



# Supply Agreement

## **PREFACE**

The Contract for the Supply and Delivery of Goods has been prepared for use in supplies contracts which have the following characteristics:

- Simple, regional purchase of readily available materials or commodities;
- Requires almost no management of the buying and delivery process and may only need simple cross border formalities;
- Minimal testing, installation and commissioning on delivery.

This document is intended to be used with the procurement documents prepared in accordance with the Advanex Terms of Purchase.

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# GENERAL CONDITIONS OF CONTRACT

## 1) DEFINITIONS

In these conditions, except where the context otherwise requires:

**Contract:** the Contract signed by the Parties and of which these General Conditions of Contract form part;

**Contract Data:** specific data, which together with these General Conditions of Contract, collectively describe the risks, liabilities and obligations of the contracting Parties and the procedures for the administration of the contract.

**Firm price:** the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax which, in terms of a law or regulation is binding on the Supplier and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;

**Goods:** the articles and things described and to be supplied and provided under the Contract.

**Parties:** The Purchaser and the Supplier.

**Pricing Data:** data that establishes the criteria and assumptions that were taken into account when developing the Contract Price and the record of the components that make up of the Contract Price;

**Purchaser:** the contracting party named in the Contract Data who purchases supplies from the Supplier;

**Scope of work:** the specification and description of the Goods which are to be provided and any other requirements and constraints relating to the manner in which the Contract work is to be performed

**Supplier:** the contracting party named in the Contract Data who is engaged by the Purchaser to provide the Goods described in the Contract.

## 2) INTERPRETATION

2.1 Unless inconsistent with the context, an expression which denotes :

- a) any gender includes the other genders;
- b) a natural person includes a juristic person and vice versa;
- c) the singular includes the plural and vice versa.

2.2 If there is any conflict between the provisions of these General Conditions of Contract and the Contract Data, the provisions of the Contract Data shall prevail.

2.3 The clause headings shall not limit, alter or affect the meaning of the Contract.

## 3) GENERAL

### 3.1 Governing law

Law governing the Contract shall be English Law

### 3.2 Language

The language of the Contract and of all communications between the Parties shall be English.

### **3.3 Notices**

3.3.1 Any notice, request, consent, or other communication made between the Parties pursuant to the Contract shall be in writing and shall be deemed to have been made when delivered in person to an authorised representative of the Party to whom the communication is addressed, or when sent by telex, telegram, e-mail or facsimile to such Party at the address specified in the Contract, or one week after having been sent by registered post.

3.3.2 If the sender requires evidence of receipt, he shall state such requirement in his communication and, wherever there is deadline for the receipt of the communication, he may demand evidence of receipt of his communication. In any event, the sender shall take all the necessary measures to ensure receipt of communications.

3.3.3 A Party may change its address for receipt of communications by giving the other Party 30 days advance notice of such change.

### **3.4 Confidentiality**

Both parties shall keep all commercially sensitive information obtained by them in the context of the Contract confidential and shall not divulge it without the written approval of the other Party.

### **3.5 Sole agreement**

3.5.1 The Contract constitutes the sole agreement between the Parties for the provision of Goods and no representation not contained therein shall be of any force or effect. No amendments will be of any force or effect unless reduced to writing and signed by both Parties.

3.5.2 No purported amendments to the terms and conditions of the Contract included in delivery notes shall be of any force or effect.

### **3.6 Indemnification**

The Supplier shall indemnify the Purchaser against all actions, suits, claims, demands, costs, charges and expenses arising in connection therewith from the negligence, infringement of intellectual or legal rights or breach of statutory duty of the Supplier, his subcontractors, agents or servants, or from the Supplier's defective design, materials or workmanship.

### **3.7 Weights and measures**

The quantities of Goods delivered shall be according to British standard weights and measures

### **3.9 Title and risk**

Without prejudice to rights of rejection under these conditions, title to and risk in the Goods passes to the Purchaser when the Goods are off-loaded and accepted by the Purchaser at the address given in the delivery instructions.

## **4) MAIN RESPONSIBILITIES OF THE PARTIES**

4.1 The Purchaser shall, within a reasonable time, give his decision on any matter properly referred to him in writing by the Supplier so as not to delay the provision of Goods.

4.2 The Supplier shall, in accordance with the requirements of the Scope of Work, provide the Goods in the quantity, on or before the due date determined in accordance with 3.6, stated in a written order issued by the Purchaser.

## **5) PACKAGING, MARKING AND DELIVERY**

5.1 All Goods shall be packaged in accordance with the provisions of the Scope of Work. Where no provisions are made in the Scope of Work for packaging, the Goods shall be properly packed for long term storage in containers suitable to protect the contents against damage through rough handling and for over-storage in transit or whilst in store.

5.2 Unless otherwise stated in the Contract Data, all containers (including packing cases, boxes, tins drums and wrappings) supplied by the Supplier shall be considered as non-returnable, and their cost having been included in the price of the Goods unless stated otherwise in writing.

5.3 The Supplier shall:

- a) clearly mark the outside of each consignment or package with the Supplier's name and full details of the destination in accordance with the Purchaser's order and include a packing note and material certificate detailing the contents thereof;
- b) on despatch of each consignment, send to the Purchaser at the address for delivery of the Goods, an advice note specifying the means of transport, weight, number or volume as Appropriate, the specification of material and the point and date of despatch;
- c) send to the Purchaser a detailed priced invoice as soon as is reasonably practical after despatch of the Goods, and
- d) state on all communications in the relevant order number and specification of the material.

5.4 Goods shall be delivered on the days, between the times and at the address stated in the Contract Data.

5.5 Delivery, unless otherwise provided for in the Contract Data shall be effected within 7 days from receipt of the Purchaser's order. Should the Supplier have reason to suspect delays in delivery, the Supplier shall advise the Purchaser upon receipt of an order in writing of any anticipated delays citing reasons therefore and put forward a new anticipated delivery. The Purchaser may then extend the delivery date if and as it seems fit. Unless and until the Supplier receives a notification of the new, extended delivery date, there shall be no extension to the date.

5.6 Should the Supplier fail to supply any of the Goods on the date or dates or within the period or periods specified thereof, or should he fail to replace any rejected Goods as required by the Contract, the Supplier shall be liable to make good to the Purchaser all loss and damage occasioned by such failure, including any reasonable price (whether greater than the appropriate Contract price or not) paid by the Purchaser in purchasing the Goods on which default has been made, from a source other than the Supplier. In such an event the Purchaser shall be at liberty to retain the amount of any such loss or damage from any money due by the Purchaser to the Supplier but without prejudice to other methods of recovery open to the Purchaser.

## **6) QUALITY**

6.1 All Goods supplied shall comply with the requirements of the Scope of Work, or shall conform in all respects to the sample which form part of the Contract.

6.2 All Goods covered by this Contract shall be the subject of the Purchaser's inspection and test at all times before, during or after manufacture. The Supplier shall furnish without extra charge all reasonable facilities and assistance for the safe and convenient inspection or test required by appointed inspectors. Such inspections may be carried out on the Supplier's premises or at such other place as deemed appropriate by inspectors.

6.3 If the Supplier fails to supply Goods, materials, workmanship or services in accordance with the provisions of the Contract, the Purchaser may reject any part of the Goods by giving written notice to the Supplier specifying the reason for rejection and whether replacement Goods are required and within what time.

6.4 All rejects shall be held at the Supplier's risk and expense including all transportation and handling costs until returned to or collected by the Supplier. All rejects shall be replaced or rectified and made good at the Supplier's expense within the specified replacement period to the full satisfaction of the inspectors and in conformity with the standards, specification or samples specified in this Contract.

6.5 In the event of the Supplier failing to remove such rejected Goods within 5 days of notification of the rejection, the Purchaser shall be at liberty to return them at the Supplier's risk, the cost of carriage being recoverable from the Supplier. In the event that the Supplier considers himself aggrieved he may, within 5 day of the receipt of notification of rejection give the Purchaser notice of objection, whereupon the Goods shall not be removed until the Purchaser so directs.

## **7) WARRANTY**

Without prejudice to any other rights of the Purchaser under these conditions, the Supplier warrants that:

- a) all Goods delivered will be free from defective materials or workmanship;
  - b) this warranty shall survive any inspection, delivery, acceptance or payment by the Purchaser;
- and

the goods will remain free from defects for a period of one year (unless otherwise stated in the Contract Data) from acceptance of the Goods by the Purchaser.

## **8) ASSIGNMENT AND SUBCONTRACTING**

The Supplier shall not assign or subcontract any part of this Contract without the written consent of the Purchaser.

## **9) TERMINATION**

The Purchaser may terminate the Contract at any time, without prejudice to any right of action or remedy which has accrued or thereafter accrues to the Purchaser, if the Supplier:

- a) defaults in due performance of the Contract; or
- c) becomes bankrupt or otherwise is, in the opinion of the Purchaser, in such financial circumstances as to prejudice the proper performance of the Contract.

## **10) PRICE AND PAYMENT**

10.1 Amounts due to the Supplier, arising from an order issued by the Purchaser, shall be paid by the Purchaser within sixty days (60) days end of month of receipt by him of the Supplier's correct tax invoice. If the Supplier does not receive payment by the due date, he shall be entitled to charge interest on the unpaid amount, which is payable by the Purchaser the overdraft rate charged him by his bank plus 2% per annum, compounded monthly and calculated from the due date of payment.

10.2 If any item or part of an item in an invoice submitted by the Supplier is disputed by the Purchaser, the latter shall, before the due date of payment, give notice thereof with reasons to the Supplier, but shall not delay payment of the balance of the invoice. Clause 10.1 shall apply to disputed amounts which are finally determined to be payable to the Supplier.

10.3 If not otherwise stated in the Pricing Data, the following shall apply:

- a) the quantities where shown in the Pricing Data are the estimated probable requirements to be supplied in the period of twelve months from the date of award of the Contract but the actual quantities ordered and supplied shall be at the sole discretion of the Purchaser;
- b) the price stated in the Pricing Data for Goods shall be for the minimum quantity the Supplier is prepared to supply in one consignment. Should no minimum quantity price be stated in the Pricing Data then such minimum quantity will be deemed to be one unit of the article described;
- c) the price shall be the price of the Goods as packaged and delivered;
- d) prices shall be NET of all cost and trade discounts being allowed for.

## **11) PRICE ADJUSTMENT**

11.1 The prices of Goods supplied under a Firm Price Contract shall be adjusted if during the Contract period:

- a) a customs or excise duty or any other duty, levy or tax (excluding any anti-dumping and countervailing duties or similar duties), is introduced in terms of any Act or regulation; or
- b) any such duty, levy or tax is legally changed or abolished.

11.2 The prices of Goods supplied under a non-Firm Price Contract shall be adjusted in accordance with a formula provided for in the Contract whereby 85% of the prices is adjusted in terms of the difference between the published indices in the month in which the Goods are delivered and the agreed base.

## **12) RESOLUTION OF DISPUTES**

### **12.1 Settlement**

12.1.1 The Parties shall negotiate in good faith with a view to settling any dispute or claim arising out of or relating to the Contract and may not initiate any further proceedings until either Party has, by written notice to the other, declared that such negotiations have failed.

12.1.2 Any dispute or claim arising out of or relating to the Contract which cannot be settled between the Parties shall be referred by the Parties in the first instance to either mediation or adjudication as provided for in the Contract Data.

### **12.2 Mediation**

12.2.1 If the Contract Data does not provide for dispute resolution by adjudication, not earlier than ten working days after having advised the other Party, in terms of Clause 12.1, that negotiations in regard to a dispute have failed, an aggrieved Party may require that the dispute be referred, without legal representation, to mediation by a single mediator. The mediator shall be selected by agreement between the Parties, or, failing such agreement, by the person named for this purpose in the Contract Data. The costs of the mediation shall be borne equally by the Parties.

12.2.2 The mediator shall convene a hearing of the Parties and may hold separate discussions with any Party and shall assist the Parties in reaching a mutually acceptable settlement of their differences through means of reconciliation, interpretation, clarification, suggestion and advice. The Parties shall record such agreement in writing and thereafter they shall be bound by such agreement.

12.2.3 The mediator is authorised to end the mediation process whenever in his opinion further efforts at mediation would not contribute to a resolution of the dispute between the Parties.

12.2.4 If either Party is dissatisfied with the opinion expressed by the mediator or should the mediation fail, then such Party may require that the dispute be referred to arbitration or litigation in a competent civil court, as provided for in the Contract Data, within three calendar months of mediator's decision being issued or the mediator declaring the mediation to have ended, as provided for in the Contract Data. Claims not brought within the time periods set out herein will be deemed to be waived.



### **12.3 Adjudication**

12.3.1 If the Contract Data does not provide for dispute resolution by mediation, an aggrieved Party may refer the dispute to adjudication. Adjudication shall be in accordance with English Law

12.3.2 The Adjudicator shall be any person agreed to by the parties or, failing such agreement, shall be nominated by the person named in the Contract Data. The Adjudicator shall be appointed in accordance with English Law

12.3.3 If a Party is dissatisfied with the decision of the Adjudicator, the Party may give the other Party notice of dissatisfaction within 28 days of the receipt of that decision and refer the dispute to arbitration or litigation in a competent civil court as provided for in the Contract Data.. If no notice of dissatisfaction is given within the specified time, the decision shall be final and binding on the Parties.

### **12.4 Arbitration**

12.4.1 Arbitration, where provided for in the Contract Data, shall be by a single arbitrator in accordance with the provisions of the Arbitration Act of 1996 as amended and shall be conducted in accordance with such procedure as may be agreed between the Parties or, failing such agreement, in accordance with the Rules based on the 2010 UNCITRAL Arbitration Rules published by the Chartered Institute of Arbitrators current at the date the arbitrator is appointed.

12.4.2 The arbitrator shall be mutually agreed upon or, failing agreement, to be nominated by the person named in the Contract Data.

## CONTRACT DATA

The Conditions of Contract are the *Contract for the Supply and Delivery of Goods* published by Advanex Europe Ltd

### Part 1: Data provided by the Purchaser

Clause *Guidance notes*

1 The Purchaser is ..... Enter company data

The authorised and designated representative of the Purchaser is:

Name: .....

The address for receipt of communications is:

Telephone: .....

Faxsimile: .....

E-mail: .....

Address: .....

.....

.....

*Enter data*

5.2 The following containers are to remain the property of the Supplier and are to be returned to the Supplier at the Purchaser's expense

*Delete if all containers and the like are non returnable or amend statement as appropriate*

5.4 Goods are to be delivered on weekdays between 09:00 and 15:00 at .....

*Enter data / amend data*

5.5 Delivery is to take place within .... days from receipt of the Purchaser's order

*Insert number of days*

7c The goods will remain free from defects for a period of ..... *Insert period or delete if period of 1 year is acceptable*

12.1.2 Interim settlement of disputes is to be by mediation / adjudication

*Delete the option that is not selected*

12.2.4 Final settlement is by litigation / arbitration *Delete the option that is not selected*

12.2.2 In the event that the parties fail to agree on a mediator, the mediator is nominated by .....

*Delete if adjudication is selected*

12.3.2 The adjudicator is the person appointed by the ..... (name of an official within a body / association) Tel ..... Fax.....

No.....

*Insert particulars of person who appoints or delete if mediation is selected*

12.4.2 In the event that the parties fail to agree on an arbitrator, the arbitrator is nominated by ..... *Delete if litigation is selected*

The additional / variations to the conditions of contract are: *Insert additional / variations to conditions of contract or delete row:*

**Part 2: Data provided by the Supplier***Guidance notes*

The Supplier is .....

Address: .....

Telephone: .....

Faxsimile: .....

*Enter data*

The authorised and designated representative of the Service Provider is:

Name: .....

The address for receipt of communications is:

Telephone: .....

Faxsimile: .....

Address: .....

*Enter data*

## Form of offer and acceptance

### Offer

The Purchaser, identified in the acceptance signature block, has solicited offers to enter into a contract for the procurement of:

.....(insert materials / parts)

The tenderer, identified in the offer signature block, has examined the documents listed in the tender data and addenda thereto as listed in the tender schedules, and by submitting this offer has accepted the conditions of tender.

By the representative of the tenderer, deemed to be duly authorized, signing this part of this form of offer and acceptance, the tenderer offers to perform all of the obligations and liabilities of the Supplier under the contract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the conditions of contract identified in the Contract Data.

### THE OFFERED TOTAL OF THE PRICES INCLUSIVE OF VALUE ADDED TAX IS

.....Pounds Sterling (in words); £ .....(in figures) per ..... (UOM)

This offer may be accepted by the Purchaser by signing the acceptance part of this form of offer and acceptance and returning one copy of this document to the tenderer before the end of the period of validity stated in the tender data, whereupon the tenderer becomes the party named as the Supplier in the conditions of contract identified in the Contract Data.

Signature(s)

Name(s).....  
Capacity.....  
(Name and address of organization)

Name and signature of witness

Date

## Acceptance

By signing this part of this form of offer and acceptance, the Purchaser identified below accepts the tenderer's offer. In consideration thereof, the employer shall pay the Supplier the amount due in accordance with the conditions of contract identified in the contract data. Acceptance of the tenderer's offer shall form an agreement between the Purchaser and the tenderer upon the terms and conditions contained in this agreement and in the contract that is the subject of this agreement.

The terms of the contract, are contained in:

Part C1 Agreements and contract data, (which includes this agreement)

Part C2 Pricing data

Part C3 Scope of work.

and drawings and documents or parts thereof, which may be incorporated by reference into Parts C1 to C3 above.

Deviations from and amendments to the documents listed in the tender data and any addenda thereto as listed in the tender schedules as well as any changes to the terms of the offer agreed by the tenderer and the employer during this process of offer and acceptance, are contained in the schedule of deviations attached to and forming part of this agreement. No amendments to or deviations from said documents are valid unless contained in this schedule.

The tenderer shall within two weeks after receiving a completed copy of this agreement, including the schedule of deviations (if any), contact the Purchaser's agent (whose details are given in the contract data) to arrange the delivery of any bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the conditions of contract identified in the contract data. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.

Notwithstanding anything contained herein, this agreement comes into effect on the date when the tenderer receives one fully completed original copy of this document, including the schedule of deviations (if any). Unless the tenderer (now Supplier) within five working days of the date of such receipt notifies the Purchaser in writing of any reason why he cannot accept the contents of this agreement, this agreement shall constitute a binding contract between the parties.<sup>1</sup>

Signature(s)

Name(s)

Capacity

(Name and address of organization)

Name and signature of witness

Date

<sup>1</sup> As an alternative, the following wording may be used:

Notwithstanding anything contained herein, this agreement comes into effect two working days after the submission by the Purchaser of one fully completed original copy of this document including the schedule of deviations (if any), to a courier-to-counter delivery / counter-to-counter delivery / door-to-counter delivery /door-to door delivery /courier service (delete that which is not applicable), provided that the employer notifies the tenderer of the tracking number within 24 hours of such submission. Unless the tenderer (now Supplier) within seven working days of the date of such submission notifies the Purchaser in writing of any reason why he cannot accept the contents of this agreement, this agreement shall constitute a binding contract between the parties.

## Schedule of Deviations

### Notes:

1. The extent of deviations from the tender documents issued by the Purchaser before the tender closing date is limited to those permitted in terms of the conditions of tender.
2. A tenderer's covering letter shall not be included in the final contract document. Should any matter in such letter, which constitutes a deviation as aforesaid, become the subject of agreements reached during the process of offer and acceptance, the outcome of such agreement shall be recorded here.
3. Any other matter arising from the process of offer and acceptance either as a confirmation, clarification or change to the tender documents and which it is agreed by the Parties becomes an obligation of the contract shall also be recorded here.
4. Any change or addition to the tender documents arising from the above agreements and recorded here, shall also be incorporated into the final draft of the Contract.

1 Subject \_\_\_\_\_  
Details \_\_\_\_\_

2 Subject \_\_\_\_\_  
Details \_\_\_\_\_

3 Subject \_\_\_\_\_  
Details \_\_\_\_\_

4 Subject \_\_\_\_\_  
Details \_\_\_\_\_

By the duly authorised representatives signing this schedule of deviations, the Purchaser and the tenderer agree to and accept the foregoing schedule of deviations as the only deviations from and amendments to the documents listed in the tender data and addenda thereto as listed in the tender schedules, as well as any confirmation, clarification or changes to the terms of the offer agreed by the tenderer and the Purchaser during this process of offer and acceptance.

It is expressly agreed that no other matter whether in writing, oral communication or implied during the period between the issue of the tender documents and the receipt by the tenderer of a completed signed copy of this Agreement shall have any meaning or effect in the contract between the parties