

# Terms & Conditions of Purchase of Goods and/or Services



## 1. INTERPRETATION

### 1.1 Definitions:

**ADR Notice:** has the meaning set out in clause 17.9(b)

**Affiliate:** in relation to a party, any entity that directly or indirectly controls, is controlled by, or is under common control with that party.

**Business Hours:** the period from 09:00 to 17:00 on a day other than a Saturday, Sunday, or public holiday in England, when banks in London are open for business.

**Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with clause 17.4.

**Contract:** the contract between the Customer and the Supplier for the sale and purchase of the Goods and / or Services in accordance with these Conditions.

**Customer:** The company identified in the Order.

**Customer Materials:** has the meaning set out in clause 9.

**Deliverables:** any outputs of the Services and any other documents products or materials to be provided by the Supplier as set out in the Order and any other documents, products and materials provided by the Supplier in relation to the Services.

**Delivery Date:** the date(s) specified in the Order upon which the Goods are to be delivered and / or the Services are to be performed, or, if none is specified, within 30 days of the date of the Order.

**Delivery Location:** the address for delivery of Goods as set out in the Order.

**Effect of Alterations Notice:** has the meaning set out in clause 7.1.

**End User:** any person (i) to whom the Customer has an obligation which is in whole or part satisfied by the Customer's procurement of the Goods and/or Services; or (ii) any person to whom the Customer is required to transfer its rights in the Goods and/or Services in accordance with such obligation.

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

**Incoterms:** the version of the Incoterms® Rules published by the International Chamber of Commerce current at the date of the Order.

**Mandatory Policies:** policies of the Customer or any End User which have been provided to the Supplier by the Customer and with which the Supplier is required to comply as set out in the Order.

**Order:** the Customer's order for the Goods and/or Services, as set out in the purchase order form from the Customer to the Supplier.

**Relevant Terms:** has the meaning set out in clause 14.5.

**Specification:** any specification for the Goods and / or Services, including any related plans and drawings, that is agreed by the Customer and the Supplier.

**Services:** the services (or any part of them) to be performed by the Supplier as set out in the Order.

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**Slavery and Human Trafficking:** has the meaning set out in clause 14.3(a).

**Supplier:** the person or firm from whom the Customer purchases the Goods and / or Services pursuant to the Order.

## 1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its successors and permitted assigns.
- (c) 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.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** excludes fax but includes email.

## 2. BASIS OF CONTRACT

2.1 These Conditions 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.

2.2 The Order constitutes an offer by the Customer to purchase the Goods and/or Services in accordance with these Conditions.

2.3 The Order shall be deemed to be accepted on the earlier of:

- (a) the Supplier issuing a written acceptance of the Order; and
- (b) the Supplier doing any act consistent with fulfilling the Order, at which point the Contract shall come into existence.

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 these Conditions.

## 3. SUPPLIER'S RESPONSIBILITIES

3.1 The Supplier shall ensure that the Goods shall:

- (a) correspond with their description and any applicable Specification;
- (b) 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;
- (c) be new (unless expressly agreed otherwise in the Order);
- (d) be free from defects in design, material and workmanship and remain so for 24 months after delivery (or such other period expressly set out in the Order); and

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- (e) 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:

- (a) ensure the Services and the Deliverables conform in all respects with their description and any applicable Specification and that the Services are 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;
- (b) perform the Services with the highest level of care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- (c) ensure that the Deliverables and all materials, standards and techniques used in providing the Services are of the best quality and are free from defects in workmanship, installation and design; and
- (d) co-operate with the Customer and comply with the Customer's instructions, in each case in all matters relating to the Services.

3.3 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.

3.4 Either or both of the Customer and an End User may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods and Services 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.

3.5 If following such inspection or testing the Customer or an End User considers that the Goods do not conform and / or Services or are unlikely to comply with the Supplier's undertakings at clauses 3.1 and 3.2, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

3.6 Either or both of the Customer and an End User may conduct further inspections and tests after the Supplier has carried out its remedial actions.

3.7 The Supplier shall observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises, including the Delivery Location, from time to time and that have been communicated to the Supplier. The Customer reserves the right to refuse access to, or remove from, the Customer's premises to any of the Supplier's personnel involved in the provision of the Services. Such access shall only be given to the extent necessary for the performance of the Services.

3.8 In performing the Services, the Supplier shall not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business.

3.9 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

## 4. DELIVERY

4.1 The Supplier shall ensure that:

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- (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition and ready for safe unloading;
- (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order 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 the outstanding balance of Goods remaining to be delivered, if the Goods are being delivered by instalments;
- (c) if the Supplier requires the Customer to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier; and
- (d) to the extent reasonably possible without derogating from the obligation in clause 4.1(a), the packaging materials used can be recycled, reused, salvaged, composted or otherwise diverted from landfills or incineration. The Supplier shall be liable for costs incurred by the Customer in disposing of packaging materials used in breach of this requirement.

4.2 The Supplier shall deliver the Goods:

- (a) on the Delivery Date;
- (b) at the Delivery Location; and
- (c) during the Customer's normal business hours, or as instructed by the Customer.

4.3 Except where the Order expressly states that Incoterms apply, delivery of the Goods shall be completed on the completion of unloading the Goods by the Customer at the Delivery Location. Where the Order states that Incoterms apply, delivery of the Goods shall be in accordance with the specified Incoterms.

4.4 The Supplier shall not deliver the Goods in instalments without the Customer's prior written consent. Where it is agreed that the Goods are to be 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 5.

4.5 The Supplier shall complete the Services on or before the Delivery Date.

### 5. CUSTOMER REMEDIES

5.1 Without prejudice to clause 15, if the Goods are not delivered and / or the Services are not completed on the Delivery Date, or the Goods and/or Services do not comply with the undertakings set out in clauses 3.1 and 3.2, then, without limiting any of its other rights or remedies, and whether or not it has accepted the Goods and/or Services, the Customer may exercise any one or more of the following rights and remedies:

- (a) to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
- (b) to require the Supplier to repair or replace the rejected Goods or reperform the Services, or to provide a full refund of the price of the rejected Goods (if paid);

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- (c) to refuse to accept any subsequent delivery of the Goods or performance of the Services which the Supplier attempts to make;
  - (d) to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods from a third party;
  - (e) purchase substitute services from elsewhere and reclaim from the Supplier any additional costs incurred as a result of procuring such services from a third party instead of the Supplier; and
  - (f) to claim damages for any other costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.
- 5.2 If the Goods are not delivered and / or the Services are not completed on the Delivery Date the Customer may, at its option, claim or deduct by way of liquidated damages 0.5% of the price of the Order for each day's delay in delivery until the earlier of delivery or termination of the Contract by the Customer, up to a maximum of 25% of the total price of the Order. If the Customer exercises its rights under this clause 5.2, it shall not be entitled to any of the remedies set out in clause 5.1 in respect of the Goods' late delivery (but such remedies shall be available in respect of the Goods' condition).
- 5.3 The Customer's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.

### 6. TITLE AND RISK

- 6.1 The Supplier warrants good title to all materials used in the Goods, free and clear of all liens, claims and encumbrances.
- 6.2 If the Order expressly states that Incoterms apply, risk in the Goods shall transfer in accordance with the specified Incoterm. If the Order does not expressly specify Incoterms, risk in the Goods shall pass to the Customer on completion of delivery.
- 6.3 Unless otherwise stated in the Order, title in the Goods and the Deliverables shall pass to the Customer on the earlier of (i) payment for such Goods and / or Services; or (ii) completion of delivery.

### 7. CHANGE CONTROL

- 7.1 The Customer may at any time, acting reasonably, request alterations to an Order by notice in writing to the Supplier. Within 7 days of receipt of the request for alterations (or such other period as may be agreed between the Parties) the Supplier shall advise the Customer by notice in writing of the effect of such alterations, if any, on the Order price and the Delivery Date (such notice being an **Effect of Alterations Notice**).
- 7.2 Within 7 days of receipt of an Effect of Alterations Notice (or such other period as may be agreed between the Parties) the Customer shall either (i) advise the Supplier by notice in writing that it wishes the alterations to proceed, at which point the relevant original Order shall be deemed amended accordingly and thereafter the Parties shall perform this Contract upon the basis of such amendments; or (ii) notify the Supplier that it does not wish to proceed with the amendment.

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7.3 The Supplier may propose an alteration to an Order to the Customer. Such proposal shall include the effect of such alteration, if any, on the Order price and Delivery Date.

7.4 Where the Supplier has proposed an alteration, the Customer may in its sole discretion acting reasonably and in good faith:

- (a) within 7 days of receipt of such proposal, accept such proposal in writing and thereafter the Parties shall perform this Contract upon the basis of such amendments;
- (b) request the Supplier provides additional information relating to the proposed alteration. In such an event, where the Supplier does not provide such requested information within 7 days of receipt of such notice, or such other period as may be agreed between the Parties, the Supplier's proposal is deemed withdrawn; or
- (c) reject the proposed alteration whereupon (without limiting the Parties' remaining rights and remedies under this Contract), the Supplier shall continue to perform this Contract in accordance with the unamended Order.

### 8. PRICE AND PAYMENT

8.1 The price of the Goods and/or Services shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date the Contract came into existence.

8.2 The price of the Goods and/or Services:

- (a) excludes any amounts due in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and
- (b) includes the costs of packaging, insurance and carriage of the Goods and (other than as specified in clause 8.2(a) above) all other taxes and charges relating to the Goods; and
- (c) is fixed for the term of the Order and not subject to exchange rate variation, indexation or escalation for any reason.

8.3 Any charges that are not included in the Order price shall not be effective unless agreed in writing with the Customer.

8.4 Unless other payment terms are specified in the Order, the Supplier may invoice the Customer for the price of the Goods plus VAT at the prevailing rate (if applicable) on or within 90 days after the completion of delivery pursuant to clause 4.3 and may invoice the Customer for the price of the Services plus VAT at the prevailing rate (if applicable) on or within 90 days after the completion of the Services.

8.5 It shall be a condition precedent to any payment that the invoice includes the date of the Order, the invoice number, the Customer's order number and the Supplier's VAT registration number. The Supplier shall provide the Customer with any supporting documents that the Customer may reasonably require.

8.6 Unless other payment terms are specified in the Order, the Customer shall pay correctly rendered invoices within 60 days of receipt of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier.

- 8.7 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%. The parties agree that this is a substantial remedy for late payment pursuant to the Late Payment of Commercial Debts (Interest) Act 1998
- 8.8 The Supplier acknowledges that timely submission of invoices is critical to the Customer's business. In consideration thereof, the Supplier agrees that any invoice received by the Customer later than the date specified in clause 8.4 or otherwise set out in the Order shall be paid within such period as the Customer may determine at the Customer's sole discretion. Such payments shall not be considered overdue and shall not attract interest in accordance with clause 8.7.
- 8.9 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. If the liabilities to be set off are expressed in different currencies, the Customer may convert either liability at a market rate of exchange for the purpose of set-off. 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.

### 9. CUSTOMER MATERIALS

The Supplier acknowledges that all materials, equipment and tools, drawings, specifications, and data supplied by the Customer to the Supplier (**Customer Materials**) and all rights in the Customer Materials are and shall remain the exclusive property of the Customer. The Supplier shall keep the Customer Materials in safe custody at its own risk, maintain them in good condition until returned to the Customer, and not dispose or use the same other than in accordance with the Customer's written instructions or authorisation.

### 10. INTELLECTUAL PROPERTY

- 10.1 In relation to the Customer Materials:
- (a) the Customer and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials; and
  - (b) the Customer grants to the Supplier a fully paid-up, non-exclusive, royalty-free, nontransferable licence to copy and modify the Customer Materials for the term of the Contract for the purpose of providing the Services to the Customer.
- 10.2 In relation to the Deliverables:
- (a) the Supplier assigns to the Customer, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the Deliverables;
  - (b) the Supplier shall obtain waivers of all moral rights in the Deliverables to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction; and

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- (c) the Supplier shall, promptly at the Customer's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Customer may from time to time require for the purpose of securing for the Customer all right, title and interest in and to the Intellectual Property Rights assigned to the Customer in accordance with clause 10.2(a).

### 10.3 In relation to the Goods:

- (a) the Supplier and its licensors shall retain ownership of all Intellectual Property Rights in the Goods, excluding the Customer Materials;
- (b) 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 perpetual and irrevocable licence to use the Goods (excluding the Customer Materials) in its business; and
- (c) the Customer may sub-license the rights granted in clause 10.3(b) to End Users.

## 11. INDEMNITY

11.1 The Supplier shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including but not limited to 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 professional costs and expenses) suffered or incurred by the Customer as a result of or in connection with:

- (a) 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 preparation, manufacture, supply or use of the Goods or Deliverables, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
- (b) 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 Goods and/or Services, to the extent that the defects in the Goods and/or Services are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and
- (c) any claim made against the Customer by a third party arising out of or in connection with the supply of the Goods and/or Services, to the extent that such claim arises out of the breach, negligent performance, fraud or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.

11.2 This clause 11 shall survive termination of the Contract.

## 12. INSURANCE

During the term of the Contract and for a period of 12 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, 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. Such insurance shall not limit or in any way reduce the Supplier's liabilities under this Contract.



### 13. CONFIDENTIALITY

13.1 Each party undertakes that it shall not at any time during the Contract and for a period of 5 years after termination of the Contract, disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 13.2.

13.2 Each party may disclose the other party's confidential information:

- (a) 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. The Customer may also disclose the Supplier's confidential information to End Users, Affiliates and employees, officers and representatives of Affiliates provided that such parties comply with the obligations set out in this clause as if they were a party to this 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 13; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

13.3 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.

### 14. COMPLIANCE WITH RELEVANT LAWS AND POLICIES

14.1 In performing its obligations under the Contract, the Supplier shall:

- (a) comply with all applicable laws, statutes, regulations from time to time in force; and
- (b) comply with the Mandatory Policies.

14.2 The Supplier shall during the term of the Contract:

- (a) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (c) notify the Purchaser (in writing) if it becomes aware of any breach of clause 14.2(a) or clause 14.2(b), or has reason to believe that it has received a request or demand for any undue financial or other advantage in connection with the performance of the Contract;
- (d) within 3 months of the date of the Contract, and annually thereafter, certify to the Customer in writing signed by an officer of the Supplier, compliance with this clause 14.2 by the Supplier and all persons referred to herein. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request.

For the purpose of this clause 14.2, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively.

14.3 The Supplier represents and warrants that it:

- (a) has not been and is not engaged in any practices involving the use of child labour, forced labour, the exploitation of vulnerable people, or human trafficking (**Slavery and Human Trafficking**);
- (b) its employees and agency workers are paid in compliance with all applicable employment Laws and minimum wage requirements;
- (c) will take reasonable steps to prevent Slavery and Human Trafficking in connection with the Supplier's business;
- (d) agrees to respond to all reasonable requests for information required by either of the Customer or an End User for the purposes of completing their respective annual antislavery statement; and
- (e) will permit the either or both of Customer and an End User and / or their third party representatives, on reasonable notice during normal business hours, but without notice if there are reasonable grounds to suspect an instance of Slavery and Human Trafficking, to access and take copies of the Supplier's records and any other information held at the Supplier's premises and to meet with the Supplier's personnel and more generally to audit the Supplier's compliance with its obligations under this clause 14.3. The Supplier shall give all necessary assistance to the conduct of such audits during the term of this contract.

#### 14.4 The Supplier shall during the term of the Contract:

- (a) not engage in any activity, practice or conduct which would constitute either:
  - (i) UK tax evasion facilitation offence under section 45(5) of the Criminal Finances Act 2017; or
  - (ii) a foreign tax evasion facilitation offence under section 46(6) of the Criminal Finances Act 2017;
- (b) establish, maintain and enforce its own policies and procedures as are both reasonable to prevent the facilitation of tax evasion by another person and to ensure compliance with clause 14.4(a); and
- (c) notify the Customer in writing if it becomes aware of any breach of clause 14.4(a) or has reason to believe that it has received a request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017, in connection with the performance of the Contract.

14.5 The Supplier shall ensure that any of its agents, consultants, contractors, subcontractors, suppliers or other persons engaged in performance of the Supplier's obligations under the Contract do so only on the basis of a written contract which imposes on and secures from such person terms substantially equivalent to those imposed on the Supplier in this clause 14 (**Relevant Terms**). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms.

## 15. TERMINATION

15.1 The Customer may terminate the Contract in whole or in part at any time before delivery of the Goods and/or completion of the Services with immediate effect by giving the Supplier

written notice, whereupon the Supplier shall discontinue all work on the Contract. The Customer shall pay the Supplier fair and reasonable compensation for any work in progress on the Goods and/or Services at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.

15.2 Without limiting its other rights or remedies, the Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if:

- (a) the Supplier commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 28 days of the Supplier being notified in writing to do so;
- (b) the Supplier is in breach of clause 14;
- (c) the Supplier 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;
- (d) the Supplier takes any step or action in connection with the Supplier being made bankrupt, entering any composition or arrangement with his creditors, having a receiver appointed to any of his 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;
- (e) the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (f) the Supplier's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

15.3 On termination of the Contract, the Supplier shall immediately 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 the Customer Materials 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.

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

15.5 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract including clauses 10 (Intellectual Property), 11 (Indemnity), 12 (Insurance), 13 (Confidentiality), 15 (Termination) and 17 (General) shall remain in full force and effect.

## 16. FORCE MAJEURE

Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be

extended accordingly. The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the affected party. If the period of delay or non-performance continues for three months, the party not affected may terminate the Contract by giving 14 days' written notice to the affected party.

### 17. GENERAL

#### 17.1 Assignment and other dealings

- (a) The Customer may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.
- (b) The Supplier may not assign, transfer, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Customer.

17.2 **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.

#### 17.3 Entire agreement.

- (a) The Contract constitutes the entire agreement between the parties.
- (b) Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

17.4 **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 Customer.

#### 17.5 Waiver.

- (a) Except as set out in clause 2.4, a waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- (b) A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

17.6 **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 the Contract. If any provision of the Contract is deemed deleted under this clause 17.6 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.

17.7 **No partnership or agency.** Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or

on behalf of any other party except as expressly provided in clauses 3 (Supplier's Responsibilities), 10 (Intellectual Property), 14 (Compliance with Relevant Laws and Policies) and 17.8 (Third Party Rights).

### 17.8 **Third party rights.**

- (a) The Customer's rights under this Contract and clauses 3 (Supplier's Responsibilities), 4 (Delivery), 5 (Customer Remedies), 10 (Intellectual Property), 13 (Confidentiality) and 15.3 of this Contract may be enforced by the End User of the Goods and/or Services in accordance with the Contracts (Rights of Third Parties) Act 1999.
- (b) Subject to clause 17.8(a) or unless otherwise expressly stated in the Order, 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.
- (c) Within 10 days of a request from the Customer, the Supplier shall deliver to the Customer a direct agreement in favour of the Customer's funders in such form as reasonably required by the Customer's funders from time to time. The Supplier acknowledges that such direct agreement will require the Supplier to notify the Customer's funders prior to any termination of this Order and/or the Contract and shall provide a right for funders (or their nominee), within a specified period, to step into this Order and/or the Contract to take over the rights and obligations of the Customer in order to avoid termination of the Contract and/or any related purchase order.

### 17.9 **Dispute resolution.**

- (a) If any dispute arises in connection with the Contract, senior representatives of the parties with authority to settle the dispute will, within 14 days of a written request from one party to the other, meet in a good faith effort to resolve the dispute.
- (b) If the dispute is not wholly resolved at that meeting, the parties agree to enter into mediation in good faith to settle such a dispute. Unless otherwise agreed between the parties within 14 days of notice of the dispute, the mediator will be nominated by Centre for Effective Dispute Resolution (CEDR). To initiate the mediation a party must give notice in writing ('**ADR Notice**') to the other party, referring the dispute to mediation. A copy of the ADR Notice should be sent to CEDR. Unless otherwise agreed, the mediation will start not later than 28 days after the date of the ADR Notice.
- (c) No party may commence any court proceedings/arbitration in relation to any dispute arising out of the Contract until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings not prejudiced by a delay.

### 17.10 **Notices.**

- (a) Any notice given to a party under or in connection with this agreement shall be in writing and shall be 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). Notices sent by the Supplier to the Customer shall be marked for the attention of the Legal Department.
- (b) Any notice shall be deemed to have been received:
  - (i) if delivered by hand, at the time the notice is left at the proper address;

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- (ii) 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
  - (iii) 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.
- 17.11 **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.
- 17.12 **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.