the Call-Off Contract (but are not modified in respect of the Framework Contract or the Call-off Contract to the extent that it relates to items other than Payment Equipment (and the related services referred to in this Section)):

3.1.1 Clause 3.2.3 of the Core Terms does not apply to the Call-Off Contract in respect of Leased PE. The warranty at Clause 3.2.5 of the Core Terms shall be modified in respect of Leased PE to refer to the "time of supply" rather than "time of transfer of ownership". The Clauses shall, however, remain unchanged in relation to Sold PE.

### **4. PE Orders**

4.1 The Buyer may from time to time place PE Orders with the Supplier for PE. The Buyer shall have the option in the PE Order to specify whether it requires the PE to be provided on a lease basis ("**Leased**

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**PE**") or to be sold to the Buyer by the Supplier ("**Sold PE**"). The Buyer shall further, where it has selected Leased PE, have the option, by notice in writing to the Supplier, to subsequently require the Supplier to (and the Supplier shall) complete the sale to the Buyer of that Leased PE, such that it becomes Sold PE. The relevant charges which can be charged by the Supplier for:

- 4.1.1 the supply of Leased PE;
- 4.1.2 the supply of Sold PE; and
- 4.1.3 the supply of ancillary Services in relation to both Leased PE and Sold PE,

shall be set out in the Order Form.

4.2 Each PE Order is subject to the PE Terms and the other relevant terms of the Call-Off Contract. No other terms and/or conditions which the Supplier tries or purports to impose including under any quotation, confirmation of order, delivery note, invoice or similar document, or otherwise, or which are elsewhere implied by custom, practice or course of dealing, shall apply or form part of the Call-Off Contract.

4.3 The Supplier shall send a confirmation of the relevant PE Order to the Buyer by electronic means (or in any other method as the Parties may agree from time to time) within one (1) Working Day of receipt of the PE Order and the confirmation will confirm the order details including:

- 4.3.1 a description of the item(s) of PE ordered;
- 4.3.2 details of any installation work to be carried out;
- 4.3.3 the anticipated delivery details; and
- 4.3.4 the name and address of the Supplier.

4.4 For the avoidance of doubt, each PE Order survives the expiration or termination of the Framework Contract but not of the Call-Off Contract.

## **5. Supply of PE**

5.1 In consideration of the payment of the PE Charges, the Supplier will supply the PE to the Buyer in a timely manner and in accordance the

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Call-Off Contract and the requirements notified to the Supplier in the PE Order (including whether the PE is Leased PE or Sold PE).

- 5.2 The Supplier shall advise the Buyer on the selection and specification of the PE and, where applicable, any installation and/or configuration work to be carried out in respect of it so as to ensure that the PE will be of satisfactory quality, suitable for the requirements of the Buyer, and fit for purpose.
- 5.3 Before the Activation Due Date of any PE item the Buyer can amend or cancel and remove that PE item from the PE Order by notifying the Supplier. If the Buyer does cancel all or part of a PE Order:
- 5.3.1 the Buyer will pay the Supplier's reasonable, unavoidable, and proven costs already incurred on the cancelled PE Order as long as the Supplier takes all reasonable steps to minimise these costs, including an attempt to redeploy the ordered PE to an alternative customer; and provided that
- 5.3.2 where the amendment or cancellation of a PE Order is directly or indirectly due to the Supplier's failure to comply with its obligations under the Call-Off Contract, the Buyer has no liability to the Supplier in respect of the amendment or cancellation.
- 5.4 If the Buyer wants to retain any Leased PE item and any related services (or in relation to Sold PE, any related services) after the expiry of the current Supply Period then the Buyer may do so giving written notice to the Supplier at least one (1) Month prior to the end of the Supply Period and specifying the period of any required extension. The PE Fees payable in relation to any extensions of a Supply Period are (unless otherwise agreed between the Parties) calculated using the same method that was used to calculate the original PE Fees.
- 5.5 The PE shall, where till rolls and sales vouchers are to be used with the equipment, enable the Buyer to use its own banking-industry approved till rolls and sales vouchers. In addition, on request, the Supplier shall provide the Buyer with replacement stocks of banking-industry approved till rolls and sales vouchers for use with the relevant PE ("**Printables**"). Where required by the Buyer, the Supplier shall monitor the levels of Printables held from time to time by the Buyer and shall recommend levels of stock holding and advise the Buyer when it should re-order any relevant Printables. The Supplier shall ensure that it holds sufficient stocks of Printables to be

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able to meet the Buyer's demand across its estate of PE deployed from time to time.

## **6. Delivery and Installation**

- 6.1 The Buyer may specify on the PE Order the required Activation Due Date for the relevant PE. The Supplier may (acting reasonably and in good faith) give the Buyer confirmation that the anticipated Activation Due Date for each PE item is not achievable and an alternative Activation Due Date by not later than two (2) Working Days of receipt of the PE Order. If the Supplier fails to give such a confirmation, it shall be deemed to have agreed the relevant Activation Due Date.
- 6.2 The Supplier will deliver the PE to the Delivery Place or as otherwise reasonably directed by the Buyer.
- 6.3 If the Buyer has requested that the Supplier installs and/or configures the PE at the Delivery Place, the Supplier shall do so. The Buyer shall use reasonable efforts to ensure that a duly authorised representative of the Buyer is present at the installation of the PE.
- 6.4 The Supplier will, at the Supplier's cost, deliver the PE to the Buyer in full working order and condition on the Activation Due Date. Each PE item shall be configured in accordance and shall in all respects comply with the relevant Specification.
- 6.5 The Supplier can only deliver PE before the Activation Due Date if the Buyer agrees to early delivery before the Supplier attempts delivery.
- 6.6 Any defects to or in a PE item notified to the Supplier by the Buyer must be rectified within five (5) Working Days at no cost to the Buyer.
- 6.7 A PE item shall only be regarded as delivered once it has been successfully installed, configured and tested and a duly authorised representative of the Buyer has signed a delivery note (which quotes the Supplier's order number and full details of the PE item) to confirm delivery of the PE. However, any such signature shall not be regarded as evidence that the PE complies with the requirements of the PE Order and/or the Contract.
- 6.8 If, for any reason, the Buyer is unable to take delivery of a PE item on or after the Activation Due Date the Supplier must, at its own expense, store or arrange for the storage of the PE for a reasonable time and must safeguard the PE until actual delivery.

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- 6.9 The Supplier must make sure (at its own cost) that each PE item is delivered in a new and unused condition unless the Buyer requests otherwise. The Buyer can at its sole discretion reject a PE item which is not in the condition required under the Contract and/or in respect of which the delivery note does not include the required information.
- 6.10 If the Supplier does not deliver a PE item by the agreed time or specified date then the Buyer can withhold payment of the PE Charges for that PE item until the time when the Supplier actually delivers it.
- 6.11 If the Supplier becomes aware that a PE item cannot be delivered by the agreed Activation Due Date or if a PE item is not actually delivered by its Activation Due Date, the Supplier shall inform the Buyer of the revised delivery date which shall be as soon as possible and without prejudice to the Buyer's other rights and/or remedies. Where the Buyer has indicated that the timing of delivery is critical, the Supplier must provide an alternative PE item of the same specification or one with equivalent specification by the Activation Due Date until the time as the PE item is actually delivered. If the Supplier cannot supply an alternative PE item by the Activation Due Date, the Supplier must meet and promptly refund to the Buyer all and any additional costs incurred by the Buyer for provision of a PE item of the same specification or one with equivalent specification (without prejudice to the other rights and/or remedies of the Buyer).

**Title, Possession and Risk**

- 6.12 All Leased PE is and shall remain the property of the Supplier, and the Buyer will not acquire ownership of the Leased PE (but shall have the right to possess and use the Leased PE in accordance with the Call-Off Contract). All Sold PE shall be sold to the Buyer by the Supplier with full title guarantee, free from any third party rights, claims and/or interests. All Sold PE will be sold to the Buyer with a warranty that it is of satisfactory quality, free from any defects in materials, manufacture and/or design and fit for its intended purposes. The Supplier shall ensure that title to any item of Sold PE transfers to the Buyer on payment by the Buyer for the relevant Sold.
- 6.13 The Buyer accepts a PE item by signing a delivery form and the Supply Period for that PE item starts at such point, unless the Buyer notifies the Supplier that the PE item is not in accordance with the agreed specification or otherwise not in conformity with the requirements of the PE Order by telephone and confirmed in writing, email or facsimile within seventy-two (72) hours of delivery.

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- 6.14 Except where non-acceptance is due to default of the Buyer, in the event of non-acceptance of a PE item the Supplier will, at its own expense make an equivalent alternative PE item available for use by the Buyer until the time that the Supplier actually delivers an acceptable PE item to the Buyer.
- 6.15 From the time of acceptance of a PE item, the Buyer bears the risk of loss or damage to the PE except for loss or damage:
- 6.15.1 caused or contributed to by the act, omission, breach or default of the Supplier, its Subcontractors or its agents;
  - 6.15.2 which is due to any defect or fault in the PE or any other Deliverable provided by the Supplier; or
  - 6.15.3 while the Supplier has possession of the PE, including for any maintenance.
- 6.16 The Supplier must give, and shall ensure that any third party owner gives, the Buyer quiet possession of the Leased PE and the Supplier warrants and represents that the Buyer can hold the Leased PE throughout the Supply Period free of any interference from the Supplier, the owner or any person acting through the Supplier.

## **7. Supplier's Obligations**

### **Warranty**

- 7.1 The Supplier warrants, represents and undertakes that:
- 7.1.1 the range of PE available from the Supplier shall be as set out in the Specification.
  - 7.1.2 all PE (and any other relevant Deliverables, including Software shall:
    - 7.1.2.1 comply with its Specification and this shall include supporting and interfacing to the Payment Gateways Merchant Acquirers, APIs, and Terminal Protocols (if any) set out in the Specification;
    - 7.1.2.2 be sufficient and able at all times to facilitate the authorisation, receipt, transfer, processing, and accounting of incoming payment Transactions;

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- 7.1.2.3 be capable of accepting and processing Transactions from and to traditional, new and existing Cards (using Chip and PIN and contactless technology or its replacement);
  - 7.1.2.4 enable the Buyer to decide which Cards and from which Card Schemes, may or may not be accepted and/or processed (it being acknowledged that where the Buyer has chosen to accept specific Cards issued under a particular Card Scheme, the Supplier may be required under the relevant Mandatory Rules of that Card Scheme to ensure that all such Cards issued under the relevant Card Scheme are capable of acceptance regardless of who the relevant Card Issuer is);
  - 7.1.2.5 collect and process Transaction Data for transmission to the Buyer's Acquirer and/or Acquiring Services provider, APM provider (if relevant), and/or Fraud Services provider;
  - 7.1.2.6 enable any required connection to and/or interfacing and interoperability with the Buyer's Related Suppliers and Related Supplies (including Gateway Services providers, Fraud Services providers, APMs (if relevant) and Acquiring Services providers);
  - 7.1.2.7 facilitate both "Cardholder Present" and "Cardholder Not Present" Transactions; and
  - 7.1.2.8 be tamper-proof, and display evidence of any tampering.
- 7.1.3 all encryption keys shall be invalidated on any tampering with the relevant PE.
- 7.2 The Supplier shall ensure that all Transactions are processed and any issues are resolved:
  - 7.2.1 in accordance with the Service Levels;
  - 7.2.2 in accordance with all Laws, Rules and PCI at all times.

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- 7.3 The Supplier shall provide, maintain and update all hardware and software required to facilitate the acceptance and processing of Transactions required by the Buyer through the PE.
- 7.4 The Supplier shall ensure the Buyer can elect which Cards and/or Card Schemes can be accepted and processed at any time.

**Defects**

- 7.5 The Supplier shall remedy, as soon as possible, any defect in the PE which manifests itself following the Activation Date (including where relevant by providing a replacement). Such remedy shall be free of charge, provided that:
  - 7.5.1 the Buyer permits the Supplier to make a full examination of the alleged defect; and
  - 7.5.2 the defect did not materialise as a result of misuse, neglect, alteration, mishandling or unauthorised manipulation by any person other than the Supplier's authorised personnel.
- 7.6 If the Supplier does not remedy or replace any defective PE within two (2) Working Days, any PE Fees in respect of that PE item shall, without prejudice to any of the Buyer's other rights or remedies, be suspended and shall not resume until the relevant issue is resolved. The suspension of PE Fees is calculated on a daily basis.
- 7.7 The Supplier shall transfer to the Buyer, so far as is possible, the benefits of any manufacturers' warranties relating to the fitness and performance of the PE.
- 7.8 If the Supplier does not remedy any defect in the PE in accordance with Paragraph 7.5, the Supplier must, at the Buyer's request, recover part or all of the PE and make an appropriate reduction to the PE Fees payable during the remaining term of the Contract.

**Maintenance and Support**

- 7.9 The Supplier shall provide maintenance, installation and swap services for the PE provided to the Buyer.
- 7.10 The Supplier is responsible for the provision (at its own costs) of:
  - 7.10.1 normal routine maintenance (where relevant in accordance with manufacturers' maintenance recommendations as amended from time to time); and

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7.10.2 any PE Specific Maintenance.

7.11 If the Supplier replaces any components or PE the replacement must be new and of the same specification. The Supplier shall assign title in any replacement PE or components for Sold PE in the same way as required under the Contract for the relevant Sold PE.

7.12 If the Parties agree that the Buyer will pay any additional maintenance or repair costs, the Supplier must advise the Buyer of the costs as soon as practicable which must then be subject to approval in writing by the Buyer and the Supplier must submit an invoice to the Buyer within ten (10) Working Days of the cost being incurred.

### **Indemnity**

7.13 The Supplier indemnifies the Buyer against all Losses incurred by the Buyer whilst the PE is unavailable for use by the Buyer due to a Default or due to the negligence of the Supplier, its servants or agents.

### **PE Collection**

7.14 At the end of the Supply Period in relation to Leased PE and/or in respect of any PE which has been rejected by the Buyer, the risk of loss or damage of such PE shall vest in the Supplier and it shall be the responsibility of the Supplier to collect any such PE from the Buyer or such location as the Buyer may nominate.

### **Payment Gateway and Set- up**

7.15 Without prejudice to Paragraph 5.1 of Part 1 above, the Supplier will assist with and co-operate in any acquirer certification, configuring relevant terminal identifiers, encryption key loading and connectivity to the Buyer's payment Gateway Service and/or Acquiring Services and/or APM providers as required by the Buyer and/or its Acquiring Services and/or payment Gateway Service and /or APM providers.

## **8. Buyer's Obligations**

### **Modifications**

8.1 The Buyer shall not alter, tamper with, or modify any Leased PE (except where and to the extent permitted as part of the required Specification) without the Supplier's written consent, which cannot be unreasonably withheld or delayed.

## **Limits of Use**

- 8.2 While a Leased PE item is in its possession and control, the Buyer shall use reasonable efforts to:
- 8.2.1 keep and operate the PE in a suitable environment, use it only for the purposes for which it is intended, and operate it in a proper manner by reasonably trained and competent staff in accordance with any reasonable operating instructions provided by the Supplier;
  - 8.2.2 take such steps (including compliance with all reasonable safety and usage instructions provided by the Supplier) as may be necessary to make sure, so far as is reasonably practicable, that the PE is kept safe and without risk to health when it is being set, used, or maintained;
  - 8.2.3 not knowingly do or allow to be done anything which will or might jeopardise the right, title and/or interest of the Supplier in the PE (save for the exercise of a lawful lien by the Buyer);
  - 8.2.4 use reasonable efforts not to allow the PE to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process by a third party, but if the PE is confiscated, seized or taken, the Buyer shall inform the Supplier (as soon as reasonably possible after becoming aware) and the Buyer shall use its reasonable endeavours to procure the release of the PE; and
  - 8.2.5 not knowingly use the PE for any unlawful purpose (without prejudice to the warranties by the Supplier regarding the use and lawfulness of the PE).
- 8.3 The Buyer shall not remove or deface any sign that the Leased PE is the Supplier's property.
- 8.4 The Buyer will not sell or offer to sell the Leased PE and can only part with possession or control of the Leased PE to an authorised user in the employment of the Buyer, any of its Related Suppliers and/or any other authorised person.
- 8.5 The Buyer shall inform the Supplier as soon as reasonably possible after becoming aware if any Leased PE is lost, damaged, tampered with, or destroyed.

- 8.6 The Buyer will take reasonable steps to allow the Supplier or its duly authorised representative to inspect the Leased PE at reasonable times on reasonable advance notice.

### **Actions upon Termination or Expiry of Supply Period**

- 8.7 On expiry of the Supply Period or in the event of early termination of the Contract in respect of any Leased PE:

- 8.7.1 the Buyer will:

8.7.1.1 make the PE reasonably available for collection by the Supplier. The Supplier will be bound by all obligations under this Call-Off Contract until the time when the Supplier actually collects the PE which the Supplier shall do promptly;

8.7.1.2 use reasonable efforts to remove all Transaction Data and any other items belonging to the Buyer from the Leased PE

- 8.7.2 The Supplier shall, once it has received the Leased PE (and shall, in any event and at any time in respect of either Leased PE or Sold PE which has been rejected by the Buyer) validate the removal of the Buyer's Transaction Data from the relevant PE.

### **Expiry Or Termination**

- 8.8 At any time with effect from the date which is 90 days after the commencement of the lease of the Leased PE item, the Buyer can terminate the supply of any Leased PE item by giving at least ten (10) days' written notice to the Supplier. On the effective date of such notice period, the relevant Supply Period shall be deemed to have ended.
- 8.9 At the Supplier's cost, the Supplier must collect the Leased PE (as relevant) from the Delivery Place or if different any nominated collection point within five (5) Working Days after the expiry or termination of the Supply Period.
- 8.10 If Supplier does not collect the Leased PE at the relevant time and collection point, the Supplier indemnifies the Buyer against all Losses due to the failure to collect the PE as agreed.

- 8.11 Where the Buyer terminates the Call-Off Contract under Clause 10 (Ending the Contract) and then makes other arrangements for the supply of the Leased PE, the Buyer can (without prejudice to its other rights and remedies, and save where the termination is under Clause 10.3.2 of the Core Terms) recover the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Buyer from the Supplier.

## **9. Reporting**

- 9.1 For the purposes of Paragraph 17.2 of Part 1 above, the Service-related Data shall include logs of maintenance of the PE and any encryption key data processed for and on behalf of the Buyer.
- 9.2 The Supplier shall provide the Buyer with reporting at the times and in the format required by the Buyer (and/or as otherwise set out in the Call-Off Contract), including in relation to:
- 9.2.1 locations of PE;
  - 9.2.2 PE age;
  - 9.2.3 maintenance due dates;
  - 9.2.4 hot stock held at locations;
  - 9.2.5 stock held at Supplier locations;
  - 9.2.6 fault reporting analysis; and
  - 9.2.7 tamper evidence,
- and such other details as the Buyer may request.

## Annex

### Call-Off Schedule 23 (Payment Equipment (and related Services) Supply Terms) – Part 2 Section 2 Payment Equipment Terms - Annex: PE Order Form Template

**[Buyer guidance:** This PE Order Form, when completed and executed by both Parties, forms an PE Order. A PE Order can be completed and executed using an equivalent document or available electronic purchase order system. If an electronic purchasing system is used instead of signing as a hard-copy, the text below must be copied into the electronic order form]

ORDER REFERENCE: **[Insert]** Buyer's PE Order number]

DATE OF ORDER: **[Insert]** Date the order is placed]

THE BUYER: **[Insert]** Buyer's name]

BUYER CONTACT **[Insert]** business address and contact number]

INVOICE CONTACT **[Insert]** business address for equipment invoicing]

THE SUPPLIER: **[Insert]** name of Supplier]

SUPPLIER ADDRESS: **[Insert]** registered address]

SUPPLIER ACCOUNT

MANAGER: **[Insert]** registered address]

THE DELIVERABLES

**[Buyer guidance:** Insert the details for the PE and/or services which are the subject of the Call-Off Contract. For example:

**[CCS guidance: It may be helpful to Buyers if a list of PE from the Specification is included here for Buyers to choose from. Also please include a list of available support or maintenance services that Buyers can choose from]**

PE: **[Insert]** Description of PE]

Quantity: **[Insert]** Number of items]

Services: **[Insert]** Description of any additional services]

Delivery Place: **[Insert]** all addresses where the PE is to be delivered and/or the services are to be performed]

Time and Date of Delivery **[Insert]** the Activation Due Date]

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Is the PE to be Leased (Leased PE) or [insert]  
Sold (Sold PE) by the Supplier to  
the Buyer:

**SUPPLY PERIOD (LEASED PE AND/OR ANCILLARY SERVICES (INCLUDING SERVICES IN RELATION TO SOLD PE))**

The Supply Period shall be the period of [Insert [ ] months / quarters / years] from the Activation Date until the [Return[Finish] Date] which is [Insert [ ] months / quarters / years] after the Activation Date.

**[Buyer guidance]** Extension periods are agreed in accordance with Paragraph 5.4 of the PE Terms]

**PRICE AND PAYMENT**

PE Fees payable by the Buyer [Insert PE Fees payable (including any applicable discount but excluding VAT)]

**[Buyer guidance]** where the Buyer requests and the Supplier provides the requested services then the Buyer shall pay the corresponding charges]

Additional Charges for services [Insert additional charges payable by the Buyer (including any applicable discount but excluding VAT):

Purchase Option Price [Insert the Purchase Option Price (excluding VAT)]

Payment Method [Insert payment method(s) and necessary details]

**Invoicing and Payment**

The Supplier shall issue invoices [Delete monthly]/[quarterly] and the Buyer shall pay the Supplier within thirty (30) days of receipt of a valid invoice, submitted in accordance with this PE Order Form and the provisions of the Call-Off Contract.

**SPECIAL TERMS**

**[Buyer guidance]** specify whether any clauses apply to this PE Order in addition to the PE Terms that are needed.]

**Special Term 1**

**Special Term 2**

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**For and on behalf of the Buyer:**

Name and Title	
Signature	
Date	
