

**THE SUSTAINABLE ENERGY AUTHORITY OF IRELAND
PURCHASE ORDER
TERMS AND CONDITIONS OF PURCHASE**

WHEREAS

The Sustainable Energy Authority of Ireland (hereinafter called “**SEAI**”) of Wilton Park House, Wilton Place, Dublin 2, Ireland seeks to purchase goods and/or services and the Seller (whose name and address is on the front of this Purchase Order (“**Purchase Order**”) wishes to sell such goods or services as advised in this Purchase Order:

IT IS AGREED:-

1. PURCHASE

- 1.1 The Seller shall sell and SEAI shall purchase the goods and/or services on the execution by SEAI of this Purchase Order for the price agreed and shown thereon.
- 1.2 Goods or services supplied to SEAI shall be deemed to be supplied on the terms and conditions set out in this Purchase Order (“**Conditions of Purchase**”), and no purported variation of these terms and conditions shall be valid unless specifically agreed by SEAI.
- 1.3 SEAI shall not accept responsibility for any Purchase Order which is not issued on an official Purchase Order form and fully signed by an authorised officer.

2. APPLICABILITY

Save where SEAI has executed a specific contract with the Seller for the supply of goods or services, in which case such contract shall supersede these Conditions of Purchase, these Conditions of Purchase shall govern every contract for the supply of goods and/or services between SEAI and the Seller. All orders are placed and executed on the understanding that the Seller is bound by these Conditions of Purchase. Any goods and/or services shall be supplied pursuant to these Conditions of Purchase only, to the total exclusion of any terms and conditions of the Seller. No quotation or standard terms of business or supply, in any confirmation dockets, invoice, purchase order or other similar document issued by or on behalf of the Seller shall vary these Conditions of Purchase or be binding upon the parties.

3. LAW

This Purchase Order shall be governed and construed under the laws of Ireland and the parties agree to submit to the exclusive jurisdiction of the Irish Courts.

4. TITLE AND ACCEPTANCE

- 4.1 The title and property in the goods shall pass to SEAI upon delivery or (in the case of delivery by instalments) upon delivery of each instalment, unless payment or part payment has been made prior to delivery in which event the property in any materials, components or goods purchased or allocated by the Seller for the purpose of this Purchase Order shall immediately vest in SEAI.
- 4.2 If any goods are delivered or services provided which fail to comply with the provisions of the Purchase Order (however slight the failure to meet those requirements) by reason of quality, quantity, price or (without limitation) any other reason, or are delivered in error, without prejudice to any other rights, SEAI may at its sole discretion and at the Seller’s risk and expense, either:-
 - 3.2.1 Return the goods or any instalment or any part thereof on the basis that a full refund for such goods shall be paid forthwith by the Seller; or
 - 3.2.2 Require immediate replacement or rectification by delivery of goods which are in accordance with the Purchase Order; or
 - 3.2.3 Require the immediate repair or remedy of any defects in the goods; or
 - 3.2.4 Repair or remedy the defects or deficiencies itself or by others, at the Sellers expense; or
 - 3.2.5 Purchase equivalent goods or services elsewhere at no additional costs to SEAI; or
 - 3.2.6 Refuse to accept any further delivery of goods upon continuous failure to meet delivery schedules or failure to meet quality, without liability.SEAI shall have the right to claim compensation for all its resulting costs and expenses. The making of any prior payment shall not prejudice SEAI’s right of rejection.
- 4.3 All consignments are to be addressed to SEAI at the correct location and forwarded to the delivery address advised in this Purchase Order. SEAI is under no obligation to accept delivery of goods or performance of services in advance of the delivery or performance dates advised in the Purchase Order.
- 4.4 Time shall be of the essence in relation to the delivery of the goods and performance of the services.

5. PAYMENT

- 5.1 In consideration for the provision of goods and/or services, SEAI shall pay the Seller in accordance with agreed prices and rates (“**charges**”) as stated in this Purchase Order.
- 5.2 The Seller will issue an invoice for each individual Purchase Order. A single monthly statement will be submitted within three (3) working days of month end. This statement will be broken down to show all individual invoice charges for the month.
- 5.3 SEAI is bound by the Prompt Payment of Accounts Act 1997 (as amended). All public sector bodies must pay invoices within 15 days of receipt of invoice or the goods or service, which ever is the later. After 15 days,

interest is automatically applied to monies outstanding. Invoices/delivery must be queried within 10 days of receipt and it should be done in writing in order to have evidence of query. The rate of interest is fixed from time to time by the Minister.

- 5.4 This 15 day period shall commence from the day on which a valid invoice has been received at:

Sustainable Energy Authority of Ireland
Accounts Payable- Finance
Wilton Park House, Wilton Place, Dublin 2

The following information shall be quoted on all invoices:

- Invoice number
 - Invoice date
 - Purchase Order Number
 - VAT registration number
 - VAT analysis (by vat rate)
 - Comprehensive and detailed description of all works carried out on SEAI's behalf. This should include where appropriate:
 - Work carried out
 - The billing period
 - Number of days worked (including the dates)
 - Agreed daily rate
- 5.5 SEAI is bound by Chapter 1, Part 18, Taxes Consolidation Act 1997 which provides for a professional services withholding tax (PSWT), to be deducted from payments made by certain bodies in respect of professional services. The rate at which PSWT is deducted is the standard rate of tax in force at the date on which the relevant payment is made.
- 5.6 Where the value of a public sector contract exceeds the threshold provided for under the Tax Clearance Certification Scheme, the Seller shall provide SEAI with a valid tax clearance certificate before payment can be made. The Seller shall ensure that any sub-contractor employed by him possesses either a current tax clearance certificate or a current C2 certificate.

6. INSPECTION AND TESTING

- 6.1 The Seller agrees to allow SEAI's authorised representatives to visit its premises and any other location which is in any way associated with this Purchase Order to ensure that the Seller is discharging its responsibilities efficiently and to SEAI's satisfaction. Any such inspection or test, or failure to inspect or test, shall not in any way relieve the Seller from any of its obligations hereunder.

7. INDEPENDENT CONTRACTOR

- 7.1 For the purposes of this Purchase Order, the Seller is an independent contractor and neither it is nor its sub-contractors or its or their employees or agents are the sub-contractor, agent or employee of SEAI and they shall not hold themselves out to be.
- 7.2 The Seller shall comply with all applicable laws, ordinances statutes, orders, rules and regulations of any government authority having jurisdiction hereafter ("**Laws**") and shall, unless otherwise stipulated in this Purchase Order, obtain and pay for all licences and permits necessary for the provision of goods and performance of services in accordance with such Laws.
- 7.3 The Seller shall pay its employees involved in the provision of the goods and services and shall ensure that all sub-contractors involved in the provision of the goods and services agree to pay their employees rates of wages not less favourable than those laid down by the National Minimum Wage Act 2000 (as amended by any regulations made under the Act). The Seller shall be responsible to SEAI for the due observance by all sub-contractors of the provisions of this clause.

8. WARRANTIES

- 8.1 The Seller hereby warrants its power to enter into contracts and has obtained all necessary approvals to do so.
- 8.2 The Seller hereby warrants that the Seller has conveyed good title to SEAI and that any goods supplied to SEAI will be free from encumbrance.
- 8.3 The Seller shall use best endeavours to assign to SEAI all benefits of the Manufacturer's warranty, or any other guarantee which may apply to any goods supplied.
- 8.4 The Seller warrants that all goods delivered hereunder are free from defects in design, material and in workmanship and that the goods are of merchantable quality and fit for the purposes intended.

9. INTELLECTUAL PROPERTY

- 9.1 In consideration of the payment by SEAI to the Seller of €1.00 (one euro) (the sufficiency of which the Seller hereby acknowledges), the Seller hereby grants SEAI a non-exclusive, perpetual, royalty-free licence to use all intellectual property owned by or licensed to the Seller which shall be used in the provision of the goods or services supplied by the Seller to SEAI.
- 9.2 The Seller hereby irrevocably assigns to SEAI all right, title and interest in, including all copyright, patents and other proprietary rights in, and all newly created intellectual property made, originated or developed which the Seller creates (either solely or jointly with others and either on or off SEAI's premises) in connection with

this Purchase Order (the “**SEAI Materials**”). SEAI Materials shall be the exclusive property of SEAI and may not be used by the Seller for any purpose except for the benefit of SEAI.

- 9.3 The Seller hereby represents, warrants and undertakes that it is the owner or licensee of the goods or services (as the case may be), that it has all rights, licences and consents legally required to provide the goods or services to SEAI and/or to assign the intellectual property in the SEAI Materials to SEAI as set forth in this purchase order and that SEAI's receipt and use of the goods and/or services (as the case may be) does not and will not infringe any intellectual property rights of any third party.
- 9.4 Patented articles supplied shall be marked in accordance with the provision of the Patents Act, 1964.
- 9.5 Copyright of all work accepted by the Seller under this Purchase Order, remains the property of SEAI. This includes all design, origination, specifications, plans, drawings, finished artwork, source code and the like produced by the Seller on the instructions of SEAI.
- 9.6 If notified promptly in writing of any action brought against SEAI based on a claim that any parts provided or modification made to the goods by the Seller infringes any patent, trade mark, copyright or other intellectual property right, the Seller will defend such action at its expense and pay any costs and damages awarded and any expenses incurred by SEAI in connection with the claim (including legal and other expert fees). The Seller shall have sole control of the defence of any such action and all negotiations for its settlement or compromise.
- 9.7 If as a result of such claim SEAI is prohibited from using or otherwise unable to use the goods or if such claim is likely to be made, the Seller will either procure for SEAI the right to continue using the goods, or replace or modify the infringing parts without detracting from the goods overall performance so that it becomes non-infringing. The Seller shall indemnify SEAI against any loss of use during modification or replacement.
- 9.8 The Seller will not have any liability to SEAI under any provision of this clause if the infringement, or claim thereof, is based upon any modification of any item of the goods by a party other than the Seller (other than in accordance with the Seller's instructions).

10 INDEMNITY

- 10.1 The Seller agrees to indemnify and to keep indemnified SEAI and hold SEAI harmless from and against all loss, liabilities, damages and expenses (including reasonable legal fees) arising out of or in connection with the Seller's negligence, default or breach of these Conditions of Purchase, Purchase Order or of any order, including any act or omission of its personnel or sub-contractors. This Clause shall survive termination of this agreement.

11. LIMITATION OF LIABILITY

- 11.1 In no event will SEAI's total liability for damages and actions based on contract or tort arising out of or in connection with this Purchase Order exceed the amount remaining due under this Purchase Order.
- 11.2 In no event shall SEAI be liable for any indirect or consequential loss.

12 CONFIDENTIALITY

Save as provided for by law, including the Freedom of Information Acts 1997 and 2003 (as amended), the Seller agrees to maintain in confidence and not disclose, reproduce or copy any materials, documentation or specification and other confidential information provided to it by SEAI. The Seller shall take all reasonable steps to ensure that its employees, agents, sub-contractors are bound by the same obligation.

13 DATA PROTECTION

The Seller acknowledges that in performing its obligations under this Purchase Order, the Seller may process personal data, within the meaning of the Data Protection Acts 1988 and 2003 (the “**Data Protection Acts**”), received from SEAI. In such circumstances the Seller shall: only collect and process personal data in accordance with the Data Protection Acts and instructions of the Company and solely as strictly necessary for the performance of its obligations or exercise of its rights under this Purchase Order; and, not disclose or permit the disclosure of such personal data, other than as required by law or as necessary for the performance of the Services; and, implement such technical and organisational security measures to guard against the loss, destruction, corruption or alteration of personal data as are required to comply with its obligations under the Data Protection Acts. The Seller shall immediately notify SEAI of any breach of its obligations under this clause.

14 CONTRACTS FOR SERVICES

Any records created in fulfilling a contract for services with SEAI belong to SEAI for the purposes of the Freedom of Information Acts 1997 and 2003 and must be made available to SEAI on request.

15 FORCE MAJEURE

Neither party will be liable for failure or delay in the performance of its obligations under this Purchase Order due to causes beyond its control including but not limited to strikes, wars, revolutions, fires, floods, explosions, earthquakes or governmental regulations.

16 ASSIGNMENT

The Seller shall not assign this Purchase Order or any part thereof without SEAI's prior approval.

17 SUB-CONTRACTING

- 17.1 The Seller shall not sub-contract all or any part of its obligations under this Purchase Order (except delivery of goods) without SEAI's prior written approval. No such approval shall create any contractual relationship between SEAI and any sub-contractor.

17.1 The Seller shall be fully responsible for those elements performed by its sub-contractors and for the acts and omissions of all its sub-contractors to the same extent as it is for the acts and omissions of persons directly employed by it.

18 NOTICES

18.1 Any demand, notice or communication shall be deemed to have been duly served:-

- 18.1.1 If delivered by hand, when left at the proper address for service (except that where such delivery is not on a working day, service shall be deemed to occur on the next following working day).
- 18.1.2 If given or made by prepaid post, four working days after being posted.
- 18.1.3 If transmitted electronically on receipt of "read receipt" or equivalent.

18.2 Any demand, notice or communication shall be made in writing to the recipient at its registered office, or in the case of The Sustainable Energy Authority of Ireland, Wilton Park House, Wilton Place, Dublin 2 (or such address as may be notified in writing from time to time) and shall be marked for the attention of the Finance Department.

19 WAIVER

19.1 Failure to exercise or delay in exercising on the part of either party any right, power or privilege of that party under this Purchase Order shall not in any circumstances operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege in any circumstances preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

19.2 Any waiver of a breach of any of the terms hereof or of any default hereunder shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of this Purchase Order.

20 HEADINGS

The headings to the clauses of this Purchase Order shall not affect the construction of this Purchase Order.

21 SEVERABILITY

If any part of this Purchase Order is found by a court of competent jurisdiction or other competent authority to be invalid, unlawful or unenforceable, then such part shall be severed from the remainder of this Purchase Order which will continue to be valid and enforceable to the fullest extent permitted by law.

22 CANCELLATION

22.1 Without prejudice to its other rights, SEAI reserves the right (i) to cancel any order for any reason at any time prior to delivery on giving the Seller 7 days notice in writing. Save in the event of breach by the Seller, SEAI will pay a reasonable price for all work in progress at the date of the cancellation notice, to the extent only that such work in progress cannot reasonably be used by the Seller in respect of its other customers. SEAI shall not be liable for any other direct or indirect costs, damages or expenses of the Seller arising from such cancellation.

22.2 SEAI may cancel this Purchase Order in whole or in part at any time by written or electronic notice in the event that the Seller:

- 22.2.1 Fails to comply with any term or condition of this Purchase Order or attachments or exhibits hereto including but not limited to delivery terms; or
- 22.2.2 Appoints a receiver, liquidator or other similar officer over any or all of its property or assets; or
- 22.2.3 Files a voluntary petition in bankruptcy; or
- 22.2.4 Voluntarily ceases trading; or
- 22.2.5 Suffers a force majeure event which persists for 4 consecutive weeks.

23 INSURANCE

If the Seller's work under this Purchase Order involves operations by the Seller on SEAI's premises or at any of SEAI's customers or any place where SEAI conducts operations, the Seller shall take all necessary precautions to prevent the occurrence of any injury to persons or property during the progress of such work and except to the extent that such injury is due solely and directly to SEAI's negligence, the Seller shall indemnify SEAI against all loss which may result in any way from any act or omission of the Seller, its employees, servants, agents or sub-contractors. The Seller undertakes and agrees for the benefit of SEAI to take out and maintain at its own expense and for such time as is reasonable and/or may be required in the circumstances adequate employer's liability insurance, public liability insurance, product liability insurance and professional indemnity insurance with a reputable insurance company and shall produce evidence of such insurance upon request by SEAI.

24 GENERAL

24.1 SEAI accepts no liability whatsoever for goods, supplies or services not ordered on the official order form and invoices for such supplies or services not officially ordered will not be honoured.

24.2 Nothing in these Conditions of Purchase shall constitute or be deemed to constitute the Seller an employee or agent of SEAI or a partnership or joint venture between SEAI and the Seller for any purpose whatsoever.

24.3 If any provision of these Conditions of Purchase is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, all other terms of these Conditions of Purchase shall remain in full force and effect.

24.4 The parties shall do their utmost to resolve any dispute or controversy with respect to the interpretation or application of any provision of these Conditions of Purchase in an amicable, timely and efficient manner for the purposes of seeking a just and equitable solution. Proposals and information exchanged during informal

dispute resolution proceedings will be privileged, confidential and without prejudice to a party's legal position in any formal proceedings.

24.5 Any dispute or difference arising out of or in connection with this Purchase Order shall be determined by the appointment of a neutral arbitrator to be agreed between the parties, or failing agreement within 14 (fourteen) days, such dispute may then be referred to the courts.

24.6 Subject to these Conditions of Purchase, the provisions of the Sale of Goods Act 1893 and the Sale of Goods and Supply of Services Act 1980 shall apply.