

TERMS AND CONDITIONS - PURCHASE OF GOODS AND/OR SERVICES

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

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 clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 14.8.

Contract: the contract between WAA Chosen and the Supplier for the supply of Goods and/or Services in accordance with these Conditions.

WAA Chosen: WAA Chosen Limited trading as WAA Chosen registered in England and Wales with company number 03477643 and whose registered office at Wren's Court, 58 Victoria Road, Sutton Coldfield, West Midlands, B72 1SY.

WAA Chosen Materials: has the meaning set out in clause 5.3(i).

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, including without limitation computer programs, data, reports and specifications (including drafts).

Document: includes, without limitation, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

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

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, 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.

Order: WAA Chosen's order for the supply of Goods and/or Services, as set out in WAA Chosen's purchase order, or in WAA Chosen's written acceptance of the Supplier's quotation, or accompanying these Conditions, as the case may be.

Services: the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Specification.

Specification: in relation to Goods, any specification for the Goods (including any relevant plans or drawings) produced by the Supplier and agreed in writing by WAA Chosen, and in relation to Services, the description or specification for the Services produced by the Supplier and agreed in writing by WAA Chosen.

Supplier: the person or firm from whom WAA Chosen purchases the Goods and/or Services.

1.2 Construction. In these Conditions a reference to **writing** or **written** includes faxes and e-mails.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by WAA Chosen 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:

- a) the Supplier issuing written acceptance of the Order; or
- b) any act by the Supplier consistent with fulfilling the Order,

at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

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.

3. SUPPLY OF 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 WAA Chosen, expressly or by implication, and in this respect WAA Chosen 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 WAA Chosen shall have the right to inspect and test the Goods at any time before delivery.

3.4 If following such inspection or testing WAA Chosen considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 3.1, WAA Chosen 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 WAA Chosen shall have the right to 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:

- a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition; and
- b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods, 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:

- a) on the date specified in the Order or, if no such date is specified, then within 7 days of the date of the Order;
- b) to WAA Chosen's premises or such other location as is set out in the Order or as instructed by WAA Chosen before delivery (Delivery Location);
- c) during WAA Chosen's normal hours of business on a Business Day, or as instructed by WAA Chosen.

4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

4.4 Title and risk in the Goods shall pass to WAA Chosen on completion of delivery.

5. SUPPLY OF SERVICES

5.1 The Supplier shall from date set out in the Order and for the duration of this Contract provide the Services to WAA Chosen 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 notified to the Supplier by WAA Chosen.

5.3 In providing the Services, the Supplier shall:

- a) co-operate with WAA Chosen in all matters relating to the Services, and comply with all instructions of WAA Chosen;
- 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 Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by WAA Chosen;
- 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 WAA Chosen, 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 WAA Chosen's premises;
- i) (hold all materials, equipment and tools, drawings, specifications and data supplied by WAA Chosen to the Supplier (WAA Chosen Materials) in safe custody at its own risk, maintain WAA Chosen Materials in good condition until returned to WAA Chosen, and not dispose or use WAA Chosen Materials other than in accordance with WAA Chosen's written instructions or authorisation; and
- j) not do or omit to do anything which may cause WAA Chosen to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business, and the Supplier acknowledges that WAA Chosen may rely or act on the Services.

6. WAA CHOSEN REMEDIES

6.1 If the Supplier fails to deliver the Goods and/or perform the Services by the applicable dates, WAA Chosen 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 WAA Chosen in obtaining substitute goods and/or services from a third party;
- d) where WAA Chosen 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 within 7 days; and
- e) to claim damages for any additional costs, loss or expenses incurred by WAA Chosen 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, then, without limiting its other rights or remedies, WAA Chosen 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;
- 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 WAA Chosen in obtaining substitute goods from a third party; and
- f) to claim damages for any additional costs, loss or expenses incurred by WAA Chosen arising from the Supplier's failure to supply Goods in accordance with clause 3.1.

6.3 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

6.4 WAA Chosen's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

7. CHARGES AND PAYMENT

7.1 The price for the Goods:

- a) 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 Commencement Date; and
- b) shall be inclusive of the costs of packaging, insurance and carriage of the Goods, unless otherwise agreed in writing by WAA Chosen. No extra charges shall be effective unless agreed in writing via an amended purchase order.

7.2 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 WAA Chosen, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

7.3 In respect of Goods, the Supplier shall invoice WAA Chosen on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice WAA Chosen on completion of the Services. Each invoice shall include such supporting information required by WAA Chosen to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.

7.4 In consideration of the supply of Goods and/or Services by the Supplier, WAA Chosen 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.

7.5 All amounts payable by WAA Chosen under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT) and where any taxable supply for VAT purposes is made under the Contract by the Supplier to WAA Chosen, the Supplier shall issue WAA Chosen with a valid VAT invoice.

7.6 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow WAA Chosen to inspect such records at all reasonable times on request.

7.7 The Supplier shall not be entitled to assert any credit, set-off or counterclaim against WAA Chosen in order to justify withholding payment of any such amount in whole or in part. WAA Chosen may, without limiting its other rights or remedies, set off any amount owing to it by the Supplier against any amount payable by WAA Chosen to the Supplier.

7.8 The Supplier shall ensure that all amounts due to it are invoiced in a Valid Invoice within three (3) months of the date the Supplier is first entitled to invoice such sum as set out in the Order. The Supplier irrevocably waives the right to payment of any amounts not included in a Valid Invoice within such period.

8. CANCELLATION

8.1 WAA Chosen may, at its sole discretion, cancel any Order without any obligation to compensate the Supplier other than to pay for all out of pocket costs incurred by the Supplier to the date such Order was so cancelled.

8.2 Subject to 8.1, where WAA Chosen 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, WAA Chosen have the right to have such sums refunded by the Supplier within 7 days.

9. INTELLECTUAL PROPERTY RIGHTS

9.1 In respect of the Goods and any goods that are transferred to WAA Chosen 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 WAA Chosen, it will have full and unrestricted rights to sell and transfer all such items to WAA Chosen.

9.2 The Supplier assigns to WAA Chosen, 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.

9.3 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.

9.4 The Supplier shall, promptly at WAA Chosen's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as WAA Chosen may from time to time require for the purpose of securing for WAA Chosen the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to WAA Chosen in accordance with clause 9.2.

9.5 All WAA Chosen Materials are the exclusive property of WAA Chosen.

10. INDEMNITY

10.1 The Supplier shall keep WAA Chosen indemnified in full 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 WAA Chosen as a result of or in connection with:

- a) any claim made against WAA Chosen 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 WAA Chosen 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 brought against WAA Chosen 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 or any claim WAA Chosen may have for breach of clause 14.1 of these Conditions.

10.2 For the duration 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 WAA Chosen'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 clause 10 shall survive termination of the Contract.

11. CONFIDENTIALITY

A party (Receiving Party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to, or otherwise obtained by, the Receiving Party by the other party (Disclosing Party), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 11 shall survive termination of the Contract.

12. TERMINATION

12.1 Without limiting its other rights or remedies, WAA Chosen 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 30 days of receipt of notice in writing of the breach;
- b) the Supplier becomes or is reasonably likely to become insolvent; or
- c) there is a change of control of the Supplier; or
- d) the Supplier suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business.

12.2 Without limiting its other rights or remedies, WAA Chosen may terminate the Contract:

- a) in respect of the supply of Services, by giving the Supplier one weeks' written notice; and
- b) in respect of the supply of Goods, with immediate effect by giving written notice to the Supplier, in which case WAA Chosen 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.

12.3 In any of the circumstances in these Conditions in which WAA Chosen may terminate the Contract, where both Goods and Services are supplied, WAA Chosen 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.

13. 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 WAA Chosen all Deliverables, whether or not then complete, and return all WAA Chosen Materials. If the Supplier fails to do so, then WAA Chosen 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 Supplier shall, if so requested by the Customer, provide all assistance reasonably required by the Customer to facilitate the smooth transition of the Services to the Customer or any replacement supplier appointed by it.
- c) 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
- d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

14. GENERAL

14.1 Restrictive covenant: In the event that the Supplier supplies Goods or Services directly or indirectly to any client of WAA Chosen, the Supplier agrees that it shall not, for a period of 24 months after the relevant supply, supply further goods or services directly or indirectly to that client outside of the agreement between the supplier and WAA Chosen. In the event that the Supplier breaches the provisions of this clause 14.1, the Supplier and WAA Chosen agree that the damages payable to WAA Chosen shall equate to 20% of the value of the services or goods supplied to such client by the Supplier during such 24 month restricted period.

14.2 Force majeure: Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under the Contract if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable. If such event or circumstances prevent the Supplier from supplying the Goods and/or Services for more than two weeks, WAA Chosen shall have the right, without limiting its other rights or remedies, to terminate this Contract with immediate effect by giving written notice to the Supplier.

14.3 Assignment and subcontracting:

- a) The Supplier shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of WAA Chosen.
- b) WAA Chosen 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 or agent.

14.4 Waiver and cumulative remedies:

- a) 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.
- b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

14.5 Severance:

- a) If a court or any other competent authority finds that any provision (or part of any provision) of the Contract 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.
- b) 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.

14.6 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.

14.7 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.

14.8 Variation: Any variation, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by both parties.

14.9 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.

14.10 Notices. Any notice or other communication given to a party under or in connection with the Contract shall be in writing. E-mail is an acceptable form of notice or communication.

14.11 Governing law and jurisdiction: The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.