



Environment
Agency

Our Ref: F/2122/0640
Your Ref: Quotes 20212964 / 20212978 / 20212979 / 20213154
Date: 10th November 2021

TSI Instruments Limited
Stirling Road,
Cressex Business Park,
High Wycombe
Buckinghamshire
HP12 3ST

Email -

Dear

Contract ID: F/2122/0640

Contract Title: Purchase of SMPS sampling systems - SMPS 3938W50-CEN, 3077 Aerosol Neutralizer, and 3077A Aerosol Neutralizer

Thank you for your quotations and correspondence upto the 28th October 2021 regarding the specification and terms and conditions.

I am pleased to offer you the above contract in accordance with the specification (Schedule 1), the Pricing (Schedule 2) & the negotiated terms and conditions – good as attached (Schedule 3).

The contract documents have been prepared and hopefully summarise all that has been agreed previously to your satisfaction.

The Contract shall be performed in accordance with the agreed specification and the agreed, negotiated Environment Agency Conditions of Contract for Goods.

Please review, sign and return this letter to indicate your acceptance of this offer of Contract.

Yours faithfully

Name:
Job title: Higher Executive Officer
E-mail:
Address: Manley House, Kestrel Way, Exeter, EX2 7LQ

I/we accept the offer of Contract described above.

Signed.....

Designation.....

Date..... 11th of November 2021

TSI GmbH
Neuköllner Str. 4
52068 Aachen
Telefon 0241 / 523 03-0

F_2122_0640

Schedule 1 Specification

This schedule details the goods and the location, and delivery, installation and commissioning requirements.

Goods to be provided	
Agreed Instrument specifications	
1	Differential Mobility Analyser (DMA) and Electrostatic Classifier that are suitable to enable monitoring which complies with ISO 15900:2020, "Determination of particle size distribution — Differential electrical mobility analysis for aerosol particles"
2	Condensation Particle Counter (CPC) component, hardware complies with CEN/TS 16976:2016 but without CEN calibration. Scanning Mobility Particle Sizer (SMPS) complies with ISO 15900:2020, hardware complies to CEN/TS 17434:2020 but without CEN calibration
3	Zero particles/cm ³ baseline ability
4	Internal calculations must be transparent
5	Catalytic stripper for butanol in exhaust stream included to remove all butanol in the exhaust air
6	Optimal operation temperature between 10 and 40 °C
7	Operational in relative humidity conditions of up to 90% (non-condensing conditions)
10	Data pertaining to faults / settings and other diagnostics available to review
11	Compatible software that enables relevant data is logged and accessible (e.g. flow rate, sampling time, sampled volume, etc.)
12	Fault diagnostic procedure available and easy to follow - Manuals for service and operation to be provided with instruments.
13	Sample and sheath flow rates can be controlled, and temperature can be controlled.
14	Flow rates can be calibrated using reference flow kits and pressure sensors, and uncertainties can be defined

- 15 User selectable start / stop / date / time and flow rates
- 16 Leak test procedure can be easily followed and carried out
- 17 Instrument Operation training to be provided as per quotation. Additional training for any other interested contractors included,
- 18 Capacity to decommission old radiation unit with supplier
- 19 ME8NT Strong Membrane Vacuum Pump

Requirements specific to the PCN Network:

- 20 Devices can be installed at all locations. Site specific additions include dilution system at Marylebone Road
- 21 Devices are safe for operation at monitoring locations, with no additional infrastructural changes required.
- 22 Connections are compatible with existing connections on site
- 23 Data is output in readable format and is compatible.
- 24 Data can be stored using existing protocols with small adaptations
- 25 Local Site Operators are capable of performing maintenance, or can be easily trained to do so
- 26 Stable aerosol neutraliser, compatible with instruments infrastructure
- 27 Devices must be compatible with existing inlet (head & main tubing)
- 28 Temperature and relative humidity sensors that will record data automatically with concentration data.
- 29 Devices can be calibrated by NPL and routine maintenance can also be performed in lab. The AIM 11 SMPS standard version can be shared. Standard NPL calibration is possible, extra calibration option e.g. up-down-scanning for time delay determination only with AIM 11 SMPS monitoring software license.

Software - Software licenses are valid for the life of the instruments. Upgrades for the licence version 11, will be provided at no additional cost.

Manual – An operational and/or service manual will be supplied to enable the equipment to be serviced and maintained by a third party.

Lead Time – The instruments **must** be supplied to the stated delivery address **by the 28th March 2022**. Should this delivery date not be met, or evidence the equipment is not in transit or in existence, then the parties will refer to the negotiated terms and conditions in Schedule 3.

For Deliveries in Progress/ Late stage testing of goods beyond 28th March 2022 – In this scenario, assistance with additional information on the equipment and its location and status prior to the 28th March 2022 maybe required, to enable the Agency to undertake a budget 'accrual' of the expected invoice value using our financial year budget ending in March 2022. This is only possible if the instrument delivery is delayed but is in the final stages of testing and delivery. If no evidence the equipment exists, then we maintain the right to refer to the agreed terms and conditions in Schedule 3, notably regarding extensions of time and termination.

Specification Details
Health and Safety: Documentation on compliance with all applicable UK Health and Safety Legislation and any other applicable Environmental Legislation, and document such applicable legislation.
Logbooks and manuals: These should be supplied with each instrument.
Electrical Safety: The equipment should be able to be PAT tested in the UK and come with a UK compatible power supply, or one that can meet UK legislation.
Warranty: As detailed in the Terms and Conditions

1) Delivery Address

The Goods shall be delivered to National Physical Laboratory address at:

██████████,
National Physical Laboratory
Hampton Road,
Teddington
TW11 0LW

2) Payment of Delivery:

For physical items, payment will be upon completion of the delivery of goods by 28th March 2022, unless otherwise agreed.

For installation of goods at sites, this element of payment will be delayed until testing and calibration at NPL, expected to be completed by 30th May 2022, unless otherwise agreed.

It is understood that this element may be delayed as it is beyond the Contractor's control.

3) Installation

Installation to occur at four locations (TSI will join at least the installation & training at the first two locations; the other two stations can be installed by NPL personal after the TSI training.)

- NPL Teddington – Laboratory delivery address - for comparison and calibration with existing SMPS unit
- Marylebone Road (for 1 month co-location with existing SMPS)

Link - ([Site Information for London Marylebone Road\(UKA00315\) - Defra, UK](#))

- Chilbolton

Link - [Site Information for Chilbolton Observatory\(UKA00614\) - Defra, UK](#)

- Honour Oak Park

Link - [Site Information for London Honor Oak Park\(UKA00656\) - Defra, UK](#)

4) Instructions:

Alongside delivery, an invoice for the goods will need to be provided prior to the 28th March 2022, referencing an issued Purchase Order for items delivered in Schedule 2, alongside evidence of the delivery for example delivery notes or photographs if applicable.

Non-compliant invoices with no Purchase Order number will be rejected and returned to the supplier.

The invoices shall include:

- i) Unique invoice number;
- ii) Date of issue;
- iii) Purchase order and reference to correct Purchase
- iv) Date of delivery of services;

- v) Agency contract number;
- vi) The Environment Agency project officer;
- vii) Qualitative description of the work being done;
- viii) Excluding VAT unit price and total amount;
- ix) Contractor contact name and details;
- x) Payment information for supplier;
- xi) Register company information;
- xii) VAT registration number;

Invoice Submission Digital standards - Inbound invoices and emails must comply with our Payment processors (SSCL) submission standards otherwise your invoice will not be processed. For information the submission standards are summarised below;

- Email size must not exceed 4mb
- All files/invoices must be in PDF format attached directly to the email (No folders etc)
- One PDF per invoice – all supporting documentation must be included within the single PDF. Do not attach additional/separate supporting documentation as a separate file
- Multiple invoices can be attached to one email but each invoice must be in a separate PDF (with no additional supporting files as described above)
- "PASSWORD PROTECTED" Files cannot be processed.
- Please submit the invoices by Email to:

i) APinvoices-ENV-U@gov.sscl.com

ii) [REDACTED]

iii) AQmonitoringUK <AQmonitoringUK@environment-agency.gov.uk>

5) The charges for the Goods: shall be as set out in Schedule 2.

6) The specification of the Goods: is as set out in Schedule 1.

7) The Goods contract terms: as set out in Schedule 3.

8) FOR INFORMATION ONLY – None Contractual Discussion

No contractual agreements have been agreed with TSI around spare parts, spare parts pricing and compatibility of the purchased instrumentation. The below commercially reasonable efforts / best endeavours are included for completeness as a reference. Any

key changes to supply of parts / pricing and compatibility are communicated to the Agency Responsible Officer, so we can understand our asset life cycle risks.

- I) **Spare Parts Availability** – TSI shall make commercially reasonable efforts (not a contractual guarantee) to provide spares for a maximum period of seven (7) years.
- II) **Spare Parts Pricing** - TSI expect prices on average for spare parts to increase at approximately 6% a year for these parts in Table 1, but do not make any contractual guarantee.

Table 1 – Spare parts pricing from supplier (Not contractually guaranteed):

SPARE PARTS					
Spare Parts 3082 Classifier					
Part number	Description	Qty	Unit Price	Total Price	
3082R-MAINT	Maintanance kit (as per preventative maintainance guide)	3		every 3 years	
Individual spare parts					
3001788	Conductive tubing, 1/4", 50 ft roll	1		after 5 years	
3001789	Conductive tubing, 3/8", 50 ft roll	1		after 5 years	
ZEROCHECKFILTER1	Zero-check filter	1		also in maintenance kit	
Spare Parts 3750					
3750-MKIT	Maintanance kit (as per preventative maintainance guide)	3		annual	
Spare Parts sampling					
1602051	Aerosol filter cartridge for Sampling System	3		6 units 2 x per year	

- III) **Compatibility** - TSI agree that they will strive to be backward compatible with updates and evolved models in the purchased SMPS SYSTEM (includes classifier 3082, DMA 3083 and CPC 3750) but do not make any contractual guarantee.

Schedule 2: Pricing

The Contractor agrees to provide the following items at the agreed fixed prices below in the summary of the 4 TSI Quotes which are included. Parties agree that the terms of conditions contained within the TSI quotes are superseded by the Terms and Conditions in Schedule 3.

For Quote 1, an amendment to the Quote 20212964 total is included in the pricing summary and detailed in the table for two lines labelled with an * including a discounted reduction for re-use of PM2.5 heads and an additional delivery costs. All other 3 quotes and prices are replicated in the pricing tables.

Quote 1 Summary – 20212964 – New Capital Items

Details	Price per Item	Units	Total Price (£)_
SMPS SYSTEM (includes classifier 3082, DMA 3083 and CPC 3750)	██████	3	██████
Software AIM 11 – Monitoring edition	████	3	████
Vacuum Pump	██████	3	██████
3077A - Aerosol Neutralizer Source Kr-85	██████	3	██████
Lead shielding Column	████	3	████
Sampling System x 3	██████	3	██████
Diluter for Marylebone Road	██████	1	██████
Aerosol Humidity and Temperature Sensor – RHT3000	██████	3	██████
Catalytic Butanol Vapour Removal (Health and safety addition)	██████	6	██████
Site installation (engineer from Germany)	██████	4	██████
2 Year Warranty extension	██████	3	██████
Flow Meters and Modems	██████	3	██████
*Reduction for re-used heads on sampling system (Not in Quote 20212964, but in contract)	██████	3	██████
*Delivery to NPL (Not in Quote 20212964, but in contract)	████	1	████
5% discount SMPS SYSTEM (includes classifier 3082, DMA	██████	1	██████

3083 and CPC 3750)			
Total			£258,570



Appendix 2i - TSI
Quote 20212964.PDF

Quote 2 -20212978 (Disposal of Existing equipment and Inlet upgrade to existing sampler)

Details	Price per Item	Units	Total Price (£)
Disposal of Neutralizer 3077		3	
Upgrade of Existing Sampler Inlet		1	
Total			£2,950



Appendix 2ii - TSI
Quote 20212978.PDF

Quote 3 - 20212979 (One off capital – Maintenance kit)

Details	Price per Item	Units	Total Price (£)
Maintenance Kit set with Zero Filter		1	
Total			£5,040



Appendix 2iii - TSI
Quote 20212979.PDF

Quote 4 - 20213154 (Training)

Details	Price per Item	Units	Total Price (£)
Multi-user training on SMPS		1	
Total			£1,830



Appendix 2iv - TSI
Quote 20213154.PDF

- **Prices:** Excluding VAT
- **Prices:** includes the Specification in Schedule 1 and Terms and Conditions in Schedule 3.

Conditions of Contract - Goods

Ref: « F_2122_0640 »

Title: «Purchase of SMPS sampling systems - SMPS 3938W50-CEN, 3077 Aerosol Neutralizer, and 3077A Aerosol Neutralizer»

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1. DEFINITIONS

1.1 In the Contract, unless the context otherwise requires the following words and expressions shall have the following meanings assigned to them.

- 1.1.1 The Agency
The Environment Agency, its successors and assigns.
- 1.1.2 The Appendix
The Appendix to these Conditions.
- 1.1.3 The Contract
These Conditions including the Appendix, any Special Conditions, the Specification, Pricing Schedule, Contractor's tender, acceptance letter and any relevant documents agreeing modifications exchanged before the Contract is awarded, and any subsequent amendments or variations agreed in writing.
- 1.1.4 The Contractor
The person, firm company or body who undertakes to supply the Goods to the Agency.
- 1.1.5 Contract
The time period stated in the Appendix or otherwise Period provided in the Contract, for the delivery of the Goods.
- 1.1.6 Contract Price
The price exclusive of VAT set out in the Contract for which the Contractor has agreed to supply the Goods.
- 1.1.7 Contract Supervisor
Any duly authorised representative of the Agency notified in writing to the Contractor for all purposes connected with the Contract. Any Notice or other written communication given by or made to the Contract Supervisor, shall be taken as given by or made to the Agency.
- 1.1.8 Contracting Authority
Means any contracting authorities (other than the Environment Agency) as defined in regulation 2 of the Public Contract Regulations 2015 (SI 2015/102) (as amended).
- 1.1.9 Contractor Personnel
Means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any sub-contractor engaged in the performance of its obligations under this Contract.
- 1.1.10 Data Protection Legislation
Means: (i) the General Data Protection Regulation (Regulation (EU) 2016/679) or GDPR, the Law Enforcement

Directive (Directive (EU) 2016/680) ("LED") and any applicable national implementing Laws as amended from time to time (ii) the Data Protection Act 1998 ("DPA 1998") and/or the Data Protection Act 2018 ("DPA 2018") to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy.

1.1.11

Data Protection Schedule

The Schedule attached to this Contract describing how the Parties will comply with the Data Protection Legislation.

1.1.12

Goods

All Goods detailed in the Specification including any additions or substitutions as may be requested by the Contract Supervisor Where the Contract is for the provision of Goods *and* Services, the words "the Goods" shall mean, where the context allows, to include the Services the Contractor has agreed to provide.

1.1.13

Intellectual Property Rights

All Intellectual Property Rights including without limitation, patents, patent applications, design rights, registered designs, utility models, trade and service marks and applications for same, copyright know-how, rights in semiconductor chip topography, and in each case whether protectable at law or not, and if protectable, whether an application has been made for such protection or not, and all similar industrial, commercial, monopoly or other intellectual property rights whether present or future, vested or contingent wherever protected.

1.1.14

Law

Means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply.

1.1.15

Notice

Any written instruction or notice given to the Contractor by the Contract Supervisor, delivered by:

- i. fax, or hand delivery to the Contractor's registered office or other address notified for the purposes of the Contract and deemed to have been served at the date and time of delivery.
- ii. First class post to the Contractor's registered office. Such Notices are deemed to have been served 48 hours after posting.

1.1.16 Permission
Express permission given in writing before the act being permitted.

1.1.17 Regulations
means the Public Contract Regulations 2015 (SI 2015/102) as amended.

1.2 Except as set out above and in the Data Protection Schedule, the Contract shall be interpreted in accordance with the Interpretation Act 1988.

1.3 All headings in these Conditions are for ease of reference only, and shall not affect the construction of the Contract.

1.4 Any reference in these Conditions to a statutory provision will include all subsequent modifications.

1.5 All undefined words and expressions are to be given their normal English meaning within the context of this Contract. Any dispute as to the interpretation of such undefined words and expressions shall be settled by reference to the definition in the Shorter Oxford English Dictionary.

2. PRECEDENCE

To the extent that the following documents form the Contract, in the case of conflict of content, they shall have the following order of precedence:

- Conditions of Contract including Appendix, Data Protection Schedule and any Special Conditions;
- Specification;
- Pricing Schedule;
- Drawings, maps or other diagrams.

If these Conditions are used in the production of an order under pre-existing arrangements, then the Conditions of Contract of the pre-existing arrangements shall prevail.

Parties agree that the terms of conditions contained herein supersede the Contractor's Terms and Conditions incorporated by reference in any of the Contractor's Quotes issued to the Agency in connection with this Agreement.

3. CONTRACT SUPERVISOR

The Contractor shall strictly comply with any instruction given by the Contract Supervisor concerning or about the Contract provided such instructions are reasonable and consistent with the nature, scope and value of the Contract. All such instructions shall be in writing. The Contractor is not obliged to comply with any verbal instruction from the Contract Supervisor that is not confirmed in writing within 7 working days.

4. GOODS

The Contractor shall provide all staff, equipment, materials and any other requirements necessary for the performance of the Contract to the standard in the Specification, within the time period specified in the Appendix [DRAFTING NOTE

– CHECK TIME IN APPENDIX], using reasonable skill, care and diligence, and to the reasonable satisfaction of the Contract Supervisor.

5. ASSIGNMENT

- 5.1 The Contractor shall not assign, transfer or sub-contract the Contract, or any part of it, without the Permission of the Contract Supervisor.
- 5.2 Any assignment, transfer or sub-contract entered into, shall not relieve the Contractor of any of his obligations or duties under the Contract.
- 5.3 Nothing in this Contract confers or purports to confer on any third party any benefit or any right to enforce any term of the Contract.

6. CONTRACT PERIOD

The Contractor shall use commercially reasonable efforts to deliver the Goods within the time stated in the Appendix [DRAFTING NOTE – CHECK APPENDIX], subject to any changes arising from Condition 9 (Variations), and/or Condition 10 (Extensions of time),

7. MATERIALS

- 7.1 The Contractor shall be responsible for establishing his own sources of supply for any goods and materials needed in connection with the performance of the Contract.
- 7.2 The Contractor shall not place, or cause to be placed, any orders with suppliers or otherwise incur liabilities in the name of the Agency or any representative of the Agency.

8. SECURITY

- 8.1 The Contractor shall be responsible for the security of all goods and equipment belonging to the Agency and used by the Contractor in the supply of the Goods, or belonging to the Contractor, or the Contractor's staff, or sub-contractors whilst on Agency premises.
- 8.2 This Condition shall not prejudice the Agency's rights under Condition 16.

9. VARIATIONS

- 9.1 The Contract Supervisor may vary the Contract by adding to, deleting or otherwise modifying the Goods to be supplied, by written order to the Contractor provided such variations are reasonable and consistent with the nature, scope and value of the Contract. Notwithstanding the foregoing, no such variation shall take effect unless agreed and confirmed in writing by the Contractor.
- 9.2 The value of any such variation shall be determined by reference to the rates contained in the Pricing Schedule. Where the Goods so ordered are not covered in the Pricing Schedule, they shall be valued at a fair and reasonable rate agreed between the Contract Supervisor and the Contractor.

- 9.3 Where a variation is the result of some default or breach of the Contract by the Contractor or for some other cause for which he is solely responsible, any additional cost attributable to the variation shall be borne by the Contractor.
- 9.4 The Contractor may also propose a variation to the Goods to be supplied but no such variation shall take effect unless agreed and confirmed in writing by the Contract Supervisor.
- 9.5 No variation shall have the effect of invalidating the Contract, or placing the Contract at large, if that variation is reasonably consistent with the nature, scope and value of the Contract.
- 9.6 The Agency may vary the Contract to comply with a change in English Law. Such a change will be effected by the Contract Supervisor notifying the Contractor in writing.
- 9.7 The Agency may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- 9.7.1 any Contracting Authority; or
- 9.7.2 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Agency; or
- 9.7.3 any private sector body which substantially performs the functions of the Agency, provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.
- 9.8 Any change in the legal status of the Agency such that it ceases to be a Contracting Authority shall not affect the validity of the Contract. In such circumstances the Contract shall bind and inure to the benefit of any successor body to the Agency.

10. EXTENSIONS OF TIME

- 10.1 Should the performance of the Contract be directly delayed by any cause beyond the reasonable control of the Contractor, and provided that the Contractor shall first have given the Contract Supervisor written notice within five working days after becoming aware that such delay was likely to occur, then the Contract Supervisor, if satisfied that this Condition applies:
- 10.1.1 in the case of any delay of which the Agency is not the cause, may grant the Contractor such extension of time, as in his opinion is reasonable, having regard, without limitation, to any other delays or extensions of time that may have occurred or been

granted under the Contract. The Contract Price shall not increase as a result of such an extension of time.

10.1.2 in the case of any delay of which the Agency is the cause, shall grant the Contractor a reasonable extension of time to take account of the delay.

10.1.3 No extension of time shall be granted where the Contractor has failed to use reasonable endeavours to avoid or reduce the cause and/or effects of the delay.

10.1.4 Any extension of time granted under this Condition shall not affect the Agency's rights to terminate or determine the Contract under Conditions 12 and 13.

11. PROPERTY AND RISK

The property and risk in the Goods shall pass to the Agency when the Goods have been delivered to the Agency's nominated address or addresses as stated in the Appendix

12. REJECTION OF GOODS

12.1 Without prejudice to the operation of Condition 12.5 the Goods shall be inspected on behalf of the Agency within a reasonable period of time after delivery, but no more than 30 business days and may be rejected if the Goods:

12.1.1 are found to be defective in material or workmanship, inferior in quality to or differing in form or material from the requirements of the Contract, or

12.1.2 do not comply with any express term of the Contract.

12.2 Without prejudice to the operation of Condition 12.5, the Agency shall notify the Contractor in writing of the discovery of any defect in material or workmanship within fourteen days and shall give the Contractor all reasonable opportunities to investigate such defect. The Agency is deemed to have accepted delivered Goods on terms set forth herein, unless within 30 business days after installation of the Goods the Agency sends a written notice of rejection that provides detailed grounds for rejection.

12.3 The whole of any consignment may be rejected if a reasonable random sample of the Goods taken from the consignment is found not to conform in every respect with the requirements of the Contract.

12.4 Goods so rejected after delivery shall be removed by the Contractor within 14 days of receipt of the Agency's notification of rejection. If the Contractor fails to remove the rejected Goods within this time period, the Agency may return the rejected Goods at the Contractor's risk and expense.

- 12.5 Taking delivery, inspection, use or payment for the Goods, or part of them shall not constitute acceptance, waiver or approval and shall be without prejudice to any right or remedy the Agency may have against the Contractor.

13. DEFAULT

- 13.1 The Contractor shall be in default if he:
- 13.1.1 fails to perform the Contract with due skill, care diligence and timeliness;
 - 13.1.2 Intentionally Omitted.
 - 13.1.3 is in breach of the Contract.
- 13.2 Where the Contractor is in default, the Contract Supervisor may serve a Notice giving Contractor a commercially reasonable time, (provided this exceeds no more than 6 months) in which to remedy the default.
- 13.3 Intentionally Omitted.

14. TERMINATION

- 14.1 The Agency may immediately, without prejudice to any other rights and remedies under the Contract, terminate all or any part of the Contract by Notice in writing to the Contractor, Receiver, Liquidator or to any other person in whom the Contract may become vested, if the Contractor:
- 14.1.1 fails to comply with (or take reasonable steps to comply with) a Notice under Condition 13.2.
 - 14.1.2 becomes bankrupt or insolvent, or has a receiving order made against him, or makes an arrangement with his creditors or (being a corporation) commences to be wound up, not being a voluntary winding up for the purpose of reconstruction or amalgamation, or has a receiver, administrator, or administrative receiver appointed by a Court.
- 14.2 Termination under the Regulations'
- 14.3 The Agency may terminate the Contract on written Notice to the Contractor if:
- (a) the contract has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Regulations;

- (b) the Contractor was, at the time the Contract was awarded, in one of the situations specified in regulation 57(1) of the Regulations, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure which resulted in its award of the Contract; or
- (c) the Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and the Regulations that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU.

15. DETERMINATION

- 15.1 Without prejudice to any other rights or remedies under the Contract, the Agency reserves the right to determine the Contract at any time by giving not less than one month's Notice, (or such other time period as may be appropriate).
- 15.2 The Agency shall pay the Contractor such amounts as may be necessary to cover his reasonable costs and outstanding and unavoidable commitments necessarily and solely incurred in properly performing the Contract prior to determination.
- 15.3 The Agency will not pay for any costs or commitments that the Contractor is able to mitigate and shall only pay those costs that the Agency has validated. The Agency's total liability under this Condition shall not in any circumstances exceed the Contract Price that would have been payable for the Services if the Contract had not been determined.

16. INDEMNITY

- 16.1 Without prejudice to the Agency's remedies for breach of Contract, the Contractor shall fully indemnify the Agency and its staff against any direct legally enforceable and reasonably mitigated liability, loss, costs, expenses, claims or proceedings in respect of:
 - 16.1.1 death or injury to any person;
 - 16.1.2 loss or damage to any property excluding indirect and consequential loss;

arising out of, or in connection with, defects in Goods, to the extent that the defects in the Goods are attributable to the the actions or negligence of the Contractor, his staff or agents in the execution of the Contract.
- 16.2 This Condition shall not apply where the damage, injury or death is a direct result of the actions, or negligence of the Agency or its staff.
- 16.3 In the event any Goods to be furnished under this Agreement are not to be made in accordance with drawings, samples or manufacturing specifications designated by the Agency, but rather is solely the design of the Contractor, the Contractor agrees that it shall, at its own expense and at its option, defend or settle any claim, suit, or

proceeding brought against the Agency or any customer of the Agency, based on an allegation that the Goods furnished under this Agreement constitute a direct infringement of any claim of any patent, mask work, copyright or any other intellectual property right.

This obligation shall be effective only if the Agency shall have made all payments then due and if the Contractor is notified of said allegation promptly in writing and given authority, information, and assistance for the settlement or defense of said claim, suit, or proceeding. The Contractor shall pay all damages and costs assessed in such suit or proceedings. In the event of a final adjudication by a court of competent jurisdiction that its product or any part thereof infringes or violates any third party intellectual property right or if the sale thereof is enjoined, the Contractor shall at its sole option and its own expense, either: (a) procure for the Agency the right to continue using the product; or (b) replace it with a substantially equivalent non-infringing product; or (c) modify it so it becomes non-infringing but substantially equivalent; or (d) if none of the above is reasonably available, terminate the Agency's right to use the product, accept the return of the product from the Agency, and return to the Agency the pro rata amount of the price originally paid by the Agency to the Contractor for the product supplied by the Contractor, based on a three year life.

The foregoing indemnity does not apply to the following: (1) infringement by a combination of Goods furnished under this Agreement with other goods or products not furnished hereunder unless the Contractor is a contributory infringer; (2) infringement resulting from the Agency's use of the Goods in a manner inconsistent with the Contractor's written and publicly available documentation; (3) infringement resulting from changes or modifications made to or from the Goods by the Agency; and (4) any settlements of a claim, suit, or proceeding made without the Contractor's written consent. The foregoing states the entire liability of the Contractor with respect to infringement or violation of third party intellectual property rights in connection with Goods furnished under this Agreement.

17. LIMIT OF CONTRACTOR'S LIABILITY

- 17.1 Save for the Contractor's liability for (i) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors, (ii) fraud or fraudulent misrepresentation or (iii) defective products under the Consumer Protection Act 1987 TO THE FULLEST EXTENT PERMITTED BY LAW, THE EXCLUSIVE REMEDY OF THE AGENCY, AND THE LIMIT OF THE CONTRACTOR'S LIABILITY FOR ANY AND ALL LOSSES, OR DAMAGES CONCERNING THE GOODS (INCLUDING CLAIMS BASED ON CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY OR OTHERWISE) SHALL BE THE THE SUM STATED IN THE APPENDIX. IN THE CASE OF SOFTWARE, THE CONTRACTOR WILL REPAIR OR REPLACE DEFECTIVE SOFTWARE OR IF UNABLE TO DO SO, WILL REFUND THE PURCHASE PRICE OF THE SOFTWARE. IN NO EVENT SHALL THE CONTRACTOR BE LIABLE FOR LOST PROFITS OR ANY SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES. EXCEPT FOR THE INITIAL INSTALATION(S) DESCRIBED IN THE QUOTE, THE

CONTRACTOR SHALL NOT BE RESPONSIBLE FOR INSTALLATION, DISMANTLING OR REINSTALLATION COSTS OR CHARGES. The Goods returned under warranty to the Contractor's factory shall be at the Agency's risk of loss, and will be returned, if at all, at the Contractor's risk of loss. The Agency and all users are deemed to have accepted this LIMITATION OF WARRANTY AND LIABILITY, which contains the complete and exclusive limited warranty of the Contractor. This LIMITATION OF WARRANTY AND LIABILITY may not be amended, modified or its terms waived, except by writing signed by an Officer of the Contractor.

18. INSURANCE

- 18.1 The Contractor shall insure and maintain insurance against liabilities under Condition 16 (Indemnity) in the manner and to the values listed in the Appendix].
- 18.2 Intentionally Omitted.
- 18.3 The Contractor shall, upon request, produce to the Contract Supervisor documentary evidence that the insurances required are fully paid up and valid for the duration of the Contract.

19. PREVENTION OF FRAUD AND CORRUPTION

- 19.1 The Contractor shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or for showing or refraining from showing favour or disfavour to any person in relation to the Contract.
- 19.2 The Contractor shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Contractor's staff and the Contractor (including its shareholders, members and directors) in connection with the Contract and shall notify the Agency immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 19.3 If the Contractor or the Contractor's staff engages in conduct prohibited by this clause 19 or commits fraud in relation to the Contract or any other contract with the Crown (including the Agency) the Agency may:
 - 19.3.1 terminate the Contract and recover from the Contractor the amount of any loss suffered by the Agency resulting from the termination, including the cost reasonably incurred by the Agency of making other arrangements for the supply of the Goods and

any additional expenditure incurred by the Agency throughout the remainder of the Contract; or

19.3.2 recover in full from the Contractor any other loss sustained by the Agency in consequence of any breach of this clause.

19.4 The Contractor shall not, directly or indirectly through intermediaries commit any offence under the Bribery Act 2010 (as amended), in any of its dealings with the Agency.

20. CONTRACT PRICE

20.1 The Contract Price will be paid by the Agency to the Contractor as amended by any Variations ordered under Condition 9 (Variations).

20.2 In addition to the Contract Price, the Agency will pay to the Contractor such Value Added Tax (if any) as may properly be chargeable at rates ruling at the time of invoice.

21. INVOICING AND PAYMENT

21.1 Invoices shall only be submitted for those Goods already delivered accompanied by such information as the Contract Supervisor may reasonably require to verify the Contractor's entitlement to payment. Such invoices will be paid in 30 days from receipt by the Agency.

21.2 If any sum is payable under the Contract by the Contractor to the Agency, whether by deduction from the Contract or otherwise, it will be deducted from the next available invoice.

21.3 If the Contractor enters into a sub-contract with a supplier for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in the sub-contract which requires payment to be made of all sums due from it to the sub-contractor within 30 days from the receipt of a valid invoice.

22. INTELLECTUAL PROPERTY RIGHTS

22.1 The Contractor warrants to the Agency that the Goods provided by the Contractor shall not infringe upon the copyright, patent or other proprietary rights of others. Notwithstanding the foregoing, the Contractor makes no warranties, whether express or implied, that the Agency's use of the Contractor's Goods in a manner inconsistent with the Contractor's intended purpose for the Goods (as described in Contractor's published written materials), in combination with systems, equipment or computer programs not supplied by the Contractor, any use of the Contractor's Goods outside of the United States, or any modification of the Contractor's Goods will not and will

not give rise to any infringement of any Intellectual Property right of any third party.

22.2 Intentionally Omitted.

22.3 If the Contractor is prevented from carrying out his obligations under the Contract due to any infringement or alleged infringement of any Intellectual Property Rights, the Agency may without prejudice to any other rights and remedies under the Contract, exercise the powers and remedies available to it under Conditions 14 and 15.

23. WARRANTY

The Contractor warrants that the Goods supplied by him are of a satisfactory quality and are supplied with reasonable skill, care and diligence and shall conform to any of the Contractor's published product Specifications..

24. GUARANTEES

The Contractor warrants the Goods, excluding software, sold hereunder, under normal use and service as described in the operator's manual, to be free from defects in workmanship and material for 12 months (without the purchase of an extended warranty), or if less, the length of time specified in the operator's manual, from the date of shipment to the Agency. This warranty period is inclusive of any statutory warranty or condition. This limited warranty is subject to the following exclusions and exceptions:

a. Hot-wire or hot-film sensors used with research anemometers, and certain other components when indicated in specifications, are warranted for 90 days from the date of shipment;

b. Intentionally Omitted;

c. Parts repaired or replaced as a result of repair services **(not parts repaired or replaced under standard warranty coverage or extended warranty)** are warranted to be free from defects in workmanship and material, under normal use, for 90 days from the date of shipment;

d. The Contractor does not provide any warranty on any fuses, batteries or other consumable materials. Only the original manufacturer's warranty applies. For avoidance of doubt, the Scanning Mobility Particle Sizer (SMPS) system is deemed a finished good manufactured by the Contractor which shall be covered under the Contractor's standard warranty;

e. This warranty does not cover calibration requirements, and the Contractor warrants only that the instrument or product is properly calibrated at the time of its manufacture. Instruments returned for calibration are not covered by this warranty;

f. Except for calibrations conducted by NPL, this warranty is VOID if the instrument is opened by anyone other than a factory authorized service center with the one exception where requirements set forth in the manual allow an operator to replace consumables or perform recommended cleaning;

g. This warranty is VOID if the product has been misused, neglected, subjected to accidental or intentional damage, or is not properly installed, maintained, or cleaned according to the requirements of the manual. Unless specifically authorized in a separate writing by the Contractor, the Contractor makes no warranty with respect to, and shall have no liability in connection with, Goods

which are incorporated into other products or equipment, or which are modified by any person other than the Contractor.

The foregoing is IN LIEU OF all other warranties and is subject to the LIMITATIONS stated herein. **NO OTHER EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE OR MERCHANTABILITY IS MADE.** WITH RESPECT TO THE CONTRACTOR'S BREACH OF THE IMPLIED WARRANTY AGAINST INFRINGEMENT, SAID WARRANTY IS LIMITED TO CLAIMS OF DIRECT INFRINGEMENT AND EXCLUDES CLAIMS OF CONTRIBUTORY OR INDUCED INFRINGEMENTS. WITH RESPECT TO CLAIMS OF DIRECT INFRINGEMENT, THE AGENCY'S EXCLUSIVE REMEDY SHALL BE THE RETURN OF THE PURCHASE PRICE DISCOUNTED FOR REASONABLE WEAR AND TEAR OR AT THE CONTRACTOR'S OPTION REPLACEMENT OF THE GOODS WITH NON-INFRINGEMENTS GOODS.

25. STATUTORY REQUIREMENTS

The Contractor shall fully comply with all relevant statutory requirements in the performance of the Contract, including, but not limited to the giving of all necessary notices and the paying of all fees.

26. ENVIRONMENT, SUSTAINABILITY AND DIVERSITY

26.1 The Contractor in the performance of this Contract should adopt a sound proactive environmental approach, designed to minimise harm to the environment, to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of single-use plastic, ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and/or the environment, and be able to provide proof of so doing to the Agency on demand.

26.2 The Agency is committed to ensuring that workers employed within its supply chains are treated fairly, humanely and equitably. The Agency expects the Contractor to share this commitment and to understand any areas of risk associated with this and work to ensure they are meeting International Labour Standards. The Contractor ensures that it will :

26.2.1 comply with the provisions of the Modern Slavery Act 2015;

26.2.2 pay staff fair wages (and pays its staff in the UK not less than the Foundation Living Wage Rate); and

26.2.3 implement fair shift arrangements, providing sufficient gaps between shifts, adequate rest breaks and reasonable shift length, and other best practices for staff welfare and performance.

26.3 The Contractor should support the Agency to achieve its Public Sector Equality Duty by complying with the Agency's policies (as amended from time to time) on Equality, Diversity and Inclusion (EDI). This

includes ensuring that the Contractor in the delivery of its obligations under this Contract:

- 26.3.1 eliminates discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- 26.3.2 advances equality of opportunity between people who share a protected characteristic and those who do not; and
- 26.3.3 fosters good relations between people who share a protected characteristic and those who do not.

27. PUBLICITY

The Contractor shall not advertise or publicly announce that he is supplying Goods or undertaking work for the Agency without the Permission of the Contract Supervisor.

28. LAW

This Contract shall be governed and construed in accordance with the Law, and subject to the jurisdiction of the courts of England.

29. WAIVER

- 29.1 No delay, neglect or forbearance by either Party in enforcing any provision of the Contract shall be deemed to be a waiver, or in any other way prejudice the rights of the the other Party under the Contract.
- 29.2 No waiver by either Party shall be effective unless made in writing.
- 29.3 No waiver by either Party of a breach of the Contract shall constitute a waiver of any subsequent breach.

30. ENFORCEABILITY AND SURVIVORSHIP

- 30.1 If any part of the Contract is found by a court of competent jurisdiction or other competent authority to be invalid or legally unenforceable, that part will be severed from the remainder of the Contract which will continue to be valid and enforceable to the fullest extent permitted by law
- 30.2 The following clauses shall survive termination of the Contract, howsoever caused: 14, 15, 16, 22, 23, 25, 28, 30, 31, 32, 33 and 34.

31. DISPUTE RESOLUTION

- 31.1 All disputes under or in connection with this agreement shall be referred first to negotiators nominated at a suitable and appropriate working level by the Agency and the Contractor.

- 31.2 If the parties' negotiators are unable to resolve the dispute within a period of forty five days from its being referred to them, the dispute shall be referred at the instance of either party to the parties' respective senior managers or directors (supported as necessary by their advisers).
- 31.3 If the parties' respective senior managers or directors are unable to resolve the dispute within forty five days the dispute shall be referred to the Centre for Dispute Resolution who shall appoint a mediator and the parties shall then submit to the mediator's supervision of the resolution of the dispute.
- 31.4 Recourse to this dispute resolution procedure shall be binding on the parties as to submission to the mediation but not as to its outcome. Accordingly all negotiations connected with the dispute shall be conducted in strict confidence and without prejudice to the rights of the parties in any future legal proceedings. Except for any party's right to seek interlocutory relief in the courts, no party may commence other legal proceedings under the jurisdiction of the courts or any other form of arbitration until forty five days after the appointment of the mediator.
- 31.5 If, with the assistance of the mediator, the parties reach a settlement, such settlement shall be put in writing and, once signed by a duly authorised representative of each of the parties, shall remain binding on the parties.
- 31.6 The parties shall bear their own legal costs of this dispute resolution procedure, but the costs and expenses of mediation shall be borne by the parties equally.
- 31.7 Any of the time limits in Condition 31 may be extended by mutual agreement. Such agreed extension shall not prejudice the right of either party to proceed to the next stage of resolution.

32. GENERAL

- 32.1 Neither party to the Contract shall be liable for any damage, loss or expense suffered as a result of any delay or nonperformance, when the delay or nonperformance is, directly or indirectly, caused by or arises from the following events ("**Force Majeure Event**") war (whether declared or not), armed conflict or the serious threat of the same (including but not limited to hostile attack, blockade, military embargo), hostilities, invasion, act of a foreign enemy, extensive military mobilization; civil war, riot, rebellion, revolution, military or usurped power, insurrection, civil commotion or disorder, mob violence, act of civil disobedience; act of terrorism, sabotage or piracy; plague, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee restrictions; act of authority whether lawful or unlawful, compliance with any law or governmental order, rule, regulation or direction, curfew restriction, expropriation, compulsory acquisition, seizure of works, requisition, nationalization; act of God or natural disaster such as but not limited to violent storm, cyclone, typhoon, hurricane, tornado, blizzard, earthquake, volcanic activity, landslide, tidal wave, tsunami, flood, damage or destruction by lightning, drought; explosion,

fire, destruction of machines, equipment, factories and of any kind of installation, prolonged break-down of transport, telecommunication or electric current; general labor disturbance such as but not limited to boycott, strike and lock-out, go-slow, occupation of factories and premises; inability to obtain critical material or supplies to the extent not subject to the reasonable control of the Contractor. Such delay or failure caused by a Force Majeure Event will not constitute a breach of the Contract provided that the party hindered or delayed in performing its obligations by a Force Majeure Event (the “**Party Affected**”) promptly notifies the other party in writing when such Force Majeure Event causes delay and when it ceases to do so. Following such notice at the start of the Force Majeure Event, the time for performance of the affected obligation will be extended by a reasonable period. If the period of delay or non performance caused by the Force Majeure Event, continues for more than 60 days, the party not affected may terminate this agreement by giving 14 days written notice to the Party Affected.

- 32.2 The Contract contains the whole agreement between the parties and supersedes all previous communications, representations and arrangements, written or oral. It is accepted that the Contract has not been entered into on the basis of any representations that are not expressly contained in the Contract.

33. FREEDOM OF INFORMATION ACT

- 33.1 The Agency is committed to open government and to meeting its responsibilities under the Freedom of Information Act 2000 (as amended) ('Act') and the Environmental Information Regulations 2004 (as amended) (Regulations').
- 33.2 The Contractor agrees that:
- 33.2.1 All information submitted to the Agency may need to be disclosed by the Agency in response to a request under the Act or the Regulations; and
 - 33.2.2 The Agency may include information submitted (in whole or in part) in the publication scheme which it maintains under the Act or publish the Contract, including from time to time agreed changes to the Contract, to the public.
- 33.3 If the Contractor considers that any of the information included in its tender, or that it has submitted to the Agency or that is otherwise contained in the Contract, is commercially sensitive, it shall identify and explain (in broad terms) what harm may result from disclosure if a request is received, and the time period applicable to that sensitivity. The Contractor acknowledges that if it has indicated that information is commercially sensitive, such information may still be required to be disclosed by the Agency under the Act or the Regulations. The receipt of any material stated to be or marked 'confidential' or equivalent by the Agency shall not be deemed to infer that the Agency agrees any duty of confidentiality by virtue of that marking.


34. DATA PROTECTION

- 34.1 In the event that the Contract requires data to be processed within the meaning of the Data Protection Legislation the Data Protection Schedule shall be completed by the Parties and provisions and definitions therein shall apply and bind the Parties as part of this Contract

Section 9 Appendix to Conditions Goods

Ref: « F/2122/0640 »

Title: « Purchase of SMPS sampling systems - SMPS 3938W50-CEN, 3077 Aerosol Neutralizer, and 3077A Aerosol Neutralizer »

	Condition
1 Contract Supervisor 	3
Address:- Environment Agency, Ghyll Mount, Gillan Way, 40 Business Park, Penrith, Cumbria, CA11 9BP	
2 Contractor TSI Instruments Ltd Address: Stirling Rd Cressex Business Pk High Wycombe Buckinghamshire HP 12 3ST UK	
3 Completion	6
Contract Start Date	«05/11/2021»
Contract End Date	«31/03/2022»
4 Delivery	11

Address:-



National Physical Laboratory

Hampton Road,

Teddington

TW11 0LW

5 Insurance 18

Professional Indemnity Min. Cover £2 million

Third Party Minimum Cover £2 million

Public Liability Min. Cover £2 million

6 Limit on Liability 17

Limit on Contractors Liability £2 million