

Change Note for PW-CF1 to PW-CF4 & FTS-1 to FTS-4

17 July 2023: The following amendments are made:

TABLE A: DOCUMENTS AMENDED	
Form of Conditions of Contract	Form of Tender and Schedule
PW-CF1 v2.6 07-01-2022	FTS-1 v2.5 07-01-2022
PW-CF2 v2.5 07-01-2022	FTS-2 v2.4 07-01-2022
PW-CF3 v2.6 07-01-2022	FTS-3 v2.5 07-01-2022
PW-CF4 v2.5 07-01-2022	FTS-4 v2.4 07-01-2022

TABLE B: AMENDMENTS	
Ref	DESCRIPTION OF AMENDMENT
A.	<p>Clause 1 (<i>The Contract</i>) To provide for Tenderers to rely upon the resources of an entity for the purpose of pre-qualification, the following amendments are made:</p> <ul style="list-style-type: none"> Sub-clause 1.6 (previously titled "<i>Parent Company Guarantee</i>") is re-titled as "<i>Reliance Documents</i>", and, amended to provide that where the Schedule Part 2B states that there are to be Reliance Documents (Reliance Guarantees and/or Reliance Warranties), the Contractor gives these to the Employer before the Starting Date. In the Schedule, Part 2B (previously entitled "<i>Parent Company Guarantee</i>") is re-titled as "<i>Reliance Documents</i>" and amended. Tenderers are required to enter the names of entities upon whom they relied upon for the purpose of pre-qualification. Model Form 1.7 (previously titled "<i>Parent Company Guarantee</i>") is re-titled as "<i>Reliance Guarantee</i>" and amended. Where, for the purpose of pre-qualification, the Contractor has relied upon an entity for financial and economic resources, a Reliance Guarantee is required. A new Model Form 1.30 "<i>Reliance Warranty</i>" is provided. Where, for the purpose of pre-qualification, the Contractor has relied upon an entity for technical competency resources a Reliance Warranty is required. (The Contracting Authority may instead, require a Collateral Warranty, having regard to the nature of the technical capability criterion relied upon by the Tenderer)
B.	<p>Sub-clause 2.6 (<i>Ethics in Public Office</i>)</p> <p>In sub-clause 2.6 (Ethics in Public Office) the reference to the "Prevention of Corruption Acts 1889 to 2010" is replaced by the "Criminal Justice (Corruption Offences) Act 2018".</p>
C.	<p>Sub-clause 3.8 (<i>Existing Facilities and Use of Occupation by Employer</i>)</p> <p>In the Schedule Part 1D, Optional Insurance Provisions, the first sentence: "The Employer shall not/shall have the risk of loss of and damage to its existing facilities and parts of the Works it uses or occupies, in accordance with sub-clause 3.8." is removed, and is replaced by: "Sub-clause 3.8 (Existing Facilities and Use or Occupation by Employer) shall/shall not apply". (The Contracting Authority selects either "shall" or "shall not" from a drop-down option). (There is no change to Sub-clause 3.8 (<i>Existing Facilities and Use or Occupation by Employer</i>)).</p>
D.	<p>Sub-clause 3.9 (<i>General Requirements Concerning Insurance</i>)</p> <p>Sub-clause 3.9.6 is amended such that the Contractor is required to provide evidence that the Insurances are in effect, on or before the renewal date of any insurance policy.</p>

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E.	<p>Schedule 1D Insurance (Clause 3)</p> <ul style="list-style-type: none"> The option to select “each and every claim” for Professional Indemnity Insurance is removed and “annual aggregate” only applies. The maximum excess permitted for Professional Indemnity Insurance is amended to read “The maximum excess shall be the greater amount of 2% of the Contractor’s annual turnover or €5,000.”
F.	<p>Sub-clause 3.10 (Limitation on Liability)</p> <ul style="list-style-type: none"> A new sub-clause 3.10 <i>Limit on Liability</i> is incorporated, which - subject to specified exclusions - limits the liability of the Contractor to the Employer to an amount stated in the Schedule (“the Liability Cap”). Sub-clause 3.10.1 provides that the amount of the Liability Cap is as stated in the Schedule, Part 1M <i>Limit on Liability</i> and sub-clause 3.10.2 describes exclusions from the application of the Liability Cap. The Contracting Authority is to state the amount of the Liability Cap to apply in Schedule, Part 1M <i>Limit on Liability</i>. The Schedule provides that where the Contracting Authority does not state an amount, the amount of the Liability Cap defaults to the amount of the Contract Sum.
G.	<p>Clause 10.10 (International Procurement Instrument)</p> <p>To provide for the application of Regulation (EU) 2022/1031 of the European Parliament and of the Council of 23 June 2022 on the access of third-country economic operators, goods and services to the Union’s public procurement and concession markets and procedures supporting negotiations on access of Union economic operators, goods and services to the public procurement and concession markets of third countries (“The International Procurement Instrument” – IPI):</p> <ul style="list-style-type: none"> A new sub-clause 10.10 International Procurement Instrument Measures is included. In a new entry the Schedule Part 1P IPI Measures, the Contracting Authority must state whether sub-clause 10.10 <i>International Procurement Instrument Measures</i> applies to the contract, which is only when, at the date the competition was launched, an IPI Measure was in force.
H.	<p>Clause 12 (Termination)</p> <p>To incorporate the requirements of Regulation 73 of SI 284/2016 (“the SI”) the following amendments have been made:</p> <ul style="list-style-type: none"> Sub-clause 12.1 <i>Termination on Contractor Default</i> has been amended by the addition of a new sub-clause 12.1.1 (13), which provides for the termination of the contract where the Contractor has, at the time of the Contract award, been in one of the situations referred to in Regulations 57(1) or 57(2) of the SI, and in the opinion of the Employer, should therefore have been amended from the procurement procedure. Sub-clause 12.5.4 <i>Termination at Employer’s Election</i> is amended by the addition of a new sub-clause 12.5.4. The new sub-clause permits termination by the Employer in those situations where the Contract should not have been awarded in view of a serious infringement of the European Treaties and Directive 2014/24/EU or Directive 2014/25/EU declared by the Court of Justice of the European Union; or, the Contract, has in the view of the Employer, been subject to a substantial

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	<p>modification pursuant to Regulation 72 (Modification of Contracts during their term) of the SI. Sub-clause 12.5.2 is also amended to exclude sub-clause 12.5.4.</p> <p>To incorporate the requirements of Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine as amended by Council Regulation (EU) 2022/2474 of 16 December 2022 (together "the sanctions against Russia"), the following amendment is made:</p> <ul style="list-style-type: none"> a new sub-clause 12.1.1 (14) is added. The sub-clause provides that the Employer may terminate the Contractor where the Contractor (or subcontractors) falls within the category of prohibited economic operators (as defined in the sanctions against Russia). <p>Sub-clause 12.1.2 is amended by the removal of "(ii) terminate the obligation to complete the Works of the person concerned and the others shall remain liable to perform the Contractor's obligations".</p>
I.	<p>Clause 14 (Covid-19 Mandatory Closure)</p> <p>Sub-clause 14.3.1 is amended by removing the requirement that Site Closure Costs are added to the Contract Sum where the duration of a Covid-19 Mandatory Closure(s) exceeds a period of 7 days.</p>
J.	<p>Clause 15 (Price Variation)</p> <ul style="list-style-type: none"> Clauses PV1 and PV2 are removed and instead, a new Clause 15, which is based on a simplified version of PV2 is provided. Clause 15 permits adjustments to the Contract Sum for fluctuations in Materials, Fuel and Labour and a change in law. A fixed price period for Materials and Fuel no longer applies. The Contracting Authority assigns, (in the Schedule Appendix 4, Part 1), the proportions of the Contract Sum that are eligible for adjustment for fluctuations in Materials, Fuel and Labour. In order to calculate the adjustments to the Contract Sum, the Contracting Authority also assigns, (in the Schedule Appendix 5, Parts 1 - 3,) weightings to specified Material Categories, Fuel Categories and Labour Categories. The Contracting Authority must also assign, (in the Schedule Appendix 4, Part 2), a value to apply for the Permitted Increase Threshold (which must be between 3% and 10%) for Materials and Fuel. For Materials and Fuel, in order for an adjustment to be permitted, movements in the relevant CSO indices for Material Categories and Fuel Categories must either: <ul style="list-style-type: none"> (i) increase by more than the applicable Permitted Increase Threshold; or (ii) decrease by more than ten percent. The duration of the Base Date is reduced to that date falling 25 months after the Designated Date. Adjustments to the Contract Sum for Labour are calculated using changes in sectoral employment orders coming into effect after the Base Date for stated labour categories. In addition, the following amendments are made: <ul style="list-style-type: none"> (i) Sub-clause 1.1 <i>Definitions</i> –definitions of Applicable Factor, Applicable Factor (Specialist) and the Tender Inflation Indexation Date are removed. (ii) Sub-clause 10.8 <i>Price Variation</i> is no longer used (as PV1 and PV2 have been removed). (iii) Sub-clause 11.1.1(3) is amended (re: adjustment of named Specialist payments) (iv) Sub-clause 11.1.3 is no longer used.

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K.	<p>Inflation/Supply Chain Co-operation Framework Agreement</p> <p>NOTE: In tandem with the publication of the above contracts (& PW-CF5, which is subject of a separate Change Note), the Inflation/Supply Chain Co-operation Framework Agreement v1.1 is replaced by the Supply Chain Co-operation Framework Agreement v1.2. Parties to an un-amended form of public works contract PW-CF1 to PW-CF5 with a publication date of 17-7-2023 may elect to use the Supply Chain Co-operation Framework Agreement to address delay caused by supply chain delay in accordance with the provisions of the Framework Agreement.</p>

End.