

# ARCA TERMS AND CONDITIONS – LOW VALUE CONTRACTS WITH A VALUE OF LESS THAN £25,000 GOODS/SERVICES/WORKS

# The Box

These terms and conditions govern the Supplier's provision of Goods/Services/Works with a value of less than £25,000 to Arca (Plymouth Limited) trading as "The Box" and are incorporated into the Contract.

## 1. GENERAL

1.1 Except where conditions 8 applies, these terms and conditions apply to every order placed by Arca with any individual, firm or company (the "Supplier"). No terms and Conditions in or attached to any catalogue, invoice or other sales literature or document or tender or dispatch/delivery note which are inconsistent with these terms and conditions or which purport to add to or vary them in any way shall not have any effect unless expressly accepted by ARCA in writing. In the absence of such written acceptance, the Supplier shall be deemed to have withdrawn or waived his terms and conditions and to contract solely on the basis of these terms and conditions and acceptance of goods and/or services shall not constitute or be deemed to constitute acceptance by ARCA of the Suppliers terms and conditions. The contract shall commence and the Supplier will be contractually bound upon the despatch of a purchase order by ARCA.

## 2. PURCHASE ORDER

2.1 The Supplier shall ensure that the goods and/or services shall:

- (a) correspond with the quantity, type, sort, quality and description set out in the purchase order;
- (b) meet the performance standards and dates specified on the purchase order or notified to the Supplier by ARCA;
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the supplier or made known to the supplier by ARCA;
- (d) where applicable, be free from defects in design, materials and workmanship and remain so for 12 months after delivery;
- (e) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

2.2 If the goods and/or services do not comply with the ARCA purchase order and/or instructions, ARCA is entitled at its option to either return the goods at the risk of the Supplier; reject the goods and/or services; require the Supplier to re-perform the services or accept the whole or part of the goods and/or services supplied by the Supplier but without prejudice to any rights of ARCA to claim

compensation or damages for loss or damage suffered as a result of failure to comply.

2.3 If the Supplier fails to deliver the Goods and/or perform the Services by the date specified in the purchase order ARCA shall be entitled to terminate the contract without notice.

## 3. PRICE, PAYMENT AND SET OFF

3.1 The price for the goods and/or services shall be the price set out in the purchase order and shall be inclusive but not limited to the costs of packaging, insurance and carriage of the goods and/or provision of the services. No extra charges shall be effective unless agreed by ARCA.

3.2 In respect of goods, the Supplier shall invoice ARCA on or at any time after completion of delivery. In respect of services, the Supplier shall invoice ARCA in full, monthly, or quarterly as agreed. The valid VAT invoice must contain the purchase order number and shall include such supporting information required by ARCA to verify the accuracy of the invoice.

3.3 ARCA will pay the invoiced amounts within 30 days of the date of a valid and correct invoice to a bank account nominated in writing by the Supplier.

3.4 ARCA may, without limiting its other rights or remedies, set off any amount owing to it by the Supplier against any amount payable by ARCA to the Supplier.

## 4. INDEMNITY AND INSURANCE

The Supplier shall hold and keep ARCA indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by ARCA due to or arising out of the performance of the contract or any breach by the Supplier of these terms and conditions or any term or obligation implied by law or any statutory provision that may be in force from time to time.

The Supplier shall maintain in force for the duration of the Purchase Order, with a reputable insurance company, insurance to provide as a minimum:

- i) *Public liability insurance with a limit of indemnity of not less than five million pounds (£5,000,000) per claim and unlimited in the aggregate in any one period of insurance;*
- ii) *Employer's liability insurance with a limit of indemnity of not less than five million pounds (£5,000,000) per claim and unlimited in the aggregate in any one period of insurance;*
- iii) *Where relevant \*professional indemnity insurance with a limit of not less than two million pounds (£2,000,000) per claim; and*
- iv) *Where relevant, product liability insurance with a limit of not less than two million pounds (£2,000,000) per claim.*

*\*Professional indemnity insurance shall be maintained for a period of 6 years following the end of the contract or service delivery thereafter.*

## **5. CONFIDENTIALITY**

The Supplier shall treat all confidential information belonging to ARCA as confidential and safeguard it accordingly, and shall not disclose any confidential information without the prior written consent of ARCA.

## **6. TERMINATION**

In addition to clause 2.3 and 7.1, if at any time after the commencement of the contract the Supplier commits: a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days after receiving notice of the breach; commits a material breach which cannot be rectified, then ARCA may terminate the contract with immediate effect.

## **7. GENERAL**

7.1 Force majeure: Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under the Contract if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable. If such event or circumstances prevent the Supplier from supplying the Goods and/or Services for more than 4 weeks, ARCA shall have the right, without limiting its other rights or remedies, to terminate this Contract with immediate effect by giving written notice to the Supplier.

7.2 Assignment and subcontracting: The Supplier shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its

rights or obligations under the Contract without the prior written consent of ARCA.

7.3 Notices: Any notice or other communication required to be given under or in connection with this Contract shall be in writing and shall be delivered to the other party by prepaid first-class post.

7.4 Waiver No delay, neglect or forbearance on the part of either party in enforcing against the other party any term or condition of the contract shall either be or be deemed to be a waiver or in any way prejudice any right of that party under this contract.

7.5 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership of any kind between any of the parties.

7.6 Contracts (Rights of Third Parties) Act 1999: A person who is not a party to the Contract shall not have any rights under or in connection with it.

7.7 Variation: Any variation, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by ARCA.

7.8 Severance: if any provision in this contract shall in whole or in part be held to any extent to be unlawful or unenforceable under any enactment or rule of law, the remainder of the provisions shall stand in full force and effect.

7.9 Statutory Requirements: the Supplier shall comply with all statutes, orders, regulations or bye laws applicable to the performance of this contract and shall not do anything or perform its obligations under or in connection with the Contract in such a way as to cause ARCA to breach any of its legal obligations including those under data protection law and shall indemnify ARCA against all losses, claims or liabilities, expenses, proceedings or otherwise as a result of the Suppliers noncompliance with the same.

7.10 Governing law and jurisdiction: The Contract shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

## **8. INTELLECTUAL PROPERTY**

In this clause "Intellectual Property Rights" means all intellectual property rights, whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world including all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights

in computer software, database rights, topography rights, rights in confidential information (including know-how and trade secrets).

The Supplier warrants that:

- the Supplier has all Intellectual Property Rights, permissions, licences and consents necessary to carry out its obligations under the Contract and shall not carry out its obligations in breach of any Intellectual Property Right permission, licence or consent; and
- in respect of the goods and deliverables, the Supplier has full clear and unencumbered title to all such items, and that at the date of delivery of such items to ARCA, it has full and unrestricted rights to transfer full title to all such items to ARCA.

Unless otherwise provided for, the Supplier grants to Arca, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the services, including all deliverables. ARCA reserves to itself or its licensors all ARCA materials and any Intellectual Property Rights in them and the Contract shall not operate to vest in the Supplier any rights in Arca materials other than a licence, for the duration of the Contract, to use them to the extent necessary to enable the Supplier to carry out its obligations under the Contract.

## **9. TERMS AND CONDITIONS**

These terms and conditions will apply unless ARCA specifies different terms and conditions in its tender or quotation documentation or some other contract entered into by the parties. If different terms and conditions are specified by ARCA those terms and conditions will override the purchase order terms and conditions and will apply instead of these.