

REGULATIONS GOVERNING PARTICIPATION IN A DYNAMIC NEGOTIATION, REQUEST FOR QUOTATION AND ALL OTHER EVENTS CONDUCTED THROUGH THE PURCHASE PORTAL OF ARRIVA INTERNATIONAL LIMITED

PART I: GENERAL PRINCIPLES AND PROVISIONS

1. INTRODUCTION

- 1.1 A Dynamic negotiation consists in a mechanism for establishing, by electronic means, the necessary elements for entering into commercial transactions, namely the dynamic definition of price and other contractual conditions regarding the exchange of goods (the **Goods**) and/or services (the **Services**) (the **Dynamic Negotiation**). The RFX, the Request for Information, Proposal or Quotation is defined as the request to send and consequently submit, all by electronic means, a binding financial quotation and/or binding and/or a binding indication of the technical-pricing terms and conditions in relation to the exchange of goods and services (the **RFX**). The Dynamic Negotiation and the Request for Quotation shall take place between *Arriva International Limited* (the **Buyer**) and one or more Suppliers, with each party operating within the range of its business, professional or institutional activity and registered on the Portal, through the submitting of quotations (**Quotations**) on the Portal.
- 1.2 The Regulations define methods for the implementation of a Dynamic Negotiation, Request for Quotation and all other events performed by means of the Portal in addition to the obligations and the rules that Buyer and Suppliers are to comply with throughout the duration of an Event. Further specific provisions relating to the implementation of each Event, binding for both Buyer and Suppliers, are expressed in the Letter of Publication as well as in the Portal's dedicated information sections.
- 1.3 The general principles that govern the implementation of Events and participation therein are the equality of conditions for all participants, transparency, good faith, fairness, confidentiality of information and compliance with English Law.
- 1.4 For reasons of clarity, terms starting with a capital letter but not specifically defined in the Regulations, shall bear the meaning as given in "**General terms and conditions for Supplier participation in events conducted through the Portal of Arriva International Limited**" (the **General Conditions**).
- 1.5 For the managing of the activities described in this document the Buyer may make use of the operative support of the Market Operation Centre (**MOC**) of BravoSolution.

2. NOTIFICATIONS RELATING TO EVENTS

- 2.1 All actions and communications between the Buyer and the Suppliers, at every stage of the Event (including the preliminaries, progress, award and any possible suspensions, interruptions, resumptions and/or cancellations), may be implemented under two separate operating modes and/or by a combination of both: a) on-line; b) off-line. The actual availability of both operating modes shall be at Buyer's discretion; the Buyer and Suppliers are bound to utilize the available operating mode.
- 2.2 The on-line operation implies that the Suppliers upload data and Quotations, communicate with Buyer and express their will by clicking on the appropriate icons available on the Portal and/or using the messaging tool of the Portal.
- 2.3 The off-line operation implies that the Suppliers communicate with the Buyer, by sending and receiving information, data, instructions and expressions of will via fax, e-mail or telephone. In the case of telephone communication, the Buyer shall be entitled, in compliance with applicable English Law, to record the conversation taking place with the Suppliers. Suppliers hereby acknowledge and accept that the recordings made by Buyer shall serve as a full proof of facts and circumstances reported therein.

3. PRELIMINARY PHASES

- 3.1 The Buyer shall forward to the Suppliers, through the Portal, an invitation to participate in the Event itself, thereby making all data regarding the Event (the **Data**) available in the personal folders of invited Suppliers (**Suppliers' Personal Folders**), provided the Suppliers have been registered on the Portal and activated to participate in the Events.
- 3.2 The Buyer shall be entitled to amend the Data, including Portal configuration parameters, prior to the start of the Event (the **Amendments**), by notifying Suppliers.
- 3.3 The Suppliers' acceptance of the Buyer's invitation to participate in the Event is implicit subsequent to the issue of a Quotation during the course of the Event and the participation therein implies full and unconditional acknowledgement and acceptance of both Data and Amendments, including acceptance of Portal configuration parameters as defined by the Buyer.

4. IMPLEMENTATION OF EVENTS – GENERAL PROVISIONS

- 4.1 The Buyer and the Suppliers acknowledge that for the entire duration of the Event, including preliminary and subsequent stages, and for the purpose of its implementation, closure, award and possible interruption, suspension, resumption and/or cancellation, the Quotations forwarded, the notifications submitted, the official schedule as well as elapsed time shall be only those displayed on the Portal and, as the case may be other recording and telecommunications equipment of the Buyer or of BravoSolution, which makes the technology available, and such recordings shall constitute full evidence of the reported facts and circumstances.
- 4.2 In the case of discrepancies, Quotations effectively placed and entered in the Portal shall prevail over the contents of a file, attachments and other documents submitted or made available by Suppliers during the Event.
- 4.3 The Suppliers acknowledge that the system will not allow them to view the identity of the other Suppliers during the course of the Event.
- 4.4 Notification of awarding or non-awarding to bidders in the Event is managed by the Buyer subsequent to the conclusion of the Event, after allowing for an adequate period of time for the required technical evaluations. Possible electronic notifications of awarding and/or non-awarding of the Event sent via the Portal upon Event closure shall be considered as temporary and subject to a technical evaluation and shall in no way represent any obligation towards Suppliers as an additional and specific confirmation in this regard is necessary.
- 4.5 Each Event is configured according to the Portal parameters configuration selected by the Buyer. Parameters configuration adopted for each Event is described in the Suppliers' Personal Folders, in the information sections of the Portal. Participation in the Event by the Suppliers shall be deemed as implying complete acknowledgement of the configuration options defined by the Buyer and their unconditional acceptance.
- 4.6 Should a Dynamic Negotiation derive from a previously conducted Request for Quotation Event, Suppliers shall acknowledge and accept that the Quotations forwarded during the Request for Quotation stage may represent, upon the Buyer's decision and following a notification to Suppliers, the initial Quotation by each Supplier presented in the subsequent Dynamic Negotiation.

PART II: DYNAMIC NEGOTIATION EVENTS

5. IMPLEMENTATION OF A DYNAMIC NEGOTIATION – SPECIFIC PROVISIONS

- 5.1 Every Dynamic Negotiation operates through the issue and on-line and real time upload of progressively decreasing Quotations by Suppliers up until the closure of the Event, in accordance with implementation procedures and Portal parameters configuration options defined in the Letter of Publication and in the information sections of the Portal.
- 5.2 The Buyer shall reserve the right to decline the quotation of the Supplier which turns out to be ten or more Minimum Decrements (as defined in the Portal) below the amount of the previous quotation submitted in the implementation of the Event by one of the Suppliers ("**Anomalous Quotation**"). In such a case, BravoSolution, which shall assist Buyer in the implementation of the Dynamic Negotiation, shall alert the Supplier concerning the Anomalous Offer, and Buyer shall have the facility to delete the Anomalous Quotation, which it shall notify to the Supplier and shall be entitled to bar the Supplier from taking further part in the Dynamic Negotiation. The Buyer shall be entitled to set a different definition of Anomalous Quotation for each Event as well as exclude from the Event all quotations that stand out for their anomalous characteristics.
- 5.3 The Buyer shall be entitled to attribute a Weighted Coefficient, in its absolute discretion, to the Quotations submitted by Suppliers during the course of the Event, based on various elements relating to the Supplier and the nature of the quotation, such as, by way of example only, the technical features and the quality of products offered, the terms and conditions of payment and delivery ("**Weighted Coefficients**"). Should Weighted Coefficients be applied to an Event, Suppliers will be notified of the utilization of such option by the Buyer. Weighted Coefficients shall not be altered once an Event has started and shall therefore remain fixed and unchanged throughout the duration of the Event, and its awarding. The Suppliers acknowledge that Weighted Coefficients shall not be communicated to them. In the case of an Event being implemented through the application of Weighted Coefficients, the amounts related to the Quotations issued during the Event by other Suppliers shall be made known to each Supplier as modified by the application of the Weighted Coefficients.
- 5.4 The Buyer shall be entitled to set an initial price for the Event (**Base Price**) and a target price below which Buyer wishes to award the Event in compliance with the awarding rules of the Dynamic Negotiation (**Reserve Price**).
- 5.5 The Dynamic Negotiation shall be deemed closed at the date and time Buyer has defined through pre-set closing mechanisms; it is acknowledged however that Buyer shall at all times have full discretion to award the the Dynamic Negotiation or not, as shall be notified through a specific written communication.

PART III: REQUEST FOR QUOTATION AND OTHER EVENTS

6. IMPLEMENTATION OF A REQUEST FOR QUOTATION – SPECIFIC PROVISIONS

- 6.1 Each Event operates through the issue and on-line upload of Quotations by Suppliers up until the closure of the Event, in accordance with implementation procedures and Portal parameter configuration options defined in the Letter of Publication and in the information sections of the Portal.
- 6.2 The issue of the invitation to Suppliers is the start of the Event.
- 6.3 The Event shall be closed at the date and time defined by Buyer.
- 6.4 Each Supplier has the facility to prepare and submit one or more Quotations in the time frame between the starting and closing date and time of the Event. It is understood that the last Quotation from each Supplier submitted to Buyer prior to Event closing date shall be the one taken into consideration by the Buyer in the awarding process.
- 6.5 Irrespective of the Buyer's configuration options, the Buyer shall evaluate Quotations against the stated evaluation criteria notified to the Suppliers via the Portal and/or RFX and upon closing of the Event, the Buyer shall reserve the right not to accept any Quotation from Suppliers and/or not to award the Event at all.
- 6.6 Subsequent to the closing of an Event, the Buyer shall notify those Suppliers that have submitted one or more Quotations, of the outcome of the Event and its possible subsequent conversion into a Dynamic Negotiation.
- 6.7 Subsequent to the closing of an Event, the Buyer has the facility to make visible to all competing suppliers, either through the Portal, or through other means, the received offers.
- 6.8 The Buyer shall be entitled to award the Event to one of the Suppliers participating in the Event at a price which is different from the amount entered in the Quotation submitted. It is understood that the winning bidder, in such case, shall be entitled to reject the awarding of the Event. Should the Supplier decide to accept the awarding, the price of the Goods and/or the Service shall be settled between Buyer and the Supplier.

7. OTHER TYPES OF EVENTS (RFX)

- 7.1 In case RFX Events are implemented, they shall be subjected to the same provisions featured in Parts I & IV and, wherever applicable, provisions of Part III of the Regulations. All possible specific provisions related to a given RFX Event, Regulation waivers, additional definitions as well as implementation systems, are stated in the information sections of the Portal.
- 7.2 Through participation in a RFX Event, the Supplier shall fully and unconditionally accept the rules of the Event as stated in the Regulations, wherever applicable, in the Letter of Publication and/or in the information sections of the Portal.

PART IV: FINAL SHARED PROVISIONS FOR ALL TYPES OF EVENTS

8. SUSPENSION AND/OR CANCELLATION OF THE EVENT

- 8.1 The Buyer shall be entitled, due to a just cause, to suspend the Event for a length of time deemed appropriate by issuing a communication to all Suppliers.
- 8.2 In case of a technical breakdown or malfunctioning of IT, technological devices, telephone connections and/or recording equipment that may jeopardise the regular course of the Event, the Buyer shall be entitled to suspend the Event until all the necessary measures have been adopted for its repair and resumption. The Buyer, in such cases, shall reserve the right to cancel or reopen the Event even after its termination, with no liability whatsoever towards the Suppliers.
- 8.3 In case of suspension and/or reopening pursuant to the Articles above, the date and time for resumption of the Event and the time remaining shall be defined the by Buyer and immediately notified to all Suppliers. Unless otherwise agreed, the Event shall be resumed on the basis of the last quotation submitted by the Suppliers and recorded by the Portal which must be considered as valid to all effects.
- 8.4 Should the connection to the Portal of one or more Suppliers fail, for whatever reason, the Buyer shall be entitled, based entirely on its judgement of the circumstances, to suspend the Event, or allow for its reopening even after its closing or to continue with its execution through allowing the continued submission of quotations in the Portal through the alternative off-line bidding mode, as defined in Art. 2.3, without incurring any liability whatsoever towards Suppliers.

8.5 In addition to the cases provided for in the Articles above, the Buyer shall be entitled, based entirely on its judgement, to suspend and/or cancel the Event at any moment in time, including after its closing, through a routine e-mail notification to the Suppliers, without incurring any liability whatsoever towards the Suppliers.

8.6 The Buyer shall be entitled, in its unquestionable judgement, to bar from taking part in the Event any Supplier responsible for or accused of violations to the obligations set forth under Articles 5.2, 9 and 11, without incurring any liability whatsoever towards the Suppliers, and shall reserve the right to compensation for any damages incurred as a result of such violations. Such a ban on Suppliers shall come into force through a routine e-mail communication to their respective address.

9. OBLIGATIONS AND GUARANTEES OF THE BUYER AND SUPPLIERS

9.1 The Buyer and the Suppliers shall agree amongst themselves the conditions and time frame within which to evaluate, fairly and in good faith, whether the Goods and/or Services offered comply with the description made as well as the quality promised by the Suppliers.

9.2 The Suppliers acknowledge the Buyer's right to subordinate their participation in the Event to the prior issue of adequate guarantees acting in support of the seriousness and irrevocability of the Quotations.

9.3 The Buyer and the Suppliers shall adopt all possible precautions and technical measures for safeguarding the security of all data and commercial information exchanged during the Event, in addition to barring access to the same by un-authorized personnel.

9.4 The Data shall be deemed as of the essence with regard to the Goods and/or Services trading contract that may be stipulated upon conclusion of the Event (the **Trading Contract**) between the Buyer and the awarded Supplier.

9.5 The Buyer and Sellers acknowledge that the Trading Contract, as well as its negotiation, conclusion and implementation, shall be exclusively a two-way act, and that BravoSolution is to be deemed in any case extraneous to any of such negotiation successful/unsuccessful conclusion and/or performance.

9.6 The Buyer and Sellers acknowledge that BravoSolution provides exclusively, in an autonomous and independent fashion, all Portal related utilisation and assistance services, and that it shall not take part and/or intervene in negotiations for the conclusion of the Trading Contract.

10. OBLIGATIONS & GUARANTEES OF THE BUYER

10.1 The Buyer pledges its full compliance with procedures, obligations and principles set forth under the Regulations.

10.2 Whenever the Event closes with an awarding, the Buyer undertakes towards the Suppliers, in compliance with the provisions set forth under the method of awarding, to enter into the Trading Agreement with the Successful Supplier resulting from the Event, save where the Successful Supplier has been in breach of obligations stated in Arts. 1.5, 9 and 11 and in Art. 10.3 below.

10.3 The Buyer shall be entitled to subordinate the stipulation of the Trading Contract or its effectiveness to the fulfilment of all conditions possibly stated in the Letter of Publication or in other agreements with Suppliers.

11. OBLIGATIONS AND GUARANTEES OF THE SUPPLIERS

11.1 The Suppliers pledge their full compliance with the procedures, obligations and principles set forth in the General Conditions and Regulations.

11.2 Each Supplier undertakes towards the Buyer to maintain its Quotations firm for the entire duration of the Event and throughout the period necessary for its awarding and the stipulation of the Trading Contract but in any case, unless otherwise agreed between the parties, not beyond 12 months from the starting date of the Event. In case of a Request for Quotation followed by a Dynamic Negotiation, each Supplier undertakes to maintain its Quotations firm throughout the whole duration of the Dynamic Negotiation, including the time necessary for awarding.

11.3 The Awarded Supplier undertakes to enter into the Trading Contract with the Buyer. Failure to do so shall entitle Buyer to seek damages.

11.4 Should the Awarded Supplier, for whatever reason, decline the award of the Event or not enter into the Trading Contract with Buyer, the Suppliers acknowledge that Buyer shall have the right, at any moment in time, including after the final awarding notification, to cancel the final awarding and proceed with the awarding of the Event to another bidding Supplier, which shall be bound to all the obligations set forth under Art. 11.3.

11.5 The Suppliers shall guarantee to Buyer:

- a) that they shall retain ownership and availability of the Goods and/or Services for the entire duration of the Event and up until its final awarding and the execution of the Trading Contract;
- b) that they shall supply a precise, truthful, honest and fair description of the Goods and/or Services to be supplied;
- c) that they shall refrain from troubling the proper course of the Event through behaviour and conduct which may be deemed anti-competitive, unlawful, anti-regulatory or in violation of third party rights, such as, by way of example only, the fixing of prices or other conditions between some Suppliers to the detriment of others, the issuing of Anomalous Quotations, etc.;
- d) that they shall refrain from marketing Goods and/or Services of doubtful or illegal origin; counterfeit Goods and/or Services manufactured in violation of third party rights and/or national and international regulations safeguarding industrial and intellectual property; Goods and/or Services of any nature the sale of which is forbidden by Law or applicable regulations;
- e) to offer goods and/or services manufactured and/or provided in compliance with all applicable laws and in any case European standard rules regarding the health and safety of workforce, the protection of the environment, and to provide, where required, the necessary certifications.

12. AMENDMENTS TO REGULATIONS

12.1 The Suppliers acknowledge and accept that the Buyer can amend the Regulations at any point in time through publication of a notification on the Portal or, at Buyer's discretion, by means of an e-mail or fax sent to the Suppliers.

12.2 Amendments to Regulations shall come into force as of the date indicated in the notification or in the communication as provided for in the previous paragraph, but in any case no earlier than 15 days from the communication. Such amendments are deemed to have been tacitly and unconditionally accepted by the Suppliers through continued use of User ID and/or participation in Events.

12.3 However, following the notification or communication mentioned in Art. 12.1, Suppliers maintain the facility to recede from the General Conditions.