



SUB-CONTRACT TERMS AND CONDITIONS

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

Additional Conditions: any terms and conditions referred to as such in the Order or the Order Schedule.

AFL: AFL Telecommunications Europe Ltd registered in England and Wales with company number 03971894.

AFL Materials: has the meaning set out in clause 4.4(i).

Business Day: a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business.

Commencement Date: has the meaning set out in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 13.9.

Contract: the contract between AFL and the Supplier for the supply of Goods and/or Services in accordance with these Conditions.

Customer: AFL's customer described as such in the Order.

Customer Contract: AFL's contract with the Customer which may be annexed to the Order.

Goods: the goods (or any part of them) set out in the Order or any materials, parts, components or equipment to be supplied by the Supplier and incorporated in the Works.

Order: AFL's order for the supply of Goods and/or Services, as set out in AFL's purchase order form, or in AFL's written acceptance of the Supplier's quotation, or overleaf, as the case may be.

Order Schedule: the document described as such and annexed to or incorporated within the Order.

Project: the project described in the Order Schedule.

Project Programme: the document described as such and agreed by the Supplier, AFL, the Customer and the other subcontractors.

Services: the services to be provided by the Supplier under the Contract as set out in the Order Schedule.

Site: the site at which the Works will be carried out and identified as such in the Order.

Supplier: the person or firm from whom AFL purchases the Goods and/or Services.

Works: shall mean the Goods and/or Services to be provided under the Contract.



1.2 Construction. In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a references to a party includes its successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to **writing** or **written** includes faxes.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by AFL to purchase Goods and/or Services from the Supplier in accordance with these Conditions.

2.2 The Order shall be deemed to be accepted on the earlier of:

- (a) the Supplier issuing written acceptance of the Order; or
- (b) any act by the Supplier consistent with fulfilling the Order,

at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 These Conditions and the Additional Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.4 All of these Conditions and the Additional Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

3. SUPPLY OF GOODS

3.1 The Supplier shall ensure that the Goods shall:

- (a) correspond with their description and any applicable specification;



- (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by AFL, expressly or by implication, and in this respect AFL relies on the Supplier's skill and judgment;
- (c) where applicable, be free from defects in design, materials and workmanship and remain so for 12 months after delivery; and
- (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

3.3 Title and risk in the Goods shall pass to AFL on completion of delivery. Delivery shall be deemed completed when Goods are incorporated into the Works.

4. SUPPLY OF SERVICES

4.1 The Supplier shall provide the Services to AFL in accordance with the terms of the Contract.

4.2 The Supplier shall meet any performance dates for the Services specified in the Order or Order Schedule or notified to the Supplier by AFL.

4.3 The Supplier acknowledges and agrees that it has examined the Site and finds it satisfactory. The Supplier assumes full responsibility for the adequacy, quantity, type and suitability of the plant, equipment and vehicles to be provided under the Contract.

4.4 In providing the Services, the Supplier shall:

- (a) co-operate with AFL and the Customer in all matters relating to the Services, and comply with AFL's instructions;
- (b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;
- (d) ensure that the Services will conform with all descriptions and specifications set out in the Order Schedule;



- (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services including, but not limited, to those set out in the Order Schedule;
- (f) use the best quality goods, materials, standards and techniques, and ensure that all goods and materials supplied and used in the Services or transferred to AFL, will be free from defects in workmanship, installation and design;
- (g) obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
- (h) observe all health and safety rules and regulations and any other security requirements that apply at any of AFL's or the Customer's premises;
- (i) hold all cable, accessories, other materials, equipment and tools, drawings, specifications and data supplied by AFL to the Supplier (AFL Materials) in safe custody at its own risk, maintain the AFL Materials in good condition until returned to AFL, and not dispose or use AFL's Materials other than in accordance with AFL's written instructions or authorisation;
- (j) not do or omit to do anything which may cause AFL to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that AFL may rely or act on the Services;
- (k) provide AFL with associated documentation, training or other support as required in the Customer Contract or as AFL specify as necessary for the proper completion of the Services;
- (l) support AFL as required in planning and progress meetings at such locations as AFL may reasonably specify; and
- (m) provide resources, materials and personnel in accordance with the Project Programme.

4.5 The Supplier shall only access the Site using routes agreed with AFL and the Customer.

5. RESPONSIBILITIES

5.1 Unless otherwise stated in the Order Schedule, AFL will be responsible for the design and supply of cables and accessories, packing and delivery to the relevant Site and general management of the installation. Title to all AFL Materials will remain with AFL at all times.

5.2 The Supplier shall be responsible for the day to day organisation, management and conduct of the provision of Services.

5.3 For SkyWrap contracts AFL will provide specialist installation equipment for its SkyWrap system as detailed in AFL document QD10181 in a timely manner to enable commencement and progress of the Services as required by the Project Programme. The Supplier is responsible for providing



all other equipment necessary for the completion of the Services including, but not limited to, those more particularly described in the Order Schedule.

5.4 The Supplier shall be responsible for all health and safety aspects relating to the Works. The Supplier agrees to comply with AFL's and the Customer's rules, together with all applicable statutory rules and regulations regarding such matters. The Supplier shall appoint a Responsible Person for Health and Safety for the Project ('RP'). The RP shall:

- (a) prepare a risk assessment for potential health hazards;
- (b) provide and maintain all safeguards, health and safety equipment, personal protective equipment, traffic warning signs, barricades, signalmen etc and take any other actions that he or AFL or the Customer may determine necessary to protect the life and health of the employees involved in the Works, the public and their property.

5.5 Where the Contract requires Work on overhead power lines, AFL requires the Supplier to follow AFL Project Services Contractor EHS Plan QD10243 as well as any AFL Project specific safety plan and the safety precautions and rules laid down by the owner of the line or the Customer and any local statutory health and safety reasons.

5.6 Responsibility for the care of AFL cable, accessories and equipment will be as follows:

1	Delivery of AFL cable and installation	AFL
2	Unloading, handling and storage on Site	Supplier
3	Installation up and until hand-over to AFL	Supplier
4	From hand-over of installation to AFL to hand-over to Customer	AFL

6. REMEDIES

6.1 If the Supplier fails to perform the Services by the applicable date, AFL shall, without limiting its other rights or remedies, have one or more of the following rights:

- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (b) to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;



- (c) to recover from the Supplier any costs incurred by AFL in obtaining substitute goods and/or services from a third party;
- (d) where AFL has paid in advance for Services that have not been provided by the Supplier to have such sums refunded by the Supplier; and
- (e) to claim damages for any additional costs, loss or expenses incurred by AFL which are in any way attributable to the Supplier's failure to meet such dates.

6.2 AFL's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

7. AFL'S OBLIGATIONS

AFL shall:

- (a) provide the Supplier with reasonable access at reasonable times to the Site for the purpose of providing the Services; and
- (b) provide such information as the Supplier may reasonably request for the provision of the Services and AFL considers reasonably necessary for the purpose of providing the Services.

7A CDM REGULATIONS

7A.1 This clause 7A applies where the CDM Regulations apply to the Works.

7A.2 Definitions applicable to this clause:

'CDM Co-ordinator'

for the purposes of the CDM Regulations is the person described as such in the Order, or if he ceases to be the CDM Co-ordinator, such other person as the Customer shall appoint pursuant to regulation 14 (3) of those regulations.

'CDM Regulations'

the Construction (Design and Management) Regulations 2007 and any associated approved code of practice and guidance requirements issued by the Health and Safety Executive.

'Construction Phase Plan'

the plan prepared by the Principal Contractor, where the project is notifiable under the CDM Regulations and in order to comply with regulation 23, including any updates and revisions.

'Principal Contractor'

for the purposes of the CDM Regulations is the person described as such in the Order or, if he ceases to be the Principal Contractor, such other contractor as the Customer shall appoint pursuant to regulation 14 (3) of the CDM Regulations.



- 7A.3 Each party acknowledges that he is aware of and undertakes to the other that in relation to the Works and the Site he will duly comply with the CDM Regulations. Without limitation, where the project that comprises or includes the Works is notifiable under the CDM Regulations:
- (a) if under the Customer Contract the Customer notifies AFL of a new appointee as the CDM Co-ordinator and/or as the Principal Contractor, AFL shall as soon as reasonably practicable copy that notification to the Supplier;
 - (b) AFL shall use reasonable endeavours to ensure that the Supplier is supplied as soon as reasonably practicable with any updates or revisions of the Construction Phase Plan by the Principal Contractor;
 - (c) the Supplier shall comply at no extra cost to the Customer or AFL with all the reasonable requirements of the Principal Contractor relating to compliance by the Supplier with the CDM Regulations but no extension of time for completing the Works shall be given in respect of such compliance; and
 - (d) within a time reasonably notified by AFL, the Supplier shall provide to AFL such information in respect of the Works as is reasonably necessary to enable AFL to meet its obligations to provide the Customer, the Principal Contractor and/or the CDM Co-ordinator with such information as the CDM Co-ordinator reasonably requires for the preparation of the health and safety file.

8. CHARGES AND PAYMENT

8.1 The price for the Goods and Services:

- (a) shall be the price set out in the Order;
- (b) shall be:
 - (i) in respect of Goods, inclusive of the costs of packaging, insurance and carriage of the Goods, unless otherwise agreed in writing by AFL;
 - (ii) in respect of Services, inclusive of all the Supplier's expenses in respect of the performance of the Services including expenses with regard to labour, travel, subsistence, equipment, consumables, fuel, energy, light, water, tools etc., and the maintenance of adequate insurance by the Supplier.
- (c) is fixed for the duration of the Contract.

8.2 The Supplier shall invoice AFL on completion of the Works or as otherwise agreed between AFL and the Supplier. Each invoice shall include such supporting information required by AFL to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.



- 8.3 In consideration of the supply of Goods and/or Services by the Supplier, AFL shall pay the invoiced amounts within 30 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier, payment of invoiced amounts is subject to the Works being performed to the satisfaction of AFL and its Customer, based on reports from AFL Site supervision and the Supplier and review of relevant documentation and photographs.
- 8.4 All amounts payable by AFL under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to AFL, AFL shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.
- 8.5 If AFL fails to pay any amount properly due and payable by it under the Contract, the Supplier shall have the right to charge interest on the overdue amount at the rate of 2 per cent per annum above the base rate for the time being of HSBC Bank plc accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment. This clause shall not apply to payments that AFL disputes in good faith.
- 8.6 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow AFL to inspect such records at all reasonable times on request.
- 8.7 AFL may, without limiting its other rights or remedies, set off any amount owing to it by the Supplier against any amount payable by AFL to the Supplier under the Contract.

9. INSURANCE AND INDEMNITY, BONDS AND GUARANTEES

- 9.1 The Supplier shall keep AFL indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid AFL as a result of or in connection with:
- (a) any claim made against AFL by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
 - (b) any claim made against AFL by a third party arising out of, or in connection with, the supply of the Goods or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and



- (c) any claim made against AFL by a third party arising out of or in connection with the Supplier's breach of condition 4.5.

9.2 For the duration of the Contract and for a period of six years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance and motor vehicle insurance to cover the liabilities that may arise under or in connection with the Contract and shall, at AFL's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

9.3 The Supplier shall provide and maintain any bonds or guarantees requested by AFL as set out in the Order.

9.4 This clause 9 shall survive termination of the Contract.

10. CONFIDENTIALITY

A party (Receiving Party) shall keep in strict confidence all technical or commercial know-how, specifications, plans, designs, drawings, samples, tools, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (Disclosing Party), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees or agents as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees or agents are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 10 shall survive termination of the Contract.

11. TERMINATION

11.1 Without limiting its other rights or remedies, AFL may terminate the Contract with immediate effect by giving written notice to the Supplier if:

- (a) the Supplier commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of receipt of notice in writing of the breach;
- (b) if AFL reasonably believes that the Supplier may be unable to complete the Works by the date referred to in condition 4.2;
- (c) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is



deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

- (d) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- (f) the Supplier (being an individual) is the subject of a bankruptcy petition order;
- (g) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (h) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier (being a company);
- (i) a floating charge holder over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (j) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
- (k) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.1(c) to clause 11.1(j) (inclusive);
- (l) the Supplier suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business; or
- (m) the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.



12. CONSEQUENCES OF TERMINATION

On termination of the Contract or any part of it for any reason:

- (a) where the Services are terminated, the Supplier shall immediately return all AFL Materials. If the Supplier fails to do so, then AFL may without limiting its other rights or remedies enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (b) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and
- (c) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

13. GENERAL

13.1 Force majeure: Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under the Contract if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable. If such event or circumstances prevent the Supplier from supplying the Goods and/or Services for more than 30 days, AFL shall have the right, without limiting its other rights or remedies, to terminate this Contract with immediate effect by giving written notice to the Supplier.

13.2 Assignment and subcontracting:

- (a) The Supplier shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without AFL's prior written consent;
- (b) AFL may at any time assign, transfer, charge, subcontract, or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

13.3 Where the Works are to be carried out in the UK the Supplier shall provide AFL with a copy of its tax exemption certificate.

13.4 Notices:

- (a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other



party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.

- (b) Any notice or communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.
- (c) This clause 13.4 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

13.5 Waiver and cumulative remedies:

- (a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

13.6 Severance:

- (a) If a court or any other competent authority finds that any provision (or part of any provision) of the Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

13.7 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

13.8 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.



- 13.9 Variation: Any variation, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by AFL.
- 13.10 Governing law and jurisdiction: The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.