



# **RWE Generation UK plc General Conditions of Contract for Goods and Services**

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## 1. Definitions and interpretation

1.1 In these terms and conditions, unless the context otherwise requires, the following words have the following meanings:

<b>"Ad hoc Services"</b>	the additional services, if any, requested by the Employer pursuant to condition 10.
<b>"Applicable Law"</b>	means all laws, regulations, orders, rules, guidance, directions, judgments, directives, industry agreements or determinations in force from time to time applicable to a party and relevant to the Contract.
<b>"Appointed Person"</b>	the person or persons confirmed by the Contractor to the Employer pursuant to condition 11.1 as responsible for providing to the Employer all Method Statements, Site Specific Risk Assessments and other information required by the Employer in connection with the Services.
<b>"Business Day"</b>	a day (other than a Saturday, Sunday or a public holiday in England) when the banks in London are open for business.
<b>"Commencement Date"</b>	the date specified in the Purchase Order.
<b>"Conditions"</b>	means these general conditions of contract.
<b>"Contract"</b>	means the contract comprising the Purchase Order and these Conditions.
<b>"Contractor"</b>	the entity which is named as the Contractor in the Purchase Order.
<b>"Contractor's Representative"</b>	the competent person employed by and nominated by the Contractor who is authorised to act on behalf of and bind the Contractor under the Contract and who is notified to the Employer from time to time.
<b>"Contract Price"</b>	the price of the Goods and/or for undertaking the Services as set out in the Purchase Order.
<b>"Deliverables"</b>	all documents, products and materials developed by the Contractor or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).
<b>"Default"</b>	any negligence on the part of either party in connection with the Contract, breach of the Contract or breach of statutory duty, in respect of which a party is legally liable to the other whether in contract or tort.
<b>"Delivery"</b>	delivery of Goods that have been ordered by the Employer at the Delivery Place in accordance with the Purchase Order and these Conditions and <b>"Deliver"</b> and <b>"Delivered"</b> shall be construed accordingly.
<b>"Delivery Date"</b>	the date specified in the Purchase Order as the delivery date for the Goods.

<b>"Delivery Place"</b>	the place or places specified in the Purchase Order.
<b>"Employer"</b>	the company from within the RWE Group which is named as the contracting entity in the Purchase Order.
<b>"Employer's Contact"</b>	all or any one of the individuals identified on the Purchase Order.
<b>"Employer Materials"</b>	has the meaning given to it in condition 9.2(e).
<b>"Event of Force Majeure"</b>	as defined in condition 19.1.
<b>"Good Industry Practice"</b>	the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected to be exercised by a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances and conditions as the Contractor.
<b>"Goods"</b>	the goods which are as described in the Purchase Order including without limitation goods which may be supplied as part of or with the Services in accordance with the Contract.
<b>"Guarantee Period"</b>	a minimum of twelve months from Delivery or longer period if expressly stated in the Purchase Order or Specification.
<b>"Indemnified Party"</b>	the Employer, any company in the RWE Group and any of their respective servants and agents.
<b>"RWE Group"</b>	RWE AG and its subsidiaries with "subsidiary" having the meaning ascribed to such term in Section 1159 of the Companies Act 2006.
<b>"RWE Group Policy Document"</b>	any relevant rules, policies or standard techniques used by the RWE Group including without limitation the provisions of the Employer's Sustainability Schedule attached as an appendix to the Purchase Order, the relevant Employer's health and safety requirements for working on the Employer's sites, the Employer's Code of Conduct and such other policies as the Employer may notify to the Contractor from time to time, copies of which shall be available for inspection at the Employer's offices.
<b>"Item"</b>	each item of Goods.
<b>"Method Statement"</b>	the method statement to be completed by each Appointed Person detailing the manner in which the Services are to be performed, and specifying the process for Delivery of the Goods and/or performance of the Services.
<b>"Purchase Order"</b>	means the letter issued by the Employer to the Contractor setting out details of the Goods and Services which are to be provided by the Contractor to the Employer.
<b>"Safety Incident"</b>	an accident, incident or near-miss, whether or not death or personal injury or other property damage is caused.

<b>"Scheduled Date"</b>	<b>Completion</b>	the date specified in the Purchase Order as the date by which the Services must be completed, as such date may be varied in accordance with conditions 5.3 and 19.2.
<b>"Serious Incident"</b>		a fatal accident or an accident involving a serious injury, such as an amputation, fracture, electrical shock or burn, loss of sight (temporary or permanent), or any injury resulting in admittance to hospital for more than 24 hours.
<b>"Services"</b>		the services which are as described in the Purchase Order including without limitation services which may be required with the Goods in accordance with the Contract and any Ad Hoc Services.
<b>"Site"</b>		the site or sites at which the Services are required as set out in the Purchase Order or subsequently agreed in writing between the parties.
<b>"Site Meeting"</b>		has the meaning given in condition 11.1.
<b>"Site Specific Risk Assessment"</b>		the risk assessment to be completed by each Appointed Person following a Site Meeting.
<b>"Specification"</b>		the specification for each of the Goods and the Services, details of which are set out in the Purchase Order.
<b>"Staff"</b>		all personnel provided by the Contractor to perform the Services (including without limitation all employees, workers, sub-contractors (and any employee, agent or independent contractor of such sub-contractors)).
<b>"TUPE"</b>		the Transfer of Undertakings (Protection of Employment) Regulations 2006.

- 1.2 In the Contract, unless the context otherwise requires a reference to a statute or statutory provision includes:
- (a) any subordinate legislation (as defined in Section 21(1), Interpretation Act 1978) made under it; and
  - (b) any repealed statute or statutory provision which it re-enacts (with or without modification).

All of these Conditions shall apply to both Goods and Services except where the application to one or the other is specified.

## **2. Appointment**

- 2.1 The Employer appoints the Contractor as its contractor to provide the Goods and/or Services on the terms of, and to the standards required in, the Contract and the Contractor agrees to provide the Goods and/or Services. The appointment of the Contractor is not exclusive and nothing in the Contract shall be deemed to give the Contractor exclusive rights to supply goods and/or services to the Employer.
- 2.2 These Conditions shall prevail over any terms in any Purchase Order, any acknowledgement from the Contractor of such Purchase Order, or (subject to condition 22.2) in other correspondence between the parties relating to the subject matter of the Contract (including but not limited to any quote provided by the Contractor).
- 2.3 The Contract shall commence on the Commencement Date and shall (unless terminated at an earlier date pursuant to condition 19.3 or condition 20) terminate automatically once the Goods have been Delivered and paid for and/or the Services have been completed and paid for.

### 3. General Obligations of the Contractor

- 3.1 The Contractor shall perform the Services and shall sell such quantities of the Goods as may be ordered by the Employer from time to time in accordance with the terms of the Contract.
- 3.2 The Contractor shall at all times during the period of the Contract:
  - (a) comply with all Applicable Law, rules, guidelines and codes of practice applicable to the provision of the Goods and the performance of the Services;
  - (b) ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods and Services;
  - (c) carry out all risk assessments and ensure safe organisation and implementation of the Services that would ordinarily be expected to be carried out by a provider of goods and/or services similar to those required under the Contract acting in accordance with Good Industry Practice;
  - (d) comply, and procure that its Staff comply, with the RWE Group Policy Document;
  - (e) faithfully and diligently perform those duties and exercise such powers consistent with them which are from time to time necessary in connection with the provision of the Goods and Services;
  - (f) ensure that the Services are supervised at all times by a competent person;
  - (g) obey and procure that its Staff obey all lawful and reasonable directions of the Employer; and
  - (h) be responsible for making appropriate PAYE deductions for tax and national insurance contributions from the remuneration which it pays to its personnel and the Contractor agrees to indemnify the Employer on demand in respect of any claims or demands which may be made by the relevant authorities against the Employer in respect of income tax relating to the provision of the Goods and/or Services by the Contractor.
- 3.3 When providing the Goods and/or Services the Contractor must not do or omit to do anything which may, in the sole opinion of the Employer, bring the Employer's name, or the name of any company within the RWE Group, into disrepute or damage its reputation, goodwill or business interests.
- 3.4 The Contractor's Representative shall be the Employer's principal contact in relation to the Contract. The Contractor's Representative shall have the full authority to act on behalf of the Contractor for all purposes of the Contract. Before the Contractor's Representative (and each successor Contractor's Representative (if any)) is appointed the Employer shall be entitled to satisfy itself of the competence of the Contractor's Representative.
- 3.5 The Contractor, at its own cost, shall provide its Staff with training and all necessary safety equipment to ensure that they are qualified and able to perform the Services and to supply the Goods safely. Without prejudice to the generality of the foregoing, the Contractor shall ensure that:
  - (a) all equipment and other tools are in a good and serviceable condition;
  - (b) Staff are suitably skilled and experienced and are trained in the use of the Goods and all tools and equipment needed to perform the Services;
  - (c) it has put procedures in place to ensure that Staff are able to understand and comply with oral and written instructions given by the Employer, which relate to health and safety; and
  - (d) it has put in place suitable precautions to prevent contact or injury.
- 3.6 The Contractor shall provide any information reasonably requested by the Employer in relation to the Contractor's Staff who will be performing the Services within 10 Business Days of such request being made.

3.7 Where any Services are carried out on a site occupied by the Employer, the Contractor shall remove any person from such site who in the reasonable opinion of the Employer is guilty of misconduct, is incompetent or negligent or brings any company within the RWE Group into disrepute. The Employer shall be entitled to require that such person does not provide the Services again. The Contractor shall be responsible for any consequent costs. The Employer shall be entitled to require the removal from Site of any employee, agent or sub-contractor who has not undergone a DBS check.

#### **4. Sale of Goods**

4.1 Without prejudice to conditions 7 and 8, the Contractor agrees and warrants to the Employer that the Goods shall:

- (a) conform as to quantity, quality and description with the particulars stated in the Purchase Order and the Contract;
- (b) be of sound material and workmanship;
- (c) be equal in all respects to the Specification and to the samples or patterns provided or given by either party (if any);
- (d) meet any quality standard, and be capable of any performance, specified in the Purchase Order or otherwise made known to the Contractor by the Employer;
- (e) be fit for use in conjunction with the Services (if applicable) and for any other purpose which is indicated in the Purchase Order or otherwise made known to the Contractor (in each case either expressly or by implication);
- (f) be new and free from any lien, charge or other encumbrance; and
- (g) comply with all Applicable Law.

4.2 The Employer and any of its authorised representatives shall have the right to inspect the Goods during manufacture, processing and storage at the premises of the Contractor or any third party prior to Delivery. The Contractor shall use all reasonable endeavours to procure access to such third parties' premises to enable the Employer to exercise its rights of inspection under this condition. If following any inspection, the Employer considers that the Goods do not conform or are unlikely to comply with the Contractor's undertaking at conditions 3.2 or 4.1, the Employer shall inform the Contractor and the Contractor shall immediately take such remedial action as is necessary to ensure compliance. Irrespective of whether the right of inspection is exercised or remediation is carried out under this condition, the Employer shall have the right to reject any Goods after Delivery in accordance with condition 7.1 if in the opinion of the Employer they do not comply with the Purchase Order, the Specification, Applicable Law or any provision of the Contract.

4.3 The Contractor undertakes to systematically monitor the safety of the Goods and, without limitation:

- (a) to mark each of the Items and batches of Goods in such a way that they can be readily identified as being supplied by the Contractor (such as applying its name or other identification markings to them) and as having been manufactured or supplied on a particular date;
- (b) to properly label the Goods with, and supply with the Goods, all necessary warnings, instructions and other information relevant to their storage and use; and
- (c) where the Goods are potentially hazardous to health and/or the environment, to provide the Employer at least 2 days prior to the Delivery Date with full details of the hazardous contents of the Goods and details of correct measures to be taken in the event of exposure or spillage.

4.4 The Employer shall have the right to request any reasonable variation to a Purchase Order or Specification, in the case of Goods, at any time prior to the Delivery Date and in the case of Services, at any time prior to the Scheduled Completion Date. Where such variation is requested, the parties shall discuss in good faith and agree any resulting increases or

reductions in the Contract Price. If the parties are unable to agree any such changes they shall refer the matter for resolution under condition 25.

## 5. Delivery

- 5.1 The Contractor shall at its own expense:
- (a) ensure that the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
  - (b) deliver the Goods by the Delivery Date;
  - (c) provide the Services by the Scheduled Completion Date; and
  - (d) provided that the prior written consent of the Employer is obtained where Goods or Services are not so specified in the Purchase Order, Deliver such Goods as are necessary for the proper provision of the specified Services and provide such Services as are necessary for the proper provision of the specified Goods.
- 5.2 The Contractor shall confirm the Delivery Date or the Scheduled Completion Date with the Employer not less than 48 hours before the date specified in the Purchase Order.
- 5.3 In addition to any other right that the Employer may have under the Contract the Employer shall be entitled to postpone the Delivery Date and the Scheduled Completion Date for the related Services and request that the Contractor puts the Goods into storage for whatsoever period it thinks fit on giving notice in writing to the Contractor provided that the Employer shall pay the reasonable storage charges (if any) incurred by the Contractor in storing the Goods in respect of which the Delivery Date has been postponed. However, the Employer shall not be liable to pay any costs in respect of the first 4 weeks' storage of the relevant Goods.
- 5.4 The Employer shall be entitled, without incurring any liability (including without limitation the Contractor's storage charges):
- (a) to cancel the Contract where Goods or Services which are the subject of that Contract have not been Delivered or the Services have not been completed in whole or in part by the Scheduled Completion Date; or
  - (b) to require the Contractor to suspend Delivery or provision or performance of the Services for any period,
- if the activities for which those Goods or Services were ordered are stopped or seriously interfered with by any Event of Force Majeure.
- 5.5 The Goods shall be Delivered by the Contractor to the Delivery Place. All Goods ordered by the Employer shall be at the Contractor's risk until the Contractor Delivers them to the Employer at the Delivery Place and, if applicable, carries out the Services required in connection with those Goods to the satisfaction of the Employer (acting reasonably). Until such time as risk in the Goods passes to the Employer, the Contractor shall insure the Goods to their full replacement value.
- 5.6 Any signature by a representative of the Employer on any delivery note or other documentation presented in connection with the Delivery of the Goods shall be evidence only of the number of packages received and is not evidence that the correct quantity of Goods has been Delivered or that the Goods delivered comply with the requirements of the Contract.
- 5.7 If the Employer requires the Contractor to take responsibility for unloading any Goods:
- (a) the Contractor shall comply with the Employer's policy and procedures (including the RWE Group Policy Document) and the reasonable instructions of the Employer;
  - (b) any personnel supplied by the Employer to assist with unloading shall be deemed to be under the Contractor's control; and
  - (c) the Contractor shall ensure that good manual handling practice is observed at all times, all lifting and unloading equipment is in a good and serviceable condition and its personnel are trained in the use of such lifting and unloading equipment.

5.8 The Employer shall not be obliged to return to the Contractor any packaging materials used in the transportation of the Goods, whether or not the Employer accepts any Goods.

5.9 If the Goods are to be Delivered in instalments, the contract for the purchase of those Goods shall be treated as a single contract and not severable.

## **6. Ownership**

6.1 Without prejudice to the Employer's rights of rejection under the Contract, property in the Goods shall pass to the Employer when payment of the Contract Price for such Goods and any related Services (if applicable) is made by the Employer.

6.2 Where property in the Goods has passed to the Employer following payment but the Goods have not yet been Delivered to the Employer:

(a) the Contractor shall keep the Goods separate from any similar goods owned by the Contractor or any third party. The Contractor shall further ensure that the Goods are properly stored and protected and identified as the Employer's property; and

(b) the Employer may require the Contractor to deliver up the Goods to the Employer on request and if the Contractor fails to do so immediately, the Employer may enter any premises of the Contractor or any third party where the Goods are stored and repossess the Goods.

6.3 Notwithstanding the provisions of condition 6.1, the Employer may resell or install or use the Goods in the ordinary course of business.

## **7. Rejection**

7.1 Without prejudice to any other rights of the Employer pursuant to the Contract, the Employer may by notice in writing to the Contractor reject any Goods which do not comply with the Purchase Order, Applicable Law, the Specification or any provision of the Contract within 60 days of Delivery of the Goods or in the case of latent defects, within 30 days of the defect becoming apparent.

7.2 The Employer shall, when giving notice of rejection, specify the reasons for it and shall (unless otherwise agreed) return the rejected Goods to the Contractor at the Contractor's risk and expense. In such case the Contractor shall, at the Employer's sole discretion, either pay to the Employer the sums referred to in condition 7.3 in accordance with that condition or, as soon as practicable (and in any event within 5 days), replace those rejected Goods with Goods which comply in all respects with the Purchase Order, the Specification, the Applicable Law and the provisions of the Contract and supply, free of charge, such services as may be necessary to replace those Goods.

7.3 In respect of rejected Goods that are not replaced in accordance with condition 7.2, the Contractor shall immediately:

(a) refund the Contract Price paid by the Employer to the Contractor in respect of any such rejected Goods and, if applicable, the Contract Price paid by the Employer for any related Services; and

(b) pay the Employer any additional expenditure reasonably incurred by the Employer in obtaining replacement Goods and any related Services from a third party (including, but not limited to, the prices of such replacement Goods and any payments contractually due to third parties as a result of Goods not being Delivered in accordance with the Contract, the Applicable Law, the Specification and the Purchase Order).

## **8. Guarantee**

8.1 If within the Guarantee Period for any Goods the Employer gives notice in writing to the Contractor of any defect in the design, materials or workmanship of those Goods (other than a design made, furnished or specified by the Employer for which the Contractor has in writing disclaimed responsibility), the Contractor shall, as soon as possible, replace or repair (at the Employer's sole option) each such Item and supply such services as are necessary to remedy the defects without cost to the Employer.

8.2 The Employer shall, as soon as practicable after discovery of any such defect, return the defective Goods or parts of them to the Contractor at the Contractor's risk and expense unless the Employer informs the Contractor in writing that the necessary services, replacement or repair shall be carried out by the Contractor on the Employer's premises.

8.3 The full Guarantee Period for any repaired or replaced Goods shall commence on the date of Delivery of the repaired or replaced Goods.

## 9. Provision of Services

9.1 The Contractor shall provide all Staff for the provision of the Services. The Contractor shall ensure that no relationship of employer and employee is created as between the Employer and any Staff.

9.2 The Contractor warrants and undertakes as follows:

- (a) that it shall provide the Services by the Scheduled Completion Date at the Site in accordance with the Specification, Method Statement, Applicable Law and these Conditions;
- (b) that it shall provide any Goods and any other tools and equipment necessary to properly and efficiently provide the Services;
- (c) that the Services will be performed with reasonable skill and care and in accordance with Good Industry Practice;
- (d) that the Services will conform with all descriptions and specifications set out in the Purchase Order and that the Services and any Deliverables shall be fit for any purpose expressly or impliedly made known to the Contractor by the Employer;
- (e) that it shall hold all materials, equipment and tools, drawings, specifications and data supplied by the Employer to the Contractor ("**Employer Materials**") in safe custody at its own risk, maintain the Employer Materials in good condition until returned to the Employer, and not dispose or use the Employer Materials other than in accordance with the Employer's written instructions or authorisation; and
- (f) that it and all its Staff have the skill and expertise required to carry out the provision of the Services to the standards required in the Contract.

9.3 Prior to any employee, agent or sub-contractor performing the Services, the Contractor shall, to the extent lawful, ensure that each such employee, agent and sub-contractor has satisfied any checks/requirements which may be appropriate according to Good Industry Practice or which are reasonably notified by the Employer to the Contractor from time to time and the Contractor shall keep records of such checks.

9.4 The Contractor shall not (without the Employer's prior written consent) use any individual to perform the Services who, to the Contractor's knowledge, having made all reasonable enquiries in accordance with condition 9.3, has been convicted of any serious crime involving violence or threat of violence, theft or other dishonest conduct, drugs or controlled substances, computer-related crimes, or similar crimes which create an increased risk to persons or property located on the Employer's premises.

9.5 The Contractor shall retain all documents referred to in condition 9.3 for individuals performing Services under the Contract. The Contractor shall permit the Employer to inspect such documents upon the Employer providing the Contractor with one Business Day's written notice.

9.6 The Contractor shall ensure that the Staff comply with the Employer's local security arrangements including the right to search. The Contractor shall ensure that the Staff carry out their duties so as to cause minimum disruption to the Employer's business operations.

9.7 If the Contractor does not already have in place an occupational pension scheme that allows all eligible employees and earnings at or above the National Insurance lower earnings level to join within 12 months of starting work for it, or if the Contractor is not an exempt employer under the provisions of the Welfare Reform and Pensions Act 1999 (the "Act"), the Contractor shall provide to the Employer such evidence as the Employer may reasonably require that the Contractor has arranged for its relevant employees as defined in the Act to have access to a

stakeholder pension scheme in accordance with the Act and the Stakeholder Pension Scheme Regulations 2000.

- 9.8 There will be no contract between the Employer and any of the Contractor's third party workers, and the Contractor will be responsible, at its cost, for all vetting and auditing of its third party workers (including but not limited to checking identities, c.v's, references, qualifications, DBS records, ISA checks, FSA compliance, rights to work in UK, driving licenses, etc). The Contractor will indemnify the Employer and the RWE Group against any loss, liability, damage, expense, claim, fine, demand, proceeding, charge, expense, claim, fine, demand, proceeding, charge, expense or cost suffered or incurred by it (and/or the RWE Group) as a result of any breach by the Contractor of its obligations under this clause.

## 10. Ad hoc Services

The Employer may at any time request the Contractor to provide additional services beyond those specified in the Purchase Order ("**Ad Hoc Services**"). Any such request shall be made in writing and the Contractor shall respond to the request within 2 Business Days specifying the price applicable to the Ad Hoc Services. Where the Employer confirms in writing its acceptance of that price, the Contractor shall perform the Ad Hoc Services.

## 11. Site Meeting and Planning the Services

- 11.1 Where the Contractor is performing Services and the Employer requests a Site Meeting, within two Business Days of receipt of the Purchase Order the Contractor shall contact the Employer's Contact to arrange a meeting at the relevant Site (the "**Site Meeting**") and shall at the same time confirm the identity and contact details of the Appointed Person.
- 11.2 At the Site Meeting the Employer shall provide the Contractor with all information in the Employer's possession in relation to the Site necessary for the performance of the Services.
- 11.3 The Employer does not warrant the adequacy, accuracy or sufficiency of the information provided to the Contractor pursuant to condition 11.2. The Contractor shall take all necessary steps to secure all necessary information for undertaking the Services at the Site in accordance with the Contract and for checking the adequacy, accuracy and sufficiency of the information provided to the Contractor by the Employer.
- 11.4 At the Site Meeting, the Employer's Contact and the Appointed Person will identify all risks and hazards of undertaking the Services and agree:
- (a) an exhaustive list of services required for and to be included in the Services; and
  - (b) the commencement date and Scheduled Completion Date for the undertaking of the Services (if not set out in the Purchase Order).
- 11.5 The Employer's Contact shall confirm to the Appointed Person in writing within 2 Business Days of the Site Meeting the agreed position on the matters referred to in condition 11.4.
- 11.6 The Contractor shall be deemed to have inspected and examined the Site and its surroundings and all information available in connection with them and to have fully acquainted and satisfied itself so far as is practicable, before commencing the Services as to the conditions of the Site and generally to have obtained for itself all necessary information as to risks, contingencies and all other circumstances which may influence or affect the Services. The Contractor shall not be entitled to make any claim for additional loss expense and/or time to complete the Services arising from the Contractor's failure to do so.
- 11.7 No later than 10 Business Days prior to the commencement of the Services at the Site the Appointed Person shall provide to the Employer's Contact the Site Specific Risk Assessment and a Method Statement for carrying out the Services.
- 11.8 The Employer's Contact shall check the Site Specific Risk Assessment and Method Statement to ensure that appropriate hazards and risks identified at the Site Meeting have been addressed and, once so satisfied, shall confirm this to the Contractor. The reviewing of the Method Statement by the Employer's Contact or the giving of any comment or approval by the Employer's Contact shall not in any way relieve the Contractor of its obligations under the Contract or of its duty to check that all appropriate hazards and risks identified at the Site have been addressed.

## **12. Health and Safety**

- 12.1 The Contractor shall, and shall procure its sub-contractors (if any) shall, keep records of all acts and things done in the provision of the Goods and Services (including but not limited to all monitoring and testing procedures and other measures taken to ensure the safety of the Goods and Services) and at the Employer's request shall make them available for inspection and/or provide copies to the Employer.
- 12.2 The Contractor shall have in place an accident reporting procedure in compliance with the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, and shall report all accidents, incidents or near-misses (whether or not death or personal injury or other damage is caused) to the Employer so the Employer can make full and accurate notifications as it is required to do so by law. The Contractor shall make notifications of any Serious Incident immediately by telephone, and in the case of any other accident, incident or near-miss, shall make notification no later than 10 am on the Business Day immediately following the incident taking place.
- 12.3 The Contractor shall have in place an accident investigation procedure to deal with all Serious Incidents. Copies of all Serious Incident investigation reports shall be supplied by the Contractor to the Employer promptly following the conclusion of the investigation.
- 12.4 The Contractor shall immediately notify the Employer if any site where Services are being, or have been, provided by the Contractor is the subject of a visit or inspection by a regulatory body or the subject of any enquiry made in writing. The Contractor shall provide the Employer with all details of that visit, inspection or enquiry and promptly provide the Employer with copies of all related correspondence.
- 12.5 The Employer may (but shall not be obliged to) stop all or any part of the Services if it believes the working processes being used breach the requirements of this condition, are unsafe or pose a risk to persons or property.
- 12.6 The Contractor shall notify the Employer as soon as possible following the Commencement Date of any prosecution, improvement notice, written warning or other correspondence received by the Contractor from the Health & Safety Executive, the Environment Agency, any local authority or the police in the five year period up to and including the Commencement Date relating to any Safety Incidents involving goods of the same or similar type to those provided under the Contract or sold by the Contractor.
- 12.7 The Contractor shall notify the Employer immediately following receipt of any prosecution, improvement notice, written warning or other correspondence received from the Health & Safety Executive, the Environment Agency, any local authority or the police which relates to any Safety Incidents involving goods of the same or a similar type to those provided under the Contract or sold by the Contractor.

## **13. Obligations of the Employer**

- 13.1 Throughout the period of the Contract the Employer shall:
- (a) afford the Contractor such access to such the Site as the Contractor may reasonably require to provide the Goods and/or Services under the Contract;
  - (b) insofar as it is able, advise the Contractor of the rules and regulations which are then in force for the conduct of personnel at the Site;
  - (c) make available appropriate personnel to liaise with the Contractor; and  
inform the Contractor of any defects in the Contractor's performance of the Contract in providing the Goods and the Services within a reasonable period after such defects come to the attention of the Employer.

## **14. Insurance**

- 14.1 The Employer shall procure that the RWE Group shall take out and maintain at its cost a property all-risks and liability insurance policy for the Site in respect of which the Services are to be provided under the Contract. Deductibles applying under the insurance arranged by the RWE Group shall be for the Contractor's account where such deductibles relate to loss or

damage for which the Contractor is responsible under the Contract. Any loss or damage to the Site which is as a result of the negligence of the Contractor shall be for the Contractor's account and insured by them accordingly.

- 14.2 The Contractor undertakes and agrees to take out and maintain insurance cover in full force and effect at its own cost with an insurance office of repute to cover its liabilities under the Contract to the extent as would reasonably be expected, including (but not limited to) the insurance cover set out in conditions 14.3, 14.4, 14.5 and 14.6.
- 14.3 The Contractor shall take out and maintain at its cost product liability insurance in the amount of £1,000,000 each and every claim.
- 14.4 The Contractor shall take out and maintain at its cost a third party legal liability insurance policy to cover loss, damage, injury or death to any third party, persons or property arising out of the Services provided by the Contractor. Such insurance shall have a limit of liability of a minimum of £5,000,000 each and every occurrence.
- 14.5 The Contractor shall take out and maintain at its cost employer's liability insurance in respect of its employees as required by Applicable Law. Such insurance shall have a limit of liability of a minimum of £5,000,000 each and every claim and the level of such insurance shall be adjusted in line with the statutory minimum requirements prevailing from time to time.
- 14.6 The Contractor shall take out and maintain motor insurance in respect of vehicles used by it in the performance of the Services as required by Applicable Law and such other insurances as are required to be taken out and maintained by the Contractor under the Applicable Law.
- 14.7 The Employer shall provide to the Contractor, and the Contractor shall provide to the Employer (and procure that its sub-contractors provide), all such reasonable assistance and necessary information and documentation for the purpose of making or processing claims under the insurances.
- 14.8 The Contractor shall provide evidence to the Employer whenever reasonably requested of the placing of the insurance policies detailed above.

## **15. Contract Price and Payment terms**

- 15.1 The Contract Price includes payment for the supply and operation of the Goods and/or Services (including transport of the Goods to and from the Site), packaging, insurance, travel, accommodation and all other costs relating to the Goods and/or Services (including, but not limited to, provision of equipment necessary as a result of any Site conditions and/or any hazards or risks identified at the Site). The Employer shall not be liable for any other costs, expenses, charges or payments of any kind incurred by the Contractor in the provision of the Goods and/or Services.
- 15.2 After deducting any sums due to the Employer under the Contract, the Contractor may invoice the Contract Price and any price payable for Ad Hoc Services pursuant to condition 10 in accordance with the Purchase Order. The final date for the payment of the invoice by the Employer shall be the number of calendar days as expressed in the Purchase Order after receipt by the Employer of a valid VAT invoice for the amount due.
- 15.3 Payment by the Employer shall be without prejudice to any claims or rights which the Employer may have against the Contractor and shall not constitute any admission by the Employer as to the performance by the Contractor of its obligations under the Contract. Prior to making any such payment, the Employer shall be entitled to make deductions or deferments in respect of any disputes or claims whatsoever with or against the Contractor not already allowed by the Contractor under condition 15.2.
- 15.4 All invoices to be rendered by the Contractor pursuant to condition 15.2 must contain the information and be sent to the address specified in the Purchase Order.
- 15.5 If either party fails to pay any sum payable under the Contract when due (whether payable by agreement or by an order of the court or otherwise) the liability of that party shall be increased to include interest on that sum from the date when such payment was due until the date of the actual payment at a rate of 4% over the base rate from time to time of the Bank of England. Such interest shall accrue from day to day and shall be compounded annually.

- 15.6 Where under the Contract any party agrees to pay to any other party any sum or to furnish to any other party consideration which (in either case) is consideration for a taxable supply that sum or consideration shall be exclusive of Value Added Tax payable on it and the recipient of the supply shall pay an amount equal to such Value Added Tax in addition to any sum or consideration on receipt of a valid Value Added Tax invoice from the relevant party.

## **16. Intellectual property rights**

- 16.1 The Contractor shall indemnify the Indemnified Parties in full and on demand from and against all liability, loss, damage, costs or expense suffered or incurred by an Indemnified Party by reason of any claim, action or litigation in respect of any alleged or actual infringement of any patent, copyright, design right, trademark or other intellectual property rights of any person which results directly or indirectly from the possession or use of any Goods or any part of any Goods.
- 16.2 Condition 16.1 shall not apply to any Goods manufactured solely in accordance with the Employer's instructions.
- 16.3 The Contractor shall notify the Employer of any claim, action or litigation in respect of any alleged infringement of any patent, copyright, design right, trade mark or other intellectual property rights relating to the Goods immediately upon becoming aware of any such claim, action or litigation.
- 16.4 If the Employer reasonably requires any licences of any intellectual property rights for the proper use of the Goods, the Contractor shall grant to the Employer promptly such licences or sub-licences to use such intellectual property rights at no additional cost to the Employer.
- 16.5 The Contractor assigns to the Employer, with full title guarantee and free from all third party rights, all intellectual property rights in the products of the Services, including for the avoidance of doubt any Deliverables.
- 16.6 The Contractor shall obtain waivers of all moral rights in the products, including for the avoidance of doubt any Deliverables of the Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- 16.7 The Contractor shall, promptly at the Employer's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Employer may from time to time require for the purpose of securing for the Employer the full benefit of the Contract, including all right, title and interest in and to the intellectual property rights assigned to the Employer in accordance with condition 16.5.
- 16.8 All Employer Materials are the exclusive property of the Employer.

## **17. Remedies for late delivery or non-performance**

- 17.1 Without prejudice to any other right or remedy the Employer may have, on each occasion when the Contractor either fails to Deliver by the Delivery Date in accordance with the terms of the Contract or fails to perform a material aspect of the Services in accordance with condition 9.2 by the Scheduled Completion Date, the Employer shall be entitled (at its sole discretion) either to:
- (a) charge to the Contractor the costs, losses or expenses which the Employer incurs as a result of that failure including, but not limited to, the costs incurred by the Employer in obtaining replacement Goods or Services (or both) from a third party and any payments contractually due to third parties as a result of the failure of Delivery or non-performance of the Services; or
  - (b) require the Contractor to remedy immediately any failure to Deliver the Goods or perform Services in accordance with the terms of the Contract at its own cost (in which case the Contractor shall also be liable to the Employer for any payments contractually due to third parties as a result of the failure of Delivery or non-performance of the Services). The Contractor shall provide free of charge any additional Goods necessary to remedy the failure.

## 18. Liability

- 18.1 Each party shall inform the other of any Default under the Contract and afford the other a reasonable opportunity to correct such Default.
- 18.2 Each party accepts unlimited liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - (b) fraud or fraudulent misrepresentation; and
  - (c) any other liability which cannot by law be excluded or limited.
- 18.3 The Employer shall not be liable for the following loss or damage however caused and even if foreseeable:
- (a) economic loss including without limitation loss of profits, business, contracts, revenues, goodwill, production and anticipated savings of every description;
  - (b) loss arising from any claim made by any third party; or
  - (c) loss or damage arising from the Contractor's failure to fulfil its responsibilities or any matter under the Contractor's control.
- 18.4 Save for liability arising under condition 18.2, neither party shall be liable for indirect or consequential loss.
- 18.5 The Contractor shall be liable for any damage caused through not acquainting himself fully of the Site conditions as stated in condition 11.6.
- 18.6 Except as provided in condition 18.2, the Contractor's liability under the Contract shall not exceed an amount equal to the Contract Price in aggregate.
- 18.7 Except as provided in condition 18.2, the Employer's liability under the Contract (save for its liability to pay the Contract Price due and any interest due under condition 15.5) shall not exceed an amount equal to the Contract Price in aggregate.

## 19. Force Majeure

- 19.1 Subject to condition 19.2, neither party shall be deemed to be in breach of the Contract, or otherwise be liable to the other, by reason of any delay in performance or non-performance of any of its obligations under the Contract to the extent that such delay or non-performance is due to any Act of God, explosion, lightning, tempest, flood, fire, terrorism, war, hostilities, act of public enemy, invasion, revolution or riot or is due to any cause beyond its reasonable control (an "**Event of Force Majeure**") provided that the following shall not be treated as Events of Force Majeure (i) a strike by or lockout or other industrial dispute or trade dispute involving any employees of the Contractor or any suppliers, agents or sub-contractors; or (ii) non-supply of machinery by any supplier to the Contractor; or (iii) the Contractor's failure to hire suitably qualified personnel or labour; or (iv) mechanical or electrical breakdown or failure of equipment, machinery or plant owned by or provided to the Contractor.
- 19.2 The party affected by the Event of Force Majeure shall immediately give the other party written notification of the nature and extent of the Event of Force Majeure and shall make all reasonable efforts to prevent and reduce to a minimum the effect of any Event of Force Majeure. The parties shall enter into bona fide discussions with a view to alleviating its effects or to agreeing upon such alternative arrangements as may be fair and reasonable.
- 19.3 If the Contractor is affected by the Event of Force Majeure and the written notice in relation to the Event of Force Majeure has not been withdrawn within 1 month, the Employer may terminate the Contract with immediate effect by serving a written notice on the Contractor. The service of such notice shall be without prejudice to any rights or obligations which have accrued prior to termination.
- 19.4 When the effects of the Event of Force Majeure cease both parties shall take all reasonable steps to ensure resumption of normal performance of their obligations under the Contract.

## 20. Termination

- 20.1 Without prejudice to any right or remedy either party may have against the other for breach or non-performance of the Contract, either party may, with immediate effect by notice in writing to the other, terminate the Contract on or at any time after the happening of any of the following events:
- (a) the other party commits a material breach of the Contract provided that where such breach is capable of remedy the party in breach has been advised in writing of the breach and has not rectified it within 30 days of receipt. For the purposes of this condition 20.1 a breach shall be considered capable of remedy if time is not of the essence in performance of the obligation and if that party can comply with the obligation within the 30 day period;
  - (b) the passing of a resolution for its winding-up or the making by a court of competent jurisdiction of an order for the winding-up or the dissolution of the other party;
  - (c) the making of an administration order or the appointment of an administrator under the out of court procedure under the Enterprise Act 2002 or the appointment of a receiver or an administrative receiver over, or the taking possession or sale by an encumbrancer of, any of the other party's assets;
  - (d) the other party makes an arrangement or composition with its creditors generally or making an application to a court of competent jurisdiction for protection from its creditors generally;
  - (e) the other party ceases to do business at any time for 30 consecutive days; or
  - (f) the other party for any reason whatsoever being substantially prevented from performing or becoming unable to perform its obligations.

## 21. Consequences of Termination

- 21.1 All rights and obligations of the parties shall cease to have effect immediately upon termination of the Contract except that:
- (a) where the Services are terminated, the Contractor shall immediately deliver to the Employer all Deliverables, whether or not then complete, and return all Employer Materials. If the Contractor fails to do so, then the Employer may without limiting its other rights or remedies enter the Contractor's premises and take possession of them. Until they have been returned or delivered, the Contractor shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract;
  - (b) termination shall not affect:
    - (i) the accrued rights and obligations of the parties at the date of termination; and
    - (ii) conditions 3.2(h), 6, 7, 8, 14, 16.1, 18, 21, 22, 23, 25, and 26, which shall remain in force.
- 21.2 On expiry or termination of the Contract for any reason whatsoever the Employer shall be under no obligation to offer employment to any employee, agent, sub-contractor or member of the Contractor's team who has been providing the Services in accordance with the Contract.
- 21.3 On termination of the Contract for any reason whatsoever, the Contractor shall (subject to condition 22.5) be entitled to be paid the value of the Contract Price properly due under the Contract for Goods Delivered and Services completed by the date of termination (to the extent not already paid to the Contractor in accordance with the terms of the Contract). The Employer shall have no liability to the Contractor for any loss of profit, loss of contracts, loss of revenue or any indirect or consequential losses arising out of or in connection with such termination.
- 21.4 It is acknowledged and agreed between the parties that TUPE does not apply to the transfer of the Services under the Contract.

- 21.5 Notwithstanding clause 21.4, the Contractor undertakes to hold harmless and fully indemnify and keep the Employer indemnified against any and all losses which the Employer and any relevant sub-contractor may incur arising out of or in connection with:
- (a) any claim or allegation relation to the employment and/or dismissal of any person whose employment transfers or is alleged to transfer to the Employer and or a relevant sub-contractor by virtue of TUPE; and
  - (b) any failure on the part of the Contractor to comply with Regulation 11 and/or 13 of TUPE.

21.6 The Contractor warrants that there is no organised grouping of employees whose principal purpose is carrying on the activities of the Services on behalf of the Contractor.

## **22. General**

### **22.1 Assignment and subcontracting**

- (a) The Contract shall be binding on and enure for the benefit of the successors in title of the parties but, except as set out in condition 22.1(b), shall not be assigned or sub-contracted by any party without the prior written consent of the other; in addition, a party to the Contract may not hold the benefit of the Contract or any rights under it on trust for any third party or parties.
- (b) The Employer may assign the benefit of the Contract to any other member of the RWE Group.

### **22.2 Variation**

No purported variation of the Contract shall be effective unless it is in writing and signed by or on behalf of each of the parties.

### **22.3 Releases and Waivers**

- (a) Any party may, in whole or in part, release, compound, compromise, waive or postpone, in its absolute discretion, any liability owed to it or right granted to it in the Contract by any other party or parties without in any way prejudicing or affecting its rights in respect of that or any other liability or right not so released, compounded, compromised, waived or postponed.
- (b) No single or partial exercise, or failure or delay in exercising any right, power or remedy by any party shall constitute a waiver by that party of, or impair or preclude any further exercise of, that or any right, power or remedy arising under the Contract or otherwise.
- (c) The rights, powers and remedies conferred on any party by the Contract and the remedies available to any party are cumulative and are additional to any right, power or remedy which it may have under general law or otherwise.

### **22.4 Costs and Expenses**

Each party shall bear its own costs and expenses incurred in the preparation, execution and implementation of the Contract.

### **22.5 Set off**

The Employer may at any time set off any liability of the Contractor to the Employer against any liability of the Employer to the Contractor howsoever arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency of its denomination. Any exercise by the Employer of its rights under this condition shall be without prejudice to any other rights or remedies available to the Employer under the Contract or otherwise.

### **22.6 Confidentiality**

- (a) Except as referred to in condition 22.6(b), each party shall treat as strictly confidential and shall not disclose to any third party any information received or obtained as a result of entering into or performing the Contract which relates to the provisions or subject matter of the Contract, or the negotiations relating to the Contract.

- (b) Any party may disclose information which would otherwise be confidential if and to the extent that:
  - (i) it is required to do so by law or any securities exchange or regulatory or governmental body to which it is subject wherever situated;
  - (ii) it considers it necessary to disclose the information to its professional advisers, auditors and bankers provided that it does so on a confidential basis;
  - (iii) the information has come into the public domain through no fault of that party;
  - (iv) the information was previously disclosed to it without any obligation of confidence; or
  - (v) each party to whom it relates has given its consent in writing.

## 22.7 **No partnership**

Nothing in the Contract shall create, or be deemed to create, a partnership between the parties.

## 22.8 **Entire agreement**

The Contract sets out the entire agreement and understanding between the parties in respect of the subject matter of the Contract.

## 22.9 **Acknowledgement**

The Contractor acknowledges that it has entered into the Contract in reliance only upon the representations, warranties and promises specifically contained or incorporated in the Contract and, save as expressly set out in the Contract, the Employer shall have no liability in respect of any other representation, warranty or promise made prior to the date of the Contract unless it was made fraudulently.

## 22.10 **Invalidity**

To the extent that any provision of the Contract is found by any court or competent authority to be invalid, unlawful or unenforceable in any jurisdiction, that provision shall be deemed not to be a part of the Contract and it shall not affect the enforceability of the remainder of the Contract nor shall it affect the validity, lawfulness or enforceability of that provision in any other jurisdiction.

## 22.11 **Exclusion of third party rights**

No express term of the Contract or any term implied under it is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

## 23. **Notices**

23.1 Any notice to be given to a party under the Contract shall be in writing (which excludes email) signed by or on behalf of the party giving it, and shall be delivered personally, or sent by recorded delivery, to the address of the party set out in the Purchase Order. Either party may, by a notice given in accordance with this condition 23, change its address for the purposes of this condition.

23.2 A notice shall be deemed to have been served:

- (a) at the time of delivery if delivered personally; or
- (b) 2 Business Days after posting in the case of an address in the United Kingdom and 5 Business Days after posting for any other address.

## 24. **Data protection**

24.1 The Contractor warrants that it shall comply with its obligations under the Data Protection Act 1998.

24.2 The Contractor shall procure permission from all its employees, sub-contractors and agents engaged in the provision of the Services for the Employer to create and maintain records of each such personnel containing details of:

- (a) each individual's name and any other relevant personal details; and
  - (b) details of relevant training that each individual has had (including but not limited to that training provided by or on behalf of the Employer).
- 24.3 The Contractor shall obtain the explicit, freely given and informed consent of its agents, employees and sub-contractors engaged in the provision of the Services to the processing of their data in accordance with the terms of conditions 9.3 - 9.5.
- 24.4 The Employer warrants that it shall comply with the Data Protection Act 1998 in respect of the records referred to in condition 24.2.

## **25. Alternative dispute resolution**

- 25.1 Subject to condition 25.4 and without prejudice to either party's rights under condition 25.3, if a dispute arises out of or in connection with the Contract, the parties shall:
- (a) within 21 days of written notice of the dispute being received by the receiving party in good faith seek to resolve the dispute through negotiations between the parties' senior representatives who have the authority to settle it;
  - (b) not pursue any other remedies available to them until at least two months after the first written notification of the dispute.
- 25.2 The appointed representatives shall use all reasonable endeavours to resolve the dispute.
- 25.3 If the dispute is not resolved in accordance with this condition, either party may propose to the other in writing that the matter be referred to a non-binding mediation. If the parties are unable to agree on a mediator either party may apply to the Centre for Dispute Resolution (CEDR) to appoint one.
- 25.4 Nothing in this condition shall prevent either party from having recourse to a court of competent jurisdiction for the sole purpose of seeking a preliminary injunction or such other provisional judicial relief as it considers necessary to avoid irreparable damage.

## **26. Governing Law**

- 26.1 The Contract and any dispute, claim or obligation (whether contractual or non-contractual) arising out of or in connection with it shall be governed by the laws of England and Wales.
- 26.2 Subject to condition 25, the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) arising out of or in connection with the Contract.

## **27. System Access**

- 27.1 During and in the course of furnishing the Services, the Contractor shall: (i) not access, and shall not permit anyone to access, the Employer's computing systems without the Employer's express written authorisation; (ii) employ anti-virus procedures when appropriate; (iii) comply with the Employer's information security policies and procedures; (iv) ensure that it has in place a plan approved by the Employer in relation to ensuring business continuity both in relation to general day-to-day service disruptions and disaster recovery affecting either the Contractor's, the Employer's or the RWE Group's business.
- 27.2 Where authorised by the Employer in advance, the Employer may provide the Contractor with remote access to its computing systems. Where the Employer provides such access the Contractor will comply with the Employer's IT policies and procedures, including those relating to access to its systems (which will be provided on request).
- 27.3 The Contractor shall use any remote access only to provide Services. The Employer may terminate the Contractor's access to the Employer's systems at any time without notice to the Contractor. The Contractor shall immediately notify the Employer of any actual or threatened security breach in or unauthorised access to the Employer's systems.