

FEN-BAY SERVICES LIMITED TERMS & CONDITIONS OF PURCHASE

1. INTERPRETATION

1.1 The following definitions and rules of interpretation apply in these Conditions.

"**Addendum**" means the Fen-Bay Services Limited - Terms & Conditions of Purchase Addendum, available at the link found [here](#).

"**Business Day**" means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

"**Business Hours**" means the period from 9.00 am to 5.00 pm on any Business Day.

"**Conditions**" means these terms and conditions set out in this document as amended from time to time in accordance with these conditions.

"**Contract**" means the contract between the Customer and the Supplier for the supply of Goods and/or Services in accordance with these Conditions, the Purchase Order and, if applicable, the Framework Agreement and/or the Addendum. Where the Services include any personnel attending the site of the Customer or its customer, then the Addendum shall apply.

"**Control**" has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression "**change of Control**" shall be interpreted accordingly.

"**Customer**" means Fen-Bay Services Ltd registered in England and Wales with company number 03692535, trading as FBS Hörmann.

"**Deliverables**" means all documents, products, correspondence 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).

"**Delivery Date**" means the date specified in the Purchase Order, or, if a period is specified, the last date of such period calculated from the Commencement Date.

"**Delivery Location**" means the address for delivery of Goods as set out in the Purchase Order or as otherwise notified by the Customer to the Supplier.

"**Framework Agreement**" means any framework purchasing agreement entered into between the Customer and the Supplier in force on the Commencement Date.

"**Goods**" means any goods to be supplied by the Supplier as required by the Contract and detailed in the Purchase Order.

"**Goods Specification**" means any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and the Supplier (including where applicable by inclusion in the Framework Agreement) for the applicable produce code(s) relating to the Goods.

"**Intellectual Property Rights**" means any and all:

- (a) patents, trade marks, service marks, domain names, registered designs, utility models, applications for and the right to make applications for any such rights, inventions, know how, confidential information, unregistered trade marks and service marks, trade and business names, including rights in any get-up or trade dress, copyrights, (including rights in computer software or databases) unregistered design rights and other rights in designs and rights in databases;
- (b) rights under licences, consents, orders, statutes or otherwise in respect of any rights of the nature specified in paragraph (a) above; and
- (c) rights of the same or similar effect or nature as or to those in paragraphs (a) and (b) above and in each case in any jurisdiction.

"**Purchase Order**" means the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form.

"**Price**" means the price that Customer will pay the Supplier for providing the Goods and/or Services as set out in the Purchase Order.

"**Services**" means any services, including any Deliverables, to be provided by the Supplier as required by the Contract.

"**Service Specification**" means the description or specification for Services agreed in writing by the Customer and the Supplier.

"**Supplier**" means the person, firm or company to whom the Purchase Order is addressed and who is responsible for providing the Services or supplying the Goods.

1.2 Interpretation:

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

A reference to a party includes its personal representatives, successors and permitted assigns.

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

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

A reference to **writing** or **written** excludes fax and email.

2. BASIS OF CONTRACT

2.1 These Conditions govern the Contract between the Customer and the Supplier.

2.2 The Purchase Order constitutes an offer by the Customer to purchase Goods or Services or Goods and Services from the Supplier in accordance with these Conditions.

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

- 2.3.1 the Supplier issuing written acceptance of the Purchase Order; or
- 2.3.2 any act by the Supplier consistent with fulfilling the Purchase Order, at which point and on which date the Contract shall come into existence (the "**Commencement Date**").

2.4 The supply of Goods and/or supply of Services and/or taking any other positive step towards fulfilment of the Contract in response to the Purchase Order shall expressly and irrevocably mean that the Supplier has agreed to supply to the Customer the Goods and/or Services and that the Supplier accept these Conditions and the Purchase Order and agrees that no other terms apply to the Contract.

2.5 Without prejudice to the generality of clauses 2.1 to 2.4 inclusive, 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 law, trade custom, practice or course of dealing.

2.6 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 Supplier that is inconsistent with these Conditions.

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

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 of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer, expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgement;
- 3.1.3 where they are manufactured products, be free from defects in design, materials and workmanship; and
- 3.1.4 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.

3.3 The Customer may inspect and test the Goods at any time before or after 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 affect the Supplier's obligations under the Contract.

3.4 If following such inspection or testing the Customer considers that the Goods do not comply or are unlikely to comply with the Supplier's undertakings in the Contract, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

3.5 The Customer 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, labelled and secured in such manner as to enable them to reach their destination in good condition;
- 4.1.2 each delivery of the Goods is accompanied by a delivery note which shows the date of the Purchase Order, the Purchase Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- 4.1.3 if the Supplier requires the Customer to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

4.2 The Supplier shall deliver the Goods:

- 4.2.1 on the Delivery Date;
- 4.2.2 at the Delivery Location; and
- 4.2.3 during Business Hours or as instructed by the Customer.

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

4.4 The Supplier shall not deliver the Goods in instalments without the Customer's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Customer to the remedies set out in clause 6.1.

4.5 Title and risk in the Goods shall pass to the Customer on completion of delivery.

5. SUPPLY OF SERVICES

5.1 The Supplier shall from the Commencement Date or the date otherwise set out in the Purchase Order and for the duration of the Contract supply the Services to the Customer in accordance with the terms of the Contract.

5.2 The Supplier shall meet any performance dates for the Services specified in the Purchase Order or that the Customer 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 Customer in all matters relating to the Services, and comply with all instructions of the Customer;
- 5.3.2 perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- 5.3.3 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;
- 5.3.4 ensure that the Services will conform with all descriptions, standards and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose that the Customer expressly or impliedly makes known to the Supplier;
- 5.3.5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- 5.3.6 use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Customer, will be free from defects in workmanship, installation and design;
- 5.3.7 obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
- 5.3.8 observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises;
- 5.3.9 hold all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier (the "**Customer Materials**") in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not dispose of or use the Customer Materials other than in accordance with the Customer's written instructions or authorisation;
- 5.3.10 not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission upon which it relies for the purposes of

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conducting its business, and the Supplier acknowledges that the Customer may rely or act on the Services; and

5.3.11 comply with any additional obligations as set out in the Service Specification.

6. CUSTOMER REMEDIES

6.1 If the Supplier fails to deliver the Goods by the applicable date or to perform the Services by the applicable date, the Customer shall, without limiting or affecting other rights or remedies available to it, have any 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 or delivery of the Goods which the Supplier attempts to make;
- 6.1.3 to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods 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 or Goods that it has not delivered; and
- 6.1.5 to claim damages for any additional costs, loss or expenses incurred by the Customer 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 the Contract, then, without limiting or affecting other rights or remedies available to it, the Customer shall have one or more of the following rights and remedies, whether or not it has accepted the Goods:

- 6.2.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
- 6.2.2 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;
- 6.2.3 to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods;
- 6.2.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- 6.2.5 to recover from the Supplier any expenditure incurred by the Customer in obtaining substitute goods from a third party; and
- 6.2.6 to claim damages for any additional costs, loss or expenses incurred by the Customer arising from the Supplier's failure to supply Goods in accordance with the Contract.

6.3 If the Supplier has supplied Services that do not comply with the requirements of the Contract then, without limiting or affecting other rights or remedies available to it, the Customer shall have one or more of the following rights and remedies:

- 6.3.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
- 6.3.2 to return the Deliverables to the Supplier at the Supplier's own risk and expense;
- 6.3.3 to require the Supplier to provide repeat performance of the Services, or to provide a full refund of the price paid for the Services;
- 6.3.4 to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
- 6.3.5 to recover from the Supplier any expenditure incurred by the Customer in obtaining substitute services or deliverables from a third party; and
- 6.3.6 to claim damages for any additional costs, loss or expenses incurred by the Customer arising from the Supplier's failure to comply with the Contract.

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

6.5 The Customer'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. CUSTOMER'S OBLIGATIONS AND RESTRICTIONS

7.1 The Customer shall:

- 7.1.1 provide the Supplier with reasonable access at reasonable times to the Customer's premises for the purpose of providing the Services; and
- 7.1.2 provide such necessary information for the provision of the Services as the Supplier may reasonably request.

7.2 For a period of 12 consecutive months following the conclusion or expiry of the Contract (or where applicable the Framework Agreement), the Supplier shall not:

- 7.2.1 solicit business from any client of the Customer in respect of whom the Supplier has performed Services;
- 7.2.2 engage in competition with the Customer regarding the provision of services similar in kind and nature to the Services performed by the Supplier for the Customer; and
- 7.2.3 directly or indirectly employ or engage any personnel of the Customer.

7.3 The Supplier acknowledges that the provisions of clause 7.2 are essential for safeguarding the Customer's legitimate business interest, including but not limited to confidential business or professional information, trade secrets, customer relationships, vendor relationships, sub-contractor relationships, and goodwill. Accordingly, the Supplier accepts that the 12 month duration is reasonable and appropriate.

8. CHARGES AND PAYMENT

8.1 No variation in Price will apply unless agreed in writing by the Customer prior to delivery of Goods or completion of Services.

8.2 The price for the Goods:

- 8.2.1 shall be the price set out in the Purchase Order (or, if applicable and where no alternative price is set out in the Purchase Order, the price set out in the Framework Agreement for such Goods);
- 8.2.2 excludes amounts in respect of value added tax ("VAT"), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and
- 8.2.3 shall be inclusive of the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by the Customer.

8.3 No extra charges shall be effective unless agreed in writing with the Customer.

8.4 The charges for the Services shall be set out in the Purchase Order (or, if applicable and where no alternative price is set out in the Purchase Order, the price set out in the

Framework Agreement for such Services) 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 Customer, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

8.5 Where the price (or part thereof) is based on time and materials, 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 Customer to inspect such records at all reasonable times on request.

8.6 In respect of the Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Customer on completion of the Services. Each invoice shall include the date of the Purchaser Order, the invoice number, the Customer's Purchase Order number, the Supplier's VAT registration number and any supporting information required by the Customer to verify the accuracy of the invoice.

8.7 In consideration of the supply of Goods and/or Services by the Supplier, the Customer shall pay the invoiced amounts within 60 days of the date of a correctly rendered and undisputed invoice via BACS and a remittance advice shall be provided to inform the Supplier that payment has been made.

8.8 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of VAT from time to time. Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer 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 or Services or both, as applicable, at the same time as payment is due for the supply of the Goods or Services.

8.9 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 4% a year above the Bank of England's base rate from time to time, but at 4% 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 the date 5 Business Days after the dispute is resolved until payment.

8.10 The Customer may at any time, without notice to the Supplier, set off any liability of the Supplier to the Customer against any liability of the Customer 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 Customer may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Customer 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 The Supplier shall, during the Contract, disclose full details in writing to the Customer of the conception, origination, making or development of any Intellectual Property by the Supplier in carrying out the Contract.

9.2 The Customer shall be the sole legal and beneficial owner of all Intellectual Property Rights in or arising out of or in connection with the Services.

9.3 To the extent such Intellectual Property Right is not automatically vested in the Customer, the Supplier hereby assign such Intellectual Property to the Customer. The Supplier shall execute all such further documents as the Customer may require formally to confirm the assignment of such Intellectual Property Right to the Customer pursuant to this Contract.

9.4 The Supplier hereby waive all their moral rights in any works created or developed pursuant to the Contract.

9.5 The Supplier warrant and represent that they are free of any duties or obligations to third parties which might conflict with the terms of this Contract and that the Customer use or reproduction of any Deliverables (including the media upon which they are recorded) and all Intellectual Property Rights therein created by the Supplier or their employees in performance of the Contract shall vest in the Customer and that the Supplier will not do anything to damage or endanger any Intellectual Property Rights or Deliverables created pursuant to the Contract.

9.6 The Supplier acknowledges that all rights in the Customer Materials are and shall remain the exclusive property of the Customer.

10. INDEMNITY

10.1 The Supplier shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including 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 Customer arising out of or in connection with:

- 10.1.1 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 manufacture, supply or use of the Goods, or receipt, use or supply of the Services;
- 10.1.2 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 the Goods, as delivered, or the Services;
- 10.1.3 any claim made against the Customer by a third party arising out of or in connection with the supply of the Goods, as delivered, or the Services;
- 10.1.4 loss of or damage to any property owned, hired or used by the Supplier (including without limitation by any of its subcontractors, agents or employees), including without limitation any plant, vehicles, equipment, tools, temporary buildings, site huts or similar, whether such loss or damage is total or partial;
- 10.1.5 any act or omission of the Supplier (including without limitation acts or omissions of any of its subcontractors, agents or employees) arising out of or relating to the Contract, the Goods and/or the Services; and
- 10.1.6 any breach of a warranty or representation made or provided by or on behalf of the Supplier, whether set out in this Contract or otherwise.

10.2 This clause 10 shall survive termination of the Contract.

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11. INSURANCE

- 11.1 During the term of the Contract and for a period of six years afterwards, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance, employers liability insurance and public liability insurance to cover the whatsoever and howsoever liabilities that may arise under or in connection with the Contract, and shall produce to the Customer on demand both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.
- 11.2 The Customer will not be liable under any legal theory (including without limitation breach of contract, tory, negligence or otherwise) for any loss of contracts, loss of opportunity, loss of or damage to reputation, losses under third party contracts, loss of anticipated savings or increase in costs, loss of profits, in each case whether director or indirect or any indirect loss or consequential loss whatsoever and howsoever arising from the Contract.

12. COMPLIANCE WITH RELEVANT LAWS AND POLICIES

- 12.1 In performing its obligations under the Contract, the Supplier shall:
- 12.1.1 comply with all applicable laws, statutes, regulations and codes from time to time in force; and
- 12.1.2 comply with the Customer's policies and procedures notified to the Supplier from time to time.
- 12.2 The Supplier shall not engage in any activities which may give rise to a conflict of interest between the Customer and the Supplier or otherwise infringe any applicable bribery and corruption legislation, including without limitation the Bribery Act 2010 or the Criminal Finances Act 2017. Without prejudice to the generality of the foregoing, the Supplier must not:
- 12.2.1 offer or receive any payments or kickbacks to or from any employee, worker, agent or partner of the Customer;
- 12.2.2 provide or accept or unjustly influence rebates; and
- 12.2.3 accept referral fees from entities associated with any Purchase Order, including without limitation referral fees from employees of the Customer.
- 12.3 In performing its obligations under the Contract, the Supplier:
- 12.3.1 Shall comply with any applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force, including but not limited to the Modern Slavery Act 2015 (MSA);
- 12.3.2 Shall not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 4 of the MSA if it were carried out in the UK;
- 12.3.3 Hereby warrants as at the Commencement Date and throughout the duration of the Contract that neither the Supplier nor any of its officers, employees or other persons associated with it:
- 12.3.3.1 Has been convicted of any offence involving or relating to slavery or human trafficking; and
- 12.3.3.2 Has been or is the subject of (to the best of its knowledge) any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence involving or relating to slavery or human trafficking.
- 12.4 Where any arrangement or situation which would or could infringe any part of this clause 12 comes to the attention of the Supplier, it must immediately provide full details to the Customer.

13. DATA PROTECTION

- 13.1 The following definitions apply in this clause 13:
- 13.1.1 **Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures:** as defined in the Data Protection Legislation.
- 13.1.2 **Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR, the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.
- 13.1.3 **Domestic Law:** the law of the United Kingdom or a part of the United Kingdom.
- 13.1.4 **UK GDPR:** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.
- 13.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 13 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 13.3 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor.
- 13.4 Without prejudice to the generality of clause 13.2, the Customer 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.
- 13.5 Without prejudice to the generality of clause 13.2, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under the Contract:
- 13.5.1 process that Personal Data only on the documented written instructions of the Customer unless the Supplier is required by Domestic Law to otherwise process that Personal Data. Where the Supplier is relying on Domestic Law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits the Supplier from so notifying the Customer;
- 13.5.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, 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, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting

Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- 13.5.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- 13.5.4 not transfer any Personal Data outside of the UK unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
- (a) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
- (b) the Data Subject has enforceable rights and effective legal remedies;
- (c) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- (d) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- 13.5.5 assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 13.5.6 notify the Customer without undue delay on becoming aware of a Personal Data Breach;
- 13.5.7 at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Contract unless required by Domestic Law to store the Personal Data; and
- 13.5.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 13 and allow for audits by the Customer or the Customer's designated auditor and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.
- 13.6 The Customer does not consent to the Supplier appointing any third party processor of Personal Data under the Contract.
- 13.7 Either party may, at any time on not less than 30 days' notice, revise this clause 13 by replacing it with any applicable controller to processor standard clauses or similar terms adopted under the Data Protection Legislation or forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).
- ### 14. TERMINATION
- 14.1 Without affecting any other right or remedy available to it, the Customer may terminate the Contract:
- 14.1.1 with immediate effect by giving written notice to the Supplier if:
- (a) there is a change of control of the Supplier; or
- (b) the Supplier commits a breach of clause 12.1.
- 14.1.2 for convenience by giving the Supplier 30 days' written notice.
- 14.2 Without affecting any other right or remedy available to it, the Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if:
- 14.2.1 the Customer placed the Purchase Order in error and the Customer informs the Supplier as such within seven days of the date on the Purchase Order;
- 14.2.2 the Customer require security checks to be carried out in relation to any or all of Supplier's staff and the results of all or some of the security checks are in the Customer's opinion unsatisfactory;
- 14.2.3 the Supplier commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- 14.2.4 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), obtaining a moratorium, 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;
- 14.2.5 the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 14.2.6 the Supplier's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- ### 15. CONSEQUENCES OF TERMINATION
- 15.1 On termination of the Contract, the Supplier shall immediately deliver to the Customer all Goods and Deliverables whether or not then complete, and return all Customer Materials. If the Supplier fails to do so, then the Customer may 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 the Contract.
- 15.2 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.
- 15.3 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.
- ### 16. CONFIDENTIALITY
- 16.1 Each party undertakes that it shall not at any time during the Contract and for a period of three years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 16.2.
- 16.2 Each party may disclose the other party's confidential information:
- 16.2.1 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or

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advisers to whom it discloses the other party's confidential information comply with this clause 16; and

disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

16.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

16.3 Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

17. FORCE MAJEURE

Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for four weeks, the party not affected may terminate the Contract by giving 14 days' written notice to the affected party.

18. GENERAL

18.1 **Bribery.** The Supplier will not give or offer to any of the Customers staff, employees or agents, or any third party, any gift, bribe or inducement in relation to this or any other Contract between the Customer or engage in any activity which is or is likely to be an offence under the Bribery Act 2010.

18.2 Assignment and other dealings.

18.2.1 The Customer 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.

18.2.2 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 Customer.

18.3 **Subcontracting.** The Supplier may not subcontract any or all of its rights or obligations under the Contract without the prior written consent of the Customer. If the Customer 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. The Customer may assign, transfer or sub-contract the Contract or any part of it at their discretion.

18.4 Notices.

18.4.1 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 at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by email to the addresses specified in the applicable Framework Agreement and/or Purchase Order.

18.4.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address;
- (b) if sent by next working day delivery service, at 9.00 am on the Business Day after posting; or
- (c) 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.

18.4.3 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.

18.5 **Severance.** If any 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 18.5 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.

18.6 Waiver.

18.6.1 A waiver of any right or remedy is only effective if given in writing.

18.6.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

18.7 **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.

18.8 Entire agreement.

18.8.1 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. For the avoidance of doubt, where a Framework Agreement exists, this clause 18.8.1 is without prejudice to that Framework Agreement.

18.8.2 Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in the Contract.

18.9 **Third party rights.** 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.

18.10 **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.

18.11 **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.

18.12 **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