

# SCX SPECIAL PROJECTS LIMITED – CONDITIONS OF PURCHASE

## 1. INTERPRETATION

In these Conditions, **SCX SPECIAL PROJECTS LIMITED** (CRN: 07434072) is called the 'Company'. The following definitions and rules of interpretation apply in these Conditions.

<b>"Business Day"</b>	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
<b>"Company Materials"</b>	has the meaning set out in clause 5.3.6.
<b>"Conditions"</b>	these terms and conditions as amended from time to time in accordance with clause 19.9.
<b>"Contract"</b>	the contract between the Company and the Supplier for the supply of Goods and/or Services in accordance with these Conditions and the Order.
<b>"Control"</b>	has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression <b>change of Control</b> shall be construed accordingly.
<b>"Data Protection Legislation"</b>	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) (for so long as it is directly applicable in the UK), the Data Protection Act 2018 and all other applicable legislation and regulatory requirements in force from time to time relating to the use of personal data.
<b>"Deliverables"</b>	all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).
<b>"Delivery Location"</b>	has the meaning given in clause 4.2.2.
<b>"Goods"</b>	the goods (or any part of them) set out in the Order and any applicable Goods Specification.
<b>"Goods Specification"</b>	any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Company and the Supplier (including as may be set out in the Order).
<b>"Intellectual Property Rights"</b>	patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
<b>"Main Contract"</b>	has the meaning given in clause 13.1.3.
<b>"Mandatory Policies"</b>	any policies and procedures notified by the Company to the Supplier in the Order relating directly or indirectly to the Goods or Services.
<b>"Order"</b>	the Company's order for the supply of Goods and/or Services, as set out in the Company's purchase order form.
<b>"Services"</b>	the services, including any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification.
<b>"Service Specification"</b>	the description or specification for Services agreed in writing by the Company and the Supplier (including as may be set out in the Order)
<b>"Special Conditions"</b>	Means any special conditions which apply to the Contract as set out in the Order.
<b>"Supplier"</b>	the person or firm from whom the Company purchases the Goods and/or Services.

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

1.2 A reference to a party includes its successors and permitted assigns.

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

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

1.5 A reference to **writing** or **written** includes email but not fax.

## 2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Company to purchase Goods and/or Services from the Supplier in accordance with these Conditions.

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

2.2.1 the Supplier confirming in writing that it has accepted the Order; or

2.2.2 any act by the Supplier consistent with fulfilling the Order,

at which point and on which date the Contract shall come into existence.

2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate (in its quotation, order confirmation or otherwise), or which are implied by law, trade custom, practice or course of dealing. The Supplier waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Company that is inconsistent with these Conditions.

2.4 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

2.5 If there is any conflict between these Conditions and the Special Conditions, the Special Conditions shall prevail.

## 3. SUPPLY OF GOODS

3.1 The Supplier shall ensure that the Goods shall:

3.1.1 correspond with their description and any applicable Goods Specification;

3.1.2 be new and of good quality, and of satisfactory quality (within the meaning of the Sale of Goods Act 1979);

3.1.3 be fit for any purpose held out by the Supplier or made known to the Supplier by the Company, expressly or by implication having regard to the contents of the Order and the purpose and nature of the Contract, and in this respect the Company relies on the Supplier's skill and judgement;

3.1.4 be free from defects in design, materials and workmanship and remain so for 12 months after delivery or for such other period as may be specified in the Order; and

3.1.5 comply (and that it shall comply) with all applicable statutory and regulatory requirements, and any industry standards and guidelines, relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

3.2 The Company may inspect and test the Goods (or any applicable designs and specifications) at any time before delivery with reasonable prior written notice to the Supplier. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.

3.3 If following such inspection or testing the Company considers that the Goods do not comply or are unlikely to comply with the Supplier's undertakings at clause 3.1, the Company shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance. The Company may conduct further inspections and tests after the Supplier has carried out its remedial actions.

## 4. DELIVERY OF GOODS

4.1 The Supplier shall ensure that:

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

4.1.2 in reasonable time before delivery of the Goods, the Supplier has provided such information and assistance as may be necessary to enable the Company to prepare for the delivery of the Goods; and

4.1.3 each delivery of the Goods is accompanied by adequate supporting documentation for the Goods (including with regards to operation and maintenance) and a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

4.2 The Supplier shall deliver the Goods:

4.2.1 in accordance with and on the date specified in the Order or, if no such date is specified, then within 14 days from the date of the Order. Time is of the essence in relation to such delivery dates;

4.2.2 to the location set out in the Order or as instructed by the Company before delivery (**Delivery Location**); and

- 4.2.3 during the Company's normal hours of business, or such other time period as instructed by the Company.
- 4.3 Delivery of the Goods shall be on a DPU basis (Incoterms 2020) and completed on the completion of unloading of the Goods at the Delivery Location.
- 4.4 If the Supplier delivers less than or more than the quantity of Goods ordered, the Company may at its sole discretion reject the Goods (or the excess Goods, if applicable) and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers less than the quantity of Goods ordered, and the Company accepts the delivery, the Supplier shall make a pro rata adjustment to the invoice for the Goods.
- 4.5 The Supplier shall not deliver the Goods in instalments without the Company's prior written consent unless agreed in the Order. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Company to the remedies set out in clause 6.1.
- 4.6 Title in the Goods shall pass to the Company on the earlier of: (a) completion of delivery; and (b) payment in full being made for the Goods. Risk in the Goods shall pass to the Company on completion of delivery in accordance with clause 4.3
- 4.7 The Supplier shall comply with all applicable laws, regulations, codes and guidelines relating to the supply of dangerous goods and hazardous items. If any of the Goods or constituent parts thereof, are classified under the category of dangerous goods as defined in the International Maritime Dangerous Goods Code the Supplier must ensure the Company is advised as to the precise nature of such dangerous goods and provided with all other relevant information relating to the Goods. The Supplier's shipping specification and delivery advice must contain full details of such dangerous goods and in the case of airfreight the Supplier must also quote the relevant IATA number.
- 4.8 The Supplier shall indemnify the Company in full for all liabilities, costs, expenses, damages and losses suffered or incurred by the Company in the event of failure by the Supplier to comply with clause 4.7.
- 5. SUPPLY OF SERVICES**
- 5.1 The Supplier shall from the date set out in the Order and for the duration of the Contract supply the Services to the Company in accordance with the terms of the Contract.
- 5.2 The Supplier shall meet any performance dates for the Services specified in the Order or that the Company notifies to the Supplier and time is of the essence in relation to any of those performance dates.
- 5.3 In providing the Services, the Supplier shall:
- 5.3.1 co-operate with the Company in all matters relating to the Services, and comply with all instructions of the Company;
- 5.3.2 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;
- 5.3.3 perform the Services with all due care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade, and ensure that:
- 5.3.3.1 the Services will conform with all descriptions, standards and specifications set out in the Service Specification,
- 5.3.3.2 the Deliverables shall be free from defects in workmanship, installation and design and fit for any purpose that the Company expressly or impliedly makes known to the Supplier for 12 months after delivery or for such other period as may be specified in the Order;
- 5.3.4 provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- 5.3.5 observe all health and safety rules and regulations and any other security requirements that apply at any premises where the Services are to be carried out;
- 5.3.6 hold all materials, equipment and tools, drawings, specifications and data supplied by the Company to the Supplier (**Company Materials**) in safe custody at its own risk, maintain the Company Materials in good condition until returned to the Company, and not dispose or use the Company Materials other than in accordance with the Company's written instructions or authorisation;
- 5.3.7 not do or omit to do anything which may cause the Company 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 Company may rely or act on the Services;
- 5.3.8 not do or omit to do anything which may cause the Company to breach the terms of any Main Contract; and
- 5.3.9 comply with any additional obligations as set out in the Service Specification.
- 6. COMPANY REMEDIES**
- 6.1 If the Supplier fails to deliver the Goods by the applicable date or to perform the Services by the applicable date, or both, the Company shall, without limiting or affecting other rights or remedies available to it, be entitled to enforce one or more of the following rights and remedies:
- 6.1.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
- 6.1.2 to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
- 6.1.3 to recover from the Supplier any costs incurred by the Company in obtaining substitute goods and/or services from a third party;
- 6.1.4 to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and/or Goods that it has not delivered;
- 6.1.5 to claim liquidated damages set out in the Order for each day of delay in the delivery of Goods or performance of the Services until the earlier of delivery of the Goods or performance of the Services, as applicable, or termination of the Contract by the Company, up to the maximum liquidated damages amount set out in the Order;
- and/or
- 6.1.6 Subject to clause 15 to claim damages for any additional costs, loss or expenses incurred by the Company which are in any way attributable to the Supplier's failure to meet such dates.
- 6.2 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 3.1, or has supplied Services that do not comply with the requirements of clause 5.3.3 then, without limiting or affecting other rights or remedies available to it, the Company shall have one or more of the following rights and remedies:
- 6.2.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
- 6.2.2 to reject the Goods and/or Deliverables (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
- 6.2.3 to require the Supplier to repair or replace the rejected Goods, or provide repeat performance of the Services, or provide a full refund of the price of the Services or rejected Goods (if paid);
- 6.2.4 to refuse to accept any subsequent delivery of the Goods or performance of the Services which the Supplier attempts to make;
- 6.2.5 to recover from the Supplier any expenditure incurred by the Company in obtaining substitute goods, services or deliverables from a third party; and
- 6.2.6 Subject to clause 15 to claim damages for any additional costs, loss or expenses incurred by the Company arising from the Supplier's failure to supply Goods in accordance with clause 3.1 and/or Services in accordance with clause 5.3.3.
- 6.3 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.
- 6.4 The Company's rights and remedies under the Contract are in addition to, and not exclusive of, any rights and remedies implied by statute and common law.
- 7. COMPANY'S OBLIGATIONS**
- The Company shall provide such information for the supply of the Goods and/or Services as is reasonably necessary for the Supplier to perform the Contract.
- 8. CHARGES AND PAYMENT**
- 8.1 The price for the Goods:
- 8.1.1 shall be the price set out in the Order, or if no price is quoted, the price set out in the Supplier's published price list in force at the date of the Order; and
- 8.1.2 shall be inclusive of the costs of packaging, wrapping, cartons, boxing, containers, crating, cartage, insurance and carriage of the Goods. No extra charges shall be effective unless expressly agreed in the Order or otherwise in writing by the Company.
- 8.2 The charges for the Services shall be set out in the 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 Company, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 8.3 Unless otherwise agreed in the Order, the Supplier shall invoice the Company (a) for the Goods, on or at any time after completion of delivery of the Goods; and (b) for the Services, on or at any time after completion of the Services. Each invoice shall include such supporting information required by the Company to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.
- 8.4 In consideration of the supply of Goods and/or Services by the Supplier, unless otherwise agreed in the Order, the Company shall pay the invoiced amounts within

- 60 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier. Time for payment shall not be of the essence.
- 8.5 All amounts payable by the Company 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 Company, the Company 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.
- 8.6 If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each date at 2% a year above the Bank of England's base rate from time to time, but at 2% a year for any period when the base rate is below 0%. Where a payment is disputed in good faith, interest is only payable after the dispute is resolved, on sums found or agreed to be due, from 7 days after the dispute is resolved until payment.
- 8.7 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow the Company to inspect such records at all reasonable times on request.
- 8.8 The Company may at any time, without notice to the Supplier, set off any liability of the Supplier to the Company against any liability of the Company to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. If the liabilities to be set off are expressed in different currencies, the Company may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Company of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.
- 9. INTELLECTUAL PROPERTY RIGHTS**
- 9.1 In this clause **Background IP** means the Intellectual Property Rights owned or controlled by a party on the date of the Contract or developed or acquired by that party during the term of the Contract but wholly unrelated to the performance of the Contract.
- 9.2 Nothing in the Contract shall affect the ownership of either party's Background IP.
- 9.3 The Supplier grants to the Company, or shall procure the direct grant to the Company of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to use, copy and modify the Supplier's Background IP for the purpose of receiving and using the Services, Goods and the Deliverables.
- 9.4 All Intellectual Property Rights in or arising out of or in connection with the Services (excluding the Supplier's Background IP) shall be owned by the Company.
- 9.5 All Intellectual Property Rights in the Deliverables and arising out of or in connection with the Services shall be owned by the Company. The Supplier hereby irrevocably, unconditionally and absolutely assigns to the Company, with full title guarantee, and without restriction, all right, title and interest in and to all existing and future Intellectual Property Rights subsisting in or relating to all Deliverables and the Services. To the extent that the above does not comprise an effective assignment of such Intellectual Property Rights, then the Supplier shall assign to the Company such Intellectual Property Rights as and when requested by the Company by executing any assignment documents reasonably requested by the Company. Until such time as those Intellectual Property Rights are assigned to the Company, the Supplier shall hold all such Intellectual Property Rights on trust for the Company and the Company shall have an exclusive worldwide, royalty-free licence under those Intellectual Property Rights and to use the Deliverables for any purpose.
- 9.6 All Company Materials (and Intellectual Property Rights therein) are and shall remain the property of the Company or its customers or other contractors. To the extent that it has the legal right to do so, the Company grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to use the Company Materials to the Supplier for the term of the Contract solely for the purpose of providing the Services to the Company.
- 10. INDEMNITY**
- 10.1 The Supplier shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Company arising out of or in connection with:
- 10.1.1 any claim made against the Company for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services (excluding the Company Materials);
- 10.1.2 any claim made against the Company by a third party for death, personal injury, damage to property or otherwise arising as result of any act or omission of the Supplier;
- 10.1.3 any damage to the Company's property caused by an act or omission of the Supplier; and
- 10.1.4 any breach of the Contract by the Supplier or any act, omission, negligence or wilful misconduct on the part of the Supplier.
- 10.2 This clause 10 shall survive termination of the Contract.
- 11. INSURANCE**
- During the term of the Contract and for a period of 6 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on the Company'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.
- 12. CONFIDENTIALITY**
- 12.1 Confidential Information** means all confidential information (however recorded or preserved) disclosed by the Company (or its officers, employees, agents, customers, representatives and other subcontractors) to the Supplier or its Representatives (as defined below), whether before, on or after the date of the Contract, including but not limited to:
- 12.1.1 the existence and terms of the Contract;
- 12.1.2 any information that would be regarded as confidential by a reasonable business person relating to:
- 12.1.2.1 the business, affairs, customers, clients, suppliers, or plans, intentions, or market opportunities of the Company or the Company's customer(s); and
- 12.1.2.2 the operations, premises, processes, product information, know-how, designs, specifications, formulae, drawings, samples, prototypes, devices, techniques, trade secrets or software of the Company or the Company's customer(s).
- 12.2** The Supplier undertakes that it shall not at any time disclose to any person any Confidential Information, except:
- 12.2.1 to its employees, officers or advisers who need to know such information for the purposes of exercising the Supplier's rights or carrying out its obligations under the Contract (**Representatives**). The Supplier shall ensure that its Representatives to whom it discloses Confidential Information comply with this clause 12 and have signed written agreements containing confidentiality obligations no less onerous than those imposed under this clause; and
- 12.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority, provided that to the extent it is legally permitted to do so, it gives the Company as much notice of such disclosure as possible;
- 12.2.3 where the Supplier can show by written evidence that the relevant information was (a) available to the Supplier on a non-confidential basis before disclosure by the Company (or its officers, employees, agents, customers, representatives and other subcontractors); or (b) was, is or becomes available to the Supplier on a non-confidential basis from a person who is not bound by a confidentiality agreement with the Company or its customer or otherwise prohibited from disclosing the information to the Supplier.
- 12.3** The Supplier shall not use the Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.
- 12.4** The Supplier shall not, without first obtaining the written consent of the Company, make or permit any person to make any public announcement in any manner concerning the existence, subject matter or terms of the Contract, the wider transactions contemplated by it, or the relationship between the parties.
- 13. COMPLIANCE**
- 13.1** In performing its obligations under the Contract, the Supplier shall:
- 13.1.1 comply with all applicable laws, statutes, regulations, codes and guidelines from time to time in force;
- 13.1.2 ensure that at all times it has and maintains all licences, permissions, authorisations, consents and permits required in connection with the supply of the Goods and/or Services;
- 13.1.3 if the Contract relates to subcontracted work for one of the Company's customers, comply with any requirements included in the Company's contract with its customer (**Main Contract**) notified to the Supplier by the Company from time to time; and
- 13.1.4 comply with any Mandatory Policies.
- 13.2** The Supplier shall allow the Company or the Company's authorised representatives or agents to have access to the Supplier's premises, systems and records at all reasonable times in order to audit and take copies of the Supplier's books and records related to Contract.
- 13.3** The Supplier shall notify the Company of a change of control of the Supplier (within the meaning given in section 1124 of the Corporation Tax Act 20) upon it becoming reasonably likely that the Supplier will become subject to the change of control, and in any event not less than 14 days prior to the change of control.
- 13.4** The Supplier shall:

- 13.4.1 comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including to the Bribery Act 2010 (**Relevant Requirements**);
- 13.4.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- 13.4.3 have and shall maintain in place throughout the term of the Contract its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate;
- 13.4.4 notify the Company (in writing) if it becomes aware of any breach of this clause, or has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage; and
- 13.4.5 immediately notify the Company (in writing) if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier and the Supplier warrants that it has no foreign public officials as direct or indirect owners, officers or employees at the date of the Contract).
- 13.5 The Supplier shall ensure that any person associated with the Supplier who is performing services in connection with the Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 13 (**Relevant Terms**). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Company for any breach by such persons of any of the Relevant Terms.
- 13.6 Breach of this clause 13 shall be deemed a material breach of the Contract.
14. **DATA PROTECTION**
- 14.1 In this clause **controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures** shall have the meaning given in the Data Protection Legislation.
- 14.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. In this clause 14, **Applicable Laws** means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or all Data Protection Legislation and any other law that applies in the UK.
- 14.3 The parties acknowledge that for the purposes of the Data Protection Legislation, the Company is the controller and the Supplier is the processor and the processor will process data of the type and for the purpose set out in the Order
- 14.4 Without prejudice to the generality of clause 14.1, the Company will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of the Contract.
- 14.5 Without prejudice to the generality of clause 14.1, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of the Contract:
- 14.5.1 process that personal data only on the documented written instructions of the Company unless the Supplier is required by Applicable Laws to otherwise process that personal data. Where the Supplier is relying on Applicable Laws as the basis for processing personal data, the Supplier shall promptly notify the Company of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Company;
- 14.5.2 ensure that it has in place appropriate technical and organisational measures (reviewed and approved by the Company where the Company requests to do so) 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;
- 14.5.3 ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential;
- 14.5.4 not transfer any personal data outside of the UK unless the prior written consent of the Company has been obtained and the transfer is in accordance with the Data Protection Legislation;
- 14.5.5 assist the Company, 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 including with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 14.5.6 notify the Company immediately on becoming aware of a personal data breach;
- 14.5.7 at the written direction of the Company, delete or return personal data and copies thereof to the Company on termination of the Contract unless required by Applicable Law to store the personal data; and
- 14.5.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 14 and allow for audits by the Company or the Company's designated auditor.
- 14.6 The Company does not consent to the Supplier appointing any third party processor of personal data under the Contract except for the third party processor(s) named in the Order, provided that such third party processor(s) have entered into terms with the Supplier which are the same as or equivalent to the terms set out in this clause 14 in relation to the protection of personal data and the Supplier will provide to the Company evidence of its compliance with this clause where requested by the Company.
15. **LIMITATION OF LIABILITY**
- 15.1 Both parties agree that nothing in the Contract is intended to exclude or limit the liability of:
- 15.1.1 either party for death or personal injury caused by negligence of a party or its directors, employees, agents or subcontractors or for any fraud or fraudulent misrepresentation;
- 15.1.2 the Supplier for any losses for which it provides an indemnity under the Contract;
- 15.1.3 the Supplier for breach of confidentiality;
- 15.1.4 the Supplier for its wilful default or deliberate misconduct (including any deliberate repudiatory breach);
- 15.1.5 either party for fraud, including fraudulent misrepresentation or
- 15.1.6 either party for any matter for which it would be unlawful for the parties to exclude or limit liability.
- 15.2 Subject to clause 15.1, the Supplier's total liability to the Customer for breach of contract, a tortious act (including negligence), a breach of any statute or any other liability otherwise under or in connection with this Contract, shall be limited to the a sum equivalent to 200% of the total charges paid and/or which would have been payable if the Deliverables had been performed in full.
- 15.3 Subject to clause 15.1, the Company's total liability to the Supplier for breach of contract, a tortious act (including negligence), a breach of any statute or any other liability otherwise under or in connection with this Contract, shall not in the aggregate exceed the total charges paid or payable in the in the 12 months immediately preceding the incident giving rise to a claim.
- 15.4 Subject to Clause 15.1, neither party shall have any liability in contract, tort or otherwise arising out of or in connection with the Contract for any indirect loss or damage.
16. **TERMINATION AND SUSPENSION**
- 16.1 Without affecting any other right or remedy available to it, the Company may terminate the Contract with immediate effect by giving written notice to the Supplier if:
- 16.1.1 the Supplier commits a breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 2 days after the date of the breach;
- 16.1.2 there is a change of control of the Supplier (within the meaning given in section 1124 of the Corporation Tax Act 2010);
- 16.1.3 the Supplier takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- 16.1.4 the Supplier's financial position deteriorates to such an extent that in the Company's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- 16.1.5 the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
- 16.2 Without affecting any other right or remedy available to it, the Company may terminate the Contract:
- 16.2.1 with immediate effect by giving written notice to the Supplier if any applicable Main Contract is terminated; or
- 16.2.2 for convenience by giving the Supplier 7 days' written notice.
- 16.3 The Company shall be entitled to suspend delivery of the Goods or performance of the Services immediately upon notice to the Supplier:
- 16.3.1 for an indefinite period if the Supplier becomes subject to any of the events set out in clause 16.1; or
- 16.3.2 for any period of time during which any applicable Main Contract is suspended; or

- 16.3.3 for any period of time during which an event outside of the Company's control affects its normal business operations; or
- 16.3.4 for a period of up to 90 days for any reason provided that at the end of such period the Supplier shall be entitled to terminate the Contract upon 14 days' notice in writing to the Company.

## 17. CONSEQUENCES OF TERMINATION

- 17.1 On termination of the Contract, the Supplier shall immediately deliver to the Company all Goods and Deliverables whether or not then complete which the Company has paid for, and return all Company Materials. If the Supplier fails to do so, then the Company may enter the Supplier's premises and take possession of them. For this purpose, the Supplier shall ensure that any paid for Goods/Deliverables, together with any Company Materials which are on the Supplier's premises, are clearly marked as being the property of the Company and held separately to any other items which it holds/stores for customer at its premises. 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.
- 17.2 On termination of the Contract the Supplier shall immediately refund the Company any sums paid for Goods not fully and properly delivered and for Services not fully and properly performed.
- 17.3 Termination of the Contract shall not affect the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 17.4 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

## 18. FORCE MAJEURE

The Company shall not be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed.

## 19. GENERAL

- 19.1 **Assignment and other dealings.** The Company may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights and obligations under the Contract. The Supplier shall not assign, transfer, mortgage, charge, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Company.
- 19.2 **Subcontracting.** Except for the subcontractors identified in the Order, the Supplier may not subcontract any or all of its rights or obligations under the Contract without the prior written consent of the Company. If the Company consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all the acts and omissions of its subcontractors as if they were its own.
- 19.3 **Notices.** Any notice given to a party under or in connection with the Contract shall be in writing and shall be (a) delivered by hand or by pre-paid first-class post or other next working day delivery service or airmail at its registered office; or (b) sent by email to the address notified for such purposes (with a copy to follow by first-class post). Any notice shall be deemed to have been received:
- 19.3.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- 19.3.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service;
- 19.3.3 if sent by airmail, at 9.00 am on the fifth Business Day after posting or at the time recorded by the delivery service; and
- 19.3.4 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 19.3.4, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

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

- 19.4 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 19.4 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 19.5 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the

Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

- 19.6 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 19.7 **Entire agreement.** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 19.8 **Third party rights.** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract
- 19.9 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives.
- 19.10 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 19.11 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.