

ST MUNGO'S COMMUNITY HOUSING ASSOCIATION – PURCHASE ORDER STANDARD TERMS AND CONDITIONS  
(PURCHASE OF GOODS)

1 INTERPRETATION

1.1 Definitions

In these Conditions, the following definitions apply:

**"Authorised Officer"** means a person authorised, either generally or specifically, by Purchaser to either sign an Order, or raise an Order by telephone, e-mail, fax, or other means;

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

**"Charges"** means the charges payable by Purchaser for the supply of the Goods in accordance with Clause 11;

**"Commencement Date"** has the meaning set out in Clause 2.3;

**"Conditions"** means these terms and conditions as amended from time to time in accordance with Clause 22.8;

**"Contract"** means these Conditions together with the Order, any Order Amendments and Specifications;

**"Delivery Date"** has the meaning set out in Clause 5.1;

**"Delivery Location"** has the meaning set out in Clause 5.2;

**"DPA"** means the Data Protection Act 1998 (DPA) until 24<sup>th</sup> May 2018 and the General Data Protection Regulation (GDPR) from 25<sup>th</sup> May 2018 and the rules and regulations made or having effect under it;

**"Eighth Data Protection Principle"** means the eighth data protection principle set out in the DPA and the whole of Chapter 5 of the GDPR;

**"Force Majeure Event"** means an event beyond the control of either party, which by its nature could not have been foreseen by such party, or, if it could have been foreseen, was unavoidable, and includes acts of God, storms, floods, riots, fires, sabotage, civil commotion or civil unrest, interference by civil or military authorities, acts of war (declared or undeclared) or armed hostilities or other national or international calamity or one or more acts of terrorism or failure of energy sources, and in particular Government intervention, strikes or lock-outs relevant to the Order and any Order Amendment or breakdown of plant;

**"Goods"** means the materials, documents, products, articles, works and services to be provided by the Supplier under the Contract as set out in the Order;

**"Intellectual Property Rights"** means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography 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 for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

**"Order"** means Purchaser's order for the supply of Goods;

**"Order Amendment"** means Purchaser's authorised order amendment or series of order amendments, adding to, deleting or modifying the Order, each order amendment having precedence over any earlier order amendment;

**"Personal Data"** has the meaning given to that term in the DPA until 24<sup>th</sup> May 2018 and the GDPR from 25<sup>th</sup> May 2018;

**"Process"** has the meaning given to that term in the DPA and the GDPR and "Processed" and "Processing" shall be construed accordingly;

**"Programmes"** has the meaning set out in Clause 9.2.2;

**"Purchaser"** means St. Mungo's Community Housing Association (company number: 8225808) 3 Thomas More Square, Tower Hill, London, E1W 1YW;

**"Purchaser Materials"** has the meaning set out in Clause 4.4.9;

**"Sale of Goods Act 1979"** shall mean the Sale of Goods Act 1979 as amended by the Sale and Supply of Goods Act 1994;

**"Seventh Data Protection Principle"** means the seventh data protection principle set out in the DPA and the sixth data protection principle set out in the GDPR;

**"Specification"** means the description or specification for the Goods described in the Order and any Order Amendment or otherwise specified by Purchaser to the Supplier;

**"Supplier"** means the person from whom Purchaser purchases the Goods and to whom it submits an Order;

**"Supplier Personnel"** means the employees, agents and contractors of the Supplier (including the employees, agents and contractors of any sub-contractor of the Supplier) who are engaged in the provision of the Goods;

**"Term"** has the meaning set out in Clause 3;

**"Usual Business Hours"** means the hours between 9:00am and 5:00pm (UK time) on a Business Day.

1.2 Construction

In the Contract, the following rules apply:

- 1.2.1 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.2 a reference to a party includes its personal representatives, successors or permitted assignees;
- 1.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 1.2.4 a reference to a **Clause** or **Annex** is a clause or annex of these Conditions;
- 1.2.5 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; and
- 1.2.6 a reference to **writing** or **written** includes faxes or emails..

2 BASIS OF CONTRACT

- 2.1 No request for a quotation by Purchaser shall constitute an offer to purchase Goods.
- 2.2 The Order constitutes an offer by Purchaser to purchase Goods in accordance with these Conditions.
- 2.3 The Order shall be deemed to be accepted on the earlier of:
- 2.3.1 the Supplier issuing written acceptance of the Order; or
- 2.3.2 any act by the Supplier consistent with fulfilling the Order, at which point and on which date the Contract shall come into existence (the **"Commencement Date"**).
- 2.4 Purchaser reserves the right to withdraw or cancel the Order or request for a quotation without notice at any time prior to receipt of the Goods or deemed acceptance pursuant to Clause 2.3 above.
- 2.5 In the event of any conflict or inconsistency, the following order of precedence shall apply:
- 2.5.1 these Conditions;
- 2.5.2 any Order Amendment;
- 2.5.3 the Order;
- 2.5.4 any Specification.
- 2.6 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. In the event that the Contract is held by a court of competent jurisdiction to include the Supplier's terms, if there is any conflict or apparent conflict between these Conditions and the Supplier's terms, these Conditions shall always prevail.

3 COMMENCEMENT AND TERM

The Contract shall commence on the Commencement Date and shall, subject to the provisions in Clause 0, remain in effect until completion of the parties' respective obligations in the Order and any Order Amendment (the **"Term"**).

4 SUPPLY OF GOODS

- 4.1 During the Term, the Supplier shall supply the Goods in accordance with the terms of the Contract.
- 4.2 The Supplier warrants, represents and undertakes that it has and shall continue to have all rights, including Intellectual Property Rights, power and authority required for it to deliver and perform its obligations under the Contract.
- 4.3 The Supplier shall meet any dates for delivery of the Goods specified in the Order, any Order Amendment or as notified to the Supplier by Purchaser.
- 4.4 In delivering the Goods, the Supplier shall:
- 4.4.1 co-operate with Purchaser in all matters relating to the Contract, and comply with all instructions and regulations of Purchaser;
- 4.4.2 fulfil its obligations under the Contract with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- 4.4.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them with all due care, skill and diligence and in a professional and workmanlike manner, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;
- 4.4.4 use the best quality goods, materials, standards and techniques;
- 4.4.5 unless otherwise stated in the Order or any Order Amendment, ensure that compatible spares for the Goods are available for a period of at least five (5) years from the Delivery Date;
- 4.4.6 obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
- 4.4.7 observe all health and safety rules and regulations and all legal requirements of the United Kingdom in relation to health, safety and environment, and in particular to the marking of hazardous goods, the provision of data sheets for hazardous materials, and all provisions relating to food;
- 4.4.8 comply with other security requirements that apply at any of Purchaser's premises where the Supplier is performing works or services under the Contract at any of Purchaser's premises and of which it has been notified by Purchaser in writing;
- 4.4.9 hold any materials, equipment and tools, drawings, other equipment and specifications and data supplied by Purchaser to the Supplier (**"Purchaser Materials"**) in safe custody at its own risk, maintain Purchaser Materials in good and serviceable condition until returned to Purchaser, and not dispose or use Purchaser Materials other than

for the purpose of completing the Contract and/or in accordance with Purchaser's written instructions or authorisation;

- 4.4.10 return Purchaser Materials to Purchaser within ten (10) Business Days of a request being made by Purchaser;
- 4.4.11 dispose of all scrap arising from the supply of Purchaser Materials at Purchaser's discretion, and the Supplier shall promptly pay to Purchaser any and all proceeds of sales of scrap;
- 4.4.12 make no copies of the Purchaser Materials without the consent in writing of the Authorised Officer; and
- 4.4.13 not do or omit to do anything which may cause Purchaser to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business, and the Supplier acknowledges that Purchaser may rely or act on the Contract.
- 4.5 Without prejudice to Clause 2.4, Purchaser shall have the right, before delivery of Goods pursuant to the Order, to send the Supplier an Order Amendment. If the Order Amendment will cause a change to the Charges or delivery of the relevant Goods, the Supplier must suspend performance of the Order and notify Purchaser without delay, calculating the new Charges at the same level of cost and profitability as the original Charges. The Supplier must allow Purchaser at least ten (10) Business Days to consider any new Charges. The Order Amendment shall take effect on Purchaser's Authorised Officer accepting in writing the new Charges within the reasonable time period the Supplier has stipulated. If Purchaser's Authorised Officer fails to confirm the Order Amendment within the time period the Supplier has stipulated then performance of the Order shall immediately resume as though the said Order Amendment had not been issued.
- 4.6 The Supplier agrees to act in a way which is consistent with the best interests of the Purchaser. The Supplier undertakes to declare to the Purchaser any competing interest which may affect the performance of the Contract by the Supplier or which may conflict with the best interests of the Purchaser or cause, or be likely to cause, the Supplier to act in a way which is inconsistent with the best interests of the Purchaser and will provide a written declaration of any such conflict of interest to the Purchaser.

5 DELIVERY

- 5.1 The Supplier shall deliver the Goods on the date or within the period stated on the Order and any Order Amendment (the **"Delivery Date"**). Where the date of delivery on the Order differs from the date of delivery stated on the Order Amendment, the date on the Order Amendment shall prevail.
- 5.2 Deliveries of the Goods shall be made at the address nominated by Purchaser on the Order and/or any Order Amendment (the **"Delivery Location"**), and unless specified otherwise by Purchaser, to a location within the Delivery Location which can be secured by means of a lockable entrance.
- 5.3 Unless specified in the Order or any Order Amendment, upon making a delivery of the Goods the Supplier shall:
- 5.3.1 report to the reception of the Delivery Location; and
- 5.3.2 verify the identity of the Purchaser personnel authorised to take delivery of the Goods.
- 5.4 Unless specified in the Order or any Order Amendment, the Supplier shall deliver the Goods to the Delivery Location during Purchaser's Usual Business Hours.
- 5.5 Pursuant to Clauses 5.1, 5.2 and 5.3, Purchaser shall hold the Goods as delivered where the Goods have been delivered, unloaded, positioned, and where necessary installed, at the Delivery Location on the Delivery Date, and signed for by a member of Purchaser's personnel who is wearing a valid Purchaser identity card (containing a photograph).
- 5.6 The Supplier shall provide any equipment, facilities, or fittings required for the delivery and installation of the Goods at its own cost unless specified otherwise in writing by Purchaser.
- 5.7 The Supplier shall not make a delivery of the Goods in instalments or in advance of the Delivery Date unless specified by Purchaser in the Order or any Order Amendment.
- 5.8 The Supplier shall remove any packaging materials from the Delivery Location at the Supplier's risk and expense.
- 5.9 If the Order is not delivered at the specified Delivery Location, Purchaser may, at the expense of the Supplier, return any Goods which Purchaser reasonably deems cannot be utilised. The Supplier shall reimburse Purchaser for the cost and return of such Goods.

6 ACCEPTANCE AND DEFECTIVE PRODUCTS

- 6.1 Purchaser shall not be deemed to have accepted any Goods until it has had a reasonable time to inspect them following Delivery, or, in the case of a latent defect in the Goods, until a reasonable time after the latent defect has become apparent.
- 6.2 If the Supplier fails to deliver the Goods in accordance with the Contract, including Clause 9.1 and / or any Delivery Date, Purchaser shall, without limiting its other rights or remedies, have one or more of the following rights:
- 6.2.1 to require the Supplier to repair or replace the rejected Goods at the Supplier's risk and expense within five (5) Business Days of being requested to do so;
- 6.2.2 to require the Supplier to repair the price of the rejected Goods in full (whether or not Purchaser has previously required the Supplier to repair or replace the rejected Goods);
- 6.2.3 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- 6.2.4 to claim damages for any other costs, expenses or losses resulting from the Supplier's delivery of Goods that are not in conformity with the Contract; and
- 6.2.5 to terminate the Contract with immediate effect by giving written notice to the Supplier and require the Supplier to repay any moneys paid by Purchaser under the Order and any Order Amendment.
- 6.3 Purchaser's rights and remedies under this Clause 6 are in addition to the rights and remedies available to it under statute and common law, including in respect of the statutory conditions relating to description, quality, fitness for purpose and correspondence with sample implied into this agreement by the Sale of Goods Act 1979.
- 6.4 The Contract shall apply to any repaired or replacement Goods supplied by the Supplier.
- 6.5 If the Supplier fails to promptly repair or replace rejected Goods in accordance with Clause 6.2.1, Purchaser may, without affecting its rights under Clause 6.2.4, obtain substitute goods from a third party supplier, or have the rejected Goods repaired by a third party, and the Supplier shall reimburse Purchaser for the costs it incurs in doing so.

7 TITLE AND RISK

- 7.1 The risk in Goods delivered to Purchaser shall pass to Purchaser on delivery of the Goods in accordance with Clause 5.
- 7.2 Title to Goods delivered to Purchaser shall pass to Purchaser:
- 7.2.1 on delivery of the Goods in accordance with Clause 5; or
- 7.2.2 where the Order provides for payment to the Supplier in advance, at the time such advance payment is made.
- 7.3 Purchaser Materials held by the Supplier shall remain the exclusive property of Purchaser.

8 PURCHASER'S OBLIGATIONS

- 8.1 Purchaser shall:
- 8.1.1 if necessary, provide the Supplier with reasonable access at reasonable times to Purchaser's premises for the sole purpose of delivering the Goods; and
- 8.1.2 provide such information to the Supplier as the Supplier may reasonably request and Purchaser considers reasonably necessary for the purpose of delivering the Goods.

9 MANUFACTURE, QUALITY AND DESCRIPTION

- 9.1 The Supplier warrants, represents and undertakes to Purchaser that the Goods supplied to Purchaser by the Supplier under the Contract shall:
- 9.1.1 conform with all descriptions, samples, plans and specifications set out in the Specification;
- 9.1.2 be fit for any purpose expressly or impliedly made known to the Supplier by Purchaser;
- 9.1.3 be of satisfactory quality;
- 9.1.4 be free from defects in workmanship, installation and design and remain so for twelve (12) months after delivery;
- 9.1.5 be new unless specified otherwise on the Order and/or any Order Amendment;
- 9.1.6 be clearly marked as the property of Purchaser;
- 9.1.7 not contain asbestos content unless specified on the Order and/or any Order Amendment; and
- 9.1.8 comply with all applicable statutory and regulatory requirements.
- 9.2 The Supplier shall:
- 9.2.1 at all times maintain sufficient manufacturing capacity, stocks of raw materials and packaging and stocks of Goods to enable it to meet the Order and any Order Amendment;
- 9.2.2 provide any programmes of manufacture and delivery reasonably required by Purchaser (the "Programmes");
- 9.2.3 notify Purchaser in writing and without undue delay if the Supplier's progress falls behind or is likely to fall behind any of the Programmes as provided under Clause 9.2.2;
- 9.2.4 ensure that the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition; and
- 9.3 comply with all applicable laws, enactments, orders, regulations and other instruments relating to the manufacture, packing, packaging, marking, storage, handling, and delivery of the Goods.

10 RIGHT TO AUDIT

Purchaser shall have the right, during normal business hours and on reasonable notice, to inspect and take copies of all relevant records relating to the work that the Supplier carries out under the terms of the Contract (including evidence of expenses and expenditure, amounts which the Supplier holds or has held on Purchaser's behalf, and invoices issued to or by suppliers/agencies), or to authorise an agent or representative to carry out that work on Purchaser's behalf. The aim of that inspection will be to verify the Supplier's performance under and in accordance with the Contract including how the Supplier's costs are incurred and how the Supplier has used any amounts held by the Supplier on Purchaser's behalf. This right will exist during the life of the Contract and for one year after its expiry or termination. The Supplier agrees to co-operate with the inspection and where requested, provide access to its staff, systems and premises.

11 CHARGES AND PAYMENT

- 11.1 The Charges for the Goods shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the Order. Unless otherwise agreed in writing by Purchaser, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the Order.
- 11.2 The Supplier shall issue invoices as agreed with Purchaser, and each invoice submitted to Purchaser shall include the details agreed with Purchaser and such supporting information required by Purchaser to verify the accuracy of the invoice.
- 11.3 In consideration of the proper supply of the Goods by the Supplier in accordance with the terms of this agreement, subject to Clause 11.4 Purchaser shall pay the invoiced amounts no later than the end of the calendar month following the calendar month in which delivery was made and receipt of a correct invoice submitted by the Supplier whichever shall happen last, to a bank account nominated in writing by the Supplier.
- 11.4 If Purchaser disputes any invoice or other request for payment, Purchaser shall immediately notify the Supplier in writing. The parties shall negotiate in good faith to attempt to resolve the dispute promptly. The Supplier shall provide all such evidence as may be reasonably necessary to verify the disputed invoice or request for payment. Where only part of an invoice is disputed, the undisputed amount shall be paid on the due date as set out in Clause

- 11.3. For the avoidance of doubt, the Supplier's obligations to deliver the Goods shall not be affected by any payment dispute, including its obligations to deliver the Goods to which the payment dispute relates.
- 11.5 The Supplier's invoice must be addressed to the department or division of Purchaser notified to the Supplier and must quote the Order number. Purchaser shall not be held responsible for delays in payment caused by the Supplier's failure to comply with Purchaser's invoicing instructions.
- 11.6 All amounts payable by Purchaser under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being ("VAT"). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to Purchaser, 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 at the same time as payment is due for the supply of the Goods.
- 11.7 If Purchaser fails to pay any amount properly due and payable by it under the Contract, the Supplier shall have the right to charge interest on the overdue amount at the rate of two (2) per cent per annum above the base rate for the time being of The Royal Bank of Scotland plc, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment. This Clause shall not apply to payments that Purchaser disputes in good faith pursuant to Clause 11.4.
- 11.8 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Goods, and shall allow Purchaser to inspect such records at all reasonable times on request.
- 11.9 Purchaser may, without limiting its other rights or remedies, set off any amount owed to it by the Supplier against any amount payable by Purchaser to the Supplier under the Contract.
- 12 **INDEMNITY AND INSURANCE**
- 12.1 The Supplier shall indemnify Purchaser and keep Purchaser indemnified on demand and in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by Purchaser as a result of or in connection with:
- 12.1.1 any claim made against Purchaser by a third party arising out of, or in connection with, the Goods, 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 subcontractors; and
- 12.1.2 any claim brought against Purchaser for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use, supply or delivery of the Goods.
- 12.2 The indemnities under Clause 12.1 shall not be prejudiced or waived by any exercise of Purchaser's rights under Clause 6.
- 12.3 For the duration of the Contract and for a period of six (6) years thereafter, the Supplier shall maintain in force, with a reputable insurance company to cover the liabilities that may arise under or in connection with the Contract and shall, on Purchaser's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each of the following risks:
- 12.3.1 professional indemnity insurance cover with a minimum limit of £5,000,000 (five million pounds Sterling) for any one claim in any one policy year;
- 12.3.2 employer's liability insurance cover with a minimum limit of £5,000,000 (five million pounds Sterling) per occurrence;
- 12.3.3 public liability insurance cover with a minimum limit of £5,000,000 (five million pounds Sterling) per occurrence; and
- 12.3.4 risks against which it is usual to insure a business of the type carried out by the Supplier or which Purchaser specifically asks the Supplier to take out at the time that the Contract is signed.
- 12.4 The Supplier shall:
- 12.4.1 ensure that any subcontractors also maintain adequate insurance having regard to the obligations under this agreement which they are contracted to fulfil;
- 12.4.2 do nothing to invalidate any insurance policy or to prejudice Purchaser's entitlement under it; and
- 12.4.3 notify Purchaser if any policy is (or will be) cancelled or its terms are (or will be) subject to any material change.
- 12.5 This Clause 12 shall survive termination of the Contract.
- 13 **LIMITATION OF LIABILITY**
- 13.1 Nothing in the Contract shall limit or exclude the liability of either party for:
- 13.1.1 death or personal injury resulting from negligence; or
- 13.1.2 fraud or fraudulent misrepresentation.
- 13.2 Nothing in the Contract shall limit or exclude the liability of the Supplier for:
- 13.2.1 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- 13.2.2 breach of section 2 of the Consumer Protection Act 1987; or
- 13.2.3 the indemnities contained in Clause 12; or
- 13.2.4 the deliberate default or wilful misconduct of that party, its employees, agents or subcontractors.
- 13.3 Without prejudice to Clause 13.1 or Clause 13.2, neither party shall be liable to the other, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any indirect or consequential loss suffered by the other party that arises under or in connection with the Contract.
- 13.4 Without prejudice to Clause 13.1 or Clause 13.2, the Supplier's total liability arising under or in connection with the Contract, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall be limited to £5,000,000 (five million pounds sterling).
- 13.5 Without prejudice to Clause 13.1, Purchaser's total liability arising under or in connection with the Contract, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall be limited to £1,000,000 (one million pounds sterling).
- 14 **CONFIDENTIALITY**
- 14.1 A party (the "Receiving Party") shall keep in strict confidence information which is of a confidential nature and which has been disclosed to, or otherwise obtained by, the Receiving Party by or from the other party (the "Disclosing Party"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain (the "Confidential Information").
- 14.2 Each party agrees not to use the Confidential Information relating to any other party for any purpose other than the purpose for which it is supplied under the Contract and the Receiving Party agrees to restrict disclosure of the Confidential Information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. Purchaser Materials that are confidential in nature shall be deemed to be, and be treated as, the Confidential Information of Purchaser.
- 14.3 The obligations in this Clause 14 shall not apply in relation to:
- 14.3.1 confidential information to the extent that disclosure is authorised in writing by the other party which authorisation shall not be unreasonably withheld or delayed;
- 14.3.2 confidential information which is or becomes public knowledge other than as a result of a breach of Clauses 14.1 or 14.2;
- 14.3.3 confidential information which the party using or disclosing the information either knew prior to the other party's first disclosure to it or received from a third party entitled to disclose the same, and
- 14.3.4 confidential information which any party is required to disclose by law, any Court of competent jurisdiction, any Government agency or regulatory body lawfully requesting the same or by the regulations of any stock exchange.
- 14.4 This Clause 14 shall survive termination of the Contract.
- 15 **DATA PROTECTION**
- 15.1 If and to the extent that the Supplier (for the purpose of this Clause 8, the "Data Processor") Processes any Personal Data on behalf of the Purchaser under this Agreement (for the purpose of this Clause 8, the "Data Controller"), the Data Processor undertakes to the Data Controller that the Data Processor:
- 15.1.1 shall comply with the obligations imposed on the Data Controller by the Security Data Protection Principle, namely:
- 15.1.2 to maintain technical and organisational security measures sufficient to comply at least with the obligations imposed on the Data Controller by the Security Data Protection Principle and take reasonable steps to ensure the reliability of any employees of the Data Processor who have access to Personal Data;
- 15.1.3 only to Process Personal Data for and on behalf of the Data Controller for the purpose of performing and in accordance with this Agreement (and where necessary only on instructions from the Data Controller to ensure compliance with the DPA/GDPR, whichever is in force); and
- 15.1.4 to allow representatives of the Data Controller to audit the Data Processor's compliance with the requirements of this Clause 8 on reasonable notice and/or, at the option of the Data Controller, on request to provide the Data Controller with evidence of its compliance with such requirements;
- 15.1.5 to not engage another processor without prior specific or general written authorisation of the Data Controller;
- 15.1.6 shall not transfer any Personal Data outside the European Economic Area without the prior written consent of the Purchaser, and in granting consent to the transfer, the Purchaser may impose such terms on the Processing of the Personal Data and on the Supplier and/or any overseas processor of the data as the Purchaser requires to ensure that the Personal Data is adequately protected (as required by the International Transfer Data Protection Principle); and
- 15.1.7 shall assist the Data Controller to comply with any obligations imposed on the Data Controller by the DPA in relation to any Personal Data Processed by the Data Processor including:
- 15.1.8 providing the Data Controller with reasonable assistance in complying with any subject access request served on the Data Controller under the DPA;
- 15.1.9 promptly informing the Data Controller about the receipt of any subject access request received by the Data Processor in relation to Personal Data Processed pursuant to any Contract; and
- 15.1.10 not disclosing any Personal Data in response to a subject access request without first consulting with and obtaining the consent of the Data Controller.
- 15.2 On expiry or termination of the Contract, the Supplier shall immediately cease Processing the Personal Data and, at Purchaser's option or direction, arrange for the prompt and safe return and/or destruction of all of the Personal Data with all copies in its possession or control and, where requested by the Purchaser, certify that such destruction or return has taken place.
- 16 **COMPLIANCE**
- 16.1 The Supplier will comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including the Bribery Act 2010 and will not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010. Without limiting the foregoing, the Supplier will not make any payments, or offer or transfer anything of value, to any government official or government employee, to any political party official or to any other third party and will promptly report to Purchaser any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of the Contract.
- 16.2 The Supplier shall ensure that any person associated with the Supplier who is performing services or providing goods in connection with the Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this Clause 15.1 ("Relevant Terms"). The Supplier shall be responsible for the observance and performance by such persons of any of the Relevant Terms, and shall be directly liable to Purchaser for any breach by such persons of any of the Relevant Terms.
- 16.3 In the event of any breach of this Clause 15.1, Purchaser shall, without prejudice to any other rights it may possess, be at liberty immediately to terminate this and any other Contract and to recover from the Supplier any loss or damage resulting from such termination.
- 17 **EQUALITY AND DIVERSITY**
- 17.1 The Supplier shall, and shall procure that the Supplier Personnel, comply with any and all applicable anti-discrimination legislation, including the Equality Act 2010.
- 17.2 The Supplier will provide evidence to Purchaser, on written request, of the Supplier's compliance with any and all applicable anti-discrimination legislation in connection with the performance of the Contract (including in the Supplier's employment practices), in order to satisfy Purchaser that the Supplier takes all reasonable steps to promote equality and diversity in connection with the performance of the Contract and in the Supplier's work environment.
- 17.3 Where the Services are performed in London, the Supplier shall pay such personnel that are engaged in performing the Services, the London living wage in force from time to time and where the Services are performed outside London, the National living wage
- 18 **MODERN SLAVERY**
- 18.1 The Supplier represents and warrants that: (i) it has not been and is not engaged in any practices involving the use of child labour, forced labour, the exploitation of vulnerable people, or human trafficking, including any activity or practice that would constitute an offence under section 1, section 2 and section 4 of the Modern Slavery Act 2015, if carried out in the UK ("Slavery and Human Trafficking"); (ii) its employees and agency workers are paid in compliance with all applicable employment laws and minimum wage requirements; (iii) it will take reasonable steps to prevent Slavery and Human Trafficking in connection with the Supplier's business; (iv) it will include in its contracts with its subcontractors and suppliers in connection with this Contract Slavery and Human Trafficking provisions that are at least as onerous as those set out in this Contract; and (v) it will respond to all reasonable requests for information required by Purchaser for the purposes of completing Purchaser's annual anti-Slavery and Human Trafficking statement.
- 19 **TERMINATION**
- 19.1 Without limiting its other rights or remedies Purchaser may terminate the Contract with immediate effect by giving the Supplier written notice at any time if:
- 19.1.1 the Supplier is in material or persistent breach of any of its obligations under the Contract and fails to remedy that breach (if capable of remedy) within twenty-eight (28) days after receiving written notice of the breach; or
- 19.1.2 the Supplier is in breach of any of its obligations under the Contract on more than three (3) occasions during any six (6) month period (even if that party has remedied those breaches on previous occasions); or
- 19.1.3 if any encumbrance takes possession of or a receiver, administrative receiver or similar officer is appointed over any of the property or assets of the Supplier or if the Supplier makes any voluntary arrangement with its creditors or becomes subject to an administration order or has an administrator appointed or goes into liquidation or has a resolution for its winding up passed (except for the purpose of amalgamation or reconstruction not involving insolvency where the resulting entity agrees to be bound by or assumes the obligations imposed on the other party) or anything analogous to any of these events under the law of any jurisdiction occurs in relation to the Supplier or if the Supplier ceases or threatens to cease to carry on business; or
- 19.1.4 the Supplier (being an individual) dies, or by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 19.2 The termination or expiry of the Contract (however caused) will not affect any rights and/or liabilities of Purchaser which have accrued before termination or expiry, or any provision of the Contract which expressly or by implication is intended to come into or continue in effect on or after termination or expiry.
- 19.3 Without limiting its other rights or remedies, Purchaser may at any time during the Term terminate the Contract by giving the Supplier three (3) months' written notice.
- 20 **CONSEQUENCES OF TERMINATION**
- 20.1 On termination of the Contract for any reason:
- 20.1.1 the Supplier shall immediately return and deliver to Purchaser any Purchaser Materials. If the Supplier fails to do so, then Purchaser may enter the Supplier's premises and take possession of the Purchaser Materials. Until Purchaser Materials 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;
- 20.1.2 the accrued rights, remedies, obligations and liabilities of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and
- 20.1.3 Clauses which expressly or by implication have effect after termination shall continue in full force and effect.
- 21 **MULTI-TIERED DISPUTE RESOLUTION PROCEDURE**
- 21.1 If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it ("Dispute") then, the parties shall follow the procedure set out in this Clause:
- 21.1.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("Dispute Notice"), together with relevant supporting documents. On service of the Dispute Notice, a nominated representative of the Supplier and a nominated representative of Purchaser shall attempt in good faith to resolve the Dispute;
- 21.1.2 if the nominated representative of the Supplier and the nominated representative of Purchaser are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to a senior representative of the Supplier and a senior representative of Purchaser who shall attempt in good faith to resolve it; and
- 21.1.3 if the senior representative of the Supplier and the senior representative of Purchaser are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing ("ADR notice") to the other party to the Dispute, requesting mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 30 days after the date of the ADR notice.
- 21.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under Clause 18.9 which Clause shall apply at all times.
- 22 **GENERAL**
- 22.1 **Force Majeure**
- 22.1.1 Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under the Contract if and to the extent such delay or failure is caused by a Force Majeure Event.
- 22.1.2 If a Force Majeure Event prevents the Supplier from providing any of the Goods for more than 6 weeks, Purchaser shall have the right, without limiting its other rights or remedies, to terminate the Contract with immediate effect by giving written notice to the Supplier.
- 22.2 **Assignment and subcontracting**
- 22.2.1 The Supplier shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of Purchaser (such consent not to be unreasonably withheld or delayed). The Supplier will be responsible for all acts and omissions of its subcontractors (including any sub-subcontractors) as though they were its own.
- 22.2.2 Purchaser may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- 22.3 **Notices**
- 22.3.1 Any notice or other communication required to be given to a party under or in connection with the Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax or e-mail to the other party's main fax number or e-mail address.
- 22.3.2 Any notice or communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax or e-mail, on the next Business Day after transmission.
- 22.3.3 This Clause 22.3 shall not apply to the service of any proceedings or other documents in any legal action.
- 22.4 **Waiver and Cumulative Remedies**
- 22.4.1 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. 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.
- 22.4.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 22.5 **Severance**
- 22.5.1 If a court or any other competent authority finds that any provision (or part of any provision) of the Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 22.5.2 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.

- 22.6 **No Partnership**  
Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 22.7 **Third Parties**  
No term of the Contract shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to the Contract.
- 22.8 **Variation**  
Any variation, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by an Authorised Officer of Purchaser.
- 22.9 **Entire Agreement**  
Each party acknowledges that, in entering into the Contract, it has not relied on any statement, representation, assurance or warranty (whether made negligently or innocently) other than those expressly set out in the Contract. No previous correspondence, writings, facsimiles, emails (or other electronic communications) or verbal communications between the Supplier and Purchaser regarding the Goods shall form any part of or be incorporated into the Contract. For the avoidance of doubt, nothing in the Contract shall exclude or limit liability for fraudulent misrepresentation.
- 22.10 **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.