

OFFICIAL



# PURCHASE ORDER TERMS AND CONDITIONS

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# TIDEWAY

## Purchase Order Terms and Conditions

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## Definitions

In these Terms and Conditions (the "Conditions"), the following definitions apply:

**"Contract"** means the contract that shall exist between the parties, in accordance with these Conditions, on receipt of an unconditional acceptance from the Supplier or where no acceptance is received on receipt of the Goods by the Purchaser or on commencement of specified Services.

**"Data"** means all personal data as defined in the Data Protection Laws and other data provided by the Purchaser or collected, generated or otherwise processed by the Supplier as a result of, or in connection with, the provision of the Services.

**"Data Protection Laws"** means:

- (a) the Data Protection Act 2018 and the General Data Protection Regulation (EU 2016/679) ("**GDPR**") and any legislation which amends, re-enacts or replaces those laws in England and Wales;
- (b) the Electronic Communications (EC Directive) Regulations 2003, together with any legislation which replaces it; and
- (c) at all times, any other data protection laws and regulations applicable in England and Wales.

**"Goods"** means all goods, materials, products, equipment and to the extent applicable computer software and other intellectual property on any specified media.

**"Group"** means a party, its parent undertaking and the subsidiary undertakings of its parent undertaking and its associated companies (as each such term is defined in the Companies Act 2006).

**"Losses"** means claims, demands, actions, awards, judgments, settlements, costs, expenses, liabilities, damages and losses (including all interest, fines, penalties, management time and legal and other professional costs and expenses).

**"Purchase Order"** means the document issued by the Purchaser, Bazalgette Tunnel Limited and/or one of its group companies, namely Bazalgette Equity Limited, Bazalgette Ventures Limited, Bazalgette Holdings Limited and Bazalgette Finance plc (the "**Purchaser**"), to the Supplier defining the materials, goods and/or services to be provided together with any other requirements, documents listed or referred to in these Conditions and the prices to be paid.

**"Services"** means all activities set out on the Purchase Order or implied as being necessary to complete the provision of Goods in accordance with the requirements stated or referred to herein.

**"Subject Access Request"** means any request from a data subject concerning his or her personal data (as defined in the Data Protection Laws).

**"Supplier"** means the person to whom the Purchase Order is issued.

**"Supplier Personnel"** means employees, agents, subcontractors, suppliers and invitees of the Supplier engaged, or due to be engaged, in the supply of the Goods and/or the provision of the Services or otherwise carrying out, or required to carry out, the Supplier's obligations under the Contract.

## 1 Basis of contract

- 1.1 The Supplier shall provide all Goods and Services in accordance with the terms and conditions set out herein.
- 1.2 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 1.3 No person is authorised to amend the Purchase Order in any respect (except authorised site personnel on matters concerning delivery times) other than by the issue of written instructions on a further Purchase Order.
- 1.4 The Purchase Order constitutes an offer by the Purchaser to purchase the Goods and Services in accordance with these Conditions.
- 1.5 The Purchaser and the Supplier each reserves the right to cancel this Purchase Order at any time, in whole or in part, in the event of the other not complying in any material respect with one or more of these Conditions and any other requirements of the Purchase Order and any proper variation or amendment thereof.

## 2 Property, risk and delivery

- 2.1 Property and risk in Goods to be supplied to the Purchaser shall remain with the Supplier until the Goods are delivered at the point(s) specified in the Purchase Order.
- 2.2 Every delivery of Goods shall be accompanied by a delivery note in duplicate carrying full particulars of the Goods and the Purchase Order number.
- 2.3 When the Purchaser makes a payment to the Supplier prior to the receipt of the Goods, the property in the Goods shall pass to the Purchaser, but the risk shall remain with the Supplier until delivery is complete. Unless otherwise agreed, time for delivery shall not be of the essence.
- 2.4 Delivery of a consignment of Goods shall be considered to be complete and risk shall pass to the Purchaser only when an appropriate delivery note has been signed by a duly authorised representative of the Purchaser.

## 3 Prices and rates

- 3.1 The prices and rates stated on this Purchase Order shall be inclusive of all costs and shall remain fixed.
- 3.2 No increase in any price or rate or any additional sum will apply unless the Purchaser has given its prior written agreement. In particular no price increase shall be applied to any Goods delivered after the agreed delivery date.

## 4 Audit

- 4.1 In order that the Purchaser may audit the Supplier's charges payable under this Purchase Order, the Supplier shall, for up to 36 months from the issue of the Supplier's invoice provide the Purchaser and/or its external auditors, on request, at no additional charge with:
- a. reasonable access to and copies of all accounts and records of the Supplier showing the costs incurred by it in providing the services and/or goods in accordance with this Purchase Order;
  - b. records and supporting documentation detailing Thames Tideway tunnel project-related gifts and hospitality costs, together with other non-attributable gifts and hospitality costs;
  - c. reasonable access to all relevant information, premises, data, IT systems, employees, agents, sub-contractors, suppliers and assets at all locations from which obligations of the Supplier are being carried out; and
  - d. all reasonable assistance in carrying out the audit.

## 5 Defective goods and services

- 5.1 Notwithstanding the provisions of Clause 2 the Purchaser's signature on a delivery note and the acceptance of Goods on delivery shall not prevent the Purchaser subsequently rejecting the Goods in accordance with this Clause.
- 5.2 For a period of 12 months after the delivery of any Goods the Supplier shall be responsible for correcting any Goods found not to be in accordance with the Purchase Order or found to have been defective in any way at the time of delivery, including all costs reasonably incurred by the Purchaser in remedying any such deficiency which is not remedied promptly by the Supplier.

The Supplier shall repeat at no additional charge, any Services which are not carried out to the reasonable satisfaction of the Purchaser.

## 6 Delays

The Supplier shall be liable for any loss or expense incurred by the Purchaser arising from delayed or incomplete delivery of Goods or failure to carry out the Services with due diligence and reasonable care and skill in accordance with good industry practice (save where and to the extent that such failure is as a result of any act or omission by the Purchaser) and any such loss or expense may be deducted from any monies which may become payable by the Purchaser to the Supplier, without prejudice to the Purchaser's right to recover the full amount of such loss and expense at law.

## 7 Variations to goods and services

The Supplier shall not substitute alternative Goods or carry out alternative Services, except as directed in writing by a duly authorised representative of the Purchaser.

## 8 Specification

The Goods shall comply with the relevant ISO and British Standards, codes of practice or equivalent where applicable, with all relevant legislation (as amended and updated), and with the Purchaser's requirements, referred to or as detailed on the Purchase Order, and if imported from outside the European Union shall carry the appropriate CE marking.

## 9 Quality and protected rights

- 9.1 The Supplier shall ensure that the Goods supplied are free from encumbrances at the time of delivery and are of merchantable quality and satisfactory quality and are fit for the purpose for which, to the knowledge or reasonable belief of the Supplier, they are required. If after delivery the Purchaser is subject to any claim alleging infringement of patent or other intellectual property right arising from the use, resale or copying of the Goods, the Supplier shall indemnify and hold the Purchaser harmless and if so directed by the Purchaser, shall be solely responsible for negotiation and settlement of such claims and for any necessary modification or replacement of affected Goods at the Supplier's own expense.
- 9.2 Where to the extent that the Purchaser operates quality control/management procedures which require stage checks to verify and record compliance with this Purchase Order, whether on or off the premises of the Supplier, then the Supplier shall co-operate with the Purchaser in implementing those procedures and by providing documentation reasonably required to record verification.

## 10 Liability

- 10.1 The Supplier shall at all times observe, perform and comply with all statutory and other obligations.
- 10.2 The Supplier shall be responsible for and indemnify the Purchaser and its successors in title and assigns against and from all claims resulting from any damage, loss (including theft) injury or death caused by the Supplier's employees, sub-contractors, servants and agents howsoever arising in connection with this Contract.
- Any resulting claims and costs shall be reduced proportionately to the extent that the Purchaser has been liable in law for the incident concerned.
- 10.3 The Supplier shall at all times hold public liability insurance cover of not less than £5 million against its liabilities to the Purchaser and to third parties and shall produce to the Purchaser on request all relevant insurance policies and evidence of payment of current premiums. Such insurance shall contain an indemnity to principals clause.

## 11 Security and confidentiality

- 11.1 The Supplier, his sub-contractors, employees, servants and agents shall be required while on the Purchaser's premises to conform with all reasonable requests concerning access, conduct and security and shall be required to maintain in confidence all matters learned in connection with the Purchase Order and while on the Purchaser's premises, the disclosure of which could be gainful to the Supplier or a third party or detrimental to the Purchaser.
- 11.2 The Supplier, his sub-contractors, employees, servants and agents shall not advertise or publicly announce that they are providing the Goods and Services without the prior written consent of the Purchaser and shall not make use of the Purchaser's name or any information in connection with the Purchase Order for publicity or marketing purposes without the prior written consent of the Supplier.

## 12 Data protection

- 12.1 In relation to the Data:
- a. The Supplier shall at all times comply with the requirements of the Data Protection Laws and shall not knowingly do anything or permit anything to be done which is likely to lead to a breach by the Purchaser of the Data Protection Laws;
  - b. The Supplier shall only process Data in accordance with these terms and conditions and the Purchaser's instructions from time to time and shall not process the Data for any other purpose;
  - c. The Supplier shall:
    - i. deal promptly and properly with all enquiries from the Purchaser relating to the processing of the Data and promptly comply with any request from the Purchaser requiring the Supplier to amend, transfer, delete or return the Data and, if requested, to certify that this has been done;
    - ii. not transfer the Data to a country or territory outside the European Economic Area without the Purchaser's prior written consent; and
    - iii. at the Purchaser's request, provide to the Purchaser a copy of all the Data held by the Supplier in the format and on the media reasonably specified by the Purchaser.
  - d. The Supplier shall have in place, and shall maintain throughout the term of this Contract, all appropriate technical and organisational measures against unauthorised or unlawful processing of or theft of the Data and against accidental loss or destruction of, or damage to, the Data.
  - e. The Supplier shall ensure that access to the Data is limited to:
    - i. those Supplier Personnel who need access to the Data to meet the Supplier's obligations under these Conditions; and
    - ii. in the case of any access by any of the Supplier Personnel, such part or parts of the Data as is strictly necessary for performance of that Supplier Personnel member's duties.



- f. The Supplier shall ensure that all of the Supplier Personnel who have access to the Data:
    - i. are informed of the confidential nature of the Data and act accordingly; and
    - ii. are aware of the Supplier's obligations under the Conditions.
  - g. The Supplier shall immediately notify the Purchaser of:
    - i. any unauthorised or unlawful processing, theft of, loss of, damage to or destruction of the Data including any disclosure, theft of, or accidental or unauthorised access made by a member of the Supplier Personnel or any other person as well as the known facts as regards the above;
    - ii. any complaint, notice or communication which relates directly or indirectly to the processing of the Data or to either party's compliance with the Data Protection Laws in relation to the supply of the Goods and/or the provision of the Services;
    - iii. any request for disclosure of the Data by a law enforcement authority (unless such notification is forbidden by any applicable law); and
    - iv. any Subject Access Request which relates directly or indirectly to the Data.
  - h. The Supplier shall provide the Purchaser with full co-operation and assistance in relation to any Subject Access Request, complaint, notice or communication which relates directly or indirectly to the Data and shall not respond to a data subject, third party or their advisors unless the Purchaser has instructed the Supplier to do so.
  - i. The Purchaser may request a written description of the technical and organisational methods employed by the Supplier referred to in Clause 12 (d). The Supplier shall supply the written description within no more than five Business Days of the Purchaser's request.
  - j. At the request of the Purchaser, the Supplier shall submit its data processing facilities for audit which will be carried out by the Purchaser or an inspection body selected by the Purchaser, where applicable, in agreement with the Information Commissioner.
  - k. The Supplier hereby indemnifies the Purchaser from and against all Losses incurred by the Purchaser or any member of its Group or any of their respective employees, officers, agents and contractors as a result of any breach by or on behalf of the Supplier of this Clause 12.
- 12.2 Any breach by the Supplier of this Clause 12 will be a material breach of the Contract for the purposes of Clause 19 (Termination).
- 12.3 Upon termination of the Contract for whatever cause, the Supplier will return to the Purchaser, or destroy upon the Purchaser's request, any copy of the Data in hard copy and/or electronic form.

## 13 Health and Safety at Work Act 1974

- 13.1 The Supplier, its sub-contractors, all employees, servants and agents shall in all dealings with the Purchaser comply with all relevant health and safety legislation, regulations and codes of practice.
- 13.2 The Supplier shall deliver with each consignment of materials, Goods and/or Services such written information as may be reasonably necessary for the proper handling, use, processing, storage and maintenance of the materials, Goods and/or Services without risk of damage or injury to persons or property.
- 13.3 Where the Supplier is delivering Goods on a vehicle with any mechanical offloading facility, the operator must be the holder of the appropriate competency certificate, i.e. Construction Industry Board for safe operation of the same.

## 14 COSHH regulations, 2002

The Supplier, his sub-contractors, all employees, servants and agents shall observe their specific responsibilities contained in the Control of Substances Hazardous to Health (COSHH) Regulations, 2002 (as amended) which require that suitable and sufficient information is to be provided with appropriate Goods such that an assessment of their hazards can be made (e.g. Hazard Warning Data Sheets).

## 15 Payment of terms

- 15.1 No claim for payment shall be valid unless supported by an official Purchase Order and related delivery note signed by the Purchaser.
- 15.2 When a consignment of Goods is despatched or services rendered invoices must be sent to the 'Invoice To' address stated on the Purchase Order. The date of invoice receipt is the date that an invoice is received at the 'Invoice To' address. Non-compliant invoices may be returned to the Supplier. Unless otherwise expressly stated on the Purchase Order, payment will be made by the Purchaser to the Supplier in 30 days following receipt of the invoice. The Supplier acknowledges that by entering into a Contract in accordance with these Conditions of Purchase the payment date set out in this Clause 15 or in the Purchase Order shall not be considered grossly unfair to the Supplier and accordingly sub-section 3B of the Late Payment of Commercial Debts (Interest) Act 1998 (as amended) Regulations 2013 shall not apply. Value Added Tax where applicable shall be shown separately. Invoices which qualify for a cash discount for early payment shall be clearly marked with the appropriate details.

## 16 Intellectual property

Where the Purchase Order requires the provision of specified Services, all copyright, design right, data base rights, patents, trademarks and all other intellectual property rights in original works produced for the Purchaser shall be vested exclusively in the Purchaser.

## 17 Force majeure

If the requirements of the Purchase Order are delayed or prevented by circumstances beyond the reasonable control of either party including but not limited to natural disaster, Government intervention, strike, lockout, delay by sub- contractors (but only where such delays are beyond the control of the sub- contractor concerned), performance of the Purchase Order shall be suspended. During such suspension the Purchaser shall be at liberty to obtain from any source such Goods or Services as it deems necessary and to cancel the Purchase Order in whole or in part by the like amount without incurring liability. Performance of the Purchase Order requirements will be resumed as soon as the circumstances causing the delay cease, except where the parties otherwise agree, or the Purchaser no longer requires the Goods or Services having sourced similar Goods or Services elsewhere in accordance with this clause. The Purchaser shall pay for such Goods as have been delivered or such a sum as may be equitable in respect of Services performed prior to suspension or cancellation.

## 18 Fraud, bribery and corruption

- 18.1 The Supplier shall procure that all of its business activities in the UK or elsewhere are conducted in compliance with the Bribery Act 2010 and the laws and requirements of all countries or territories in which the Supplier operates, including all anti-bribery and corruptions laws. Nor shall the Supplier do or omit to do any act that will cause or lead the Purchaser to be in breach of the Bribery Act 2010 and/or any other applicable anti-bribery and/or anti-corruption laws or regulations.
- 18.2 The Supplier shall not receive or agree to receive from any person or offer to agree to give to any person or procure for any person any gift or consideration of any kind as an inducement or reward for doing or not doing anything or showing favour or disfavour to any person in relation to this Purchase Order. Nor shall the Supplier conspire with any person to do any of the acts mentioned in this clause 18.
- 18.3 Any breach by the Supplier of this clause 18 shall entitle the Purchaser to immediately terminate this Purchase Order and recover from the Supplier the amount of any loss resulting from such termination and recover from the Supplier the amount of value of any such gift, consideration or commission.

Further, and without prejudice to the foregoing and/or any other remedy it may have, if the Purchaser has reasonable grounds to believe that any of the Supplier's personnel has committed a fraud or malpractice and/or otherwise acted in breach of the Bribery Act 2010, the Purchaser may, in its sole discretion:

- a. suspend the Services; and/or
- b. withhold payment of any sums falling due to the Supplier.

To the extent permitted by law the Supplier shall indemnify the Purchaser against any damages, losses, costs expenses (including but not limited to legal expenses) or other liabilities howsoever or wheresoever arising or incurred by the Purchaser as a result of any breach of this clause 18 and/or any applicable laws, including but not limited to any breach of the Bribery Act 2010.

## 19 Modern Slavery

Ethical behaviour and human rights are core to the Purchaser's ethos and operations. The Supplier shall procure that all of its business activities in the UK or elsewhere are conducted in compliance with the Modern Slavery Act 2015 and in adherence to the International Labour Organisation's Ethical Trading Initiative Code.

## 20 Termination and suspension

- 20.1 Without limiting its other rights or remedies, the Purchaser may terminate the Contract with immediate effect by giving written notice to the Supplier if:
- a. the Supplier commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of receipt of notice in writing of the breach; or
  - b. an order is made or resolution passed for the Supplier to be declared bankrupt or be wound up (as appropriate), or if an administrator, liquidator, receiver or administrative receiver shall be appointed over the whole or any part of the Supplier's undertakings or assets.
- 20.2 Without limiting its other rights or remedies, the Purchaser may terminate the Contract at any time by giving the Supplier one month's written notice.
- 20.3 The Purchaser may for his own convenience at any time suspend performance of the Services and subsequently order recommencement at a later date.
- 20.4 The Supplier shall be reimbursed all reasonable costs and loss of profit thereby occasioned, limited to the price of the Services.

## 21 Supplier's default

- 21.1 The Supplier shall properly manage and monitor the provision of the Goods and/or Services and immediately inform the Purchaser if any aspect of the Contract is not being or is unable to be performed.
- 21.2 The Supplier shall provide quarterly progress reports and have six-monthly progress meetings and for each reporting mechanism, they shall provide suitable material for consideration, if and when requested by the Purchaser.
- 21.3 If the Supplier fails to execute the Services or supply the Goods in accordance with the terms of this Contract, to be determined in the Purchaser's sole and absolute discretion, the Purchaser may give seven days' notice to correct the failure and should the Supplier fail to do so, the Purchaser may thereafter terminate the Contract. The Supplier shall be liable for all additional costs incurred by the Purchaser in having the Services and/or goods completed supplied.

## 22 Precedence of conditions

The Purchase Order is placed on the understanding that all of the Conditions and other information printed hereon or as amended by Clause 23 below, when applicable, are accepted by the Supplier. Any amendments submitted by the Supplier shall not apply unless the Purchaser has given prior written acceptance to such an amendment.

## 23 Framework agreement conditions

If this Purchase Order is issued under a framework agreement or Contract then the terms and conditions of the framework agreement or Contract (as the case may be) shall also apply to this Purchase Order. In the event of any conflict between the terms of this Purchase Order and the framework agreement or Contract, the terms of the framework agreement or Contract shall take precedence.

## 24 Assignment

- 24.1 The Supplier shall not assign, transfer, charge, subcontract or deal in any other manner with all or any part of its rights or obligations under the Contract (other than as required by the Purchase Order) without the prior written consent of the Purchaser.
- 24.2 The Purchaser may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

## 25 Severance

- 25.1 If a court or any other competent authority finds that any provision (or part of any provision) of the Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 25.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

## 26 Third party rights

A person who is not a party to this Contract shall have no rights under the Contracts (Rights of Third Parties) Act, 1999 to enforce any of its terms.

## 27 Law and jurisdiction

These Conditions shall be subject to the laws of England and Wales (and any EU regulations from time-to-time applicable (i) whilst the United Kingdom remains a member of the European Union or (ii) subsequently under the terms of the European Union (Withdrawal) Bill) and the parties hereto submit to the exclusive jurisdiction of the English Courts.