

## Terms & Conditions of Purchase

### Background:

The Parties have agreed the terms for supply of Goods and or Services by Supplier to the Purchaser as detailed in this Agreement.

It is agreed as follows:

### 1. Definitions and Interpretation

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

**"Agreement"** this Agreement (including any Schedule and the Specification each of which forms part of this Agreement).

**"Agreement Period"** a period of such duration set out in section 1, subject to early termination in accordance with section 3 of Schedule 1.

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

**"Commencement Date"** is the date of which this Agreement has been signed by the Parties.

**"Conditions"** these terms and conditions as amended from time to time in accordance with clause 23;

**"Contract"** means the Contract between the Purchaser and the Supplier for the supply of Goods and/or Services, as in accordance with these Conditions;

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

**"Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures"** as defined in the Data Protection Legislation;

**"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);

**"Deliverables"** all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts);

**"Delivery Date"** means the date on which the Goods and/or Services are to be delivered to the Purchaser, as specified in the Purchase Order;

**"Delivery Location"** as defined in clause 3.2.2

**"Domestic Law"** the law of the United Kingdom or a part of the United Kingdom.

**"Goods "** means the goods (or any part of them) set out in the Purchase Order;

**"Goods Specification"** any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Purchaser and the Supplier;

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

**"Purchase Order"** means the Purchaser's order for the supply of Goods and/or Services, as set out in the Purchaser's order form or upon the Purchaser's written acceptance of the Supplier's quotation.

**"Purchaser"** means Ivor Shaw Limited trading as Pennine Healthcare, company number 00755641;

**"Purchaser's Materials"** has the meaning provided to it in clause 5.3.9.

**"Services"** the services, including any Deliverables, to be provided by the Supplier under the Contract as set out in the Purchase Order;

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

**"Specifications"** means the Goods Specification and/or the Service Specification;

**"Standards"** the Purchaser's quality and compliance standards (if any) as annexed to the Purchase Order;

**"Supplier"** means the person, firm or company who is the supplier of the Goods and/or Services, and as named in the Purchase Order;

**"UK GDPR"** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

## **2. Interpretation:**

2.1. The headings in these Conditions are for convenience only and will not affect their interpretation.

2.2. In the event of conflict, the contractual documents shall be applied in the following order:

2.2.1. Purchase Order (together with any Standards and/or Specifications annexed to it).

2.2.2. These Conditions

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

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

2.5. 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.

2.6. 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.

### **3. Basis of Contract**

3.1. These Conditions apply to the Contract to the exclusions 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.

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

3.3. 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.

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

3.5. The Purchase Order shall be deemed to have been accepted by the Supplier on the earlier of: (a) acceptance of the Purchase Order by the Supplier (either verbally or in writing); or (b) any act by the Supplier consistent with fulfilling the Purchase Order, at which point, and on which date the Contract shall come into existence (Commencement Date).

### **4. Supply of Goods**

4.1. The Supplier shall ensure that the Goods shall:

4.1.1. match their description and any applicable Goods Specification.

4.1.2. 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 Purchaser, expressly or by implication, and in this respect the Purchaser relies on the Supplier's skill and judgement;

4.1.3. where they are manufactured products, be free from defects in design, materials and workmanship and remain so for 36 months after delivery;

4.1.4. have a minimum shelf-life of 36 months from date of receipt of the Goods by the Purchaser;

4.1.5. comply in full with all applicable regulations and statutory requirements

relating to all aspects of supply, including but not limited to manufacture, labelling, packaging, storing and delivery; and

- 4.1.6. where applicable, be suitable for use as medical devices.
- 4.2. The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.
- 4.3. The Purchaser may inspect and test the Goods at any time before 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.
- 4.4. If following such inspection or testing the Purchaser considers that the Goods do not comply or are unlikely to comply with the Supplier's undertakings at clause 3.1, the Purchaser shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 4.5. The Purchaser may conduct further inspections and tests after the Supplier has carried out its remedial actions.

## **5. Delivery and Acceptance**

- 5.1. The Supplier shall ensure that:
  - 5.1.1. the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
  - 5.1.2. 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
  - 5.1.3. it states clearly on the delivery note any requirement for the Purchaser to return any packaging material for the Goods to the Supplier. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.
- 5.2. The Supplier shall deliver the Goods:
  - 5.2.1. on the Delivery Date;
  - 5.2.2. to the Purchaser's premises or such other location as is set out in the Purchase Order or as instructed by the Purchaser before delivery (Delivery Location); and
  - 5.2.3. during the Purchaser's normal hours of business, or as instructed by the Purchaser.

5.3. The Delivery Date is as defined in the Purchase Order and:

5.3.1. changes to the Delivery Date will be agreed in writing by the Purchaser no less than five (5) Business Days prior to the original Delivery Date; and

5.3.2. deliveries of any Goods must be booked-in with the Purchaser prior to delivery otherwise it may result in the delivery being rejected by the Purchaser (without liability to the Purchaser and at the Supplier's sole cost).

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

5.5. The Supplier shall not deliver the Goods in instalments without the Purchaser'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 Purchaser to the remedies set out in clause .1.

5.6. Title and risk in the Goods shall pass to the Purchaser on completion of delivery.

5.7. Where it is the Supplier's responsibility to transit the Goods, the Supplier shall, free of charge and as quickly as possible, either repair or replace (as the Purchaser shall elect in its sole discretion) any Goods that have been damaged in transit, provided that in the case of damage to such Goods in transit the Purchaser shall within thirty (30) days of delivery give notice to the Supplier that the Goods have been damaged.

## **6. Supply of Services**

6.1. The Supplier shall from the date set out in the Purchase Order and for the duration of the Contract supply the Services to the Purchaser in accordance with the terms of the Contract.

6.2. The Supplier shall meet any performance dates for the Services specified in the Purchase Order or that the Purchaser notifies to the Supplier and time is of the essence in relation to any of those performance dates.

6.3. In providing the Services, the Supplier shall:

6.3.1. co-operate with the Purchaser in all matters relating to the Services, and comply with all instructions of the Purchaser;

6.3.2. perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;

6.3.3. 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;

6.3.4. 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 Purchaser expressly or impliedly makes known to the Supplier;

- 6.3.5. provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- 6.3.6. 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 Purchaser, will be free from defects in workmanship, installation and design;
- 6.3.7. obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
- 6.3.8. observe all health and safety rules and regulations and any other security requirements that apply at any of the Purchaser's premises;
- 6.3.9. hold all materials, equipment and tools, drawings, specifications and data supplied by the Purchaser to the Supplier (**Purchaser Materials**) in safe custody at its own risk, maintain the Purchaser Materials in good condition until returned to the Purchaser, and not dispose of or use the Purchaser Materials other than in accordance with the Purchaser's written instructions or authorisation;
- 6.3.10. not do or omit to do anything which may cause the Purchaser to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Purchaser may rely or act on the Services; and
- 6.3.11. comply with any additional obligations as set out in the Service Specification.

## **7. Purchaser remedies**

7.1. If the Supplier fails to deliver the Goods by the applicable date or to perform the Services by the applicable date, or both, the Purchaser shall, without limiting or affecting other rights or remedies available to it, have any one or more of the following rights and remedies:

- 7.1.1. to terminate the Contract with immediate effect by giving written notice to the Supplier;
- 7.1.2. to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
- 7.1.3. to recover from the Supplier any costs incurred by the Purchaser in obtaining substitute goods and/or services from a third party;
- 7.1.4. to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and/or Goods that it has not

delivered; and

7.1.5. to claim damages for any additional costs, loss or expenses incurred by the Purchaser which are in any way attributable to the Supplier's failure to meet such dates.

7.2. If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 3.1, then, without limiting or affecting other rights or remedies available to it, the Purchaser shall have one or more of the following rights and remedies, whether or not it has accepted the Goods:

7.3. If the Supplier has supplied Services that do not comply with the requirements of clause 5.3.4 then, without limiting or affecting other rights or remedies available to it, the Purchaser shall have one or more of the following rights and remedies:

7.3.1. to terminate the Contract with immediate effect by giving written notice to the Supplier;

7.3.2. to return the Deliverables to the Supplier at the Supplier's own risk and expense;

7.3.3. to require the Supplier to provide repeat performance of the Services, or to provide a full refund of the price paid for the Services (if paid);

7.3.4. to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;

7.3.5. to recover from the Supplier any expenditure incurred by the Purchaser in obtaining substitute services or deliverables from a third party; and

7.3.6. to claim damages for any additional costs, loss or expenses incurred by the Purchaser arising from the Supplier's failure to comply with clause 5.3.4.

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

7.5. The Purchaser'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.

## **8. Purchaser's obligations**

8.1. The Purchaser shall:

8.1.1. provide the Supplier with reasonable access at reasonable times to the Purchaser's premises for the purpose of providing the Services; and

8.1.2. provide such necessary information for the provision of the Services as the Supplier may reasonably request.

## **9. Price**

9.1. The Price of the Goods and Services:

9.1.1. shall be the price set out in the Purchaser Order, or if no price is quoted, the price set out in the Supplier's published price list in force at the Commencement Date; and

9.1.2. 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 Purchaser.

9.2. The charges for the Services shall be set out in the Purchase Order and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Purchaser, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

9.3. All amounts payable by the Purchaser under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Purchaser, the Purchaser shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.

9.4. The costs of the Goods and/or Services shall be fixed for the duration of the Contract and cannot be changed unless agreed in writing by the Purchaser, by way of a purchase order amendment.

9.5. The Supplier will provide the Purchaser with such cost information as requested by the Purchaser, for the Goods and/or Services, to enable the Purchaser to assess value for money.

## **10. Payment**

10.1. Unless otherwise agreed in writing by the Purchaser, the Supplier shall submit a separate invoice in respect of each consignment of the Goods and/or Services delivered under the Purchase Order. Invoices shall not be submitted by the Supplier until completion of delivery of all the Goods and/or Services which are the subject of the Purchase Order or of the consignment (as appropriate). Each invoice shall include such supporting information required by the Purchaser to verify the accuracy of the invoice, including the relevant purchase order number.

10.2. A valid invoice is one that is:

10.2.1. Delivered on time in accordance with the Contract;

10.2.2. References the relevant purchase order number;



10.2.3. For the correct sum (which must reflect the purchase order, any additional carriage charges must not be included if not on the purchase order);

10.3. Invoices that fail to comply with the provisions of clause 9.2, may be disputed by the Purchaser. In the event that the Purchaser notifies the Supplier of a disputed invoice it shall have the right to, without liability, withhold settlement of the disputed invoice, until such time as the dispute is resolved in full.

10.4. Provided that the invoice has not been disputed under clause 9.3, and unless expressly stated otherwise in the Purchase Order, the Purchaser will pay the invoiced amounts within 30 days (end of week), of receiving a correctly rendered invoice, to a bank account nominated in writing by the Supplier.

10.5. If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each date at 2% a year above the Bank of England's base rate from time to time, but at 2% a year for any period when the base rate is below 0%. Where a payment is disputed in good faith, interest is only payable after the dispute is resolved on sums found or agreed to be due, from 2 days after the dispute is resolved until payment.

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

10.7. The Purchaser may at any time, without notice to the Supplier, set off any liability of the Supplier to the Purchaser against any liability of the Purchaser to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. Any exercise by the Purchaser of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

## **11. Intellectual Property**

11.1. Except to the extent that the Goods are supplied strictly in accordance with designs provided by the Purchaser, it shall be a condition of the Contract that none of the Goods will infringe the Intellectual Property Rights of a third party and the Supplier shall indemnify and keep indemnified the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses (including legal expenses and disbursements) which the Purchaser may suffer or incur as a result of or in connection with any breach of this clause.

11.2. The Supplier shall not (except to the extent necessary for the implementation of the Purchase Order) without prior written consent of the Purchaser, use or disclose any such Intellectual Property or any information (whether or not relevant to the Contract) which the Supplier may obtain pursuant to the Contract and in particular (but without prejudice to the generality of the foregoing) the Supplier shall not refer to the Purchaser or the Contract in any advertisement without the Purchaser's prior written agreement

11.3. All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any Purchaser Materials) shall be owned by the Supplier.

11.4. The Supplier grants to the Purchaser or shall procure the direct grant to the Purchaser of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence during the term of the Contract to copy and modify the Deliverables (excluding Purchaser Materials) for the purpose of receiving and using the Services and the Deliverables.

11.5. The Purchaser grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Purchaser to the Supplier for the term of the Contract for the purpose of providing the Services to the Purchaser.

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

## **12. Indemnity**

12.1. The Supplier shall indemnify the Purchaser against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation, wasted expenditure and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Purchaser arising out of or in connection with:

12.1.1. any claim made against the Purchaser for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services (excluding the Purchaser Materials);

12.1.2. any claim made against the Purchaser 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 Deliverables; and

12.1.3. any claim made against the Purchaser by a third party arising out of or in connection with the supply of the Goods, as delivered, or the Services.

12.2. This clause 11 shall survive termination of the Contract.

## **13. Limit of Liability**

13.1. Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

13.1.1. death or personal injury caused by negligence;

13.1.2. fraud or fraudulent misrepresentation;

13.1.3. breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet

possession; or

13.1.4. defective products under the Consumer Protection Act 1987

13.2. Subject to the provisions of clause 12.1, the Purchaser's maximum total liability arising under or in connection with the Contract will not exceed the sum equal to the total sums due from the Purchaser to the Supplier under the Purchase Order relating to the Contract.

13.3. Subject to clause 12.1, the Purchaser shall not be liable for any indirect, consequential or special loss, including without limitation, loss of profits, loss of business, loss of sales, loss of contract, wasted expenditure or loss of earnings.

## **14. Insurance**

14.1. The Supplier shall maintain, with a reputable insurance company, employer's liability insurance, public liability insurance, product liability insurance and professional indemnity insurance (if applicable) to cover the liabilities that may arise under or in connection with the Contract.

14.2. The Supplier shall have and maintain during the term of the Contract a valid insurance policy covering product liability for damages deriving from non-conformity of the Goods to the Goods Specifications and covering costs deriving from any product recall.

14.3. The Supplier shall upon request from the Purchaser provide a copy of the insurance policy and proof of payment of the current premium.

## **15. Confidentiality**

15.1. Each party undertakes that it shall not at any time, 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 14.2.

15.2. Each party may disclose the other party's confidential information

15.2.1. 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 advisers to whom it discloses the other party's confidential information comply with this clause 14; and

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

15.3. 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.

## 16. Data protection

16.1. 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.

16.2. The parties acknowledge that for the purposes of the Data Protection Legislation, the Purchaser is the Controller, and the Supplier is the Processor.

16.3. Without prejudice to the generality of clause 15.2, the Purchaser 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.

16.4. Without prejudice to the generality of clause 15.2, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under the Contract:

16.4.1. process that Personal Data only on the documented written instructions of the Purchaser 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 Purchaser of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits the Supplier from so notifying the Purchaser;

16.4.2. ensure that it has in place appropriate technical and organisational measures 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;

16.4.3. ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;

16.4.4. not transfer any Personal Data outside of the UK unless the prior written consent of the Purchaser has been obtained and the following conditions are fulfilled:

- a) the Purchaser 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 Purchaser with respect to the processing of the Personal Data;
- 16.4.5. assist the Purchaser 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;
- 16.4.6. notify the Purchaser without undue delay on becoming aware of a Personal Data Breach;
- 16.4.7. at the written direction of the Purchaser, delete or return Personal Data and copies thereof to the Purchaser on termination of the Contract unless required by Domestic Law to store the Personal Data; and
- 16.4.8. maintain complete and accurate records and information to demonstrate its compliance with this clause 15.

## **17. Labour Standards Assurance**

17.1. Supplier shall conduct all employment and other activities related to its dealings with The Purchaser in compliance with the standards of integrity and human rights set out in the Ethical Trading Initiative (“ETI”) Base Code, in particular, prohibitions on forced and child labour, excessive working hours, discrimination, harassment and other harsh or inhumane treatment, and their standards related to freedom of association and collective bargaining, safe and hygienic working conditions, and living wages.

17.2. Supplier agrees to hold its suppliers and other third parties to the same standards when performing its obligations under this agreement, and to ensure that it has human rights policies and a means of raising complaints to address any breaches of such policies.

17.3. The Purchaser shall have the right, directly or through an independent agent, to conduct due diligence surveys and audits, staffed as The Purchaser deems appropriate, to verify Supplier’s past and current compliance with this requirement, and Supplier shall cooperate fully and respond in a timely manner and in good faith, including making relevant documents and personnel available, to facilitate any such due diligence surveys or audits

## **18. Termination**

18.1. Without affecting any other right or remedy available to it, the Purchaser may terminate the Contract with immediate effect by giving written notice to the Supplier if:

- 18.1.1. there is a change of Control of the Supplier; or
- 18.1.2. for convenience by giving the Supplier one months' written notice.

18.2. Without affecting any other right or remedy available to it, either party may

terminate the Contract with immediate effect by giving written notice to the other party if:

- 18.2.1. the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- 18.2.2. the other party 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;
- 18.2.3. the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 18.2.4. the other party'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.

18.3. On termination of the Contract, the Supplier shall immediately deliver to the Purchaser all Deliverables whether or not then complete and return all Purchaser Materials. If the Supplier fails to do so, then the Purchaser 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.

18.4. Termination or expiry of the Contract shall not affect the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

18.5. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

18.6. The Purchaser may terminate this Contract immediately on written notice to the Supplier if the Supplier breaches the Standards, regardless of whether the Goods and or Services have been delivered to the Purchaser or not and regardless of whether the Supplier has recalled and/or replaced such Goods at its own cost.

18.7. The Purchaser, notwithstanding any notice period, reserves the right to purchase all (or part of any) finished Goods stock and materials, at the termination date, provided that these items have a shelf life of no less than 36 months and these stock levels have been declared and agreed by the Purchaser during the term of the Contract. Should the

Purchaser wish to exercise its right of purchase under this clause 16.7, it shall notify the Supplier in writing within 30 days of the contract being terminated.

18.8. In the event that the Purchaser does not exercise its right of purchase under clause 16.7, the Purchaser shall have no liability to pay the Supplier any sums for any unpurchased Goods and, where the Purchaser has paid in advance for those Goods, the Supplier shall, immediately upon demand, refund the Purchaser in full for the Goods not purchased.

## **19. Assignment and Sub-Contracting**

19.1. The Supplier shall not without the prior written consent of the Purchaser assign or transfer the benefit or burden of the Contract.

19.2. No sub-contracting by the Supplier shall in any way relieve the Supplier of any of its responsibilities under the Contract.

## **20. Force Majeure**

20.1. 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 30 days, the party not affected may terminate the Contract by giving 7 days written notice to the affected party.

## **21. Communications**

21.1. Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

21.1.1. 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

21.1.2. sent by email to the address stated in the Purchase Order.

21.2. Any notice shall be deemed to have been received:

21.2.1. if delivered by hand, at the time the notice is left at the proper address;

21.2.2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or

21.2.3. 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.

21.3. 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.

## **22. Waiver**

22.1. No delay or omission by the Purchaser in exercising any of its rights under the Contract shall constitute a waiver of that right and any partial exercise of any such right shall not prevent any future exercise of the right.

## **23. Severance**

23.1. If one or more of these Conditions are found to be unlawful, invalid or otherwise unenforceable, these provisions shall be deemed severed from the remainder of these Conditions.

## **24. Third Party Rights**

24.1. No person who is not a party to this Contract shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.

## **25. Variation**

25.1. These Conditions may only be varied with the written agreement of the Purchaser. The Purchaser reserves the right by reasonable notice to the Supplier to vary the Goods and/or Services detailed in the Purchase Order and any alteration to the price or delivery date arising by reason of such modification shall be agreed between the parties and evidenced in writing by form of amendment to the Purchase Order.

## **26. Governing Law and Jurisdiction**

26.1. This 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 interpreted in accordance with the law of England.

26.2. Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.