



TERMS & CONDITIONS OF PURCHASE

1 Definitions

- 1.1 In these Conditions the following definitions apply:
- 1.2 “Affiliate” means any entity that directly or indirectly Controls, is Controlled by or is under common Control with, another entity;
- 1.3 “Bribery Laws” means the Bribery Act 2010 and associated guidance published by the Secretary of State for Justice under the Bribery Act 2010 and all other applicable UK legislation, statutory instruments and regulations in relation to bribery or corruption and any similar or equivalent legislation in any other relevant jurisdiction;
- 1.4 “Business Day” means a day other than a Saturday, Sunday or bank or public holiday when banks generally are open for non-automated business in England;
- 1.5 “Customer” means Smith Brothers Stores Limited (registered number: 00962846) whose registered office is at Unit V2 Winchester Avenue, Blaby Industrial Park, Leicester, Leicestershire, England, LE8 4GZ (VAT No: 317 4596 84)
- 1.6 “Conditions” means the Customer’s terms and conditions of purchase set out in this document as amended from time to time in accordance with clause 25.1;
- 1.7 “Confidential Information” means any commercial, financial or technical information, information relating to the Deliverables, plans, know-how or trade secrets which is obviously confidential or has been identified as such, or which is developed by the Customer in performing its obligations under, or otherwise pursuant to the Contract;
- 1.8 “Contract” means the agreement between the Supplier and the Customer for the sale and purchase of the Deliverables in accordance and incorporating these Conditions and the Order;
- 1.9 “Control” means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company;
- 1.10 “Deliverables” means the Goods or Services (or any part of them) as set out in the Order;
- 1.11 “Force Majeure” means an event or sequence of events beyond any party’s reasonable control (after exercise of reasonable care to put in place robust back-up and disaster recovery arrangements) preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster, war, riot or civil unrest, strike, lockout or boycott or other industrial action except strikes or other industrial disputes involving the Supplier’s or its suppliers’ workforce;
- 1.12 “Goods” means the goods and related accessories, spare parts and documentation and other physical material set out in the Order to be supplied by the Supplier to the Customer;
- 1.13 “Intellectual Property Rights” means copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in goodwill, rights in confidential information, rights to sue for passing off, domain names and all similar rights and, in each case:
- 1.13.1 whether registered or not;
- 1.13.2 including any applications to protect or register such rights;
- 1.13.3 including all renewals and extensions of such rights or applications;
- 1.13.4 whether vested, contingent or future;
- 1.13.5 to which the relevant party is or may be entitled; and
- 1.13.6 in whichever part of the world existing;
- 1.14 “Location” means the address for delivery of the Goods and performance of the Services as set out in the Order;
- 1.15 “Modern Slavery Policy” means the Customer’s anti-slavery and human trafficking policy in force and notified to the Supplier from time to time;
- 1.16 “Order” means the Customer’s order for the Deliverables as set out in the Customer’s order form;
- 1.17 “Price” has the meaning given in clause 4.1;
- 1.18 “Regulatory Requirements” means in relation to any jurisdiction where the Goods and/or Services are intended to be marketed and/or supplied and/or sold, all applicable laws, enactments, orders, regulations and other instruments relating to the Goods and/or Services (including the design, manufacture, packaging, labelling, storage, handling, marketing, sale, import, export and/or delivery of the Goods and/or performance of the Services) together with all relevant regulations, codes of practice and guidance imposed by any governmental, regulatory or trade body from time to time;
- 1.19 “Supplier” means the person or firm from whom the Customer purchases the Deliverables and whose details are set out in the Order;
- 1.20 “Services” means the services set out in the Order or understood by the parties to be included in the Services and to be supplied by the Supplier to the Customer;
- 1.21 “Specification” means the description or specification of the Deliverables, including any related plans and drawings, that is agreed by the Customer and the Supplier; and
- 1.22 “VAT” means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Deliverables.

2 Interpretation

In these Conditions, unless the context otherwise requires:

- 2.1 a reference to the Contract includes these Conditions, the Order, and their respective schedules, appendices and annexes (if any);
- 2.2 any clause, schedule or other headings in these Conditions are included for convenience only and shall have no effect on the interpretation of these Conditions;
- 2.3 a reference to a ‘party’ means either the Supplier or the Customer and includes that party’s personal representatives, successors and permitted assigns;



- 2.4 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
- 2.5 a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;
- 2.6 a reference to a gender includes each other gender;
- 2.7 words in the singular include the plural and vice versa;
- 2.8 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- 2.9 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form [(excluding email) [includes email]
- 2.10 a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 2.11 a reference to any English action, remedy, method of judicial proceeding, court, official, legal document, legal status, legal doctrine, legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English equivalent in that jurisdiction.

3 Application of these Conditions

- 3.1 These Conditions apply to and form part of the Contract between the Supplier and the Customer. They supersede any previously issued terms and conditions of purchase or supply and are 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.
- 3.2 No terms or conditions endorsed on, delivered with, or contained in the Supplier's quotation, sales conditions, confirmation of order, specification, delivery note, invoice or other document shall form part of the Contract except to the extent that the Customer otherwise agrees in writing.
- 3.3 No variation of these Conditions or to an Order or to the Contract, shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of the Customer.
- 3.4 Each Order by the Customer to the Supplier shall be an offer to purchase Deliverables subject to and in accordance with these Conditions.
- 3.5 An Order may be amended by the Customer at any time before the Supplier performs a material part of the Order. An Order shall lapse unless accepted by the Supplier before the expiry of 14 days after the date of the Order. If the Supplier is unable to accept an Order, it shall notify the Customer promptly.
- 3.6 Acceptance of an Order by the Supplier shall take place when it is expressly accepted or by any other conduct of the Supplier which the Customer reasonably considers is consistent with acceptance of the Order at which point the Contract shall come into existence

4 Price

- 4.1 The price for the Deliverables shall be as set out in the Order or, in default of such provision, shall be calculated in accordance with the Supplier's scale of charges as confirmed by the Supplier in writing and received and acknowledged by the Customer before the date the Order is made ("Price"). No increase in the Price may be made after the Order is placed.
- 4.2 The Price includes packaging, insurance, carriage of the Goods, delivery, unloading, unpacking.
- 4.3 No extra charges shall be effective unless agreed in writing with the Customer.

5 Payment

- 5.1 The Supplier shall invoice the Customer for:
- 5.1.1 Goods no sooner than completion of delivery of the Goods or, if later, the Customer's acceptance of the Goods; and
- 5.1.2 Services no sooner than completion of performance of the Services or, if later, the Customer's acceptance of the Services.
- 5.1.3 The Supplier shall ensure that the invoice includes the date of the Order, the invoice number, the Customer's order number, the Supplier's VAT registration number and any supporting documentation that the Customer may reasonably require.
- 5.2 The Customer shall pay each correctly rendered invoice of the Supplier within 60 days following the end of the calendar month of receipt. Payment shall be made to the bank account nominated in writing by the Supplier.
- 5.3 VAT shall be charged by the Supplier and paid by the Customer at the then applicable rate.
- 5.4 The Customer may at any time, without limiting any of its other rights or remedies, set off liability of the Supplier to the Customer against any liability of the Customer to the Supplier.

6 Cancellation

- 6.1 The Customer shall have the right to cancel the Order for the Deliverables or for any part of the Deliverables which have not yet been, in the case of Goods, delivered to and in the case of Services, performed for, the Customer.
- 6.2 In relation to any Order cancelled or part-cancelled under clause 6.1, the Customer shall pay:
- 6.2.1 in respect of any Goods, for that part of the Price that relates to the Goods which at the time of cancellation have been delivered to the Customer; and
- 6.2.2 in respect of any Services, such part of the Price that relates to the Services as is proportionate to the part of the Services that has been performed by the Supplier.

7 Delivery and performance

- 7.1 The Goods shall be delivered by the Supplier to the Location and at the time and on the date specified in the Order. Where no time for delivery is specified on the Order, then delivery of the goods shall take place during the Customers normal business hours, or as instructed by the Customer. The Goods shall be deemed delivered by the Supplier only on completion of unloading of the Goods at the Location. The Supplier shall ensure that the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
- 7.2 The Services shall be performed by the Supplier at the Location and at the time and on the date specified in the Order. The Services shall be deemed performed by the Supplier only on completion of the performance of the Services at the Location.
- 7.3 The Deliverables shall not be delivered by or performed in instalments unless otherwise agreed in writing by the Customer. Where it is agreed that the Goods are to be 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 Customer to terminate the Contract in whole or part.
- 7.4 Each delivery or performance of the Deliverables shall be accompanied by a delivery note stating:
- 7.4.1 the date of the Order and Order number;
 - 7.4.2 the relevant Customer and Supplier details;
 - 7.4.3 if Goods, the product numbers and type and quantity of Goods in the consignment;
 - 7.4.4 if Services, the category, type and quantity of Services performed;
 - 7.4.5 any special instructions, handling and other requests; and
 - 7.4.6 in the case of Goods, whether any packaging material is to be returned, in which case the Customer shall, after the Goods are unpacked, make them available for collection by the Supplier at the Supplier's expense.
- 7.5 Time of delivery or performance (as the case may be) is of the essence. If the Supplier fails to deliver any of the Goods or perform any of the Services by the date specified in the Order, the Customer shall (without prejudice to its other rights and remedies and whether or not it has accepted the Goods and/or the Services) be entitled at the Customer's sole discretion:
- 7.5.1 to terminate the Contract in whole or in part;
 - 7.5.2 refuse any late delivery or subsequent delivery of the Goods or performance of the Services that the Supplier attempts to make;
 - 7.5.3 to purchase the same or similar Deliverables from a supplier other than the Supplier;
 - 7.5.4 to recover damages from the Supplier in respect of all costs, claims, losses, damages, liabilities and expenses incurred by the Customer as a result of the Supplier's failure, including the amount by which the price payable by the Customer to acquire those Deliverables from another supplier exceeds the price payable under the Contract and any loss of profit; and
 - 7.5.5 all or any of the foregoing.
- 7.6 If the Customer fails to accept delivery of the Goods on the date or within the period set out in the Order, the Supplier shall store and insure the Goods pending delivery at the Suppliers expense.

8 Acceptance, rejection and inspection

- 8.1 The Customer shall not have accepted, or be deemed to have accepted, the Deliverables until the Acceptance Conditions are fulfilled.
- 8.2 The "Acceptance Conditions" are that:
- 8.2.1 for Goods, the Goods have been delivered to and unloaded at the Location;
 - 8.2.2 for Services, the Services have been performed at the Location;
 - 8.2.3 the Customer has notified the Supplier in writing that the Deliverables have been delivered or performed (as the case may be) in full compliance with the terms and conditions of the Contract; and
 - 8.2.4 for Goods, the Customer has had a reasonable time to inspect them following delivery or, if later, a reasonable time has passed after latent defects in the Goods become apparent.
- 8.3 The Customer shall be entitled to reject any Deliverables which are not in full compliance with the terms and conditions of the Contract. Any acceptance of defective, late or incomplete Deliverables or any payment made in respect thereof, shall not constitute a waiver of any of the Customer's rights and remedies, including its right to reject. If the Goods are rejected due to the volume of the Goods exceeding the tolerances (if any) specified in the Order, the Supplier shall promptly and at its own cost arrange for redelivery of the correct volume.
- 8.4 Any rejected Goods may be returned to the Supplier by the Customer at the Supplier's cost and risk. The Supplier shall pay to the Customer a reasonable charge for storing and returning any of the Goods over-delivered or rejected.
- 8.5 The Customer may require acceptance tests to be performed or to be carried out, at the Customer's option, either by the Customer or the Supplier, and the results of the tests shall be made available to the Customer.
- 8.6 The Customer may inspect and test the Deliverables during performance or during manufacture or processing prior to despatch, and the Supplier shall provide the Customer with all facilities reasonably required in that regard. If the inspection or testing indicates that the Goods do not, or are unlikely to, conform to the Contract, the Supplier shall immediately take such remedial action as is necessary and at its expense to ensure compliance prior to delivery. 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 effect the Suppliers obligations under the Contract.
- 8.7 The Customer may conduct further inspections and test after the Supplier has carried out its remedial actions
- 8.8 Any inspection or testing of the Deliverables shall not be deemed to be acceptance of the Deliverables or a waiver of any of the Customer's rights and remedies, including its right to reject.
- 8.9 The rights of the Customer in this clause 8 are without prejudice to the Customer's rights under clause 10

9 Title and risk

- 9.1 Risk in the Goods shall pass to the Customer upon delivery in accordance with clause 7.1 and when the Customer has accepted the Goods as conforming in every respect with the Contract.



- 9.2 Title to the Goods shall pass to the Customer on the sooner of payment by the Customer for the Goods or delivery of the Goods to the Customer.
- 9.3 The passing of title shall not prejudice any other of the Customer's rights and remedies, including its right to reject.
- 9.4 Neither the Supplier nor any other person shall have a lien on, right of stoppage in transit or other rights in or to any Goods title to which have vested in the Customer or any specifications or materials of the Customer, and the Supplier shall ensure that relevant third parties accept the exclusion of such lien and rights.
- 9.5 The Supplier warrants and represents that it:
- 9.5.1 has at the time the Contract is made full, clear and unencumbered title to the Goods, and the full, clear and unencumbered right to sell and deliver them to the Customer; and
- 9.5.2 shall hold such title and right to enable it to ensure that the Customer shall acquire a valid, unqualified title to the Goods and shall enjoy quiet possession of them.

10 Warranties

- 10.1 The Supplier warrants, undertakes and represents that the Deliverables shall:
- 10.1.1 conform to any sample, their description, to the Specification and to the quality, quantity, description and other particulars stated in the Order;
- 10.1.2 be free from defects in design, material and workmanship and remain so for 12 months after delivery;
- 10.1.3 comply with all applicable laws, standards, Regulatory Requirements and best industry practice relating to manufacture, Labelling, packaging, storage, handling and delivery of Goods;
- 10.1.4 if Goods, be of satisfactory quality within the meaning of the Sale of Goods Act 1979 as amended ; and
- 10.1.5 if Services, be supplied with reasonable care and skill within the meaning of the Supply of Goods and Services Act 1982, Part II, section 13; and
- 10.1.6 be fit for purpose and for any purpose held out by the Supplier and for any purpose as required to meet the Customers needs, made known to the Supplier by the Customer expressly or by implication, and in this respect the Customer relies on the Suppliers skill and Judgment
- 10.2 To the extent that the Supplier has designed or will design the Goods, the Supplier warrants, undertakes and represents that in:
- 10.2.1 carrying out such design;
- 10.2.2 selecting materials and components in relation to the Goods; and
- 10.2.3 ensuring that the Goods will meet any performance requirements specified in the Specification or which may be inferred from the Order or the description of the Goods, it has exercised and shall continue to exercise all the reasonable skill, care and diligence to be expected of a competent, qualified, professional designer of the relevant discipline with experience of carrying out designs in connection with projects of a similar size, complexity and nature to the project for which the Goods are intended.
- 10.3 The Supplier agrees that the approval by the Customer of any design or Specification provided by the Supplier shall not relieve the Supplier of any of its obligations under this clause 10.
- 10.4 The Supplier warrants that it understands the Customer's business and needs.
- 10.5 To the extent that the Deliverables do not comply with clause 10.1 or clause 10.2, the Customer may (without prejudice to its other rights and remedies and whether or not it has accepted the Goods and/or the Services) at the Customer's sole discretion:
- 10.5.1 terminate the Contract in whole or in part;
- 10.5.2 reject such Deliverables (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
- 10.5.3 require the Supplier promptly, at its own expense, to remove (including making good any damage caused in doing so), remedy, repair, replace, correct, re-perform or full refund the price of any such Deliverables;
- 10.5.4 recover damages from the Supplier in respect of all costs, claims, losses, damages, liabilities and expenses incurred by the Customer which are in any way attributable to the Suppliers failure to carry out its obligations under the Contract , including any costs incurred by the Customer to acquire those Deliverables from another supplier and any loss of profit; and
- 10.5.5 refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- 10.5.6 all or any of the foregoing.
- 10.6 The provisions of these Conditions shall apply to any Deliverables that are remedied, repaired, replaced, corrected or re-performed with effect from the date of the delivery or performance of the remedied, repaired, replaced, corrected or re-performed Deliverables.
- 10.7 The Customer's rights under these Conditions are in addition to, and do not exclude or modify, any rights and remedies implied under statute or by common law.
- 10.8 The Customer shall be entitled to exercise its rights under this clause 10 regardless of whether the Deliverables have been accepted under the Acceptance Conditions and notwithstanding that the Deliverables were not rejected following their initial inspection under clause 8.3 .
- 10.9 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.

11 Anti-bribery

- 11.1 For the purposes of this clause 11 the expressions "adequate procedures" and "associated with" shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.
- 11.2 The Supplier shall comply with applicable Bribery Laws including ensuring that it has in place adequate procedures to prevent bribery and ensure that:
- 11.2.1 all of its personnel;



11.2.2 all others associated with the Supplier; and

11.2.3 all of the Supplier's sub-contractors and suppliers;

involved in performing the Contract so comply.

11.3 Without limitation to clause 11.2 the Supplier shall not make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment, nor shall it allow any such bribe or payment to be made or received on its behalf, either in the United Kingdom or elsewhere, and shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.

11.4 The Supplier shall immediately notify the Customer as soon as it becomes aware of a breach or possible breach of any of the requirements in this clause 11.

12 Anti-slavery

12.1 The Supplier undertakes, warrants and represents that:

12.1.1 neither the Supplier nor any of its officers, employees, agents or subcontractors has:

(a) committed an offence under the Modern Slavery Act 2015 (an "MSA Offence"); or

(b) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or

(c) is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;

12.1.2 it shall comply with the Modern Slavery Act 2015 and the Modern Slavery Policy;

12.1.3 its responses to the Customer's modern slavery and human trafficking due diligence questionnaire are complete and accurate; and

12.1.4 it shall notify the Customer immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of the Supplier's obligations under clause 12.1. Such notice shall set out full details of the circumstances concerning the breach or potential breach of the Supplier's obligations.

12.2 Any breach of clause 12.1 by the Supplier shall be deemed a material breach of the Contract and shall entitle the Customer to terminate the Contract with immediate effect.

13 Indemnity and insurance

13.1 The Supplier shall indemnify and keep indemnified and hold harmless, the Customer from and against any losses, damages, liability, costs (including legal fees) and expenses suffered or incurred, whether directly or indirectly, or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses suffered or incurred by the Customer as a result of or in connection with,

13.1.1 any claim made against the Customer by a third party arising out of or in connection with the supply of the Goods, to the extent that such claim arises out of breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or sub contractors

13.1.2 any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the supply or use of the Goods, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or sub contractors;

13.1.3 any claim made against the Customer by a third party for death, personal injury or damage to property arising out of or in connection with defects in Goods, to the extent that the defects are attributable to the acts or omissions of the Supplier, its employees, agents or sub contractors;

13.2 This Clause 13 shall survive termination of the Contract.

13.3 The Supplier shall maintain, with reputable insurers incorporated in the United Kingdom, adequate professional indemnity, product liability and public liability insurance to cover the Supplier's liabilities under the Contract and insurance of the Deliverables and any of the Customer's materials in the Supplier's possession against the usual risks, including accident, fire and theft, for their full replacement value until the risk in them passes to the Customer. On request, the Supplier shall supply so far as is reasonable evidence of the maintenance of the insurance and all of its terms from time to time applicable. The Supplier shall on request assign to the Customer the benefit of such insurance.

14 Limitation of liability

14.1 The extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 14.

14.2 Subject to clauses 14.5 and 14.6, the Customer's total liability shall not exceed the Price.

14.3 Subject to clauses 14.5 and 14.6, the Customer shall not be liable for consequential, indirect or special losses.

14.4 Subject to clauses 14.5 and 14.6, the Customer shall not be liable for any of the following (whether direct or indirect):

14.4.1 loss of profit;

14.4.2 loss of data;

14.4.3 loss of use;

14.4.4 loss of production;



- 14.4.5 loss of contract;
 - 14.4.6 loss of opportunity;
 - 14.4.7 loss of savings, discount or rebate (whether actual or anticipated);
 - 14.4.8 harm to reputation or loss of goodwill.
- 14.5 The limitations of liability set out in clauses 14.2 to 14.4 shall not apply in respect of any indemnities given by either party under the Contract.
- 14.6 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:
- 14.6.1 death or personal injury caused by negligence;
 - 14.6.2 fraud or fraudulent misrepresentation; and
 - 14.6.3 any other losses which cannot be excluded or limited by applicable law.

15 Intellectual property rights

- 15.1 All specifications provided by the Customer and all Intellectual Property Rights in the Deliverables made or performed in accordance with such specifications shall vest in and remain at all times the property of the Customer and such specifications may only be used by the Supplier as necessary to perform the Contract. The Supplier assigns (or shall procure the assignment) to the Customer absolutely, with full title guarantee, all rights, title and interest in any such Intellectual Property Rights, and the Supplier shall do all such things and sign all documents necessary in the Customer's opinion to so vest all such Intellectual Property Rights in the Customer, and to enable the Customer to defend and enforce such Intellectual Property Rights, and the Supplier shall at the Customer's request waive or procure a waiver of applicable moral rights.
- 15.2 The Supplier shall indemnify the Customer from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by the Customer as a result of or in connection with any action, demand or claim that use or possession of any of the Intellectual Property Rights, infringes the Intellectual Property Rights of any third party ("Supplier IPR Claim").
- 15.3 If any Supplier IPR Claim is made or is reasonably likely to be made against the Customer, the Supplier shall promptly and at its own expense either:
- 15.3.1 procure for the Customer the right to continue using and possessing the relevant Intellectual Property Rights; or
 - 15.3.2 modify or replace the infringing part of the Intellectual Property Rights and without adversely affecting the functionality of the Intellectual Property Rights as set out in the Contract so as to avoid the infringement or alleged infringement, provided that if, having used reasonable endeavours, neither of the above can be accomplished on reasonable terms, the Supplier shall (without prejudice to the indemnity above) refund the price paid by the Customer in respect of the affected Intellectual Property Rights.

16 Confidentiality and announcements

- 16.1 The Supplier shall keep confidential all Confidential Information of the Customer and of any Affiliate of the Customer and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:
- 16.1.1 any information which was in the public domain at the date of the Contract;
 - 16.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;
 - 16.1.3 any information which is independently developed by the Supplier without using information supplied by the Customer or by any Affiliate of the Customer; or
 - 16.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.
- 16.2 The Supplier shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.
- 16.3 This Clause 16 shall survive termination of the Contract

17 Force Majeure

- 17.1 A party shall not be liable if delayed in or prevented from performing its obligations due to Force Majeure, provided that it:
- 17.1.1 promptly notifies the other of the Force Majeure event and its expected duration; and
 - 17.1.2 uses best endeavours to minimise the effects of that event.
- 17.2 If, due to Force Majeure, a party:
- 17.2.1 is or shall be unable to perform a material obligation; or
 - 17.2.2 is delayed in or prevented from performing its obligations for a continuous period exceeding 14 days or for a total of more than 60 days in any consecutive period of 60 days;
- the other party may, within 60 days, terminate the Contract on immediate notice.

18 Termination

- 18.1 The Customer may terminate the Contract or any other contract which it has with the Supplier at any time with immediate effect by giving notice in writing to the Supplier if:
- 18.1.1 the Supplier commits a material breach of the Contract and such breach is not remediable;
 - 18.1.2 the Supplier commits a material breach of the Contract which is not remedied within 14 days of receiving written notice of such breach;
 - 18.1.3 the Supplier has failed to pay any amount due under the Contract on the due date and such amount remains unpaid within 60 days after the Customer has given notification that the payment is overdue; or

- 18.1.4 any consent, licence or authorisation held by the Supplier is revoked or modified such that the Supplier is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled.
- 18.2 The Customer may terminate the Contract at any time with immediate effect by giving notice in writing to the Supplier if the Supplier:
- 18.2.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
- 18.2.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the Customer reasonably believes that to be the case;
- 18.2.3 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
- 18.2.4 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
- 18.2.5 has a resolution passed for its winding up;
- 18.2.6 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
- 18.2.7 is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within seven days of that procedure being commenced;
- 18.2.8 has a freezing order made against it;
- 18.2.9 is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title in those items;
- 18.2.10 is subject to any events or circumstances analogous to those in clauses 18.2.1 to 18.2.9 in any jurisdiction;
- 18.2.11 takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 18.2.1 to 18.2.10 including for the avoidance of doubt, but not limited to, giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.
- 18.3 The Customer may terminate the Contract at any time by giving not less than four weeks' notice in writing to the Supplier if the Supplier undergoes a change of Control or if it is realistically anticipated that it shall undergo a change of Control within two months.
- 18.4 If the Supplier becomes aware that any event has occurred, or circumstances exist, which may entitle the Customer to terminate the Contract under this clause 18, it shall immediately notify the Customer in writing.
- 18.5 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of the Customer at any time up to the date of termination.

19 Dispute resolution

- 19.1 Any dispute arising between the parties out of or in connection with the Contract shall be dealt with in accordance with the provisions of this clause 19.
- 19.2 The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.
- 19.3 The parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedures:
- 19.3.1 Within seven days of service of the notice, nominated representatives of the parties shall meet to discuss the dispute and attempt to resolve it.
- 19.3.2 If the dispute has not been resolved within seven days of the first meeting of the parties' nominated representatives, then the matter shall be referred to the parties' Finance Directors (or persons of equivalent seniority). The Finance Directors (or equivalent) shall meet within seven days to discuss the dispute and attempt to resolve it.
- 19.4 The specific format for the resolution of the dispute under clause 19.3.1 and, if necessary, clause 19.3.2 shall be left to the reasonable discretion of the parties.
- 19.5 If the dispute has not been resolved within 14 days of the first meeting of the Finance Directors (or equivalent) under clause 19.3.2 then the matter may be referred to mediation in accordance with the London Court of International Arbitration Mediation Rules.
- 19.6 Either party may issue formal legal proceedings at any time whether or not the steps referred to in clauses 19.3 and 19.5 have been completed.

20 Notices

- 20.1 Any notice given by a party under these Conditions shall:
- 20.1.1 be in writing and in English;
- 20.1.2 be signed by, or on behalf of, the party giving it (except for notices sent by email); and
- 20.1.3 be sent to the relevant party at the address set out in the Contract.
- 20.2 Notices may be given, and are deemed received:
- 20.2.1 by hand: on receipt of a signature at the time of delivery;
- 20.2.2 by Royal Mail Recorded Signed For post: at 9.00 am on the Business Day after posting;
- 20.2.3 by Royal Mail International Tracked & Signed post: at 9.00 am on the fourth Business Day after posting; and
- 20.3 Any change to the contact details of a party as set out in the Contract shall be notified to the other party in accordance with clause 20.1 and shall be effective:
- 20.3.1 on the date specified in the notice as being the date of such change; or
- 20.3.2 if no date is so specified, five Business Days after the notice is deemed to be received.
- 20.4 All references to time are to the local time at the place of deemed receipt.
- 20.5 This clause does not apply to notices given in legal proceedings or arbitration.



21 Cumulative remedies

21.1 The rights and remedies provided in the Contract for the Customer only are cumulative and not exclusive of any rights and remedies provided by law.

22 Time

22.1 Unless stated otherwise, time is of the essence for any date or period specified in the Contract in relation to the Supplier's obligations only.

23 Further assurance

23.1 The Supplier shall at the request of the Customer, and at the Supplier's own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.

24 Entire agreement

24.1 The parties agree that the Contract constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.

24.2 Each party acknowledges that it has not entered into the Contract in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.

24.3 Nothing in these Conditions purports to limit or exclude any liability for fraud.

25 Variation

25.1 Except as set out in these Conditions, no variation of the Contract including the introduction of any additional terms and conditions, shall be valid or effective unless it is agreed in writing, refers to the Contract and these Conditions and is duly signed or executed by, or on behalf of, the Customer.

26 Assignment

26.1 The Supplier may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Customer's prior written consent which it may withhold or delay at its absolute discretion.

26.2 Notwithstanding clause 26.1, the Supplier may perform any of its obligations and exercise any of its rights granted under the Contract through any Affiliate provided that it gives the Customer prior written notice of such sub-contracting or assignment including the identity of the relevant Affiliate. The Supplier acknowledges and agrees that any act or omission of its Affiliate in relation to the Supplier's rights or obligations under the Contract shall be deemed to be an act or omission of the Supplier itself.

27 Set off

27.1 The Customer shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Supplier under the Contract or under any other contract which the Customer has with the Supplier.

27.2 The Supplier shall pay all sums that it owes to the Customer under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

28 No partnership or agency

28.1 The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

29 Equitable relief

29.1 The Supplier recognises that any breach or threatened breach of the Contract may cause the Customer irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the Customer, the Supplier acknowledges and agrees that the Customer is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

30 Severance

30.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.

30.2 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.



31 Waiver

- 31.1 No failure, delay or omission by the Customer in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.
- 31.2 No single or partial exercise of any right, power or remedy provided by law or under the Contract by the Customer shall prevent any future exercise of it or the exercise of any other right, power or remedy by the Customer.
- 31.3 A waiver of any term, provision, condition or breach of the Contract by the Customer shall only be effective if given in writing and signed by the Customer, and then only in the instance and for the purpose for which it is given.

32 Compliance with law

- 32.1 The Supplier shall comply with all laws, enactments, regulations, regulatory policies, guidelines and industry codes applicable to it and shall maintain such authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract.

33 Conflicts within contract

- 33.1 If there is a conflict between the terms contained in the Conditions and the terms of the Order, schedules, appendices or annexes to the Contract, the terms of the Conditions shall prevail.

34 Costs and expenses

- 34.1 The Supplier shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of the Contract (and any documents referred to in it).

35 Third party rights

- 35.1 Except as expressly provided for in clause 35.2, a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.
- 35.2 Any Affiliate of the Customer shall be entitled under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract. The consent of any such Affiliate is not required in order to rescind or vary the Contract or any provision of it.

36 Governing law

- 36.1 The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

37 Jurisdiction

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).

July 2019