

TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS AND SERVICES

1. Interpretation

In these Conditions:

1.1 the following expressions have the following meanings unless inconsistent with the context:

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

Conditions means these terms and conditions as amended from time to time in accordance with **clause 14**.

Contract means the contract between the Customer and the Supplier for the supply of Goods and/or Services in accordance with these Conditions

Customer means Philip Payne Limited (Registered in England and Wales No. 1361523), whose registered office is at Merse Road, North Moons Moat, Redditch, Worcestershire, B98 9HH, UK.

Deliverables: means all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

Goods means the goods (or any part of them) set out in the Order.

Goods Specification means any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and the Supplier.

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 right, 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 the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form or in the Customer's written acceptance of the Supplier's quotation.

Services means the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification

Service Specification means the description or specification for Services agreed in writing by the Customer and the Supplier.

Supplier means the person or firm from whom the Customer purchases the Goods and/or Services.

2 Basis of Contract

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

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

- a. the Supplier issuing written acceptance of the Order; or
- b. any act by the Supplier consistent with fulfilling the Order,
- c. at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 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.

3 Supply of Goods

3.1 The Supplier shall ensure that the Goods shall:

- a. correspond with their description and any applicable Goods Specification;
- b. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the

Customer, expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgment;

c. where applicable, be free from defects in design, materials and workmanship and remain so for 60 months after delivery; and

d. comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

The Customer reserves the right to make minor changes to the specification of the Goods upon reasonable notice prior to its delivery.

The Customer shall have the right to inspect and test the Goods at any time before delivery.

If following such inspection or testing the Customer considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at **clause 0**, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

4 Delivery of Goods

4.1 The Supplier shall ensure that:

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

b. reach delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

c. if the Supplier requires the Customer to return any packaging material for the Goods to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

4.2 The Supplier shall deliver the Goods, carriage paid:

a. on the date specified in the Order or, if no such date is specified, then within 7 days of the date of the Order;

b. to the Customer's registered office or such other location as is set out in the Order or as instructed by the Customer before delivery;

c. and during the Customer's normal hours of business on a Business Day, or as instructed by the Customer.

4.3 Title and risk in the Goods shall pass to the Customer on completion of delivery.

5 Supply of Services

5.1 The Supplier shall from the Commencement Date and for the duration of this Contract provide the Services to the Customer in accordance with the terms of the Contract.

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

5.3 In providing the Services, the Supplier shall:

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

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

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

- d. ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Customer;
- e. provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- f. use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Customer, will be free from defects in workmanship, installation and design;
- g. observe and comply with all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises;
- h. hold all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier (Customer Materials) in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not dispose or use the Customer Materials other than in accordance with the Customer's written instructions or authorisation;
- i. not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Customer may rely or act on the Services;
- j. and to notify the Customer as soon as the Supplier becomes aware of any non-conformance with the above, whereby the Customer shall, at its sole discretion, have the right to exercise the remedies set out in **clause 0**.

6 Customer Remedies

- 6.1 If the Supplier fails to deliver the Goods and/or perform the Services by the applicable date, the Customer shall, without limiting its other rights or remedies, have one or more of the following rights:
- a. to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - b. to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
 - c. to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods and/or services from a third party;
 - d. where the Customer has paid in advance for Services that have not been provided by the Supplier and/or Goods which have not been delivered by the Supplier, to have such sums refunded by the Supplier; and
 - e. to claim damages for any additional costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to meet such dates.

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

7. Charges and Payment

7.1 The price for the Goods:

- a. shall be the price set out in the Order; and
- b. shall be inclusive of the costs of packaging, insurance and carriage of the Goods, unless otherwise agreed in writing by the Customer.

7.2 The charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services.

7.3 In respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Customer on completion of the Services. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.

7.4 In consideration of the supply of Goods and/or Services by the Supplier, the Customer shall pay the invoiced amounts within 60 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.

7.5 If the Customer 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 2.5% per cent per annum above the base rate for the time being of Bank of England 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 the Customer disputes in good faith where no interest shall apply until and unless the issue in dispute is resolved in favour of the Supplier.

7.6 The Customer may, without limiting its other rights or remedies, set off any amount owing to it by the Supplier under the Contract against any amount payable by the Customer or any member of the same group of companies as the Customer to the Supplier under the Contract or any other agreement or arrangement.

8 Intellectual Property Rights

8.1 In respect of the Goods and any goods that are transferred to the Customer as part of the Services under this Contract, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the Customer, it will have full and unrestricted rights to sell and transfer all such items to the Customer.

8.2 The Supplier assigns to the Customer, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables.

8.3 The Supplier shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Deliverables, of the Services 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.

8.4 The Supplier shall, promptly at the Customer's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Customer may from time to time require for the purpose of securing for the Customer the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Customer in accordance with **clause 8.2**.

All Customer Materials are the exclusive property of the Customer.

9 Indemnity

9.1 The Supplier shall keep the Customer indemnified 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 the Customer as a result of or in connection with:

- a. any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
- b. any claim made against the Customer by a third party arising out of, or in connection with, the supply of the Goods or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors;
- c. and any claim made against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services.

9.2 For the duration of the Contract and for a period of 12 months thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, employers liability insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract and shall, on the Customer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance. In no event shall such insurance be for cover of less than £1,000,000 per claim (in the case of professional indemnity insurance) and £5,000,000 per claim (in the case of the other insurances referred to above) unless agreed in writing by the Customer.

9.3 This **clause 0** shall survive termination of the Contract.

10 Confidentiality

A party (Receiving Party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (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 Receiving Party shall restrict disclosure of such 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. This **clause 0** shall survive termination of the Contract.

11 Termination

11.1 Without limiting its other rights or remedies, the Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if:

- a. the Supplier commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of receipt of notice in writing of the breach;
- b. the Supplier 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) 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;
- c. the Supplier 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;
- d. 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 Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- e. the Supplier (being an individual) is the subject of a bankruptcy petition order;
- f. a creditor or encumbrancer of the Supplier 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 14 days;
- g. 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 Supplier (being a company);
- h. a floating charge holder over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;
- i. a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
- j. any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in **clause 0** to **clause 0** (inclusive);
- k. the Supplier suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business; or
- l. 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.

11.2 Without limiting its other rights or remedies, the Customer may terminate the Contract:

- a. in respect of the supply of Services, by giving the Supplier 1 month's written notice; and
- b. in respect of the supply of Goods, with immediate effect by giving written notice to the Supplier, in which case the Customer shall pay the Supplier fair and reasonable compensation for any work in progress on any other Goods at the date of termination but such compensation shall not include loss of anticipated profits or any consequential loss.

11.3 In any of the circumstances in these Conditions in which the Customer may terminate the Contract, where both Goods and Services are supplied, the Customer may instead terminate part of the Contract in respect of the Goods, or in respect of the Services, and the Contract shall continue in respect of the remaining supply.

12 Consequences of Termination

On termination of the Contract or any part of it for any reason:

- a. where the Services are terminated, the Supplier shall immediately deliver to the Customer all Deliverables, whether or not then complete, and return all Customer Materials. If the Supplier fails to do so, then the Customer may without limiting its other rights or remedies enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- b. 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; and
- c. clauses which expressly or by implication have effect after termination shall continue in full force and effect.

13 Assignment and subcontracting

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 the Customer.

14 Variation

Any variation, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Customer.

15 General

15.1 A person who is not a party to the Contract shall not have any rights under or in connection with it.

15.2 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, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.