

General Terms and Conditions for the Supply of Services

Reference [v1.1 Nov 2018]



INTRODUCTION

These Conditions set out the entire terms and conditions upon which the Supplier has agreed to supply services to the Customer and shall apply to the exclusion of any other terms and conditions including any other terms and conditions which the Customer may purport to apply whether through the use of any standard form documents or otherwise.

I DEFINITIONS AND INTERPRETATION

1.1 In these Conditions the following words have the following meanings: **Conditions** means these terms and conditions; **Contract** means a contract between the Customer and the Supplier for the sale and purchase of Services made subject to these Conditions which have come into force following the acceptance of an Order in accordance with Clause 2.3; **Force Majeure Event** means any circumstance beyond the control of the Supplier including any act of God, war, riot, terrorism, explosion, abnormal, extreme or unusual weather conditions, failure of sub-contractors or suppliers, inability or difficulties in obtaining supplies, loss of utilities, fire, flood, strike, lock out or industrial dispute and/or governmental or regulatory authority action; **Services** means the services as detailed in any Order; **Insolvency Event** means with respect to the Customer that: **(a)** any meeting of creditors of the Customer is held or any arrangement or composition with or for the benefit of its creditors (including any voluntary arrangement as defined in the Insolvency Act 1986) is proposed or entered into by or in relation to the Customer; **(b)** the Customer ceases or threatens to cease carrying on business or is or becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; **(c)** a nominee, supervisor, receiver, administrator, administrative receiver or liquidator is appointed in respect of the Customer or any encumbrancer takes possession of, or any distress, lien, execution or other process is levied or enforced (and is not discharged within seven days) upon, the assets of the Customer; **(d)** a petition is presented for the winding-up of the Customer or a resolution for its winding up is passed; **(e)** a notice of intention to appoint an administrator is filed with the court or served on any creditor of the Customer; **(f)** an application for an administration order in respect of the Customer Party is issued at court; **(g)** a meeting is convened for the purpose of considering a resolution for the winding up of the Customer or the making of an application for an administration order or the dissolution of the Customer; **(h)** any Main or Territorial proceedings are opened within the meaning of the EC Regulation on Insolvency Proceedings 2000 with respect to the Customer; and/or **(i)** any event analogous to any of the foregoing occurs to the Customer in any jurisdiction; **Order** means the Customer's order for any Services as may be set out in any purchase order issued by the Customer to the Supplier or in any other written request for Services which is issued by the Customer to the Supplier from time to time (but excluding in either case any terms and conditions which the Customer may purport to apply in any such purchase order or other written order); **Price** means the price payable by the Customer for the Services as set out in the applicable Order which has been accepted in accordance with Clause 2.3 or, where no price is detailed in the applicable Order, the Supplier's list price for the Services in question in force as at the date of the Contract (subject in either case to adjustment in accordance with Clause 5.2).

1.2 In these Conditions and each Contract: headings are inserted for convenience only and shall not affect construction or interpretation; references to Clauses are to the Clauses of these Conditions; words denoting the singular shall include the plural and vice versa; words denoting any gender shall include all genders; any reference to any law, statute, statutory provision, statutory instrument, directive, subordinate legislation, code of practice or guideline shall be construed as a reference to the same as may be amended, consolidated, modified, extended, re-enacted or replaced from time to time; and use of words such as "include", "including" and "in particular" shall not limit the generality of any preceding or following words which are not intended to be exhaustive.

2 BASIS OF CONTRACT

- 2.1 These Conditions apply to each Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which otherwise are implied by trade, custom, practice or course of dealing.
- 2.2 Each Order constitutes an offer by the Customer to purchase the Services

in question in accordance with these Conditions. The Customer shall ensure that the terms of any Order submitted by it are complete, accurate and not misleading.

- 2.3 Each Order shall be deemed accepted on the earlier of: **(a)** the Supplier issuing a written acceptance of the Order (which may be issued by the Supplier by email); or **(b)** the Supplier commencing the supply of any Services. Once an Order has been accepted it cannot be cancelled by the Customer and must be paid for in full in accordance with these Conditions.
- 2.4 The Supplier shall be under no obligation to accept any Orders which may be submitted to it from time to time and shall be entitled to decline to accept any Orders without liability or the need to give reason.

3 SERVICES

- 3.1 The Supplier warrants that all Services supplied by it shall be provided with reasonable care and skill and correspond in all material respects with any specification provided by the Supplier.
- 3.2 The Supplier may vary the specification for any Services prior to supply if necessary in order to comply with any applicable statutory or regulatory requirement or for any other reason provided that in that case, the variation in question does not result in any material adverse change to the specification in existence at the Customer's Order for the Services in question was accepted.
- 3.3 Each Contract represents the entire agreement between the parties relating to the supply of the Services in question and the Customer acknowledges that it will not rely on and has not relied on any statement, promise or representation made by or on the behalf of the Supplier which is not set out in writing in the applicable Contract.
- 3.4 Any samples, drawings, measurements, descriptions, advertising, photographs, catalogues, websites or similar which may be provided by the Supplier concerning any Services are produced and provided solely for the purpose of giving an approximate idea of the Services described and such information and items shall not form part of any Contract nor have any contractual force.
- 3.5 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Contract, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.6 The Supplier has given commitments as to compliance of the Services with relevant specifications in Clause 3.1. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

4 CUSTOMER'S OBLIGATIONS

- 4.1 The Customer shall: **(a)** co-operate with the Supplier in all matters relating to the Services; **(b)** provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects; **(c)** obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and **(d)** comply with all applicable laws, including health and safety laws.
- 4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**): **(a)** without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations; **(b)** the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in Clause 4.1; and **(c)** the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

5 PRICE AND PAYMENT

- 5.1 Any quotations which are provided by the Supplier do not constitute an offer which is capable of acceptance by the Customer and may be withdrawn by the Supplier without liability at any-time. Any quotations not withdrawn earlier by the Supplier shall automatically lapse on the expiry date detailed on the quotation.
- 5.2 The Supplier shall be entitled at any-time prior to invoicing the Customer for the Price of an Order to increase that Price to reflect any increase to the Supplier's costs of supplying the Services in question.
- 5.3 All Prices are stated exclusive of VAT which shall be paid by the Customer in addition at the rate from time to time in force (subject to the provision of a VAT invoice by the Supplier).
- 5.4 Unless the Supplier has agreed to grant the Customer credit terms (or should the Customer have exceeded any credit limit set by the Supplier from time to time) or otherwise agreed in writing by the parties, the Customer shall pay the Price of each Order to the Supplier in full in cleared funds prior to the date of performance of the Services.
- 5.5 Where the Supplier has agreed to grant the Customer credit terms then unless otherwise agreed in writing, the Supplier may invoice the Customer for the Price of each Order at any-time on or after completion of performance of the Services and the Customer shall pay all such invoices in full in cleared funds by the due date detailed on the invoice.
- 5.6 Time of payment shall be of the essence.
- 5.7 The Supplier shall be entitled to suspend, vary or withdraw any credit terms granted by it to the Customer at any-time on notice.
- 5.8 In the event that the Customer fails to pay any sum due from it under any Contract (including the Price) by the due date for payment then without prejudice to any other rights or remedies available to it (whether under the applicable Contract or otherwise) the Supplier shall be entitled to charge interest on such amount together with the cost of recovery in each case, in accordance with the Late Payment of Commercial Debt (Interest) Act 1998.
- 5.9 The Price together with any other amounts which may be due to be paid by the Customer to the Supplier under any Contract shall be paid by the Customer in full in cleared funds without set-off, withholding, deduction or counterclaim.
- 5.10 All sums payable by the Customer to the Supplier under any Contract (including the Price) shall become immediately due and payable by the Customer upon termination of the Contract in question.

6 LIMITATIONS AND EXCLUSIONS ON LIABILITY

- 6.1 Neither party seeks to limit or exclude in any way its liability for death or personal injury caused by negligence; for fraud or fraudulent misrepresentation; in respect of any breach of any condition implied under section 2 of the Supply of Goods and Services Act 1982; and/or for any other matter or liability which cannot be lawfully limited or excluded. Each provision of each Contract shall be read as subject to this Clause 6.1 and no provision of any Contract is intended to nor shall be interpreted as seeking to limit or exclude any of the foregoing types of liability.
- 6.2 Subject at all times to Clause 6.3, the maximum liability of the Supplier to the Customer for all claims under any Contract howsoever arising (including under any indemnity) shall be limited in aggregate to Price actually paid by the Customer to the Supplier under the Contract in question.
- 6.3 The Supplier shall not be liable (whether under the terms of any Contract under any indemnity or otherwise) for: loss of business; loss of use; loss of profit; loss of anticipated profit; loss of contracts; loss of revenues; loss or damage to goodwill or brand; loss of anticipated savings; loss of data or use of data; product recall costs; damage to reputation; and/or any consequential, special or indirect loss or damage in any case, regardless of whether or not the Supplier was aware or had been made aware (or ought reasonably to have been aware) at the time of the relevant Contract being formed of the risk that such loss or damage might occur.
- 6.4 The Supplier shall not be liable for any failure or delay in complying with any of its obligations under any Contract in the event that the failure or delay in question is attributable to any Force Majeure Event.

7 INSOLVENCY AND TERMINATION

- 7.1 If the Customer: (a) becomes subject to any Insolvency Event; (b) should the Supplier reasonably believe that the Customer is about to become subject to any Insolvency Event and notifies the Customer of such belief in writing; (c) and/or should any amount due to be paid by the Customer to the Supplier under any Contract be overdue then the Supplier may in any such case (and without prejudice to any other rights or remedies available to it whether under any Contract or otherwise) suspend without liability any or all further performance of Services under any or all Contracts and/or terminate any outstanding Contracts in either case, without liability to the Customer.
- 7.2 The Supplier may terminate any or all outstanding Contracts in the event that the Customer is in breach of any of its obligations under any Contract and, in the case of a breach which is capable of remedy, the Customer fails to remedy the same within 5 days of receipt of notice from the Supplier requesting it to do so.
- 7.3 Termination or expiry of any Contract shall not affect the continuing in force or coming into force of any provision of a Contract which, whether expressly or by implication is to survive termination or expiry.

8 GENERAL

- 8.1 Any notices to be served on either party by the other shall be in writing and sent by pre-paid registered post to the registered office address of the other party or such other address as is notified in writing by that party from time to time. Such notice shall be deemed to have been received by the addressee 72 hours after posting provided applicable evidence of posting is retained and produced on request.
- 8.2 Whilst the parties may make operational communications via email, formal notice may not be served via email.
- 8.3 The parties are with respect to each other independent contractors and nothing in these Conditions or any Contract and no actions taken by the parties under any these Conditions or any Contract shall be deemed to constitute any agency, partnership, association, joint venture or other co-operative enterprise between the parties.
- 8.4 Each Contract represents the entire agreement between the parties relating to the supply of the Services in question and supersedes all previous presentations made and/or agreements, negotiations and discussions between the parties relating to the same.
- 8.5 Save only to the extent as may be specifically provided for otherwise under these Conditions, no variation or amendment of any Contract shall be binding unless made in writing and signed by or on the behalf of each of the parties.
- 8.6 The Customer may not assign or transfer any of its rights and/or obligations under any Contract without the prior written consent of the Supplier. The Supplier may assign or transfer any or all of its rights and/or obligations under any Contract on notice to the Customer.
- 8.7 The Supplier may sub-contract the performance of any of its obligations under any Contract without the prior consent of the Customer but shall remain primarily liable to the Customer for the acts and omissions of any of its sub-contractors as if those were the acts or omissions of the Supplier itself under the applicable Contract.
- 8.8 Any Supplier group companies shall be entitled to rely upon the benefit of any Contract and to enforce any Contract pursuant to the Contracts (Rights of Third Parties) Act 1999. Subject to the foregoing, a person who is not a Party to a Contract shall have no right to enforce any term of that Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 8.9 If any provision of these Conditions or of any Contract is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, the remaining provisions shall remain in full force and effect.
- 8.10 The failure to exercise or delay in exercising any right or remedy under these Conditions or any Contract shall not be regarded as a waiver of such right or remedy, or a waiver of other rights or remedies. No single or partial exercise of any right or remedy under these Conditions or any Contract shall prevent any further exercise of the right or remedy or any other right or remedy.
- 8.11 These Conditions and each Contract shall be governed by English law and, save in respect of the enforcement of any judgment, the parties agree to submit to the exclusive jurisdiction of the English courts.