
**E-ROC CONDITIONS OF SALE
(SECOND EDITION)
NFPAS ROC AUCTION**

e-ROC CONDITIONS OF SALE (SECOND EDITION)

These e-ROC Conditions of Sale are the “e-ROC Conditions of Sale” referred to in the e-ROC Auction Code and apply to the sale by auction of Renewables Obligation Certificates by NFPAS Limited, company number 4334396, whose registered office is at Fourth Floor, Higham House, Higham Place, New Bridge Street West, Newcastle-upon-Tyne NE1 8AN (“NFPAS”) as agent on behalf of the seller of such Renewables Obligation Certificates (the “Principal”).

1. CAPACITY OF NFPAS

NFPAS acts as agent for the Principal, by whom it has been appointed and as such NFPAS is not responsible for any default by the Principal or the Successful Bidder. Where the Principal is Northern Ireland Electricity plc, NFPAS acts as agent for the purpose of procuring bids pursuant to Article 19 of the RO(NI) Order where applicable.

2. WARRANTIES BY THE SUCCESSFUL BIDDER

2.1 The Successful Bidder warrants and represents that it has the power to enter into, perform and comply with all its obligations under these e-ROC Conditions of Sale and that its entry into, performance of or compliance with its obligations under these e-ROC Conditions of Sale does not and will not violate any law to which it is subject or its constitutional or enabling documents.

2.2 The Successful Bidder warrants and represents that it has been granted and there subsists in respect of it a licence to supply electricity pursuant to Section 6 of the Electricity Act 1989 or Article 10 of the Electricity (Northern Ireland) Order 1992.

3. INDEMNITY

The Successful Bidder agrees to indemnify and keep indemnified the Principal and NFPAS their officers, employees, agents and sub-contractors against all liabilities, claims and expenses (including reasonable legal fees) that may arise from any breach of the terms of the e-ROC Conditions of Sale by the Successful Bidder or the violation by the Successful Bidder of any law or rights of the Principal or any third party.

4. WARRANTY BY THE PRINCIPAL

The Principal warrants and represents that it has the power to enter into, perform and comply with all of its obligations under these e-ROC Conditions of Sale and that its entry into, performance of or compliance with its obligations under these e-ROC Conditions of Sale does not and will not violate any law to which it is subject or its constitutional or enabling documents.

5. CHARGES

The Successful Bidder hereby authorises and directs NFPAS to submit an invoice to it in accordance with Clause 5.5 of the e-ROC Auction Code.

6. PAYMENT

6.1 Invoices submitted by NFPAS pursuant to Condition 5 and disclosing amounts payable by the Successful Bidder to NFPAS shall, subject to Condition 9, be paid by the Successful

Bidder within 10 Banking Days of the date of the invoice. Payment shall be made by direct transfer to the bank account of NFPAS in the United Kingdom with such bank as NFPAS may from time to time notify to the Successful Bidder or by such other arrangements as the parties may agree.

- 6.2 Any payment including VAT and interest by the Successful Bidder to NFPAS may be applied by NFPAS towards any sums owing from that Successful Bidder to NFPAS on any account whatever without regard to any directions of the Successful Bidder, whether express or implied.

7. VALUE ADDED TAX

The sums expressed to be due and payable by the Successful Bidder to NFPAS under these e-ROC Conditions of Sale are exclusive of Value Added Tax (or any other tax in substitution therefor or in addition thereto) and the Successful Bidder shall, in addition to such sums, pay to NFPAS Value Added Tax (or any other tax in substitution therefor or in addition thereto) at the rate for the time being and from time to time payable, in respect of any payment to be made under these e-ROC Conditions of Sale.

8. INTEREST

Without prejudice to NFPAS's right to rescind the sale under Condition 11, any amount properly due and payable from the Successful Bidder to NFPAS pursuant to these e-ROC Conditions of Sale and remaining unpaid at the expiry of the relevant period for payment shall bear interest thereafter, such interest to accrue from day to day and to be compounded with monthly rests at a rate equal to 3% in excess of the Barclays Bank Base Rate from (but excluding) the date of expiry of any such period until (but excluding) the date upon which the amount due is actually received by NFPAS whether before or after the date of any judgement. The provisions of this Condition 8 shall not apply in respect of periods where interest is calculated pursuant to paragraph (C) of Condition 9.

9. DISPUTED ITEMS

- 9.1 If any item or part of any item of an invoice rendered by NFPAS in accordance with Condition 5 is disputed in good faith by the Successful Bidder:
- (A) the payment by the Successful Bidder of the undisputed and unquestioned items or parts of items shall not be withheld;
 - (B) the provisions of Condition 8 shall apply to such undisputed and unquestioned items or parts of items;
 - (C) if it is subsequently agreed or determined that the disputed or questioned item or parts of items were properly payable to NFPAS, the Successful Bidder shall pay such amount within 5 Banking Days of such agreement or determination together with interest, to accrue from day to day and to be compounded with monthly rests at a rate equal to 1½% in excess of the Barclays Bank Base Rate from (but excluding) the day that such amount should have been paid had it not been disputed until (but excluding) the date on which the amount is actually received by NFPAS;
 - (D) NFPAS and the Successful Bidder shall use reasonable endeavours to resolve the dispute as soon as possible; and

(E) if the Successful Bidder has paid a disputed or questioned amount but it is subsequently agreed or determined that the disputed or questioned amount was not properly payable NFPAS shall repay such amount within 5 Banking Days of receipt by NFPAS of such amount from the Principal. No interest shall be payable by NFPAS on such amount.

9.2 The Successful Bidder agrees that it shall not raise any dispute concerning an invoice rendered by NFPAS after the expiry of 3 months from the date of the invoice in the absence of fraud or manifest error.

10. TRANSFER OF TITLE

10.1 Ownership of and title to the Lot purchased shall remain with the Principal and shall not pass to the Successful Bidder until the Successful Bidder has made payment in full to NFPAS of the Total Amount Due.

10.2 NFPAS shall use reasonable endeavours to procure the delivery to the Successful Bidder of the Renewables Obligation Certificates awarded to the Successful Bidder pursuant to the Auction within 20 days of payment of the Total Amount Due being received by NFPAS or, if longer, within such other period of time as is required pursuant to the procedures for the registration of the transfer of Renewables Obligation Certificates published by the Authority from time to time.

10.3 The Successful Bidder agrees to accept delivery of the Renewables Obligation Certificates from NFPAS and to take such steps as are necessary in accordance with the procedures for the registration of the transfer of Renewables Obligation Certificates published by the Authority from time to time to procure the registration of the Renewables Obligation Certificates in the name of the Successful Bidder as soon as reasonably practicable or at such other time as NFPAS and the Successful Bidder may agree.

11. REMEDIES FOR NON-PAYMENT

If the Total Amount Due in respect of a Lot is not received by NFPAS in accordance with Condition 6.1, and is not an amount disputed in good faith under Condition 9.1, NFPAS as agent of the Principal shall, at its absolute discretion and without prejudice to any other rights it may have, be entitled to exercise one or more of the following rights and remedies:

- (A) to proceed against the Successful Bidder for damages for breach of contract;
- (B) to rescind the sale of that or any other Lots sold to the defaulting Successful Bidder at the same or any other Auction;
- (C) to offer the Lot to an unsuccessful bidder (commencing with the next highest bidder and ending with the least highest bidder) or to re-auction the Lot;
- (D) to charge interest in accordance with Condition 8;
- (E) to retain that or any other Lot sold to the same Successful Bidder at the same or any other Auction and release it only after payment of the Total Amount Due;
- (F) to reject or ignore any bids made by or on behalf of the defaulting Successful Bidder at any future Auctions or obtain a deposit before accepting any bids in future.

12. REVOCATION OF RENEWABLES OBLIGATION CERTIFICATES

- 12.1 If any Renewables Obligation Certificates within a Lot awarded to a Successful Bidder are revoked by the Authority after the Successful Bidder has made payment to NFPAS in accordance with these e-ROC Conditions of Sale and prior to the Specified Day in respect of the Obligation Period to which the Renewables Obligation Certificate relates, NFPAS shall within 25 Banking Days of notification of such revocation being received by NFPAS and at its sole discretion:
- (A) if NFPAS has not yet remitted such monies to the Principal, NFPAS will return monies to the Successful Bidder equal to the amount paid to NFPAS by the Successful Bidder for any Renewables Obligation Certificates so revoked; or
 - (B) if NFPAS has remitted such monies as mentioned in paragraph (A) above to the Principal, NFPAS will take such action as it considers appropriate to recover such monies from the Principal and return them to the Successful Bidder provided that, for the avoidance of doubt, NFPAS shall have no obligation to refund such monies to the Successful Bidder if NFPAS is unable to recover them from the Principal.
- 12.2 If any Renewables Obligation Certificates within a Lot awarded to a Successful Bidder are revoked by the Authority before the Successful Bidder has made payment, a new invoice shall be issued by NFPAS for an amount representing the value of the Renewables Obligation Certificates that have not been revoked.
- 12.3 The provisions of Conditions 12.1 and 12.2 shall represent the Successful Bidder's sole remedy in respect of the revocation of any Renewables Obligation Certificates.

13. LIABILITY

- 13.1 Subject to Condition 10, the Principal, NFPAS or their officers, employees, agents and sub-contractors will not be liable to the Successful Bidder or any third party for any exemplary, incidental, special, indirect or consequential loss or damage, or for any loss of data, sales, profit, revenue, opportunity, information, business or anticipated savings, or loss or wasted time, howsoever caused (whether arising out of any tort, negligence or breach of these e-ROC Conditions of Sale or otherwise arising out of or in connection with the performance of obligations under these e-ROC Conditions of Sale, even if that loss or damage was foreseeable by, or the actuality, inevitability or possibility of it was brought to the attention of the Principal or NFPAS.
- 13.2 Without limiting the generality of Condition 13.1 but subject to Condition 13.4 and 13.5, the aggregate liability of the Principal, its officers, employees, agents and sub-contractors will not under any circumstances exceed £50,000 per calendar year, regardless of the cause or form of action.
- 13.3 Without limiting the generality of Condition 13.1 but subject to Condition 13.4 and 13.5, the aggregate liability of NFPAS, its officers, employees, agents and sub-contractors, including any liability in relation to the Auction or pursuant to the Auction Code will not in any circumstances exceed £50,000 per calendar year regardless of the cause or form of action.
- 13.4 Nothing in these e-ROC Conditions of Sale shall exclude or limit liability for death or personal injury resulting from negligence or fraudulent misrepresentation.

- 13.5 Nothing in these e-ROC Conditions of Sale is intended to limit or exclude any liability on the part of the Principal, NFPAS, its officers, employees, agents and sub-contractors where and to the extent that applicable law prohibits such exclusion or limitation.
- 13.6 The Successful Bidder acknowledges that the Principal and NFPAS hold the benefit of Conditions 13.1 to 13.5 inclusive on trust for the benefit of their officers, employees, agents and sub-contractors.

14. CONFIDENTIALITY

- 14.1 Subject to Condition 14.2 below, the Successful Bidder shall not, at any time, whether before or after the expiration or termination of the Auction Period, without the prior written consent of NFPAS, divulge or suffer or permit its officers, employees, agents or contractors to divulge to any person (other than to any of its or their respective officers or employees who require the same to enable them properly to carry out their duties) any of the contents of the Auction Code or these e-ROC Conditions of Sale and any commercially confidential information which may come to the Successful Bidder's knowledge through the Auction Site, in the course of the Auction process or in connection with these e-ROC Conditions of Sale or otherwise concerning the operations, contracts, commercial or financial arrangements or affairs of NFPAS or the Principal.
- 14.2 The restrictions imposed by Condition 14.1 shall not apply to the disclosure of any information:
- (a) which now or hereafter comes into the public domain otherwise than as a result of a breach of an undertaking of confidentiality or which is obtainable with no more than reasonable diligence from sources other than NFPAS or the Principal;
 - (b) which is required by law to be disclosed to any person who is authorised by law to receive the same (including any disclosure required for the RO Order the ROS Order or the RO(NI) Order);
 - (c) which is required to be disclosed by the regulation of any recognised exchange upon which the share capital of the Successful Bidder is or is proposed to be from time to time listed or dealt in;
 - (d) to a court, arbitrator or administrative tribunal in the course of proceedings before it which the Successful Bidder is a party;
 - (e) in accordance with the provisions of the RO Order, the ROS Order, the RO(NI) Order or pursuant any licence granted under Section 6 of the Electricity Act 1989 or Article 10 of the Electricity (Northern Ireland) Order 1992 of the Successful Bidder concerned;
 - (f) to any consultants, banks or advisers to the Successful Bidder;
 - (g) by any party to any instrument, agency of government or the European Community having jurisdiction in respect of inter-state commerce, competition or energy;
 - (h) to the Authority, or to the Scottish Ministers, the Secretary of State or to the Department of Enterprise, Trade and Investment (“DETI”) and their respective agents to enable the Authority, DETI, the Scottish Ministers or the Secretary of State to monitor developments concerning the generation of electricity from non-fossil fuel sources; or

- (i) by NFPAS to its sub-contractors to the extent required to enable such sub-contractor to carry out NFPAS' obligations under the e-ROC Auction Code or e-ROC Conditions of Sale provided that such sub-contractor shall be made aware by NFPAS of its obligations thereunder and shall be required by NFPAS to observe the same restrictions on the use of the confidential information as are contained in this Clause 14.

14.3 Before the Successful Bidder discloses any information in any of the circumstances described in Condition 14.2(f) (other than to legal advisers), it shall notify NFPAS of its intention to make such disclosure and procure the execution and delivery to NFPAS of an undertaking executed by the person to whom the disclosure is proposed to be made being in the same terms mutatis mutandis as the undertakings contained in this Condition 14, but excluding Condition 14.2(f).

15. GENERAL

15.1 The Successful Bidder may not assign, sub-licence or otherwise transfer its rights or its obligations under these e-ROC Conditions of Sale.

15.2 In the event that any provision of these e-ROC Conditions of Sale is found to be invalid by any court having competent jurisdiction, the invalidity of such provision will not affect the validity of the remaining provisions of these e-ROC Conditions of Sale which will remain in full force and effect.

15.3 These e-ROC Conditions of Sale read together with the Registration Form and the e-ROC Auction Code, are the entire agreement between the Successful Bidder and NFPAS with respect to the sale and purchase of Renewables Obligation Certificates.

15.4 Failure by a party to exercise any right or remedy under these e-ROC Conditions of Sale does not constitute a waiver of that right or remedy. The failure of a party to act with respect to a breach by another party does not waive the first party's right to act with respect to subsequent or similar breaches.

15.5 These e-ROC Conditions of Sale shall be governed by and construed in accordance with English law and the Successful Bidder agrees that the Courts of England shall have exclusive jurisdiction to settle any disputes which arise out of or in connection with these e-ROC Conditions of Sale and both parties waive any objection to proceedings being brought in the English courts on the ground of venue or on the grounds that the proceedings have been brought in an inconvenient forum.

16. DEFINITIONS

16.1 In these e-ROC Conditions of Sale:

- (A) **“Auction”**, **“Authority”**, **“Banking Days”**, **“Lot”**, **“Registration Form”**, **“RO Order”**, **“ROS Order”**, **“RO(NI) Order”** and **“Successful Bidder”** have the meaning given in the e-ROC Auction Code;
- (B) **“e-ROC Auction Code”** means the code of that name which governs the manner in which the auction of Renewables Obligation Certificates is conducted by NFPAS, as amended by NFPAS from time to time;
- (C) **“Renewables Obligation Certificate”** means a ROC as defined in the RO Order, a SROC as defined in the ROS Order or a NIROC as defined in the RO(NI) Order;

- (D) “**Total Amount Due**” means the amount due under Condition 5, Value Added Tax chargeable, any amount due under Condition 8 and Condition 9 and additional charges and expenses due from a defaulting Successful Bidder under Condition 11;
 - (E) “**Specified Day**” has the same meaning as “specified day” in the RO Order, ROS Order and RO(NI) Order;
 - (F) “**Obligation Period**” has the same meaning as “obligation period” in the RO Order, the ROS Order and the RO(NI) Order;
 - (G) “**Barclays Bank Base Rate**” means interest at an annual rate equal to the base rate of Barclays Bank Plc published from time to time (or if that rate ceases to be published the the Bank of England base rate); and
 - (H) references to any statute or statutory instrument or any section of, or schedule to, or other provisions of a statute or statutory instrument shall be construed, at any particular time, as including a reference to any modification, extension or re-enactment thereof then in force and to all instruments, orders or regulations then in force and made under or deriving validity from such statute or provision (as the same may have been so modified, extended or re-enacted from time to time).
- 16.2 The headings in these Conditions do not form part of the e-ROC Conditions of Sale but are for convenience only.