

Minor capital works – Conditions of purchase



1 Definitions

“Conditions”	means these DMC minor capital works conditions of purchase.
“Contract”	means the contract between the Purchaser and the Contractor for the provision of the Goods and/or Works and/or Services incorporating the Purchase Order and these Conditions or the terms and conditions of the framework agreement between the Purchaser and Contractor (as applicable).
“Contractor”	means the person or company identified as “Vendor” in the Purchase Order.
“Goods”	means the, goods materials, products, equipment and to the extent applicable computer software and other intellectual property on any specified media (or any part of them) specified in the Purchase Order.
“Intellectual Property Rights”	means all copyright and rights in the nature of copyright, design rights, patents, trade marks, database rights, applications for any of the above, moral rights, rights in confidential information, know-how, domain names and any other intellectual or industrial property rights (and any licences in connection with any of the same) whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world.
“Price”	means the price for the Goods and/or Works and/or Services stated in the Purchase Order.
“Purchase Order”	means the document entitled ‘purchase order’ issued by Purchaser, setting out the Purchaser’s requirements for the provision of Goods and/or Works and/or Services.
“Purchaser”	means Thames Water Utilities Limited.
“Services”	means the services to be provided as set out on the Purchase Order or implied as being necessary to complete the provision of the Goods.
“Site”	means the place or places where the Contractor is required to enter to deliver the Goods and/or undertake some or all of the Works and/or Services.
“Works”	means the works to be provided as specified in the Purchase Order, including all inspections, surveys, excavation of trial holes, drilling of boreholes, demolition and construction of any structure above or below ground or provision and installation or removal of any mechanical or electrical plant or machinery. The term ‘Works’ shall include any structure, plant or machinery so constructed or provided.

Unless the context otherwise expressly requires, references to “including” or “includes” shall be deemed to have the words “without limitation” inserted after them.

2 Offer and Acceptance

- 2.1 The Purchase Order together with these Conditions or (where the Purchase Order is issued under a framework agreement between the Purchaser and the Contractor) the terms and conditions of the framework agreement (as applicable) shall constitute an offer by the Purchaser to purchase Goods and/or Works and/or Services from the Contractor in accordance with these Conditions or the terms and conditions of the framework agreement (as applicable) and shall be deemed to have been accepted on receipt of an unconditional acceptance from the Contractor, or, where no such acceptance is received, on the commencement of the provision the Goods and/or Works and/or Services.
- 2.2 These Conditions shall apply to the Purchase Order except where the Purchase Order is issued under a framework agreement between the Purchaser and the Contractor whereupon the terms and conditions of the framework agreement shall apply to the Purchase Order. In the event of any conflict between the terms of the Purchase Order and these Conditions or the framework agreement (as applicable), the terms of these Conditions or the framework agreement (as applicable) shall take precedence. The terms of Purchase Order and these Conditions or the framework agreement terms and conditions (as applicable) shall override any conflicting conditions proposed by the Contractor.



3 Quality and Performance

3.1 The Contractor shall carry out and complete:

- (a) the Services with all reasonable skill, care and diligence in accordance with best practice in the Contractor's industry, profession or trade; and
- (b) the Works diligently and with sound workmanship.

3.2 In carrying out and completing the Works and/or Services, the Contractor shall:

- (a) co-operate with the Purchaser and comply with all reasonable instructions of the Purchaser;
- (b) use personnel who are suitably skilled and experienced to perform tasks assigned to them and in sufficient number to ensure that the Contractor's obligations are fulfilled in accordance with the Contract;
- (c) provide all equipment, tools and vehicles and such other items as are required to ensure that the Contractor's obligations are fulfilled in accordance with the Contract;
- (d) obtain and at all times maintain all necessary licences and consents; and
- (e) not do or omit to do anything which may cause the Purchaser to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business.

3.3 The Contractor shall ensure that the Goods, deliverables, and materials supplied and/or used in the delivery of the Works and/or Services:

- (a) correspond with their description and any applicable Goods specification;
- (b) are free from encumbrances at the time of delivery and are of satisfactory quality and are fit for the purpose for which, to the knowledge or reasonable belief of the Contractor, they are required and in this respect the Purchaser relies on the Contractor's skill and judgment; and
- (c) are free from defects in workmanship, installation and design and remain so for 12 months after delivery or installation (whichever is the later);

3.4 The Contractor shall ensure that the Works, Services and/or Goods, deliverables, and materials supplied and/or used in the delivery of the Works and/or Services comply with all applicable laws, regulations, regulatory requirements and codes of practice of any jurisdiction, as amended and in force from time to time, including those relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods and all relevant ISO and British Standards and if imported from outside the European Union, carry the appropriate CE marking;

3.5 The Contractor shall not substitute alternative Goods or carry out alternative Works and/or Services, except as directed in writing by a duly authorised representative of the Purchaser.

3.6 The Contractor shall be responsible for the correctness and completeness of the information it supplies, and shall be liable for the rectification (including the cost thereof) of any faults arising from incorrect or incomplete information.

4 Property and Risk

4.1 Property and risk in the Goods and materials shall remain with the Contractor until they are delivered to the Site(s) specified in the Purchase Order. Every delivery shall be accompanied by a delivery note in duplicate carrying full particulars of the Goods and materials and the Purchase Order number.

4.2 When the Purchaser makes a payment to the Contractor prior to receipt of the Goods, property in the Goods shall pass to the Purchaser, but risk in the Goods shall remain with the Contractor until delivery is complete.

4.3 Notwithstanding the provisions of Clause 4.2, the Purchaser's signature on a delivery note and the acceptance of Goods and materials on delivery shall not prevent the Purchaser from subsequently rejecting the Goods and materials. For a period of 12 months after the delivery of any Goods and materials, the Contractor shall be responsible for correcting any Goods and materials found not to be in accordance with the Purchase Order or found to have been defective in any way at the time of delivery or installation (if later), including all costs reasonably incurred by the Purchaser in remedying any such deficiency which is not remedied promptly by the Contractor.



5 Price

- 5.1 The Contractor shall be deemed to have satisfied himself as to the correctness and sufficiency of the Price for the provision of Goods and/or Works and/or Services specified in the Purchase Order (which shall be exclusive of VAT).
- 5.2 The Price stated on the Purchase Order shall be inclusive of all costs and shall remain fixed. No increase in any Price or any additional sum will apply unless the Purchaser has given its prior written agreement.

6 Payment

- 6.1 The Contractor shall address invoices to Thames Water Utilities Limited and include on each invoice the Contractor's full company name, company number and address. The Contractor shall send invoices to the "Invoice To" address shown on the Purchase Order. Value Added Tax (VAT) and the rate of VAT charged shall be shown separately on invoices together with the Contractor's VAT registration number where applicable. Non-compliant invoices may be returned to the Contractor. Invoices which qualify for a cash discount for early payment shall be clearly marked with the appropriate details.
- 6.2 For Contracts not including Works (i.e. Contracts for the supply of Goods or for the provision of Goods and Services), or for Contracts including Works, where the Works are to be completed in less than 45 days, invoices shall be issued following the despatch of the Goods or the completion of the Services and/or Works and payment is due on the last day of the second month following the date of receipt of a compliant invoice (unless otherwise expressly stated on the Purchase Order).
- 6.3 For Contracts including Works, where the Works are to be completed in 45 days or more, the Contractor shall submit to the Purchaser at monthly intervals commencing within one month after commencing the Works an invoice showing the amount which in his opinion he is entitled to and the basis on which such amount is calculated having regard to the amount of work carried out to the date of the invoice.
- 6.4 If the Purchaser fails to pay in accordance with these Conditions he shall pay the Contractor interest upon any overdue amount at a rate per annum equivalent to 2% above the base rate for the time being of National Westminster Bank plc. The Contractor acknowledges that by entering into a Contract in accordance with these Conditions the payment date set out in these Conditions or in the Purchase Order shall not be considered grossly unfair to the Contractor and accordingly sub-section 3B of the Late Payment of Commercial Debts (Interest) Act 1998 (as amended) Regulations 2013 shall not apply.
- 6.5 If as a result of any audit or otherwise, an error is discovered in the amount paid to the Contractor, such error shall be corrected in the next invoice issued by the Contractor. If such error is discovered following the making of the last payment the error shall be notified by one party to the other party as soon as possible setting out the correction to be made and the basis on which it has been calculated. The amount to be paid to or from the Contractor shall, if such notification is not challenged within twenty-eight days, become due for payment twenty-eight days after the date of such notification with the final date for payment being forty-two days after the date of notification. If such notification is challenged the parties shall attempt to agree any amount to be paid. The agreed amount shall be due fourteen days after the date of agreement, with the final date for payment being the last day of the first calendar month after the month in which agreement is reached. If the parties fail to agree the dispute may be referred to the courts in accordance with Clause 22 below.

7 Access and Security

- 7.1 The Contractor shall be allowed entry to Sites as necessary and as agreed in writing with the Purchaser. The Contractor may not have exclusive use of Sites and shall accommodate other contractors and the Purchaser's employees as required by the Purchaser. The Contractor shall conform to all reasonable requests of the Purchaser concerning access and conduct at any Site. Unless otherwise agreed between the parties no work shall be executed on the Site during the night or on Saturdays, Sundays or Public Holidays.
- 7.2 The Contractor shall, upon acceptance of the Purchase Order, notify the Purchaser of the name and contact telephone number of the Contractor's representative who shall supervise delivery of the Goods and/or Works and/or Services and receive all instructions under the Contract from the Purchaser. Employees of the Purchaser shall not be engaged as employees or agents of the Contractor in connection with the delivery of the Goods and/or Works and/or Services.



8 Health and Safety, CDM Regulations And COSHH Regulations

- 8.1 The Contractor shall not attempt to commence the provision of the Works and or Services on Site prior to the Purchaser issuing him with a TWOSA (Thames Water Operational Safety Authorisation) or other written authority to do so.
- 8.2 The Contractor shall be responsible for the health, safety and welfare of all persons who may be affected by his activities, and for the adequacy stability and safety of the Works. The Contractor, its sub-contractors, all employees, servants and agents shall in all dealings with the Purchaser comply with all relevant health and safety legislation, regulations and codes of practice and with the Purchaser's health & safety documents as are notified to the Contractor by the Purchaser from time to time. The Contractor shall comply with any reasonable request of any CDM Co-ordinator or Principal Contractor (if any) notified to him in accordance with the Construction (Design and Management) Regulations 2007 (CDM Regulations).
- 8.3 The Contractor, his sub-contractors, all employees, servants and agents shall observe their specific responsibilities contained in the Control of Substances Hazardous to Health (COSHH) Regulations, 2002 (as amended) which require that suitable and sufficient information is to be provided with appropriate Goods and products such that an assessment of their hazards can be made (e.g. Hazard Warning Data Sheets). If so required by the Purchaser the Contractor shall undertake the duties of Principal Contractor in accordance with the CDM Regulations.

9 Intellectual Property

- 9.1 The Contractor assigns to the Purchaser, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services (including copyright in all drawings reports and other documents and software prepared or developed by the Contractor specifically in the performance of the Contract). The Contractor shall, promptly at the Purchaser's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Purchaser may from time to time require for the purpose of securing for the Purchaser the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Purchaser under this Contract.
- 9.2 The Contractor shall on demand indemnify the Purchaser from and against all claims, demands, actions, awards, judgments, settlements, costs, expenses, liabilities, damages and losses (including all interest, fines, penalties, management time and legal and other professional costs and expenses) incurred by the Purchaser, its employees, officers, agents and contractors arising out of or in connection with any claim, demand or action alleging that the performance of the Services or the receipt or use of the Goods or implementing the outputs of the Services (including reports, design or cost estimate) has infringed any Intellectual Property Rights of a third party, provided always that the Purchaser shall give the Contractor notice as soon as reasonably practicable of any claim or action threatened or brought against the Purchaser and that the Purchaser shall permit the Contractor to conduct at his own expense, but in full consultation with the Purchaser as to the potential outcome, any action that may ensue together with all negotiations for a settlement of such claim or action.

10 Force Majeure

- 10.1 If the requirements of the Purchase Order are delayed or prevented by circumstances beyond the reasonable control of either party including but not limited to natural disaster, Government intervention, strike, lockout, delay by sub-contractors (but only where such delays are beyond the control of the sub-contractor concerned), performance of the Purchase Order shall be suspended. During such suspension the Purchaser shall be free to obtain from any source such Goods and/or Works and/or Services as it deems necessary and to cancel the Purchase Order in whole or in part by the like amount without incurring liability. Performance of the Purchase Order requirements will be resumed as soon as the circumstances causing the delay cease, except where the parties otherwise agree, or the Purchaser no longer requires the Goods and/or Works and/or Services having sourced similar Goods and/or Works and/or Services elsewhere in accordance with this Clause 10. The Purchaser shall pay for such Goods as have been delivered and/or such a sum as may be equitable in respect of Works and/or Services performed prior to suspension or cancellation.



11 Liability

11.1 The Contractor shall be responsible for and indemnify the Purchaser against claims resulting from any damage, loss (including theft) injury or death caused by the Contractor's employees, sub-contractors, servants and agents howsoever arising in connection with the Contract. Any resulting claims and costs shall be reduced proportionately to the extent that the Purchaser has been liable in law for the incident concerned. The Contractor shall at all times hold:

- (a) public liability insurance cover of not less than £10 million for each event or series of connected events against its liabilities to the Purchaser and to third parties; and
- (b) where design work and/or professional services are being performed, professional indemnity insurance with a minimum indemnity value of £1 million for any one incident (where a different professional indemnity insurance requirement is stated in the Purchase Order that requirement shall apply in place of that stated in this Clause 11.1(b)), such insurance to be maintained for six years after the expiry or termination of the Contract for any reason,

and shall produce to the Purchaser on request all relevant insurance policies and evidence of payment of current premiums. Such insurance shall contain an indemnity to principals clause.

11.2 Where a professional indemnity insurance requirement is stated in the Purchase Order, that requirement shall replace that stated in clause 11.1(b) above.

12 Termination

12.1 Without limiting its other rights or remedies, the Purchaser may terminate the Contract with immediate effect by giving written notice to the Contractor if:

- (a) the Contractor fails to provide the Goods and/or execute the Works and/or Services in accordance with the Contract and with due diligence, including compliance with the Purchaser's instructions, the Purchaser may give seven days' notice to correct the failure and should the Contractor fail to do so the Purchaser may thereafter terminate the Contract. The Contractor shall be liable for all additional costs incurred by the Purchaser in having the Works and or Services completed;
- (b) commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of receipt of notice in writing of the breach; or
- (c) The Contractor ceases or threatens to cease to trade (either in whole, or as to any part or division involved in the performance of the Contract); becomes insolvent; is unable to pay its debts as they fall due; has a receiver, administrative receiver, administrator or manager appointed of the whole or any part of its assets or business; makes any composition or arrangement with its creditors; or an order or resolution is made for the Contractor to be declared bankrupt or dissolved or to enter liquidation (other than for the purpose of solvent amalgamation or reconstruction); or takes or suffers any similar or analogous procedure to any of the events described in this Clause 12(c) in any jurisdiction.

12.2 Without limiting its other rights or remedies, the Purchaser may terminate the Contract at any time by giving the Contractor one month's written notice.

12.3 The Purchaser may at any time suspend or terminate performance of the Works and/or Services or the Contract for any reason including his own convenience and, in the case of suspension, subsequently order recommencement at a later date. The Contractor shall be reimbursed its reasonable costs and loss of profit thereby occasioned, limited to the Price of the Works and/or Services (as relevant).



13 Purchaser remedies

- 13.1 If the Contractor fails to deliver the Goods and/or perform the Work and/or Services in accordance with the Contract, the Purchaser shall, without limiting its other rights or remedies, have one or more of the following rights:
- (a) to recover from the Contractor any expenditure incurred by the Purchaser in obtaining substitute goods, works and/or services from a third party;
 - (b) to claim damages for any additional costs, loss or expenses incurred by the Purchaser which are in any way attributable to the Contractor's failure to provide Goods and/or Works or Services in accordance with the Contract.
 - (c) to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Contractor at the Contractor's own risk and expense;
 - (d) to terminate the Contract with immediate effect by giving written notice to the Contractor;
 - (e) to require the Contractor to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid); and
 - (f) to refuse to accept any subsequent delivery of the Goods which the Contractor attempts to make.
- 13.2 The Contractor shall comply with all times and periods stated in the Purchase Order and shall, if late in delivering the Goods or in completing the Works and/or Services as compared with such times or periods, be liable to pay liquidated damages to the Purchaser at a rate of 0.5% of the total amount payable under the Purchase Order for each week of delay or where a different rate, amount and or time period is specified in the in the Purchase Order that rate, amount and or time period shall apply instead PROVIDED ALWAYS that:
- (a) if the Contractor is delayed by a force majeure event in accordance with clause 10 (Force majeure) liquidated damaged will not apply; or
 - (b) if the Contractor is delayed by any action of the Purchaser he shall be allowed such extension of time for completing the Works and/or Goods and/or Services as is reasonable.
- While the Purchaser is exercising its rights to liquidated damages under this clause 13.2, it shall not be entitled to any of the remedies set out above in respect of the late delivery of Goods and/or Works and/or Services.
- 13.3 Where an alternative rate of liquidated damages is stated in the Purchase Order, that alternative rate shall replace the rate stated in clause 13.2 above.
- 13.4 The Contractor shall be liable for any loss or expense incurred by the Purchaser arising from delayed or incomplete delivery of Goods or failure to carry out the Works and/or Services with due diligence and reasonable care and skill in accordance with good industry practice (to be determined at the Purchaser's sole and absolute discretion) and/or diligently and with sound workmanship (as relevant) and any such loss or expense may be deducted from any monies which may become payable by the Purchaser to the Contractor, without prejudice to the Purchaser's right to recover the full amount of such loss and expense.
- 13.5 Where required to do so by the Purchaser, the Contractor shall re-perform any Services not carried out to the reasonable satisfaction of the Purchaser at no additional charge.

14 Confidentiality

- 14.1 The Contractor shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Contractor, its employees, agents or subcontractors, by the Purchaser and any other confidential information concerning the Purchaser's business or its products or its services which the Contractor may obtain including information obtained during visits to the Purchaser's sites or otherwise. The Contractor shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Contractor's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Contractor. The Contractor shall be responsible for the acts and omissions of its employees, agents and subcontractors as though they were the actions or omissions of the Contractor itself. This clause 14 shall survive termination of the Contract.



15 Audit

- 15.1 In order that the Purchaser may audit the Contractor's charges payable under a Purchase Order, the Contractor shall, for up to 36 months from the issue of the Contractor's invoice provide the Purchaser and/or its external auditors, on request, at no additional charge with:
- (a) reasonable access to and copies of all accounts and records of the Contractor showing the costs incurred by it in providing the Goods and/or Works and/or Services in accordance with this Purchase Order;
 - (b) records and supporting documentation detailing Purchaser-related gifts and hospitality costs, together with other non-attributable gifts and hospitality costs;
 - (c) reasonable access to all relevant information, premises, data, IT systems, employees, agents, sub-contractors, suppliers and assets at all locations from which obligations of the Contractor are being carried out; and
 - (d) all reasonable assistance in carrying out any such audit.

16 Variations

- 16.1 The Contractor shall not substitute materials or vary the Goods and/or Works or Services from that stated in the Purchase Order or referred to therein, except as directed in writing by the Purchaser.
- 16.2 The Purchaser may order variations to the Goods and/or Works or Services provided such variations shall not vary the general scope of the original Goods and/or Works or Services. If the Contractor considers that any such variation justifies an amendment to the Price, he shall so notify the Purchaser in writing and await confirmation that the amendment to the Price is agreed before undertaking the variation.

17 Fraud, Bribery and Corruption

- 17.1 The Contractor shall procure that all of its business activities in the UK or elsewhere are conducted in compliance with the Bribery Act 2010 and the laws and requirements of all countries or territories in which the Contractor operates, including all anti-bribery and corruptions laws. Nor shall the Contractor do or omit to do any act that will cause or lead the Purchaser to be in breach of the Bribery Act 2010 and/or any other applicable anti-bribery and/or anti-corruption laws or regulations. The Contractor shall not receive or agree to receive from any person or offer 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 showing favour or disfavour to any person in relation to this Purchase Order. Nor shall the Contractor conspire with any person to do any of the acts mentioned in this clause 17. Any breach by the Contractor of this clause 17 shall entitle the Purchaser to immediately terminate this Purchase Order and recover from the Contractor the amount of any loss resulting from such termination and recover from the Contractor the amount of value of any such gift, consideration or commission. Further, and without prejudice to the foregoing and/or any other remedy it may have, if the Purchaser has reasonable grounds to believe that any of the Contractor's personnel has committed a fraud or malpractice and/or otherwise acted in breach of the Bribery Act 2010, the Purchaser may, in its sole discretion:
- (a) suspend the delivery of the Goods and/or Works and/or Services; and/or
 - (b) withhold payment of any sums falling due to the Contractor. To the extent permitted by law the Contractor shall indemnify the Purchaser against any damages, losses, costs expenses (including but not limited to legal expenses) or other liabilities howsoever or wheresoever arising or incurred by the Purchaser as a result of any breach of this Clause 17 and/or any applicable laws, including but not limited to any breach of the Bribery Act 2010.

18 Assignment

- 18.1 The Contractor shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract (other than as required by the Purchase Order or as required for the supply of goods and materials forming part of the Goods) without the prior written consent of the Purchaser. The Purchaser may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent. Any agreement or requirement to subcontract any part of the Services shall not relieve the Contractor of any of his obligations hereunder.



19 Severance

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

20 Third Party Rights

20.1 A person who is not a party to this Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

21 Adjudication and Arbitration

21.1 The Institution of Civil Engineers' Adjudication Procedure (1997) shall form part of each Contract to which the Housing Grants, Construction and Regeneration Act 1996 (as amended) applies.

22 Law and jurisdiction

22.1 The Contract shall be governed by and construed according to the laws of England and Wales, and the parties hereto submit to the exclusive jurisdiction of the courts of England and Wales.