



Narec General Conditions of Contract for Goods

1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions, unless the context requires otherwise, the following words and phrases shall have the following meanings:

"Affiliates"	any of Narec's subsidiaries (direct or indirect) from time to time (within the meaning of the Companies Act 2006) and any of their respective officers, employees, agents or subcontractors;
"Conditions"	these general conditions of contract for goods;
"Contract"	the Order and the Seller's acceptance of the Order;
"Contract Manager"	the official of Narec, or other person employed in that capacity, appointed by Narec to act on its behalf for the purpose of managing the Contract;
"Goods"	any goods agreed in the Contract to be bought by Narec from the Seller (including any part or parts of them);
"Narec"	National Renewable Energy Centre Limited, Eddie Ferguson House, Ridley Street, Blyth, Northumberland, NE24 3AG or any of its Affiliates if they are instead the party issuing the Order;
"Order"	Narec's written instruction to buy the Goods, incorporating these Conditions;
"Seller"	the person, firm or company who accepts Narec's Order;
"Sub-Contractor"	any person, firm or company under contract to the Seller to perform work or provide professional services and/or supply goods, plant or equipment relating to the Contract.

1.2 Unless the context requires otherwise, the singular shall include the plural and vice versa and the masculine shall include the feminine and vice versa.

1.3 Headings are inserted for convenience only and shall not affect the interpretation of these Conditions.

1.4 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

2. APPLICATION OF TERMS

- 2.1 Subject to any variation under **Condition 2.4**, these Conditions are the only conditions upon which Narec is prepared to deal with the Seller and they shall govern the Contract to the entire exclusion of all other terms or conditions.
- 2.2 Each Order for Goods by Narec from the Seller shall be deemed to be an offer by Narec to buy Goods subject to these Conditions and no Order shall be accepted until the Seller either expressly by giving notice of acceptance, or impliedly by fulfilling the Order, in whole or in part accepts the offer.
- 2.3 No terms or conditions endorsed upon, delivered with or contained in the Seller's quotation, acknowledgement or acceptance of order, specification or similar document shall form part of the Contract and the Seller waives any right which it otherwise might have to rely on such terms and conditions.
- 2.4 These Conditions apply to all Narec's purchases and any variation to these Conditions shall have no effect unless expressly agreed in writing and signed by the Contract Manager.

3. QUALITY AND DEFECTS

- 3.1 The Goods shall be of the best available design, of the best quality, material and workmanship, be without fault and conform in all respects with the Order and specification and/or patterns supplied or advised by Narec to the Seller or otherwise agreed in writing by Narec in conformity with **Condition 2**.
- 3.2 Narec's rights under these Conditions are in addition to the statutory conditions implied in favour of Narec by the Sale of Goods Act 1979.
- 3.3 At any time prior to delivery of the Goods to Narec, Narec shall have the right to inspect and test the Goods at all times.
- 3.4 If the results of such inspection or testing cause Narec to be of the opinion that the Goods do not conform or are unlikely to conform with the Order or to any specifications and/or patterns supplied or advised by Narec to the Seller or otherwise agreed in writing by Narec in conformity with **Condition 2**, Narec shall inform the Seller and the Seller shall immediately take such action as is necessary to ensure conformity and in addition Narec shall have the right to require and witness further testing and inspection.
- 3.5 Notwithstanding any such inspection or testing, the Seller shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Seller's obligations under the Contract.
- 3.6 If any of the Goods fail to comply with the provisions set out in this **Condition 3** Narec shall be entitled to avail itself of any one or more remedies listed in **Condition 14**.

4. **INDEMNITY**

The Seller shall keep Narec indemnified in full against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by Narec as a result of or in connection with:

- 4.1.1 defective workmanship, quality or materials;
- 4.1.2 an infringement or alleged infringement of any intellectual property rights caused by the use, manufacture or supply of the Goods; and
- 4.1.3 any claim made against Narec in respect of any liability, loss, damage, injury, cost or expense sustained by Narec's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Contract by the Seller.

5. **DELIVERY**

- 5.1 The Goods shall be delivered, carriage paid, to Narec's place of business or to such other place of delivery as is agreed by Narec in writing prior to delivery of the Goods. The Seller shall off-load the Goods at its own risk as directed by Narec.
- 5.2 The date for delivery shall be specified in the Order, or if no such date is specified then delivery shall take place within 28 days of the Order.
- 5.3 The Seller shall invoice Narec upon, but separately from, despatch of the Goods to Narec.
- 5.4 The Seller shall ensure that each delivery is accompanied by a delivery note which shows, among other things, the Order number, date of Order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.
- 5.5 Time for delivery shall be of the essence.
- 5.6 Unless otherwise stipulated by Narec in the Order, deliveries shall only be accepted by Narec in normal business hours.
- 5.7 If the Goods are not delivered on the due date then, without prejudice to any other rights which it may have, Narec reserves the right to:
 - 5.7.1 cancel the Contract in whole or in part;
 - 5.7.2 refuse to accept any subsequent delivery of the Goods which the Seller attempts to make;

- 5.7.3 recover from the Seller any expenditure reasonably incurred by Narec in obtaining the Goods in substitution from another supplier; and
- 5.7.4 claim damages for any additional costs, loss or expenses incurred by Narec which are in any way attributable to the Seller's failure to deliver the Goods on the due date.
- 5.8 If the Seller requires Narec to return any packaging material to the Seller that fact must be clearly stated on any delivery note delivered to Narec and any such packaging material shall only be returned to the Seller at the cost of the Seller.
- 5.9 Where Narec agrees in writing to accept delivery by instalments the Contract shall be construed as a single contract in respect of each instalment. Nevertheless failure by the Seller to deliver any one instalment shall entitle Narec at its option to treat the whole Contract as repudiated.
- 5.10 If the Goods are delivered to Narec in excess of the quantities ordered Narec shall not be bound to pay for the excess and any excess shall be and shall remain at the Seller's risk and shall be returnable at the Seller's expense.
- 5.11 Narec shall not be deemed to have accepted the Goods until it has had 240 days to inspect them following delivery. Narec shall also have the right to reject the Goods as though they had not been accepted for 240 days after any latent defect in the Goods has become apparent.

6. **RISK/PROPERTY**

The Goods shall remain at the risk of the Seller until delivery to Narec is complete (including off-loading and stacking) when ownership of the Goods shall pass to Narec.

7. **PRICE**

- 7.1 The price of the Goods shall be stated in the Order and unless otherwise agreed in writing by Narec shall be exclusive of value added tax but inclusive of all other charges.
- 7.2 No variation in the price nor extra charges shall be accepted by Narec.

8. **PAYMENT**

- 8.1 Narec shall pay the price of the Goods within 60 days of delivery of the Goods to Narec, but time for payment shall not be of the essence of the Contract.
- 8.2 Without prejudice to any other right or remedy, Narec reserves the right to set off any amount owing at any time from the Seller to Narec against any amount payable by Narec to the Seller under the Contract.
- 8.3 The Seller is not entitled to suspend deliveries of the Goods as a result of any sums being outstanding.

9. **CORRUPT GIFTS AND PAYMENTS OF COMMISSION**

9.1 The Seller shall not receive or agree to receive from any person, or offer or agree to give to any person, or procure for any person any gift or consideration of any kind as an inducement or reward for doing or not doing anything, or for showing favour or disfavour to any person in relation to the Contract or any other contract with Narec.

9.2 The Seller shall not conspire with any person to do any of the acts mentioned in this **Condition 9**.

9.3 Any breach by the Seller of this Condition shall entitle Narec to terminate the Contract and/or seek the remedies referred to in **Condition 13** and recover from the Seller the amount of value of any such gift, consideration or commission. The decision of Narec in relation to this Condition shall be final and conclusive.

10. **CONFIDENTIALITY AND DISCLOSURE OF INFORMATION**

10.1 The Seller shall:

10.1.1 shall treat all Confidential Information as confidential and safeguard it accordingly; and

10.1.2 shall not disclose any Confidential Information to any other person without the prior written consent of Narec, except to such persons and to such extent as may be reasonably necessary for the proper performance of the Contract or except where disclosure is otherwise expressly permitted by the provisions of the Contract.

10.2 The Seller shall take all necessary precautions to ensure that all Confidential Information obtained or received by it in connection with the Contract:

10.2.1 is given only to such staff and professional advisors or consultants engaged to advise it in connection with the Contract as is strictly necessary for the performance of the Contract and only to the extent necessary for the performance of the Contract; and

10.2.2 is treated as confidential and not disclosed (without prior approval) or used by any staff or such professional advisors or consultants otherwise than for the purposes of the Contract.

10.3 The Contractor shall ensure that staff or its professional advisors or consultants are aware of the Seller's confidentiality obligations under this Contract prior to any disclosure to them of Confidential Information.

10.4 The provisions of **Conditions 10.1 to 10.3** shall not apply to any Confidential Information received by the Seller

10.4.1 which is or becomes public knowledge (otherwise than by breach of this **Condition 10**);

- 10.4.2 which was in the possession of the Seller, without restriction as to its disclosure, before receiving it from Narec;
 - 10.4.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
 - 10.4.4 is independently developed without access to the Confidential Information; or
 - 10.4.5 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure.
- 10.5 No information regarding the Services being provided under the Contract or facilities or consent to photograph or film shall be given or permitted by the Seller except with prior written permission of Narec, to whom any press or other enquiry or any such matter should be referred.

11. **DISCRIMINATION**

The Seller shall not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2010, Race Relations Act 1996, and the Sex Discrimination Act 1995 and shall take all reasonable steps to ensure that all servants, employees or agents of the Seller and all Sub-Contractors do not unlawfully discriminate. This **Condition 11** shall not in any way relieve the Seller of his general obligations to comply with any legislative and statutory requirements as provided in **Condition 23**.

12. **NAREC'S PROPERTY**

Materials, equipment, tools, dies, moulds, copyright, design rights or any other forms of intellectual property rights in all drawings, specifications and data supplied by Narec to the Seller or not so supplied but used by the Seller specifically in the manufacture of the Goods shall at all times be and remain the exclusive property of Narec but shall be held by the Seller in safe custody at its own risk and maintained and kept in good condition by the Seller until returned to Narec and shall not be disposed of other than in accordance with Narec's written instructions, nor shall such items be used otherwise than as authorised by Narec in writing.

13. **TERMINATION**

- 13.1 Narec shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Seller written notice whereupon all work on the Contract shall be discontinued and Narec shall pay to the Seller fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss.
- 13.2 Narec shall have the right at any time by giving notice in writing to the Seller to terminate the Contract forthwith if:

- 13.2.1 the Seller commits a material breach of any of the terms and conditions of the Contract;
 - 13.2.2 any distress, execution or other process is levied upon any of the assets of the Seller;
 - 13.2.3 the Seller has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Seller or notice of intention to appoint an administrator is given by the Seller or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Seller or for the granting of an administration order in respect of the Seller, or any proceedings are commenced relating to the insolvency or possible insolvency of the Seller;
 - 13.2.4 the Seller ceases or threatens to cease to carry on its business; or
 - 13.2.5 the financial position of the Seller deteriorates to such an extent that in the opinion of Narec the capability of the Seller adequately to fulfil its obligations under the Contract has been placed in jeopardy.
- 13.3 The termination of the Contract, however arising, shall be without prejudice to the rights and duties of Narec accrued prior to termination. The Conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.
14. **CONSEQUENCES OF TERMINATION**
- 14.1 Where the Contract is terminated under **Condition 13**, without prejudice to any other rights and remedies of Narec the following provisions shall apply:
- 14.1.1 any sum due or accruing from Narec to the Seller may be withheld or reduced by such amount as Narec considers reasonable and appropriate in the circumstances to reflect any such loss, damage or additional cost suffered by Narec as a result of such termination;
 - 14.1.2 Narec may make all arrangements which are in its view necessary to procure the orderly completion of the Contract including the letting of another contract.
- 14.2 On termination of the Contract, the Seller shall immediately deliver to Narec:
- 14.2.1 all copies of information and data provided by Narec to the Seller for the purposes of the Contract. The Seller shall certify to Narec that it has not retained any copies

of such information or data, except for one copy which the Seller may use for audit purposes only and subject to the confidentiality obligations in **Condition 10**; and

14.2.2 all specifications, programs (including source code) and other documentation comprised in the deliverables and existing at the date of such termination, whether or not then complete. All Intellectual Property in such materials shall automatically pass to Narec (to the extent they have not already done so), who shall be entitled to enter the premises of the Seller to take possession of them.

14.3 If the Seller fails to fulfil its obligations under this **Condition 14** then Narec may enter the Seller's premises and take possession of any items which should have been returned under it. Until they have been returned or repossessed, the Seller shall be solely responsible for their safe keeping.

15. **REMEDIES**

Without prejudice to any other right or remedy which Narec may have, if any Goods are not supplied in accordance with, or the Seller fails to comply with, any of the terms of the Contract Narec shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods have been accepted by Narec:

15.1.1 to rescind the Order;

15.1.2 to reject the Goods (in whole or in part) and return them to the Seller at the risk and cost of the Seller on the basis that a full refund for the Goods so returned shall be paid forthwith by the Seller;

15.1.3 at Narec's option to give the Seller the opportunity at the Seller's expense either to remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;

15.1.4 to refuse to accept any further deliveries of the Goods but without any liability to the Seller;

15.1.5 to carry out at the Seller's expense any work necessary to make the Goods comply with the Contract; and

15.1.6 to claim such damages as may have been sustained in consequence of the Seller's breach or breaches of the Contract.

16. **MERGER, TAKE-OVER OR CHANGE OF CONTROL**

The Seller shall forthwith inform Narec in writing of any proposal or negotiations which may or will result in a merger, take-over, change of control, change of name or status of the Seller or the Seller (being a company as defined in the Companies Act 2006) shall inform Narec of any such change as defined in Section 416 of the Income and Corporation Taxes Act 1988. A change of control shall mean in the case of a partnership if as a result of the proposal more than 50% of the partners in any firm prior to the change will cease to be 50%

or more of the partners in the firm. The Seller shall comply with any request by Narec for information arising from this **Condition 16**.

17. **ASSIGNMENT AND SUB-CONTRACTORS**

17.1 The Seller shall not be entitled to sub-contract, transfer, assign, charge or otherwise dispose of the Contract or any part of it without the prior written consent of Narec.

17.2 Narec may assign the Contract or any part of it to any person, firm or company.

17.3 The Seller shall ensure that any Sub-Contractor complies with the Conditions so far as they are applicable. Any sub-contract shall not relieve the Seller of its obligations under the Contract.

18. **INSURANCE**

18.1 The Seller shall effect and maintain insurance necessary to cover the Seller and all his Sub-Contractors for the risks under the Contract.

18.2 The Seller shall, whenever required by Narec, produce to Narec certificates signed on behalf of the Seller and its Sub-Contractor's insurers stating that insurance complying with the requirements set out in **Condition 18** is in force and the period for which it has been taken out.

19. **RECOVERY OF SUMS DUE**

19.1 Wherever under the Contract any sums of money shall be recoverable from or payable:

19.1.1 by the Seller to Narec, the same may be deducted at the sole option of Narec from any sum then due, or which at any later time may become due, to the Seller under the Contract or under any contract with Narec or any of its Affiliates;

19.1.2 by Narec to the Seller, the same shall be paid by the Seller free of any set-off or counterclaim (save as provided above).

20. **DRAWINGS, SPECIFICATION, SOFTWARE, DESIGNS AND INTELLECTUAL PROPERTY**

20.1 Any drawings, specification, software, designs or other data (including working documents, maps and photographs) completed or provided in connection with the Contract shall become or, as the case may be, remain the property of Narec and be delivered up to Narec on completion or termination of the Contract. Where Narec has agreed to accept modern storage media, drawings and other documents shall be supplied by the Seller in the agreed form.

20.2 All Intellectual Property arising from the Contract shall vest in and be the absolute property of Narec, and accordingly, in consideration of the mutual undertakings under the Contract, the Seller hereby assigns to Narec with full title guarantees all such Intellectual Property therein and all for the full term during which the said rights and any renewals of extensions shall subsist.

- 20.3 The Seller agrees to execute any documents necessary to assign to Narec all right, title and interest in the Intellectual Property referred to above and to do all such acts and things as Narec may determine are necessary or desirable in connection with any such assignment.
- 20.4 The Seller shall indemnify and hold harmless Narec against any damages (including costs) that may be awarded to or agreed to be paid to any third party in respect of any claim or action that the Intellectual Property referred to above infringe the intellectual property rights of any third party (an "**Intellectual Property Infringement**").
- 20.5 In the event of an Intellectual Property Infringement the Seller shall forthwith make without charge to Narec such alterations, modifications, or adjustments to the Intellectual Property and/or the Goods as shall be necessary to make them non-infringing.

21. **RETENTION OF DOCUMENTATION**

The Seller shall retain and produce when required such accounts, documents (including working documents) and records as Narec, or the Contract Manager, may request, in connection with the Contract, at any time during the Contract and for a period of 2 years from the date of expiry or termination or such longer period as may be agreed between Narec and the Contractor in writing and afford such facilities as Narec may reasonably require for his representatives to visit the Contractor's premises and examine the records under this **Condition 21**.

22. **ROYALTIES AND LICENCE FEES**

The Seller shall ensure that all royalties, licence fees or similar expenses in respect of all Intellectual Property used in connection with the Contract, have been paid and are included within the Contract Price. The Seller shall indemnify Narec from and against all claims and proceedings, which may be made or brought against Narec and any damages, costs and expenses incurred by Narec in respect of such supply or use.

23. **STATUTORY OBLIGATIONS**

- 23.1 The Seller shall comply with all legislation relating directly or indirectly to the provision of the Goods.
- 23.2 The Seller will comply with the above legislation in so far as it places obligations upon Narec in the performance of its obligations under the Contract.
- 23.3 The Seller notes particularly that Narec may be required to provide information relating to the Contract or the Seller to a person in order to comply with its obligations under these provisions.

24. **FORCE MAJEURE**

Narec reserves the right to defer the date of delivery or payment or to cancel the Contract or reduce the volume of the Goods ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of Narec including,

without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

25. **GENERAL**

- 25.1 Each right or remedy of Narec under the Contract is without prejudice to any other right or remedy of Narec whether under the Contract or not.
- 25.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 25.3 Failure or delay by Narec in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 25.4 Any waiver by Narec of any breach of, or any default under, any provision of the Contract by the Seller shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 25.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 25.6 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English Law, and the parties submit to the exclusive jurisdiction of the English courts although Narec may serve proceedings or take enforcement action in any other jurisdiction.