

**NETWORK RAIL 2(S)**  
**PURCHASE ORDER CONDITIONS FOR THE PURCHASE OF SERVICES**  
**(ONLY TO BE USED AS ATTACHMENT TO PURCHASE ORDER)**

1. **INTERPRETATION**

In these clauses, where the context admits:

"Agreed Rail Industry Period" means each or any of Network Rail's thirteen accounting periods in a Contract Year;

"Claims Allocation and Handling Agreement" means the railway industry Claims Allocation and Handling Agreement made 1 December 2009 or as subsequently amended;

"Contract" means the agreement between Network Rail and the Supplier which incorporates these Purchase Order Conditions and the requirements set out in the Purchase Order;

"Contract Year" means the period from 00.00 hours on 1 April until 24.00 hours on 31 March;

"Network Rail" means Network Rail Infrastructure Limited (registered in England under number 2904587) whose registered office is at Kings Place, 90 York Way, London, N1 9AG, its successors in the title and/or permitted assignees;

"Network Rail's Representative" means the person or persons named on the Purchase Order appointed for the time being by Network Rail to act on its behalf in carrying out those duties described in the Contract;

"Payment Schedule" means the schedule on the Purchase Order which states the sums and method of payment to the Supplier for performance of the Services;

"Purchase Order" means the Network Rail Purchase Order used by Network Rail to order Services from the Supplier in accordance with requirements set out in the Purchase Order;

"Services" means the services, duties and responsibilities to be provided, performed and observed by the Supplier pursuant to the Contract and the Purchase Order;

"Supplier" means the person or persons named in the Purchase Order and whose tender is accepted by Network Rail and his or their, successors and/or permitted assignees, employees, agents, sub-contractors and sub-suppliers and the employees and agents of sub-contractors and sub-suppliers.

2. **PERFORMANCE AND DURATION**

a) The Supplier shall commence the provision of the Services on the commencement date shown on the Purchase Order and shall continue to provide the Services until the completion date shown on the Purchase Order or termination of the Contract as provided in clause 12.

b) In addition and without limitation to clause 6 the Supplier warrants and undertakes to Network Rail to perform the Services with due diligence having regard to any key dates for performance for the Services set out in the Purchase Order.

3. **KEY PERSONNEL**

The Supplier agrees that the Services shall be performed by the key personnel named in the Purchase Order. No changes in the key personnel shall be made without the prior approval of Network Rail's Representative, which shall not be unreasonably withheld.

4. **INTELLECTUAL PROPERTY**

a) For the purposes of the clause 4, "Intellectual Property" means all intellectual and industrial property and all rights therein in any part of the world including, without limiting the generality of the foregoing, any patent, patent application, trade mark, trade mark application, registered design, registered design application, trade name, trade secret, business name, discovery, invention, process, formula, know-how, specification, improvement, technique, copyright, unregistered design right, technical information or drawing including rights in computer software, database rights, topography rights.

b) The Intellectual Property which the Supplier has supplied to Network Rail in accordance with this Contract and which the Supplier has created and/or developed for the purposes of performing its obligation under this Contract shall remain vested in the Supplier but the Supplier hereby grants to Network Rail an irrevocable royalty free non-exclusive licence to copy use adapt and reproduce the Intellectual Property for any purpose whatsoever in connection with Network Rail's permitted business. Such licence shall carry with it the right to grant sub-licences and shall be transferable to third parties.

c) The Supplier shall indemnify Network Rail against all loss damage costs and expenses for which Network Rail is or becomes liable as a result of any infringement or alleged infringement by the Supplier of any third party's intellectual property rights.

d) The Supplier shall not be liable for any use of the Intellectual Property for any purpose other than that for which it was originally prepared or supplied by the Supplier.

5. **CONFIDENTIALITY**

The Supplier agrees to keep all documents supplied to it by Network Rail or which are created in connection with this Contract and the Services and all other matters arising or coming to its attention in connection with the provision of the Services confidential and not at any time for any reason whatsoever to disclose them or permit them to be disclosed to any third party except as permitted hereunder to enable the Supplier to carry out its duties and obligations. The Supplier's obligations under this clause shall survive the expiry or the termination of the Contract for whatever reason.

6. **LIABILITY**

a) The Supplier:

(i) warrants that it has exercised and will continue to exercise in the performance of the Services all the reasonable skill care and diligence as may be expected of a properly qualified and competent member of the Supplier's profession;

(ii) accepts Network Rail will be relying upon the Supplier's skill care and diligence and its expertise and experience in the provision of the Services and also upon the accuracy of all representations or statements made and the advice given by the Supplier in connection with the provision of the Services and the accuracy of all contractual documentation and the Supplier hereby agrees to indemnify Network Rail against all loss, damage, costs, legal costs and professional and other expenses of any nature whatsoever incurred or suffered by Network Rail or by a third party as a result of such reliance.

b) The Supplier accepts:

(i) liability for death and personal injury howsoever resulting from the Supplier's negligence; and

(ii) liability for damage to property resulting from the Supplier's negligence where such negligence has arisen or arises in connection with the provision of the Services or in connection with any other activities undertaken by the Supplier pursuant to or for any purpose related to the Contract.

c) The Supplier hereby agrees to indemnify Network Rail against all and any liability, loss, damage, costs and expense of whatsoever nature incurred or suffered by Network Rail or by any third party whether arising from any disputes, contractual, tortious or other claims or proceedings which seek to recover loss and damage incurred by reason of any such death, personal injury or damage to property in relation to the provision of the Services.

d) The Supplier undertakes to maintain, at its own cost, public liability insurance for the amount of £1,000,000 (one million pounds) in respect of any one occurrence or series of occurrences arising out of one event.

e) The provisions of this condition 6 shall survive the termination of the Contract for any reason.

7. **ACCESS TO THE SITE AND SAFETY REQUIREMENTS**

The Supplier shall comply with the safety requirements and the requirements for access to the site stipulated by Network Rail and shall procure that its employees, agents, sub-contractors and sub-suppliers comply with such requirements.

8. **PAYMENT**

a) After the end of each Agreed Rail Industry Period the Supplier shall present to Network Rail an application stating the total amount due to the Supplier in accordance with the Payment Schedule and supported by documentation and other information required by Network Rail including a statement of the basis of calculation of the application.

b) Not later than 14 days after the date of submission of the Supplier's application under clause 8(a) Network Rail shall give the Supplier written notice stating the amount that Network Rail proposes to pay in respect of the application, to what the amount of the payment relates and the basis on which that amount is calculated. The Supplier will then raise an invoice for the amount due.

c) Provided that the Supplier's invoice includes the correct Purchase Order number and is addressed to "Network Rail, Accounts Payable, P.O. Box 4145, Manchester M60 7WZ", Network Rail shall issue payment to the Supplier of the amount properly due to the Supplier together with VAT thereon on or before the expiry of 28 days from receipt of the Supplier's invoice (the final date for payment). If the Supplier's invoice does not comply with the requirements of this clause 8.c), Network Rail shall be under no obligation to pay the same.

d) Payment by Network Rail shall be without prejudice to any claims or rights which Network Rail may have against the Supplier and shall not constitute any admission by Network Rail as to the performance by the Supplier of its obligations hereunder.

e) Not later than 5 days before the final date for payment Network Rail may give a written notice to the Supplier specifying any amount to be withheld from the payment and the grounds for such withholding.

f) If any sum under the Contract is not paid by the final date for payment then, without prejudice to the parties' other rights under the Contract, that sum shall bear simple interest from the final date for payment until payment is made in full at a rate of 4% per annum above the Bank of England Base Rate current at the date that a payment under this Contract becomes overdue. The Supplier is not entitled to suspend performance of the Services as a result of any sums being outstanding.

9. **VALUE ADDED TAX**

All prices indicated shall be exclusive of Value Added Tax (VAT). The Supplier shall, if registered for VAT, supply a valid VAT invoice. The Supplier shall provide further information as may reasonably be required in relation to any such invoice.

10. **ASSIGNMENT AND SUB-CONTRACTING**

The Supplier shall not assign, transfer, sub-contract or in any other manner make over to any third party the benefit of the Contract without the prior written consent of Network Rail.

11. **STATUTORY AND OTHER REGULATIONS**

a) The Supplier shall comply in all respects with the law and all applicable rules and regulations in all matters arising in the performance of or in connection with the Contract.

b) Without prejudice to or limitation of any other rights Network Rail may have, if the Supplier does not fulfil its obligations and responsibilities under the Contract, the Supplier shall indemnify Network Rail against all costs for which Network Rail becomes liable and for which it would not otherwise be liable.

12. **TERMINATION**

a) In the event of:

(i) the making of an administration order in relation to the Supplier or the appointment of an administrative receiver; or

(ii) the Supplier making an arrangement or composition with its creditors generally or making an application to a court of competent jurisdiction for protection from its creditors generally;

Network Rail may, without prejudice to any other power of termination or to any rights or remedies it may have, terminate the Contract forthwith by notice.

b) Without prejudice to Network Rail's other rights and remedies, Network Rail may forthwith terminate the Contract by notice in writing to the supplier if:

(i) the Supplier commits any breach of the Contract and fails to remedy such breach within 14 days of being given written notice to do so by Network Rail; or

(ii) the Supplier fails to perform its obligations under the Contract with due diligence.

c) The Supplier shall indemnify Network Rail against all costs, expenses and damages for which Network Rail becomes liable arising from termination pursuant to clause 12.a) and clause 12.b).

d) Termination of the Contract shall not prejudice or affect any right or remedy which has accrued or shall accrue thereafter to Network Rail, and any provision which is expressed to survive the Contract shall remain in full force and effect.

e) Network Rail may, in addition to any other power it may have, at any time by notice to the Supplier forthwith terminate the Contract at no additional cost to Network Rail. In such circumstances, the Supplier shall only be entitled to payment of a fair and reasonable sum for the Services performed up to the date of termination.

13. **GOVERNING LAW AND JURISDICTION**

The Contract shall be governed by and construed in accordance with English law and all disputes, claims or proceedings between the parties relating to the validity, construction or performance of the Contract shall be subject to the non-exclusive jurisdiction of the English courts.

14. **SET-OFF**

Without prejudice to Network Rail's other rights and remedies, Network Rail

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may deduct from any sums due to the Supplier under the Contract an amount equivalent to any sum due from the Supplier to Network Rail (whether such sums are due to Network Rail under the Contract or under any other agreement between the Supplier and Network Rail) and may also deduct any sum of money that is recoverable from or payable by the Supplier under the Contract from any sum due or which at any time thereafter may become due under any other agreement between Network Rail and the Supplier.

15. **WAIVER**

No failure to exercise or delay in exercising any right, power or remedy under or in connection with the Contract shall operate as a waiver thereof, and no single or partial exercise of any right, power or remedy shall preclude any further or other exercise thereof, or the exercise of any other right or remedy.

16. **TUPE**

Notwithstanding anything to the contrary elsewhere in this Contract:

- a) the Supplier shall be responsible for and shall indemnify and keep indemnified Network Rail from and against all and any costs claims expenses damages demands actions losses and liabilities arising out of or in connection with any claim in respect of any person which arises or is alleged to arise by reason of the operation of and/or for failure to inform and consult under the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended or re-enacted from time to time ("TUPE");
- b) In the last 12 months of the Contract within 28 days of Network Rail's request the Supplier shall, where TUPE is likely to apply, provide Network Rail with a list of names ages addresses and national insurance numbers of all persons who are who have been or who may be at any time concerned with the Services or any part thereof specifying their job title job description basic salary bonus and all other emoluments and benefits periods of continuous employment the percentage of the time that they have worked on the Contract details of any agreements entered into with employee representative bodies in relation to such persons and such other requirements as Network Rail may reasonably require (altogether the "Employee Data");
- c) In the last 12 months of the Contract the Supplier shall (and shall procure that any sub-contractor shall) provide to the people engaged in the performance of the Services written contracts of employment or statements of terms of employment in either case complying with the requirements of Section 1 of the Employment Rights Act 1996 and retain copies of such documents together with such other documentation and PAYE records as may reasonably be required by Network Rail ("Personnel Records") and shall, where TUPE is likely to apply, within 28 days of Network Rail's request whether during the performance of the Services or following the end of this Contract (whether lawfully or otherwise) deliver up to Network Rail or to such person as Network Rail may nominate the Employee Data such copies of the Personnel Records as may be required by Network Rail and to the extent not otherwise provided any employee liability information pursuant to and in accordance with Regulation 11 of TUPE. Network Rail may communicate such information to persons intending to tender to execute works of the nature of the Services;
- d) the Supplier shall not (and shall procure that any sub-contractor shall not) in the last six months prior to completion of the Services, without the prior written permission of Network Rail vary or purport or promise to vary (in the employee's favour) the terms of the contract of employment of any person engaged wholly or principally in the execution of the Services except in the ordinary course of business;
- e) the Supplier shall not (and shall procure that any sub-contractor shall not) without the prior written consent of Network Rail create or grant or promise to create or grant terms or conditions of employment for any new employee engaged wholly or principally in the execution of the Services if and to the extent that such terms or conditions are materially different to the terms or conditions of employment of equivalent or nearest equivalent existing employees (which themselves comply with sub-clause 16.d) at the date of commencement of employment of such new employee;
- f) the Supplier shall (and shall procure that any sub-contractor shall) at all times comply with its information and consultation obligations under Regulation 13 of TUPE; and
- g) the Supplier shall indemnify and keep indemnified Network Rail and any successor supplier against all costs claims expenses damages demands actions losses and liabilities arising out of or in connection with any claim or demand arising out of or in connection with any act or omission of the Supplier or any sub-contractor during the term of this Contract and which Network Rail or the successor supplier incurs:
- (i) in relation to any one or more employees whose employment has transferred or is alleged to have transferred to Network Rail and/or a successor supplier pursuant to TUPE and/or this Contract; and/or
- (ii) as a result of the Supplier's breach of clause 16.d), 16.e) and/or 16.f); and such a successor supplier can directly enforce the indemnity in its favour provided for by this clause 16.g).

17. **NOTICES**

All notices given under this Contract shall be in writing and shall be served by personal delivery by pre-paid registered or recorded delivery post (or registered airmail in the case of an address for service outside the United Kingdom) to the persons and the addresses set out in the Purchase Order (or as otherwise notified by the relevant party hereunder).

18. **ENTIRE AGREEMENT**

The Contract and the documents referred to in it constitute the entire agreement and understanding of the parties and supersede any previous agreement between the parties relating to the subject matter of this Contract.

19. **CHANGES**

No change to this Contract shall be valid unless it is in writing and signed by or on behalf of each of the parties.

20. **CAHA**

- a) Subject to clause 20(b), the provisions of the Claims Allocation and Handling Agreement shall apply to the Supplier and the Supplier shall provide its insurers with a copy of the Claims Allocation and Handling Agreement.
- b) The parties agree that clause 17 of the Claims Allocation and Handling Agreement shall not apply to this Contract.

21. **THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

Without prejudice to clause 16.g), no term of this Contract is intended by the parties to be enforceable by a third party.

22. **ANTI-BRIBERY REQUIREMENTS**

- a) The Supplier shall comply with all applicable anti-bribery and anti-corruption

legislation including, without limitation, the Bribery Act 2010 and any applicable European Union Directives. The Supplier shall also comply with Network Rail's codes and policies on business ethics, interests in transactions and corporate hospitality, and any updates thereof. Any breach of this clause shall be deemed a material breach under this Contract. (Note: These codes and policies are available on line at: <http://www.networkrail.co.uk/asp/12859.aspx>)

- b) Throughout the term of this Contract the Supplier shall maintain and enforce its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with all applicable anti-bribery and anti-corruption legislation and European Union Directives. Adequate procedures shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of the Act).
- c) The Supplier shall use all reasonable endeavours to ensure that all persons associated with the Supplier (as defined by section 8 of the Bribery Act 2010) including any subcontractors and suppliers comply with clause a) and b) above.