

## Purchase Order Terms and Conditions

### 1. DEFINITIONS AND INTERPRETATION

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

**'Agreement'** means together these Conditions of Purchase and the Purchase Order, including all schedules, annexes and all documents expressly referred to in them;

**'Applicable Law'** means any applicable law, enactment, order, regulation and mandatory or generally recognised industry code of conduct under any laws relating or applicable to the provision or receipt of the Services or the performance of the terms of the Agreement;

**'Background Rights'** means any Intellectual Property Rights owned by, or licensed from a third party to, Customer or the Supplier (as applicable) that are or have been created independently of the Agreement (whether prior to the Commencement Date or otherwise);

**'Business Contact Data'** means the business contact information of personnel engaged by either party to the Agreement, specifically the name, business telephone number, business email address, business postal address and/or the job title of such personnel;

**'Business Day'** means a day other than a Saturday or a Sunday or a public holiday in England and Wales;

**'Charges'** means the Charges as set out in, and/or calculated in accordance with, the Purchase Order;

**'Commencement Date'** shall have the meaning given to it in clause 2.2;

**'Conditions of Purchase'** means the terms and conditions set out in this document as may be amended in accordance with clause 21.7;

**'Confidential Information'** means any and all know-how, documentation and information, whether commercial, financial, technical, operational or otherwise, relating to the business, affairs, customers, suppliers, employees, affiliates, products and/or methods of either party and disclosed to or otherwise obtained by the other party in connection with the Agreement;

**'Control'** means (a) ownership or control (whether direct or indirect) of more than 50% of its fully diluted voting share capital; and/or (b) the ability (whether direct or indirect) to direct or cause the direction of its affairs, whether by means of holding shares, possessing voting power, exercising contractual powers or otherwise. The terms **"Controls"** or **"Controlled"** shall be construed accordingly;

**'Customer'** means the customer entity set out in the Purchase Order;

**'Customer Policies'** means the policies which apply to entities which supply any goods or services to the Customer, as may be provided to the Supplier by the Customer from time to time;

**'Data Protection Laws'** means the Data Protection Act 2018, UK GDPR, GDPR and any relevant law implemented as a result of GDPR, E Privacy Law, and any other legislation in any applicable jurisdiction concerning the protection and/or processing of personal data, the right to privacy, information security, and the obligation to provide data breach notifications, and including all subordinate legislation, regulations, guidance and codes of practice;

**'Deliverable'** means all deliverables and outputs from the Services which are to be prepared, developed and/or provided by Supplier under the Agreement, including any reports, plans, products, materials, hardware, goods and other deliverables and any items or deliverables identified as a Deliverable in the Purchase Order;

**'Delivery Address'** means the delivery address stated on the Purchase Order;

**'E Privacy Law'** means Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector, as amended by Directive 2009/136/EC and any relevant law implementing or superseding Directive 2002/58/EC including the Privacy and Electronic Communication (EC Directive) Regulations 2003 and any superseding law;

**'Force Majeure Event'** means any event outside the reasonable control of a party affecting its ability to perform any of its obligations under the Agreement which did not arise as a result of that party's negligence, including acts of God, fire, flood, lightning, war, revolution, act of terrorism, pandemics and epidemics riot or civil commotion, but excluding: (a) strikes, lock-outs or other industrial action of the affected party's own employees or the employees of a company in the same group as that party; (b) failure of supplies of power, fuel, transport, equipment, raw materials or other goods or services or sub-contractors (except where such failures arises due to force majeure events); and (c) adverse weather conditions;

**'GDPR'** means Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data;

**'Good Industry Practice'** means the exercise of skill, diligence, prudence and foresight that would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking as the Supplier, seeking in good faith to comply with its contractual obligations and complying with all Applicable Law relating to the provision of the Services and/or Goods;

**'Goods'** means the goods to be provided by the Supplier to the Customer (if any) as stated on the Purchase Order;

**'Insolvency Event'** means in relation to a party any of the following events: (a) a meeting of creditors of that party being held or an arrangement or composition with or for the benefit of its creditors (including a voluntary arrangement as defined in the Insolvency Act 1986) being proposed by or in relation to that party; (b) a charge holder, receiver, administrative receiver or other similar person taking possession of or being appointed over or any distress, execution or other process being levied or enforced (and not being discharged within seven (7) days) on the whole or a material part of the assets of that party; (c) that party ceasing to carry on business or being deemed to be unable to pay its debts within the meaning of section 123 Insolvency Act 1986 (except that, for the purposes of the Agreement, the reference to £750 in section 123(1) of that Act shall be construed as a reference to £10,000); (d) that party or its directors or the holder of a qualifying floating charge or any of its creditors giving notice of their intention to appoint, appointing or making an application;

**'Intellectual Property Infringement'** means the receipt and/or use in accordance with the Agreement, of part or all of the Goods, Deliverables or the Services (including any constituent part) infringes the Intellectual Property Rights of a third party;

**'Intellectual Property Rights'** means all patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use and protect the confidentiality of, confidential information (including know-how and trade secrets and all other intellectual property rights), in each case whether registered or unregistered and including all applications and rights to apply for and be granted renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

**'Losses'** means losses, liabilities (including any liability to taxation), costs (on a full indemnity basis) including legal and other professional costs and costs of enforcement, damages and expenses;

**'Order Number'** means the number as stated on the Purchase Order;

**'Purchase Order'** means the order between the parties and to which these Conditions of Purchase are incorporated;

**'Services'** means all services provided by the Supplier as may be further described in the Purchase Order;

**'Supplier'** means the person, firm or company identified as the supplier on the Purchase Order;

**'Supplier's Personnel'** means all individuals employed or wholly or partly engaged by the Supplier or any other person in the provision of the Goods and/or Services or the performance of the Supplier's obligations under the Agreement from time to time;

**'Term'** means the term (if any) as stated on the Purchase Order;

**'TUPE'** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 or similar regulations, laws and/or rules in any part of the world affecting this Agreement and/or the Services (as amended from time to time);

**'UK GDPR'** means the GDPR as it forms part of domestic law in the United Kingdom by virtue of section 3 of the European Union (Withdrawal) Act 2018 (including as further amended or modified by the laws of the United Kingdom or a part of the United Kingdom from time to time);

- 1.2 The headings in these Conditions of Purchase are for convenience only and shall not affect their construction.
- 1.3 Words denoting the singular include the plural and vice versa, words denoting any one gender include all genders and vice versa, and references to persons include individuals, partnerships, bodies corporate and unincorporated associations.
- 1.4 The words and phrases "other", "including" and "in particular" in the Agreement shall not limit the generality of any preceding words or be construed as being limited to the same class as the preceding words where a wider construction is possible.
- 1.5 In the event of any inconsistency between a provision of the Agreement, unless otherwise expressly stated they shall prevail in the following order:
  - 1.5.1 the Purchase Order;
  - 1.5.2 these Conditions of Purchase.
- 1.6 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.

- 1.7 Notwithstanding anything to the contrary, if a written contract signed by both parties is in existence covering the sale of Goods or Services covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Conditions of Purchase.

## 2. **AGREEMENT TO PURCHASE**

- 2.1 The Purchase Order constitutes an offer by the Customer to purchase the Goods and/or the Services subject to the Conditions of Purchase.
- 2.2 The Purchase Order shall be deemed to be accepted on the earlier of:
- 2.2.1 the Supplier issuing written acceptance of the Purchase Order; and
  - 2.2.2 any act by the Supplier consistent with fulfilling the Purchase Order; at which point and on which date the Agreement shall come into existence (the "**Commencement Date**").
- 2.3 These Conditions of Purchase shall prevail to the exclusion of any other terms and conditions that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. Subject to clause 1.7, 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 of Purchase.
- 2.4 This Agreement shall continue in full force and effect unless and until terminated in accordance with clause 9.

## 3. **SUPPLIER'S OBLIGATIONS**

- 3.1 The Supplier warrants, represents and undertakes during the Term that it shall:
- 3.1.1 provide the Goods and/or Services to Customer as set out in the Purchase Order;
  - 3.1.2 not use, attempt to use, or interfere with any communications systems, information technology systems or data used by the Customer, unless authorised to do so under the Agreement;
  - 3.1.3 co-operate with the Customer in any security arrangements which the Customer considers necessary to prevent the Supplier, or any unauthorised third party, accessing a system or data in a manner prohibited by clause 3.1.2;
  - 3.1.4 perform the Services and/or provide the Goods in accordance with all descriptions, specifications and requirements in the Agreement and as otherwise mutually agreed;
  - 3.1.5 perform its obligations under the Agreement in a timely and professional manner, in accordance with Good Industry Practice and in line with any performance dates or such other dates agreed between the parties in writing;
  - 3.1.6 act in good faith towards the Customer in connection with the provision of Goods and/or Services;
  - 3.1.7 ensure that Supplier's Personnel keep full and accurate records relating to the provision of the Services;
  - 3.1.8 take reasonable steps to (and ensure that Supplier's Personnel) preserve the reputation and good name of the Customer when carrying out its obligations under the Agreement and shall not intentionally or recklessly do anything which would or may diminish the reputation or good name of the Customer;
  - 3.1.9 comply and procure the compliance by all Supplier Personnel at all times with Customer Policies as updated and notified to Supplier from time to time;
  - 3.1.10 comply with all Applicable Law (including, all such laws, regulations, guidance and codes relating to health and safety requirements and any policy of the Customer's in this regard); and
  - 3.1.11 it has obtained and will maintain all necessary permissions, consents, approvals, certificates, permits, licences, statutory agreements, authorisations required by Applicable Law and all necessary consents and agreements from any third parties needed to carry out the Services and/or provide the Goods in accordance with this Agreement.

## 4. **GOODS AND SERVICES**

- 4.1 In providing the Goods, the Supplier will ensure that:
- 4.1.1 the Goods are of satisfactory quality within the meaning of the Sale of Goods Act 1979 and are fit for any purpose held out by the Supplier or made known to the Supplier expressly or by implication;
  - 4.1.2 the Goods will be free from defects in design, materials and workmanship;
  - 4.1.3 the Goods shall comply with all Applicable Law;

- 4.1.4 the Goods are, wherever applicable, formulated, designed, constructed, finished and packaged as to be safe and without risk to health; and
  - 4.1.5 it has full, clear and unencumbered title to all Goods and that on delivery to the Customer it will have full and unrestricted rights to sell and transfer all such items to the Customer.
- 4.2 In providing the Goods and/or Services, the Supplier shall:
- 4.2.1 immediately notify the Customer of any complaint by any third party (including customers or regulators) which relates to the Goods or Services;
  - 4.2.2 obtain, maintain and comply with all necessary authorisations, registrations, certifications, clearances, licences, permits and consents required for the supply of Goods and/or performance of the Services.
- 4.3 The Customer may reject any Goods and/or Services that do not conform with this Agreement and require Supplier to repair or replace the rejected Goods and/or Services promptly at Supplier's risk and expense.

## 5. **PRICE AND PAYMENT**

- 5.1 The Charges for the Goods and/or the Services shall be as stated in the Purchase Order and, unless otherwise so stated, shall be exclusive of value added tax (which shall be payable by the Customer subject to receipt by the Customer of a value added tax invoice).
- 5.2 The Charges are inclusive of all costs and expenses incurred by the Supplier, including for packaging, packing, carriage, insurance, delivery of the Goods to the Delivery Address, any other duties or imposts other than value added tax and travel, accommodation and subsistence expenses.
- 5.3 The Charges shall not be varied without the written consent of the Customer.
- 5.4 The Charges shall be paid by the Customer within thirty (30) days following the Customer's receipt of the invoice, unless otherwise stated in the Purchase Order.
- 5.5 Payment is conditional upon the Supplier ensuring all invoices:
- 5.5.1 include the full and valid Order Number provided to it by the Customer;
  - 5.5.2 are made out to the Customer's registered address (or such other address that is notified by the Customer to the Supplier from time to time);
  - 5.5.3 are sent electronically for payment to [invoices.dl@davidlloyd.co.uk](mailto:invoices.dl@davidlloyd.co.uk) (or such other address that is notified by the Customer to the Supplier from time to time);
- 5.6 If any undisputed sums payable by the Customer remain outstanding after the due date for payment (and where disputed sums become payable), the Supplier may if it wishes to do so charge interest on all unpaid undisputed amounts from the due date until payment of the overdue sum, at a rate of 4% per annum above the base rate for the time being applied by the Bank of England.
- 5.7 The Supplier shall submit all invoices relating to the Goods and/or Services under the Agreement within six (6) months of the date of delivery or completion of the relevant Services. If the Supplier fails to issue an invoice within this period, the Customer shall not be liable to make any payment in respect of such Goods and/or Services, and the Supplier shall be deemed to have waived its right to payment.

## 6. **INSPECTION AND TESTING**

- 6.1 The Supplier shall permit the Customer or the Customer's authorised representative to inspect and test the Goods at any time during manufacture, processing or storage and to inspect and test performance of the Services at the premises of the Supplier or any third party and the Supplier shall provide or procure the provision of all such facilities and accommodation, as may reasonably be required by the Customer for inspection and testing. The Supplier shall at the request of the Customer, supply to the Customer a copy of the Supplier's test sheets certified by the Supplier to be a true copy.
- 6.2 If, as a result of such inspection or testing, the Customer is of the opinion that the Goods do not comply with the Agreement or are unlikely on completion of manufacture or processing so to comply, upon the Customer so informing the Supplier, the Supplier shall immediately take such steps as may be necessary to enable the Supplier to comply with the Agreement.

6.3 For the avoidance of doubt such inspection or right to inspect on the part of the Customer shall not constitute acceptance or approval by the Customer of the Goods or Services.

## 7. DELIVERY

7.1 The Goods shall be delivered and the Services shall be performed on the date or within the time period stated in the Purchase Order at the Delivery Address or as may be directed by the Customer. Where the date and time of delivery of the Goods or of performance of the Services is not specified in the Purchase Order, the Supplier shall give the Customer reasonable notice of the date and time thereof and shall not perform their duties under the Purchase Order until the Customer has confirmed that the date of performance is acceptable.

7.2 The Supplier shall give the Customer in good time any instruction or information required to enable the Customer to take delivery of the Goods and performance of the Services.

7.3 Delivery of the Goods will occur when they are off-loaded at the Delivery Address. The Supplier will, unless otherwise specified in the Purchase Order, be responsible for off-loading Goods from the delivery vehicle at the Delivery Address.

7.4 The Customer shall be entitled to reject any Goods delivered which are not in accordance with the Agreement and shall not be deemed to have accepted any Goods until the Customer has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent. In the event of any failure on the part of the Supplier to supply Goods or Services of the quality, in the quantity and to the time specified, the Customer shall be entitled to:

7.4.1 reject, and to require the Supplier to replace, at the Supplier's cost, any such Goods; or

7.4.2 reject and obtain equivalent Goods or Services from an alternative source and the Supplier undertakes to reimburse the Customer for any reasonable additional costs incurred in so doing.

7.5 Time of delivery of the Goods and of performance of the Services shall be of the essence of the Agreement.

7.6 Any extension of time for delivery or performance must be agreed in advance between the Customer and the Supplier in writing. If time is so extended, time as extended shall be of the essence of the Agreement.

7.7 Supplier may not deliver Goods or perform the Services under a Purchase Order in instalments, unless the Purchase Order specifies that instalments are permitted or the Customer gives its prior written consent. If the Goods are to be delivered or the Services are to be performed by instalments, the Agreement will be treated as a single contract and not severable.

7.8 If relevant, delivery of the Services shall occur when the Services are accepted in writing by an authorised officer, employee, or representative of the Customer.

7.9 The Order Number must be quoted on all correspondence relating to the Purchase Order. A delivery or advice note must accompany all Goods dispatched to the Delivery Address. All Goods must be delivered to the Customer's personnel and not left unattended at the Delivery Address. A signed delivery note is required for each delivery, however, such signature shall not constitute acceptance of the goods, which remain subject to inspection and verification by the Customer.

## 8. TITLE AND RISK

8.1 Title in the Goods shall pass to the Customer upon delivery unless payment is made prior to delivery in which case it shall pass to the Customer once payment has been made and the Goods have been appropriated to the Agreement.

8.2 Risk of damage to or loss of the Goods supplied shall pass to the Customer upon delivery in accordance with the Agreement.

8.3 The Supplier shall insure the Goods to their full value against all risks of damage or loss prior to completion of delivery by whomsoever effected.

## 9. LIABILITY

9.1 Nothing in the Agreement shall be construed to limit or exclude either party's liability for:

9.1.1 death or personal injury caused by its negligence;

9.1.2 fraud or fraudulent misrepresentation;

9.1.3 any other matter which, by law, may not be excluded or limited; or

9.1.4 the indemnity contained at clause 9.2.

- 9.2 The Supplier shall indemnify and hold harmless the Customer in full against all Losses incurred by the Customer arising out of or in connection with:
- 9.2.1 any breach of any warranty given by the Supplier in relation to the Goods or Services;
  - 9.2.2 any allegation or claim of Intellectual Property Infringement;
  - 9.2.3 any liability, deduction, contribution, assessment or claim for income tax, employee National Insurance contributions, social security contributions or other taxation obligations where arising in connection with the Charges or any other payments made to the Supplier for the performance of its obligations under the Agreement;
  - 9.2.4 any breach of clause 15 (Confidentiality);
  - 9.2.5 any breach of clause 18 (Data Protection);
  - 9.2.6 any claim by a third party for death, personal injury or damage to property arising out of or in connection with defective Goods, to the extent that the defect is attributable to the acts or omissions of the Supplier;
  - 9.2.7 any claim by a third party arising out of or in connection with the supply of Goods or the Services, to the extent that the claim arises out of the breach, negligent performance or failure or delay in performance of the Agreement by the Supplier; and
  - 9.2.8 any loss or damage to Customer property, or property of Supplier's Personnel, the Delivery Address, arising out of the performance of the Services or from any act or omission of the Supplier or of Supplier Personnel.

## 10. **FORCE MAJEURE**

- 10.1 If either party is prevented, hindered or delayed from or in performing any of its obligations under this Agreement by reason of a Force Majeure Event, it shall within 2 days of becoming aware of the impact of the Force Majeure Event give written notice to the other party declaring the extent of the Force Majeure Event, the date of its commencement and the effects of the Force Majeure Event on its ability to perform its obligations under this Agreement and if mutually agreed by the parties then the obligations of the party so affected shall thereupon be suspended for so long as the circumstances may continue.
- 10.2 A party affected by a Force Majeure Event is to use every reasonable effort to minimise the effects thereof and shall resume performance as soon as possible after the removal of such Force Majeure Event. If the period of non-performance exceeds fourteen (14) days from the receipt of the notice of the Force Majeure Event, the party whose performance has not been so affected may, by giving written notice, terminate the Agreement.

## 11. **TERMINATION & BREACH**

- 11.1 Either party may immediately terminate the Agreement at any time on giving written notice to the other party if the other party:
- 11.1.1 commits a material breach of the Agreement not capable of being remedied;
  - 11.1.2 commits a material breach of the Agreement which is capable of being remedied but has failed to remedy such breach within 30 (thirty) days after having received written notice from the innocent party requiring the same;
  - 11.1.3 is subject to an Insolvency Event.
- 11.2 The Customer may additionally terminate the Agreement (in whole or in part) at any time by written notice to the Supplier, without liability, if there is a change of Control of the Supplier.
- 11.3 Clause 11.1 will not apply to any failure of the Customer to make any payment due to a Supplier on or by the due date.
- 11.4 The Customer may additionally terminate this Agreement (in whole or in part) at any time upon providing three (3) months' written notice to the Supplier.
- 11.5 Termination of the Agreement or any of the Services (in whole or in part) shall not affect any right or liabilities which either Supplier or the Customer have accrued prior to the date of termination or the continuance in force of any provision hereof which expressly or by implication is intended to come into or continue in force after termination. All other rights and obligations will immediately cease without prejudice to any rights, obligations, claims (including claims for damages for breach) and liabilities which have accrued prior to the date of expiry or termination.

## 12. **ELECTRONIC DATA INTERCHANGE**

- 12.1 Where the parties exchange purchase orders or related documents through direct computer to computer communications (including with or without the assistance of a value-added network or other intermediary), additional terms and conditions

may apply and the Supplier agrees to comply with any such terms and conditions. A copy of these terms is available from the Customer upon request. In the event of any conflict between the terms of such third-party terms and conditions and the terms here set out, the latter shall apply.

### **13. ASSIGNMENT AND CONTRACTING**

- 13.1 The Supplier shall not assign, sub-contract or transfer or purport to assign, sub-contract or transfer any of its rights or obligations under this Agreement without the prior written consent of the Customer.
- 13.2 Any consent given by the Customer to the Supplier under clause 13.1 shall not impose any duty on the Customer to enquire as to competency of any sub-contractor and the Supplier shall ensure that any subcontractor is competent and that performance of the Agreement is properly carried out. In the event that any sub-contractor is subsequently deemed in the Customer's reasonable opinion not to be suitable on technical or commercial grounds then the Supplier shall replace that sub-contractor with an alternative sub-contractor also approved in writing by the Customer.
- 13.3 No sub-contracting shall relieve the Supplier from any of its obligations and liabilities under the Agreement. The Supplier shall be responsible for the acts, defaults and neglects of its sub-contractors, employees and agents as fully as if they were the acts, defaults and neglects of the Supplier.
- 13.4 The Customer shall have the right to assign, novate or otherwise dispose of any or all of its rights or obligations under this Agreement in whole or in part provided that such assignment, novation or disposal shall not increase the burden of the Supplier's obligations under the Agreement.

### **14. INSURANCE**

- 14.1 At all times during the term of this Agreement, the Supplier shall take out and maintain adequate insurance policies to the value sufficient to meet its liabilities under or in connection with this Agreement, including the required insurances as set out in the Purchase Order, provided that each such insurance policy shall have a limit of no less than £5,000,000 (or such other sum as is set out in the Purchase Order). Upon the Customer's reasonable request, the Supplier will provide the Customer with evidence that such insurance is in place.

### **15. CONFIDENTIALITY**

- 15.1 Each party shall at all times: (i) keep the Confidential Information of the other party confidential, safe and secure using the highest degree of care; (ii) only use the other party's Confidential Information for the purpose of performing its obligation and exercising its right under the Agreement.
- 15.2 Unless it has the prior written agreement of the other party, neither party shall:
- 15.2.1 disclose or make available the Confidential Information to any person, company or other entity, except as provided in clause 15.3 of these Conditions of Purchase;
  - 15.2.2 copy, reduce to writing or otherwise record the Confidential Information, except as strictly necessary for the performance of the Agreement; or
  - 15.2.3 use or exploit the Confidential Information in any way except as strictly necessary in the performance of the Agreement.
- 15.3 Nothing in the Agreement shall prevent a party from disclosing Confidential Information:
- 15.3.1 to those of its officers and employees reasonably required to have the same in order for that party to perform its obligations under the Agreement provided that it shall procure that such officers and employees comply with the provisions of this clause;
  - 15.3.2 to its professional advisors who require access to the Confidential Information; and
  - 15.3.3 as is required to be disclosed by that party by an order of any court of competent jurisdiction or in connection with any proceedings of any such court or otherwise by force of law or regulation having the force of law or the rules of any regulatory authority.
- 15.4 Each party shall on demand and on any termination surrender to the other party all documents, notes and memoranda relating to Confidential Information in its possession or in the possession of its employees, agents and sub-contractors save to the extent that is reasonable to enable the party to retain evidence of its proper performance of the Agreement.

- 15.5 Each party shall on demand and on any termination surrender to the other party all documents, notes and memoranda relating to Confidential Information in its possession or in the possession of its employees, agents and sub-contractors save to the extent that is reasonable to enable the party to retain evidence of its proper performance of the Agreement.
- 15.6 Each party undertakes that, save as required by law or any regulatory authority, neither it nor any of its employees, agents or contractors shall make, or cause to be made (whether to the public, press, employees, customers, supplier or otherwise) any media statement, announcement, communication or other disclosure whatsoever, whether written or oral, in relation to the other party, the existence of the Agreement or any matter referred to in the Agreement without the other party's prior written approval of its contents.
16. **SUPPLIER CONDUCT**
- 16.1 The Supplier acknowledges that the Customer will not tolerate any form of facilitation of tax evasion, or any form of bribery or corruption, in any of its business activities. The Supplier shall comply fully with this position as a condition of doing business with the Customer. The Supplier warrants to the Customer that throughout the term of the Agreement, the Supplier:
- 16.1.1 shall not engage in any activity, practice or conduct which may constitute a breach of any laws prohibiting the facilitation of tax evasion ("**Applicable CFA Laws**"), or anti-bribery and corruption laws ("**Applicable ABC Laws**"), applicable to the Supplier or the Customer in performing the Agreement;
- 16.1.2 shall not use any payments received from the Customer in order to procure, directly or indirectly, an improper benefit from any public official or other person on behalf of the Customer or for any other purpose that would be in violation of any Applicable ABC Laws;
- 16.1.3 shall establish, maintain and enforce appropriate policies, procedures and training to prevent acts of bribery and corruption by its directors and employees;
- 16.1.4 shall establish, maintain and enforce policies, procedures and training that are reasonable to prevent the facilitation of tax evasion by any person associated with the Supplier (including without limitation employees of the Supplier) and to comply with Applicable CFA Laws; and
- 16.1.5 shall ensure that any person associated with the Supplier including each of its directors, employees, representatives, sub-contractors or any other person acting for or on behalf of the Supplier review and comply with the standards of conduct set out in the Agreement.
- 16.2 The Supplier shall comply with all Applicable Law relating to anti-slavery and human trafficking including but not limited to the Modern Slavery Act 2015.
- 16.3 Breach of this clause 16 shall be deemed a material breach of the Agreement which is not capable of remedy.
17. **AUDITS AND RECORD KEEPING**
- 17.1 The Supplier will maintain an audit trail and maintain complete, accurate and legible records and supporting documentation of all information ("**Records**") relating to the provision of Goods and/or supply of Services during the Term and for a period of 6 (six) years following the date of the relevant transaction, including (without limitation) information required to demonstrate compliance with Applicable Law and the obligations under the Agreement, and recording showing all payments and advantages given and received and steps taken to comply with clause 16.
- 17.2 Customer and its internal and external auditors, inspectors, regulators, any authority and other such representatives as the Customer may designate from time to time ("**Audit Representatives**") will have the right to perform audits and inspections of the Records of the Supplier and its sub-contractors for a period of up to 6 (six) years post termination of the Agreement. The Supplier shall, co-operate fully with the Customer in relation to any audit and assist the Customer and the Audit Representatives in the conduct of the audit including providing access to all Records, Supplier Personnel, any Supplier premises where Services are being provided and other information required by the Customer as necessary.
- 17.3 Each party shall bear its own costs and expenses incurred in respect of compliance with its obligations under this clause, unless an audit identifies a material breach by the Supplier or an overpayment of the Charges, in which case the Supplier shall reimburse the Customer (or the relevant Audit Representative) for all its reasonable, demonstrable costs incurred in the course of the audit.

## 18. DATA PROTECTION

- 18.1 The expressions "personal data", "controller", "processor" and "process" bear the meaning given to that expression in GDPR or UK GDPR (as applicable).
- 18.2 The parties acknowledge and agree that for the purposes of the Agreement:
- 18.2.1 each party shall comply with its obligations under Data Protection Laws and the Supplier shall provide the Goods and/or perform the Services in accordance with Data Protection Laws;
- 18.2.2 any personal data processed by that party shall be in accordance with Data Protection Laws and each party is responsible for its own compliance with its data protection obligations under Data Protection Laws with regard to its processing of personal data; and
- 18.2.3 if a party (the "**Disclosing Party**") discloses Business Contact Data to the other party (the "**Recipient Party**"), the Disclosing Party shall ensure that such disclosure is lawful.
- 18.3 The Recipient Party shall only process the Disclosing Party's Business Contact Data to the extent necessary to perform its obligations under the Agreement or as is otherwise necessary to comply with a legal obligation.
- 18.4 Where personal data beyond Business Contact Data is being processed by the Supplier, each party shall agree to negotiate in good faith to vary this Agreement as soon as reasonably practicable to (i) reflect the personal data being transmitted between the parties; and (ii) ensure that the transmission and processing of such personal data complies with all applicable requirements under Data Protection Laws.

## 19. INTELLECTUAL PROPERTY RIGHTS

- 19.1 All Background Rights shall remain vested in and remain the property of that party or its third-party licensors as appropriate.
- 19.2 The Supplier hereby grants to the Customer a worldwide, perpetual, irrevocable, non-exclusive, assignable, royalty-free licence and all necessary permissions and/or consents required (with full right to sub-licence) to use, reproduce, exploit, modify and alter the Supplier's Background Rights solely to enable the Customer to benefit from the Services and/or use the Goods in connection with the Customer's business.
- 19.3 The Customer hereby grants to the Supplier during the Term a revocable, non-exclusive, non-assignable, royalty-free licence and all necessary permissions and/or consents required to use the Customer's Background Rights in accordance with the Customer's instructions, to enable the Supplier to supply the Services and/or Goods.
- 19.4 Subject to clause 19.2 and 19.7, any Deliverables (including any Intellectual Property Rights in such Deliverables) produced for, on behalf of, or at the request of the Customer pursuant to the Agreement shall, on creation, immediately vest in the Customer and the Supplier hereby assigns or agrees to procure the assignment of all those Intellectual Property Rights in the Deliverables to the Customer with full title guarantee and free of any encumbrances and in the case of copyright, by way of a present assignment of future copyright, together with the right to sue for past infringement of the Intellectual Property Rights. The Supplier shall execute all documents and take all steps as the Customer may reasonably require giving the Customer the full benefit of the Agreement.
- 19.5 The Supplier waives irrevocably all moral rights (including all rights of a similar nature or effect anywhere in the world) in or relating to all Deliverables and will procure that such rights are waived by any third party (including any moral rights of any employee), so that the Customer may use all Deliverables in whatsoever way the Customer determines.
- 19.6 The Supplier undertakes not to register or attempt to register any Intellectual Property Rights in the Deliverables, unless requested to do so by the Customer.
- 19.7 To the extent that any Deliverable or any of the Services include or have been created or delivered using any elements in which:
- 19.7.1 the Intellectual Property Rights are owned by a third party;
- 19.7.2 those elements are not exclusive to the Customer and/or any part of the Services; and/or
- 19.7.3 the third party will not assign those Intellectual Property Rights to the Customer or the Supplier;
- 19.7.4 the Supplier shall notify the Customer in writing prior to creation of the applicable Deliverable, and unless otherwise agreed with the Customer, the Supplier hereby licenses or shall procure that the relevant third party licenses, without charge, a world-wide, perpetual, irrevocable, non-exclusive, assignable, royalty-free licence and all necessary permissions and/or consents required (with full right to sublicense) to use, reproduce, exploit, modify and alter those

third party Intellectual Property Rights to enable the Customer to benefit from the Services and/or use the Deliverables in connection with the Customer's business.

- 19.8 The Supplier warrants and undertakes that in its fulfilment of the Agreement, any Deliverables supplied and Services performed pursuant to the Agreement, and the use or possession of the Deliverables and Services do not and shall not infringe any Intellectual Property Right of any third party.
- 19.9 Without prejudice to any right of the Customer, if at any time an Intellectual Property Infringement is made, or if, in the Customer's reasonable opinion, such an allegation is likely to be made, in respect of the Services and/or Deliverables supplied by the Supplier to the Customer or the use or possession of the Services and/or Deliverables, the Supplier shall promptly and at its own expense:
- 19.9.1 procure for the Customer the right to continue using and possessing relevant Services and/or Deliverables; or
- 19.9.2 modify or replace the relevant Services and/or Deliverables in a manner acceptable to the Customer, without detracting from the Supplier's obligations under the Agreement.
- 19.9.3 Without prejudice to any other rights the Customer has under this Agreement, at the Customer's election, and where in the opinion of the Customer neither clause 19.9.1 nor 19.9.2 above are commercially viable remedies, the Customer may suspend or terminate the Agreement without liability and with immediate effect and be entitled to recover from the Supplier any Charges paid with respect to those Deliverables.

## 20. SUPPLIER'S PERSONNEL

- 20.1 The parties agree that it is their intention that TUPE will not apply on the expiry or termination of the Agreement or the termination of the provision of any of the Services. The Supplier shall take all necessary steps to ensure that no Supplier's Personnel shall transfer to the Customer and/or any replacement supplier under TUPE (or otherwise).
- 20.2 If notwithstanding clause 20.1 of these Conditions of Purchase, the contract of employment of any Supplier's Personnel transfers or is alleged to transfer to the Customer and/or any replacement supplier by virtue of the operation of TUPE on the expiry or termination of the Agreement or on the expiry or termination of the provision of any of the Services, the Supplier shall keep the Customer and any replacement supplier indemnified against all Losses incurred by the Customer and/or any replacement supplier by virtue of the actual or alleged operation of TUPE, including any costs relating to the employment or termination or alleged termination of such Supplier's Personnel's employment and any other costs, liabilities or expenses otherwise arising directly or indirectly from any actual or alleged transfer (including any claim that is made by or on behalf of any Supplier's Personnel relating to circumstances or events arising or occurring at any time).

## 21. GENERAL

- 21.1 **Entire Agreement.** Subject to clause 21.2, this Agreement constitutes the entire agreement and understanding of the parties and supersedes any previous agreement or understanding between the parties with respect to the arrangements contemplated by or referred to in it.
- 21.2 Notwithstanding anything to the contrary and except for clause 21.3 which shall take precedence, if a written contract signed by both parties is in existence covering the sale of Goods or Services covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Conditions of Purchase.
- 21.3 **Purchase Order:** The Supplier shall not commence any work or supply any Goods or Services under this Agreement without a valid Purchase Order issued by the Customer. The Supplier acknowledges and agrees that no payment will be made for Goods and/or Services delivered without a valid Purchase Order, except where the Customer has provided prior written consent. The Supplier must reference the Purchase Order number on all invoices submitted for payment.
- 21.4 **Non-exclusivity.** The Agreement does not grant Supplier any exclusive rights to do business with the Customer, and the Customer may contract with other Suppliers for the procurement of comparable services. The Customer makes no commitment for any minimum or maximum amount of Goods and/or Services to be purchased under the Agreement.
- 21.5 **Counterparts.** The Agreement may be executed in any number of counterparts, and by each party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the instrument.
- 21.6 **Severance.** If any provision or part-provision of the Agreement 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 Agreement. In the event any provision

or part-provision of the Agreement is deemed deleted, 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.

- 21.7 **Variations.** No variation of the Agreement shall be effective unless and until it is made in writing and signed by each of the parties to the Agreement or on their behalf by duly authorised representatives.
- 21.8 **Waiver.** Any failure to exercise or delay by a party in exercising any right or remedy shall not constitute a waiver of that or any other right or remedy. No waiver shall be effective unless and until in writing and signed by (or on behalf of) the relevant party. A waiver of a right or remedy on one occasion shall not constitute a waiver of the same right or remedy in the future. Save as otherwise expressly provided in the Agreement, the Customer's rights and remedies set out in the Agreement are in addition to and not exclusive of any rights and remedies provided by law.
- 21.9 **Remedies.** Save as expressly provided in the Agreement, the rights and remedies provided by the Agreement are cumulative and (subject as otherwise provided in the Agreement) are not exclusive of any right or remedy provided by law. No exercise by a party of any one right or remedy shall (save unless expressly provided otherwise) operate so as to hinder or prevent the exercise by it of any other right or remedy.
- 21.10 **Set-Off.** The Customer may set off any liability which Supplier has to the Customer against any liability which the Customer has to Supplier, whether such is present or future, liquidated or unliquidated under the Agreement or any the contract between the parties or other cause of action. Save as otherwise expressly provided in the Agreement or as required by law, all payments to be made by Supplier to the Customer will be made in full and without any set-off or any deduction or withholding including on account of any counterclaim.
- 21.11 **Status.** Nothing in the Agreement shall be deemed to constitute a partnership, joint venture, representative or agency relationship between the parties hereto construed or have effect as constituting any relationship of employer and employee between the parties. Neither party shall have the authority to bind or pledge the credit of, or oblige the other in any way without obtaining the other's prior written consent.
- 21.12 **Third Party Rights.** No other person shall have any rights to enforce the Agreement (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise). The Customer and the Supplier shall not be required to notify or obtain the consent of any third party in order to rescind or vary the Agreement or any provision thereof.
- 21.13 **Notices.** Any notice to be given under the Agreement shall be in writing and sent:
- 21.13.1 by post to the address in the Purchase Order (or a party's registered office address where this is not available); or
- 21.13.2 by email to the email address in the Purchase Order;
- or in each case, such other address or email address the party may notify the other in writing from time to time. A notice sent by post shall be deemed to have been delivered at 9:00am on the third Business Day after the date of posting. A notice sent by email shall be deemed to have been delivered at the time of transmission or, where this would occur outside business hours in the place of receipt, at 9:00am on the next Business Day. This clause does not apply to the service of legal proceedings.
- 21.14 **Assurance.** The Supplier agrees to take all actions and execute all documents as may in the Customer's opinion, be reasonably necessary to enable the Customer to obtain, defend and enforce its rights under the Agreement and shall not do or fail to do any act which would or might prejudice the Customer's rights under the Agreement.

## 22. **ARBITRATION, GOVERNING LAW & JURISDICTION**

- 22.1 For any dispute arising out of or in connection with this Agreement, the parties shall first attempt to resolve the dispute through good faith negotiations. Either party may initiate this negotiations process by providing written notice to the other party, outlining the nature of the dispute.
- 22.2 If the dispute has not been resolved in accordance with clause 22.1 within 30 days (or such other timeframe as may be agreed between the parties), the dispute shall be referred to and finally resolved by arbitration under the London Court of International Arbitration ("**LCIA**") rules, which are deemed to be incorporated by reference into this clause. The arbitration shall consist of one single arbitrator appointed by mutual agreement between the parties. If the parties are unable to agree on an arbitrator, the LCIA shall appoint one. The seat, or legal place, of arbitration shall be London, England and the language of the arbitration shall be English. The arbitrator's decision shall be final and binding on the parties, and judgment on the award rendered by

the arbitrator may be entered in any court having jurisdiction thereof. The governing law of the Agreement shall be the substantive law of England and Wales.

22.3 The Agreement shall be governed by, and construed in accordance with, the laws of England and Wales.

23. **COUNTRY SPECIFIC PROVISIONS**

Intentionally omitted

## Annex 1

### Additional Provisions for Goods for Resale

#### 1. SCOPE

- 1.1 This Annex applies only where Goods are purchased by the Customer for its own account for resale ("**Goods for Resale**"). Reference to Goods in the Purchase Order Terms and Conditions shall be construed as including Goods for Resale as applicable.
- 1.2 Unless otherwise defined in this Annex, capitalised terms shall have the meanings given in the Purchase Order Terms and Conditions.
- 1.3 This Annex forms part of the Agreement, which shall continue to apply in full force except as expressly modified by this Annex.
- 1.4 In the event of any inconsistency between this Annex and the Agreement, this Annex shall prevail in respect of Goods for Resale only.

#### 2. COMMISSION AND PAYMENT

##### *Consignment Model (where stated in the Purchase Order)*

- 2.1 The commercial terms applicable to the resale of the Goods for Resale, including whether the Goods for Resale are supplied on a consignment basis or purchased outright by the Customer, shall be as set out in the relevant Purchase Order. The Customer may be entitled to retain a commission on each sale of the Goods for Resale at the rate set out in the relevant Purchase Order (the "**Commission**").
- 2.2 Where the Goods for Resale are provided on a consignment basis, the Customer shall collect the full retail selling price payable by the end-customer on behalf of the Supplier ("**Revenue**") and the Customer shall hold such amounts on behalf of the Supplier.
- 2.3 The Customer shall pay to the Supplier the Revenue minus Commission and any other agreed deductions within the payment period specified in the Purchase Order.
- 2.4 Title to and risk in the Goods for Resale supplied on a consignment basis shall remain with the Supplier until the Goods for Resale are sold by the Customer to an end-customer. The Supplier shall bear the costs, losses and liabilities associated with the Goods for Resale prior to such sale, except to the extent any loss or damage is caused directly by the Customer in contravention of these terms.

##### *Owned-Inventory Model (where stated in the Purchase Order)*

- 2.5 Where the Purchase Order provides that the Customer purchases the Goods for Resale outright, the Customer shall pay the purchase price in accordance with the Purchase Order, and no Commission shall apply.
- 2.6 Title and risk in the Goods for Resale shall pass in accordance with clause 8 of the Purchase Order Terms and Conditions (Title and Risk).

#### 3. INSPECTIONS

- 3.1 In addition to clause 6, the Customer shall have the right on reasonable written notice to enter the Supplier's premises to inspect and take samples of the Goods for Resale, including the raw materials to ensure the Goods for Resale are in compliance with agreed specifications and Applicable Law.

#### 4. ADVERTISING AND PROMOTION

- 4.1 The Supplier shall provide such information to the Customer as the Customer may require assisting the Customer in advertising and promoting the Goods for Resale. The Customer may promote the Goods for Resale at either a central or individual club level, and the Supplier acknowledges that promotional activity may vary between clubs.
- 4.2 The Supplier will provide all necessary marking material and branding guidelines to the Customer in accordance with the requirements set out in the Purchase Order.

#### 5. COMPLAINTS HANDLING

- 5.1 Upon the Customer's request, the Supplier shall be responsible for handling any complaints from customers relating to the Goods for Resale and shall bear the cost of all returns from customers relating to the Goods for Resale.

## 6. **INTELLECTUAL PROPERTY**

- 6.1 The Supplier hereby extends clause 19.2 to include the right to market, promote and resell the Goods for Resale.
- 6.2 The Supplier shall provide the Customer with details of any improvement, development, enhancement, modification or derivative of any of the Goods for Resale, or its design or manufacturing process, which would make the Goods for Resale cheaper, more effective or commercially cost effective ("**Improvement**").which is made, developed or acquired by the Supplier from time to time.
- 6.3 The Customer may resell the Goods for Resale incorporating any Improvement notified to the Customer and the Supplier grants to the Customer a non-exclusive, royalty-free, licence to resell the Goods for Resale incorporating any such Improvements.
- 6.4 The Supplier warrants that the sale, marketing, composition and method of manufacture of the Goods For Resale will not infringe the Intellectual Property Rights of any third party.

## 7. **PRODUCT LIABILITY**

- 7.1 The Supplier shall indemnify and hold harmless the Customer in full against all Losses incurred by the Customer if any claim is made by a third party arising out of or in connection with the manufacture of the Goods for Resale or any defects in the Goods for Resale.
- 7.2 For the avoidance of doubt, the indemnity in this clause forms part of the indemnity in clause 9.2 and is not subject to any financial cap, limit or exclusion of liability under clause 9.1 or elsewhere in the Agreement.
- 7.3 The Customer shall notify the Supplier as soon as reasonably practicable after becoming aware of a claim pursuant to this clause 7.1, and take all action reasonably requested by the Supplier to avoid, compromise or defend the claim and any proceedings in respect of the claim, subject to the Customer being indemnified and secured to its reasonable satisfaction against all costs and expenses which may be incurred in doing so.

## 8. **PRODUCT RECALL**

- 8.1 If the Customer is the subject of a request, court order or other directive of a governmental or regulatory authority to withdraw or recall any Goods for Resale from the market ("**Recall Notice**") it shall without delay notify the Supplier in writing and attach a copy of the Recall Notice.
- 8.2 The Supplier may issue a notice to recall or withdraw the Goods for Resale to the Customer ("**Voluntary Recall Notice**"):
- 8.2.1 if the supply or use of the Goods for Resale infringes, or may infringe, a third party's Intellectual Property Rights;
  - 8.2.2 if the Goods for Resale are, or may be, unsafe;
  - 8.2.3 if the Goods for Resale are, may be, or may become illegal or non-compliant with any law, regulation or government agency or industry standard;
  - 8.2.4 if a defect in the Goods may cause harm to the Supplier's reputation or brand; or
  - 8.2.5 on any other reasonable ground.
- 8.3 In the event of a Recall Notice or Voluntary Recall Notice, the Supplier shall:
- 8.3.1 co-operate fully with the Customer and give such assistance as the Customer requires to recall or withdraw the Goods for Resale; and
  - 8.3.2 bear all associated costs, including costs associated with complying with the Supplier's instructions about the process of implementing that recall or withdrawal.