

## 1. INTERPRETATION

### 1.1 Definitions

In these Conditions, the following definitions apply unless the context otherwise requires:

(a) **Approval Procedure**: has the meaning set out in **condition 5.3(j)**;

(b) **Conditions**: the terms and conditions set out in this document as amended from time to time in accordance with **condition 18.7** and any Special Terms (if applicable);

(c) **Confidential Information**: means information in whatever form (including, without limitation in writing, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, products, affairs and finances of the Customer and/or any Group Company for the time being confidential to the Customer and/or any Group Company, sales and marketing data supplied by the Customer which the Customer has obtained from a third party and trade secrets including, without limitation, technical data, know-how and any Specification, relating to the business of the Customer and/or any Group Company or any of their suppliers, clients, customers, agents, distributors, shareholders or management, whether or not such information (if in anything other than oral form) is marked confidential;

(d) **Contract**: the contract between the Customer and the Supplier for the sale and purchase of the Goods or the supply of the Services in accordance with these Conditions and the Order;

(e) **Customer**: means the Group Company described in the Order;

(f) **Customer Intellectual Property**: means any and all Intellectual Property owned, licensed to and/or used by the Customer and/or any Group Company and any and all Intellectual Property rights created by the Supplier which vest in the Customer and/or in any Group Company in accordance with **condition 10.2**;

(g) **Customer Materials**: has the meaning set out in **condition 5.3(i)**;

(h) **Data Controller, Data Processor, Process and processing**: have the meanings set out in the Data Protection Legislation;

(i) **Data Protection Legislation**: any data protection legislation from time to time in force in the UK including the Data Protection Act 1998 or 2018 or any successor legislation, and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation (EU) 2016/679) and any other directly applicable European Union legislation relating to privacy;

(j) **Deliverables**: all documents, products, materials and artwork developed by the Supplier or its agents, contractors and/or employees as part of or in relation to the Services in any form or media, including, without limitation, drawings, designs, computer programs, data, reports and specifications (including drafts);

(k) **Delivery**: has the meaning set out in **condition 4.2**;

(l) **Delivery Location**: has the meaning set out in **condition 4.2(b)**;

(m) **Goods**: the goods (or any part of them) set out in the Order;

(n) **Group Company**: means any entity in which Theo Müller (or his successor in title) has a 50% or greater interest either directly or indirectly;

(o) **Intellectual Property**: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, business and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications 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 whether existing now or in the future in any part of the world;

(p) **Order**: the Customer's written order for the Goods and/or the Customer's written instruction for the supply of the Services (as the case may be), as set out in the Customer's purchase order;

(q) **Personal Data**: has the meaning set out in the Data Protection Legislation and relates only to personal data, or any part of such personal data, of which the Customer is the Data Controller and in relation to which the Supplier is providing Services;

(r) **Services**: the services (or any part of them) set out in the Order;

(s) **Special Terms**: has the meaning set out in **condition 2.4**;

(t) **Specification**: any specification or technical requirements in relation to the Goods and/or Services, including any design and development materials, any related plans or drawings, and all information which explains the structure, design, operation, functionality and all information of any description which relates to the maintenance and/or support of Goods, that is supplied to the Supplier by the Customer, or produced by the Supplier and agreed in writing by the Customer or alternatively if no Specification is agreed between the parties in writing the standard documents made known to the Supplier by the Customer or vice versa as at the date of the Order;

(u) **Supplier**: the person, firm or company from whom the Customer purchases the Goods and/or receives the Services as named in the Order;

(v) **Third Party Intellectual Property**: has the meaning set out in **condition 10.7**; and

(w) **Working Day**: means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

### 1.2 Construction

In these Conditions, unless the context requires otherwise, the following rules apply:

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

(b) A reference to a party includes its personal representatives, successors or permitted assigns.

(c) A reference to a statute or statutory provision is a reference to such statute or statutory provision as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended, extended or re-enacted from time to time.

(d) Any phrase introduced by the terms including, include, in particular, or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

(e) A reference to 'writing' or similar expressions shall include reference to any communication effected by electronic mail and/or any comparable means but shall not include communication by facsimile, SMS or similar text messaging facilities.

(f) Any obligation on any party not to do and/or omit to do anything is to include an obligation not to allow that thing to be done and/or omitted to be done.

(g) The phrase "and/or" means either of the alternatives and both of the alternatives as the case may be.

(h) Reference to "procure" or "ensure" shall create a primary obligation and not a secondary obligation or guarantee.

## 2. BASIS OF CONTRACT

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

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

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

(a) the Supplier issuing a written acceptance of the Order; or

(b) the Supplier doing any act consistent with fulfilling the Order,

at which point the Contract shall come into existence. The Customer may for any reason alter or withdraw any Order at any time prior to acceptance.

2.4 The parties may agree special terms in writing which will be included in the Order and/or a separate letter and will form part of these Conditions ("**Special Terms**").

2.5 In the event of a conflict between any Special Terms and these Conditions, the Special Terms shall prevail to the extent of the conflict or inconsistency only.

2.6 The international rules for the interpretation of trade terms prepared by the International Chamber of Commerce 2020 ("**Incoterms**") shall apply but where they conflict with these Conditions, these Conditions shall prevail to the extent of the conflict or inconsistency only.

## 3. THE GOODS

3.1 The Supplier warrants, represents and undertakes that the Goods shall:

(a) be as specified in the Order in terms of quantity, quality and description;

(b) correspond with their description and any applicable Specification;

(c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgment;

(d) where applicable, be free from defects in design, material and workmanship and remain so for 12 months after delivery or for such longer period as may be specified in the Order;

(e) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and Delivery of the Goods including all food safety, hygiene and, where applicable, animal welfare standards; and

(f) if sold by way of sample, correspond in all respects to the approved sample unless agreed otherwise by the Customer in writing.

3.2 The Customer shall have the right to inspect and test the Goods at any time before Delivery at the Supplier's cost and the Customer shall have the right to conduct further inspections and tests at the Supplier's cost after the Supplier has carried out any remedial actions.

3.3 Notwithstanding any inspection or testing by the Customer, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.

3.4 In respect of the Goods the Supplier will maintain and observe quality control and supplier quality assurance standards in accordance with the requirements of the Customer, its customs, relevant British standards and statutory and regulatory bodies and any other requirements specified in the Order.

3.5 In respect of Goods which comprise food products, the Supplier warrants, represents and undertakes that the Goods shall:

(a) be fit for human consumption, free from any abnormality or contaminant which might be injurious to public health or directly affect the sale of any end product that the Customer, any Group Company and/or any third party incorporates the Goods within;

(b) be useable safely without causing any harm, injury, death, loss or damage; and

(c) comply with all relevant UK and EC laws and other requirements from time to time in force in relation to Goods of such a nature.

## 4. DELIVERY

4.1 The Supplier shall ensure that:

(a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;

(b) the Goods are marked in accordance with the Customer's instructions;

(c) each Delivery of the Goods is accompanied by a delivery note and any other relevant documents specified in the Order which includes the date of the Order, the 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 in accordance with **condition 4.5**, the outstanding balance of Goods remaining to be delivered; and

(d) if the Supplier requires the Customer to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the Supplier's risk and expense.

4.2 The Supplier shall deliver the Goods:

(a) on the date specified in the Order, or, if no such date is specified, within 28 days of the date of the Order;

(b) Delivered Duty Paid (Incoterms) to the Customer's premises at Müller, Shrewsbury Road, Market Drayton, Shropshire, TF9 3SQ, United Kingdom or such other location as is set out in the Order, or as otherwise instructed by the Customer in writing prior to Delivery (the "**Delivery Location**"); and

(c) during the Customer's normal business hours of 9am to 5pm on a Working Day, or as otherwise instructed by the Customer in writing,

collectively referred to as "**Delivery**".

4.3 Unless otherwise as specified in the Order, Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Location.

4.4 The time of Delivery of the Goods is of the essence of the Contract.

4.5 Unless otherwise agreed in writing by the Customer, the Supplier may not perform the Services in stages or undertake Delivery of the Goods in separate instalments. If the Customer does agree, the Contract will be construed as a separate Contract in respect of each instalment or stage, and without prejudice to any other right or remedy, the Customer will have the right, but not the obligation to:

(a) treat all Contracts for the total Order as repudiated if the Supplier fails to complete Delivery or perform any instalment or stage; and

(b) reject any or all of the instalments or stages for the total Order if the Customer is entitled to reject any one instalment or stage.

## 5. THE SERVICES

5.1 The Supplier shall from the date stated in the Order and for the duration of the Contract provide the Services to the Customer in accordance with the terms of the Contract.

5.2 The Supplier shall meet any performance dates for the Services specified in the Order or otherwise notified in writing to the Supplier by the Customer.

5.3 In providing the Services, the Supplier shall:

(a) co-operate with the Customer in all matters relating to the Services, and comply with all instructions of the Customer;

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

(c) use personnel who are suitably skilled and experienced to perform the tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;

(d) ensure that the Services and Deliverables conform with all descriptions and specifications set out in the Specification and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Customer;

(e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;

(f) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services and/or transferred to the Customer, are free from defects in workmanship, installation and design;

(g) obtain and at all times maintain all necessary licences, permissions, authorisations, permits and consents;

(h) not do or omit to do anything which may cause the Customer to lose any licence, authority, consent, permit or permission on which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Customer may rely or act on the Services;

(i) hold all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier (the "**Customer Materials**") in safe custody at its own risk and maintain the Customer Materials in good condition until returned to the Customer, and not dispose of use the Customer Materials other than in accordance with the Customer's written instructions or authorisation; and

(j) comply with the Customer's internal approval procedures notified by the Customer from time to time ("**Approval Procedure**").

5.4 The time of performance of the Services is of the essence of the Contract.

5.5 In relation to the provision of Services by the Supplier, the Customer shall:

(a) provide the Supplier with reasonable access at reasonable times to the Customer's premises for the purpose of providing the Services; and

(b) provide such information to the Supplier as the Supplier may reasonably request and the Customer considers reasonably necessary for the purpose of providing the Services.

5.6 The Customer and the Supplier acknowledge that the requirements of the Customer in respect of the Services may change during the Contract. The Supplier shall accept such revisions, changes and modifications to the Services as the Customer shall from time to time request, provided that such amendments do not require the Supplier to incur a substantial increase in time or costs in providing the Services.

5.7 The Supplier warrants, represents and undertakes that each aspect of the Services shall be performed solely by those persons (if any) who are listed in the Order and/or Specification. The Supplier shall not change such personnel, or allow the change of such personnel to be made, without the prior written consent of the Customer. The Customer may request specific replacement personnel to work on the Services and the Supplier shall use best endeavours to comply with all such requests at no additional cost to the Customer.

## 6. RELEVANT REQUIREMENTS

6.1 The Supplier warrants, represents and undertakes that it shall, and that it shall ensure that its employees, agents and, notwithstanding **condition 18.1**, sub-contractors shall, at all times during the Contract:

(a) comply with all applicable laws, regulations, codes and sanctions including, without limitation, those relating to anti-bribery and anti-corruption including the Bribery Act 2010 and those relating to anti-slavery and human trafficking including the Modern Slavery Act 2015;

(b) observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises; and

(c) comply with the Customer's policies and procedures as notified by the Customer from time to time.

## 7. REMEDIES

7.1 In the event that:

(i) Delivery of the Goods is not effected in accordance with **condition 4.2**; and/or

(ii) the Goods do not comply with the warranties and undertakings set out in **condition 3**; and/or

(iii) the Supplier fails to perform the Services in accordance with **condition 5** or as reasonably expected by the Customer

then, without prejudice to any other rights or remedies of the Customer including but not limited to, the remedies in **condition 11** and **condition 14**, the Customer shall have the right to any one or more of the following remedies, whether or not it has accepted the Goods and/or performance of the Services has commenced:

(a) to immediately terminate the Contract on giving notice to the Supplier with no further sums due from the Customer to the Supplier;

(b) to reject the Goods (in whole or in part) whether or not title has passed and return them to the Supplier at the Supplier's own risk and expense or require the Supplier to collect the rejected Goods within 7 days of notification;

(c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods;

(d) to refuse to accept any subsequent Delivery of the Goods which the Supplier attempts to make and/or to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;

(e) to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods and/or services from a third party;

(f) where the Customer has paid in advance for Goods and/or Services that have not been provided by the Supplier, to have such sums refunded by the Supplier;

(g) where the Goods have been combined with any other products (together the "**Combined Product**"), to recover from the Supplier the cost of such Combined Product; and/or

(h) to claim damages for any other costs, losses or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.

7.2 In addition, without prejudice to any other rights or remedies of the Customer including but not limited to, the remedies in **condition 11** and **condition 14**, the Customer shall have the right to any one or more of the following remedies, whether or not it has accepted the Goods:

(a) if following inspection or testing under **condition 3.2**, the Customer considers that the Goods do not conform or are unlikely to conform with the Supplier's warranties, representations and undertakings at **condition 3**, to require the Supplier to take such remedial action as is necessary to ensure compliance and/or to immediately terminate the Contract on giving notice to the Supplier with no further sums due from the Customer to the Supplier; and

(b) where the quantity of Goods supplied is more or less than the quantity ordered by the Customer, to reject the Goods in whole or in part. Any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers less than the quantity of Goods ordered, and the Customer accepts the Delivery, a pro rata reduction shall be made to the invoice for the Goods. If the Supplier delivers more than the quantity of Goods ordered, the Customer shall be entitled to retain the excess Goods and the Contract price shall not be adjusted.

7.3 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier and/or any substituted or remedial Services provided by the Supplier.

7.4 The Customer's rights and remedies under these Conditions are in addition to its rights and remedies implied by law.

## 8. TITLE AND RISK

Title and risk in the Goods shall pass to the Customer on Delivery.

## 9. PRICE AND PAYMENT

9.1 The price of the Goods shall be the price set out in the Order, or as agreed between the parties in writing, or if no price is quoted or agreed in writing, the price set out in the Supplier's published price list in force as at the date the Contract came into existence.

9.2 The price of the Goods is exclusive of amounts in respect of value added tax (VAT), but includes the costs of Delivery, packaging and insurance of the Goods. No extra charges shall be effective unless agreed in writing and signed by the Customer. All taxes, charges and levies, assessments and other fees of any kind imposed on the purchase of Goods shall be the responsibility of, and for the account of, the Supplier.

9.3 The charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Customer, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services. All taxes, charges and levies, assessments and other fees of any kind imposed in respect of receipt of Services shall be the responsibility of, and for the account of, the Supplier.

9.4 The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services.

9.5 Unless otherwise agreed in writing by the parties, the Supplier may invoice the Customer:

(a) for the Goods on or at any time after Delivery; and/or

(b) for the Services on satisfactory completion of the Services in full.

Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including but not limited to the relevant Order number.

9.6 The Customer shall pay correctly rendered invoices within 45 days of receipt of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier.

9.7 If a party fails to make any payment due to the other party under the Contract by the due date for payment (due date), then the defaulting party shall pay interest on the overdue amount at the rate of 3% per annum above National Westminster Bank plc's base lending rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. This interest shall be in substitution for any other right to interest or compensation for late payment which a party may have, including under the Late Payment of Commercial Debts (Interest) Act 1998 and any other equivalent law and the parties agree this **condition 9.7** constitutes a substantial remedy for late payment of any sum payable in accordance with the Contract for the purposes of Section 8(2) of the Late Payment of Commercial Debts (Interest) Act 1998. The defaulting party shall pay the interest together with the overdue amount. This condition shall not apply to payments the defaulting party disputes in good faith.

9.8 The Supplier shall not be entitled to assert any credit, set-off, counterclaim or deduction against the Customer or any Group Company in order to justify withholding payment of any such amount in whole or in part. The Customer and/or any Group Company may at any time, without limiting any other rights or remedies it may have under the Contract or otherwise, set off any liability of the Supplier to the Customer and/or any Group Company against any liability of the Customer and/or any Group Company to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.

## 10. INTELLECTUAL PROPERTY

10.1 The Supplier warrants, represents and undertakes that it shall use the Customer Intellectual Property:

(a) solely for the purpose of providing the Goods and/or Services to the Customer;

(b) in accordance with its duties and obligations under the Contract;

(c) in accordance with the Customer's instructions from time to time; and

(d) in accordance with the Approval Procedure.

10.2 Subject to **condition 10.7**, the Supplier hereby assigns to the Customer or any other Group Company nominated by the Customer, with full title guarantee, free from all liens, charges, encumbrances and third party rights, all Intellectual Property rights in the Deliverables absolutely.

10.3 The Supplier shall, without charge to the Customer, obtain irrevocable waivers of all moral rights in the Deliverables to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.

10.4 The Supplier shall, promptly at the Customer's request, without charge to the Customer, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Customer may from time to time require for the purpose of securing for the Customer the full benefit of the Contract, including all right, title and interest in and to the rights in the Intellectual Property assigned or to be assigned to the Customer or any other Group Company nominated by the Customer in accordance with **condition 10.2**.

10.5 All Customer Materials are the exclusive property of the Customer.

10.6 The Supplier warrants that the Deliverables and Goods and the receipt, use and supply thereof will not infringe any third party Intellectual Property rights.

10.7 Where the Supplier uses Intellectual Property which is not the Customer Intellectual Property (**Third Party Intellectual Property**):

(a) the Supplier is solely responsible for obtaining all necessary licences, assignments and/or consents for such use of Third Party Intellectual Property as the Supplier and/or the Customer require as a result of the Contract and/or in connection with the Goods and/or Services;

(b) the Supplier shall arrange for and provide to the Customer such licences and/or assignments to use Third Party Intellectual Property as the Customer shall require as a result of or in connection with the Goods and/or Services;

(c) the Supplier shall provide the Customer with written details of the scope (including, but not limited to, territory, media and term) of such licences, rights or assignments in order that the Customer may use such Third Party Intellectual Property;

(d) the Supplier shall ensure that each such licence, right and assignment is:

(i) enforceable by the Customer and each Group Company as if they were a party to it; and

(ii) freely assignable at any time (without cost, limitation or restriction) to the Customer and/or its nominee;

(e) notwithstanding **condition 10.7(b)** or **condition 10.7(c)**, the Customer accepts no responsibility for the use of Third Party Intellectual Property by the Customer and/or the Supplier, nor does the Customer accept any responsibility for the use of Third Party Intellectual Property in any Goods and/or Deliverables and the foregoing shall not reduce or otherwise affect the Supplier's obligations under the Contract;

(f) compliance with the Approval Procedure will not, in any way, make the Customer responsible for use of Third Party Intellectual Property;

(g) without prejudice to any other rights and remedies that the Customer may have, the Customer may directly enter into a licence or assignment to use Third Party Intellectual Property. In such event, the Customer shall give the Supplier details of the scope of such licences or assignment to use such Third Party Intellectual Property and to the extent that obligations are imposed on the Customer under such licences or assignments and the obligations relate to the use of the Third Party Intellectual Property by the Supplier, the Supplier will assume responsibility for such obligations and will be liable to the Customer as if the Supplier were a party to the licence and/or assignment in place of the Customer.

10.8 The Supplier shall not anywhere in the world during the Contract and thereafter for whatever reason, apply for the registration of, or make a claim to rights in any of the Customer's Intellectual Property, or in any other trade mark, service mark or corporate name which includes, imitates or is otherwise confusingly similar to any of the Customer Intellectual Property.

10.9 The Supplier shall promptly inform the Customer if it becomes aware of any suspected unauthorised use of the Customer Intellectual Property, or any Intellectual Property which is confusingly similar to the Customer Intellectual Property. The Customer shall take whatever action (if any) it deems necessary in the circumstances and shall have sole conduct of any resulting proceedings. The Supplier shall, at the Customer's request provide to the Customer all such documents and assistance as the Customer may require in relation to such proceedings or otherwise to limit, stop and/or prevent such unauthorised use. The costs incurred and damages recovered in any such proceedings shall be for the account of the Customer. The Supplier shall not have any right to initiate proceedings in relation to unauthorised use of the Customer's Intellectual Property without the Customer's prior written consent.

10.10 No rights to or licences of the Customer Intellectual Property or Third Party Intellectual Property are conferred on the Supplier except for those expressly set out in the Contract. No such rights or licences shall survive the expiry or termination of the Contract, regardless of the manner of the circumstances surrounding such termination.

10.11 The Supplier shall ensure that each of its employees, professional advisers, agents and sub-contractors comply with the terms of this **condition 10** as if each of them were a party to the Contract and any breach by any such person shall be deemed to be a breach by the Supplier.

10.12 Any Specification supplied by the Customer to the Supplier, or specifically produced by the Supplier for the Customer, in connection with the Contract, together with the Intellectual Property rights in the Specification, shall be the exclusive property of the Customer. The Supplier shall not disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of the Supplier, or as required for the purpose of the Contract.

## 11. INDEMNITY

11.1 The Supplier shall keep the Customer and each Group Company indemnified in full against all costs, expenses, damages, losses and liabilities (whether direct, indirect or consequential), including all interest, penalties, and legal and other professional fees and expenses awarded against or incurred or paid by the Customer and/or any Group Company as a result of or in connection with:

(a) the Supplier's breach of any warranty, representation, undertaking or condition; and

(b) any claim made against the Customer and/or any Group Company by a third party arising out of, or in connection with, the supply of the Goods and/or the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or sub-contractors; and

(c) any claim brought against the Customer and/or any Group Company for actual or alleged infringement of a third party's Intellectual Property rights arising out of, or in connection with, the receipt, use or supply of the Goods and/or Services;

(d) any claim made against the Customer and/or any Group Company by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods and/or Services, to the extent that the defect in the Goods and/or Services is attributable to the acts or omissions of the Supplier, its employees, agents or sub-contractors; and

(e) any product recall in respect of the Goods attributable to the acts or omissions of the Supplier, its employees, agents or sub-contractors.

11.2 The parties do not intend the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("**Regulations**") to apply to the Contract. In the event that the Regulations are deemed upon commencement or termination of the Contract to apply, the Supplier shall keep the Customer and each Group Company indemnified in full against all costs, expenses, damages, losses and liabilities (whether direct, indirect or consequential), including all interest, penalties, and legal and other professional fees and expenses awarded against or incurred or paid by the Customer and/or any Group Company as a result of or in connection with the transfer to or from the Supplier of any employees pursuant to the Regulations.

11.3 This **condition 11** shall survive termination or expiry of the Contract.

## 12. INSURANCE

During the term of the Contract and for a period of 7 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance, public liability insurance and employers' liability insurance and any additional types of insurance to cover such heads of liability as may arise under or in connection with the Contract, and shall, on the Customer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance policy.

## 13. CONFIDENTIAL INFORMATION

13.1 The Supplier shall keep in strict confidence all Confidential Information disclosed to the Supplier by the Customer and/or any Group Company, its employees, agents or sub-contractors and/or which the Supplier may obtain and shall only use such Confidential Information for the purpose of discharging its obligations under the Contract. The Supplier shall only disclose such Confidential Information to those of its employees, agents or sub-contractors who need to know the same for the purpose of discharging the Supplier's obligations under the Contract, and shall ensure that such employees, agents and sub-contractors keep such Confidential Information in strict confidence and use it only for the purpose of discharging the Supplier's obligations under the Contract.

13.2 The Supplier shall not publicise the existence of the Contract, the fact of the provision of the Services and/or

Goods and/or make any public announcement concerning or relating to the Customer and/or any Group Company without the prior written consent of the Customer.

13.3 This **condition 13** shall survive termination or expiry of the Contract.

## 14. TERMINATION

14.1 Without prejudice to any other right or remedy it may have, the Customer may terminate the Contract in whole or in part at any time before satisfactory completion of the Services and/or Delivery of the Goods with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on the Contract. If all or part of any Services are terminated in accordance with this **condition 14.1**, the Customer will pay for Services which have been satisfactorily provided by the Supplier up to and including the date of termination of such Services provided that the Supplier takes all reasonable steps to mitigate the amount due. Any such payment shall be in full and final settlement of all and any claims for payment in respect of the terminated Services.

14.2 The Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if the Supplier:

(a) breaches any term of the Contract (and if remediable the breach has not remedied within 7 calendar days of receiving notice requiring it to be remedied);

(b) persistently breaches any one or more terms of the Contract;

(c) the Supplier is, or is deemed to be, or the Customer has reasonable cause to believe that the Supplier will become, unable to pay its debts as they fall due or admits inability to pay its debts or is insolvent, suspends making payments on any debts or announces an intention to do so, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness by reason of actual or anticipated financial difficulties, has a moratorium declared in respect of any of its indebtedness, ceases or threatens to cease to carry on business, applies for an interim order under Section 252 Insolvency Act 1986 or has a bankruptcy petition presented against it, has appointed in respect of it or any of its assets a liquidator, trustee in bankruptcy, judicial custodian, supervisor, compulsory manager, receiver, administrative receiver, administrator or similar officer (in each case whether out of court or otherwise), pledges or charges any Goods which remain the property of the Customer, takes or suffers any similar action in any jurisdiction or any step is taken (including, without limitation, the making of an application or the giving of any notice) by it or by any other person in respect of any of these circumstances;

(d) (being an individual) the Supplier dies or, by reason of illness or incapacity (whether mental or physical) is, or the Customer has reasonable cause to believe that the Supplier is, incapable of managing his or her own affairs or becomes a patient under any mental health legislation; and/or

(e) there is a change of control (whether directly or indirectly) of the Supplier.

## 15. CONSEQUENCES OF TERMINATION

15.1 On expiry or termination of the Contract for any reason:

(a) the Supplier shall immediately deliver to the Customer all Deliverables whether or not they are complete, and return all Customer Materials. If the Supplier fails to do so, then the Customer may enter the Supplier's premises or any third party premises connected to its business 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;

(b) the accrued rights, remedies, obligations and liabilities of the parties as at termination or expiry shall not be affected, including the right to claim under any indemnity in the Contract or to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and

(c) conditions which expressly or by implication have effect after termination or expiry shall continue in full force and effect.

15.2 This **condition 15** shall survive termination or expiry of the Contract.

## 16. CO-OPERATION, ASSISTANCE, AUDITING AND RECONCILIATION

16.1 The Supplier shall retain copies of all invoices, all payment records and all other documents and information associated with the Services and shall provide such information and documentation to the Customer on request, to enable the Customer or its appointed representative to evaluate the total expenditure and internal and external time and resources expended and/or procured by the Supplier in the provision of the Services.

16.2 Where the Customer requires assistance from the Supplier in order to respond to requests, queries and/or investigations in respect of the Goods and/or Services, the Supplier shall at the Supplier's sole cost provide the Customer with such assistance as the Customer requests within any timescales specified by the Customer. If no timescales are specified, the Supplier shall respond to and comply with the Customer's request within a reasonable period of time of receiving the request for assistance.

16.3 The Customer or its appointed representatives shall throughout the duration of the Contract and for 7 years after expiry or termination of the Contract for whatever reason, have the right to enter the Supplier's premises, or any third party premises connected to the Supplier, at any time to access, inspect and take copies of the Supplier's records in the event that the Supplier fails to comply with **condition 16.1**, **condition 16.2** and/or for the purpose of checking compliance with the Contract. The Supplier shall provide the Customer with all assistance requested by the Customer in the carrying out of any such audit under this **condition 16.3** at no cost to the Customer, any such audit shall not extend to payroll and personnel records or records relating to any of the Supplier's other clients.

16.4 If, following an audit under **condition 16.1** or otherwise the Customer finds that the sums incurred by the Supplier are less than the amount agreed in the Contract, without prejudice to the Customer's other remedies under the Contract, the Supplier shall pay the difference to the Customer within 7 calendar days of receiving a written demand for the same, or, at the Customer's sole discretion, the Supplier shall issue a credit note for such sums. The Supplier shall not be entitled to demand payment of any further sums from the Customer following such evaluation.

## 17. DATA PROTECTION

17.1 For the purposes of the Data Protection Legislation, the Customer is the Data Controller and the Supplier is the Data Processor of any Personal Data.

17.2 The Supplier shall comply with all applicable requirements of the Data Protection Legislation. In particular, and without limitation, in relation to any Personal Data processed by the Supplier under the Contract, the Supplier shall:

(a) only process the Personal Data to the extent, and in such a manner as is necessary for the purpose, scope and nature as specified in the Order, and in accordance with the Customer's written instructions from time to time, and not process the Personal Data for any other purpose;

(b) promptly comply with any request from the Customer requiring the Supplier to amend, transfer or delete the Personal Data (or copies thereof) on termination of the Contract;

(c) take appropriate technical and organisational measures to protect against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data;

(d) provide the Customer with reasonable evidence of the Supplier's compliance with this condition 17;

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

(f) immediately notify the Customer if the Supplier is requested to undertake any action which may cause the infringing of any Data Protection Legislation.

17.3 The Supplier agrees to assist the Customer to enable it to comply with Data Protection Legislation.

17.4 The Supplier shall not authorise any third party or sub-contractors to process the Personal Data.

## 18. GENERAL

18.1 Assignment and other dealings

(a) The Customer may at any time assign, transfer, charge, sub-contract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

(b) The Supplier may not assign, transfer, charge, sub-contract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the Customer's prior written consent.

## 18.2 Notices

(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party (and, in the case of the Customer, with a copy to its Legal Director) at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this condition, and shall be delivered by hand, or sent by pre-paid first-class post or other next working day delivery service or commercial courier or e-mail.

(b) In the absence of evidence of earlier receipt, a notice or other communication shall be deemed to have been received: if delivered by hand, when left at the address referred to in **condition 18.2(a)** at the date and time of actual delivery; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or if sent by e-mail on the same Working Day if sent before 4pm on a Working Day, otherwise, on the next Working Day.

(c) The provisions of this **condition 18.2** shall not apply to the service of any proceedings or other documents in any legal action.

## 18.3 Severance

If any provision (or part of any provision) of the Contract is or becomes invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

## 18.4 No partnership or agency

Notwithstanding this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party. The Supplier confirms it is acting on its own behalf and not for the benefit of any other person.

## 18.5 Waiver

A waiver of any right or remedy under the Contract or by law by the Customer is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by the Customer to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

## 18.6 Third party rights

A person who is not a party to the Contract shall not have any rights under or in connection with it save that the Customer has entered into the Contract for the benefit of itself and each Group Company. Accordingly, any Group Company shall be entitled to enforce the terms of the Contract as if it were a party to it. The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under the Contract are not subject to the consent of any person who is not a party to the Contract.

## 18.7 Variation

No variation of the Contract shall be effective unless it is in writing and signed by the Customer.

## 18.8 Governing law and jurisdiction

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