

# **HARLECH**

**PRINT & PAPER MANAGEMENT**

**HARLECH PPM LIMITED**

**GENERAL CONDITIONS OF PURCHASE**

1. **Interpretation**

1.1 Definitions. In these Conditions, the following definitions apply:

<b>Carrier</b>	Royal Mail Group Limited or such other postal or parcel delivery service utilised by the Supplier by agreement with the Purchaser.
<b>Commencement Date</b>	the date of the Purchase Order;
<b>Conditions</b>	these terms and conditions as amended from time to time;
<b>Confidential Information</b>	any information which is secret or confidential in whatever form and whether disclosed in writing, orally or electronically and including without limitation business secrets or secret technical know-how;
<b>Contract</b>	the contract between the Purchaser and the Supplier for the supply of the Products and/or the acquisition of Services in accordance with the Purchase Order and these Conditions;
<b>Customer</b>	any customer of the Purchaser;
<b>Data</b>	any data concerning any third party provided to the Supplier for the purpose of the Contract;
<b>Data Protection Legislation</b>	(i) the Data Protection Act 1998, until the effective date of its repeal (ii) the General Data Protection Regulation ((EU) 2016/679) (“GDPR”) and any national implementing laws, regulations and secondary legislation, for so long as the GDPR is effective in the UK, and (iii) any successor legislation to the Data Protection Act 1998 and the GDPR, in particular the Data Protection Bill 2017-2019, once it becomes law ;

<b>Data Subject</b>	an individual who is the subject of Personal Data;
<b>Database</b>	means a collection of information on any person and data to be stored, amended, deleted or retrieved using a computer system;
<b>Delivery</b>	has the meaning set out in clauses 7.1;
<b>Force Majeure Event</b>	has the meaning given to it in clause 16;
<b>Group Company</b>	means any Subsidiaries or Holding Companies of the Purchaser from time to time and any Subsidiary of any Holding Company from time to time;
<b>Insert</b>	any item of printed paper in any format or product provided by the Supplier or a third party on its behalf to the Purchaser to be inserted in or packaged for delivery with the Products or otherwise as described in the Specification or Purchase Order;
<b>Intellectual Property Rights</b>	patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and 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;
<b>Law</b>	the law of England and Wales;

<b>Liabilities</b>	means all liabilities, costs, expenses, damages and losses, (including any direct, consequential losses, loss of reputation and all interest, penalties and legal and other professional costs and expenses);
<b>Materials</b>	information and materials the supplied to the Supplier to enable the Supplier to produce the Products in accordance with the Contract;
<b>Personal Data</b>	has the meaning given to it in the Data Protection Legislation and in relation to which the Supplier is providing processing under the terms of this Contract;
<b>Press Pass</b>	the visual inspection by the Purchaser of the Products on the printing press of the Supplier or any third party to whom the Supplier has sub-contracted any printing in the Specification;
<b>Price</b>	means the total price of the Products and Services as specified in the Quotation by the Supplier;
<b>Process</b>	has the meaning set out in the Data Protection Legislation any amending or replacement Law;
<b>Processing</b>	has the meaning set out in the Data Protection Legislation any amending or replacement Law;
<b>Products</b>	the products (or any part of them) to be produced, supplied and/or delivered by the Supplier to the Purchaser or third parties at the direction of the Purchaser as described in the Specification, including, where applicable, the Inserts;
<b>Proofs</b>	proofs of any printed material to be copied onto or utilised in the Products and/or design lay outs for the Products;

<b>Purchase Order</b>	the Purchaser's order for the supply of products or services by the Supplier in accordance with the Specification provided by the Purchaser to the Supplier at the Price;
<b>Purchaser</b>	Harlech PPM Limited registered in England and Wales with company number 10094154;
<b>Quotation</b>	the Supplier's offer of a price to provide the Products and Services in the Specification to the Purchaser as set out by the Supplier in writing to the Purchaser;
<b>Services</b>	The services to be provided by the Supplier to the Purchaser as set out in the Specification;
<b>Specification</b>	the information in any form supplied to the Supplier by the Purchaser explaining the function, design, purpose, description, operation and/or other detail of the products or services it requires the Supplier to supply to it;
<b>Stock</b>	means surplus Inserts, undelivered instalments of the Products or any surplus products purchased by the Supplier for the production of the Products or against the prospective future orders from the Purchaser which have been paid for by the Purchaser;
<b>Supplier Warranties</b>	means the warranties in clause 3 and 13;
<b>Working Day</b>	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

1.2 In these Conditions, the following rules of construction 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 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 or as replaced by any applicable substitute Law in place at any future time during the Contract;
- 1.2.3 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
- 1.2.4 a reference to writing or written includes e-mails.

## 2. **Basis of contract**

- 2.1 The Purchaser shall provide to the Supplier its requirements for products and/or services in the Specification.
- 2.2 A Quotation given by the Supplier shall be deemed to be available to the Purchaser for acceptance for a period of 30 days from its date of issue to the Purchaser and to be upon these Conditions.
- 2.3 The Purchaser Order constitutes an offer by the Purchaser to purchase the Products and/or Services in the Specification from the Supplier at the Price and on these Conditions. No Quotation can be the subject of any Purchase Order, save on these Conditions.
- 2.4 Acceptance of the Purchase Order by the Supplier is evidence of the acceptance by the Supplier of these Conditions as the entire and exclusive terms of the Contract as is the commencement of the production of or Delivery of the Products and/or Services.
- 2.5 The Purchaser and the Supplier agree that any variation in the quantity of the Products produced by the Supplier against the quantities in the Purchase Order shall not be in breach of the Contract within a tolerance of plus or minus 3%. A pro-rata variation in the Price will be credited to the Purchaser for under production of the Products and a charge for excess levied by invoice raised by the Supplier.

- 2.6 Notwithstanding clause 2.5, the Purchaser may at any time make changes to the Purchase Order and/or the Specification providing such changes are confirmed in writing. If such changes result in an increase in cost to the Supplier to comply with the changes, the Purchaser agrees to make an adjustment to the Price on a pro rata or quantum meruit basis such adjustment to be agreed by the Purchaser in writing before the Supplier proceeds with the changes specified by the Purchaser.
- 2.7 The Contract constitutes the entire agreement between the parties. The Supplier acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Purchaser which is not set out in the Contract.
- 2.8 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 and no terms and conditions included in with or contained in any documentation produced by the Supplier will form part of the Contract whether or not such documents are referred to in the Contract. Any variation of the Contract will be on these Conditions to the exclusion of all other terms and conditions and any variation to a Quotation or any written representations will be ineffective unless expressly agreed in writing and signed by an authorised representative of the Purchaser.

### 3. **Suppliers obligations**

The Supplier agrees that it will:

- 3.1 ensure the Products and the Services conform with the descriptions and specifications set out in the Specification and shall be fit for any purpose expressly or impliedly made known to the Supplier by the Purchaser;
- 3.2 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;
- 3.3 perform any Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;

- 3.4 use the best quality products, materials, standards and techniques, and ensure that the Products and the Services will be free from defects in workmanship, installation and design;
- 3.5 obtain and at all times maintain all necessary licences and consents;
- 3.6 comply with all applicable laws, statutes, regulations and codes from time to time in force, including but not limited to all applicable regulations relating to the manufacture, packaging, and delivery of the Products and the performance of the Services including implied conditions of fitness for purpose, satisfactory quality and compliance with description and the Consumer Rights Act 2015 or otherwise implied or imposed by Law,
- 3.7 hold all materials, equipment, tools, drawings, specifications and data supplied by the Purchaser to the Supplier in safe custody at its own risk, maintain the Materials in good condition until returned to the Purchaser, and not dispose or use the Materials other than in accordance with the Purchaser's written instructions or authorisation;
- 3.8 not do or omit to do anything which may cause the Purchaser to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business, nor to be subject to any fine, penalty, or Liability;
- 3.9 comply with any additional obligations as set out in the Specification;
- 3.10 indemnify the Purchaser against all Liabilities suffered or incurred by the Purchaser arising from any claim made against the Purchaser for actual or alleged infringement of a third party's Intellectual Property Rights or other legal rights arising out of or in connection with the Supplier's provision of the Products or Services save, subject to clause 6, where this arises directly from the explicit requirements of the Purchaser set out in the Specification. This clause 3.10 shall survive termination of the Contract;
- 3.11 ensure the Products are marked with necessary or appropriate marks as to standard, manufacture, content or as otherwise required by any Law, regulation or industry good practice in any jurisdiction to which the Products are to be used;
- 3.12 have in place product liability insurance of not less than £2 million pounds per claim and ensure any sub-contractors it contracts with to provide the Products do likewise;

- 3.13 have in place professional indemnity insurance of not less than £2 million pounds per claim if Services are being provided by it to the Purchaser and ensure that any sub-contractors it contracts with to provide the Services do likewise;
- 3.14 provide copies of any insurance policies required under this Contract upon request by the Purchaser;
- 3.15 notify the Purchaser if its insurance or that of its sub-contractors is cancelled or materially varied at any time during the Contract.

#### **4. Inspection of Products**

- 4.1 The Purchaser shall have the right to inspect the Products prior to Delivery and for this purpose the Supplier shall provide access to its business premises at any time reasonably requested by the Purchaser and shall ensure that the Purchaser's representatives shall have the right to access the business premises of any third party to whom the Supplier has sub-contracted any part of its obligations under the Contract. The Supplier shall ensure that all facilities reasonably required by the Purchaser to satisfy itself the Products are in accordance with the Specification are provided to the Purchaser's representatives to enable inspection and or tests on the Products to be carried out.
- 4.2 The inspection by the Purchaser under clause 4.1 shall not in any way limit the obligations of the Supplier to ensure the Products comply with the Specification and the terms of this Contract and the Purchaser's right hereunder, whether exercised or not, shall not constitute any contributory negligence on the part of the Purchaser in relation to any defect in the Products. The Supplier shall remain liable for any errors or omissions in any Products or Services provided to the Purchaser provided that such errors or omission are not due to errors or omissions in any written information given to the Supplier by the Purchaser, save that this proviso is subject to clause 6.
- 4.3 If as the result of any inspection by the Purchaser under clause 4.1 or otherwise it identifies any deviation from the Specification or otherwise from the terms of the Contract it shall notify the Supplier within 5 Working days. The Supplier shall use its best endeavours to ensure that any deviation from the Specification or breach of the Contract is rectified, if capable of rectification. If the breach is not capable of remedy or is not remedied by the Supplier, this

will be deemed a material breach of the Contract. This clause shall not in any way diminish the Purchaser's rights under any Law or the other terms of this Contract.

4.4 The Supplier shall ensure its premises or those of any sub-contractor meet minimum health and safety requirements under the Law to protect the employees, contractors or agents of the Purchaser attending such premises at any time under the terms of this Contract.

## 5. **Proofs.**

5.1 The Supplier will provide the Purchaser with Proofs for inspection. The Purchaser shall be entitled to correct any errors and to edit the Proofs. The Supplier will produce further Proofs to the Purchaser for approval after the Supplier has made any amendments.

5.2 The Purchaser's authorised representative must sign-off the Proofs as approved by it before the Supplier can begin production.

5.3 If any error is identified after the Proofs are signed-off, the Supplier shall be entitled to agreed reasonable costs for such corrective work and to invoice the Purchaser separately upon completion of the corrective work.

5.4 The Supplier shall ensure that the Products produced are the same or of better quality than the Proofs.

5.5 The Purchaser shall be entitled to attend Press Passes and the Supplier shall give reasonable notice to the Purchaser of any occasion when the Products are being printed to enable the Purchaser to make arrangements to attend should it require. If any additional Press Passes are required as a result of the Purchaser identifying any errors or breach of the Contract by the Supplier, the Purchaser shall be entitled to charge the Supplier for its costs of attending.

5.6 The Supplier must retain 1 section in every 2000 copies of a print run for print runs below 50,000 meters and 1 section in every 5000 copies of a print run for print runs above 50,000 metres for the purpose of enabling the audit of the print run by the Purchaser. Each section must be of sufficient length to represent a full production sample. The Supplier must retain such print run samples for 90 days after acceptance of the Products by the Purchaser and make them available to the Purchaser if requested.

## 6. **Inserts**

Where the Specification requires the Supplier to provide an Insert, the Purchaser is relying upon the Suppliers expertise in the supply of the Insert, including but not limited to the design, production, manufacture, packaging and delivery of such Inserts. The Supplier shall ensure that the Inserts comply with all laws and regulations which are applicable to them in addition to the complying with the requirements of the Specification. If any requirement in the Specification conflicts with a Law the Supplier shall ensure that the Insert complies with the Law and shall notify the Purchaser of any proposed changes to the Inserts as against the Specification. The Supplier will be responsible for ensuring and Inserts meet these requirements. The Supplier shall provide any samples of Inserts to the Purchaser as it reasonably requires, but the Inserts are not purchased by sample and the Supplier retains full responsibility at all times to ensure the Inserts meet all laws and regulations, are fit for purpose and do not infringe any third party rights, including but not limited to any Intellectual Property Rights.

## **7. Delivery**

7.1 Unless otherwise specified in the Purchase Order, Delivery shall occur when

7.1.1 the Products delivered by the Supplier or the Suppliers Sub-contractor to the Purchaser or the Purchasers nominated recipient;

7.1.2 the Products are delivered by the Supplier or its Sub-contractor to a Carrier for the purpose of mailing the Products to multiple persons where a Database has been supplied by the Purchaser to the Supplier for that purpose.

7.2 Where the Quotation specifies the Products are to be delivered in instalments, Delivery shall occur in accordance with clause 7.1 in respect of each separate instalment.

7.3 Where dates are quoted for Delivery, time is of the essence. The Supplier shall be liable for any delay in Delivery of the Products other than caused by a Force Majeure Event or the Purchaser's failure to provide the Supplier with adequate or correct delivery instructions, a Database or any other instructions, whether specified in the Quotation or not, that are reasonably required to be supplied by the Purchaser to enable the Supplier to supply and delivery of the Products.

7.4 If under the terms of the Quotation the Supplier is to deliver the Products by instalment, they shall be invoiced and paid for separately for each instalment unless otherwise specified in the Quotation.

- 7.5 If the Supplier is providing Delivery of the Products in instalments or at the request of the Purchaser in anticipation of any further order for similar products to the Products the Supplier may be required or requested to store Stock and/or Materials which may be owned by the Purchaser or have been purchased by the Supplier for the purpose of supplying any future order by the Purchaser. The Supplier is entitled to charge the Purchaser for such storage at a reasonable cost, agreed by the Purchaser; including insurance which the Supplier shall ensure covers any Stock and/or Materials and property of the Purchaser on the Suppliers premises or those of any sub-contractor of the Supplier.
- 7.6 Where the Contract requires the Products to be delivered by a Carrier the Supplier shall be responsible unless otherwise specified for the delivery by the Carrier and shall be liable to the Purchaser for any errors, omissions, delay, losses, additional costs or the inability of the Carrier to deliver the Products or otherwise perform the terms of this Contract.
- 7.7 The Products shall be packaged in a safe and secure manner to prevent damage with any delivery information clearly displayed and in accordance with any Law and suitable for Delivery to and in compliance with the law of any jurisdiction specified in the Specification.
- 7.8 The Supplier shall provide evidence of the date and time of Delivery if requested to do so by the Purchaser.
- 7.9 The Purchaser may inspect the Products within 10 Working Days of Delivery and shall have the right to reject the Products if in breach of this Contract within 15 Working Days of Delivery.
- 7.10 If any Products are rejected by the Purchaser as not in compliance with the Contract, the Supplier shall bear the cost of their collection and return including all packaging, insurance and delivery costs.

## 8. **Property Rights**

The Supplier warrants that in respect of any Inserts provided by the Supplier to the Purchaser:-

- 8.1 all Intellectual Property Rights are owned by the Supplier or the Supplier has, in respect of any third party Intellectual Property Rights, obtain the necessary written licence or permission required to entitle the Supplier to utilise such Intellectual Property Rights;

- 8.2 the Inserts comply with all applicable laws in any jurisdiction in which the Products are to be produced and/or delivered;
- 8.3 the Inserts comply with any advertising standards or codes of practice or other marketing standards and will not otherwise bring the Purchaser and Group Company or any third party associated with the Inserts into disrepute or is likely to do so.
- 8.4 the Inserts are owned by the Supplier or the Supplier is otherwise lawfully entitled to supply them to the Purchaser for use by the Purchaser under the terms of the Contract.
- 8.5 the property in the Products passes to the Purchaser on Delivery including, for the avoidance of doubt, any Inserts.

## 9. **Cancellation**

If the Supplier cancels the Contract save where the Purchaser is in material breach, it shall indemnify the Purchaser in full for all the Purchaser's losses howsoever incurred including whether direct or indirect, consequential loss or damage, all costs and loss of profit. The Purchaser shall make reasonable efforts to mitigate its loss.

## 10. **Risk and Title**

- 10.1 The risk and title in the Products shall pass from the Supplier to the Purchaser on Delivery.
- 10.2 Until the risk in the Products passes from the Supplier under clause 10.1 above, the Supplier shall insure, and shall ensure its sub-contractors insure the Products for the cost of replacement of the Products and for any other loss or damage of the Purchaser howsoever incurred including consequential, loss or damage all costs and loss of profit.
- 10.3 If the Purchaser's Stock is not required within a twelve month period from the Commencement Date, the Supplier may dispose of the Stock at the Purchaser's cost, providing it has given 20 Working Days' notice to the Purchaser and has co-operated with the Purchaser and provided it with a reasonable opportunity to remove the Stock, the Supplier shall be entitled to deduct from any monies received for the Stock the costs of disposal, including storage and insurance costs, and account to the Purchaser for the balance. Any balance unpaid for by the sale proceeds may be invoiced by the Supplier to the Purchaser.

**11. Charges and payment**

- 11.1 The Purchaser shall pay the Price on the terms set out in the Quotation. In the absence of specific terms in the Quotation the Purchaser shall pay within 60 days of receipt of an invoice from the Supplier or if more than one, each invoice.
- 11.2 In the absence of any specific price for the transport and delivery of the Product in the Quotation the Price is inclusive of all costs and charges relating to delivery of the Products.
- 11.3 The Supplier may provide an invoice to the Purchaser by email, post or by hand to the Purchaser's place of business.
- 11.4 The Supplier may add additional charges to the Price without notice to the Purchaser due to:-
- 11.4.1 any increase in import or export tax and/or duties since the date of the Quotation;
  - 11.4.2 any value added tax or other applicable tax which has increased or been required to be added since the date of the Quotation;
  - 11.4.3 under any other Condition which entitles the Supplier to raise additional charges to the Purchaser.
- 11.5 If the Purchaser fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Purchaser shall pay interest on the overdue amount at the rate of 2% per annum above Lloyds Bank PLC's base rate from time to time or as otherwise agreed in the Purchase Order. The Supplier is not entitled to suspend the production or the Delivery of the Products or performance of any Services as a result of any invoice to the Purchaser being overdue for payment.
- 11.6 The Purchaser may set-off any amount owing to it by the Supplier against any amount payable to the Supplier. The exercise of its rights under this clause does not limit any other right the Purchaser has under this Contract or otherwise.
- 11.7 The Supplier will use its reasonable endeavour to give the Purchaser notice of any increase in the Price under clause 11.4 as soon as reasonably practical.

**12. Data Protection and Databases**

- 12.1 The Purchaser and the Supplier acknowledge that for the purpose of Data Protection Legislation in certain circumstances the Purchaser will not be providing the Supplier with any Personal Data but the Supplier will be receiving Personal Data from Customers from time to time ("**Customer Personal Data**"). To this extent the Customer will be the Data Controller and the Supplier will be the Data Processor (as such terms are defined in the Data Protection Legislation). Where the Supplier processes any Personal Data on behalf of the Purchaser ("**Purchaser Personal Data**") then the Purchaser shall be the Data Controller and the Supplier shall be the Data Processor.
- 12.2 Both parties will comply with all applicable requirements of the Data Protection Legislation.
- 12.3 Without prejudice to the generality of clause 12.2, the Purchaser and/or the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this Contract.
- 12.4 Without prejudice to the generality of clause 12.2, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this Contract:
- 12.4.1 process the Customer Personal Data only on the written instructions of the Customer and the Purchaser Personal Data only on the written instructions of the Purchaser unless the Supplier is required by Data Protection Legislation to otherwise process that Personal Data;
  - 12.4.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer and/or the Purchaser (as applicable), to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly

assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

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

12.4.4 not transfer any Personal Data outside of the European Economic Area;

12.4.5 assist the Customer and the Purchaser (as applicable), at their cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

12.4.6 notify the Customer and/or the Purchaser (as applicable) without undue delay on becoming aware of a Personal Data breach;

12.4.7 at the written direction of the Customer and/or the Purchaser, delete or return Personal Data and copies thereof to the Customer and/or Purchaser (as applicable) on termination of the Contract unless required by Data Protection Legislation to store the Personal Data; and

12.4.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 12.

12.5 The Supplier shall take reasonable steps to ensure the reliability of all its employees, agents and sub-contractors who have access to the Personal Data and their compliance with the Data Protection Legislation.

12.6 The Supplier shall indemnify and keep indemnified and hold the Purchaser and the Customer harmless at its own expense against all Liabilities incurred by the Purchaser and/or the Customer for which such party may become liable due to any failure by the Supplier or its employees agents or sub-contractors to comply with Data Protection Legislation and/or any of its obligations under the terms of this clause 12.

12.7 The Supplier may authorise a third party sub-contractor to process the Personal Data provided that the sub-contractor's contract is on terms which are substantially the same as those set out in this clause and terminate automatically on termination of this Contract for any reason and the sub-contractor ceases to have any authority to use the Personal Data

on completion of the order and is required to delete that Personal Data on the instruction of the Supplier and/or the Customer when obsolete or in accordance with the requirements of the Data Protection Legislation.

13. **General Warranties and indemnity – the Suppliers attention is drawn to this clause.**
- 13.1 The Supplier warrants the Products will be provided with reasonable care and skill and will be of satisfactory quality.
- 13.2 The Supplier warrants that the Products will satisfy the Consumer Rights Act 2015 or any other Law in force during the Contract applicable to the provenance, quality, safety manufacture or delivery of any Product or Service provided under the Contract including any applicable guidelines or industry practice, whether binding or not.
- 13.3 The Supplier warrants that the Products and Services will comply with the Purchase Order and with the Specification.
- 13.4 The Supplier warrants it shall keep the Purchaser indemnified against all Liabilities suffered or incurred by the Purchaser as a result of or in connection with any claim brought against the Purchaser for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the receipt use of supply of the Products or Services to the extent that the claim is attributable to the actions or omissions of the Supplier, its employees, agents or subcontractors and any claim made against the Purchaser by a third party arising out of or in connection with the supply of the Products or Services to the extent that such a claim arises out of the breach, negligent performance of failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors or in connection with any claim made against the Purchaser by a third party for death, personal injury or damage to property arising out of, or in connection with, defective Products, to the extent that the defect in the Products is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.
- 13.5 If any third party makes a claim, or notifies an intention to make a claim against the Purchaser which may reasonably be considered likely to give rise to a liability under this indemnity, (Claim), the Purchaser shall as soon as reasonably practicable, give written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail

and shall reasonably co-operate with the Supplier to provide relevant information and documentation relevant to the Claim at the Suppliers cost.

13.6 This clause shall survive termination of the Contract.

#### 14. **Confidentiality**

The parties shall keep confidential all Confidential Information belonging to each other or any third party which has been disclosed under the terms of the Contract or in connection with it, save that the Supplier is authorised to provide such Confidential Information to its employees, agents or sub-contractors that needed to know if it has sub-contracted any obligations under the terms of this Contract. The Supplier shall ensure its employees, agents and sub-contractors comply with the obligations set out in this clause in relation to Confidential Information as though they were a party to the Contract.

#### 15. **Termination**

15.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

15.1.1 the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 10 Working Days after receipt of notice in writing to do so;

15.1.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

15.1.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

- 15.1.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
- 15.1.5 the other party (being an individual) is the subject of a bankruptcy petition or order;
- 15.1.6 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 10 Working Days;
- 15.1.7 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- 15.1.8 the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 15.1.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 15.1.10 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.1.2 to clause 15.1.9 (inclusive);
- 15.1.11 the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
- 15.1.12 the other party's financial position deteriorates to such an extent that in the Purchaser's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- 15.1.13 the other party (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.

15.2 On termination of the Contract for any reason:

15.2.1 the accrued rights and remedies 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 or expiry; and

15.2.2 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

16. **Force majeure**

16.1 For the purposes of this Contract, Force Majeure Event means an act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, fire, flood or storm.

16.2 The Supplier shall not be liable to the Purchaser as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

16.3 If the Force Majeure Event prevents the Supplier from providing any of the Products for more than 10 Working Days, the Purchaser shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Supplier.

17. **General**

17.1 **Assignment and other dealings.**

17.1.1 The Purchaser may at any time assign, transfer, mortgage, 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.

17.1.2 The Supplier shall not, without the prior written consent of the Purchaser, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

17.2 **Notices.**

- 17.2.1 Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party 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 clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, or e-mail.
- 17.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the other parties main business address 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, one Working Day after transmission unless otherwise specified.
- 17.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action

### 17.3 **Severance.**

- 17.3.1 If any provision or part of a 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 shall not affect the validity and enforceability of the rest of the Contract.
- 17.3.2 If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

### 17.4 **Dispute Resolution.**

- 17.4.1 If any dispute arises out of the Contract (a Dispute) the parties will attempt to resolve it by negotiating in good faith. If any Dispute remains unresolved within 15

Working Days then either party is free to pursue the rights granted to it under the contract through the Courts. This sub-clause will not prevent either party from:-

17.4.1.1 seeking an injunction in the case of any breach or threatened breach by the other;

17.4.1.2 commencing any proceedings where there is a reasonable necessity to avoid the loss of a claim due to the limitation period;

17.4.1.3 commencing proceedings in the case of non-payment of an invoice.

17.5 **Waiver.** A waiver of any right under the Contract or law 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 prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

17.6 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

17.7 **Restrictive covenants.** For a period of 12 months from the Commencement Date the Supplier shall not either directly or indirectly solicit or entice away or attempt to solicit or entice away from the employment of the Purchaser or the Purchaser's Group or engagement by or under contract with the Purchaser or the Purchaser's Group, whether directly or indirectly, including through a service company, any person who is or has been involved in the provision of the Products to a material extent, without the prior written agreement of the Purchaser. If any such person is employed or engaged by the Supplier within 12 months from the Commencement Date whether directly or indirectly including through a service company, it is presumed that the Supplier has directly or indirectly solicited or enticed away from the Purchaser such a person.

17.8 **Employment.** If the contract of employment of any employee is found or alleged to have effect after the Commencement Date as if originally made with the Purchaser or any member of the Purchaser's Group pursuant to any Law, the Purchaser or the relevant

member of the Purchaser's Group shall, at its discretion terminate the employment of the individual concerned within one month of becoming aware of a transfer or deemed transfer and the Supplier shall indemnify and keep indemnified the Purchaser in full against any and all claims demands liabilities and losses arising out of or in connection with such a finding or allegation. This indemnity shall include but not be limited to the cost of employing the individual concerned, the termination of that employment and any liabilities arising in relation to the employment or the termination.

- 17.9 **Third parties.** Save in relation to a Customer who shall have the benefit of the Supplier's obligations and the indemnity in clause 12 above, a person who is not a party to the Contract shall not have any rights to enforce its terms unless otherwise stated herein.
- 17.10 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Purchaser.
- 17.11 **Governing law.** This Agreement 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 law of England and Wales.
- 17.12 **Jurisdiction** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).