

NFPAS e-TOC AUCTION CODE (RENEWABLE TRANSPORT FUEL OBLIGATION CERTIFICATES) Third edition

This Auction Code sets out the rights and obligations of Participants in relation to the conduct of the Auction and the use of the Auction Site.

The Auction has been established by NFPAS acting as agent for principals wishing to auction Renewable Transport Fuel Obligation Certificates in accordance with the e-TOC Conditions of Sale.

1. DEFINITIONS AND INTERPRETATION

1.1 In this Auction Code, the following words and expressions shall bear the following meanings unless the context requires otherwise:

"Agency" means the Office of the Renewable Fuels Agency established under article 6 of the RTFO Order and section 125 at the Energy Act 2004, or any successor from time to time;

"Auction" means the electronic auction conducted by NFPAS, commencing on the date specified by NFPAS on the Auction Site from time to time, in accordance with this Auction Code to determine the Participant who will purchase each Lot on the e-TOC Conditions of Sale and the price such Participant shall pay for each Lot;

"Auction Period" means the time periods within which bids may be submitted in respect of any Lot as specified by NFPAS on the Auction Site from time to time;

"Auction Site" means the electronic site accessible by the Participants on which the Auction will be conducted;

"Banking Days" means any day other than: (a) Saturday or Sunday; (b) Christmas Day or Good Friday; or (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom;

"Bidding Hours" means the period from 9.00 am to 5.00 pm Monday to Friday on each Banking Day of the Auction Period but shall not include any scheduled or unscheduled system downtime when the Auction Site or NFPAS is unable to receive and/or process bids;

"Certificate" means an "RTF Certificate" as referred to in the RTFO Order;

"e-TOC Conditions of Sale" means the terms and conditions for the sale of Certificates issued under the RTFO Order, as set out in the Registration Form (including any amendments to such terms and conditions as notified by NFPAS in accordance with Clause 13);

"Final Bid Price" means the final bid price of the Successful Bidder which is accepted by NFPAS;

"Lot" means one or more Certificates issued under the RTFO Order (which are identified by their quantity, the month and year in which they were issued and the relevant Obligation Period to which they relate) which are made available for sale by NFPAS on behalf of the specified principal under the e-TOC Conditions of Sale;

"NFPAS" means NFPAS Limited whose registered office is at 4th Floor, Higham House, Higham Place, New Bridge Street West, Newcastle-upon-Tyne NE1 8AN;

"Obligation Period" has the meaning given to such term in Article 2 of the RTFO Order;

"Participant" means the party named as the Participant in the Registration Form and **"Participants"** means all parties participating in the Auction;

"Registration Form" means the "Registration Form for Participation in the NFPAS e-TOC Auctions" which is completed in full and submitted by the Participant;

"Reserve Price" means, where applicable, the price notified by NFPAS on the Auction Site as the minimum at which a Lot will be sold at an Auction;

"RTF Account" has the meaning given to such term in Article 2 of the RTFO Order;

"RTFO Order" means the Renewable Transport Fuel Obligations Order 2007 as amended by the Renewable Transport Fuel Obligations (Amendment) Order 2009; and

"Successful Bidder" is defined in Clause 5.1.

1.2 In this Auction Code, unless the context requires otherwise:

- (a) references to singular shall include references in the plural and vice versa and words denoting natural persons shall include corporations and any other legal entity and vice versa;
- (b) references to the word "including" are to be construed without limitation;
- (c) references to any statute or statutory instrument or any section of a statute or statutory instrument shall be construed, at any particular time, as 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 modified, extended or re-enacted from time to time);
- (d) except to the extent that the context requires otherwise references to a particular Clause shall be references to that clause in this Auction Code;
- (e) except to the extent that the context requires otherwise, any reference to "this Auction Code" is a reference to it as amended, supplemented or novated from time to time and includes a reference to any document which amends, is supplemental to, novates, or is entered into, made or given pursuant to or in accordance with any terms of it;
- (f) where the Participant is a partnership or a firm, this Auction Code shall be binding upon each of the partners thereof from time to time as partners and individuals and their respective successors as partners and individuals and the executors and personal representatives of any such persons;
- (g) where the Participant comprises two or more persons, any obligation of the Participant in, under or arising from this Auction Code is undertaken by or binding upon such two or more persons jointly and severally; and
- (h) headings are inserted for convenience only and are to be ignored for the purposes of construction.

2. REGISTRATION

2.1 In order to participate in the Auction, the Participant shall submit to NFPAS (or its nominated representative) a completed and signed Registration Form.

2.2 By submitting the Registration Form, the Participant:

- (a) acknowledges that the information that is provided in the Registration Form may be used by NFPAS for the effective administration of the Auction and to communicate with the Participant;
- (b) warrants that the information is true, accurate and complete;
- (c) accepts the terms and conditions of this Auction Code; and
- (d) agrees to be bound by the e-TOC Conditions of Sale in respect of any Lot consisting of Certificates issued under the RTFO Order for which it is the Successful Bidder.

2.3 On receipt of the Registration Form signed in accordance with Clause 2.1, NFPAS shall issue the Participant with a unique username for use in all future Auctions together with a confidential security password to access the Auction Site and participate in the Auction. NFPAS shall issue the Participant with a new confidential security password for each subsequent Auction. NFPAS agrees not to disclose the Participant's username and security password to any other party.

2.4 The Participant shall at all times maintain the confidentiality of its username and password. The Participant is responsible for all acts in relation to the Auction (including the submission of bids) referable to its username and password, regardless of whether such acts are actually or expressly authorised by the Participant, unless such acts result directly from a breach of NFPAS' obligations of non-disclosure in Clause 2.3.

2.5 The Participant shall notify NFPAS immediately if it believes that its user name and password have been misused or compromised in any manner.

2.6 The Participant may request in writing to NFPAS that, should the Participant become the Successful Bidder in respect of a Lot, NFPAS should instruct the Principal to transfer the Lot into NFPAS' RTF Account and NFPAS (acting as an agent for the Principal) will subsequently transfer the Lot to the Successful Bidder. If the Participant wishes to make such a request, the Participant must sign and return to NFPAS a separate authorisation form prior to the commencement of the Auction.

3. OPERATION OF AUCTION

- 3.1 The Auction for each Lot shall be conducted on the Auction Site during the relevant Auction Period.
- 3.2 NFPAS shall ensure that the information set out in Schedule 1 of the Auction Code for each Lot is made available to the Participants via the Auction Site at least 24 hours before the commencement of each Auction Period.

4. SUBMISSION OF BIDS

- 4.1 During the Auction Period, the Participant may submit bids electronically through the Auction Site in respect of any Lot, provided that all bids submitted shall be:
- (a) positive and in the range of 1p per Certificate to 100p per Certificate;
 - (b) in increments of not less than 0.25p per Certificate; and
 - (c) in relation to any Lot in respect of which a Reserve Price has been specified, equal to or greater than the Reserve Price.
- 4.2 By submitting a bid, the Participant:
- (a) acknowledges that it has examined all information made available by NFPAS through the Auction Site regarding the Lot (including the identity of the principal);
 - (b) irrevocably offers to pay the bid submitted as the price to be paid in respect of Certificates included in such Lot in accordance with the e-TOC Conditions of Sale if it is the Successful Bidder; and
 - (c) warrants that neither its bid nor its participation in the Auction violates any laws or breaches the terms of this Auction Code.
- 4.3 The Participant acknowledges that a bid is deemed to have been submitted only when a bid that is in conformity with the terms of the Auction Code has been received and processed by NFPAS.
- 4.4 NFPAS shall use all reasonable endeavours to process and post the highest bid received for each Lot at any point in time during the Auction Period at the Auction Site within 3 minutes of receipt. In the case of equal bids, the earliest bid received and processed by NFPAS will be deemed the higher bid.
- 4.5 During the Auction Period, NFPAS shall send as soon as reasonably practicable a notification to the Participant whose processed bid is the current highest bid and shall use all reasonable endeavours to do so within 5 minutes of posting that bid on the Auction Site. Such notification shall be sent by e-mail, to the e-mail address specified by the Participant in the Registration Form. The failure of the Participant to receive such notification shall not release the Participant from any obligations set out in this Auction Code.
- 4.6 Notwithstanding Clause 4.2(b), NFPAS may in its sole and absolute discretion consent to a request from a Participant for withdrawal of a bid on the grounds that the bid contained an obvious typographical error. NFPAS is not obliged in any circumstances to consent to the withdrawal of any bid submitted.
- 4.7 In the event that a posted bid is subsequently withdrawn or removed pursuant to Clauses 4.6 or 9.3, NFPAS will have the right (in its absolute discretion) to cancel all bids submitted and restart the auction process and the Auction Period in respect of such Lot.

5. SUCCESSFUL BIDDER

- 5.1 NFPAS shall accept the bid of the "Successful Bidder" which shall in respect of any Lot be the Participant who has a) met and/or exceeded the Reserve Price of the Auction; and b) has the highest bid for the Lot (determined in accordance with Clause 4.4 in the case of equal bids):
- (a) for a continuous period of 1 hour during the Bidding Hours; or
 - (b) at the end of the Auction Period.
- 5.2 The Successful Bidder in respect of each of the Lots shall be absolutely and finally determined by NFPAS in accordance with the criteria set out in Clause 5.1 and by relying on the computer hardware, software and systems used by it to regulate the Auction.
- 5.3 NFPAS shall post the Final Bid Price in respect of each Lot at the Auction Site as soon as reasonably practicable and in any event within 1 Banking Day of the end of the Auction Period.
- 5.4 NFPAS shall send to the Successful Bidder an e-mail notification that it is the Successful Bidder (by e-mail to the address specified in the Registration Form) within one Banking Day of NFPAS' determination of that fact under Clause 5.2.

- 5.5 The Participant hereby authorises and directs NFPAS to submit a hard copy of the invoice to the address shown on the Registration Form together with an electronic copy of the invoice to the email address shown on the Registration Form giving details of the Lot(s) and Final Bid Price(s) and the total amount due for payment. The invoice value for each Lot shall be calculated by multiplying the Final Bid Price by the number of Certificates in each Lot together with any Value Added Tax or any other tax that may apply.
- 5.6 The Participant acknowledges that if payment is not made within 10 Banking Days of the date of receipt of the electronic copy of the invoice, NFPAS has the right to rescind the sale and may offer the Certificates to an unsuccessful bidder (commencing with the next highest bidder and ending with the least highest bidder) or re-auction the Lot or exercise such other rights as it may have pursuant to the e-TOC Conditions of Sale.
- 5.7 Ownership of and title to the Lot purchased by the Successful Bidder 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 under the e-TOC Conditions of Sale.

6. WARRANTIES BY PARTICIPANT

- 6.1 The Participant warrants and represents that it has the power to enter into, perform and comply with all its obligations under this Auction Code and any e-TOC Conditions of Sale which it is bound by as a result of the Auction and that its entry into, performance of or compliance with its obligations under this Auction Code and any applicable e-TOC Conditions of Sale does not and will not violate any law to which it is subject or its constitutional or enabling documents.
- 6.2 The Participant warrants and represents that it has a valid and working RTF Account.
- 6.3 The Participant warrants and covenants that it shall comply with all applicable laws, statutes, statutory instruments, ordinances and regulations regarding its participation in the Auction.
- 6.4 The Participant warrants and covenants that it will:
- (a) not bid in a way that is manipulative of the Auction or conspire with other Participants to manipulate the Auction or any bidding;
 - (b) not communicate in any manner with any other Participants in relation to the Auction;
 - (c) not use any mechanism, device, software, script or computer programming routine (including any virus, worm, time bomb, cancelbot or trojan horse) that may damage, interfere with, delay, intercept, expropriate or otherwise affect the proper functioning of the Auction Site or any system, data or personal information related to the Auction Site;
 - (d) not take any action that places an unreasonable burden or excessive load on the computer systems supporting the Auction Site; and
 - (e) act in good faith in the participation in the Auction.

7. INDEMNITY

The Participant agrees to indemnify and keep indemnified NFPAS, its 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 this Auction Code by the Participant or any act referable to the Participant's user name and/or password (unless directly caused by a disclosure of the Participant's user name and security password by NFPAS in breach of Clause 2.3) or the violation by the Participant of any law or rights of NFPAS or any third party.

8. SUSPENSION, CANCELLATION AND TERMINATION

The Participant acknowledges that NFPAS has the right to:

- (a) refuse or remove any bids;
- (b) shorten or extend any Auction Period;
- (c) postpone, cancel or withdraw any Lot from the Auction;
- (d) temporarily suspend or permanently terminate the Auction at any time; and
- (e) refuse, temporarily suspend or permanently terminate the Participant's participation in the Auction, where NFPAS has, in its opinion, reasonable grounds (including technical grounds) for so doing. Where practicable, NFPAS will provide reasonable advance notice (in the form of postings at the Auction Site) of any such steps that NFPAS intends to take.

9. DISCLAIMER

9.1 The Auction Site is provided on an “as is”, “as available” basis and NFPAS makes no representation and excludes any warranty, express or implied as to the availability, quality, accuracy, timeliness, completeness, non-infringement, performance or fitness for a particular purpose of the Auction Site. In particular, NFPAS makes no representation or warranty that:

- (a) access to the Auction Site will be free from infection by viruses or anything else that has contaminating or destructive properties; and
- (b) access to the Auction Site and participation in the Auction (including the submission of bids) will be secure, uninterrupted and free of errors or free of downtime, outages or technical problems that may hinder the efficacy of a bid or the Auction (including transmission times or delays).

All such terms which would otherwise be implied into this Auction Code are hereby excluded to the fullest extent permitted by law. The Participant warrants that it has not relied on any representations made by NFPAS which have not been expressly stated in this Auction Code.

9.2 The information provided for each Lot at the Auction Site is information which has been provided to NFPAS in respect of that Lot, and has not been verified by NFPAS and NFPAS gives no warranties and makes no representations in respect of the status, value or authenticity of any Certificates.

9.3 NFPAS will use reasonable efforts to correct errors or omissions in the information provided for each Lot at the Auction Site as quickly as practicable after being notified of them and shall notify the Participant of any corrections made by posting a notice on the Auction Site. In the event of any corrections being made to the information which, in NFPAS's opinion, materially affects the Participant's bid, the Participant may withdraw a bid placed in that Auction provided such bid was placed before the correction is made, and provided that the Participant has not become the Successful Bidder pursuant to Clause 5.

10. LIABILITY

10.1 NFPAS, its officers, employees, agents and sub-contractors will not be liable to the Participant or any third party for:

- (a) any losses or claims (whether in contract, tort, negligence or otherwise) arising from any inability to access the Auction Site, any interruption in the conduct of the Auction, any postponement, cancellation or withdrawal of any Lot from the Auction in accordance with Clause 8 above, any refusal, suspension or termination of the Participant's participation in the Auction, any losses or claims arising from Lots offered on the Auction Site;
- (b) 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 or in connection with the performance of obligations under this Auction Code), even if that loss or damage was foreseeable by, or the actuality, inevitability or possibility of it was brought to the attention of NFPAS;
- (c) other than as provided for in Condition 12 of the e-TOC Conditions of Sale, the revocation of any Certificates.

For the avoidance of doubt, sub-Clauses (a) and (b) are severable.

10.2 Without limiting the generality of Clause 10.1 but subject to Clause 10.3 and 10.4, the aggregate liability of NFPAS, 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.

10.3 Nothing in this Auction Code shall exclude or limit liability for death or personal injury resulting from negligence or fraudulent misrepresentation.

10.4 Nothing in this Auction Code is intended to limit or exclude any liability on the part of NFPAS, its officers, employees, agents and sub-contractors where and to the extent that applicable law prohibits such exclusion or limitation.

10.5 The Participant acknowledges that NFPAS holds the benefit of Clauses 10.1 to 10.4 inclusive on trust for the benefit of its officers, employees, agents and sub-contractors.

11. INTELLECTUAL PROPERTY

The Participant acknowledges that all copyright, trade marks, and other intellectual property rights in and relating to the Auction and the Auction Site are owned by NFPAS or its third party licensors. The Participant

agrees not to use any of such intellectual property rights nor any data or information generated or derived from the Auction Site, except to the extent necessary to participate in the Auction in the manner anticipated in this Auction Code.

12. CONFIDENTIALITY

12.1 Subject to the exceptions provided in Clause 12.2 below, NFPAS and the Participant shall not, at any time, whether before or after the expiration or termination of the Auction Period, without the prior written consent of the other, 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 this Auction Code and any commercially confidential information which may come to a party's knowledge through the Auction Site or in the course of the Auction process or otherwise concerning the operations, contracts, commercial or financial arrangements or affairs of other party.

12.2 The restrictions imposed by Clause 12.1 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 purposes of the RTFO Order, section 125B of the Energy Act 2004 or the Hydrocarbon Oil Duties Act 1979);
- (c) which is required to be disclosed by the regulation of any recognised exchange upon which the share capital of the party making the disclosure 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 to which the disclosing party is a party;
- (e) to any consultants, banks or advisers to the disclosing party;
- (f) by any party to any instrument, agency of government or the European Community having jurisdiction in respect of inter-state commerce, competition or energy;
- (g) to the Agency, the Scottish Ministers, the Secretary of State or to the Department of Enterprise, Trade and Investment ("DETI") and their respective agents to enable the Agency, DETI, the Scottish Ministers or the Secretary of State to monitor developments concerning the production and supply of renewable transport fuel or to enable the Agency to discharge its duties under the RTFO Order; and
- (h) by NFPAS to its sub-contractors to the extent required to enable such sub-contractor to carry out NFPAS' obligations under the e-TOC Auction Code or e-TOC Conditions of Sale provided that such sub-contractors 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 12.

12.3 Before any party discloses any information in any of the circumstances described in Clause 12.2(e) (other than to legal advisers), it shall notify the other party of its intention to make such disclosure and procure the execution and delivery to that party 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 Clause 12, but excluding Clause 12.2(e).

13. AMENDMENTS/MODIFICATIONS

13.1 NFPAS reserves the right, at its discretion, to make additions, substitutions and modifications to any part of the Auction or the Auction Site.

13.2 This Auction Code and the e-TOC Conditions of Sale may be amended by NFPAS at any time by posting details of the amendments at the Auction Site, and NFPAS shall use reasonable endeavours within 1 Banking Day to send an e-mail notification that it has done so to every Participant who has submitted the Registration Form for participating in Auctions to NFPAS in accordance with Clause 2.1. Unless otherwise stated, all amended terms shall automatically be effective 14 days after they are initially posted at the Auction Site. The terms of this Auction Code and e-TOC Conditions of Sale may not otherwise be amended except in writing signed by the Participant and NFPAS.

14. NOTICES

14.1 All notices given or documents submitted to either party under or in connection with this Auction Code (save

for the electronic submission of bids on the Auction Site and all notices specifically stated to be sent by e-mail) (collectively "Notices") must be left at, or sent by prepaid first class post to the address or sent by fax to the fax number (marked for the attention of the person so specified) if to NFPAS, as specified below and if to the Participant, as specified in the Registration Form.

Address:	NFPAS Limited 4th Floor Higham House Higham Place New Bridge Street West Newcastle-upon-Tyne NE1 8AN
Facsimile Number:	0191-245 7331
Attention:	Commercial Director

14.2 Notices shall be deemed received:

- (a) in the case of a notice left at the address specified, upon delivery at that address;
- (b) in the case of a letter posted within the United Kingdom, on the third day after posting, otherwise when actually received;
- (c) in the case of a facsimile, at the time indicated on a transmission report from the machine from which the facsimile was sent which indicate that the facsimile was sent in its entirety to the facsimile number specified; and
- (d) in the case of e-mail, on the day on which the communication is first stored in the other party's electronic mail box.

15. GENERAL

15.1 Assignment

The Participant may not assign, sub-licence or otherwise transfer its rights or its obligations under this Auction Code or any rights as a Participant including rights of access to the Auction Site.

15.2 Severability

In the event that any provision of this Auction Code 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 this Auction Code which will remain in full force and effect.

15.3 Entire Agreement

This Auction Code read together with the Registration Form and the e-TOC Conditions of Sale is the entire agreement between the Participant and NFPAS with respect to the Auction and the use of the Auction Site.

15.4 Non-waiver

Failure by either party to exercise any right or remedy under this Auction Code does not constitute a waiver of that right or remedy. The failure of NFPAS to act with respect to a breach by the Participant does not waive its right to act with respect to subsequent or similar breaches.

15.5 Tax

NFPAS accepts no responsibility for taxes on the Auction or on the bids submitted at the Auction Site.

15.6 Governing Law

This Auction Code shall be governed by and construed in accordance with English law and the Participant agrees that the Courts of England shall have exclusive jurisdiction to settle any disputes which arise out of or in connection with this Auction Code 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.

SCHEDULE 1

In respect of each Lot:

- (a) The number of Certificates making up each Lot available in the Auction;
- (b) The month and year in which each Certificate making up each Lot was issued by the Agency;
- (c) The Obligation Period to which such Certificate relates;
- (d) The e-TOC Conditions of Sale applicable to the Lot;
- (d) The identity of the principal; and
- (e) The Reserve Price, if applicable.