

# RWE Purchase Order Terms and Conditions

**RWE**

Powering. Reliable. Future.

## **1 Conditions of Supply of Goods/Services**

**1.1** These terms apply between the RWE contractual entity set out in the order (“**we**”, “**us**” and “**our**”) and the supplier set out on the order (“**you**”). In these terms, the use of ‘including’ and similar expressions shall not limit the generality of any preceding words.

**1.2** The purchase of goods and/or services by us pursuant to these terms shall be on a non-exclusive basis and may be for the benefit of other companies within our group.

**1.3** Where the order states that RWE Generation UK plc. is entering into this contract on behalf of another entity in the RWE group, it does so as an authorised agent for and on behalf of that entity and all benefits, obligations and liabilities and all other matters arising under and/or by virtue of this contract vests within the named legal entity for whom it is acting as agent.

**1.4** You agree that you will issue, upon our request, a written statement to the effect that the fulfilment of these terms and the order as far as you are aware does not breach or contravene any legal requirements or obligations. .

**1.5** You will provide the goods/services set out on the order in a lawful, business-like manner in accordance with good industry practice, and compliant with all legal and regulatory requirements.

**1.6** You will not bring our name and/or the RWE group’s names into disrepute.

**1.7** You will comply with our Procurement Policy and the RWE Code of Conduct in force in the RWE Group which can be viewed at: <https://www.group.rwe/en/the-group/responsibility/compliance/code-of-conduct>

**1.8** You will commence, deliver, provide and complete the goods/services by the time stated in the order or, if none is specified, within a reasonable period.

**1.9** We may at any time upon notice to you suspend, postpone or reduce all or part of the goods/ services at no cost to us and as a consequence this may lead to a suspension of or a reduction in the price payable.

**1.10** We and/or our auditors shall have the right to audit and/or inspect all matters (including all records) relating to the supply of the goods/services to us.

**1.11** You will comply with all RWE relevant policies (including health and safety and

security) and will notify us about any hazards to health or safety, and will allow us if we require to inspect and test the goods where we deem appropriate to do so.

**1.12** In the event that you are subject to the Pensions Act 2008 (the “**Pensions Act**”) and unless the jobholder is already an active member of a qualifying scheme on his automatic enrolment date (such terms as defined under the Pensions Act), you must automatically enrol any eligible jobholders into a qualifying scheme which present no barriers to entry nor any provisions requiring a new joiner to comply with any obligations such as to have to make any choice or provide any information to remain an active member. You shall provide to us such evidence as we may reasonably require that you have arranged for your eligible jobholders, as defined in the Pensions Act, to be automatically enrolled in accordance with the Pensions Act.

**1.13** There will be no contract between us and any of your third party workers and you will be responsible, at your cost, for all vetting and auditing of your third party workers (including but not limited to checking identities, CVs, references, qualifications, records and checks from the Disclosure and Barring Service, FCA compliance, rights to work in the UK and driving licenses, etc.). You will indemnify us and the RWE group on a full indemnity basis against any loss, liability, damage, expense, claim, fine, demand, proceeding, charge or cost (including legal fees) suffered or incurred by us (and/or our group) as a result of any breach of your obligations under this clause.

## **2 Acceptance**

**2.1** An order will be accepted by you either expressly giving notice of acceptance (including signing the order) or impliedly by fulfilling the order (in whole or part).

## **3 Price, Payment and Invoicing**

**3.1** In consideration of the successful provision of the goods/services we will pay the price set out on, and in accordance with, the order. The prices on the order are exclusive of VAT but are inclusive of all other matters including freight, insurance and other delivery costs, and out-of-pocket-expenses.

**3.2** Invoices must show date, invoice number, your name and address, VAT breakdown, purchase order number and fees, together with other information or supporting

documentation we may reasonably require.

**3.3** We will pay invoices within sixty (60) days from date of receipt. If we dispute an invoice in good faith, we will be entitled to withhold payment of the disputed amount until resolution.

**3.4** Any requirement agreed for immediate or same day payments should be interpreted as a 7 day payment term as it may take up to 7 calendar days to process and clear funds from date of receipt of the invoice.

**3.5** If payment is not made on undisputed amounts when due, you may charge interest at 2% per annum above the base rate of HSBC Bank plc at the time on all unpaid amounts, which you agree is a substantial remedy for late payment of any amount payable for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.

#### **4 Warranties/Remedies**

**4.1** You warrant that:

(i) you have the right to enter into these terms and the order and you have the right to provide the goods/services;

(ii) you will deliver good marketable title free from encumbrances on all goods/services supplied by you;

(iii) you will pass on all manufacturer's guarantees to us in relation to the goods/services; and

(iv) risk in the goods will only pass to us on delivery to our nominated delivery address, and title to the goods will pass to us on the earlier of payment or delivery (any goods damaged or lost in transit shall be your responsibility);

(v) the goods/services will: (a) adhere to the specifications and quantity set out in the order or any other document supplied to you by us; (b) be of satisfactory quality, fit for purpose specified by us and free from any defects; (c) be provided with all due skill and care; (d) not infringe the intellectual property rights (including copyright) of any third party; (e) correspond to any previous sample supplied by you; and (f) be clearly marked with our name, address, order number and advice note (detailing transport, weight, number or volume and point and date of dispatch and any other information we notify to you that we require).

**4.2** If you have not complied with the provisions of clause 4.1, or have not complied with any other provisions of these terms, we shall have the right without prejudice to any

other rights and remedies at law, to reject the goods/services (in whole or part) and you shall at our discretion replace/rectify the goods/services within our reasonable timescale required where possible and if not deemed by us to be possible or appropriate, compensate us to the value of the goods/services paid by us.

#### **5 Intellectual Property Rights**

**5.1** All intellectual property rights existing on or prior to the date of the order shall remain vested in the relevant party or its licensors. You hereby grant us a perpetual irrevocable royalty free license to use any of your intellectual property rights which are necessary to derive any benefit and/or usage of the goods/services.

**5.2** You hereby assign to us with full title guarantee all intellectual property rights (including copyright) in any deliverables or other materials created or developed by or on behalf of you and/or us as a result of these terms and/or the order, or otherwise resulting from the goods/services (including new or bespoke computer code). This assignment shall either take effect on the date of the order or as a present assignment of future rights that will take effect immediately on their coming into existence. You agree to execute all documents and to do any other things reasonably necessary to perfect these rights.

**5.3** Any rights granted by us to use our intellectual property rights shall cease on termination or expiry of the order.

**5.4** You will defend us and the RWE group from and against any claim or action that goods and/or services (or any part thereof) infringe the intellectual property rights or any other rights of a third party and shall indemnify us and our group against any losses, liabilities, damages, costs (including all legal fees on a full indemnity basis) and expenses incurred by or awarded against us and/or our group as a result of or in connection with such a claim.

#### **6 Liability**

**6.1** Neither party excludes or limits its liability for:

(i) fraud or deceit;

(ii) fraudulent, negligent or innocent misrepresentation;

(iii) death or personal injury caused by its negligence;

(iv) breach of section 12 of the Sale of

Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;

(v) any other liability that cannot be excluded or limited by law.

**6.2** Subject to clause 6.1 and except where providing an indemnity, neither party shall be liable to the other party by reason of any breach of any of these terms and conditions for any indirect or consequential loss or damage in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising out of or in connection with these terms or the order;.

**6.3** Subject to clauses 6.1 and 6.2 any other liability of us to you in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising out of or in connection with these terms and/or the order is limited in the aggregate to the price paid under the order.

## **7 Confidentiality**

**7.1** The order, these terms and any information or material of a confidential nature (either marked as such or which, by its nature, reasonably ought to be considered to be confidential) which you receive from us either expressly or impliedly (or on our behalf ) or otherwise gleaned by you (including any information relating to our business or financial or other affairs, or those of a member of our group or our or their customers or suppliers) are strictly confidential and should not be disclosed (in whole or in part) by you to any other person without our prior written consent (except where you are required to disclose them by any government authority or pursuant to any court order in which case you will give us prior notice of the same).

**7.2** You will not make any announcement or publicity statement relating to us, our group, the order, its subject matter or these terms without our prior written approval (except as required by law or by any legal or regulatory authority).

## **8 Data Protection**

**8.1** For the purposes of the Data Protection Legislation, where you and the appropriate RWE contractual entity are joint Data Controllers', each party acknowledges that one party (Data Discloser) may regularly disclose to the other party (Data Recipient) Shared Personal Data collected by the Data Discloser for the Agreed Purposes. Where the RWE

contractual entity is a Data Controller and you are a Data Processor (as defined by applicable law on Data Protection ("**Data Protection Legislation**") ("**data**") on behalf of us and/or our group, you will:

- (i) comply with your obligations under such Data Protection Legislation and not place us in breach of our obligations;
- (ii) only process such data in accordance with our documented instructions and will comply with them;
- (iii) assist us with any subject access requests received in relation to such data;
- (iv) not use such data for any purpose other than as agreed with us under the order;
- (v) not disclose such data to a third party or subcontractor other than at our request and subject to such conditions as we may impose;
- (vi) not transfer or process any such data outside of the European Economic Area;
- (vii) notify us of any breach by you of, or which would put us in breach of, the Data Protection Legislation immediately; and
- (viii) provide us with all reasonably requested cooperation and information in respect of compliance with Data Protection Legislation relevant to the data.

**8.2** You warrant that you have in place and will maintain and apply appropriate technical and organisational measures, processes and procedures to safeguard against any unauthorised access, loss, destruction, theft, use or disclosure of data.

**8.3** On termination or expiry of the order you will securely return to us all data then in your possession or control.

**8.4** You will indemnify and keep us fully indemnified and the RWE group immediately on demand against any loss (including loss of profits, reputation and goodwill), liability, damage, expense, claim, fine, penalty, demand, proceeding, charge, expense or cost directly or indirectly suffered or incurred by us and/or our group) as a result of a breach of this clause 8 or any other breach of the Data Protection Legislation by you or anyone used by you in fulfilling your obligations.

## **9 WEEE and RoHS Directives**

**9.1** If any equipment provided as part of the goods/services (if any) is subject to the Waste Electrical and Electronic Equipment Directive, all and any costs (including transportation and administration) associated with the end of life recycling, re-use or disposal of such

equipment, shall be for your account unless we choose to sell or otherwise dispose of the equipment at the end of its life.

**9.2** All goods/services supplied to us pursuant to the order must be fully in compliance with the RoHS Directive.

**9.3** You will indemnify us and our group against any costs, fines or any other detrimental impacts (on a full indemnity basis) as a result of a breach of this clause 9.

## **10 Term and Termination**

**10.1** These terms subsist for the period of provision of the goods/services set out on the order. Either party may terminate the order immediately by notice if: (i) the other is in material breach of any of its obligations under the order and/or these terms and fails to remedy the breach (if capable of remedy) within 14 days of a written notice requesting such remedy; (ii) the other becomes insolvent, bankrupt, is in liquidation, administration or receivership, makes an arrangement with its creditors, is unable to pay its debts, or is subject to orders or events leading to any of the foregoing, or suffers any analogous event.

**10.2** Termination or expiry of the order will terminate these terms but will not affect: (i) any rights or liabilities accrued at the date of expiry; (ii) prejudice other rights or remedies (under these terms or otherwise); or (iii) the coming into force or the continuation in force of any provisions which expressly or by implication are intended to come into force or continue in force on or after the termination or expiry (including clauses 4, 5, 6, 7, 8, 9, 10, 13, 14 and 15).

**10.3** On termination or expiry you shall: (i) discontinue the provision of the goods/services on the date specified; and (ii) promptly return or provide to us any and all confidential information, personal data and/or intellectual property of us and/or our group then in your possession or control.

## **11 Force Majeure**

**11.1** Neither party shall be liable for any event beyond its reasonable control (but excluding any strike, lockout or industrial action involving that party's or its sub-contractor's employees, workers, agents or other personnel) which directly causes that party to be unable to comply with all or a material part of its obligations under the order or these terms provided that event does not arise from the

act, omission or negligence of that party.

**11.2** If a party is prevented, hindered or delayed from or in performing any of its obligations under the order or these terms pursuant to clause 11.1 for a continuous period in excess of 30 days, the other party may terminate the order immediately by notice in writing.

## **12 Information Security**

**12.1** During and in the course of furnishing goods/services, you shall: (i) not access, and shall not permit anyone to access, our computing systems without our express written authorisation; (ii) employ anti-virus procedures when appropriate and required by us; (iii) comply with our information security policies and procedures; and (iv) ensure that you have in place a plan approved by us in relation to ensuring business continuity both in relation to general day-to-day service disruptions and disaster recovery affecting either your, our or our group's business.

**12.2** Where authorised by us in advance and in writing, we may provide you with access to our computing systems. Where we provide such access you will comply with our IT policies and procedures, including those relating to access to our systems (which will be provided on request).

**12.3** You shall use any access only to provide the goods/services and any such access must be through the Purchaser's agreed security gateways and/or firewalls. We may terminate your access to our systems at any time without notice to you. You shall immediately notify us of any actual or threatened security breach in, or unauthorised access to, our systems.

## **13 TUPE**

**13.1** All losses, damages, costs, claims, liabilities and expenses (including all legal and other professional fees and expenses on a full indemnity basis) ("**Liabilities**") relating to the employment of any personnel by you in respect of the period from the effective date of the order up to and including the date of termination and/or expiry of the order and/or the terms, or the cessation of the provision of the services and/or deliverables (the "**Relevant Period**") are to be borne by you.

**13.2** You will indemnify us against any Liabilities transferred to, imposed upon or incurred by us:

- (i) arising out of or in connection with the employment of any personnel by you in respect of the Relevant Period;
- (ii) if any of the personnel employed by you makes any claim (whether successful or not) at any time prior to the end of the Relevant Period that they have become an employee of, or have rights against, us by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (the “Regulations”);
- (iii) following the end of the Relevant Period, arising directly or indirectly in connection with any act by or omission of you prior to the end of the Relevant Period in respect of any personnel employed by you for which we are liable by reason of the Regulations;
- (iv) if, as a result of the Regulations, the contract of employment of any of your employees shall have effect, following the end of the Relevant Period, as if originally made between us and that person and we terminate that contract; and
- (v) arising out of or in connection with a claim (whether successful or not) made by an outgoing employee of yours.

#### **14 Bribery and Modern Slavery**

**14.1** You will comply with all applicable laws, regulations and codes relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act 2010, and you will ensure that neither you or your officers, employees, subcontractors or agents engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK.

**14.2** You will report to us any request or demand for any undue financial or other advantage of any kind received by in connection with the performance of this contract and you will immediately notify us in writing if a public official becomes an officer or requires a direct or indirect controlling interest in, your business.

**14.3** You will indemnify us and our group against all losses, liabilities, damages, claims, costs and expenses (including all legal and other professional fees and expenses on a full indemnity basis) incurred or suffered by us and/or our group as a result of a breach of any of these anti-bribery and corruption provisions.

**14.4** You will comply with all applicable laws and regulations relating to anti-slavery and

human trafficking, including but not limited to Modern Slavery Act 2015. You will also comply with the RWE Generation UK plc. Anti-slavery and human trafficking policy: <https://www.group.rwe/en/modern-slavery-act-statement>

**14.5** You will not, and you shall take all reasonable steps to ensure that your own suppliers will not, make use of forced, compulsory or trafficked labour, or of anyone (whether adults or children) held in slavery or servitude.

**14.6** You hereby warrant, represent and undertake that neither you nor any of your officers, employees, agents or subcontractors has: (i) committed an offence under the Modern Slavery Act 2015; (ii) been notified that it is subject to an investigation relating to an alleged offence or prosecution under the Modern Slavery Act 2015; or (iii) is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged offence or prosecution under the Modern Slavery Act 2015;

**14.7** Any breach of this section 14 shall entitle us to terminate any agreement and order with you;

**14.8** You will, during the term of this contract and for the period of six (6) years thereafter, maintain such records relating to the goods/services as may be necessary to trace the supply chain and to ensure compliance with this contract, allowing us the right, from time to time, to conduct an audit of your operations, facilities, working conditions, procedures and systems to ensure such compliance. We will be entitled to have access to your premises, and to any premises of your subcontractors or agents in relation to this contract, during normal working hours upon giving reasonable notice.

**14.9** You will indemnify us and our group against all losses, liabilities, damages, claims, regulatory fines, costs and expenses (including all legal and other professional fees and expenses on a full indemnity basis) incurred or suffered by us and/or our group as a result of a breach of any of the anti-bribery and modern slavery provisions of these terms.

#### **15 General**

**15.1** You will not sub-contract any of your obligations under the order or these terms without our prior written consent. Any appointment of a sub-contractor shall not

affect your obligations and liabilities.

**15.2** You will not assign, novate or otherwise transfer any of your rights and/or obligations under the order or these terms without our prior written consent. We may assign, novate, transfer or sub-license any of our rights and/or obligations under the order or these terms to an RWE group company without your prior consent.

**15.3** Nothing in these terms and no action taken pursuant to them shall constitute, or be deemed to constitute, a relationship between the parties of partnership, association, joint venture or other co-operative entity.

**15.4** No variation of these terms or the order shall be valid unless it is in writing and signed by or on behalf of each of the parties.

**15.5** To the extent to which any goods/services provided pursuant to the order are for the benefit of a company in our group, that company may enforce these terms and the order subject to and in accordance with these terms, the order and the provisions of the Contracts (Rights of Third Parties) Act 1999. Save for the foregoing, a person who is not a party to these terms shall not have the right under the Contract (Rights of Third Parties) Act 1999 to enforce any of these terms.

**15.6** You shall indemnify us and our group against all losses, liabilities, damages, claims, costs and expenses (including all legal and other professional fees and expenses on a full indemnity basis) and any fines charges or penalties imposed upon or otherwise incurred by us or our group as a result of or in connection with:

- (i) any failure or alleged failure of the goods and/or services to comply with these terms and/or any order;
- (ii) any tort (including negligence) or breach of statutory duty by you;
- (iii) any action, claim, proceedings or other allegation by a regulatory, governmental, statutory authority or other similar body or otherwise related to a breach by you of these terms and/or order and/or any tort (including negligence) or breach of statutory duty by you.

**15.7** These terms and the order constitute the whole agreement between the parties and supersede all previous agreements between the parties relating to their subject matter. Each party acknowledges that, in entering into these terms and the order, it has not relied on, and shall have no right or remedy in respect

of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in these terms and the order.

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

**15.9** No failure or delay by a party to exercise any right or remedy provided under these terms, the order or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

**15.10** English law applies to these terms and the order, and the parties agree to irrevocably submit to the exclusive jurisdiction of the English courts as regards any dispute, claim or matter arising under or relating to these terms and/or the order. (including their subject matter, formation and any non-contractual disputes and claims).

**15.11** These terms may be varied by any special terms as agreed by the parties and set out in the order.

## **16 Scope**

This document applies to:

- RWE Generation UK plc (the UK Generation business) including all its subsidiary companies and its suppliers.
- RWE Markinch Limited
- RWE KL Limited