

Purchase Order Terms and Conditions

1. DEFINITIONS

- 1.1 "Business Day" means a day that is not a Saturday, Sunday or public or bank holiday in England and/or Wales.
- 1.2 "Data Controller" has the meaning set out in section 1 of the Data Protection Act 1998.
- 1.3 "Data Processor" has the meaning set out in section 1 of the Data Protection Act 1998.
- 1.4 "HS2" means High Speed Two (HS2) Limited.
- 1.5 "Intellectual Property Rights" means all intellectual and industrial property rights of any nature whatsoever, including all of the following: patents, copyrights, database rights, design rights; all rights in or arising out of discoveries, inventions, improvements, know-how, confidential information, trademarks, designs and works; the right to apply for any form of protection for any of these, applications for and registrations of any of these and all resulting registrations. In each case it includes these rights and interests in every part of the world for their full terms, including any renewals and extensions, and the right to receive any income from them and any compensation in respect of their infringement.
- 1.6 "Order" means HS2's order for the purchase of goods and/or services from the Supplier.
- 1.7 "Personal Data" has the meaning set out in section 1 of the Data Protection Act 1998.
- 1.8 "Price" means the price set out in the Order.
- 1.9 "Supplier" means the person named as the supplier in the Order.

2. CONTRACT FORMATION

- 2.1 The Order constitutes an offer by HS2 to purchase the goods set out in the Order ("Goods") and/or services set out in the Order ("Services") from the Supplier on these Conditions. A contract for the supply of Goods and/or Services by the Supplier to HS2 on these Conditions (the "Contract") will be formed on commencement of the performance of the Contract.
- 2.2 These Conditions are the only terms and conditions on which HS2 will purchase goods and/or services from the Supplier and will apply to the exclusion of all other terms and conditions.

3. DELIVERY

- 3.1 The Supplier will deliver the Goods to the delivery address and on the date as both are specified in the Order (or as otherwise agreed in writing by HS2) between 9am to 4pm on a Business Day. The Supplier will be responsible for off-loading the Goods from the delivery vehicle. Delivery of the Goods ("Delivery") will occur when they arrive at the delivery address.
- 3.2 The Supplier may not deliver the Goods by separate instalments without HS2's prior written consent. If HS2 gives such consent, each instalment will be invoiced and paid for separately in accordance with **Condition 8.4**.
- 3.3 The Supplier will ensure that:
- 3.3.1 the Goods are marked in accordance with HS2's instructions and any applicable laws and are properly packed and secured so as to reach their destination in an undamaged condition;
- 3.3.2 the delivery is accompanied by a delivery note specifying the Order number, date of Order, type and quantity of Goods, code numbers of Goods (if applicable), any special storage instructions and, where delivery by instalments is permitted under **Condition 3.2**, the outstanding balance of Goods remaining to be delivered;
- 3.3.3 on or before Delivery, HS2 is provided with a written list by name and description of any harmful or potentially harmful properties or ingredients in the Goods supplied and information concerning any changes in such properties or ingredients. HS2 will rely on the supply of such information to satisfy its obligations under the Health and Safety at Work Act 1974 and any relevant applicable laws; and
- 3.3.4 on or before Delivery, HS2 is supplied with all operating and safety instructions, clearly displayed warning notices and such other information as may be necessary for the proper use, maintenance and repair of the Goods.
- 3.4 HS2 reserves the right to mark the Goods on delivery and will not be deemed to have accepted the Goods by reason of this nor will the Supplier be entitled to raise an objection on this ground to any subsequent rejection of the Goods.
- 3.5 If the Supplier fails to deliver the Goods on the date specified in **Condition 3.1**, without prejudice to HS2's other rights or remedies (whether express or implied), HS2 may terminate the Contract immediately by giving written notice to that effect to the Supplier, in which case the Supplier will refund any monies already paid by HS2 under the Contract in relation to the Goods that have not been delivered.
- 3.6 Risk in and ownership of the Goods will pass to HS2 on Delivery.

4. STANDARD OF THE GOODS

- 4.1 The quantity and description of the Goods will be as set out in the Order.
- 4.2 The Supplier will ensure that the Goods will:
- 4.2.1 be of satisfactory quality;
- 4.2.2 be fit for any purpose held out by the Supplier or made known to the Supplier expressly or by implication and in this respect HS2 relies on the Supplier's skill and judgement;
- 4.2.3 be free from defects in design, materials and workmanship;
- 4.2.4 comply with all relevant applicable laws and British Standards and the requirements of any relevant statutory and regulatory bodies; and
- 4.2.5 be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health.
- 4.3 Without prejudice to HS2's other rights or remedies (whether express or implied), if any Goods do not conform with any of the terms of **Conditions 4.1** and **4.2**, HS2 may (whether or not the Goods have been accepted):
- 4.3.1 terminate the Contract immediately by giving written notice to that effect to the Supplier; or
- 4.3.2 require the Supplier, at HS2's option, to promptly repair or replace the relevant Goods free of charge or to refund the Price for the relevant Goods.
- 4.4 **Condition 4.3** will apply to any repaired or replacement Goods supplied under **Condition 4.3.2**.

5. INSPECTION AND TESTING

- 5.1 HS2 reserves the right to inspect and test the Goods at any time prior to Delivery.
- 5.2 If, following inspection or testing under **Condition 5.1**, HS2 is not satisfied that the Goods will comply with the Contract, the Supplier will immediately take all steps necessary to ensure compliance. Any breach of this obligation by the Supplier will be deemed to be a material breach which cannot be remedied entitling HS2 to terminate the Contract under **Condition 10.2.2**.
- 5.3 No inspection or testing under **Condition 5.1** will reduce or otherwise affect the Supplier's obligations under the Contract.

6. PERFORMANCE OF THE SERVICES

- 6.1 The Supplier will, in performing the Services:
- 6.1.1 use the degree of skill, care, prudence, supervision, diligence, foresight, quality control and quality management which would be adopted by a leading professional provider of the Services;
- 6.1.2 use appropriately qualified, trained and experienced personnel;
- 6.1.3 fulfil all requirements set out in the Order;
- 6.1.4 provide the Services in a safe manner which is free from any unreasonable or avoidable risk to any person's health and well-being and in an economic and efficient manner;
- 6.1.5 fully co-operate with HS2's agents, representatives and contractors;
- 6.1.6 maintain all licences, permissions and consents required from time to time;
- 6.1.7 comply with all health and safety and security policies that apply at HS2's premises and all lawful and reasonable directions of HS2.

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- 6.1.8 not do or omit to do anything which may cause HS2 to lose any licence, permission or consent or to be in breach of any applicable laws; and
- 6.1.9 comply with HS2's conflicts of interest policy and will immediately notify and consult with HS2 in the event that any circumstances arise which give rise, or may give rise to a conflict of interest;
- 6.1.10 comply with HS2's sustainability, and security policies and such other policies as may be notified to the Supplier by HS2 from time to time in relation to the performance of the Contract.
- 6.2 The Supplier will perform the Services on the performance date(s) set out in the Order.
- 6.3 Without prejudice to HS2's other rights or remedies (whether express or implied), if in HS2's sole opinion the Supplier has failed to perform the whole or any part of the Services in accordance with the Contract, HS2 may:
- 6.3.1 give the Supplier a notice specifying that its performance falls short of the requirements of the Contract or is otherwise unsatisfactory; and
- 6.3.2 suspend payments to the Supplier, in such amount as HS2 deem appropriate, until the Supplier has rectified the defective performance of the Services to HS2's satisfaction.
- 6.4 Any notice served by HS2 pursuant to **Condition 6.3** may require the Supplier to re-schedule and re-perform the Services to HS2's satisfaction and at the Supplier's own expense, including where necessary, the correction or re-execution of any Services already carried out within such period as may be specified in the notice (or where no such period is specified, as soon as reasonably practicable).
- 6.5 Any failure by the Supplier to comply with a notice given under **Condition 6.3** will be deemed to be a material breach which cannot be remedied entitling HS2 to terminate the Contract under **Condition 10.2.2**.

7. INDEMNITY

7.1 The Supplier will indemnify HS2 against all losses (including all direct, indirect and consequential losses), liabilities, costs, damages and expenses that HS2 does or will incur or suffer, all claims or proceedings made, brought or threatened against HS2 by any person and all losses (including all direct, indirect and consequential losses), liabilities, costs (on a full indemnity basis), damages and expenses HS2 does or will incur or suffer as a result of defending or settling any such actual or threatened claim or proceeding, in each case arising out of or in connection with any breach by the Supplier of any of its obligations under the Contract (including any failure or delay in performing, or negligent performance or non-performance of, any of those obligations), including the costs of procuring the Goods and/or Services from another supplier.

8. PRICE AND PAYMENT

- 8.1 Subject to the Supplier performing its obligations in accordance with the terms of the Contract, HS2 will pay the Price to the Supplier in accordance with this **Condition 8**.
- 8.2 The Price will be inclusive of all costs and expenses incurred by the Supplier including all packaging, insurance, carriage and delivery costs and all costs incurred by the Supplier in connection with the performance of the Services.
- 8.3 Any sum payable under the Contract is exclusive of value added tax (and any other similar or equivalent taxes, duties, fees and levies imposed from time to time by any government or other authority) which will be payable in addition to that sum in the manner and at the rate prescribed by law from time to time, subject to receipt by the paying party of a valid value added tax invoice.
- 8.4 The Supplier will be entitled to invoice HS2 following delivery of the Goods or within 28 days of the completion of the Services.
- 8.5 Each invoice will be a valid VAT invoice and will quote the Order number. The Supplier will submit invoices electronically to HS2accounts payable@hs2.org.uk.
- 8.6 HS2 is committed to prompt payment and shall pay the Supplier within 30 days of receipt of a valid invoice, provided that the Goods have been delivered and/or the Services to which the invoice relates have been performed fully in accordance with the Contract. The Supplier shall provide to HS2 the name and address of its bank, the account name and number, the bank sort code and any other details requested by HS2.
- 8.7 Notwithstanding any purported contrary appropriation by the Supplier, HS2 will be entitled, by giving written notice to the Supplier, to appropriate any payment by HS2 to any invoice issued by the Supplier.
- 8.8 No payment made by HS2 will constitute acceptance or approval by HS2 of the Goods and/or Services or otherwise prejudice any rights or remedies which HS2 may have against the Supplier including the right to recover any amount overpaid or wrongfully paid to the Supplier.
- 8.9 If HS2 disputes any part of an amount invoiced by the Supplier (a "Disputed Sum"), HS2 will be entitled to withhold payment of the Disputed Sum until the dispute is settled.
- 8.10 HS2 will be entitled to set-off any liability which the Supplier has to HS2 against any liability which HS2 has to the Supplier, whether such liability is present or future, liquidated or unliquidated, under the Contract or any other contract between the parties or other cause of action.
- 8.11 If any sum payable under the Contract is not paid on or before the due date for payment the Supplier will be entitled to charge HS2 interest on that sum at 2% per annum above the base lending rate from time to time of the Bank of England from the due date until the date of payment (whether before or after judgment), such interest to accrue on a daily basis. Such interest will not be chargeable on any Disputed Sum, provided that if it is agreed or determined that part or all of the Disputed Sum is payable, interest will be chargeable on the relevant part of the Disputed Sum in accordance with this **Condition 8.11** but after 30 days following resolution of the dispute rather than from the date on which payment of the original invoice which included that sum was originally due. The parties agree that this **Condition 8.11** is a substantial remedy for late payment of any sum payable under the Contract, for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.

9. ANTI-CORRUPTION

- 9.1 The Supplier will, and will procure that its employees agents and sub-contractors will:
- 9.1.1 not commit any act or omission which causes or could cause HS2 or the Supplier (or that person) to breach, or commit an offence under, any laws relating to anti-bribery and/or anti-corruption;
- 9.1.2 comply with HS2's anti-corruption policy as updated from time to time;
- 9.1.3 keep accurate and up to date records showing all payments and all other advantages given and received in connection with the Contract and the steps taken to comply with this **Condition 9.1**, and permit HS2 to inspect those records as required;
- 9.1.4 promptly notify HS2 of:
- 9.1.4.1 any request or demand for any financial or other advantage received by the Supplier (or that person); and
- 9.1.4.2 any financial or other advantage the Supplier (or that person) gives or intends to give;
- 9.1.4.3 whether directly or indirectly in connection with the Contract; and
- 9.1.4.4 promptly notify HS2 of any breach of this **Condition 9.1**.
- 9.2 HS2 may terminate the Contract immediately by giving written notice to that effect to the Supplier if the Supplier is in breach of **Condition 9.1**.

10. TERMINATION

- 10.1 HS2 may terminate the Contract by giving not less than 30 days' written notice to that effect to the Supplier at any time. If the Contract is terminated under this **Condition 10.1**, HS2's sole liability will be to pay to the Supplier fair and reasonable compensation for work-in-progress at the time of termination but such compensation will not include loss of profits (whether direct or indirect and whether actual or anticipated) or any indirect or consequential loss.
- 10.2 HS2 may terminate the Contract immediately by giving written notice to that effect to the Supplier if:
- 10.2.1 the Supplier commits a material breach of the Contract which cannot be remedied;
- 10.2.2 the Supplier commits a material breach of the Contract which can be remedied but fails to remedy that breach within the timescale specified by HS2 in a written notice served first by HS2 on the Supplier;
- 10.2.3 the Supplier becomes insolvent; has a receiver, administrator or provisional liquidator appointed; is subject to a notice of intention to appoint an administrator; passes a resolution for its winding-up; has a winding up order made by a court in respect of it; enters into any composition or arrangement with creditors; ceases to carry on business; is unable to pay its debts as they fall due; or is the subject of anything analogous to the foregoing under the laws of any applicable jurisdiction; or
- 10.2.4 the Supplier is subject to a change in control without HS2's prior written consent. For the purposes of this **Condition "Change in Control"** will occur in respect of a person where (a) Control of that person is obtained (whether directly or as a result of obtaining Control of one or more other persons) by any person who did not at the date of

the Contract hold Control (whether directly or as a result of having Control of one or more other persons) of that person; or (b) a person who has Control (whether directly or as a result of having Control of one or more other persons) of that person at any time during the term of the Contract ceases to have Control (whether directly or as a result of having Control of one or more other persons) of that person; and "Control" means the power (whether direct or indirect) to direct or cause the direction of its affairs, whether by means of holding shares, possessing voting power, exercising contractual powers or otherwise, and the Supplier will notify HS2 immediately upon the occurrence of any such event or circumstance.

10.3 Following expiry or termination of the Contract:

10.3.1 any Conditions which expressly or impliedly continue to have effect after expiry or termination of the Contract will continue in force; and

10.3.2 all other rights and obligations will immediately cease without prejudice to any rights, obligations, claims (including claims for damages for breach) and liabilities which have accrued prior to the date of expiry or termination.

10.4 Promptly after the date of expiry or termination of the Contract the Supplier will, subject to the exception set out in **Condition 10.5**, return to HS2 and cease to use all of HS2's Confidential Information (including all copies and extracts) in its possession or control.

10.5 The Supplier may retain any of HS2's Confidential Information to the extent required to comply with any applicable law. The provisions of **Condition 13** will continue to apply to retained Confidential Information.

11. FREEDOM OF INFORMATION

11.1 The Supplier will assist and co-operate with HS2 (at its own expense) to enable HS2 to comply with any requests for information with which HS2 is obliged to comply pursuant to the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIR").

11.2 HS2 shall be responsible for determining at its absolute discretion and notwithstanding any other provision in the Contract or any other agreement whether any information is exempt from disclosure in accordance with the provisions of the FOIA or the EIR.

12. DATA TRANSPARENCY

12.1 The Supplier acknowledges that HS2 is subject to the transparency commitment which requires HS2's contracts to be published in full, and the Supplier hereby gives its consent for HS2 to publish the Contract, any variations to the Contract, any tender documents relating to the award of the Contract; and data from the Supplier's invoices.

13. CONFIDENTIALITY

13.1 Subject to **Condition 13.2**, the Supplier will not disclose to any third party or use HS2's Confidential Information, other than for the purpose of performing its obligations under the Contract.

13.2 The Supplier may disclose HS2's Confidential Information:

13.2.1 to the extent required by law or any court of competent jurisdiction or the rules of any governmental or regulatory body, provided that the Supplier consults with HS2 prior to such disclosure; and

13.2.2 to those of its employees, agents and sub-contractors, who need access to that Confidential Information so that the Supplier can perform its obligations under the Contract. The Supplier will procure that each person to whom the Supplier discloses Confidential Information will observe the provisions of this **Condition 13**.

13.3 For the purposes of this **Condition 13**, "Confidential Information" means all information (whether written, oral, in electronic form or in any other media) of a confidential or proprietary nature that is disclosed by HS2 or on its behalf or obtained by or made available to the Supplier, but excluding information that:

13.3.1 is in the public domain (other than by virtue of a breach of this **Condition 13**); or

13.3.2 was received by the Supplier from a third party who did not acquire it in confidence.

13.4 The Supplier will not disclose any information relating to the Contract or HS2's activities without the prior written consent of HS2.

14. INTELLECTUAL PROPERTY RIGHTS

14.1 All Intellectual Property Rights in any materials provided by HS2 to the Supplier for the purposes of this Contract shall remain the property of HS2 but HS2 hereby grants the Supplier a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Contract for the sole purpose of enabling the Supplier to perform its obligations under the Contract.

14.2 Subject to **Condition 14.3**, all Intellectual Property Rights in any materials created or developed by the Supplier pursuant to the Contract or arising as a result of the provision of the Services shall vest in the Supplier. If, and to the extent, that any Intellectual Property Rights in such materials vest in HS2 by operation of law, HS2 hereby assigns to the Supplier, by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such Intellectual Property Rights, all its Intellectual Property Rights in such materials (with full title guarantee and free from all third party rights).

14.3 The Supplier hereby grants HS2:

14.3.1 a perpetual, royalty-free, irrevocable, non-exclusive licence (with a right to sub-license) to use, modify and develop all Intellectual Property Rights in the materials created or developed pursuant to the Contract and any Intellectual Property Rights arising as a result of the provision of the Good and/or Services; and

14.3.2 a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub-license) to use:

(a) any Intellectual Property Rights vested in or licensed to the Supplier prior to commencement of the Contract; and

(b) any Intellectual Property Rights created during the performance of the Good and/or Services but which are neither created or developed pursuant to the Contract nor arise as a result of the provision of the Good and/or Services, including any modifications to or derivative versions of any such Intellectual Property Rights, which HS2 reasonably requires in order to exercise its rights and take the benefit of the Contract including the Good and/or Services provided.

14.4 The Supplier shall ensure that all royalties, licence fees and similar expenses in respect of all intellectual property or intellectual property rights used in connection with the Contract have been paid and are included in the Price.

14.5 The Supplier:

14.5.1 warrants that the use of any Intellectual Property Rights which derive from or arise as a result of the performance of the Contract by the Supplier will not infringe any Intellectual Property Rights owned by third parties; and

14.5.2 will indemnify, keep indemnified and hold harmless HS2 in full and on demand from and against all liabilities (including any tax liability), direct, indirect and consequential losses, damages, claims, proceedings and legal costs (on an indemnity basis), judgments and costs (including costs of enforcement) and expenses which HS2 incurs or suffers directly or indirectly in any way whatsoever as a result of any claim that such intellectual property rights infringe any Intellectual Property Rights owned by third parties.

15. DATA PROTECTION

15.1 With respect to any Personal Data disclosed to the Supplier in connection with the Contract, the Supplier acknowledges that HS2 is the Data Controller and that the Supplier is the Data Processor.

15.2 In respect of any Personal Data processed by the Supplier pursuant to the Contract for and on behalf of HS2, the Supplier warrants and undertakes that it will:

15.2.1 comply at all times with all applicable laws, enactments, regulations, orders, standards and other similar instruments;

15.2.2 only process the Personal Data:

15.2.2.1 on behalf of HS2 to the extent necessary to provide the Goods and/or Services and then only in accordance with the Contract; and

15.2.2.2 on instructions received from HS2 from time to time;

15.3 The Supplier will not cause or permit the Personal Data to be transferred outside the European Economic Area without the prior written consent of HS2.

15.4 The Supplier will indemnify, keep indemnified and hold harmless HS2 in full and on demand from and against all liabilities (including any tax liability), direct, indirect and consequential losses, damages, claims, proceedings and legal costs (on an indemnity basis), judgments and costs (including costs of enforcement) and expenses which HS2 incurs or suffers directly or indirectly in any way whatsoever as a result of or arising out of or in connection with any breach of this **Condition 15**.

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16. INSURANCE

16.1 Save where expressly stated in the Order, the Supplier shall maintain an adequate level of insurance cover in respect of all risks that may be incurred by it in performance of the Contract and shall procure where it sub-contracts any part of the Contract, it shall procure that any sub-contractor effects and maintains insurance to cover its liabilities under that sub-contract.

17. NOTICE

17.1 Any notice or other communication given under or in connection with the Contract will be in writing and:
17.1.1 sent by pre-paid first class post, when it will be deemed served on the second working day after posting; or
17.1.2 delivered in person, when it will be deemed served at the time the notice is delivered at the relevant address,
17.1.3 and, in the case of any notice or other communication to be given to HS2, marked for the attention of the Company Secretary at One Canada Square, London E14 5AB.
The Supplier's address is that which is detailed in any quotation, acknowledgement of order or other document received by HS2 from the Supplier. Such details may be changed by the relevant party giving notice in accordance with this **Condition 14**.

18. GENERAL

18.1 The Contract constitutes the entire agreement between the parties and supersedes any prior agreement or arrangement in respect of its subject matter.
18.2 If any term of the Contract is found by any court to be illegal, unlawful, void or unenforceable, such term will be deemed to be severed from the Contract and this will not affect the remainder of the Contract which will continue in full force and effect.
18.3 No variation to the Contract will be effective unless it is in writing and signed by a duly authorised representative on behalf of each of the parties.
18.4 The Secretary of State for Transport, any subsidiary of the Secretary of State and the Department for Transport (the "**Beneficiaries**") will be entitled to enforce the Contract subject to and in accordance with the Contracts (Rights of Third Parties) Act 1999 and the terms of the Contract. The parties may vary or rescind the Contract without the consent of the Beneficiaries. Save as provided in this **Condition 18.4**, the parties do not intend that any term of the Contract will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person.
18.5 HS2's rights and remedies set out in these Conditions are in addition to and not exclusive of any rights and remedies provided by law.
18.6 The Supplier will not assign, transfer, charge, hold on trust for any person or deal in any other manner with any of its rights under the Contract or sub-contract any of its obligations under the Contract without the prior written consent of HS2.

19. DISPUTE RESOLUTION

19.1 The parties shall attempt in good faith to settle any dispute arising out of or in connection with the Contract between them within 20 Business Days of either party notifying the other of the dispute.
19.2 If the dispute cannot be resolved by the parties pursuant to **Condition 19.1**, the dispute shall be referred to mediation unless HS2 considers that the dispute is not suitable for resolution by mediation.

20. GOVERNING LAW AND JURISDICTION

20.1 The Contract will be governed by the law of England and Wales.
20.2 Subject to **Condition 19**, any dispute arising out of or in connection with the Contract shall be subject to the exclusive jurisdiction of the courts of England and Wales.