



PROCUREMENT eSERVICE  
HM Government of Gibraltar

# HM GOVERNMENT OF GIBRALTAR STANDARD TERMS AND CONDITIONS OF PURCHASE

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## HM GOVERNMENT OF GIBRALTAR ("HMGOG")

### Terms and conditions of purchase

These terms and conditions (the "Terms") shall apply to all contracts for the purchase of goods, rights and services (the "Deliverables") by HMGOG to the exclusion of all other terms and conditions, unless otherwise agreed in writing. All orders for Deliverables shall be deemed to be an offer by HMGOG to purchase Deliverables pursuant to the Terms.

By registering with the PROACTIS Data Interchange Portal (the "Procurement eServices Portal") you acknowledge that you have read, understood and agreed the Terms and the terms of the PROACTIS User Licence. By accepting an Order which we have placed with you, you acknowledge that you have read, understood and agreed the Terms.

Any variation to the Terms (including any special terms and conditions agreed between us) shall be inapplicable unless agreed in writing by the Head of Procurement or other authorised HMGOG senior officer.

For the avoidance of doubt, nothing in the Terms shall prevent HMGOG concluding a contract with a supplier on terms other than those contained herein provided that the contract is in writing and signed by HMGOG and the supplier or their duly authorised representatives.

For the purpose of the Terms, any reference to "us" or "we" shall be a reference to HMGOG.

### **1. The Contract**

- 1.1 Our contract with you will comprise the Order (as defined in clause 2.1), the Terms, any variations expressly agreed in writing and any terms implied by law (the "Contract").
- 1.2 By registering with the Procurement eServices Portal and/or accepting an Order which we have placed with you, you warrant, undertake and represent to us that:
  - (i) all statements that you have made to us, whether in writing or not, are true; and
  - (ii) you have the necessary economic financial standing and the technical and professional ability to perform your obligations under the Contract; and



- (iii) you will comply with all applicable obligations in the fields of environmental, social and labour laws established by the laws of Gibraltar; and
  - (iv) you are not in breach of your obligations relating to the payment of taxes or social security contributions; and
  - (v) you will notify us of any change in your circumstances as previously notified to us, whether orally or in writing, which may affect the way in which we manage our relationship with you; and
  - (vi) you deal and will deal with us in all respects and at all times as principal and not as agent for any other party; and
  - (vii) there is no legal rule or impediment to your entering into the Contract or to your discharging your obligations arising under the Contract; and
  - (viii) any person whom you identify to us as being authorised to represent you has been properly and validly appointed by you for that purpose and for all purposes normally incidental to it.
- 1.3 These warranties, undertakings and representations will be deemed to be repeated by you each time you accept an Order placed by us.
- 1.4 Any breach of any such warranty or undertaking, or any inaccuracy in any such representation, will entitle us to terminate this Contract.

## 2. Orders

- 2.1 “Order” shall mean any order for Deliverables placed (i) via email sent to such address as you shall previously have communicated to us in writing or (ii) via the Procurement eServices Portal.
- 2.2 You must send an acknowledgement to us via the Procurement eServices Portal or email on the first working day following receipt of the Order, or such other date as we may have stated in the Order, confirming your acceptance or rejection of the Order.
- 2.3 If an Order is not acknowledged during the course of the following working day, or the date stated in the Order, the offer will be deemed to have been rejected and we will be entitled to place an Order with another supplier without further liability to you.

## 3. Price

- 3.1 The price of the Deliverables shall be determined in accordance with the price/s previously quoted by you and submitted by you to us.



- 3.2 The price of the Deliverables will be stated in the Order and, unless otherwise agreed in writing, shall be:
  - 3.2.1 inclusive of all charges for packaging, packing, shipping, carriage, insurance, duties, levies, delivery, installation, commissioning or performance of the Deliverables to or at the delivery address,
  - 3.2.2 payable in pounds sterling; and
  - 3.2.3 fixed for the duration of the Contract.
- 3.3 We will be entitled to any discount for prompt payment, bulk purchase or the like normally granted by you in comparable circumstances.
- 3.4 For Deliverables which require on-going maintenance, training, spare parts, consumables or other goods, rights or services to be supplied post-delivery for their continued use (the "Follow-on Deliverables"), you agree to provide the Follow-on Deliverables or procure them to be provided to us, at our request, for at least 36 months following Performance (as defined in clause 9) of the original Order at fair and reasonable prices. Where the context so permits, the expression "Deliverables" shall be deemed to include reference to the "Follow-on Deliverables" for the purpose of these Terms.

#### **4. Payment**

- 4.1 Invoices for the Deliverables must be sent to us on, or after Performance of the Order. Each invoice must quote the number of the Order.
- 4.2 Unless otherwise stated in the Order, we will pay the contract price within 30 days of the invoice date.
- 4.3 If any Deliverables are not supplied on or by the agreed date then, in addition to any other remedies available to us, we will be entitled to deduct 1% of the overall contract price for those Deliverables, for every day's delay.
- 4.4 We will be entitled to set off against the contract price any money owed to us by you.

#### **5. Specifications**

- 5.1 The quantity, quality and description of the Deliverables shall be as specified in the Order.



5.2 We will be allowed to inspect any Deliverables ordered prior to delivery so long as we request an inspection on reasonable notice. If, as a result of the inspection, we are not satisfied that the quality of the Deliverables or the standards of manufacture, storage or handling conforms with the Order, you will take such steps as are necessary to ensure compliance. If, after that, we are still not satisfied we can cancel the Order without further liability to you.

## 6. Changes to the Specifications

6.1 If we wish to introduce changes to the specifications (a “Proposed Change”) of an Order we shall notify you of the Proposed Change and such Proposed Change shall be introduced in accordance with and subject to this Clause 6.

6.2 Following receipt of a notice under Clause 6.1, you shall within 48 hours (excluding hours of days which are Saturdays, Sundays or are recognised bank holidays in Gibraltar) provide to us a proposal indicating either:

6.2.1 the reasons why the Proposed Change is not agreed ; or

6.2.2 the time that would be necessary to implement such Proposed Change and any changes that would need to be made to the contract price and any other relevant aspects of the Order in order to implement such Proposed Change.

6.3 We shall notify you within 48 hours of any proposal made in accordance with Clause 6.2 whether we accept such proposal or not. If we accept such proposal, the parties shall agree a date on which the Proposed Change shall be implemented and the contract price and other aspects of the Order referred to in the proposal shall be deemed amended accordingly with effect from that date.

6.4 If you do not provide us with a proposal within 48 hours, the Proposed Change will be deemed to have been accepted by you and the Order will be deemed to have been varied with immediate effect to reflect the Proposed Change.

## 7. Delivery

7.1 The Deliverables will be delivered to, and/or performed as the case may be at, the address and on the date stated in the Order, or else under section 7.2, during usual business hours.

7.2 If we specify the date or delivery address after placing an Order, we will give you reasonable notice of the details.

7.3 The date of delivery shall be of the essence.



- 7.4 A packing note quoting the number of the Order must accompany each delivery and must be displayed prominently.
- 7.5 You will comply with any reasonable requirements we may have as regards the packaging and packing of the Deliverables, and as to information to be displayed on packaging or included on dispatch documentation and bills of lading. Subject thereto, you will ensure that all packaging, packing, labelling and documentation is such as to ensure full compliance with legal requirements and to secure delivery to us in an undamaged condition.
- 7.6 We will not be bound to return any packaging or packing material to you, save that if there is a requirement for the packaging to be returned or recycled, you undertake to collect the packaging or packing material free of charge and on request.
- 7.7 Delivery shall be, unless otherwise stated in the Order, DDP Gibraltar which bears defined meaning in the current edition of Incoterms.
- 7.8 Where Deliverables are required to be supplied in instalments, each instalment will be treated as part of the same Order. Failure to deliver or perform any instalment in whole or in part will amount to non-Performance of the Order and we may treat the Contract as repudiated.
- 7.9 We shall not be obliged to accept delivery by instalments unless previously agreed by us.

## **8. Title and Risk**

- 8.1 Risk of damage to or loss of any Deliverables passes to us on delivery. Property and ownership of any Deliverables will pass to us on the earlier of delivery or payment.
- 8.2 If we supply any articles to you, e.g. for modification or copying, they remain our property at all times. Those articles must be kept confidential and secure and we can enter your premises at any time on reasonable notice to ensure that this is so. While those articles are in your custody you must not use them, copy them or disseminate them, electronically or otherwise, except in the performance of the Contract. We retain copyright and any other available intellectual property rights in any plans, design drawings, computer programs, compilations of data, specifications or the like which we supply to you. You are not to part with possession (save to us) of any article unless with our express consent. You must indemnify us against any loss caused to us, and account to us for any profit which you make, through breach of this clause.



## 9. Performance

- 9.1 For the purpose of these Terms, “Performance” shall mean the satisfactory execution of your contractual obligations under the Contract in respect of an Order.
- 9.2 Unless otherwise stated, for the purpose of determining Performance, an Order shall include all ancillary training, all relevant documentation, certification and legal rights, necessary to enable the intended user to use the Deliverables for their intended purposes. It is your responsibility to find out from us the purposes that we intend the Deliverables to be put to. You undertake that they will be suitable for those intended purposes, save only for any unsuitability which you have, as soon as might reasonably have been expected of you (and in any case before delivery) expressly notified to us.
- 9.3 If any of your staff are required to attend at our premises for the purpose of providing training or other services necessary for Performance of the Order, we reserve the right to refuse or terminate access to any individual whom we reasonably consider undesirable to have on our premises. Your staff must, while on our premises, comply with our reasonable requirements as to security, health and safety routines, times and areas of access, and otherwise as may be communicated to you. You will be responsible to us on a full indemnity basis for all damage and injury caused by your staff.
- 9.4 You undertake to comply with all reasonable requests for information regarding Performance of any of your obligations under the Contract. You agree to respond to such a request as soon as reasonably possible and will keep records adequate for that purpose for at least two years after completion of the Contract. Without limitation, these records must provide full traceability for all components comprised in, or used in connection with the Deliverables which are in any respect safety-critical. They must also demonstrate compliance of the contract work with all legal or regulatory requirements and with all contractually binding quality and performance standards.

## 10. Acceptance

- 10.1 If any Deliverables are not fully in accordance with the Order we can demand that you repair them or supply replacements within seven days or, at our sole discretion, we can reject the Deliverables and demand the repayment of any sum already paid for them.
- 10.2 Acceptance does not occur until we have had a reasonable time to inspect or consider the relevant Deliverables following supply and, in the case of latent defect, a reasonable time after the defect becomes apparent.



## 11. Warranties and Liability

### 11.1 You warrant that:

- 11.1.1 the quantity, quality, description and specification of the Deliverables will correspond to those set out in the Order; and
- 11.1.2 any goods will be free from defects in materials and workmanship; and
- 11.1.3 any Deliverables will comply with all statutory requirements and regulations, and with all normally applicable quality standards, relating to their sale or supply; and
- 11.1.4 all representations made by you about any Deliverables, and all apparently serious representations in your advertising and promotional material, are correct and can be relied upon; and
- 11.1.5 any services will be performed by appropriately qualified and trained personnel; and
- 11.1.6 neither the sale and supply of any Deliverable, nor its proper use by us for an intended purpose, will breach any property rights in or about that Deliverable, including intellectual property rights, of any other person.

11.2 All warranties, conditions and other terms implied by statute or common law in our favour will apply to any Deliverables bought from you.

11.3 If any Deliverables were bought or obtained by you from a third party then any benefits of any guarantee warranty or indemnity that you hold from that other party, in respect of those Deliverables, will be held on trust for us.

11.4 You will insure yourselves, and keep insured for the duration of the Contract, against all normal insurance risks relevant to your work for or with us, on terms and for amounts consistent with normal business prudence. You will demonstrate to us the terms and currency of any such insurance on request.

## 12. Rights

12.1 You undertake to procure that any copyright, trademarks, patents, database and other intellectual property rights subsisting in or used in connection with the Deliverables and owned by third parties (the "Third Party Rights") are licenced to us on the basis that they are (i) assignable; (ii) royalty-free; (iii) cover usage for any likely intended purpose; and (iv) free of





any obligation on us save such as we expressly agree or as are the minimum reasonably necessary for the protection of the Third Party Rights.

12.2 If you carry out any development work at our request and wholly or primarily at our expense we will own all intellectual property rights generated by that work (the "Works"). In that case you will transfer to us, or procure to be transferred to us, with full title guarantee the ownership of all intellectual property rights in the Works to the full extent (including as to territory) that we reasonably require for our intended purposes. You will execute any documents and make any declarations reasonably required by us, now or in future, to transfer those rights to us, you will not exploit those rights save for our benefit or with our written consent, and you will (to the extent not yet legally transferred) hold all such rights on trust for us absolutely for the maximum permitted period of eighty years. We have your irrevocable power of attorney to execute any such documents and make any such declarations on your behalf if you fail to comply with this clause.

12.3 You will do anything reasonably required by us, during the term of the Contract or after the termination hereof, to perfect any transfer or licence of rights to us under this clause or to assist us in registering or authenticating (but not at your cost enforcing or defending) those rights.

### 13. Termination

13.1 At any time up to delivery, we can cancel an Order without further liability to you save that if the Order is for Deliverables which are not standard or stock items, and have been specifically commissioned or modified for us, then we will be liable to reimburse you for all irrecoverable costs incurred, or unavoidably committed, by you up to the point of cancellation. By "costs" we mean the direct costs incurred by you in connection with the Order to an aggregate amount not exceeding 80% of the contract price of the cancelled Order. We will be entitled, if we wish it, to the benefit of the part-finished Deliverables in question.

13.2 We may suspend performance of, or cancel, or suspend and then at any subsequent time cancel, the Contract or any part thereof, without any liability to you, if (i) you breach any term of the Contract, or (ii) if your business fails.

13.3 Your business will be treated for this purpose as having failed if:

13.3.1 you make any voluntary arrangement with your creditors;

13.3.2 (being an individual or firm) you become bankrupt;



- 13.3.3 (being a company) you become subject to an administration order or go into liquidation;
- 13.3.4 any third party takes possession of, or enforces rights over, any of your property or assets under any form of security ;
- 13.3.5 you stop or threaten to stop carrying on business;
- 13.3.6 you suffer any process equivalent to any of these, in any jurisdiction; or
- 13.3.7 we reasonably believe that any of the events mentioned above is about to occur and we notify you accordingly.

13.4 Any right of cancellation or suspension under this section is additional to any rights available to us under the law of any relevant jurisdiction.

13.5 Where we terminate the Contract or any part thereof, pursuant to clause 13.2, and we may make other arrangements for the supply of the Deliverables, we shall be entitled to recover from you the amount by which the aggregate of the cost of purchasing and/ or commissioning the Deliverables and the price of the Deliverables exceeds the amount which would have been payable to you had the Deliverables been delivered in accordance with the Contract. Where the Contract is terminated pursuant to clause 13.2, no further payments shall be payable by us until we have established the final cost of replacing the Deliverables.

13.6 You undertake to indemnify us and keep us indemnified against any cost, claim, expense or liability arising from any breach by you of the Contract or the PROACTIS User Licence.

#### **14. Social Considerations and Employment Opportunities**

14.1 During the term of the Contract, you shall use your best endeavours to assist the Department of Employment in finding employment for persons registered as long term unemployed and seeking employment (the “Registered Unemployed”).

14.2 In the event that as a direct result of us contracting with you, employment opportunities arise for persons who are Registered Unemployed, you agree not to advertise the employment opportunity without obtaining the prior written consent of the Director of Employment or an officer from the relevant ministry. If so requested by the Director of Employment or an officer from the relevant ministry, you shall consider the employment of Registered Unemployed persons put forward by the Department of Employment or the relevant ministry.



14.3 In the event that you terminate the employment of a person who was Registered Unemployed prior to or during the term of the Contract, you shall use its best endeavours to liaise with the Department of Employment or relevant ministry to replace that person with another person who is Registered Unemployed.

## 15. Miscellaneous

15.1 You will keep strictly confidential all information which you learn about us or our customers, and use that information only for the Performance, in good faith, of your contractual obligations to us. By way of illustration only, you may not use such information, to poach our staff or disparage our reputation. This restriction will apply until the fifth anniversary of Performance of the last Order, but does not apply to information which was demonstrably public knowledge at the time of usage by you.

15.2 Our relationship is as independent contractors only, not as partners or as principal and agent. The contract is non-assignable by you. You may sub-contract or delegate part of your obligations if necessary for Performance with the prior consent in writing by the Head of Procurement or other authorised HMGOG senior officer. Responsibility for Performance will at all times remain with you in accordance with the Contract.

15.3 We will not be liable to you for any delay or failure to perform any of our obligations under the Contract if the delay or failure was due to a cause beyond our reasonable control.

15.4 No waiver by us of any breach of contract by you will be considered as a waiver of any subsequent breach of the same or any other provision, or as a release of the provision which you breached. No delay by us in enforcement, and no toleration shown by us, is to imply any waiver or compromise of our rights.

15.5 If any of the terms of the Contract conflict with or contradict each other those terms will over-ride each other in the following order of priority: (1) any express written agreement from us (2) the Order (3) the Terms.

15.6 If any provision of these Terms is held by a competent authority to be invalid or unenforceable in whole or in part the validity of the other Terms and of the remainder of the provision in question will not be affected. Every provision is severable from every other.

15.7 Unless otherwise set out in the Terms, any written notice under these Terms will be deemed to have been sufficiently served if posted by pre-paid official postal service, or if sent by fax then on receipt of successful answerback, or if sent by e-mail (but in this case only on evidence of successful transmission and only if the parties have regularly communicated on contract matters by that e-mail route).



## 16. Choice of Law

16.1 The Contract will be governed by the laws of Gibraltar, and you submit to the non-exclusive jurisdiction of the Gibraltar courts.