



PS7

Special Terms for the
Purchase of Goods

July 2913

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PS7 SPECIAL TERMS FOR THE PURCHASE OF GOODS

These Special Terms are to be read in conjunction with the General Terms and the Service Order and govern the provision of Goods by a Contractor to JNCC.

1. APPLICATION OF TERMS

1.1 During the Contract Period the Contractor shall sell and JNCC may buy such quantities of the Goods as JNCC may order as set out in the Service Order in accordance with the terms of the Contract.

1.2 The Contract shall be on the terms of the Contract to the exclusion of all other terms and conditions (including any terms or conditions which the Contractor purports to apply under any purchase order, confirmation of order, specification or other document) and no terms or conditions endorsed on, delivered with or contained in the Contractor's confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2. SAMPLES

2.1 If requested by the Authority, the Contractor shall provide the Authority with samples of Goods for evaluation and Approval, at the Contractor's cost and expense.

2.2 The Contractor shall ensure that the Goods are fully compatible with any equipment, to the extent specified in the Specification.

2.3 The Contractor acknowledges that the Authority relies on the skill and judgment of the Contractor in the supply of the Goods and the performance of the Contractor's obligations under the Contract.

3. DELIVERY

3.1 Unless otherwise stated in the Specification, where the Goods are delivered by the Contractor, the point of delivery shall be when the Goods are removed from the transporting vehicle at the Premises. Where the Goods are collected by the Authority, the point of delivery shall be when the Goods are loaded on the Authority's vehicle.

3.2 Except where otherwise provided in the Contract, delivery shall include the unloading, stacking or installation of the Goods by the Staff or the Contractor's suppliers or carriers at such place as the Authority or duly authorised person shall reasonably direct.

3.3 Any access to the Premises and any labour and equipment that may be provided by the Authority in connection with delivery shall be provided without acceptance by the Authority of any liability whatsoever to the extent permitted by law.

3.4 Where access to the Premises is necessary in connection with delivery or installation of the Goods, the Contractor and his Sub-Contractors shall at all times comply with the security requirements of the Authority.

3.5 The Authority shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the Specification.

3.6 The Authority shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If the Authority elects not to accept such over-delivered Goods it shall give notice in writing to the Contractor to remove them within five (5) Working Days and to refund to the Authority any expenses incurred by it as a result of such over-delivery (including but not limited to the costs of moving and storing the Goods), failing which the Authority may dispose of such Goods and charge the Contractor for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Contractor unless they are accepted by the Authority.

3.7 Unless expressly agreed to the contrary, the Authority shall not be obliged to accept delivery by instalments. If, however, the Authority does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to any other rights or remedies of the Authority, entitle the Authority to terminate the whole of any unfulfilled part of the Contract without further liability to the Authority.

4. **RISK AND OWNERSHIP**

4.1 Subject to clause 3 (Delivery), risk in the Goods shall, without prejudice to any other rights or remedies of the Authority, pass to the Authority at the time of delivery.

4.2 Ownership in the Goods shall, without prejudice to any other rights or remedies of the Authority, pass to the Authority at the time of delivery (or payment, if earlier).

5. **NON-DELIVERY**

5.1 On dispatch of any consignment of the Goods the Contractor shall send the Authority an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. Where the Goods, having been placed in transit, fail to be delivered to the Authority on the due date for delivery, the Authority shall (provided that the Authority has been advised in writing of the dispatch of the Goods), within ten (10) Working Days of the notified date of delivery, give notice to the Contractor that the Goods have not been delivered and may request the Contractor to deliver substitute Goods free of charge within the timescales specified by the Authority or terminate the Contract in accordance with clause 3 (Delivery).

6. **LABELLING AND PACKAGING**

6.1 The Contractor shall ensure that the Goods supplied under this Contract shall be labelled and packaged in accordance with this Contract.

6.2 The Contractor shall comply with the Packaging & Packaging Waste Directive (94/62/EC), implemented in the UK by the Packaging (Essential Requirements) Regulations 2003 (as amended). The container in which the Goods are situated shall be labelled with the Contractor's name, the net, gross and tare weights, and contain a description of its contents. All containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.

6.3 Unless the Authority agrees to the contrary in writing, the Contractor shall be responsible for the removal and disposal of all packaging materials from the Premises within the period specified by the Authority and at no cost to the Authority.

6.4 Where no period for collection and disposal is specified by the Authority, the Contractor shall collect the packaging from the Premises no later than ten (10) Working Days from the date of delivery of the Goods. The Authority shall be

entitled to dispose of any packaging materials which have not been collected by the Contractor within those ten (10) Working Days or such other period as was specified by the Authority for collection. The Contractor shall be responsible for the payment of any costs incurred by the Authority in connection with its collection and disposal of that packaging material.

6.5 In the supply of Goods under the Contract, the Contractor shall:

- 6.5.1 use packaging capable of easy recovery for further use or recycling. Packaging materials shall be easily separable by hand into recyclable parts consisting of one material (e.g. cardboard, paper, plastic, textile);
- 6.5.2 (unless there is agreement to the contrary under clause 6.3) reuse the packaging and, where reuse is not practicable, recycle the materials in the manufacture of crates, pallets, boxes, cartons, cushioning and other forms of packaging, where these fulfil other packaging specifications;
- 6.5.3 make maximum use of materials taken from renewable sources, if recycled materials are not suitable or not readily available;
- 6.5.4 where using wooden pallets or timber derived products for the packaging and supply of goods to the Authority: to comply with the UK timber procurement policy and the provisions in clause 7 (Timber and Wood Derived Products);
- 6.5.5 review packaging specifications periodically to ensure that no unnecessary limitations on the use of recycled materials exist; and
- 6.5.6 if requested to do so, provide the Authority with a description of the product packaging and evidence to satisfy the Authority that it is reusing, recycling and reviewing its use of packaging. The evidence should provide proof of compliance with BS EN 13430 on recyclability or BS EN 13429 on reusability, or equivalent.

7. **TIMBER AND WOOD DERIVED PRODUCTS**

7.1 For the purposes of clause 7, the following terms shall have the following meanings:

"Timber and wood-derived products" means any product that contains wood or wood fibre, with the exception of "recycled" materials (see below). Such products range from solid wood to those where the manufacturing processes obscure the wood element (e.g. paper). Timber and wood-derived products supplied or used in performance of the Contract that have been recycled or reclaimed are referred to as "recycled" timber, which is defined below. Timber and wood-derived products supplied or used in performance of the Contract that are not recycled are referred to as "virgin" timber when the distinction needs to be made for clarity. Short-rotation coppice is exempt from the requirements for timber and wood-derived products and falls under agricultural regulation and supervision rather than forestry.

"Legal and Sustainable" means production and process methods, also referred to as timber production standards, and in the context of social criteria, contract performance conditions (only), as defined by the document titled "UK Government timber procurement policy: Definition of Legal and Sustainable for timber procurement" (available from the Authority on request and from the CPET website). The edition current on the day the Contract is awarded shall apply.

"FLEGT" means Forest Law Enforcement, Governance and Trade, and is a reference to the EU scheme to address the problem of illegally logged timber.

"FLEGT-licensed" means production and process methods, also referred to as timber production standards, and in the context of social criteria, contract performance conditions (only), as defined by a bilateral Voluntary Partnership Contract (VPA) between the European Union and a timber-producing country under the FLEGT scheme, where both Parties have agreed to establish a system under which timber that has been produced in accordance with the relevant laws of the producing country, and other criteria stipulated by the VPA, are licensed for export by the producing country government. This may also include any timber that has been independently verified as meeting all the producing country's requirements for a FLEGT licence, where a VPA has been signed but the FLEGT licensing system is not fully operational. Evidence from a country that has not signed up to a VPA which demonstrates that all of the requirements equivalent to FLEGT-licensed timber have been met will also be acceptable. CPET will produce further guidance on FLEGT-licensed or equivalent timber in due course.

"Recycled" means recovered wood that prior to being supplied to the Authority had an end use as a standalone object or as part of a structure. The term "recycled" is used to cover the following categories: pre-consumer recycled wood and wood fibre or industrial by products but excluding sawmill co-products (sawmill co-products are deemed to fall within the category of virgin timber), post-consumer recycled wood and wood fibre and drift wood. It also covers reclaimed timber which was abandoned or confiscated at least ten years previously. Documentary evidence and independent verification also apply to recycled materials, but will focus on the use to which the timber was previously put rather than the forest source.

"Short-rotation coppice" means a specific management regime whereby the poles of trees are cut every one to two years and which is aimed at producing biomass for energy. It is exempt from the UK government timber procurement policy requirements and falls under agricultural regulation and supervision rather than forestry. The exemption only refers to short-rotation coppice, and not 'conventional' coppice which is forest management and therefore subject to the timber policy.

"CPET" means the UK Government's Central Point of Expertise on Timber.

- 7.2 All Timber and wood-derived products supplied or used by the Contractor in performance of the Contract (including all Timber and wood-derived products supplied or used by Sub-Contractors) shall comply with the Specification.
- 7.3 In addition to the requirements of clause 7.2, all Timber and wood-derived products supplied or used by the Contractor in performance of the Contract (including all Timber and wood-derived products supplied or used by Sub-Contractors) shall originate from a forest source where management of the forest has full regard for:
- 7.3.1 Identification, documentation and respect of legal, customary and traditional tenure and use rights related to the forest;
 - 7.3.2 Mechanisms for resolving grievances and disputes including those relating to tenure and use rights, to forest management practices and to work conditions; and
 - 7.3.3 Safeguarding the basic labour rights and health and safety of forest workers.

- 7.4 If requested by the Authority, and not already provided at the tender evaluation stage, the Contractor shall provide to the Authority evidence that the Timber and wood-derived products supplied or used in the performance of the Contract complies with the requirements of the Specification. If requested by the Authority, the Contractor shall provide to the Authority evidence that the Timber and wood-derived products supplied or used in the performance of the Contract complies with the requirements of the social criteria defined in clause 7.3.
- 7.5 The Authority reserves the right at any time during the execution of the Contract and for a period of six (6) years from final delivery under the Contract to require the Contractor to produce the evidence required for the Authority's inspection within fourteen (14) days of the Authority's written request.
- 7.6 The Contractor shall maintain records of all Timber and wood derived products delivered to and accepted by the Authority. Such information shall be made available to the Authority if requested, for a period of six (6) years from final delivery under the Contract.
- 7.7 The Authority reserves the right to decide whether the evidence submitted to it demonstrates legality and sustainability, or FLEGT-licence or equivalent, and is adequate to satisfy the Authority that the Timber and wood-derived product complies with the Specification. The Authority reserves the right to decide whether the evidence submitted to it is adequate to satisfy the Authority that the Timber and wood-derived products complies with the requirements of the social criteria defined in clause 7.3. In the event that the Authority is not satisfied, the Contractor shall commission and meet the costs of an "independent verification" and resulting report that will (a) verify the forest source of the timber or wood and (b) assess whether the source meets the relevant criteria.
- 7.8 In this Contract, "Independent Verification" means that an evaluation is undertaken and reported by an individual or body whose organisation, systems and procedures conform to ISO Guide 65:1996 (EN 45011:1998) General requirements for bodies operating product certification systems (as amended from time to time) or equivalent, and who is accredited to audit against forest management standards by a body whose organisation, systems and procedures conform to ISO 17011: 2004 General Requirements for Providing Assessment and Accreditation of Conformity Assessment Bodies (as amended from time to time) or equivalent.
- 7.9 The Authority reserves the right to reject any Timber and wood-derived products that do not comply with the Specification. The Authority reserves the right to reject any Timber and wood-derived products that do not comply with the requirements of the social criteria defined in 7.3. Where the Authority exercises its right to reject any Timber and wood-derived products, the Contractor shall supply alternative Timber and wood-derived products, which do so comply, at no additional cost to the Authority and without causing delay to the Contract completion period.

8. FAILURE TO MEET REQUIREMENTS

- 8.1 In addition to rights set out in clause 39 of the General Terms; the Authority may by written notice to the Contractor reject any of the Goods which fail to conform to the approved sample or fail to meet the Specification. Such notice shall be given within a reasonable time after delivery to the Authority of such Goods. If the Authority rejects any of the Goods pursuant to this clause the Authority may (without prejudice to its other rights and remedies) either:

- 8.1.1 have such Goods promptly, free of charge and in any event within five (5) Working Days, either repaired by the Contractor or replaced by the Contractor with Goods which conform in all respects with the approved sample or with the Specification and due delivery shall not be deemed to have taken place until such repair or replacement has occurred; or
- 8.1.2 treat the Contract as discharged by the Contractor's breach and obtain a refund (if payment for the Goods has already been made) from the Contractor in respect of the Goods concerned together with payment of any additional expenditure reasonably incurred by the Authority in obtaining other goods in replacement.
- 8.2 For the avoidance of doubt, the Authority will be deemed to have accepted the Goods if it expressly states the same in writing or fails to reject the Goods in accordance with clause 8.1.
- 8.3 The issue by the Authority of a receipt note for delivery of the Goods shall not constitute any acknowledgement of the condition, quantity or nature of those Goods, or the Authority's acceptance of them.
- 8.4 The Contractor hereby guarantees the Goods against faulty materials or workmanship for such period as may be specified in the Specification or, if no period is so specified, for a period of 18 months from the date of delivery. If the Authority shall within such guarantee period or within 25 Working Days thereafter give notice in writing to the Contractor of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use, the Contractor shall (without prejudice to any other rights and remedies which the Authority may have) promptly remedy such defects (whether by repair or replacement as the Authority shall elect) free of charge.
- 8.5 Any Goods rejected or returned by the Authority as described in clause 8.1 shall be returned to the Contractor at the Contractor's risk and expense.