



Department  
for Environment  
Food & Rural Affairs

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London SW1P 3JR

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helpline@defra.gov.uk  
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[REDACTED]  
Darcy Products Ltd  
Brook House  
Larkfield Trading Estate  
New Hythe Lane  
Larkfield  
Kent  
ME20 6GN

**Your ref:** ITT\_10612  
**Our ref:** 36492  
**Date:** 19/12/2022

**Award Notification: Award Notification: Framework Agreement  
for the supply of Pollution Control Equipment (Lots  
1,2,3,4,5,6,7,9 and 10) on behalf of the Environment Agency.**

I am pleased to inform you that the Environment Agency hereby accepts your tender dated 26/09/2022 in respect of the above framework agreement. The framework agreement shall be carried out in accordance with:

- This framework agreement award letter
- Our Bidder Pack dated 19/08/2022
- Your response received dated 26/09/2022

The prices for this framework agreement shall be as detailed in your tender submission of 26/09/2022. The price will remain fixed for the duration of the contract but linked to the relevant indices as detailed in clause 37 of the terms and conditions.

The framework agreement is awarded for a period of 4 years, from 14/01/2023 to 13/01/2027.

The Purchase Order number will be provided in due course and we will require you to quote this on all invoices to ensure timely payment. Invoices should be sent to:

By email: [apinvoices-env-u@gov.sscl.com](mailto:apinvoices-env-u@gov.sscl.com)

If not by email by post to:

SSCL  
Environment Agency  
PO BOX 797  
Newport  
Gwent  
NP10 8FZ

Invoices not containing the correct Purchase Order number will mean we are unable to process them and they will be returned to you.

This framework agreement will be managed on behalf of the Environment Agency by

[REDACTED] The contract reference and title given above should be quoted on all correspondence.

The framework agreement will be governed by the Environment Agency terms and conditions as contained within the original Tender documents and as follows.

Please acknowledge receipt of this letter and confirm your acceptance by return.

Yours sincerely

[REDACTED]  
Defra Group Commercial  
[REDACTED]  
[REDACTED]  
[REDACTED]



Environment  
Agency

# Conditions of Contract Goods

October 2019

## 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 semi-conductor 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.

## **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, 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 deliver the Goods within the time stated in the 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.
- 9.2 The value of any such variation, other than any variation arising out of Condition 9.3, 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 in the opinion of the Agency 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 and unloaded.

## **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 and may be rejected if the Goods:
- 12.1.1 are found to be defective, 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 term (express or implied) of the Contract.
- 12.2 Without prejudice to the operation of Condition 12.5, the Agency shall notify the Contractor of the discovery of any defect within fourteen days and shall give the Contractor all reasonable opportunities to investigate such defect.
- 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 Contractors risk and expense.
- 12.5 The Agency's right of rejection shall continue irrespective of whether the Agency has accepted the Goods. In particular, 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 refuses or neglects to comply with any reasonable written instruction given by the Contract Supervisor;

13.1.3 is in breach of the Contract.

13.2 Where in the opinion of the Contract Supervisor, the Contractor is in default, the Contract Supervisor may serve a Notice giving at least five working days in which to remedy the default.

13.3 If the Contractor fails to comply with such a Notice the Contract Supervisor may, without prejudice to any other rights or remedies under the Contract, purchase other goods of the same or equivalent description. Any extra costs arising from this action, will be paid by the Contractor or deducted from any monies owing to him.

## **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 in the opinion of the Contract Supervisor 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 to its satisfaction. 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 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;
- 16.1.3 infringement of third party Intellectual Property Rights

which might arise as a direct consequence of 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.

## **17. LIMIT OF CONTRACTOR'S LIABILITY**

- 17.1 The limit of the Contractor's liability for each and every claim by the Agency, other than for death or personal injury, whether by way of indemnity or by reason of breach of contract, or statutory duty, or by reason of any tort shall be:

- 17.1.1 the sum stated in the Appendix;
- 17.1.2 if no sum is stated, the Contract Price or five million pounds whichever is the greater.

## **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. If no sum is stated, the value insured shall be five million pounds.
- 18.2 If specifically required by the Agency, nominated insurances shall be in the joint names of the Contractor and the Agency.

- 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, shall not in any way infringe any Intellectual Property Rights belonging to any third party and shall fully indemnify the Agency against all actions, claims, costs, charges, expenses and liabilities of whatsoever nature arising from or incurred by reason of any infringement, or alleged infringement.
- 22.2 The Contractor shall not be liable under this Condition if such infringement arises from the use of any design, technique or method of working provided by or specified by the Agency.
- 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 fit for the Agency's intended purpose so far as this has been communicated to him, or which he would reasonably be expected to know.

## **24. GUARANTEES**

The Contractor shall promptly remedy all defects in the Goods arising from faulty design, materials or workmanship and, without prejudice to the Agency's statutory rights, either repair or replace the Goods (as the Agency shall elect) at no cost to the Agency, for a period of 12 months from putting the Goods into intended service, or 18 months from delivery, whichever is the less, or as otherwise agreed in writing.

## **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 and its sub-contractors and its supply chain:
- 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 (and their sub-contractors) 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 the Agency in enforcing any provision of the Contract shall be deemed to be a waiver, or in any other way prejudice the rights of the Agency under the Contract.
- 29.2 No waiver by the Agency shall be effective unless made in writing.
- 29.3 No waiver by the Agency 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 will be liable to the other for any delay in performing or failing to perform its obligations (other than a payment obligation) under the Contract because of any cause outside its reasonable control. Such delay or failure will not constitute a breach of the Contract and the time for performance of the affected obligation will be extended by a reasonable period.
- 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.

## 35. MODERN SLAVERY

- 35.1. The Contractor shall, and procure that each of its Sub-Contractors shall, comply with:

35.1.1 the Modern Slavery Act 2015 ("**Slavery Act**"); and

35.1.2 the Agency's anti-slavery policy as provided to the Contractor from time to time ("**Anti-slavery Policy**").

- 35.2. The Contractor shall:

35.2.1. implement due diligence procedures for its Sub-Contractors and other participants in its supply chains, to ensure that there is no slavery or trafficking in its supply chains;

35.2.2. respond promptly to all slavery and trafficking due diligence questionnaires issued to it by the Agency from time to time and shall ensure that its responses to all such questionnaires are complete and accurate;

35.2.3. prepare and deliver to the Agency each year, an annual slavery and trafficking report setting out the steps it has taken to ensure that slavery and trafficking is not taking place in any of its supply chains or in any part of its business;

35.2.4. maintain a complete set of records to trace the supply chain of all Goods and Services provided to the Agency regarding the Contract; and

35.2.5. implement a system of training for its employees to ensure compliance with the Slavery Act.

- 35.3. The Contractor represents, warrants and undertakes throughout the term of the Contract that:

35.3.1 it conducts its business in a manner consistent with all applicable laws, regulations and codes including the Slavery Act and all analogous legislation in place in any part of the world;

35.3.2 its responses to all slavery and trafficking due diligence questionnaires issued to it by the Agency from time to time are complete and accurate; and

35.3.3 neither the Contractor nor any of its Sub-Contractors, nor any other persons associated with it:

- A. has been convicted of any offence involving slavery and trafficking; or
- B. has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence regarding slavery and trafficking.

35.4. The Contractor shall notify the Agency as soon as it becomes aware of:

35.4.1.any breach, or potential breach, of the Anti-Slavery Policy; or

35.4.2.any actual or suspected slavery or trafficking in a supply chain which relates to the Contract.

35.5. If the Contractor notifies the Agency pursuant to paragraph 35.4 of this Clause 35, it shall respond promptly to the Agency's enquiries, co-operate with any investigation, and allow the Agency to audit any books, records and/or any other relevant documentation in accordance with the Contract.

35.6. If the Contractor is in Default under paragraphs 35.2 or 35.3 of this Clause 35 the Agency may by notice:

35.6.1.require the Contractor to remove from performance of the Contract any Sub-Contractor, Staff or other persons associated with it whose acts or omissions have caused the Default; or

35.6.2.immediately terminate the Contract.

## **36. EXIT PLAN**

### **36.1. GENERAL**

36.1.1 The Contractor is required to ensure the orderly transition of the Goods from the Contractor to the Agency and/or a replacement contractor in the event of termination (including partial termination) or the expiry of this Contract. This Exit Plan sets out the principles of the exit and service transfer arrangements that are intended to achieve such orderly transition and which shall form the basis of the Exit Plan. For the avoidance of doubt, the Contractor shall be responsible for the overall management of the exit and service transfer arrangements.

36.1.2 The provision of this Exit Plan shall apply both to the termination or expiry of the Contract as a whole (however arising) and also to each and every partial termination (if any), save as expressly stated otherwise in this Exit Plan.

### **36.2. CONTRACT EXIT PLAN**

36.2.1 Each party will appoint an Exit Manager and provide written notification of such appointment to the other party within one (1) month of the Contract Start Date. The Contractor's Exit Manager will be responsible for ensuring that the Contractor, its Staff and any Sub-Contractors will comply with this Exit Plan. The Contractor will ensure that its Exit Manager has the requisite authority to arrange and procure any resources for the Contractor as are reasonably necessary to enable the Contractor to comply with the requirements set out in this Exit Plan. The parties' Exit Managers will liaise with one another in the relation to all issues relevant to the

termination of this Contract and all matters connected with this Exit Plan and each party's compliance with it.

36.2.2 The Contractor will, no more than one (1) month after the Contract Start Date, deliver to the Agency a Contract Exit Plan which sets out the Contractor's proposed methodology for achieving an orderly transition of Goods from the Contractor to the Agency and/or its Replacement Contractor on the expiry or termination of this Contract and which complies with the requirements set out in this Exit Plan. Within 30 days after the submission of the Contract Exit Plan, the parties will use their respective reasonable endeavours to agree the contents of the Contract Exit Plan. If the parties are unable to agree the contents of the Contract Exit Plan then such dispute shall be resolved in accordance with clause 31 (Dispute Resolution).

**36.2.3 The Contract Exit Plan will contain, as a minimum:**

- the management structure to be employed during both transfer and cessation of the services; and
- a detailed description of the transfer and cessation processes, including timetable, documentation, data transfer, systems migration, security and any other details of how the Contractor will ensure that the Goods will be transferred effectively, efficiently and in an orderly manner that will enable the Agency and the replacement contractor to continue with the service from the Transfer Date in a manner and form that is mutually agreed.

36.2.4 The Contractor will review and (if appropriate) update the Contract Exit Plan in the first month of each Contract Year (commencing with the Second Contract Year) to reflect any changes to the Goods. Following such update the Contractor will submit the revised Contract Exit Plan to the Agency for review. Within thirty (30) days following the submission of the revised Contract Exit Plan, the parties shall meet and use reasonable endeavours to agree the contents of the revised Contract Exit Plan, based on the principles set out in this Exit Plan and the changes that have occurred in the Goods since the Contract Exit Plan was last agreed. If the parties are unable to agree the contents of the revised Contract Exit Plan within that thirty (30) day period, such dispute shall be resolved in accordance with procedure set out at clause 31 (Dispute Resolution).

36.2.5 Within thirty (30) days after the service of a notice of termination by either party and no less than six (6) months prior to the Expiry Date, the Contractor shall submit for the Agency's approval the Contract Exit Plan in a final form that can be implemented immediately.

36.2.6 The parties will meet and use their respective reasonable endeavours to agree the contents of the final Contract Exit Plan. If the parties are unable to agree the contents of the Contract Exit Plan within thirty (30) days following its delivery to the Agency then such dispute shall be resolved in accordance with procedure set out at clause 31 (Dispute Resolution). Until the agreement of the final Contract Exit Plan, the Contractor shall continue to provide the Goods in accordance with the Contract.

### **36.3. CO-OPERATION AND ASSISTANCE**

36.3.1 Subject to clause 36.3.6 below, during the termination assistance period the Contractor shall provide the Agency and/or replacement contractor reasonable co-operation in connection with the transfer of responsibility for the Goods and so as to assist the Agency to resume the operation of Goods.

36.3.2 For the purpose of this paragraph 3, the meaning of the term 'reasonable co-operation' shall include:

- liaising with the Agency and/or a replacement contractor, and providing reasonable assistance and advice concerning the Goods and the transfer of the responsibility for their performance to the Agency or to such replacement contractor;
- If required the Contractor will afford access for any replacement contractor at reasonable times and on reasonable advance written notice to the premises where any Goods are provided only to the extent relevant and necessary for the purposes of taking over the services.

36.3.3 During the termination assistance period the Contractor shall provide to the Agency or, if requested by the Agency, any replacement contractor:

- a. in accordance with clause 34 of the Contract, all information the Contractor has in its possession or control or is able to produce relating to the Goods that is reasonably necessary to enable the Agency or a replacement contractor to take over the provision of the Goods. Such information shall include details of all licences for software used in the provision of Goods including the software licence agreements;
- b. up-to-date copies of all Agency Data;
- c. any reasonable assistance, expertise and advice requested by the Agency in connection with any proposed or envisaged transfer of Goods or to facilitate the transfer of Goods to the Agency or a replacement contractor; and
- d. all reasonable assistance in connection with its preparation of any request for proposal or other similar to some or all of the Goods,

36.3.4 The Contractor shall be entitled to charge for the additional services provided under paragraph 36.3.3 (c) and (d) on a time and materials basis by prior written variation of the Contract Price agreed with the Agency. However, the Contractor shall comply with paragraph 36.3.3 (a) and (b) at no additional charge to the Agency.

36.3.5 For avoidance of doubt the Contractor will, unless otherwise agreed in writing between the parties, continue to provide the Service under this Contract throughout the termination assistance period at no detriment to the service levels.

36.3.6 Without prejudice to the Contractor's obligations under paragraph 36.3.1, in consideration of the continued payment by the Agency of the charges in

accordance with the relevant provisions of the Contract, the Contractor shall continue to provide such Goods as the Agency shall request from time to time following termination of this Contract, for as long as it is reasonably requested to do so by the Agency and for period not exceeding the termination assistance period (unless otherwise agreed by the parties).

36.3.7 The Contractor shall not be held liable or responsible for any damage, loss or defect arising as a direct result of any act or omission by the Agency or any replacement contractor appointed by the Agency in the provision of this service.

36.3.8 The Contractor shall be under no obligation to retain those staff engaged to provide the Goods beyond the termination assistance period save where the Agency has requested such assistance pursuant to paragraph 36.3.5.

#### **36.4. TERMINATION OBLIGATIONS**

36.4.1 The Contractor shall comply with all of its obligations contained within the Contract Exit Plan.

36.4.2 The Contractor will use all reasonable endeavours to ensure that the transfer of Agency Data will not disrupt or inconvenience the Agency.

36.4.3 Upon the Contract End Date or the Termination Date (or earlier if this does not adversely affect the Contractor's performance of the services and its compliance with the other provisions of this Exit Plan);

- a. the Contractor will erase from any computers, storage devices and storage media (including removal from any hard disk) all Agency Data not required to be retained by the Contractor for statutory compliance purposes, and confirm in writing that such destruction has taken place;
- b. the Contractor will deliver to the Agency all materials created by the Contractor under this Contract including the Intellectual Property Rights in which are owned by the Agency;
- c. after having carried out the procedure set out in paragraph 36.4.3(b) above, the Contractor will erase from any computers, storage devices and storage media (including removal from any hard disk) that are to be retained by the Contractor after termination or expiry, any software containing the Intellectual Property Rights owned by the Agency;
- d. each party will return to the other party all Confidential Information of the other party and will certify that it does not retain the other party's Confidential Information save to the extent (and for a limited period) that such information needs to be retained by the party in question for the purposes of providing or receiving any Goods.

## 37. INDEXATION

- 37.1 Any amounts or sums in this Contract which are expressed to be “subject to Indexation” shall be adjusted in accordance with the provisions of this Paragraph 37 to reflect the effects of inflation.
- 37.2 Where Indexation applies, the relevant adjustment shall be: (a) applied on the 14/07/2024 and on the 14 January in each subsequent year (each such date an “adjustment date”); and (b) determined by multiplying the relevant amount or sum by the percentage increase or changes in the relevant index agreed by the Agency and the Contractor for the Good published for the 12 months ended on the 13 January immediately preceding the relevant adjustment date.
- 37.3 Except as set out in this Paragraph 37, neither the Charges nor any other costs, expenses, fees or charges shall be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the Contractor or subcontractors of the performance of their obligations.

## Appendix to Conditions Goods

Ref: ecm\_66554

Title: National Supply of Pollution Control Equipment Framework

Condition

1

[REDACTED]

1

[REDACTED]

Environment Agency  
Orchard House  
Endeavour Park  
London Road  
Addington  
West Malling  
Kent  
ME19 5SH

2

Contractor

[REDACTED]

Darcy Products Ltd  
Brook House  
Larkfield Trading Estate  
New Hythe Lane  
Larkfield  
Kent  
ME20 6GN

3

Completion

6

Contract Start Date

14/01/2023

Contract End Date

13/01/2027

4

Delivery

11

Address:-

To be confirmed on call-off orders.

5

Insurance

18

Professional Indemnity Min. Cover

£1 million

Third Party Minimum Cover

£1 million

Public Liability Min. Cover

£1 million

6	Limit on Liability	17
	Limit on Contractors Liability	£5 million