

## GENERAL TERMS (SUPPLY OF GOODS & SERVICES TO SMILEY MONROE LIMITED)

### 1. INTERPRETATION

#### 1.1 In these General Terms, the following definitions apply:

**Commencement Date** has the meaning set out in clause 2.3;

**Contract** means the contract between Purchaser and the Supplier for the supply of Goods and/or Services in accordance with these Conditions;

**Control** means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of a company;

**Data Protection Legislation** means all applicable data protection and privacy legislation in force from time to time in the UK including: the General Data Protection Regulation ((EU) 2016/679) (**GDPR**); the UK's domestic implementation of the GDPR; the Data Protection Act 2018 or any successor legislation; and any other UK and European Union legislation relating to personal data;

**Deliverables** means 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;

**Force Majeure Event** means act of God, pandemic, war, riot, civil commotion, compliance with any law or governmental order (excluding any law implementing or resulting from the UK's ceasing to be a member of the European Union), fire, flood or storm;

**General Terms** means these terms and conditions as amended from time to time in accordance with clause 13.8;

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

**Goods Specification** means any specification for the Goods, including any related plans and drawings and standards the Goods are to comply with, that is agreed in writing by Purchaser and the Supplier or brochure provided or prepared by the Supplier or other description of the Good(s) made available by the Supplier;

**Purchaser** means Smiley Monroe Limited, registered in Northern Ireland with company number NI20012;

**Purchaser Materials** has the meaning set out in clause 5.3;

**Purchase Order** means Purchaser's purchase order for the supply of Goods and/or Services as set in Purchaser's purchase order or in Purchaser's written acceptance of the Supplier's quotation, as the case may be;

**Service Specification** means the description or specification for Services agreed in writing by Purchaser and the Supplier;

**Services** means the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification;

**Supplier** means the person, company or firm from whom Purchaser purchases the Goods and/or Services.

#### 1.2 In these General Terms, the following rules apply: (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality); (b) references to a party includes its successors or permitted assigns; (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted; (d) any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and (e) a reference to **writing** or **written** includes faxes and e-mails.

### 2. BASIS OF CONTRACT

#### 2.1 Purchaser providing the Purchase Order to the Supplier in writing constitutes an offer by Purchaser to purchase Goods and/or Services from the Supplier in accordance with these General Terms, the Goods Specification, Service Specification, Purchase Order and any other document expressly agreed by the Purchaser (with any conflict between any of those documents being resolved by giving priority to the document first listed in this sentence).

- 2.2 The Purchaser shall not be liable for any order, order amendment or instructions to proceed with orders unless and until authorised on a Purchase Order and the Supplier shall hold the Purchaser harmless for any loss, costs or damage suffered by the Supplier for taking any act or omission otherwise than in reliance on this clause 2.
- 2.3 The Purchase Order shall be deemed to be accepted on the earlier of: (a) the Supplier issuing written acceptance of the Purchase Order; or (b) any act by the Supplier consistent with fulfilling the Purchase Order, at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.4 These General Terms apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. Unless expressly confirmed in writing by the Purchaser, Purchaser does not enter into agreements for the purchase of goods or services other than on the basis of these General Terms and no attempt by the Supplier to reject these General Terms will be valid unless clearly and explicitly stated in writing by the Supplier before contract formation in accordance with this clause 2.
- 2.5 All of these General Terms shall apply to the supply of both Goods and Services except where the application to one or the other is specified.
- 2.6 Following formation of the Contract, the Purchaser may request a modification to be made the Goods Specification or Service Specification (including as to quality and time frame) at any time in writing to the Supplier.
- 2.7 The changes requested in accordance with clause 2.6 shall be handled as follows: (a) if the change would reduce the Supplier's costs, the Contract price will reduce to fairly reflect that saving. If the change would increase the Supplier's costs, the Supplier must promptly provide the Purchaser with written notice including reasons to justify any and all increases. Both parties will then use reasonable endeavours to agree the revised terms (including, without limitation, price) in full, pending which the change will not take effect. Under no circumstances will the Purchaser be liable to the Supplier in respect of any Contract variation for more than a reasonable and proportionate reflection of such increased costs as the Supplier could not reasonably have been expected to avoid; and (b) if the change would for any reason be unachievable, the Supplier must promptly provide the Purchaser with written justification, following which both parties will use reasonable efforts to reach a mutually acceptable change.

### 3. **SUPPLY OF GOODS**

- 3.1 The Supplier shall ensure that the Goods shall: (a) correspond with their description and any applicable samples and Goods Specification; (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and be fit for any purpose held out by the Supplier or made known to the Supplier by Purchaser, expressly or by implication, and in this respect Purchaser relies on the Supplier's skill and judgment; (c) save where Purchaser specifies as not applicable, be new and unused and made from new and unused materials and free from defects in design, materials and workmanship; and (d) 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 Purchaser shall have the right (either by itself or by a third party) to inspect and test the Goods and manufacturing process at any time before delivery. The Supplier shall provide reasonable

notice to the Purchaser of the testing of the Goods being carried out and shall permit the Purchaser to attend such testing. If following such inspection or testing Purchaser considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 3.1 or the time specified for delivery in accordance with clause 4.2, Purchaser shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance (at the Supplier's cost) including, without limitation, expediting production and delivery. Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and Purchaser shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

- 3.4** Supplier must provide Purchaser with as much notice as practicably possible (and, in any event, not less than 3 months) before making any change to the design or manufacture of Goods or similar goods. For the avoidance of doubt, no change to the design or manufacture of Goods already ordered under a Purchaser Order shall be permitted without the prior written consent of Purchaser.
- 3.5** If the Purchaser is reliant on the Supplier for any supplies of maintenance, training, spare parts, consumables or other goods, rights or services, in order to benefit fully from the Goods supplied under a Purchase Order (**Follow-on Supply**) then the Supplier will provide such Follow-on Supply or procure them to be provided, for at least 36 months following delivery of the relevant Goods, at fair and reasonable prices which take no advantage of the Purchaser's dependence on the Supplier for their supply.

#### **4. DELIVERY OF GOODS**

- 4.1** The Supplier shall ensure that: (a) the Goods are properly packed and secured in accordance with any packaging requirements notified to the Supplier by Purchaser from time to time or, if none, in such manner as to enable them to reach their destination in good condition; (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Purchase Order, the Purchase 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, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and (c) if the Supplier requires Purchaser to return any packaging material for the Goods to the Supplier, that fact is clearly stated on the delivery note. 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 (and any associated information requested by the Purchaser, including (without limitation) test results, parts lists, drawings, certificates and process specifications) in accordance with any instructions specified on the Purchase Order and: (a) on the date specified in the Purchase Order or, if no such date is specified, the date specified by Purchaser; (b) to such location as is specified in the Purchase Order or as instructed (in reasonable time) by Purchaser before delivery (**Delivery Location**); and (c) unless otherwise specified by Purchaser, during Purchaser's normal hours of business.
- 4.3** The Supplier warrants, on an ongoing basis, that it shall promptly notify Purchaser in writing of any circumstance which may cause or lead to a delay in the delivery of Goods by the time and date specified in accordance with clause 4.2.
- 4.4** Unless otherwise agreed in advance by the parties, delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
- 4.5** The Supplier shall not deliver the Goods in instalments or in advance without Purchaser's prior written consent. Where it is agreed that the Goods are to be delivered by instalments or in advance, they may not be invoiced until the later of delivery of all instalments and the originally agreed delivery date unless otherwise agreed by the Purchaser.

- 4.6** Risk in the Goods shall pass to Purchaser on completion of delivery.
- 4.7** Without prejudice to any right of the Purchaser (including, without limitation, the Purchaser's right to reject Goods for non-conformance with clauses 3.1 and 3.2 and the Purchase Order), title in the Goods shall pass to Purchaser on the earlier of completion of delivery and receipt by the Supplier of payment for the Goods.
- 4.8** The Supplier shall comply with all other requirements contained in the Purchase Order including (without limitation) document retention requirements and traceability requirements.
- 4.9** For two years after completion of delivery of the Goods, the Supplier shall retain all information relating to the Goods in order to provide verification of safety and quality of all Goods (including, without limitation, in respect to quality or safety information, how they were produced or delivered and as to all relevant activities of any of the Supplier's suppliers or sub-contractors) and promptly provide the Purchaser with such information on request. The Supplier must also demonstrate compliance of the work carried out under the Contract with all legal or regulatory requirements and with all contractually binding quality and performance standards.
- 4.10** The Purchaser may reject any Goods which are not fully in accordance with the terms of this Contract. Acceptance does not occur until the Purchaser has had a reasonable time to inspect or consider the relevant Goods following supply and, in the case of a latent defect, a reasonable time after the defect becomes apparent.

## **5. SUPPLY OF SERVICES**

- 5.1** The Supplier shall from the date set out in the Purchase Order and for the duration of the Contract provide the Services to Purchaser in accordance with the Purchase Order, Service Specification and terms of the Contract. Unless otherwise noted in the Purchase Order, all Services are to be performed during the opening hours of the Purchaser's premises at which performance is required to be carried out.
- 5.2** The Supplier shall meet any performance dates for the Services specified in the Purchase Order or notified to the Supplier by Purchaser. The Supplier warrants on an ongoing basis that it shall promptly notify Purchaser in writing of any circumstances which may cause or lead to a delay in the performance of the Services by the time and date specified in accordance with this clause 5.2.
- 5.3** In providing the Services, the Supplier shall: (a) co-operate with Purchaser in all matters relating to the Services, and comply with all instructions of Purchaser; (b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade; (c) 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; (d) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by Purchaser; (e) unless otherwise stated, provide all employee instructions, manuals, explanations or clarifications necessary to enable the Purchaser to enjoy the full benefit of the Services; (f) provide all equipment, tools and vehicles and such other items as are required to provide the Services; (g) 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 Purchaser, will be free from defects in workmanship, installation and design; (h) obtain and at all times maintain all necessary licences, permissions and consents, and comply with all applicable laws and regulations; (i) observe all health and safety rules and regulations and any other health, security and access requirements, instructions, recommendations given or that apply at any of Purchaser's premises; (j) hold all materials, equipment and tools, drawings,

moulds, parts, specifications and data supplied by Purchaser to the Supplier (**Purchaser Materials**) in safe custody at its own risk, insure Purchaser Materials for their entire value against fire, damage and theft and provide proof of insurance to Purchaser on request, maintain Purchaser Materials in good condition until returned to Purchaser, and not dispose, disclose, copy or use Purchaser Materials other than for the performance of the Contract or in accordance with Purchaser's written instructions or authorisation; (k) return Purchaser Materials to Purchaser immediately on demand; (l) on request, promptly provide Purchaser with a complete record of consumption, condition and use of Purchaser Materials; and (m) not do or omit to do anything which may cause Purchaser to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that Purchaser may rely or act on the Services.

- 5.4 Purchaser shall: (a) where applicable, provide the Supplier with reasonable access at reasonable times to Purchaser's premises for the purpose of, and to the extent necessary for, providing the Services; and (b) provide such information as the Supplier may reasonably request for the provision of the Services and Purchaser considers reasonably necessary for the purpose of providing the Services.
- 5.5 Supplier must provide Purchaser with as much notice as practicably possible (and, in any event, not less than 3 months) before making any change to the manner of delivery of the Services (and similar services). For the avoidance of doubt, no change to Services already ordered under a Purchaser Order shall be permitted without the prior written consent of Purchaser.
- 5.6 If the Purchaser is reliant on the Supplier for any supplies of maintenance, training, spare parts, consumables or other goods, rights or services, in order to benefit fully from the Services supplied under a Purchase Order (**Follow-on Services**) then the Supplier will provide such Follow-on Services or procure them to be provided, for at least 36 months following completion of performance of the relevant Services, at fair and reasonable prices which take no advantage of the Purchaser's dependence on the Supplier for their supply.
- 5.7 For two years after completion of performance of the Services, the Supplier shall retain all information relating to the Services in order to provide verification of safety and quality of performance of all Services (including, without limitation, in respect to quality or safety information, how they were performed and as to all relevant activities of any of the Supplier's suppliers or sub-contractors) and promptly provide the Purchaser with such information on request. The Supplier must also demonstrate compliance of the work carried out under the Contract with all legal or regulatory requirements and with all contractually binding quality and performance standards.
- 5.8 The Purchaser may reject any Services which are not fully in accordance with the terms of this Contract. Acceptance does not occur until the Purchaser has had a reasonable time to inspect or consider the product of the relevant Services following performance and, in the case of a latent defect, a reasonable time after the defect becomes apparent.

## 6. PURCHASER'S REMEDIES

- 6.1 If the Supplier fails, or if Purchaser (acting reasonably) considers that the Supplier is likely to fail, to deliver the Goods (or instalment thereof) and/or perform the Services by any applicable milestone, delivery or performance date, Purchaser shall, without limiting its other rights or remedies, have one or more of the following rights: (a) to extend the applicable date; (b) to require the Supplier to take (at the Supplier's cost) all steps necessary to meet the original delivery or performance date (or any extended date specified by Purchaser) or mitigating any failure to meet such date including, without limitation, expediting delivery methods and allocating additional resources; (c) to recover (by way of indemnity) from the Supplier any additional costs, losses, damages or expenses payable by Purchaser which are in any way attributable to the Supplier's failure or likely failure to meet any date, including, without limitation, any liquidated or other damages payable by Purchaser to its customer(s), and for Purchaser's

allocation of additional resources and costs (including, without limit, accelerated delivery costs) to meet any deadline agreed by Purchaser with its customers (or, if necessary, reduce delays as much as possible); (d) where Purchaser has paid in advance for Services that have not been provided by the Supplier and/or Goods which have not been delivered by the Supplier, to have such sums refunded in full by the Supplier; (e) to recover from the Supplier any costs incurred by Purchaser in obtaining substitute goods and/or services from a third party; (f) for every week's delay after the agreed delivery or performance date, deduct 1% of the price or charge of the relevant Good or Service which has not been delivered or performed; (g) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make; and (h) to suspend and/or terminate the Contract and/or any Purchase Order (in full or in part) with immediate effect by giving written notice to the Supplier.

- 6.2** If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 3.1 or failed to deliver any instalment of Goods as agreed between the parties, then, without limiting its other rights or remedies, Purchaser shall have one or more of the following rights, whether or not it has accepted the Goods: (a) to require the Supplier to repair or promptly replace the rejected Goods (at no cost to the Purchaser), or to provide a full refund of the price of the rejected Goods (if paid); (b) to claim damages for any additional costs, loss or expenses payable by Purchaser arising from the Supplier's failure to supply Goods in accordance with clause 3.1, including, without limitation, any liquidated or other damages payable by Purchaser to its customer(s); (c) to recover from the Supplier any costs payable by Purchaser in obtaining substitute goods from a third party; (d) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make; (e) 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; and (f) to suspend and/or terminate the Contract and/or any Purchase Order (in full or part) with immediate effect by giving written notice to the Supplier.
- 6.3** These General Terms shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.
- 6.4** The Supplier shall indemnify and hold the Purchaser harmless against all costs, losses, expenses and damages caused to or suffered by any person or property arising from any failure of the Supplier or its staff (or any sub-contractor) to comply with clause 5.3(i).
- 6.5** Purchaser's rights under the Contract are in addition to its rights and remedies implied by statute and common law.
- 6.6** Without limitation of any provision of the Contract, if any Services, Goods or components of Goods were supplied to the Supplier with any warranty or indemnity in the Supplier's favour, the Supplier shall hold such warranty or indemnity on trust for the Purchaser.

## **7. CHARGES & PAYMENT**

- 7.1** The price for the Goods: (a) shall be the price set out in the Purchase Order or the price otherwise agreed between the parties; and (b) shall be inclusive of the costs of packaging, insurance and carriage of the Goods, unless otherwise agreed in writing by Purchaser. No extra, or variation to, charges shall be effective unless agreed in writing and signed by Purchaser.
- 7.2** 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 Purchaser, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 7.3** Unless specified otherwise in the Purchase Order: (a) in respect of Goods, the Supplier shall invoice Purchaser on, or at any time within six months after, completion of delivery; and (b) in respect of Services, the Supplier shall invoice Purchaser on, or at any time within six months

after, completion of the Services. Each invoice shall include such supporting information required by Purchaser to verify the accuracy of the invoice, including but not limited to the relevant Purchase Order number.

- 7.4 In consideration of the supply of Goods and/or Services by the Supplier, Purchaser shall pay the undisputed invoiced amounts in the currency noted on the Purchase Order and in accordance with the payment terms specified in the Purchase Order (which, if not otherwise agreed or specified on a Purchase Order, shall be within 60 days of the end of the calendar month in which a valid and undisputed invoice is received) to a bank account nominated in writing by the Supplier.
- 7.5 All amounts payable by Purchaser under the Contract: (a) are exclusive of amounts in respect of value added tax chargeable from time to time; and (b) shall be subject to any discount granted or offered to any other customer of the Supplier for prompt payment, bulk purchase or anything similar.
- 7.6 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 Purchaser to inspect such records at all reasonable times on request.
- 7.7 Purchaser may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to Purchaser against any liability of Purchaser to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.
- 7.8 The Supplier shall have no right to suspend subsequent performance of the Services and/or delivery of the Goods in the event of disputed or late payment of any amounts payable by Purchaser under the Contract.
- 7.9 The Supplier represents and warrants to Purchaser that the price for the Goods and the charges for the Services offered to Purchaser under the Contract are no less favourable than the prices and charges offered to any other party purchasing similar quantities. In the event the Supplier offers more favourable prices or charges to any other party, the Supplier will promptly notify Purchaser of such event and offer such more favourable prices or charges to Purchaser commencing upon the date such more favourable prices or charges were offered to the other party.

## **8. INTELLECTUAL PROPERTY & CONFIDENTIALITY**

- 8.1 In respect of the Goods and any goods that are transferred to Purchaser as part of the Services under the Contract, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to Purchaser, it will have full and unrestricted rights to sell and transfer all such items to Purchaser.
- 8.2 The Supplier (as legal and beneficial owner and free from all third party rights) hereby grants a non-exclusive, royalty-free, perpetual, assignable and sub-licensable, worldwide and irrevocable licence to Purchaser to use, modify, develop and copy all intellectual property rights in the products of the Services, including for the avoidance of doubt the Deliverables, for the purpose of receiving and using the Services and the Deliverables.
- 8.3 The Supplier shall obtain waivers of all moral rights in the products of the Services, including for the avoidance of doubt the Deliverables, to which any individual is now or may be at any future time entitled.
- 8.4 The Supplier shall, promptly at Purchaser's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as Purchaser may from time to time require for the purpose of securing for Purchaser the full benefit of the Contract, including

all right, title and interest in and to the intellectual property rights licensed to Purchaser in accordance with clause 8.2.

**8.5** All Purchaser Materials are the exclusive property of Purchaser and the Supplier must indemnify the Purchaser against any loss caused to the Purchaser, and provide to the Purchaser any monetary benefit the Supplier acquires, through or in connection with its unauthorised use, damage or loss of Purchaser Materials.

**8.6** A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

**8.7** Clauses 8.4 and 8.6 shall survive termination of the Contract.

## **9. DATA PROTECTION**

**9.1** Both parties will comply with all applicable requirements of the Data Protection Legislation or any other applicable legislation regarding the processing of personal data. This clause 9 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

**9.2** If the Purchase Order involves the Supplier Processing any Personal Data (where **Processing** and **Personal Data** have the meanings set out in the Data Protection Legislation) on behalf of Purchaser, the parties acknowledge that for the purposes of the Data Protection Legislation, Purchaser is the Controller and the Supplier is the Processor (where **Controller** and **Processor** have the meanings set out in the Data Protection Legislation). The Purchase Order sets 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 (where **Data Subject** has the meaning set out in the Data Protection Legislation).

**9.3** Without prejudice to the generality of clause 9.1, the Supplier shall, in relation to any Personal Data processed on behalf of Purchaser in connection with the performance by the Supplier of its obligations under the Contract:

- (a) process that Personal Data only on the written instructions of Purchaser unless the Supplier is required by the laws of the United Kingdom applicable to the Supplier to process Personal Data (**Applicable Laws**). Where the Supplier is relying on the Applicable Laws as the basis for processing Personal Data, the Supplier shall promptly notify Purchaser of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying Purchaser;
- (b) ensure that it has in place appropriate technical and organisational measures 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);

- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
  - (d) not transfer any Personal Data outside of the United Kingdom unless the prior written consent of Purchaser has been obtained and the following conditions are fulfilled:
    - (i) the Supplier has provided appropriate safeguards in relation to the transfer;
    - (ii) the data subject has enforceable rights and effective legal remedies;
    - (iii) 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
    - (iv) the Supplier complies with reasonable instructions notified to it in advance by Purchaser with respect to such processing of the Personal Data;
  - (e) assist Purchaser, at the Supplier'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;
  - (f) notify Purchaser without undue delay (and in any event within 48 hours) in the event that it suspects or becomes aware of any Personal Data breach or breach of any Data Protection Legislation by the Supplier in connection with the Contract, and shall, at the Supplier's cost: (i) investigate the incident and provide Purchaser, on an ongoing basis, with detailed information about the breach; and (ii) take all reasonable steps to mitigate the effects of the breach and to minimise any damage resulting from the breach; and (iii) co-operate with Purchaser to provide information in connection with the breach or any notice required to be sent out to any third party in connection with the breach;
  - (g) at the written direction of Purchaser, delete or return Personal Data and copies thereof to Purchaser (or its nominee) on expiry or termination of the Contract unless required by Applicable Law to store the Personal Data; and
  - (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 9 and allow for audits by Purchaser or Purchaser's designated auditor.
- 9.4** If the Supplier acts outside the instructions of Purchaser in connection with the Personal Data, the Supplier shall be in material breach of the Contract and shall be liable for any losses, penalties, costs or damages that Purchaser suffers as a result.
- 9.5** If required by Purchaser, the Supplier agrees to obtain and keep in full force and effect at all times, in respect of the processing of the Personal Data, a policy or policies of insurance covering liability for damage arising to persons as a result of the Supplier's failure to comply with Data Protection Legislation with policy limits and provisions conforming to such requirements as Purchaser may from time to time prescribe, and to produce evidence of the maintenance of such insurance to Purchaser on request and ensure that Purchaser shall be entitled to the benefit of such insurance.
- 9.6** The Supplier shall not without the prior written consent of Purchaser appoint any third-party processor to carry-out processing activities in respect of the Personal Data under the Contract. As one of any other conditions of such consent, the Supplier shall confirm that it has entered into with such third-party processor a written agreement incorporating terms which are substantially similar to those set out in this clause 9, and, as between Purchaser and the Supplier, the Supplier will remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 9.
- 9.7** Purchaser may, at any time on not less than 30 days' notice in writing to the Supplier, revise this clause 9 by replacing it with any applicable controller to processor standard clauses or

similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).

## **10. INDEMNITY & INSURANCE**

**10.1** The Supplier shall keep Purchaser indemnified 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 reasonable professional costs and expenses) suffered or incurred by Purchaser as a result of or in connection with: (a) any claim made against Purchaser 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, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; (b) any breach of the Supplier's obligations under the Contract; (c) any claim made against Purchaser by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defects in the Goods are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and (d) any claim made against Purchaser by a third party arising out of or in connection with the supply of the Goods or the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.

**10.2** Clause 10.1 shall survive termination of the Contract.

**10.3** 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, product liability insurance (where the Contract concerns the supply of Goods), public liability insurance and, where requested by Purchaser, professional indemnity insurance, in each case to cover the liabilities that may arise under or in connection with the Contract, and shall, on Purchaser'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.

## **11. TERMINATION & ITS EFFECT**

**11.1** Without limiting its other rights or remedies, Purchaser may, at any time and without liability, suspend and/or terminate the Contract with immediate effect if: (a) it provides the Purchaser with 30 days' written notice; (b) any contract(s) between Purchaser and its customer(s) upon which the Contract depends in whole or part is terminated or discharged, in which circumstances Purchaser will provide the Supplier with as much notice as reasonably possible; or (c) there is a change of Control of the Supplier.

**11.2** In any of the circumstances in these General Terms in which a party may terminate the Contract, where both Goods and Services are supplied, that party may terminate the Contract in respect of the Goods, or in respect of the Services, and the Contract shall continue in respect of the remaining supply.

**11.3** Without limiting its other rights or remedies, Purchaser may terminate the Contract with immediate effect by giving written notice to the Supplier if: (a) the Supplier commits a material breach of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of receipt of notice in writing to do so; or (b) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of applicable insolvency legislation or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of applicable insolvency legislation or (being a partnership) has any partner to whom any of the foregoing apply; or (c) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its

creditors; or (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company); or (e) the Supplier (being an individual) is the subject of a bankruptcy petition or order; or (f) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier (being a company); or (h) the holder of a floating charge over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver; or (i) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier; or (j) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clauses 11.3(b)-(i) (inclusive); or (k) the Supplier suspends or ceases, or threatens to suspend, or cease, to carry on all or a substantial part of its business.

**11.4** Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, and clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

**11.5** On termination of the Contract for any reason, the Supplier shall immediately deliver to Purchaser all Deliverables whether or not then complete, and return all Purchaser Materials. If the Supplier fails to do so, then Purchaser or its appointed agents may enter the Supplier's premises and take possession of them and the Supplier grants Purchaser and its appointed agents a licence to do so. 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.

## **12. FORCE MAJEURE**

**12.1** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such a delay or failure result from a Force Majeure Event, provided that in all cases the Supplier shall use all reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of its obligations.

**12.2** If a Force Majeure Event prevents, hinders or delays the Supplier's performance of its obligations for a continuous period of more than 7 days, Purchaser may terminate the Contract immediately by giving written notice to the Supplier.

## **13. GENERAL**

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

**13.2** In these General Terms: (a) any notice or other communication given to a party under or in connection with the Contract shall be in writing and sent by recorded post service and addressed to the other party at its registered office address, and the notice sent in this way shall be deemed to have been received by the receiving party at the time noted as the time of delivery (or equivalent) by the postal carrier; and (b) the provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

**13.3** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall

be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

- 13.4** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. 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.
- 13.5** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 13.6** The Contract shall be held by the Purchaser as being on trust for itself and its holding company and any of their subsidiaries (both as defined in section 1159 of the Companies Act 2006) (**Purchaser Group**), so that the Supplier will be liable for any damage to any member of the Purchaser Group arising from any Contract.
- 13.7** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 13.8** Except as set out in these General Terms, 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 Purchaser.
- 13.9** In performing its obligations under the Contract, the Supplier shall (and shall procure that each member of its group and supply chain involved in the supply of Goods shall) comply with all applicable laws, statutes, regulations and codes from time to time in force (including, without limitation, the Modern Slavery Act 2015).
- 13.10** Where requested by the Purchaser, Supplier shall, without undue delay, provide reasonable information, documentation and other evidence of the ethical behaviour of the Supplier and its subcontractors including (without limitation) in relation to anti-bribery, anti-fraud, anti-child labour, anti-slavery and whistleblowing policies, practices and procedures.
- 13.11** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of Northern Ireland, and each party irrevocably agrees that the courts of Northern Ireland shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).