

# TERMS AND CONDITIONS OF CONTRACT FOR THE PURCHASE OF GOODS BY NATIONAL HIGHWAYS

**THIS AGREEMENT** is dated 9<sup>th</sup> February 2023.

## **BETWEEN**

**NATIONAL HIGHWAYS LIMITED** (company number 09346363) whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ ("National Highways"); and

**LENS-TECH COMPANY LIMITED** (company number 09120056 whose registered office is at 404 Solent Business Centre, 343 Millbrook Road West, Southampton SO15 0HW ("Lens-Tech")

## **AGREED AS FOLLOWS**

### **1 Interpretation**

1.1 In these terms and conditions:

"Agreement"	means the contract between (i) National Highways and (ii) the Supplier constituted by the Supplier's countersignature of the Purchase Order;
"Purchase Order"	means the document entitled as such issued by National Highways to the Supplier;
"CEDR"	means the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London EC4Y 1EU;
"Confidential Information"	means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
"Date of Delivery"	means that date by which the Goods must be Delivered to National Highways, as specified in the Purchase Order.
"Deliver"	means hand over the Goods to National Highways at the address and on the date specified in the Purchase Order, which shall include unloading and any other specific arrangements agreed in accordance with Clause 6. "Delivered" and "Delivery" shall be construed accordingly.
"Data Protection Legislation"	means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679) and the Data Protection Act 2018;
"EIRs"	means the Environmental Information Regulations 2004 (SI 2004/3391);

“FOIA”	means the Freedom of Information Act 2000;
“Goods”	means the goods to be supplied by the Supplier to National Highways under the Agreement;
“Information”	has the meaning given under section 84 of the FOIA;
“Party”	the Supplier or National Highways (as appropriate) and “Parties” shall mean both of them;
“Price”	means the Price for the Goods as specified in the Purchase Order;
“Purchase Order Number”	means National Highways’ unique number relating to the order for Goods to be supplied by the Supplier to National Highways in accordance with the terms of the Agreement;
“Request for Information”	has the meaning set out in the FOIA or the EIRs as relevant (where the meaning set out for the term “request” shall apply);
“Specification”	means the specification for the Goods to be supplied by the Supplier to National Highways (including as to quantity, description and quality) as specified in the Purchase Order;
“Staff”	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier’s obligations under the Agreement;
“Staff Vetting Procedures”	means vetting procedures that accord with good industry practice or, where applicable, National Highways’ procedures for the vetting of personnel as provided to the Supplier from time to time;
“Supplier”	means the person named as Supplier in the Purchase Order;
“VAT”	means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
“Working Day”	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

1.2 In these terms and conditions, unless the context otherwise requires:

- 1.2.1 references to numbered clauses are references to the relevant clause in these terms and conditions;
- 1.2.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- 1.2.3 the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;
- 1.2.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
- 1.2.5 the word ‘including’ shall be understood as meaning ‘including without

limitation’.

## **2 Basis of Agreement**

- 2.1 The Purchase Order constitutes an offer by National Highways to purchase the Goods subject to and in accordance with the terms and conditions of the Agreement.
- 2.2 The offer comprised in the Purchase Order shall be deemed to be accepted by the Supplier on receipt by National Highways of a copy of the Purchase Order countersigned by the Supplier within 5 Working Days of the date of the Purchase Order.

## **3 Supply of Goods**

- 3.1 In consideration of National Highways’ agreement to pay the Price, the Supplier shall supply the Goods to National Highways subject to and in accordance with the terms and conditions of the Agreement.
- 3.2 In supplying the Goods, the Supplier shall co-operate with National Highways in all matters relating to the supply of Goods and comply with all National Highways’ instructions.
- 3.3 The Supplier shall supply the Goods in accordance with the Specification. The Supplier warrants, represents, undertakes and guarantees that the Goods supplied under the Agreement shall:
  - 3.3.1 be free from defects (manifest or latent), in materials and workmanship and remain so for 12 months after Delivery;
  - 3.3.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and comply with any applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods;
  - 3.3.3 conform with the specifications (including the Specification), drawings, descriptions given in quotations, estimates, brochures, sales, marketing and technical literature or material (in whatever format made available by the Supplier) supplied by, or on behalf of, the Supplier;
  - 3.3.4 be free from design defects;
  - 3.3.5 be fit for any purpose held out by the Supplier or made known to the Supplier by National Highways expressly or by implication, and in this respect National Highways relies on the Supplier’s skill and judgement. The Supplier acknowledges and agrees that the approval by National Highways of any designs provided by the Supplier shall not relieve the Supplier of any of its obligations under this sub-clause; and
- 3.4 The Supplier shall comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

## **4 Price, Payment and Recovery of Sums Due**

- 4.1 The Price for the Goods shall be as set out in the Purchase Order and shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Goods. Unless otherwise agreed in writing by National Highways, the Price shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the supply of the Goods, including but not limited to the costs of packaging, insurance, delivery, unloading, stacking and carriage.
- 4.2 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. National Highways shall, following the receipt of a valid VAT invoice, pay to the

Supplier a sum equal to the VAT chargeable in respect of the Goods.

- 4.3 Following Delivery of the Goods, the Supplier shall invoice National Highways as specified in the Agreement. Each invoice shall include such supporting information required by National Highways to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Goods supplied in the invoice period.
- 4.4 National Highways shall accept and process for payment an electronic invoice submitted for payment by the Supplier where the invoice is undisputed and where it complies with the standard on electronic invoicing. For the purposes of this clause 4.4 an electronic invoice complies with the standard on electronic invoicing where it complies with the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.
- 4.5 In consideration of the supply of the Goods by the Supplier, National Highways shall pay the Supplier the invoiced amounts no later than 30 days after verifying that the invoice is valid and undisputed and includes a valid Purchase Order Number.
- 4.6 If National Highways fails to consider and verify an invoice in a timely fashion the invoice shall be regarded as valid and undisputed for the purpose of paragraph 4.4 after a reasonable time has passed.
- 4.7 If there is a dispute between the Parties as to the amount invoiced, National Highways shall pay the undisputed amount. The Supplier shall not suspend the supply of the Goods unless the Supplier is entitled to terminate the Agreement for a failure to pay undisputed sums within 90 days in accordance with clause 17.3. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 20.
- 4.8 If a payment of an undisputed amount is not made by National Highways by the due date, then National Highways shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 4.9 Where the Supplier enters into a sub-contract, the Supplier shall include in that sub-contract:
  - 4.9.1 provisions having the same effects as clauses 4.3 to 4.7 of this Agreement; and
  - 4.9.2 a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions having the same effects as 4.3 to 4.8 of this Agreement.
  - 4.9.3 In this clause 4.8, "sub-contract" means a contract between two or more suppliers, at any stage of remoteness from National Highways in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.
- 4.10 If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to National Highways in respect of any breach of the Agreement), that sum may be deducted unilaterally by National Highways from any sum then due, or which may come due, to the Supplier under the Agreement or under any other agreement or contract between National Highways and the Supplier. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against National Highways in order to justify withholding payment of any such amount in whole or in part.

## **5 Cancellation**

- 5.1 National Highways shall have the right to cancel the order for the Goods, or any part of

the Goods, which have not yet been Delivered to National Highways. The cancellation shall be made in writing. Without prejudice to the generality of the foregoing, National Highways shall pay such Price or that part of the Price for Goods which have been Delivered to National Highways or, on the deemed date of service of the notice of cancellation, are already in transit and the costs of materials which the Supplier has purchased to fulfil the order for the Goods and which cannot be used for other orders or be returned to the supplier of those materials for a refund. For the avoidance of doubt National Highways shall not be liable for any loss of anticipated profits or any consequential loss.

## **6 Delivery**

- 6.1 The Supplier shall Deliver the Goods to National Highways on or by the Date of Delivery. Unless otherwise agreed in writing by National Highways, Delivery shall be on the date and to the address specified in the Purchase Order. Delivery of the Goods shall be completed once the completion of unloading the Goods from the transporting vehicle at the Delivery address has taken place and National Highways has signed for the Delivery.
- 6.2 Any access to National Highways premises and any labour and equipment that may be provided by National Highways in connection with Delivery of the Goods shall be provided without acceptance by National Highways of any liability in respect of any actions, claims, costs and expenses incurred by third parties for any loss of damages to the extent that such loss or damage is not attributable to the negligence or other wrongful act of National Highways or its servant or agent. The Supplier shall indemnify National Highways in respect of any actions, suits, claims, demands, losses, charges, costs and expenses, which National Highways may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of Delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Supplier or any of its sub-contractors.
- 6.3 Delivery of the Goods shall be accompanied by a delivery note which shows the Purchase Order Number and the type and quantity of the Goods and, in the case of part Delivery, the outstanding balance remaining to be Delivered.
- 6.4 Unless otherwise stipulated by National Highways in the Purchase Order, Deliveries shall only be accepted by National Highways on Working Days and during normal business hours.
- 6.5 Where (i) the Supplier fails to Deliver the Goods or part of the Goods or (ii) the Goods or part of the Goods do not comply with the provisions of clause 3, then without limiting any of its other rights or remedies implied by statute or common law, National Highways shall be entitled to:
  - 6.5.1 terminate the Agreement;
  - 6.5.2 request the Supplier, free of charge, to deliver substitute Goods within the timescales specified by National Highways;
  - 6.5.3 require the Supplier, free of charge, to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
  - 6.5.4 reject the Goods (in whole or part) and return them to the Supplier at the Supplier's own risk and expense and National Highways shall be entitled to a full refund on those Goods or part of Goods duly returned; or
  - 6.5.5 buy the same or similar Goods from another supplier and recover any expenses incurred in respect of buying the goods from another supplier which shall include but not be limited to administration costs, chargeable staff time and extra delivery costs.

## **7 Property and Guarantee of Title**

- 7.1 Without prejudice to any other rights or remedies of National Highways, title and risk in the Goods shall pass to National Highways when Delivery of the Goods is complete (including off-loading and stacking).
- 7.2 The Supplier warrants that:
  - 7.2.1 it has full clear and unencumbered title to all the Goods;
  - 7.2.2 at the date of Delivery of any of the Goods it shall have full and unrestricted right, power and authority to sell, transfer and deliver all of the Goods to National Highways. On Delivery National Highways shall acquire a valid and unencumbered title to the Goods.

## **8 Staff**

- 8.1 If National Highways reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Supplier:
  - 8.1.1 refuse admission to the relevant person(s) to National Highways' premises;
  - 8.1.2 direct the Supplier to end the involvement in the provision of the Goods of the relevant person(s); and/or
  - 8.1.3 require that the Supplier replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by National Highways to the person removed is surrendered,and the Supplier shall comply with any such notice.
- 8.2 The Supplier shall:
  - 8.2.1 ensure that all Staff are vetted in accordance with the Staff Vetting Procedures and if requested, comply with National Highways' Staff Vetting Procedures as supplied from time to time;
  - 8.2.2 if requested, provide National Highways with a list of the names and addresses (and any other relevant information) of all persons who may require admission to National Highways' premises in connection with the Agreement; and
  - 8.2.3 procure that all Staff comply with any rules, regulations and requirements reasonably specified by National Highways.

## **9 Assignment and Sub-Contracting**

- 9.1 The Supplier shall not without the written consent of National Highways assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. National Highways may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal.
- 9.2 The Supplier shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.
- 9.3 Where National Highways has consented to the placing of sub-contracts, the Supplier shall, at the request of National Highways, send copies of each sub-contract, to National Highways as soon as is reasonably practicable.
- 9.4 National Highways may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Supplier provided that such assignment, novation or disposal shall not increase the burden of the Supplier's obligations under the Agreement.

## **10 Intellectual Property and Indemnity**

- 10.1 The Supplier grants National Highways a perpetual, royalty-free, irrevocable, non-exclusive licence (with the right to sub-licence) to use all intellectual property rights in the Goods or in any materials accompanying the Goods to the extent that it is necessary to fulfil its obligations under this Agreement.
- 10.2 The Supplier shall indemnify, and keep indemnified, National Highways in full against all cost, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by National Highways as a result of or in connection with any claim made against National Highways for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Goods, to the extent that the claim is attributable to the acts or omission of the Supplier or any Staff.
- 10.3 National Highways shall promptly notify the Supplier of any infringement claim made against it relating to any Goods and, subject to any statutory obligation requiring National Highways to respond, shall permit the Supplier to have the right, at its sole discretion to assume, defend, settle or otherwise dispose of such claim. National Highways shall give the Supplier such assistance as it may reasonably require to dispose of the claim and shall not make any statement which might be prejudicial to the settlement or defence of the claim.

## **11 Governance and Records**

### **11.1 The Supplier shall:**

- 11.1.1 attend progress meetings with National Highways at the frequency and times specified by National Highways and shall ensure that its representatives are suitably qualified to attend such meetings; and
- 11.1.2 submit progress reports to National Highways at the times and in the format specified by National Highways.

- 11.2 The Supplier shall keep and maintain until 6 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Goods supplied under it, and all payments made by National Highways. The Supplier shall on request afford National Highways or National Highways representatives such access to those records as may be reasonably requested by National Highways in connection with the Agreement.

## **12 Confidentiality, Transparency and Publicity**

### **12.1 Subject to clause 12.2, each Party shall:**

- 12.1.1 treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and
- 12.1.2 not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.

- 12.2 Notwithstanding clause 12.1, a Party may disclose Confidential Information which it receives from the other Party:

- 12.2.1 where disclosure is required by applicable law or by a court of competent jurisdiction;
- 12.2.2 to its auditors or for the purposes of regulatory requirements;
- 12.2.3 on a confidential basis, to its professional advisers;
- 12.2.4 to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence

under the Bribery Act 2010;

12.2.5 where the receiving Party is the Supplier, to the Staff on a need to know basis to enable performance of the Supplier's obligations under the Agreement provided that the Supplier shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 12.2.5 shall observe the Supplier's confidentiality obligations under the Agreement; and

12.2.6 where the receiving Party is National Highways:

- (a) on a confidential basis to the employees, agents, consultants and contractors of National Highways;
- (b) on a confidential basis to the Secretary of State for Transport;
- (c) to the extent that National Highways (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
- (d) in accordance with clause 13.

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on National Highways under this clause 12.

12.3 The Parties acknowledge that, except for any Information which is exempt from disclosure in accordance with the provisions of the FOIA or the EIRs, the content of the Agreement is not Confidential Information and the Supplier hereby gives its consent for National Highways to publish the Agreement in its entirety to the general public (but with any Information that is exempt from disclosure in accordance with the FOIA or the EIRs redacted) including any changes to the Agreement agreed from time to time. National Highways may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA or the EIRs.

12.4 The Supplier shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of National Highways.

### **13 Freedom of Information**

13.1 The Supplier acknowledges that National Highways is subject to the requirements of the FOIA and the EIRs and shall:

13.1.1 provide all necessary assistance and cooperation as reasonably requested by National Highways to enable National Highways to comply with its obligations under the FOIA and the EIRs;

13.1.2 transfer to National Highways all Requests for Information relating to the Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;

13.1.3 provide National Highways with a copy of all Information belonging to National Highways requested in the Request for Information which is in its possession or control in the form that National Highways requires within 5 Working Days (or such other period as National Highways may reasonably specify) of National Highways request for such Information; and

13.1.4 not respond directly to a Request for Information unless authorised in writing to do so by National Highways.



- 13.2 The Supplier acknowledges that National Highways may be required under the FOIA or the EIRs to disclose Information concerning the Supplier or the Goods (including commercially sensitive information) without consulting or obtaining consent from the Supplier. In these circumstances National Highways shall, in accordance with any relevant guidance issued under the FOIA or the EIRs, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure
- 13.3 Notwithstanding any other provision in the Agreement, National Highways shall be responsible for determining in its absolute discretion whether any Information relating to the Supplier or the Goods is exempt from disclosure in accordance with the FOIA and/or the EIRs.

#### **14 Protection and Security of Data**

- 14.1 The Supplier shall, and shall procure that all Staff shall, comply with any notification requirements under the Data Protection Legislation and both Parties shall duly observe all their obligations under the Data Protection Legislation which arise in connection with the Agreement.
- 14.2 When handling National Highways data, the Supplier shall ensure the security of the data is maintained in line with the security requirements of National Highways as notified to the Supplier from time to time.

#### **15 Liability**

- 15.1 The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by National Highways if and to the extent that it is caused by the negligence or wilful misconduct of National Highways or by breach by National Highways of its obligations under the Agreement.
- 15.2 Subject always to clause 15.3
- 15.2.1 the aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Goods, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 200% of the Price paid or payable to the Supplier; and
- 15.2.2 except in the case of claims arising under clauses 10.1.2 and 19.3, in no event shall either Party be liable to the other Party for any:
- (a) loss of profits;
  - (b) loss of business;
  - (c) loss of revenue;
  - (d) loss of or damage to goodwill;
  - (e) loss of savings (whether anticipated or otherwise); and/or
  - (f) any indirect, special or consequential loss or damage.
- 15.3 Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:
- 15.3.1 death or personal injury caused by its negligence or that of its Staff;
- 15.3.2 fraud or fraudulent misrepresentation by it or that of its Staff;
- 15.3.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

15.3.4 any other matter which, by law, may not be excluded or limited.

15.4 The Supplier's liability under the indemnity in clauses 10.2 and 19.3 shall be unlimited.

## **16 Force Majeure**

16.1 Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of the Party affected. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than 30 days, either Party may terminate the Agreement by written notice to the other Party.

## **17 Termination**

17.1 Without prejudice to any other right or remedy it might have, National Highways may terminate the Agreement in whole or in part before Delivery or after Delivery (where only part of Goods have been Delivered) by written notice to the Supplier with immediate effect if the Supplier:

17.1.1 (without prejudice to clause 17.1.5), is in material breach of any obligation under the Agreement which is not capable of remedy;

17.1.2 repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;

17.1.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;

17.1.4 undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;

17.1.5 breaches the provisions of clauses 8.2, 12, 13, 14, 18 and 20;

17.1.6 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 17.1.6) in consequence of debt in any jurisdiction; or

17.1.7 fails to comply with legal obligations in the fields of environmental, social or labour law.

17.2 The Supplier shall notify National Highways as soon as practicable of any change of control as referred to in clause 17.1.4 or any potential such change of control.

17.3 In addition to the Supplier's statutory rights, the Supplier may terminate the Agreement by written notice to National Highways if National Highways has not paid any undisputed amount within 90 days of it falling due.

17.4 Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under clauses 2, 3.2, 3.3, 8, 10, 11.2, 12, 13, 14, 15, 17.5, 18.4, 19.3, 20.1 and 23.7 and any other term or condition of the Agreement that either expressly or by implication has effect after termination.

17.5 Upon termination or expiry of the Agreement, the Supplier shall:

17.5.1 give all reasonable assistance to National Highways and any incoming supplier of Goods; and

- 17.5.2 return all requested documents, information and data to National Highways as soon as reasonably practicable.

## **18 Compliance**

- 18.1 The Supplier shall promptly notify National Highways of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. National Highways shall promptly notify the Supplier of any health and safety hazards which may exist or arise at National Highways' premises and which may affect the Supplier in the performance of its obligations under the Agreement.
- 18.2 The Supplier shall:
- 18.2.1 comply with the reasonable requirements of National Highways' security arrangements;
  - 18.2.2 comply with all National Highways' health and safety measures;
  - 18.2.3 notify National Highways immediately in the event of any incident occurring in the performance of its obligations under the Agreement on National Highways' premises where that incident causes any personal injury or damage to property which could give rise to personal injury;
  - 18.2.4 perform its obligations under the Agreement in accordance with all applicable equality Law and National Highways' equality and diversity policy as provided to the Supplier from time to time;
  - 18.2.5 take all reasonable steps to secure the observance of clause 18.2.4 by all Staff; and
  - 18.2.6 supply the Goods and any packaging in accordance with National Highways' environmental policy as provided from time to time.
- 18.3 The Goods shall be packed and marked in a proper manner and in accordance with any instructions specified in the Purchase Order, any statutory requirements and any requirements of the carriers. All packaging materials shall be considered non-returnable. The Supplier shall indemnify National Highways against all actions, suits, claims, demands, losses, charges, costs and expenses which National Highways may suffer or incur as a result of, or in connection with, any breach of this clause 18.3.
- 18.4 The Supplier shall comply with, and shall ensure that its Staff shall comply with, the provisions of:
- 18.4.1 the Official Secrets Acts 1911 to 1989; and
  - 18.4.2 section 182 of the Finance Act 1989.

## **19 Prevention of Fraud and Corruption**

- 19.1 The Supplier 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 Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.
- 19.2 The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Agreement and shall notify National Highways immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 19.3 If the Supplier or the Staff engages in conduct prohibited by clause 19.1 or commits fraud in relation to the Agreement or any other contract with the Crown (including National Highways) National Highways may:

- 19.3.1 terminate the Agreement and recover from the Supplier the amount of any loss suffered by National Highways resulting from the termination, including the cost reasonably incurred by National Highways of making other arrangements for the supply of the Goods and any additional expenditure incurred by National Highways throughout the remainder of the Agreement; or
- 19.3.2 recover in full from the Supplier any other loss sustained by National Highways in consequence of any breach of this clause.

## **20 Compliance With Anti-Slavery And Human Trafficking Laws**

- 20.1 In performing its obligations under the Agreement, the Supplier shall:
  - 20.1.1 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force including but not limited to the Modern Slavery Act 2015; and
  - 20.1.2 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;
  - 20.1.3 include in contracts with its direct subcontractors and suppliers provisions which are at least as onerous as those set out in this Clause 20.
  - 20.1.4 notify National Highways as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this agreement.
  - 20.1.5 maintain a complete set of records to trace the supply chain of all Goods provided to National Highways in connection with this agreement; and permit National Highways and its third party representatives to inspect the Supplier's premises, records, and to meet the Supplier's personnel to audit the Supplier's compliance with its obligations under this Clause 20.
- 20.2 The Supplier represents and warrants that at the date of the Agreement it not has been convicted of any offence involving slavery and human trafficking; nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

## **21 Compliance with National Highways Policies**

- 21.1 The Supplier will comply with National Highways' Fair Payment Charter, Anti-Bribery Code of Conduct, Anti-Fraud Code of Conduct and Armed Forces Covenant.

## **22 Dispute Resolution**

- 22.1 If a dispute arises out of or in connection with the Agreement or the performance, validity or enforceability of it (a "Dispute"), then the Parties shall follow the procedure set out in this clause 21.
- 22.2 Either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars (a "Dispute Notice"), together with relevant supporting documents. On service of the Dispute Notice, National Highways' Procurement Officer and the Supplier's Customer Services Manager shall attempt in good faith to resolve the Dispute
- 22.3 If National Highways' Procurement Officer and the Supplier's Customer Services Manager are for any reason unable to resolve the Dispute within 10 Working Days of service of the Dispute Notice, the Dispute shall be referred to National Highways' Commercial and Procurement Director and the Supplier's Chief Executive Officer who shall attempt in good faith to resolve it.

- 22.4 If National Highways' Commercial and Procurement Director and the Supplier's Chief Executive Officer are for any reason unable to resolve the Dispute within 10 Working Days of it being referred to them, the Parties agree to enter into mediation in good faith to settle the Dispute in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 10 Working Days of the mediation arising the mediator shall be nominated by CEDR. To initiate the mediation, a Party must serve notice in writing (the "ADR notice") on the other Party, referring the Dispute to mediation. A copy of the ADR notice should be sent to CEDR. Unless otherwise agreed between the Parties, the mediation will start not later than 20 Working Days after the date of the ADR notice.
- 22.5 Neither Party may commence any court proceedings under clause 24 in relation to the whole or part of the Dispute until 20 Working Days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.
- 22.6 If the Dispute is not resolved within 50 Working Days after service of the ADR notice, or either party fails to participate or ceases to participate in the mediation before the expiry of that 50 Working Day period, or the mediation terminates before the expiry of that 50 Working Day period, the Dispute shall be finally resolved by the English courts in accordance with clause 24.

### **23 General**

- 23.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
- 23.2 A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
- 23.3 The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 23.4 The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
- 23.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
- 23.6 The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 23.7 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 23.8 If any provision of the Agreement is prohibited by law or judged by a court to be

unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

## **24 Notices**

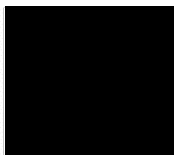
- 24.1 Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded delivery post or, subject to clause 24.3, e-mail to the address of the relevant Party set out in the Purchase Order, or such other address as that Party may from time to time notify to the other Party in accordance with this clause.
- 24.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.
- 24.3 Notices under clauses 16 (Force Majeure), 17 (Termination) and 21 (Dispute Resolution) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 24.1.

## **25 Governing Law and Jurisdiction**

- 25.1 The validity, construction and performance of the Agreement, and all contractual and non contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

**Delivered** as an AGREEMENT on the date of this document.

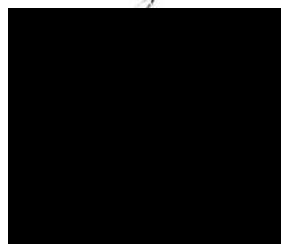
Signed for and on behalf of  
**NATIONAL HIGHWAYS LIMITED**



(Authorised signatory)



Signed for and on behalf of  
**LENS-TECH COMPANY LIMITED**



Authorised signatory



## **Annex A: information about the goods**

### **Description of the goods**

The description can be found in 'National Highways Fresnel Lens 2022 – Specification.pdf'

### **Specifications**

As mentioned above.

### **Requirements for the programme**

### **Services and other things provided by the *Purchaser***

### **Supply Requirements**

The supply requirements can be found in 'National Highways Fresnel Lens 2022 – Specification.pdf'

Pricing:



## Price List

<b>Project Title:</b>	<b>Fresnel Lenses</b>
<b>Tenderer:</b>	<b>Lens-Tech Company Limited</b>

Tenderers are referred to the 'Completion Notes' worksheet for rules and assistance on correct completion of this Commercial Workbook

Item Ref	Item Description	Specification Clause(s)	Quantity	Unit	Rate Excl. Fee	Rate Incl. Fee	Amount
<b>UK Delivery</b>							
	As detailed in the Specification, supply, manufacture, store and distribute including branded packaging and campaign messages A5 size Fresnel Lenses to various locations within the United Kingdom in batch order sizes as below:	CI 1.3					
1	Batch Order size 50 lenses.	CI 1.3	■	■	■ ■ ■ ■ ■	■ ■ ■ ■ ■	■ ■ ■ ■ ■
2	Batch Order size 100 lenses.	CI 1.3	■	■	■ ■ ■ ■ ■	■ ■ ■ ■ ■	■ ■ ■ ■ ■
3	Batch Order size 200 lenses.	CI 1.3	■	■	■ ■ ■ ■ ■	■ ■ ■ ■ ■	■ ■ ■ ■ ■
4	Batch Order size 300 lenses.	CI 1.3	■	■	■ ■ ■ ■ ■	■ ■ ■ ■ ■	■ ■ ■ ■ ■
5	Batch Order size 400 lenses.	CI 1.3	■	■	■ ■ ■ ■ ■	■ ■ ■ ■ ■	■ ■ ■ ■ ■
6	Batch Order size 500 lenses.	CI 1.3	■	■	■ ■ ■ ■ ■	■ ■ ■ ■ ■	■ ■ ■ ■ ■
7	Batch Order size 750 lenses.	CI 1.3	■	■	■ ■ ■ ■ ■	■ ■ ■ ■ ■	■ ■ ■ ■ ■
8	Batch Order size 1,000 lenses.	CI 1.3	■	■	■ ■ ■ ■ ■	■ ■ ■ ■ ■	■ ■ ■ ■ ■
<b>European Delivery</b>							
9	Research, contact and reach agreement with various European (non-UK) distributors and organisations for receiving and supplying lenses to European hauliers.	CI 3.1, 4.7, 4.8, 4.9	■	■	■ ■ ■ ■ ■	■ ■ ■ ■ ■	■ ■ ■ ■ ■
10	Extra-over Item 1 rate for delivery to European (non-UK) destination	CI 3.1, 4.7, 4.8, 4.9	■	■	■ ■ ■ ■ ■	■ ■ ■ ■ ■	■ ■ ■ ■ ■
11	Extra-over Item 2 rate for delivery to European (non-UK) destination	CI 3.1, 4.7, 4.8, 4.9	■	■	■ ■ ■ ■ ■	■ ■ ■ ■ ■	■ ■ ■ ■ ■
12	Extra-over Item 3 rate for delivery to European (non-UK) destination	CI 3.1, 4.7, 4.8, 4.9	■	■	■ ■ ■ ■ ■	■ ■ ■ ■ ■	■ ■ ■ ■ ■
13	Extra-over item 6 rate for delivery to European (non-UK) destination	CI 3.1, 4.7, 4.8, 4.9	■	■	■ ■ ■ ■ ■	■ ■ ■ ■ ■	■ ■ ■ ■ ■
14	Extra-over Item 8 rate for delivery to European (non-UK) destination	CI 3.1, 4.7, 4.8, 4.9	■	■	■ ■ ■ ■ ■	■ ■ ■ ■ ■	■ ■ ■ ■ ■
<b>Administration</b>							
15	Provide proof of delivery records and prepare, establish, and maintain a database of the distribution locations and quantities to locations within the UK and Europe.	CI 3.6	■	■	■ ■ ■ ■ ■	■ ■ ■ ■ ■	■ ■ ■ ■ ■

<b>Total of the Prices for Assessment:</b>							<b>£</b> ■ ■ ■ ■ ■
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Project Title: Fresnel Lenses

Tenderer: Lens-Tech Company Limited

Tenderers are referred to the 'Completion Notes' worksheet for rules and assistance on correct completion of this Commercial Workbook

General

- a) The *fee percentage* is fixed for the duration of the contract
- b) The *fee percentage* acts as a capped value for any Task Order placed under the contract
- c) Not used
- d) The sum of the individual constituents is the *fee percentage*.
- e) The tenderer completes the *fee percentage* in the *Contractor's Contract Data*.
- f) The *fee percentage* is consistent and will apply to all services delivered under the contract.
- g) For each item in the Price List, the tenderer's rates and prices include for Defined Cost and Fee. Fee is calculated by applying the *fee percentage* stated in the *Contractor's Contract Data* to the nett total forecast resource price for each item.
- h) For compensation events where the change to the Prices is assessed as the effect of the compensation event upon Defined Cost, the Fee is calculated by applying the *fee percentage* stated in the *Contractor's Contract Data* to the Defined Cost.
- i) The list of constituents of *fee percentage* provided below is not exhaustive. Fee includes all costs that are not included in the Defined Cost, together with profit and any allowance for risk. The tenderer may list other constituents of *fee percentage* as necessary.
- j) National Highways reserves the right to seek further breakdown of the *fee percentage* entered below. Where requested by National Highways, tenderers provide evidence to the level of the constituent percentages and beyond in sufficient detail (and based on verifiable costs) to substantiate such percentages.

Item	Constituent of <i>fee percentage</i>	Included?
1	profit	
2	franchises, royalties, licences	
3	accounting, auditing and payroll, business development, procurement and other support services	
4	research and development	
5	publicity, marketing, sales, exhibitions	
6	entertainment	
7	rents, rates, leases, services and servicing of premises, stationery, telecommunications, postage	
8	IT/computing	
9	asset depreciation	
10	insurance premiums	
11	the amount of any excess borne by the Contractor in respect of any claims under Client's liability and professional indemnity insurances	
12	finance and interest charges	
13	severance	
14	bonuses and incentives	
15	personnel / HR services	
16	quality assurance	
17	health and safety	
18	training	
19	supply chain	
20	legal costs	
21	environmental and sustainability	
22	management and non-chargeable directors	
23	adjustment for non-recoverable hours	
24	other non-recoverable costs (specified by the Contractor below at time of tender):	

*fee percentage (as entered into the Contractor's Contract Data)*