

## **e-TOC CONDITIONS OF SALE (Third edition) NFPAS e-TOC AUCTION**

These e-TOC Conditions of Sale are the "e-TOC Conditions of Sale" referred to in the NFPAS e-TOC Auction Code and apply to the sale by auction of 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 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.

### **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-TOC Conditions of Sale and that its entry into, performance of or compliance with its obligations under these e-TOC 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 a valid RTF Account.
- 2.3 The Successful Bidder warrants and represents that it is an "obligated supplier", as defined in article 2 of the RTFO Order.
- 2.4 The Successful Bidder warrants and represents that it will notify NFPAS in writing to confirm receipt of Certificates from the Principal or from NFPAS as soon as reasonably practicable after receipt of such Certificates.

### **3. INDEMNITY**

- 3.1 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-TOC 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**

- 4.1 The Principal warrants and represents that it has the power to enter into, perform and comply with all of its obligations under these e-TOC Conditions of Sale and that its entry into, performance of or compliance with its obligations under these e-TOC Conditions of Sale does not and will not violate any law to which it is subject or its constitutional or enabling documents.
- 4.2 The Principal warrants and represents that it is a supplier of "renewable transport fuel" as defined in section 132 of the Energy Act 2004 and article 3 of the RTFO Order.

### **5. CHARGES**

The Successful Bidder hereby authorises and directs NFPAS to submit an invoice to it in accordance with Clause 5.5 of the NFPAS e-TOC 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 receipt of the electronic copy 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-TOC 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 therefore 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-TOC 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-TOC 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 base lending rate of Barclays Bank plc for the time being and from time to time, 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 judgment. 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 base lending rate of Barclays Bank plc for the time being and from time to time, 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 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 Certificates published by the Agency from time to time.

10.3 Successful Bidder agrees to accept delivery of the Certificates from NFPAS or the Principal and to take such steps as are necessary in accordance with the procedures for the registration of the transfer of Certificates published by the Agency from time to time to procure the registration of the 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; and
- (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 CERTIFICATES**

- 12.1 If any Certificates within a Lot awarded to a Successful Bidder are revoked by the Agency after the Successful Bidder has made payment to NFPAS in accordance with these e-TOC Conditions of Sale and prior to the Specified Day in respect of the Obligation Period to which the Certificates relate, 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, return monies to the Successful Bidder equal to the amount paid to NFPAS by the Successful Bidder for any Certificates so revoked; or
  - (B) if NFPAS has remitted such monies as mentioned in paragraph (A) above to the Principal, NFPAS will use its reasonable endeavours 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 Certificates within a Lot awarded to a Successful Bidder are revoked by the Agency before the Successful Bidder has made payment, a new invoice shall be issued by NFPAS for an amount representing the value of the 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 Certificates.
- 12.4 NFPAS warrants and represents that it shall not remit monies received from the Successful Bidder in accordance with these e-TOC Conditions of Sale to the Principal unless and until NFPAS has received notice from the Successful Bidder that it has received the Certificates from the Principal or from NFPAS to which such monies relate.

## **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-TOC Conditions of Sale) or otherwise arising out of or in connection with the performance of obligations under these e-TOC 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-TOC Conditions of Sale shall exclude or limit liability for death or personal injury resulting from negligence or for fraudulent misrepresentation.

- 13.5 Nothing in these e-TOC 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-TOC 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-TOC 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 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 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 to which the Successful Bidder is a party;
  - (E) to any consultants, banks or advisers to the Successful Bidder;
  - (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, or to the Scottish Ministers, the Secretary of State or to the Department of Energy, 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, section 125B of the Energy Act 2004 of the Hydrocarbon Oil Duties Act 1979; or
  - (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-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(E) (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(E).

#### **15. GENERAL**

- 15.1 The Successful Bidder may not assign, sub-license or otherwise transfer its rights or its obligations under these e-TOC Conditions of Sale.
- 15.2 In the event that any provision of these e-TOC 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-TOC Conditions of Sale which will remain in full force and effect.
- 15.3 These e-TOC Conditions of Sale read together with the Registration Form and the NFPAS e-TOC Auction Code, are the entire agreement between the Successful Bidder and NFPAS with respect to the sale and purchase of Certificates.

15.4 Failure by a party to exercise any right or remedy under these e-TOC 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-TOC 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-TOC 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-TOC Conditions of Sale:

(A) **"Agency", "Auction", "Banking Days", "Certificate", "Lot", "Obligation Period", "Registration Form", "RTF Account", "RTFO Order" and "Successful Bidder"** have the meaning given in the NFPAS e-TOC Auction Code.

(B) **"NFPAS e-TOC Auction Code"** means the code of that name which governs the manner in which the auction of Certificates is conducted by NFPAS, as amended by NFPAS from time to time.

(C) **"Total Amount Due"** means the amount due under Condition 4.2, 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.

(D) **"Specified Day"** has the same meaning as "specified date" in the RTFO Order.

(E) 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-TOC Conditions of Sale but are for convenience only.