

## 1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

### 1.1. Definitions:

**Applicable Laws:** means:

- (a) Any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding provision (as amended, consolidated or re-enacted from time to time); and
- (b) Applicable emission and safety standards, recognised technical rules and all applicable environmental protection regulations, particularly those concerning hazardous materials,

that apply to the Supplier or to the provision of Goods and/or Services in the jurisdiction in which they are being carried out, or to the deliverables or work products produced as a consequence of the Contract.

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

**Commencement Date:** means the date specified in the Purchase Order or if none is specified, the earlier of the Supplier's written acceptance of the Purchase Order or the date that the Supplier supplies any Goods and/or Services to the Customer under or in connection with the Purchase Order.

**Conditions:** these terms and conditions including the schedules as amended from time to time in accordance with clause 22.10.

**Contract:** the Purchase Order together with the Conditions and any Specific Requirements.

**Control:** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly.

**Customer:** the customer whose details are set out in the Purchase Order.

**Customer Materials:** has the meaning set out in clause 5.3.9.

**Deliverables:** all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

**Delivery Location:** means the delivery location (if any) set out in the Purchase Order.

**Goods:** the goods (or any part of them) set out in the Purchase Order.

**Goods Specification:** any specification for the Goods, including any related plans and drawings, set out in the Purchase Order.

**Intellectual Property Rights:** all intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Mandatory Policies:** the Customer's business policies and procedures as updated from time to time including Drugs and Alcohol, Modern Slavery and Human Trafficking, Corporate and Social Responsibility, Anti-Bribery and Anti-Corruption, Ethics, Data and Privacy and Security and such other policies and procedures as updated from time to time set out in the Purchase Order which are made available to the Supplier.

**Minimum Insurance Requirements:** the insurance requirements set out in the Purchase Order.

**New Supplier:** another party chosen by the Customer to take over the provision of all or part of the Services.

**Purchase Order:** the Customer's order for the supply of Goods and/or Services by the Supplier.

**Services:** the services, including any Deliverables, to be provided by the Supplier under the Contract as set out in the Purchase Order.

**Services Location(s):** the location(s) (if any) set out in the Purchase Order at which the Services are to be performed.

**Services Period:** the period within which the Services are to be performed as set out in the Purchase Order.

**Services Specification:** any description or specification for the Services as set out in the Purchase Order.

**Specific Requirements:** means the specific requirements (if any) which apply to the Contract set out in the Purchase Order.

**Supplier:** the supplier whose details are set out in the Purchase Order.

**Supplier Personnel:** any person employed or engaged by the Supplier in any way in the performance of its obligations under the Contract whether as independent contractors,

employees, workers, temporary labour, consultants, agents, sub-contractors or otherwise.

**TUPE:** the Transfer of Undertakings (Protection of Employment) Regulations 2006 (*SI 2006/246*) (as amended).

**Warranty Period:** the period of time as set out in the Purchase Order.

## 1.2. Interpretation:

1.2.1. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.2.2. A reference to a party includes its personal representatives, successors and permitted assigns.

1.2.3. A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.

1.2.4. Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.2.5. A reference to **writing** or **written** includes email.

## 2. Basis of contract

2.1. This Contract shall commence on the Commencement Date.

2.2. The Purchase Order, the Conditions and any Specific Requirements apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.3. These are the terms and conditions which shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

2.4. The Supplier waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Supplier that is inconsistent with the terms of the Purchase Order, the Conditions and any Specific Requirements.

2.5. The Customer will not accept any Goods or Services provided by the Supplier unless ordered on the Customer's official purchase order form, issued by an authorised officer or employee of the Customer.

## 3. Supply of Goods

3.1. The Supplier shall ensure that the Goods shall:

3.1.1. correspond with their description and any applicable Goods Specification;

3.1.2. 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 the Customer, expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgement;

3.1.3. where they are manufactured products, be free from defects in design, materials and workmanship and remain so for the Warranty Period;

3.1.4. 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. The Customer may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.

3.4. If following such inspection or testing the Customer considers that the Goods do not comply or are unlikely to comply with the Supplier's undertakings at clause 3.1, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

3.5. The Customer may conduct further inspections and tests after the Supplier has carried out its remedial actions.

3.6. The Supplier warrants that it has the right to convey the Goods and that they are free of all liens and encumbrances.

## 4. Delivery of Goods

4.1. The Supplier shall ensure that:

4.1.1. the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;

4.1.2. each delivery of the Goods is accompanied by a delivery note which shows the Commencement Date, the

- product number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- 4.1.3. it states clearly on the delivery note any requirement for the Customer to return any packaging material for the Goods to the Supplier. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.
- 4.2. The Supplier shall deliver the Goods:
    - 4.2.1. on the date specified in the Purchase Order or, if no such date is specified, then within 7 days of the Commencement Date;
    - 4.2.2. to the Delivery Location or such other location as instructed by the Customer to the Supplier before delivery; and
    - 4.2.3. during the Customer's normal hours of business on a Business Day, or as instructed by the Customer.
  - 4.3. Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
  - 4.4. If the Supplier:
    - 4.4.1. delivers less than 100% of the quantity of Goods ordered, the Customer may reject the Goods; or
    - 4.4.2. delivers more than 105% of the quantity of Goods ordered, the Customer may at its sole discretion reject the Goods or the excess Goods, and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and the Customer accepts the delivery, the Supplier shall make a pro rata adjustment to the invoice for the Goods.
  - 4.5. The Supplier shall not deliver the Goods in instalments without the Customer's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Customer to the remedies set out in clause 6.1.
  - 4.6. Title and risk in the Goods shall pass to the Customer on completion of delivery.

## **5. Supply of Services**

- 5.1. The Supplier shall supply the Services to the Customer during the Services Period at the Services Location in accordance with the terms of the Contract.
- 5.2. The Supplier shall meet any performance dates for the Services specified in the Purchase Order or that the Customer notifies the Supplier and time is of the essence in relation to any of those performance dates.
- 5.3. In providing the Services, the Supplier shall:
  - 5.3.1. co-operate with the Customer in all matters relating to the Services, and comply with all instructions of the Customer;
  - 5.3.2. perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade (including any specific considerations with regard to Applicable Laws or customs in the location that the Goods and/or Services are to be provided);
  - 5.3.3. 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 the Contract;
  - 5.3.4. ensure that the Services will conform with all descriptions, standards and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose that the Customer expressly or impliedly makes known to the Supplier;
  - 5.3.5. provide all equipment, tools and vehicles and such other items as are required to provide the Services;
  - 5.3.6. use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Customer, will be free from defects in workmanship, installation and design;
  - 5.3.7. obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
  - 5.3.8. observe all environmental, health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises as well as industry or professional best practice;

- 5.3.9. hold all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier (**Customer Materials**) in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not dispose or use the Customer Materials other than in accordance with the Customer's written instructions or authorisation;
- 5.3.10. not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Customer may rely or act on the Services; and
- 5.3.11. comply with any additional obligations as set out in the Service Specification.
- 5.4. If any of the Supplier Personnel are to attend upon the Customer's premises as part of delivery of the Services, the Supplier shall (prior to such attendance):
  - 5.4.1. comply with all authorisation and staff screening procedures requested by the Customer (including any set out in the Specific Requirements) and ensure that only such Supplier Personnel who are authorised and screened in accordance with such procedures are engaged in the performance of the Services upon the Customer's premises;
  - 5.4.2. ensure that such Supplier Personnel have a valid and subsisting leave, permit or visa to enter or remain in the country where the Services are to be provided and to undertake the relevant Services there;
  - 5.4.3. ensure that such Supplier Personnel are not subject to any conditions (in relation to such leave, permit or visa) which may affect the Supplier's obligations under the Contract.
- 5.5. If any of the Supplier Personnel are to attend upon the Customer's premises as part of the delivery of the Services, the Supplier shall (and shall procure that the Supplier Personnel shall) at all times comply with the Customer's drugs and alcohol policy and in any event:
  - 5.5.1. the Supplier acknowledges that compliance with clause 5.5 is a condition of attendance by the Supplier

Personnel onto the Customer's premises; and

- 5.5.2. the Customer's drugs and alcohol policy shall be communicated to all Supplier Personnel by the Supplier.
  - 5.6. Any failure by the Supplier and/or the Supplier Personnel to comply with the provisions of clause 5.5 may result in the removal from the Customer's premises of all or any of the Supplier Personnel. In this event, the Customer reserves the right to engage another supplier to complete the Services at the Supplier's expense and without liability to the Customer.
  - 5.7. The Supplier shall make all Supplier Personnel aware of and procure their compliance with the applicable requirements under the Contract.
- 6. Customer remedies**
- 6.1. If the Supplier fails to deliver the Goods by the applicable date or to perform the Services by the applicable date, or both, the Customer shall, without limiting or affecting other rights or remedies available to it, have any one or more of the following rights and remedies:
    - 6.1.1. to terminate the Contract with immediate effect by giving written notice to the Supplier;
    - 6.1.2. to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
    - 6.1.3. to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods and/or services from a third party;
    - 6.1.4. to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and/or Goods that it has not delivered; and
    - 6.1.5. to claim damages for any additional costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to meet such dates.
  - 6.2. If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 3.1, then, without limiting or affecting other rights or remedies available to it, the Customer shall have one or more of the following rights and remedies, whether or not it has accepted the Goods:
    - 6.2.1. to terminate the Contract with immediate effect by giving written notice to the Supplier;

- 6.2.2. to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
  - 6.2.3. to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
  - 6.2.4. to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
  - 6.2.5. to recover from the Supplier any expenditure incurred by the Customer in obtaining substitute goods from a third party; and
  - 6.2.6. to claim damages for any additional costs, loss or expenses incurred by the Customer arising from the Supplier's failure to supply Goods in accordance with clause 3.1.
- 6.3. If the Supplier has supplied Services that do not comply with the requirements of clause 5.3.4 then, without limiting or affecting other rights or remedies available to it, the Customer shall have one or more of the following rights and remedies:
- 6.3.1. to terminate the Contract with immediate effect by giving written notice to the Supplier;
  - 6.3.2. to return the Deliverables to the Supplier at the Supplier's own risk and expense;
  - 6.3.3. to require the Supplier to provide repeat performance of the Services, or to provide a full refund of the price paid for the Services (if paid);
  - 6.3.4. to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
  - 6.3.5. to recover from the Supplier any expenditure incurred by the Customer in obtaining substitute services or deliverables from a third party; and
  - 6.3.6. to claim damages for any additional costs, loss or expenses incurred by the Customer arising from the Supplier's failure to comply with clause 5.3.4.
- 6.4. These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.
- 6.5. The Customer's rights and remedies under the Contract are in addition to, and not exclusive of, any rights and remedies implied by statute and common law.

## **7. Customer's obligations**

- 7.1. The Customer shall:
  - 7.1.1. provide the Supplier with reasonable access at reasonable times to the Customer's premises for the purpose of providing the Services;
  - 7.1.2. provide such necessary information for the provision of the Services as the Supplier may reasonably request.

## **8. Specific Requirements**

The Supplier and the Customer shall each comply with their respective obligations under the Specific Requirements (if any) listed within the Purchase Order.

## **9. Audit and Inspection**

- 9.1 The Customer may, at any time on reasonable notice (either by itself or through an agent, who shall not be a direct competitor of the Supplier, and who shall be bound by confidentiality obligations no less stringent than those set out in these Conditions), conduct an audit or inspection of the performance of the Supplier's obligations under the Contract, including associated procedures, systems, processes and documents (**Audit**).
- 9.2 The Supplier shall allow the Customer, or its appointed auditor or inspector, access to its premises and shall provide all such information as is reasonably required to facilitate an Audit.
- 9.3 In the event of any non-compliance being found through an Audit, the Supplier shall pay the Customer's costs associated with the Audit and shall undertake at its own cost, any corrective action required by the Customer to remedy the non-compliance, including any overcharge in excess of 5% or such other tolerance as may be specified in the Specific Requirements.
- 9.4 An Audit shall not negate or diminish any duty owed by the Supplier and any failure to inspect or to identify non-compliance shall not constitute a waiver of the Customer's rights in relation to it.

## **10. Charges and payment**

- 10.1. The price for the Goods:
  - 10.1.1. shall be the price set out in the Purchase Order, or if no price is quoted, the price set out in the Supplier's published price list in force at the Commencement Date; and
  - 10.1.2. shall be inclusive of the costs of packaging, insurance and carriage of the Goods. No extra charges shall be

effective unless agreed in writing and signed by the Customer.

- 10.2. The charges for the Services shall be set out in the Purchase Order and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Customer, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 10.3. In respect of the Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery unless otherwise stated in the Purchase Order. In respect of Services, the Supplier shall invoice the Customer on completion of the Services (to the reasonable satisfaction of the Customer). Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant purchase order number. Failure by the Supplier to submit an invoice which contains the relevant supporting information may result in a late or non-payment for which no additional payment (including any interest on late payment) shall be made by the Customer.
- 10.4. In consideration of the supply of Goods and/or Services by the Supplier, the Customer shall pay the invoiced amounts, within 45 days of the end of the month following the month in which the Customer receives a correctly rendered invoice, to a bank account nominated in writing by the Supplier.
- 10.5. Payment by the Customer does not constitute acceptance of Goods and/or Services by the Customer.
- 10.6. All amounts payable by the Customer 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 the Customer, the Customer 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.
- 10.7. If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each date at 4% a year above the Bank of England's base rate

from time to time, but at 4% a year for any period when the base rate is below 0%. Where a payment is disputed in good faith, interest is only payable after the dispute is resolved, on sums found or agreed to be due, from 30 days after the dispute is resolved until payment.

- 10.8. 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 the Customer to inspect such records at all reasonable times on request.
- 10.9. Payments may be withheld by the Customer in whole or in part if any Goods and/or Services are not in accordance with the Contract. The Customer may at any time, without notice to the Supplier, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. Any exercise by the Customer of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

## **11. Intellectual property rights**

- 11.1. All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any Customer Materials) shall be owned by the Supplier.
- 11.2. The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy and modify the Deliverables (excluding Customer Materials) for the purpose of receiving and using the Services and the Deliverables.
- 11.3. The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.
- 11.4. The Supplier acknowledges that all rights in the Customer Materials are and shall remain the exclusive property of the Customer.

## **12. TUPE**

- 12.1 The Supplier warrants to the Customer and any New Supplier that TUPE shall not apply on or as a result of the termination of the provision of the Services by the Supplier.

12.2 The Supplier shall indemnify the Customer and any New Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Customer and/or any New Supplier arising in connection with or as a result of a breach of the warranty in clause 12.1.

### **13. Indemnity**

13.1. The Supplier shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with:

13.1.1. any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services (excluding the Customer Materials);

13.1.2. any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods, as delivered, or the Deliverables;

13.1.3. any breach by the Supplier of clause 5.5 and/or clause 18; and

13.1.4. any claim made against the Customer by a third party arising out of or in connection with the supply of the Goods, as delivered, or the Services.

13.2. This clause 13 shall survive termination of the Contract.

### **14. Health and Safety**

24.1 The Supplier will comply with all Applicable Laws regarding health and safety and consumer protection.

24.2 The Supplier will provide the Customer with all necessary information for the safe use, maintenance, handling, cleaning, processing, storage, transportation and disposal of the

Goods or the carrying out of the Services and shall update the information as it enters the public domain.

24.3 The Supplier will maintain accurate and complete records relating to the design, manufacture and testing of the Goods or the provision of the Services to the Customer. The Customer will have complete access to such records as required.

### **15. Insurance**

During the term of the Contract and for a period of 12 months thereafter, the Supplier shall maintain in force, with a reputable insurance company, such insurance necessary to cover any liabilities that may arise under or in connection with the Contract, and, in any event, the Supplier shall comply with the insurance requirements set out in the Supplier's Vetting Requirements Questionnaire (if applicable) and any Minimum Insurance Requirements (both in relation to types of insurance and duration of cover), and shall, on the Customer'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.

### **16. Confidentiality**

16.1. Each party undertakes that it shall not at any time, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 16.2.

16.2. Each party may disclose the other party's confidential information:

16.2.1. to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 16; and

16.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

16.3. Neither party shall use the other party's confidential information for any purpose other

than to exercise its rights and perform its obligations under or in connection with the Contract.

## 17. Compliance with relevant laws and policies

17.1. In performing its obligations under the Contract, the Supplier shall (and shall procure that the Supplier Personnel shall):

17.1.1. comply with all applicable laws, statutes, regulations and codes from time to time in force; and

17.1.2. comply with the Mandatory Policies.

## 18. Data protection

18.1. The following definitions apply in this clause 18:

18.1.1. **Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures:** as defined in the Data Protection Legislation.

18.1.2. **Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

18.1.3. **Domestic Law:** the law of the United Kingdom or a part of the United Kingdom.

18.2. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 18 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

18.3. The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor. The Specific Requirements set out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject.

18.4. Without prejudice to the generality of clause 18.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier and/or lawful collection of the Personal Data by the Supplier on behalf of

the Customer for the duration and purposes of the Contract.

18.5. Without prejudice to the generality of clause 18.2, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under the Contract:

18.5.1. process that Personal Data only on the documented written instructions of the Customer which are set out in the Specific Requirements unless the Supplier is required by Domestic Law to otherwise process that Personal Data. Where the Supplier is relying on Domestic Law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits the Supplier from so notifying the Customer;

18.5.2. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

18.5.3. ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

18.5.4. not transfer any Personal Data outside of the UK unless the prior written consent of the Customer has been

obtained and the following conditions are fulfilled:

- 18.5.4.1. the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
  - 18.5.4.2. the Data Subject has enforceable rights and effective legal remedies;
  - 18.5.4.3. the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - 18.5.4.4. the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- 18.5.5. assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 18.5.6. notify the Customer without undue delay on becoming aware of a Personal Data Breach;
- 18.5.7. at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Contract unless required by Domestic Law to store the Personal Data; and
- 18.5.8. maintain complete and accurate records and information to demonstrate its compliance with this clause 18 and allow for audits by the Customer or the Customer's designated auditor and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.
- 18.6. The Customer does not consent to the Supplier appointing any third-party processor of Personal Data under the Contract.

## **19. Termination**

- 19.1. Without affecting any other right or remedy available to it, the Customer may terminate the Contract:

19.1.1. with immediate effect by giving written notice to the Supplier if:

- 19.1.1.1. the Supplier commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 7 days after being notified in writing to do so;
  - 19.1.1.2. the Supplier's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy. The Supplier shall promptly (and in any event within 5 days of request) provide such information as reasonably required by the Customer from time to time in order to assess the financial position and/or ability of the Supplier to perform its obligations under the Contract;
  - 19.1.1.3. there is a change of Control of the Supplier; or
  - 19.1.1.4. the Supplier commits a breach of clause 17;
- 19.1.2. for convenience by giving the Supplier 30 days' written notice.

19.2. Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- 19.2.1. the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or
- 19.2.2. the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

## 20. Consequences of termination

20.1.1. On termination of the Contract, the Supplier shall immediately deliver to the Customer all Deliverables whether or not then complete and return all Customer Materials. If the Supplier fails to do so, then the Customer may 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 the Contract.

20.2. Termination or expiry of the Contract shall not affect the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

20.3. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

## 21. Force majeure

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 12 weeks, the party not affected may terminate the Contract by giving 15 days' written notice to the affected party.

## 22. General

### 22.1. Assignment and other dealings.

22.1.1. The Customer may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights and obligations under the Contract.

22.1.2. The Supplier shall not assign, transfer, mortgage, charge, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Customer.

22.2. **Subcontracting.** The Supplier may not subcontract any or all of its rights or obligations under the Contract without the prior written

consent of the Customer. If the Customer consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all the acts and omissions of its subcontractors as if they were its own.

### 22.3. Notices.

22.3.1. Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:

22.3.1.1. delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

22.3.1.2. sent by email to the address specified the Purchase Order.

22.3.2. Any notice or communication shall be deemed to have been received:

22.3.2.1. if delivered by hand, at the time the notice is left at the proper address;

22.3.2.2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or

22.3.2.3. if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 22.3.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

22.3.3. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

22.4. **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision of the Contract is deemed deleted under this clause 22.4 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible,

achieves the intended commercial result of the original provision.

- 22.5. **Conflict.** If there is any conflict or ambiguity between the terms of the Purchase Order and the Conditions, a term contained in the Purchase Order shall have priority over one contained in the Conditions. If there is any conflict or ambiguity between the terms of the Specific Requirements (if any) and either or both of the Purchase Order and/or the Conditions, a term contained in the Specific Requirements (if any) shall have priority.
- 22.6. **Waiver.** Except as set out in clause 2.4, no failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 22.7. **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 22.8. **Entire agreement.** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 22.9. **Third party rights.**  
Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. For the avoidance of doubt a New Supplier shall have rights under and shall be able to enforce clause 12.
- 22.10. **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives.
- 22.11. **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be

governed by and construed in accordance with the law of England and Wales.

- 22.12. **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

