

# **NETWORK RAIL 5**

## **General Conditions of Contract for the sale of Redundant Assets [Used or New] **Materials****

Agreement No.: [Insert]

# NETWORK RAIL 5

This Contract Agreement is made the [Day] day of [Month] 20[Year]

between:

- (1) **NETWORK RAIL INFRASTRUCTURE LIMITED** (a company registered in England under number 2904587) whose registered office is at 1 Eversholt St, London, NW1 2DN (**Network Rail**); and
- (2) **[NAME OF PURCHASER]**: (a company registered in England under number [Company Number]) whose registered office is at [Purchaser's Address] (the "**Purchaser**").

Now it is hereby agreed as follows:

- 1 This Agreement comprises this Contract Agreement together with the following documents which shall be read and construed as part of this Agreement and in the case of any ambiguity or discrepancy shall have the following order of priority:
  - 1.1 Conditions;
  - 1.2 Schedule 1: Description of Materials;
  - 1.3 Schedule 2: Specified steps for the purposes of section 6 (8) of Health and Safety at Work, etc Act 1974; and
  - 1.4 Schedule 3: Pricing Document.
- 2 Capitalised terms used in this Agreement have the meanings set out in the Conditions unless otherwise specified.
- 3 In consideration of the payment of the Purchase Price by the Purchaser to Network Rail, Network Rail agrees to provide the Materials to the Purchaser in accordance with the provisions of this Agreement.

**In witness** whereof Network Rail and the Purchaser have caused this Agreement to be executed in duplicate on the date first stated above, as follows:

SIGNED for and on behalf of **NETWORK RAIL INFRASTRUCTURE LIMITED** by:

Authorised signatory ..... Printed Name:.....

SIGNED for and on behalf of .....by:

Director ..... Printed Name:.....

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## Conditions

### 1 Definitions

- 1.1 The following terms bear the meanings set out below:
- “**Materials**” means the materials and/or equipment and/or goods which are more specifically described in Schedule 1;
- “**Purchase Price**” means the purchase price set out in the Pricing Document – Schedule 3; and
- “**Premises**” means Network Rail’s premises (which may be at more than one location) set out in Schedule 2;

### 2 Application of Conditions

- 2.1 These conditions shall override any contrary or additional terms or conditions on or referred to in any document or correspondence from the Purchaser.
- 2.2 The Purchaser acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Network Rail which is not set out in this Agreement.
- 2.3 No specifications, samples, drawings, descriptive matter, promotional or sales literature issued by Network Rail shall form part of this Agreement and this is not a sale by sample.

### 3 Condition of the Materials

#### Sub-clause 3.1A Used Materials [ **Applicable / Not Applicable** ]

- 3.1A (a) The Materials are accepted by the Purchaser on the basis that they have already been used. The Purchaser agrees to take the Materials in their current state. The Purchaser acknowledges that he has fully satisfied himself as to the quality of the Materials and their fitness for the purpose for which he requires them.
- 3.1A (b) Network Rail gives no warranties to the Purchaser as to the quality of the Materials or their suitability for any purpose and all such warranties, whether express or implied (whether by common law or by statute) are hereby excluded.

#### Sub-clause 3.1B New Materials [ **Applicable / Not Applicable** ]

- 3.1B (a) Without prejudice to the Purchaser’s other rights and remedies, if during the warranty period (if any) stated in Schedule 1 any defect occurs in any of the Materials due to them not being in accordance with the requirements of this Contract, Network Rail shall as soon as reasonably practical and in any event within a reasonable time as stipulated by the Purchaser replace or repair such defective Materials at its own expense.

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- (b) Materials replaced or repaired shall have their warranty extended by the period during which they were subject to defect.
- 3.2 Where the Purchaser intends to use the Materials at work, Network Rail supplies the Materials on the basis that the Purchaser will ensure, so far as reasonably practicable, that the Materials will be safe and without risks to health when properly used. The Purchaser hereby undertakes in accordance with Section 6(8) of the Health and Safety at Work, etc Act 1974 to implement the specified steps as set out in Schedule 2 in order to ensure, as far as reasonably practicable, that the Materials will be safe and without risks to health when properly so used.
- 3.3 The Purchaser agrees to indemnify Network Rail against all actions, claims, costs, expenses, losses, damages and other liability arising from the use of the Materials by the Purchaser or any other person, including, without limitation, use at work.

## 4 Collection or delivery of the Materials

### Sub-clause 4.1A Collection [ **Applicable / Not Applicable** ]

- 4.1A (a) Subject to condition 6.2, the Purchaser must collect the Materials from the Premises within [28] days of the date of the Contract Agreement or such other date as notified to the Purchaser by Network Rail (the "Date for Collection"). The Purchaser must give Network Rail [72] hours prior notice before collecting the Materials.
- (b) Materials must be collected during the normal working hours of the Premises at which they are located. The Purchaser shall be responsible for checking what those normal working hours are.
- (c) If due to any circumstances beyond its reasonable control Network Rail is unable to make available for collection the whole or any part of the Materials, Network Rail shall not be liable for any loss, cost, damage or expense incurred, paid or suffered by the Purchaser, or any claims for or in respect thereof. If the circumstances continue for a period in excess of 90 days, Network Rail shall be entitled to terminate the Agreement.
- (d) If the Purchaser fails to collect the Materials by the Date for Collection, Network Rail shall be entitled to terminate the Agreement and the Purchaser will have no claim against Network Rail.
- (e) The Purchaser shall be fully responsible for collecting the Materials in a safe and orderly manner and shall provide all necessary resources for so doing including loading at his own cost. The Purchaser agrees to indemnify Network Rail against all actions, claims, costs, losses, damages and other liability arising in connection with any act, omission or default of the Purchaser, his employees, agents or sub-contractors in collecting the Materials.

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- (f) Risk in the Materials shall pass to the Purchaser upon collection, or in the event of the Purchaser's delay in collecting the Materials, from the Date for Collection.

## Sub-clause 4.1B Delivery [ **Applicable / Not Applicable** ]

- 4.1B (a) Network Rail shall deliver the Materials in accordance with the requirements in Schedule 1. The Purchaser will be under no obligation to accept or pay for Materials not delivered in accordance with the instructions stipulated therein.
- (b) Unless stated otherwise in Schedule 1 no additional charge shall be made by Network Rail for packing cases and materials and for delivery to the specified place for delivery.
- (c) Each delivery shall be accompanied by a delivery advice note specifying the quantity of Materials delivered and the Purchase Order or Contract number.
- (d) Risk in the Materials shall pass to the Purchaser upon delivery.

## **5 Title**

- 5.1 Title to the Materials shall not pass to the Purchaser until the Purchaser has paid the Purchase Price to Network Rail.

## **6 Payment**

### Sub-clause 6.1A Payment before collection [ **Applicable / Not Applicable** ]

- 6.1A (a) Payment of the Purchase Price shall be made within 14 days of the date of the Contract Agreement (the "Date for Payment").
- (b) No collection of the Materials may be made until the Purchase Price has been paid in full.

### Sub-clause 6.1B Payment after delivery [ **Applicable / Not Applicable** ]

- 6.1B (a) The Purchaser shall, in respect of Materials that have been properly supplied and delivered, make payment within 28 days from receipt of a valid invoice (the "Date for Payment").
- 6.2 Without prejudice to its other rights and remedies, if any part of the Purchase Price is not paid by the Date for Payment, the Purchaser shall pay to Network Rail, in addition to the amount due, simple interest thereon at the rate of 4% above the Bank of England Base Rate current at the Date for Payment for the period until such payment is made.
- 6.3 The Purchaser shall pay to Network Rail, in addition to the Purchase Price, a sum equal to the Value Added Tax ("VAT") chargeable on the value of the supply of Materials in accordance with the Agreement at the time at which

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the Purchase Price is paid to Network Rail.

## **7 Conduct of the Purchaser when collecting Materials**

- 7.1 The Purchaser shall comply with all Laws, including, without limitation, all environmental Laws (including those relating to waste) in relation to the Materials and the collection, use and disposal thereof and with the rules and regulations prescribed from time to time by Network Rail (including, without limitation, health and safety requirements). The Purchaser shall comply with all instructions of Network Rail (including, without limitation, instructions to cease or suspend collection on grounds of safety). The Purchaser shall not interfere with or obstruct any public or private rights or property (including, without limitation, Network Rail's property, railway operations and traffic, road traffic and highways).
- 7.2 The Purchaser shall take all reasonable steps and all steps required by this Agreement and by Network Rail to prevent unauthorised persons being admitted to the Premises. If Network Rail gives the Purchaser notice that any person is not to be admitted to the Premises, the Purchaser shall take all practicable steps to prevent that person being admitted.
- 7.3 Where access to the Premises is required by way of Network Rail's land the route of such access shall be approved in advance by the Network Rail. The Purchaser shall be responsible for ensuring that no person employed on his behalf trespasses beyond the agreed limits of the working area or access route and shall, if required so to do, provide and maintain at his own expense to the satisfaction of Network Rail temporary fencing of an approved type to prevent trespass on the railway or neighbouring land. The Purchaser shall remove all such fencing at his own expense on completion of collection of the Materials.
- 7.4 Where passes are required for admission to the Premises, Network Rail shall either issue them to the Purchaser or arrange for their issue by the Purchaser. The Purchaser shall submit to Network Rail a list of the names of the relevant employees and other persons issued or to be issued with passes, and any other information Network Rail reasonably requires in this connection. The passes shall be returned at any time on the demand of Network Rail and in any case on completion of collection.
- 7.5 The Purchaser shall maintain a record of all visitors to the Premises and shall if and when instructed by Network Rail, give to Network Rail a list of names and addresses of all persons who are or may be at any time concerned with the collection of the Materials or any part thereof, specifying the capacities in which they are so concerned, and giving such other particulars as Network Rail may reasonably require.

## **7A Compliance**

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- 7A.1 The Purchaser shall comply with all applicable anti-bribery and anti-corruption legislation including, without limitation, the Bribery Act 2010 and any applicable European Union Directives. The Purchaser shall also comply with Network Rail's codes and policies on business ethics, interests in transactions and corporate hospitality, and any updates thereof. Any breach of this clause shall be deemed a material breach under the Agreement. (Note: These codes and policies are available on request).
- 7A.2 Throughout the term of this Agreement the Purchaser shall maintain and enforce its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with all applicable anti-bribery and anti-corruption legislation and European Union Directives. Adequate procedures shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of the Act).
- 7A.3 The Purchaser shall use all reasonable endeavours to ensure that all persons associated with the Purchaser (as defined by section 8 of the Bribery Act 2010) including any subcontractors and suppliers comply with clause 7.6 and 7.7 above.

## 8 Confidentiality

- 8.1 Both parties agree to keep confidential any technical or commercial information which they acquire in relation to the other in connection with this Agreement. Neither party shall disclose to any third party any such information without the prior written consent of the other except as provided for in clause 8.2.
- 8.2 Nothing in this Agreement shall prevent Network Rail disclosing the Purchaser's confidential information:
- 8.2.1 to the Crown, any other Contracting Authority or any government department. All government departments receiving such confidential information shall be entitled to further disclose the confidential information to other government departments on the basis that the information is confidential and is not disclosed to a third party which is not part of the Crown, any Contracting Authority or any government department.
  - 8.2.2 for the purpose of the examination and certification of Network Rail's accounts; or
  - 8.2.3 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which Network Rail has used its resources.

## 9 Termination

- 9.1 If the Purchaser:



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- 9.1.1 fails to pay the Purchase Price or any part of it by the Date for Payment;
- 9.1.2 fails to collect the Materials by the Date for Collection;
- 9.1.3 encumbers or in any way changes any of the Materials prior to purchase; or
- 9.1.4 is otherwise in material breach of the Agreement,

Network Rail may, without prejudice to any other rights it may have, terminate this Agreement forthwith by notice in writing.

9.2 Either party may terminate by notice to the other party in writing if the other party becomes Insolvent. For the purposes of this Agreement, "Insolvent" means:

- 9.2.1 suspending or threatening to suspend payment of its debts or being unable to pay its debts as they fall due or admitting inability to pay its debts or being deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 9.2.2 being the subject of a petition presented (which is not dismissed within fourteen (14) days of its service), a notice given, or a resolution passed for or in connection with winding up other than for the sole purpose of a scheme for a solvent amalgamation with one or more other companies or solvent reconstruction;
- 9.2.3 being the subject of an application to court for the appointment of an administrator or a notice of intention to appoint an administrator filed at court;
- 9.2.4 going into liquidation;
- 9.2.5 having a receiving or administration order made against him;
- 9.2.6 compounding with creditors;
- 9.2.7 carrying on business under a receiver, trustee or manager for the benefit of creditors,

or any order, act or event which under applicable laws has effect substantially similar to these orders, acts or events.

## **9A Consequences of Termination**

Pursuant to clause 9 and without prejudice to any other claims that it may have, Network Rail shall be entitled to claim from the Purchaser all reasonable costs expenses and damages arising from such termination.

## **10 Limitations of Liability**

10.1 Network Rail's liability under the express terms of this Agreement shall be to the exclusion of all other liability of Network Rail to the Purchaser whether

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contractual, tortious or otherwise in relation to the Materials or for any loss or damage to or caused by the Materials.

10.2 Network Rail shall not be liable to the Purchaser in contract, tort (including negligence or breach of statutory duty) or otherwise for any loss of profit, contracts, business, revenues, anticipated savings or any other economic or financial loss.

10.3 Neither party excludes or limits any liability to the other party for:

10.3.1 personal injury (including sickness and death) to the extent that such injury results from the negligence or wilful default of itself, its employees, agents or sub-contractors;

10.3.2 any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979; or

10.3.3 fraudulent misrepresentation.

## 11 Third Party Rights

11.1 Nothing in this Agreement is intended to confer on any person any right to enforce any term of this Agreement which that person would not have had but for the provisions of Contracts (Rights of Third Parties) Act 1999.

## 12 Assignment

12.1 Network Rail may assign the benefit of its rights under this Agreement to any person, firm or company.

12.2 The Purchaser shall not be entitled to assign, charge or transfer this Agreement without the prior written consent of Network Rail.

## 13 Notices

13.1 Any notice required to be given by a party shall be in writing and service shall be effected either:

13.1.1 personally, in which case service shall be deemed effective on delivery; or

13.1.2 by prepaid recorded delivery post, in which case service shall be deemed effective two working days after the day after posting.

13.2 Notices to Network Rail shall be sent to the Company Secretary at the address given in the Contract Agreement and copied to [notices@networkrail.co.uk](mailto:notices@networkrail.co.uk).

## 14 Severability

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- 14.1 If any provision of this Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of this Agreement and the remainder of such provision shall continue in full force and effect.

## **15 Governing Law Jurisdiction and Limitations**

- 15.1 This Agreement shall be governed by and construed in accordance with the laws of England and Wales and the Parties submit to the exclusive jurisdiction of the Courts of England and Wales.

## **16 Freedom of Information**

- 16.1 The Purchaser acknowledges that:
- 16.1.1 Network Rail may be required, under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 (collectively, the Information Acts), to disclose information relating to the subject matter of this Agreement; and
  - 16.1.2 notwithstanding any other provision in this Agreement, Network Rail shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the Information Acts.
- 16.2 The Purchaser shall provide all necessary assistance and cooperation as reasonably requested by Network Rail to enable it to comply with its obligations under the Information Acts.

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## **SCHEDULE 1: Description of Materials**

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## **SCHEDULE 2: Specified Steps for the purposes of Section 6(8) of Health and Safety at Work, etc Act 1974**

### **Specified Steps**

### **Premises**

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## **SCHEDULE 3: Pricing Documents**