

SKA OBSERVATORY CONDITIONS OF PURCHASE

1. Definitions

In the context of these Conditions of Purchase:

'Business Day' – means any day (excluding weekends) that the SKA Observatory is open for business;

'Contract' means each contract for the supply of Goods or Services or both incorporating an Order and these Conditions of Purchase;

'Conditions of Purchase' mean these SKA Observatory Conditions of Purchase;

'Deliverables' means all documents, products and materials developed or provided by the Supplier as part of providing the Services;

'Force Majeure Event' means events including strikes, lock-outs or other industrial disputes, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, volcanic ash, earthquake, explosion, terrorist act, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood or storm, that are beyond the reasonable control of the Party claiming to be prevented from or delayed in carrying out its business due to one or more of the above events;

'Goods' means the items specified in the Order to be supplied by the Supplier in accordance with each Contract;

'Order' means the SKA Observatory purchase order describing the Goods or Services and any other documents or parts thereof expressly stated to be incorporated therein;

'Price' means the price(s) payable by SKA Observatory to the Supplier for the Goods and/or Services as detailed in the Order;

'Services' means the work or services described in the Order to be carried out by the Supplier in accordance with each Contract;

'Site' means the premises of SKA Observatory or other premises notified to the Supplier in writing;

'SKA Observatory/SKAO' means the international intergovernmental organisation established by the *Convention Establishing the Square Kilometer Array Observatory* which entered into force on 15 January 2021;

'Specifications' means the specification for the Goods and/or Services as described in the Order; and

'Supplier' means the supplier of Goods and/or Services and the recipient of an Order.

2. Contract

Each Order to which these Conditions of Purchase are attached constitutes an offer on the part of SKAO. Unless otherwise agreed in writing by SKAO, the Supplier will be deemed to have accepted the offer within 7 Business Days of receipt of the Order (Orders will be deemed to have been received 2 hours after transmission if transmitted by email or facsimile on a Business Day prior to 3pm or in any other case at 10 am on the Business Day after the date of transmission or being delivered by hand). Acceptance of an Order will bind the Supplier to these Conditions of Purchase and no Goods or Services shall be supplied or performed by the Supplier, their employees, agents or representatives, except in accordance with these Conditions of Purchase. These Conditions of Purchase shall at all times prevail over any terms and conditions submitted by the Supplier. No purported variation in Price, date of delivery or Specification of the Goods and Services supplied shall be effective unless with the prior written agreement of SKAO.

3. Performance

3.1 All Goods supplied and/or Services carried out shall conform to the Specifications and be in accordance with the Order.

3.2 Each of the Goods supplied or Services carried out will be performed to the satisfaction of SKAO. SKAO reserves the right to reject any Goods or Services which are faulty, are not fit for their specified or expected purpose, or do not conform to the Specifications. Where those Goods or Services are rejected by SKAO, the Supplier will, at SKAO's option, either replace such Goods and/or remedy such Services at its own cost and expense, or pay SKAO an amount for SKAO to have such defect remedied by a third party to the satisfaction of SKAO. SKAO will return the rejected Goods only at the Supplier's request, risk and expense.

4. Delivery

4.1 Goods shall be delivered to, and Services shall be performed at, the Site on the date or within the period stated in the Order, in either case during the SKAO usual business hours. SKAO reserves the right to amend any delivery instructions. Delivery shall be deemed to be made on receipt of the Goods by SKAO or completion of the Services in accordance with the Contract and to the satisfaction of SKAO.

4.2 Time of delivery of each of the Goods and Services shall be of the essence of each Contract. Any breach of any condition by the Supplier shall entitle SKAO to treat that any such breach as a breach of contract giving rise to a claim for damages.

5. Title & Risk

5.1 Title and risk in the Goods or deliverables shall, without prejudice to any of the rights or remedies of SKAO, pass to SKAO at the time of delivery.

5.2 For the period that the Supplier has possession or control of the Goods, it shall have the sole risk of loss or damage to the goods and shall ensure that the Goods are kept secure and identified as the Property of SKAO and shall maintain insurance cover for any loss or damage to the Goods for their full replacement cost.

6. Standards

6.1 The Supplier warrants:

a) that the design, construction and quality of Goods or Services to be manufactured or supplied complies with all relevant English or applicable European Community legislation including any statutory rule or order or regulations in force for the time being;

b) that the use of the Goods or Services deliverables by SKAO will not infringe any patent, trademark, trade name, registered design or other intellectual property right of a third party in any jurisdiction in the world;

c) that the Goods will be free from defects in material and workmanship, that they are fit for the purpose for which they are requested and are new and free from any lien, charge or encumbrance; and

d) that the Services are performed with reasonable care and skill and in accordance with good industry practice, using trained, experienced and skilled staff, during SKAO's normal business hours and in accordance with all SKAO's reasonable directions.

7. Payment

7.1 The Price shall be inclusive of all charges other than VAT (which shall be payable by SKAO subject to receipt of a valid VAT invoice clearly stating the Order number). No increase in the Price may be made without the prior written consent of SKAO.

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7.2 Payment of the Price shall be made within thirty (30) days from receipt of the Supplier's correctly rendered invoice unless a shorter payment period is agreed in writing by SKAO.

7.3 If SKAO fails to pay the Price in accordance with sub-clause 7.2 above, SKAO shall be liable to pay interest on that sum from the date when such payment was due until the date of actual payment at a rate of 2% over base rate from time to time of the Bank of England. Such interest shall accrue from day to day and shall be compounded annually.

8. Intellectual Property

8.1 Subject to any pre-existing rights of third parties and of the Supplier, which shall at all times remain the property of the party owning it, the intellectual property rights in all Deliverables which are generated or acquired by the Supplier (or any of its sub-contractors or agents) will be assigned to SKAO. The Supplier shall procure and assign any moral rights arising under the Copyright, Designs and Patents Act 1988 (as amended or revised) copyright that it owns in the Deliverables.

8.2 Any SKAO intellectual property (including but not limited to: drawings; designs; specifications) made available to the Supplier shall remain the property of SKAO.

9. Sub-contracting & Assignment

The Supplier shall not without the prior written consent of SKAO sub-contract or assign this Contract to any other party.

10. Liability and Insurance

10.1 The liability of SKAO to the Supplier in respect of one claim or a series of linked claims under the Contract shall not exceed an amount equal to two times the sum of the Price in the twelve-month period immediately preceding the event which gives rise to the relevant claim or series of linked claims.

10.2 The Supplier shall take out and maintain such insurance as a prudent and reasonable supplier would maintain to cover its liabilities under each Contract and shall at SKAO's request, provide a current certificate of insurance.

11. Force Majeure

11.1 Neither Party shall be in breach of the Contract if it is prevented from or delayed in undertaking its obligations under this Contracts of those delays or preventions are caused by a Force Majeure Event.

11.2 If delivery by the Supplier is delayed by a Force Majeure Event then the Supplier shall give written notice of such cause within 5 Business Days of the occurrence and SKAO may then (but without prejudice to its other rights) allow such extra time for delivery as is reasonable in the circumstances.

11.3 If the event of force majeure continues beyond a period of 5 Business Days, SKAO may terminate each affected Contract.

12. Termination

12.1 Without prejudice to SKAO's other rights and remedies under any Contract or at law, if the Supplier: (a) becomes bankrupt or insolvent, meets with its creditors or winding-up procedures are commenced in respect of the Supplier; or (b) is in breach of any of its obligations under any Contract after giving the Supplier not less than 5 Business Days written notice in the case of Goods or 10 Business Days written notice in the case of Services to rectify such breach and if such breach is

not rectified within such period SKAO may terminate that Contract or any part thereof. In the event of termination under this sub-clause 12.1 SKAO may retain out of any amount due to the Supplier under any Contract an amount equal to any bona fide claim SKAO may have against the Supplier arising out of each such breach.

12.2 In addition, SKAO may at its convenience terminate any Contract or any part thereof at any time by written notice to the Supplier. In this event SKAO shall, subject to any other provisions of that Contract, pay the Supplier for all Goods and Services supplied in accordance with that Contract and such other out of pocket expenses that have been incurred solely in relation to the terminated Order and which cannot be recouped by the Supplier up to the time of termination to the extent agreed between the parties. For the avoidance of doubt, the Supplier shall not be entitled to cancel any Contract.

13. Confidentiality

The Supplier shall treat each Contract and all designs, drawings, specifications and information supplied relative thereto as confidential, shall not disclose the same to a third party without the prior written consent of SKAO and shall return the same with all copies upon the completion of performance of each Contract.

14. Anti-Corruption and Anti-Slavery Undertakings

14.1 Each party shall always fully comply with the laws (including but not limited to applicable anti-corruption laws), rules, regulations, and decrees of any governmental or regulatory body in the territories in which that party conducts its business.

14.2 The parties agree that all invoices, financial statements, billings and reports which may be rendered to the other party shall reflect properly the facts about all activities and transactions between the parties and may be relied upon as being complete and accurate.

14.3 Neither party shall take any action on the other party's behalf that would result in inadequate or inaccurate reporting of any assets, liabilities or transactions which would violate any applicable laws.

14.4 Neither party shall make or give, either directly or indirectly, any improper payments of money or anything of value to any individual, including a government official, political party or official thereof, or any candidate for political office, in connection with the Contract.

14.5 The parties confirm that they have policies in place which prohibit corruption and the payment of bribes in any form.

14.6 Each party agrees to notify the other party promptly upon discovery of any instance where it has failed to comply with any provision of this clause.

14.7 In performing its obligations under these Conditions of Purchase, the Supplier shall, and shall procure that each of its subcontractors, comply with:

- a) all applicable laws, statutes, regulations from time to time in force, including but not limited to the Modern Slavery Act 2015; and
- b) SKAO's prevailing Supplier Code of Conduct.

15. Equality, Diversity and Inclusion

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The Supplier shall ensure it does not, whether as an employer or provider of goods and/or services, discriminate within the meaning of the Equality Act 2010.

16. Separate and Severable

Each clause and sub-clause in these Conditions of Purchase is separate and severable and enforceable accordingly. If there is an inconsistency between any of the provisions of these Conditions of Purchase and the provisions of an Order, the provisions of the Order shall prevail.

17. No Waiver

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 any Contract or otherwise.

18. Notice

Notice given under the Contract shall be in writing and sent either by hand or via email to the email address given on the Order Form. Provided that the notice has been sent to the correct email address, it shall be deemed to have been received 2 hours after transmission if transmitted by email on a Business Day prior to 3pm or in any other case at 10 am on the Business Day after the date of transmission. Notice delivered by hand shall be deemed to have been received immediately if provided between the hours of 9am – 5:30pm on a Business Day, or if delivered after 5:30pm, by 9am on the Business Day following delivery by hand.

19. Counterparts

The Contract may be executed in counterparts, each of which when executed shall constitute a duplicate original, but all counterparts shall together constitute one contract. Where the Contract is executed in counterparts, following execution each party must promptly deliver the counterpart it has executed to the other party. Transmission of an executed counterpart of the Contract by email in PDF, JPEG or other agreed format shall take effect as delivery of an executed counterpart of the Contract.

20. Third Party Rights

The Contract does not create any rights or benefits enforceable by any person not a party to it except that a permitted successor or assignee of the rights or benefits of a party may enforce such rights or benefits.

21. Privileges and Immunities

21.1 Nothing in this Agreement will be deemed or interpreted as a waiver, express or implied, of any privileges or immunities accorded to SKAO by its constituent documents or under international public law.

22. Governing Law and Jurisdiction

22.1 SKAO agreements are subject to the regulations adopted by SKAO by virtue of its international status. For matters of substance not specifically covered by these regulations or the Agreement, the Agreement will be governed by English law.

22.2 Noting SKAO's legal status as an intergovernmental organisation, the parties irrevocably agree that any dispute, controversy or claim arising out of or in relation to this agreement, or the existence, interpretation, application, breach, termination, or invalidity thereof, will be settled by arbitration in accordance with the PCA Arbitration Rules 2012.