



KITE PACKAGING LIMITED TERMS AND CONDITIONS OF PURCHASE

These Terms and Conditions shall supersede all previous terms and conditions existing between Kite Packaging Limited (registered in England and Wales with company number 04680835 and with registered office at 186 Torrington Avenue, Tile Hill, Coventry, CV4 9AJ) (the "**Company**") and the person, company or firm from whom the Company purchases products and/or services, as identified in the applicable purchase order (the "**Supplier**").

1. BASIS FOR CONTRACT

- 1.1 From time to time, the Company may request the Supplier to provide certain products and/or services (respectively "**Products**" and "**Services**") subject to these Terms and Conditions. These may from time to time require the production of artwork, stereotypes and/ or tooling ("**Deliverables**") for designing and/ or manufacturing bespoke Products.
- 1.2 In response, the Supplier shall provide a quotation to the Company for the provision of such Products, Services and/or Deliverables in accordance with the details set out in the Company's request.
- 1.3 The Company may accept the Supplier's quotation by issuing a purchase order form ("**Purchase Order**") to the Supplier in response to that quotation, at which point, and on which date a contract shall come into existence between the parties ("**Contract**") subject to these Terms and Conditions.
- 1.4 These Terms and Conditions shall take precedence over any terms and general conditions of sale otherwise used by the Supplier or which are implied by trade, custom, practice or course of dealing. These Terms and Conditions shall apply as the complete and exclusive terms of the Contract, and no variation from the Supplier contained in any documents from the Supplier including but not limited to any letter, receipt acknowledgement, or other form shall be effective unless expressly agreed by the Company in writing.

2. LEGAL PRICE

- 2.1 The Supplier warrants that the price for the Products and/or Services, either original or after review, is in accordance with legal price regulations prevailing in the country of the Supplier.

3. PRICING

- 3.1 Prices for Products and/or Services to be provided to the Company, including any carriage or additional charges, shall not be payable by the Company unless they have been ordered and specified under a Purchase Order.
- 3.2 Subject to clause 9, the prices for Products and/or Services are fixed and non-revisable and as set out in the Purchase Order.



- 3.3 Unless otherwise agreed in writing:
- 3.3.1 the price for all Products includes the cost of delivery, insurance and carriage as well as the cost of packaging used by the Supplier to deliver the Products to the Company;
 - 3.3.2 the price for all Products, Services and/or Deliverables includes all taxes, duties, fees, and other charges, which are the responsibility of Supplier (including but not limited to import duties, plastic packaging tax and any other taxes imposed on the Products, Services and/or Deliverables in the future). The Supplier shall provide the Company, in the form and within time limits specified by written notice, the information necessary to enable the Company to comply with any lawful request for such information from any governmental authority having responsibility for assessment or collection of taxes; and
 - 3.3.3 the price for all Services shall be the full and exclusive remuneration of the Supplier and shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 3.4 All amounts payable by the Company 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 Company, the Company 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 Products, Services and/or Deliverables at the same time as payment is due for the supply of the Products, Services and/or Deliverables.
- 3.5 The Supplier shall maintain complete and reasonably accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow the Company to inspect such records at all reasonable times on request.
- 3.6 The Company may at any time, without notice to the Supplier, set off any liability of the Supplier to the Company against any liability of the Company to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. If the liabilities to be set off are expressed in different currencies, the Company may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Company of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.
4. **PACKAGING**
- 4.1 The Supplier shall ensure that:
- 4.1.1 each and every box, package, bundle, reel or other container used by the Supplier to deliver the Products is labelled with the Company’s order number, product code number, description, date, supplier code number and the quantity of contents. This



information must also be shown on any advice note and any other relevant documentation, such as certificate of conformity, which must accompany the Products;

- 4.1.2 all Products are packed in accordance with any instructions given by the Company to the Supplier and, in any event, in such a manner as to reach the Delivery Location (as defined in clause 5.1.2) in perfect and usable condition; and
- 4.1.3 it states clearly on the delivery note any requirement for the Company to return any packaging material for the Products to the Supplier. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

5. DELIVERY, QUANTITY AND PERFORMANCE

5.1 The Supplier shall deliver the Products:

- 5.1.1 on the date specified in the Purchase Order or, if no such date is specified, within 30 days of the date of the Purchase Order ("**Delivery Date**") and time shall be of the essence in relation to the Delivery Date;
- 5.1.2 to the location specified in the Purchase Order ("**Delivery Location**"); and
- 5.1.3 during the Company's normal hours of business (being 9:00am – 5:00pm Monday to Friday) or as instructed by the Company.

5.2 Delivery of the Products shall be completed on the completion of unloading of the Products at the Delivery Location.

5.3 If the Supplier:

- 5.3.1 delivers less than 90% of the quantity of Products ordered, the Company reserves the right at its sole discretion to accept the delivery as it is, require the supplier to make up the balance or reject the Product; or
- 5.3.2 delivers more than 110% of the quantity of Products ordered, the Company may at its sole discretion reserves the right at its sole discretion to accept the delivery as it is, or reject the Product or the excess Products,

and any rejected Products shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Products ordered, and the Company accepts the delivery, the Supplier shall make a pro rata adjustment to the invoice for the Products.

5.4 The Supplier shall not deliver the Products in instalments without the Company's prior written consent. Where it is agreed that the Products are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one



instalment on time or at all or any defect in an instalment shall entitle the Company to the remedies set out in clause 7.

5.5 The Supplier shall supply the Services to the Company in accordance with the terms of the Contract.

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

6. **QUALITY AND DESCRIPTION**

6.1 It is a condition of the Contract that the Supplier shall ensure that the Products and/or any Deliverables shall:

6.1.1 be of first class materials and workmanship and fit for any purpose held out by the Supplier or made known to the Supplier by the Company expressly or by implication;

6.1.2 meet the particulars referred to in the Purchase Order as to quantity, quality standards and description;

6.1.3 be free from defects in design, material and workmanship and remain so for 12 months after the Delivery Date;

6.1.4 correspond with any specification, sample, drawing or description provided by the Supplier; and

6.1.5 comply with all statutory and regulatory requirements in force from time to time applicable to (i) the manufacture, labelling, packaging, storage, handling and delivery; and (ii) any other obligations of the Supplier in the performance of the Contract.

6.2 It is a further condition of the Contract that the Supplier's supply of Products and/ or Deliverables to, and its performance of the Services for, the Company, shall comply with applicable Company policies and codes (including, without limitation, in respect of anti-bribery, modern slavery, conflict minerals, sustainability and environment, ethical trading, the REACH Regulations and WEEE Regulations with Company policies and codes made available on the Company's website, and as may be amended by notification to the Supplier from time to time).

6.3 The Company and the Supplier shall each comply with their respective obligations under applicable data protection laws and if and to the extent that a controller – processor relationship exists or is established between the Company and the Supplier respectively, each party commits to enter into negotiations with the other to conclude and execute an



agreement setting out the required provisions in relation to the applicable processing of personal data pursuant to the Data Protection Act 2018.

- 6.4 If the Supplier has made representations to the Company as to its possession of a quality standard certification (such as British or International standard certification) then the Supplier will immediately inform the Company of a change in or loss of, addition or amendment to such certification.
- 6.5 It is a condition of the Contract that, in performing the Services, the Supplier shall:
- 6.5.1 perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
 - 6.5.2 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;
 - 6.5.3 ensure that the Services will conform with all descriptions and specifications set out in the Purchase Order;
 - 6.5.4 unless otherwise expressly agreed between the parties in writing, provide all equipment, tools and vehicles and such other items as are required to provide the Services;
 - 6.5.5 obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
 - 6.5.6 comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply to the provision of the Services;
 - 6.5.7 comply with any additional obligations as set out in the Purchase Order.

7. **COMPANY REMEDIES**

- 7.1 If the Supplier fails to comply with these Terms and Conditions (including but not limited to any of clause 6) or fails to make delivery within the time specified, which time is of the essence, the Company reserves the right (without limiting or affecting other rights or remedies available to it) to:
- 7.1.1 cancel the Contract or any part thereof (including the cancellation of any remaining instalments which have not been delivered under the Contract) without liability to the Supplier with immediate effect by giving written notice to the Supplier;
 - 7.1.2 reject the Products, Services and/or any Deliverables (as applicable) and refuse to accept any subsequent performance of the Services and/or delivery of the Products and/ or Deliverables which the Supplier attempts to make;



- 7.1.3 recover from the Supplier any costs incurred by the Company in obtaining substitute Products, Services and/or Deliverables from a third party;
 - 7.1.4 require a refund from the Supplier of sums paid in advance for Products, Services and/or Deliverables that the Supplier has not provided;
 - 7.1.5 claim damages for any other costs, losses or expenses incurred by the Company which are in any way attributable to the Supplier's failure to comply with these Terms and Conditions and/or to make delivery of Products and/or Deliverables and/or perform a Service within the time specified.
- 7.2 For 12 months from the Delivery Date of Products, Services and/or Deliverables which do not conform with the provisions of clause 6.1 or 6.2 the Supplier shall, at the Company's option, forthwith replace or repair such Products and/or Deliverables and/or reperform such Service free of charge. Any repaired or replaced Products and/or Deliverables and/or reperformed Service will be guaranteed in accordance with this clause for the unexpired portion of the 12 month period.
- 7.3 The Company's rights under the Contract are in addition to its rights and remedies implied by statute and common law.
- 8. INSPECTION**
- 8.1 All Products and/or Deliverables shall be subject to inspection by the Company and the Company shall have 30 calendar days after delivery to inspect them in order to determine whether they are compliant with the Contract except where the Product and/or Deliverable is not compliant with clause 6 above.
- 8.2 If following such inspection the Company considers that the Products and/or Deliverables do not comply or are unlikely to comply with the Supplier's undertakings at clause 6.1, 6.2 or otherwise with the Contract, the Company shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 8.3 The right of the Company to reject any of the Products and/or Deliverables supplied shall extend to a right to reject an entire consignment of Products if some or all of the consigned Products are defective or are not in compliance with the Contract, without prejudice to any further remedies by way of damages or otherwise which the Company may have against the Supplier.
- 9. CHANGES**
- 9.1 No modifications to the commercial or technical terms and conditions of the Contract (including but not limited to the Purchase Order), nor any modification to the Products, any Deliverables or the Services will be implemented without the written agreement of both parties.



10. **INSURANCE**

10.1 During the term of the Contract and for a period of six (6) years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance, public liability insurance and employer's liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on the Company'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.

11. **CONFIDENTIALITY**

11.1 For the purpose of this clause, "**Confidential Information**" means any data (including technical or engineering data), materials, documentation, products, samples, specifications, manuals, drawings, technology, computer programs, software, marketing plans, business plans, financial information, customer information, third party supplier information and other information disclosed or submitted (and identified as confidential), orally, in writing, by electronic or magnetic media, by visual observation or by any other means.

11.2 The Supplier undertakes not to:

11.2.1 use the Confidential Information for any purpose other than to perform its obligations under the Contract;

11.2.2 use confidential information to target or sell to existing or prospective Kite customers;

11.2.3 disclose to third parties the existence of the Contract;

11.2.4 disclose directly or indirectly to any person any Confidential Information for the period of the Contract and six (6) years after termination of the Contract, except:

(a) to those persons who need to know such information in order for the Supplier to perform its obligations under the Contract ("Representatives") provided that such Representatives have entered into a non-disclosure agreement with the Supplier on terms no less onerous than the terms set out in this clause 11;

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority; or

(c) with the prior written agreement of the Company.

11.3 The Supplier shall promptly notify the Company if any Confidential Information is required to be disclosed pursuant to clause 11.2.4(b) and shall co-operate with the Company regarding the manner of such disclosure or any action which the Company may elect to take to challenge legally the validity of such requirement.



- 11.4 The Supplier shall be liable for the actions and/ or omissions of the Representatives in relation to the Confidential Information as if they were the actions and/ or omissions of the Supplier.
- 11.5 The Company reserves all rights in its Confidential Information. The disclosure of Confidential Information by the Company to the Supplier does not give the Supplier or any other person any licence or other right in respect of any Confidential Information beyond the rights expressly set out in this clause 11 and clause 12.
- 11.6 Except as expressly stated in these Terms and Conditions, the Company makes no express or implied warranty or representation concerning its Confidential Information, including but not limited to the accuracy or completeness of the Confidential Information.
- 11.7 Without prejudice to any other rights or remedies that the Company may have, the Supplier acknowledges and agrees that damages alone would not be an adequate remedy for any breach of this clause 11. Accordingly, the Company shall be entitled to the remedies of injunctions, specific performance or other equitable relief for any threatened or actual breach of this agreement by the Supplier.

12. **INTELLECTUAL PROPERTY RIGHTS**

- 12.1 **“Intellectual Property Rights”** or **“IPRs”** means patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, 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.
- 12.2 **“Company IPR”** means any IPRs belonging to or licensed to the Company and/ or its affiliates.
- 12.3 **“Company Materials”** means any drawings, specifications, designs and/ or ideas of the Company or any of its licensors.
- 12.4 **“Supplier IPR”** means any IPRs belonging to or licensed to the Supplier.

Company IPR

- 12.5 In connection with the development and production of any Deliverables or bespoke Products for the Company by the Supplier:
 - 12.5.1 the Supplier acknowledges that any Intellectual Property Rights existing in any Company Materials provided by the Company to the Supplier in connection with the Contract are and shall remain Company IPR;



- 12.5.2 the Company grants to the Supplier a fully paid-up, non-exclusive, non-transferable, royalty-free licence for the term of the Contract to use such Company IPR solely for the purpose of the Supplier performing its obligations under the Contract; and
- 12.5.3 the Supplier undertakes not to use, copy or disclose any details or information from such Company IPR to or for the benefit of any other person.

IPRs

- 12.6 The Supplier hereby assigns to the Company, with full title guarantee and free from all third party rights, all Intellectual Property Rights which may arise in the future in the Products, Services and /or Deliverables as a result of the Supplier's delivery and/or performance thereof.
- 12.7 The Supplier shall obtain waivers of all moral rights in the bespoke 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.
- 12.8 The Supplier shall promptly on request, do (or procure to be done) all such further acts and things including the execution of all such other documents as the Company may from time to time require for the purpose of securing for the Company all right, title and interest in and to the Intellectual Property Rights assigned to the Company in accordance with clause 12.6.
- 12.9 For any bespoke Deliverables created by the Supplier in delivering Products and/or Services to the Company the Supplier shall keep the same in safe custody at its own risk, maintain them in good condition and not destroy or dispose of or use the same other than in accordance with the Company's written instructions or authorisation.

Company Materials

- 12.10 If the Company supplies any Company Materials to the Supplier, the Supplier shall keep the same in safe custody at its own risk, maintain them in good condition until returned to the Company and not destroy or dispose of or use the same other than in accordance with the Company's written instructions or authorisation.

Supplier IPR in the manufacturing process of standard Products

- 12.11 In connection with the design, development and production of any standard (non-bespoke) Products, the Company acknowledges that all Intellectual Property Rights used by the Supplier shall remain the exclusive property of the Supplier (or, where applicable, the third party licensor from whom the Supplier derives the right to use them).

Company trade marks

- 12.12 The Supplier's use of the Company trade marks is limited to applying them to the Products in the form and manner specified by the Company from time to time, and not otherwise.



Warranty

- 12.13 The Supplier warrants that the Company's receipt, use and/or onward supply (if applicable) of any of the Products, Services and/ or Deliverables shall not infringe the rights including any Intellectual Property Rights of any third party.
- 12.14 The Supplier shall defend any claim made against the Company for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the receipt, use and/ or onward supply of the Products, Services and/ or Deliverables and shall indemnify and hold harmless the Company against all liabilities, damages, costs, expenses and losses (including all professional costs and expenses), which may be suffered or incurred by the Company arising out of, or in connection with, the receipt, use or onward supply of any of the Products, and/ or Deliverables.

13. LIABILITY

- 13.1 The Supplier shall indemnify, keep indemnified and hold harmless the Company in full and on demand against all liabilities (including any tax liability), costs, expenses, damages, claims, proceedings, judgments and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis), costs of enforcement and all other reasonable professional costs and expenses suffered or incurred by the Company arising out of or in connection with:
- 13.1.1 a breach of, or a failure to perform or defect or delay in performance or negligent performance of, any of the Supplier's obligations under the Contract;
- 13.1.2 any claim made against the Company by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Products, Services and/or Deliverables, as delivered, and
- 13.1.3 any claim made against the Company by a third party arising out of or in connection with the supply of the Products, as delivered, or the Services.

14. WEBSITE

- 14.1 Any Products featured on the Company's website which are supplied by the Supplier shall be featured in such format as determined by the Company.

15. TERMS OF PAYMENT

- 15.1 The Supplier may invoice the Company for the Products on or at any time after the completion of delivery. The Supplier may invoice the Company for the Services on or at any time after completion of the Services. Each invoice shall include such supporting information required by the Company to verify the accuracy of the invoice, including but not limited to the relevant Purchase Order number.



15.2 In consideration of the supply of Products and/or Services by the Supplier, the Company shall pay any valid invoice raised by the Supplier within 60 days of the end of the month during which the Products are delivered and/or Services are provided. Products delivered or Services provided after the 25th of the month will be treated as received in the following month.

16. RISK AND TITLE

16.1 Risk in, and title to, the Products and any related Deliverables shall pass to the Company upon delivery of the Product and the Supplier represents and warrants that prior to such delivery, the Supplier has full legal title to the Products and Deliverables and is legally entitled to sell such Products and Deliverables to the Company.

17. COMPLIANCE WITH ANTI-SLAVERY AND HUMAN TRAFFICKING LAWS

17.1 In performing its obligations under the Contract, the Supplier shall:

17.1.1 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force [including but not limited to the Modern Slavery Act 2015];

17.1.2 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;

17.1.3 include in contracts with its direct subcontractors and suppliers, provisions which are at least as onerous as those set out in this clause 17;

17.1.4 notify the Company as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with the Contract; and

17.1.5 maintain a complete set of records to trace the supply chain of all Products, Deliverables and Services provided to the Company in connection with the Contract; and permit the Company and its third party representatives to inspect the Supplier's premises, records, and to meet the Supplier's personnel to audit the Supplier's compliance with its obligations under this clause 17.

17.2 The Supplier represents and warrants that it has not been convicted of any offence involving slavery and human trafficking; nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

17.3 Breach of this clause 17 shall be deemed a material breach under clause 19.1.1.



18. ANTI-BRIBERY AND ANTI-CORRUPTION

18.1 The Supplier shall:

18.1.1 comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("**Relevant Requirements**");

18.1.2 comply with the Company's ethics, anti-bribery and anti-corruption policies as the Company may update them from time to time ("**Relevant Policies**");

18.1.3 have and shall maintain in place its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate;

18.1.4 notify the Company (in writing) if it becomes aware of any breach of clause 18.1.1 or clause 18.1.2 or has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage in connection with the performance of its obligations under these Terms and Conditions;

18.1.5 immediately notify the Company (in writing) if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier and the Supplier warrants that it has no foreign public officials as direct or indirect owners, officers or employees;

18.1.6 upon the Company's request, certify to the Company in writing signed by an officer of the Supplier, on an annual basis and for so long as it is a supplier to the Company, compliance with this clause 18 by the Supplier and all persons associated with it under clause 18.2. The Supplier shall provide such supporting evidence of compliance as the Company may reasonably request.

18.2 The Supplier shall ensure that any person associated with the Supplier who is performing services in connection with the Contract does so only on the basis of a written contract which imposes on and secures from such person terms at least equivalent to those imposed on the Supplier in this clause 18 ("**Relevant Terms**"). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms and shall be directly liable to the Company for any breach by such persons of any of the Relevant Terms.

18.3 Breach of this clause 18 shall be deemed a material breach under clause 19.1.1.

18.4 For the purpose of this clause 18, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the



purposes of this clause 18 a person associated with the Supplier includes but is not limited to any subcontractor of the Supplier.

19. TERMINATION

19.1 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:

19.1.1 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 fourteen (14) days after being notified in writing to do so;

19.1.2 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), 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; or

19.1.3 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.

19.2 Without affecting any other right or remedy available to it, the Company may terminate the Contract without liability with immediate effect by giving written notice to the Supplier if:

19.2.1 there is a change of control of the Supplier; or

19.2.2 the Supplier's financial position deteriorates to such an extent that in the Company's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

19.2.3 the Supplier commits a breach of any of clauses 6.1.5, 6.2 or 6.5.6.

19.3 The Company may terminate the Contract in whole or in part at any time before delivery with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on the Contract and the Supplier shall be entitled to recover from the Company such stranded costs as the Supplier may have reasonably and demonstrably incurred up to the day before notice is given, subject to full original evidence of such costs being provided to the Company. Stranded costs means costs incurred directly in the Supplier's performance of the applicable Contract up to the date of termination and which the Supplier is unable, after using its best efforts to mitigate, to recover. The Supplier's right to recover such stranded costs shall be its sole and exclusive remedy for the termination occasioned under this clause 19.3.



20. CONSEQUENCES OF TERMINATION

20.1 On termination of the Contract:

20.1.1 the Supplier shall, if requested to do so, immediately deliver to the Company such Products and Deliverables as the Company may in its sole discretion and in writing specify (whether or not such Products and Deliverables are then complete) and shall return all Company Materials;

20.1.2 each party shall return to the other all documents and materials (and any copies) containing the other party's Confidential Information and, to the extent possible, erase any such Confidential Information from its computer systems and devices; and

20.1.3 the Supplier shall repay to the Company any amount which it may have been paid in advance in respect of Products, Services and/or Deliverables not provided by the Supplier as at the termination date.

20.2 If the Supplier fails to comply with its obligations under clause 20.1.1, then the Company may enter the Supplier's premises and take possession of the Company Materials, Products and/or Deliverables. 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.

20.3 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.

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

21. EXIT MANAGEMENT

22. Without prejudice to any other rights and obligations in these Terms and Conditions, the Supplier shall co-operate and provide all assistance reasonably required by the Company to ensure an orderly transition of the supply of the Products and/ or Services to the Company or any replacement supplier in the event of termination of the Contract.

23. PUBLICITY

23.1 The Supplier shall not use the Company's name or branding (including any related domain names) in any promotional material, marketing material, similar material or announcement.

23.2 Nothing in these Terms and Conditions constitutes an endorsement by the Company of the Supplier's goods or services, and the Supplier shall not conduct itself in a way that implies any endorsement or authorisation by the Company.



24. **FORCE MAJEURE**

- 24.1 Provided it has complied with clause 24.3, a party shall not be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure results from events, circumstances or causes beyond its reasonable control ("**Affected Party**"). The time for performance of such obligations shall be extended accordingly.
- 24.2 In the event that the Supplier seeks to rely on clause 24.1, the Company's corresponding obligations will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Supplier.
- 24.3 The Affected Party shall:
- 24.3.1 as soon as reasonably practicable after the start of the Force Majeure Event but no later than two (2) days from its start, notify the other party in writing of the event of force majeure, the date on which it started, its likely or potential duration, and the effect of the event of force majeure on its ability to perform any of its obligations under the Contract; and
 - 24.3.2 use all reasonable endeavours to mitigate the effect of the event of force majeure on the performance of its obligations.
- 24.4 If the period of delay or non-performance continues for one (1) month, the party not affected may terminate the Contract by giving seven (7) days' written notice to the affected party.

25. **ASSIGNMENT & OTHER DEALINGS**

- 25.1 The Company may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights and obligations under the Contract. The Supplier shall not assign, transfer, mortgage, charge, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Company.
- 25.2 The Supplier may not subcontract any or all of its rights or obligations under the Contract without the prior written consent of the Company. If the Company consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all the acts and omissions of its subcontractors as if they were its own.
- 25.3 Without prejudice to the provisions of clause 25.2, the Supplier shall procure that all subcontractors (which may include engineers appointed by the Supplier) authorised by the Company shall contract with the Supplier on terms no less onerous than as set out in these Terms and Conditions and, without prejudice to the foregoing, when on the Company site or on any of the Company's customers' sites, shall complete a Risk Assessment Method statement and comply with all HSE and Covid-19 related guidance in force at the applicable site.



26. NOTICES

- 26.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be 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 sent by email to the address specified in the Purchase Order.
- 26.2 A notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; 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; 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. In this clause 26.2, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 26.3 This clause 26 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

27. SEVERANCE

- 27.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 27 shall not affect the validity and enforceability of the rest of the Contract.

28. NO LEGAL PARTNERSHIP OR AGENCY

- 28.1 Nothing in the Contract is intended to, or shall be deemed to, establish any legal partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

29. ENTIRE AGREEMENT

- 29.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

30. THIRD PARTY RIGHTS

- 30.1 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.



31. **WAIVER**

31.1 A failure on the part of either party in enforcing against the other party any term or condition of the Contract shall not be or deemed to be a waiver or in way prejudice any right of that party under the Contract.

32. **APPLICABLE LAW**

32.1 The Contract 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 English courts.