

## TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS AND/OR SERVICES

### 1. INTERPRETATION

1.1 In these Conditions, the following definitions apply:

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

**Company** means Mission Express Limited;

**Commencement Date** has the meaning set out in clause 2.2;

**Conditions** means these terms and conditions as amended from time to time in accordance with clause 15.5;

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

**Deliverables** means all Documents, products, goods and/or materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form, including without limitation computer programs, data, reports and specifications (including drafts);

**Delivery Date** means the date or dates for delivery of the Goods or performance of the Services, as applicable, as stated in the Purchase Order (if any);

**Document** includes, without limitation, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form (including any electronic form);

**Goods** means the goods (or any part of them) described in the Purchase 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 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;

**Losses** means losses, liabilities, damages, compensation, awards, payments made under settlement arrangements, claims, proceedings, costs and other expenses including fines, penalties, interest, legal and other professional fees and expenses;

**Purchase Order** means the Company's order for the supply of Goods and/or Services, as set out in the Company's purchase order form;

**Services** means the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract;

**Specification** means the specification for the Goods and/or Services notified by the Company to the Supplier (if any); and

**Supplier** means the person, firm or other entity from whom the Company purchases the Goods and/or Services as specified in the Purchase Order.

1.2 In these Conditions, the following rules apply:

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

(b) a reference to a party includes (unless otherwise excluded by these Conditions) its

- personal representatives, successors or permitted assigns, employees or agents;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted, and includes any subordinate legislation made under that statute or statutory provision as amended or re-enacted; and
  - (d) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

## **2. BASIS OF CONTRACT**

- 2.1 The Purchase Order constitutes an offer by the Company to purchase Goods and/or Services from the Supplier in accordance with these Conditions.
- 2.2 Unless otherwise agreed by the Company in writing, the Purchase Order shall be deemed to be accepted by the Supplier on the earlier of:
  - (a) the Supplier issuing written acceptance of the Purchase Order; or
  - (b) any act by the Supplier consistent with commencing work in connection with Purchase Order, at which point and on which date the Contract shall come into existence (**Commencement Date**) and the Contract shall continue until the obligations of the Parties are fulfilled unless the Contract has been terminated in accordance with these Conditions.
- 2.3 Subject to clause 2.5 and 15.5 below, these Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.4 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.
- 2.5 If an alternative contract has been signed between the Supplier and the Company for the supply of the Goods and/or the Services (whether or not such contract is referenced in the Purchase Order), the terms of such contract shall apply instead of these Conditions.
- 2.6 In the provision of the Goods and/or the Services, the Supplier shall at all times comply with all applicable laws and regulatory requirements. Furthermore the Supplier shall comply with all applicable rules and regulations that apply at the Company's premises, including those relating to security and health and safety and operations.

## **3. SUPPLY OF GOODS**

- 3.1 The Supplier shall ensure that the Goods:
  - (a) correspond with their description and any applicable Specification;
  - (b) are 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 Company, expressly or by implication, and in this respect the Company relies on the Supplier's skill and judgment; and
  - (c) where applicable, are free from defects in design, materials and workmanship and remain so for 24 months after delivery.
- 3.2 The Company shall have the right to inspect and test the Goods at any time before delivery. If following such inspection or testing the Company considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings under clause 3.1, the Company shall inform the Supplier and the Supplier shall immediately take such remedial

action as is necessary to ensure compliance (which is subject to the Company's approval).

#### **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 ultimate destination following delivery in good condition;
- (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Purchase Order, the Purchase 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 Company 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:

- (a) on the Delivery Date or, if no such date is specified, then within 14 days of the date of the Purchase Order;
- (b) to the Company's premises at the location set out in the Purchase Order or as instructed by the Company before delivery (**Delivery Location**); and
- (c) during the Company's normal hours of business on a Business Day, or as instructed by the Company.

4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

4.4 The Supplier shall not deliver the Goods in instalments without the Company's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect or damage in an instalment shall entitle the Company to the remedies set out in clause 6.

#### **5. SUPPLY OF SERVICES**

5.1 The Supplier shall from the Commencement Date (or other date set out in the Purchase Order) and for the duration of the Contract provide the Services to the Company in accordance with the terms of the Contract and shall:

- (a) meet any Delivery Date(s) for the Services;
- (b) co-operate with the Company and comply with all instructions of the Company in all matters relating to the Services;
- (c) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- (d) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to fulfil the Contract;
- (e) ensure that the Services and Deliverables will conform with the Specification in its entirety, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Company;
- (f) provide all equipment, tools and such other items as are required to provide the Services;

- (g) 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 Company, will be free from defects in workmanship, installation and design;
- (h) hold all materials, equipment and tools, drawings, specifications and data supplied by the Company to the Supplier (**the Company Materials**, being the exclusive property of the Company) in safe custody at its own risk, maintain the Company Materials in good condition until returned to the Company, and not dispose or use the Company Materials other than in accordance with the Company's written instructions or authorisation;
- (i) not do or omit to do anything which may cause the Company 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 Company may rely or act on the Services.

## **6. COMPANY REMEDIES**

### 6.1 If the Supplier:

- (a) fails to deliver the Goods and/or perform the Services (whether by the Delivery Date or at all); or
- (b) has delivered Goods or performed Services that do not comply with the undertakings set out in clause 3.1 or 5.1 (respectively), whether or not the Company has accepted the Goods, then, without limiting its other rights or remedies, the Company shall have the right:
  - i. to terminate the Contract (in whole or part) with immediate effect by giving written notice to the Supplier;
  - ii. to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
  - iii. where the Company has paid in advance for Services that have not been provided by the Supplier and/or Goods which have not been delivered (including if refused by the Company) by the Supplier, to have such sums refunded by the Supplier;
  - iv. to recover and/or claim damages for any Losses incurred by the Company which are in any way attributable to the Supplier's breach (as specified under (a) or (b) above), including costs incurred by the Company in obtaining substitute goods and/or services from a third party;
  - v. to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense; and
  - vi. to require the Supplier, at the Company's option, to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid).

6.2 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 Purchase Order; and

- (b) shall be inclusive of the costs of packaging, insurance and carriage of the Goods, unless otherwise agreed in writing by the Company. No extra charges shall be effective unless agreed in writing and signed by the Company.
- 7.2 The charges for the Services shall be set out in the Purchase Order, and shall be the exclusive remuneration of the Supplier in respect of the performance of the Services unless otherwise agreed in writing by the Company.
- 7.3 In respect of Goods, the Supplier shall invoice the Company on or at any time after completion of delivery of all Goods unless otherwise agreed in writing. In respect of Services, the Supplier shall invoice the Company on completion of the Services. Each invoice shall include such supporting information required by the Company to verify the accuracy of the invoice, including the relevant Purchase Order number.
- 7.4 In consideration of the supply of Goods and/or Services by the Supplier, the Company shall pay the invoiced amounts within 60 days of the date of a correctly rendered invoice (provided the invoice is dated on the same day as it is despatched to the Company) to a bank account nominated in writing by the Supplier.
- 7.5 All amounts payable by the Company under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Company, the Company shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.
- 7.6 If the Company 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 1 per cent per annum above the base rate for the time being of Barclays Bank 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 the Company disputes in good faith.
- 7.7 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow the Company to inspect such records at all reasonable times on request.
- 7.8 The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part. The Company may, without limiting its other rights or remedies, set off any amount owing to it by the Supplier against any amount payable by the Company to the Supplier.

## **8. INTELLECTUAL PROPERTY RIGHTS**

- 8.1 In respect of the Goods and any goods and materials that are transferred to the Company as part of the Services under the 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 at the date of delivery.
- 8.2 Upon delivery in accordance with clause 4.3, title and risk in the Goods shall pass to the Company.
- 8.3 On delivery, the Supplier assigns to the Company, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the Deliverables to the extent they have been developed specifically for the Contract. The Supplier shall obtain waivers of all moral rights in the products of the Services, including the Deliverables, to which any individual is

now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.

8.4 The Supplier shall promptly do (or procure to be done) all such further acts and things and the execution of all such other documents as the Company may from time to time require for the purpose of securing for the Company the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Company in accordance with clause 8.3.

## **9. INDEMNITY**

9.1 The Supplier shall indemnify and keep indemnified the Company in full against all Losses awarded against or incurred or paid by the Company as a result of or in connection with:

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

## **10. INSURANCE**

10.1 Unless otherwise agreed in writing with the Company, the Supplier shall maintain in force for the duration of the Contract the following insurance:

- (a) a third party liability policy with an indemnity limit of at least £10,000,000 for any one occurrence or series of occurrences arising from any one event;
- (b) in respect of the supply of Goods, a product liability policy with an indemnity limit of at least £10,000,000 for any one occurrence or series of occurrences arising from any one event and in the aggregate in any one year; and
- (c) in respect of the supply of Services, a professional indemnity policy with an indemnity limit of at least £5,000,000 for any one occurrence or series of occurrences arising from any one event and in the aggregate in any one year.

10.2 The Supplier shall, on the request of the Company, provide the Company with documentary evidence of insurance cover relating to the policies referred to in clause 10.1 and proof of up to date payment of the premiums for such insurance.

## **11. CONFIDENTIALITY**

11.1 The Supplier shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes, business plans, commercial arrangements or initiatives which are of a confidential nature and have been disclosed to the Supplier by the Company, its employees, agents or subcontractors, and any other confidential information concerning the Company's business or its products or its services which the Supplier may obtain. The Supplier 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 Supplier'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 Supplier. This clause 11 shall survive termination of the Contract.

## **12. TERMINATION**

12.1 Without limiting its other rights or remedies, the Company may terminate the Contract in part or in whole 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 7 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);
- (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 a notice of intention to appoint an administrator is given or 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 12.1(b) to clause 12.1(i) (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.

12.2 Without limiting its other rights or remedies, the Company may terminate the Contract in part or in whole:

- (a) in respect of the supply of Services, by giving the Supplier 2 weeks' 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 Company shall pay the Supplier for all Goods delivered up to the point of termination.

### **13. CONSEQUENCES OF TERMINATION**

13.1 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 Company all Deliverables, whether or not then complete, and return all the Company Materials. If the Supplier fails to do so, then the Company 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.
- (c) clauses which expressly or by implication have effect after termination (including clauses 9, 10, 11 and 15.9) shall continue in full force and effect.

### **14. COMPLIANCE WITH ANTI-SLAVERY AND HUMAN TRAFFICKING LAWS AND POLICIES**

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

- (a) comply with all applicable anti-slavery and human trafficking laws, statutes and regulations from time to time in force including but not limited to the Modern Slavery Act 2015; and
- (b) have and maintain for the duration of the Contract its own policies and procedures to ensure its compliance; and
- (c) not engage in any activity, practice or conduct that would constitute an offence under sections 1,2 or 4 of the Modern Slavery Act 2015; and
- (d) ensure that each of its subcontractors and suppliers shall comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015.

14.2 The Supplier shall indemnify the Company against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by the Company or awarded against the Company as a result of any breach of the Modern Slavery Act 2015.

### **15. GENERAL**

15.1 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 the Company.

15.2 The Company 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.

15.3 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 email.

- 15.4 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 9:00am 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, on the next Business Day after transmission or, if sent by email, when the sender receives a non-automated reply email confirming delivery. This clause shall not apply to the service of any proceedings or other documents in any legal action.
- 15.5 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. Any variation, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Company.
- 15.6 The Company's rights under the Contract are cumulative and shall be in addition to its rights and remedies implied by statute and common law.
- 15.7 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 minimum extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 15.8 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.
- 15.9 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.