

# Terms and Conditions of Purchase



## GENERAL CONDITIONS

### 1. DEFINITIONS

In these Conditions, the following expressions have the following meanings:

**Acknowledgement of Order:** the Supplier's written acknowledgement of the Purchase Order.

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

**Commencement Date:** has the meaning set out in Condition 2.8.

**Conditions:** the terms and conditions contained in this document and any special terms and conditions agreed in writing by the Purchaser;

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

**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 without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

**Delivery Date:** the date specified or agreed by the Purchaser on which the Goods are to be delivered and/or the Services are to be rendered as set out in the Purchase Order;

**Force Majeure:** has the meaning given to it in Condition 13.

**Goods:** the products that are to be sold or supplied to the Purchaser by the Supplier (including any parts, components, materials, services or other supplies ancillary thereto or incorporated in the same);

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Price:** the price for the Goods and/or the Services;

**Purchase Order:** the Purchaser's order for Goods and/or Services in such form as the Purchaser may specify or use from time to time;

**Purchaser:** The WGP Group company whose details and address appears on the front of these Conditions, in the relevant purchase order or invoice;

**Purchaser Materials:** has the meaning set out in Condition 5.3 (i).

**Services:** the Services that are to be provided to the Purchaser by the Supplier under these Conditions and/or in respect of any Purchase Order;

**Specifications:** all materials, specifications, drawings, designs (whether registered or not), confidential information, concepts, trade secrets or other items of any nature supplied or provided to the Supplier by the Purchaser in connection with any Purchase Order;

**Supplier:** the person supplying or agreeing to supply Goods and/or Services to the Purchaser; and

**WGP Group:** WGP Group Ltd or any of its subsidiaries or associated companies..

- 1.1. In these Conditions, the following rules apply :
  - 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 personal representatives, 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. These Conditions shall apply to all offers, tenders, quotations, acceptances, estimates, orders or contracts for the sale or supply of Goods or Services by the Supplier to the Purchaser. All other terms and conditions (including any stated or incorporated in any Supplier's offer, tender, quotation, estimate, confirmation of order or other document or Acknowledgement of Order) are excluded.
- 2.2. All offers of Goods and/or Services made by the Supplier shall be deemed to constitute an offer to supply Goods and/or Services by the Supplier subject to these Conditions and the Supplier's tender of delivery of the Goods and/or provision of the Services will be conclusive evidence of the Supplier's unqualified, unconditional, acceptance of these Conditions.
- 2.3. All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.
- 2.4. No variation, amendment or waiver of these Conditions, nor any special terms or conditions, will be effective unless specifically agreed in writing by the Purchaser.
- 2.5. No order shall be binding on the Purchaser unless it is given or confirmed on the Purchaser's duly signed Purchase Order and is accepted by the Supplier by signing and returning the detachable Acknowledgement of Order by the date specified thereon.
- 2.6. If the Purchaser clearly states that any Contract for Goods and/or Services is entered into by the Purchaser as agent for a third party (and whether that third party is identified, or not, and whether that third party is domiciled in the United Kingdom, or elsewhere), the Purchaser shall be treated as the agent of that third party for all purposes and shall not incur or accept any liability or obligation of any nature whatsoever to the Supplier in respect of such Goods and/or Services.
- 2.7. The Purchase Order constitutes an offer by the Purchaser to purchase the Goods and/or Services in accordance with these Conditions.
- 2.8. The Purchase Order shall be deemed to be accepted on the earlier of:
  - a. The Supplier issuing a written acceptance of the Purchase Order; and
  - b. The Supplier doing any act consistent with fulfilling the Order, at which point the Contract shall come into existence (Commencement Date).

### 3. THE GOODS

- 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 Purchaser, expressly or by implication, and in this respect the Purchaser relies on the Supplier's skill and judgment;
  - c. where applicable, be free from defects in design, materials and workmanship and remain so for 12 months after delivery; 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. The Purchaser shall have the right to inspect and test the Goods at any time before delivery.
- 3.4. If following such inspection or testing the Purchaser considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at Condition 3.1, the Purchaser shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 3.5. 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 the Purchaser shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.
- 3.6. Deliveries are made subject to the Purchaser's subsequent inspection and acceptance. The Purchaser may reject and return to the Supplier at the Supplier's risk and expense any Goods delivered which the Purchaser in its sole discretion considers not to be in accordance with its Purchase Order or with any sample or description given by the Supplier on which the Purchaser has relied.
- 3.7. The Supplier shall ensure that a quality control system is maintained, as required by the Purchaser, which will ensure all the terms and conditions of each Purchase Order can be met and maintained.
- 3.8. The Purchaser reserves the right of reasonable access to the Supplier's premises, and those of its sub-contractors, at any reasonable time during fulfilment of its Purchase Orders. This access, which may include accompaniment by any Purchaser customer representative, may be for the purpose of quality system surveillance or product verification.
- 3.9. The Supplier's obligations under these Conditions shall include, but not be limited to, the establishment and maintenance of quality control systems to ensure that:
  - a. all items, devices or components comprised in or forming part of any Goods and their packaging shall be in accordance with all relevant or applicable laws, regulations, standards, directives, codes of practice or conduct and/or Specifications and;
  - b. all certificates of conformity and/or traceability required to be supplied or delivered shall be supplied and/or delivered within any specified or applicable deadlines and subject to all relevant or applicable conditions or requirements.
- 3.10. The Supplier shall ensure that proper provision is made for the control of special processes (including but not limited to welding) where the results of the processes cannot be fully verified by subsequent inspection or testing. Personnel engaged in such processes shall hold appropriate qualifications and certifications indicating compliance with recognised standards, for the process applied. Every certificate of conformity shall include such analyses and test confirmations as may be required by the Purchaser to demonstrate compliance with these requirements.
- 3.11. The Supplier shall provide a certificate of conformity with each delivery of Goods under a Purchaser Order. Each certificate of conformity shall comply in all respects with the Purchaser's requirements from time to time. In addition to any certificate of conformity, the Supplier shall provide, with each delivery, all other documentation required by the Purchase Order. Goods which are functionally tested or calibrated equipment shall be accompanied by a certificate of the test or calibration verifying conformity to the relevant Specifications and traceable to all relevant or applicable national or international standards. A copy of the actual results shall be delivered on demand.

#### 4. DELIVERY

- 4.1. Time for delivery shall be of the essence. Any failure to deliver the Goods or supply the Services by the Delivery Date will entitle the Purchaser to reject the Goods and/or Services and/or claim and recover damages for late delivery. Acceptance of any late delivery shall not be a waiver of the Purchaser's right to damages for late delivery.

- 4.2. The Supplier shall ensure that:
  - a. the Goods are properly packed and secured 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 the 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.
- 4.3. The Supplier shall deliver the Goods:
  - a. on the Delivery Date or, if no such date is specified, then within 7 days of the date of the Purchase Order;
  - b. to the Purchaser's premises at or such other location as is set out in the Purchase Order or as instructed by the Purchaser before delivery (Delivery Location);
  - c. during the Purchaser's normal hours of business on a Business Day, or as instructed by the Purchaser.
- 4.4. The Supplier shall give the Purchaser as much notice of deliveries as possible.
- 4.5. Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
- 4.6. The Purchaser may accept or reject the Goods, in whole or in part, where the quantity of Goods delivered is not as specified in its Purchase Order and any rejected Goods shall be returnable at the Supplier's risk and expense. The Purchaser will not be liable for loss or damage however caused to or in respect of any excess Goods delivered, whether before or after informing the Supplier of any rejection of such Goods. If the Supplier delivers more or less than the quantity of Goods ordered, and the Purchaser accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.
- 4.7. Acceptance by the Purchaser of delivery of a smaller quantity of Goods from that specified will not relieve the Supplier of liability for any loss or damage suffered by the Purchaser as a result of such short delivery.
- 4.8. The Supplier shall not deliver the Goods in instalments without the Purchaser'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 Purchaser to the remedies set out in Condition 6.1.
- 4.9. Title and risk in the Goods shall pass to the Purchaser on completion of delivery.

#### 5. SUPPLY OF SERVICES

- 5.1. The Supplier shall from the date set out in the Purchase Order and for the duration of this Contract provide the Services to the Purchaser 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 notified to the Supplier by the Purchaser.
- 5.3. In providing the Services, the Supplier shall:
  - a. co-operate with the Purchaser in all matters relating to the Services, and comply with all instructions of the 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 this 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 the Purchaser;
  - e. provide all equipment, tools and vehicles and such other items as are required to provide the Services;
  - f. 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 Purchaser, will be free from

- defects in workmanship, installation and design;
  - g. obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
  - h. observe all health and safety rules and regulations and any other security requirements that apply at any of the Purchaser's premises;
  - i. hold all materials, equipment and tools, drawings, specifications and data supplied by the Purchaser to the Supplier (Purchaser Materials) in safe custody at its own risk, maintain the Purchaser Materials in good condition until returned to the Purchaser, and not dispose or use the Purchaser Materials other than in accordance with the Purchaser's written instructions or authorisation; and
  - j. not do or omit to do anything which may cause the 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 the Purchaser may rely or act on the Services;
- 5.4. All Services shall be delivered at such place(s) and time(s) and by such persons as shall be specified in the Purchaser's Purchase Order.
- 6. PURCHASER REMEDIES**
- 6.1. If the Supplier fails to deliver the Goods and/or perform the Services by the Delivery Date, the Purchaser shall, without limiting its other rights or remedies, have one or more of the following rights:
- a. to terminate the Contract with immediate effect by giving written notice to the Supplier;
  - b. to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
  - c. to recover from the Supplier any costs incurred by the Purchaser in obtaining substitute goods and/or services from a third party;
  - d. where the 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 by the Supplier; and
  - e. to claim damages for any additional costs, loss or expenses incurred by the Purchaser 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 Condition 3.1, then, without limiting its other rights or remedies, the Purchaser shall have one or more of the following rights, whether or not it has accepted the Goods:
- a. 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;
  - b. to terminate the Contract with immediate effect by giving written notice to the Supplier;
  - c. 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);
  - d. to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
  - e. to recover from the Supplier any expenditure incurred by the Purchaser in obtaining substitute goods from a third party; and
  - f. to claim damages for any additional costs, loss or expenses incurred by the Purchaser arising from the Supplier's failure to supply Goods in accordance with Condition 3.1.
- 6.3. Where delivery by instalments has been agreed, any waiver by the Purchaser of its rights under this Condition in relation to one or more instalments shall not be deemed to be a waiver of its rights in respect of any earlier, or later, instalments.
- 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 Purchaser's rights under this Contract are in addition to its rights and remedies implied by statute and common law.
- 7. PURCHASER OBLIGATIONS**
- 7.1. The Purchaser shall:
- a. provide the Supplier with reasonable access at reasonable times to the Purchaser's premises for the purpose of providing the Services; and
  - b. provide such information as the Supplier may reasonably request for the provision of the Services and the Purchaser considers reasonably necessary for the purpose of providing the Services;
- 8. PRICE AND PAYMENT TERMS**
- 8.1. The price for the Goods:
- a. 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
- b. shall be inclusive of the costs of packaging, insurance and carriage of the Goods, unless otherwise agreed in writing by the Purchaser. No extra charges shall be effective unless agreed in writing and signed by the Purchaser.
- 8.2. Unless otherwise stated in the Purchase Order, all Prices are inclusive of any material costs and out-of-pocket expenses and disbursements, including (but not limited to) materials used in the production of illustrations, photographs, drawings, travel, accommodation and subsistence, delivery charges, telephone, e-mail and fax.
- 8.3. 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 Purchaser, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 8.4. In respect of Goods, the Supplier shall invoice the Purchaser on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Purchaser on completion of the Services. Each invoice shall include such supporting information required by the Purchaser to verify the accuracy of the invoice, including but not limited to the relevant Purchase Order number.
- 8.5. Inattention to the following details may mean delay in payment but no prompt payment discount shall be forfeited by the Purchaser on account of the Supplier's failure:-
- a. to send on the day of despatch for each consignment such advice(s) of despatch and invoice(s) as may be indicated in the Purchase Order; or
  - b. to provide any certificate or other documentation required under or in accordance with any Purchase Order.
- 8.6. All payments made shall be without prejudice to the Purchaser's rights should the Goods or Services prove to be unsatisfactory or not in accordance with the Purchase Order.
- 8.6. Time for payment shall be 30 days from receipt of the invoice.
- 8.7. All amounts payable by the Purchaser 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 Purchaser, the Purchaser 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.
- 8.8. If the Purchaser fails to pay any amount properly due and payable by it under the Contract, the Supplier shall have the right to charge interest on the overdue amount at the rate of 3 per cent per annum above the base rate for the time being of Barclays Bank Plc accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment. This Condition shall not apply to payments that the Purchaser disputes in good faith.
- 8.9. The Purchaser may, without limiting its other rights or remedies, set off any amount owing to it by the Supplier against any amount payable by the Purchaser to the Supplier under the Contract.
- 9. INTELLECTUAL PROPERTY**
- 9.1. The Supplier undertakes to the Purchaser not to divulge to any third party any Specification or other item supplied or disclosed by the Purchaser and which is incorporated in or relates to the Goods and/or Services also that it will not make use of, exploit, copy or reproduce any such Specification or item other than for the purposes of fulfilling the order for Goods and/or Services contained in the Purchase Order.
- 9.2. Any specification or design of any Goods supplied or owned by the Purchaser and in all materials supplied or provided in connection with the Services (including all patents, trademarks, copyrights, design rights and other intellectual property rights) shall be and remain the Purchaser's property. Where any design or specification is supplied by the Supplier, the Supplier warrants to the Purchaser on an ongoing basis that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Goods by the Purchaser will not infringe or conflict with the rights of any other person.
- 9.3. All Specifications furnished by the Purchaser to the Supplier:-

- a. shall be held to the Purchaser's order and any loss or damage thereto of any kind however caused shall be made good forthwith at the sole cost and expense of the Supplier;
  - b. shall not become subject to any lien whatsoever; and
  - c. must not be copied, disclosed, divulged or shown or passed to third parties, but shall be returned to the Purchaser forthwith on demand.
- 9.4. No proprietary right of any nature in any Specification shall pass to the Supplier without the express written agreement of the Purchaser. Without prejudice to any other remedies of the Purchaser, it shall be entitled to enter the premises of the Supplier at any time and recover any Specifications which the Supplier has failed to return forthwith on demand or has dealt with in breach of any of these Conditions.
- 9.5. In respect of the Goods and any goods that are transferred to the Purchaser as part of the Services under this 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 the Purchaser, it will have full and unrestricted rights to sell and transfer all such items to the Purchaser.
- 9.6. The Supplier assigns to the Purchaser, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables.
- 9.7. The Supplier shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Deliverables, of the Services 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.
- 9.8. The Supplier shall, promptly at the Purchaser's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Purchaser may from time to time require for the purpose of securing for the Purchaser the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Purchaser in accordance with Condition 9.5.

All Purchaser Materials are the exclusive property of the Purchaser.

## 10. INDEMNITY

- 10.1. The Supplier shall indemnify and keep the Purchaser indemnified in full from and against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Purchaser as a result of or in connection with:
- a. any claim made against the 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 defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
  - b. any claim made against the Purchaser by a third party arising out of, or in connection with, the supply of the Goods or 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; and
  - c. any claim made against the 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.
- 10.2. For the duration of the Contract and for a period of 12 months 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 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.
- 10.3. This Condition 10 shall survive termination of the Contract.

## 11. TERMINATION

- 11.1. Without limiting its other rights or remedies, the Purchaser may terminate the Contract with immediate effect by giving written notice to the Supplier if:
- a. the Supplier commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of receipt of notice in writing of the breach;
  - 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) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 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 section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- 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;
- 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) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- e. the Supplier (being an individual) is the subject of a bankruptcy petition order;
- 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;
- 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);
- h. a floating charge holder over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 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;
- 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 Condition 11.1 a) to Condition 11.1 i) (inclusive);
- k. 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
- l. the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

- 11.2. Without limiting its other rights or remedies, the Purchaser may terminate the Contract:
- a. in respect of the supply of Services, by giving the Supplier one (1) months' written notice; and
  - b. in respect of the supply of Goods, with immediate effect by giving written notice to the Supplier, in which case the Purchaser shall pay the Supplier fair and reasonable compensation for any work in progress on any other Goods at the date of termination but such compensation shall not include loss of anticipated profits or any consequential loss.
- 11.3. In any of the circumstances in these Conditions in which the Purchaser may terminate the Contract, where both Goods and Services are supplied, the Purchaser may instead terminate part of the Contract in respect of the Goods, or in respect of the Services, and the Contract shall continue in respect of the remaining supply.

## 12. CONSEQUENCES OF TERMINATION

- On termination of the Contract or any part of it for any reason:
- a. where the Services are terminated, the Supplier shall immediately deliver to the Purchaser all Deliverables, whether or not then complete, and return all Purchaser Materials. If the Supplier fails to do so, then the Purchaser may without limiting its other rights or remedies 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 this Contract;
  - b. the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and
  - c. Conditions which expressly or by implication have effect after termination shall continue in full force and effect.

## 13. FORCE MAJEURE

For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of the Purchaser including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, terrorism, riot, civil commotion,



malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors. In the case of a Force Majeure Event, the Purchaser reserves the right to cancel or suspend any order without incurring any liability to the Supplier.

#### 14. ASSIGNMENT AND SUB-CONTRACTING

14.1. The Purchaser may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

14.2. The Supplier shall not, without the prior written consent of the Purchaser, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

#### 15. NOTICES

15.1. Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.

15.2. Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such addressor, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.

15.3. This Condition 15 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this Condition, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

#### 16. WAIVER AND CUMULATIVE REMEDIES

16.1. A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

16.2. Unless specifically provided otherwise, rights arising under the Contract are cumulative and to not exclude rights provided by law.

#### 17. SEVERANCE

17.1. If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

17.2. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

#### 18. NO PARTNERSHIP

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

#### 19. THIRD PARTIES

19.1. Except as expressly provided in the Condition 2.6 a person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

19.2. Except as expressly provided in Condition 2.6 the rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any other person.

**20. VARIATION** Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by both

parties.

#### 21. GOVERNING LAW, COSTS AND ARBITRATION

21.1. This 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, English law, and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of England and Wales.

21.2. Nothing in this Condition 21 shall limit the right of the Purchaser to take proceedings against the Supplier in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdiction preclude the Purchaser from taking proceedings in any other jurisdiction, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

21.3. It is the Supplier's obligation to acquaint itself and to comply with all applicable requirements and restrictions imposed by law or by governmental and other authorities or corporations relating to the possession, use, import, export, or resale of the Goods. It is the Supplier's obligation to ensure that no Goods are exported or imported in violation of the laws of any jurisdiction into or through which the Goods are transported during the course of reaching the Delivery Location.

#### 22. DISPUTE RESOLUTION

##### MULTI-TIERED PROCESS

22.1. If any dispute arises in connection with this agreement, directors or other senior representatives of the parties with authority to settle the dispute will, within thirty (30) days of a written request from one party to the other, meet in a good faith effort to resolve the dispute.

22.2. If the dispute is not resolved at that meeting, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing (ADR notice) to the other party to the dispute requesting a mediation. A copy of the request should be sent to CEDR Solve. The mediation will start not later than thirty (30) days after the date of the ADR notice.

22.3. No party may commence any arbitration in relation to any dispute arising out of this agreement 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 is not prejudiced by a delay.

##### INTERNATIONAL CORE MEDIATION CLAUSE

22.4. If any dispute arises in connection with this agreement, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. The mediation will take place in London, England and the language of the mediation will be English. The Mediation Agreement referred to in the Model Procedure shall be governed by, and construed and take effect in accordance with the substantive law of England and Wales. If the dispute is not settled by mediation within thirty (30) days of commencement of the mediation or within such further period as the parties may agree in writing, the dispute shall be referred to and finally resolved by arbitration. CEDR shall be the appointing body and administer the arbitration. CEDR shall apply the UNCITRAL rules in force at the time the arbitration is initiated. In any arbitration commenced pursuant to this Condition, the number of arbitrators shall be three and the seat or legal place of arbitration shall be London, England.