

THE DALKIA UK GROUP PURCHASE ORDER CONDITIONS 2023

1. Interpretation

1.1 Definitions:

Dalkia UK Group: Dalkia Group Limited (company number 09752439) and its subsidiary companies including Dalkia Energy Services Limited (company number 07023025), Capula Limited (company number 00953504), Dalkia Facilities Limited (company number 04956673), Dalkia Engineering Limited (company number 00443522), Dalkia Operations Limited (company number 06275653), Dalkia Scotland Limited (company number SC133446) and Dalkia Facilities Northern UK Limited (company number 05970050) and / or such other names as may be changed from time to time;

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

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 19.5.

Contract: the contract between the Purchaser and the Supplier for the sale and purchase of the Goods in accordance with these Conditions.

Delivery Date: the date specified in the Purchase Order Form.

Delivery Location: the address for delivery of Goods as set out in the Purchase Order Form.

Force Majeure Event: means any exceptional event or circumstance which is beyond a party's reasonable control, which such party could not reasonably have foreseen or provided against and which, having arisen, such party could not reasonably have avoided or overcome including without limitation (i) explosion, flood, tempest, fire (ii) war or an outbreak of hostilities, sabotage, insurrection, terrorism, civil disturbance or riotous assembly (iii) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition.

Goods: the items(s) and/or Services that will be supplied as part of this Contract (including any instalment of the goods or any part of them) as described in the Purchase Order Form (which may include reports and data produced as part of the Order).

Human Rights: any and all internationally recognised human rights understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work.

Human Rights Policies: the Purchaser's human rights policies which are available the Purchaser's website (and/or as otherwise notified to the Supplier by the Purchaser) as amended from time to time.

Intellectual Property Rights: patents, rights to inventions, copyright, trade marks, business names and domain names, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use and protect the confidentiality of, confidential information (including know how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted renewals or extensions of, and rights to claim priority from, such rights and all equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

International Bill of Human Rights: the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, and International Covenant on Economic, Social and Cultural Rights.

Order: the Purchaser's order for the Goods, on the terms of the Purchase Order Form and the Conditions.

Purchase Order Form: the Purchaser's purchase order form to which these Conditions are annexed.

Purchaser: the company in the Dalkia UK Group identified as Purchaser on the front of the Purchase Order Form.

Reverse Charge Order: the Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019/892

Specification: any specification for the Goods, including any related plans, drawings, sketches, and/or photographs that is supplied to the Supplier by the Purchaser, or produced by the Supplier and agreed in writing by the Purchaser.

Special Conditions: any Special Conditions as set out in the Purchase Order Form.

Supplier: the person or firm set out in the Purchase Order Form or the person or firm from whom the Purchaser purchases the Goods.

Writing: includes documents delivered by post or hand, e-mail and verbal instructions provided they are confirmed in writing by the Purchaser within 48 hours of the date of the verbal instruction.

1.2 Interpretation:

- references to clauses are to the clauses of these Conditions;
- a reference to a statute or statutory provision is a reference to such statute or 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;
- any phrase introduced by the Conditions consisting of "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
- a reference to writing or written includes emails.

2. Basis of Contract

2.1 The Purchase Order Form, these Conditions and any Special 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, including any terms and conditions on which any quotation (offer) has been given to the Purchaser or subject to which the Order is purported to be accepted by the Supplier. For the avoidance of doubt, in accepting the Order whether by conduct or by written notification, the Supplier agrees that the exclusive terms of the Order shall apply to the Contract between the Purchaser and the Supplier.

2.2 The Order constitutes an offer by the Purchaser to purchase the Goods in accordance with these Conditions.

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

- the Supplier issuing a written acceptance of the Order; and
- the Supplier doing any act consistent with fulfilling the Order, at which point the Contract shall come into existence.

2.4 The Supplier waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents that is inconsistent with these Conditions.

2.5 No variation to the Order or these Conditions shall be binding on either party unless agreed in Writing by the Purchaser.

3. The Goods

3.1 The Supplier shall ensure and warrants to the Purchaser that the Goods shall:

- correspond with their description and any applicable Specification supplied by the Purchaser to the Supplier;
- be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Purchaser expressly or by implication, and in this respect the Purchaser relies on the Supplier's skill and judgement;
- where they are manufactured products, be free from defects in design, material and workmanship and remain so for 12 months after delivery; and
- comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

3.2 The Supplier shall be liable for all damages arising out of improper or inadequate packing.

3.3 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.

3.4 The Supplier shall not refuse any reasonable requests by the Purchaser (or his representatives) to inspect and test the Goods during the manufacture, processing or storage at the premises of the Supplier or any third party prior to dispatch, and the Supplier shall provide the Purchaser (or his representatives) with all facilities necessary or reasonably required for inspection and testing purposes including but not limited to all manufacturers' literature and test sheets applicable to the Goods being supplied. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.

3.5 If as a result of inspection or testing the Purchaser is not satisfied that the Goods will comply in all respects with the Contract, and the Purchaser so informs the Supplier within seven Business Days of inspection or testing, the Supplier shall take such steps as are necessary to ensure compliance at no additional cost to the Purchaser.

3.6 Should the Supplier fail to take such steps to ensure compliance in accordance with clause 3.5 above then the Purchaser shall be entitled by notice in writing to terminate the Contract immediately without obligation to take possession of or pay for the Goods and/or without any liability whatsoever for compensation, cancellation costs, storage costs or any third party costs.

3.7 The Purchaser may conduct further inspections and tests after the Supplier has carried out its remedial actions.

3.8 The Supplier shall be responsible for the insurance of the Goods up to and including the point of their unloading and positioning and shall indemnify the Purchaser against the partial or total loss of the Goods whether in transit, storage or at the delivery address and the Supplier shall further indemnify the Purchaser against all liabilities arising under its own contract for the failure to deliver the Goods for any reason whatsoever.

3.9 Insofar as the Goods to be delivered include products (**Products**):

- the Products must be manufactured from sound, new materials and be properly constructed;
- the Products must be suited to the purpose for which they are intended;
- the Products must be fabricated using parts of raw materials of traceable origin;
- the Products must not contain asbestos or other carcinogenic substances, any other material that does not comply with any current relevant British Standard or be otherwise dangerous to health;
- the Products will not include any materials that do not comply with the guidelines and recommendations of the British Council for Offices' publication Good Practice in the Selection of Construction Materials (as may be updated from time to time);
- the Products will not contain any materials that are otherwise known or considered in the construction industry as posing a threat to the durability, structural stability, performance or physical integrity of the Project or any part or component of the Project; and
- the Products must be provided with type, series and device numbers and an indication of origin in the form of adequate markings made by the manufacture or importer, or, if this is not possible, the packaging of the delivered goods will be provided with such markings.

4. Delivery

4.1 The Supplier shall ensure that:

- the Goods shall be marked in accordance with the Purchaser's instructions and any applicable regulations or requirements of any carrier, and shall be properly packed and secured in such manner as to enable them to reach their destination in good condition;
- each 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;
- the Supplier shall supply the Purchaser with any instructions or other information required in good time to enable the Purchaser to accept delivery of the Goods; and
- the Purchaser shall not be obliged to return to the Supplier any packaging or packing materials for the Goods, whether or not any Goods are acceptable by the Purchaser.

4.2 The Supplier shall deliver the Goods:

- on the Delivery Date;
- at the Delivery Location; and
- during the Purchaser's normal business hours, or as instructed by the Purchaser.

4.3 Where the date for the delivery of the Goods is not specified within the Order, the Purchaser shall give the Supplier reasonable notice in writing of the date required for the delivery of the Goods and the Supplier shall forthwith comply as if the date had formed a part of the Order.

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

4.5 For the avoidance of doubt time is of the essence in respect of this Contract and it is agreed that any extension of time granted by the Purchaser for the performance of the Supplier's obligations shall not amount to a waiver of this provision.

4.6 If delivery of Goods is not complete by the Delivery Date, the Purchaser shall have the right, without liability, to terminate the Order by written notice. Upon such termination, the Purchaser shall have the right to purchase substitute Goods and to charge the Supplier with any additional costs incurred, including but not limited to consequential loss or damage incurred on the Purchaser's contract or contracts for which the Goods were intended. If in consequence of such termination the Goods delivered up to the date of termination cannot be used by the Purchaser for the purpose of which they were ordered, the Purchaser shall have the further right to reject such Goods. Any payments made to the Supplier for such Goods shall be repaid to the Purchaser and shall be considered as a debt.

4.7 Payment for any Goods delivered shall not constitute a waiver of the Purchaser's right to reject Goods. The price of any rejected Goods shall be credited to the invoice covering the provisions of those Goods or debited against the Supplier's account. Goods rejected by the Purchaser shall be held at the place of delivery at the Supplier's risk for removal by the Supplier. If not removed by the Supplier in the time notified by the Purchaser, they may be sold or otherwise disposed of by the Purchaser. Any proceeds received by the Purchaser as a result of such disposal shall be credited to the Supplier's account. Any costs incurred by the Purchaser as a result of such disposal shall be charged to the Supplier and treated as a debt. Goods supplied in excess of quantities ordered will be returned to the Supplier at its expense. The Purchaser reserves the right to require replacement of or to reject goods with any latent defect not apparent on examination at the time of delivery. Nothing contained in these Conditions shall relieve the Supplier of its responsibility for testing, inspection and quality control.

4.8 The Supplier shall not deliver the Goods in instalments without the Purchaser'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 in an instalment shall entitle the Purchaser to the remedies set out in clause 6.

5. The Purchaser and Safety at Work

5.1 The Supplier warrants that:

- the Supplier has carried out all testing and examination and other work necessary to minimise and so far as is reasonably practicable eliminate any risk to the Purchaser and safety resulting from the use of the Goods for any purpose for which they are designed.
- that where conditions exist under which there will or may be any risk to the Purchaser and safety, the Supplier shall immediately on acceptance of the Order bring such conditions to the attention of the Purchaser in writing and shall provide free of cost adequate information about such conditions and the safeguards which should be observed to ensure that the Goods can be transported, stored, processed, used and/or disposed of safely and without risk to the Purchaser.
- that where Goods comprise rotating or moving parts or where there is any risk from explosion or flying parts then the Supplier shall provide, fit and bear the cost of suitable guards and/or protective devices to minimise and so far as reasonably practicable eliminate any risk to the Purchaser and safety resulting from the use of the Goods for any purpose which they are designed.
- that all persons delivering Goods on behalf of the Supplier will be fully and adequately trained in all aspects of safe working on construction sites, will comply with and observe all site rules and will be properly equipped by the Supplier with all necessary personal protective equipment for use in such an environment. The Supplier shall be liable for any costs incurred by the Purchaser and/or the Supplier as a result of any delivery being refused on the basis that the persons making the delivery are not properly trained or equipped.

6. Remedies

6.1 If the Goods are not delivered on the Delivery Date, or do not comply with the undertakings set out in clause 3.1, then, without limiting any of its other rights or remedies, and whether or not it has accepted the Goods, the Purchaser may exercise any one or more of the following remedies:

- to terminate the Contract;
- to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
- to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods;
- to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- to recover from the Supplier any costs incurred by the Purchaser in obtaining substitute goods from a third party; and
- to claim damages for any other costs, loss or expenses incurred by the Purchaser which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.

6.2 If the Goods are not delivered on the Delivery Date the Purchaser may, at its option, claim or deduct 5% of the price of the Goods for each day's delay in delivery by way of liquidated damages, up to a maximum of 100% of the total price of the Goods (**Liquidated Damages Cap**). If the Purchaser exercises its rights under this clause 6.2, it shall not be entitled to any of the remedies set out in clause 6.1 in respect of the Goods' late delivery (but such remedies shall be available in respect of the Goods' condition) save that the Purchaser may exercise its right to terminate under clause 6.1(a) if the Liquidated Damages Cap is exceeded.

6.3 Without prejudice to the Purchaser's right of rejection, all Goods shall remain at the Supplier's risk regarding deterioration, damage, loss and the like until they are delivered and accepted by the Purchaser. The Purchaser shall be entitled to deduct from any money due to the Supplier the amount of any shortage, loss

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or damage. The approval, whether expressed or implied, by the Purchaser of drawings, data sheets, samples and the like provided by the Supplier shall not relieve the Supplier of its responsibilities for supplying Goods which are fit for purpose.

6.4 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

6.5 The Purchaser's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.

7. Title and Risk

7.1 Title and risk in the Goods shall pass to the Purchaser on completion of delivery of such Goods in accordance with clause 4.4 (including for any instalments of Goods).

8. Price of the Goods

8.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date the Contract came into existence.

8.2 The price of the Goods:

- excludes amounts in respect of value added tax (VAT), which the Purchaser shall additionally be liable to pay to the Supplier (or account for to HM Revenue & Customs, as applicable) at the prevailing rate, subject to the receipt of a valid VAT invoice provided that the Supplier has provided the Purchaser with all necessary documentary and lawful evidence that it is entitled to the payment of VAT;
- includes the costs of packaging, insurance and carriage of the Goods; and
- includes the costs of any drawings and any operating and maintenance manuals that are normally provided with the Goods, or are specifically called for by the Purchaser on the face of the Purchase Order Form.

8.3 No extra charges shall be effective unless agreed in writing with the Purchaser.

8.4 No increase in the Price may be made whether on account of increased material, labour or transport costs, fluctuation in rates of exchange, taxation changes (other than VAT) or otherwise.

8.5 The Purchaser shall be entitled to all discounts for prompt payment, bulk purchase or volume of purchase customarily granted by the Supplier, whether or not shown on its own terms and conditions of sale and/or whether or not expressly stated within the Order or the Conditions.

9. Commissioning and installation of Goods

9.1 This clause 9 shall apply in the event that any installation or commissioning services (**Services**) are required in respect of the Goods, in each case as specified in the Purchase Order. The Supplier shall provide the Services to the Purchaser in accordance with the terms of the Purchase Order and this clause 9.

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

9.3 In providing the Services, the Supplier shall:

- co-operate with the Purchaser in all matters relating to the Services, and comply with all instructions of the Purchaser;
- perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- use personnel who are suitably skilled and experienced to perform tasks assigned to them with the appropriate certifications and training (including but not limited to CSCS, working at height and DBS checked), and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;
- ensure that the Services will conform with all descriptions and specifications, drawings, scope of work and technical details set out in the Purchase Order;
- provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- use the best quality goods, materials, standards and techniques, and ensure that all goods and materials supplied and used in the Services or transferred to the Purchaser, will be free from defects in workmanship, installation and design;
- obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
- comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply from time to time to the provision of the Services, and with any policies which are notified to it in writing by the Purchaser;
- observe all health and safety rules and regulations and any other security requirements that apply at any of the premises where the Services are provided; and
- comply with any additional obligations as set out in the Specification.

9.4 The Supplier may invoice the Purchaser for the price for the Services set out in the Purchase Order plus VAT on or after the completion and satisfactory performance of the Services. The terms of clauses 10.2 to 10.7 shall apply to invoices relating to Services.

10. Terms of Payment

10.1 The Supplier may invoice the Purchaser for price of the Goods plus VAT at the prevailing rate (if applicable) on or at any time after the completion and satisfactory performance of the Order for the Goods.

10.2 It shall be a condition precedent to payment that each invoice includes the date of the Order, the invoice number, states the correct price, the Purchaser's order number, the Supplier's VAT registration number and any supporting documents that the Purchaser may reasonably require and (where applicable) indicates whether or not s55A of the Value Added Tax Act 1994 (**VATA**) (the **Reverse Charge**) applies to the relevant supply by marking that invoice "Reverse charge: section 55A of VATA applies". For the avoidance of doubt, in the event that the invoice does not comply with this clause 10.2, that invoice will be rejected and an invoice which complies with this clause 10.2 shall be required to be submitted to the Purchaser before payment becomes due.

10.3 The Purchaser shall pay correctly rendered invoices within 60 days from the end of the month of receipt of a proper invoice in accordance with clause 10.1. Payment shall be made to the bank account nominated in writing by the Supplier. Unless the Reverse Charge applies in respect of each invoice, the Purchaser shall pay to the Supplier the amount of any VAT properly chargeable in respect of such supply.

10.4 The Purchaser may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to the Purchaser against any liability of the Purchaser to the Supplier.

10.5 In the event that this Order is terminated in consequence of any contract associated with this Order (for which any goods or services ordered hereunder were to form part) having been cancelled or terminated other than by reason of breach of that contract by the Purchaser, the Supplier shall, at the request of the Purchaser, agree to extend the Purchaser's time for payment of all sums due under this Order by up to 24 weeks from the date of termination of this Order and the Supplier hereby acknowledges that such extension of time for payment is reasonable in these circumstances.

10.6 Notwithstanding anything to the contrary elsewhere in these Conditions, payment to the Supplier is conditional upon the Purchaser receiving payment from a third party for the Goods provided by the Supplier, and if the third party upon whom payment to the Purchaser is conditional becomes insolvent, the Purchaser shall not be obliged to make any further payment to the Supplier of any amount which is due or may become due to the Supplier unless the Purchaser has received payment in respect thereof from the third party and then only to the extent of such receipt.

10.7 Where and to the extent that the supply of the Goods includes "specified services" (within the meaning of article 4 of the Reverse Charge Order), the following provisions shall apply:

- the Purchaser shall notify the Supplier if the Purchaser is an "end user" or an "intermediary supplier" for the purposes of the Reverse Charge Order. In the absence of such notification, it is acknowledged that the Reverse Charge Order will apply in respect of payment for any such "specified services" and the Purchaser will be required to account for VAT to HM Revenue & Customs under section 55A of VATA;
- the Supplier shall submit a separate invoice complying with the requirements of clause 10.2 in respect of such "specified services" to which the Reverse Charge applies;
- where and to the extent that the Reverse Charge applies, the Supplier will supply to the Purchaser such information in its possession (or that of its agents) as the Purchaser will reasonably request in writing for the purposes of: (i) verifying that relevant services are "specified services", (ii) accounting for and/or recovering the correct amount of VAT and (iii) otherwise complying with any VAT requirements; and
- to the extent not indicated in the Purchase Order, the Purchaser shall notify the Supplier of its UK VAT registered number upon request.

References in this clause 10 to the "Reverse Charge applying" (or similar) mean any case where the recipient of a supply for VAT purposes, or a member of a VAT group of which the recipient of the supply is a member, is required to account to the relevant tax authority for the VAT chargeable in respect of that supply. If the Reverse Charge Order is incorrectly applied and the Purchaser pays an amount in respect of VAT to the Supplier in error, then the Supplier shall pay to

the Purchaser on demand an amount equal to such VAT plus any interest, penalties or surcharges charged or imposed on the Purchaser by HM Revenue & Customs arising from the late payment of any VAT.

11. Force Majeure and Indemnity

11.1 Neither the Supplier nor the Purchaser shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligation in relation to the Goods, if the delay or failure was due to a Force Majeure Event. The party affected by the Force Majeure Event shall as soon as reasonably practicable notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Contract. The party affected by the Force Majeure Event shall use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

11.2 The Supplier shall keep the Purchaser indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Purchaser as a result of or in connection with:

- a breach of any condition or warranty given by the Supplier in relation to the Goods;
- any claim made against the Purchaser for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the supply or use of the Goods, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
- 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 defects in Goods, to the extent that the defects in the Goods are attributable to the acts 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 Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.

11.3 Clause 11.2 shall survive termination of the Contract.

12. Insurance

During the term of the Contract and for a period of 12 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, such insurance policies as are reasonably required to insure itself and keep itself insured against its liability in the widest sense of the word (including, but not restricted to professional liability, product liability, and third party risk) with a reputable insurance company to a level of at least £5 Million in respect of each and every claim, to cover the liabilities that may arise under or in connection with the Contract, and shall, on the Purchaser's request, produce both any insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

13. Confidentiality

13.1 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, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

13.2 Drawings, specifications or other information supplied by the Purchaser shall not be used by the Supplier for any purpose other than satisfying the requirements of the Order. The Supplier shall return all drawings, specifications and other information to the Purchaser if so requested. The Supplier shall treat all such information as confidential, and shall not disclose it to any other person without the written permission of the Purchaser. The Supplier shall not advertise or publish the fact that the Purchaser is purchasing the Goods from the Supplier without the prior written permission of the Purchaser. Unless otherwise agreed in writing no information disclosed by the Supplier to the Purchaser shall be deemed to be confidential.

13.3 This clause 13 shall survive termination of the Contract.

14. Purchaser Materials

The Supplier acknowledges that all materials, equipment and tools, drawings, Specifications, and data supplied by the Purchaser to the Supplier (**Purchaser Materials**) and all rights in the Purchaser Materials are and shall remain the exclusive property of the Purchaser. The Supplier shall keep the Purchaser Materials in safe custody at its own risk, maintain them in good condition until returned to the Purchaser and not dispose or use the same other than in accordance with the Purchaser's written instructions or authorisation.

15. Compliance with Relevant Laws And Policies

15.1 In performing its obligations under the Contract, the Supplier shall comply with all applicable laws, statutes, regulations and codes from time to time in force; and

15.2 The Purchaser may immediately terminate the Contract for any breach of clause 15.

16. Termination

16.1 The Purchaser may terminate the Contract in whole or in part at any time before delivery with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on the Contract. The Purchaser shall pay the Supplier the Supplier's actual cost in respect of the Goods up to the date of termination, but such cost shall not include loss of anticipated profits or any indirect or consequential loss. The onus shall be on the Supplier to demonstrate that the costs claimed have been reasonably and properly incurred and any doubt shall be resolved in favour of the Purchaser. The Purchaser shall not pay (i) for any work done after the receipt of the notice of termination or (ii) for any costs incurred by the Supplier and its subcontractors which the Supplier could reasonably have prevented.

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

- the Supplier commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;
- the Supplier takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- 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
- the Supplier'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.

16.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.

16.4 Clauses that expressly or by implication are intended to come into force or survive termination of the Contract shall continue in full force and effect.

17. Suspension of Performance

17.1 The Purchaser shall have the right at any time to suspend all or part of the performance of the Order by giving written notice to the Supplier specifying the scope, date and estimated duration of the suspension. The Supplier shall promptly suspend any further performance of the Order to the extent specified and during the period of suspension shall properly care for and protect all work in progress and materials, supplies and equipment that the Supplier has on hand for performance of the Order. The Purchaser may at any time withdraw the suspension by written notice to the Supplier specifying the effective date of the withdrawal, and the Supplier shall resume diligent performance of the work for which the suspension is withdrawn on the specified effective date. The Supplier accepts that suspension of up to 12 weeks on these terms is reasonable. The Purchaser shall have the right to suspend all or part of the performance of the Order for a period between 12 and 24 weeks on like terms save that the Supplier shall, if any such suspension causes an increase or decrease in the cost, be entitled to an equitable adjustment in respect thereof, and the Order shall be varied accordingly.

17.2 The Supplier shall take all reasonable steps to avoid or mitigate any loss or liability suffered or incurred by it resulting from any suspension of performance.

18. Anti-Bribery

18.1 The Supplier shall comply with all applicable anti-bribery and anti-corruption legislation including, without limitation, the Bribery Act 2010 and any successor UK legislation.

18.2 The Supplier shall maintain and enforce its own policies and procedures including but not limited to adequate procedures under the Bribery Act 2010 to ensure compliance with all applicable anti-bribery and anti-corruption legislation.

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- 18.3 The Supplier shall use all reasonable endeavours to ensure that all persons associated with the Supplier, including any subcontractors and suppliers, comply with the above clauses. The Supplier shall be responsible for the observance and performance of such persons of clause 18.1 and shall be directly liable to the Purchaser for any breach by such persons.
- 18.4 The Supplier shall notify the Purchaser if it becomes aware of any breach of this clause 18 or has reason to believe that it has received a request or demand for any undue financial or other advantage in connection with the performance of the Contract.
- 18.5 Breach of this clause 18 by the Supplier shall be deemed a material breach under clause 16.2(a) and such breach is deemed not to be remediable.
- 19. General**
- 19.1 **Assignment and other dealings**
- (a) The Purchaser may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract.
- (b) The Supplier may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Purchaser.
- 19.2 **Restricted use of social media and other means of marketing.** The Supplier may not, without prior written consent from the Purchaser, post images, photographs, comments, statements, blogs, wikis, microblogs, nor use 'tags' on any social media or other marketing outlet which relates to the Goods for the means to promote their business, products, services and /or other.
- 19.3 **Subcontracting.** The Supplier may not subcontract any or all of its rights or obligations under the Contract without the prior written consent of the Purchaser. If the Purchaser consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all the acts and omissions of its subcontractors as if they were its own.
- 19.4 **Entire Agreement.** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 19.5 **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.
- 19.6 **Waiver.** Except as set out in clause 2.4, no failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the 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.
- 19.7 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 19.8 **Notices.**
- (a) Any notice or other communication given to a party under or in connection with the 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 the Purchase Order Form or in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier or email.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 19.8(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action, or other method of dispute resolution.
- 19.9 **Third Party Rights.** No one other than a party to the Contract and their permitted assignees shall have any right to enforce any of its terms.
- 19.10 **Governing Law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.
- 19.11 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.
- 19.12 **Data Protection.** Each party shall, at its own expense, ensure that it complies with and assists the other party to comply with the requirements of all legislation and regulatory requirements in force from time to time in the UK relating to the use of personal data and the privacy of electronic communications, including (i) the Data Protection Act 2018 and any successor UK legislation, (ii) the retained EU law version of General Data Protection Regulation (EU) 2016/679) (**UK GDPR**) and (iii) the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.
- 20. Modern Slavery.**
- 20.1 In performing its obligations under the Contract, the Supplier shall:
- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force ("**Anti-Slavery Laws**") including but not limited to the Modern Slavery Act 2015;
- (b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct had been carried out in England and Wales;
- (c) include in contracts with its subcontractors anti-slavery and human trafficking provisions that are at least as onerous as those set out in clause 19.3;
- (d) notify the Purchaser as soon as it becomes aware of any actual or suspected breach of clause 20.1(a) and 20.1(b); and
- (e) maintain a complete set of records to trace the supply chain of all Goods provided to the Purchaser in connection with this Contract; and permit the Purchaser and its third party representatives to inspect the Supplier's premises, records and to meet the Supplier's personnel to audit the Supplier's compliance with its obligations under this clause 20; and
- (f) comply with the Purchaser's Modern Slavery Statement which is available the Purchaser's website as amended from time to time).
- 20.2 The Supplier represents and warrants that it has not been convicted of any offence involving slavery and human trafficking or been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 20.3 Breach of this clause 20 by the Supplier shall be a material breach under clause 16.2(a) and such breach is deemed not to be remediable.
- 21. Real Living Wage**
- 21.1 The Supplier shall:
- (a) ensure that all its employees, staff and contractors (and their staff and contractors) are paid at least the Living Wage. The "Living Wage" means an hourly rate set independently, and updated annually, by the Living Wage Foundation (<https://www.livingwage.org.uk>);
- (b) provide to the Purchaser any information it reasonably requires concerning the payment of the Living Wage and the Supplier's performance of its obligations under this clause within a reasonable time of request; and
- (c) co-operate and provide all reasonable assistance to the Purchaser in monitoring the effects of the Living Wage including without limitation assisting the Purchaser in conducting surveys and assembling data in respect of the effect of payment of the Living Wage to the Supplier and any third-party subcontractor.
- 21.2 In the event of any failure to comply by the Supplier with clause 21.1, the Purchaser shall be entitled to give the Supplier a preliminary notice (the "Preliminary Notice") specifying the nature and extent of the non-compliance and a date by which it must be remedied.
- 21.3 Upon receipt of a Preliminary Notice, the Supplier shall, within 10 days (or such other period as the parties may agree), provide a report to the Purchaser. Any report provided to the Purchaser under this clause shall state (i) the reason for non-compliance in relation to clause 21.1, (ii) the action taken (or proposed action to be taken) to remedy the non-compliance, (iii) the date on which the non-compliance was remedied (or is expected to be remedied), and (iv) if applicable, the reason for any delay in remedying the non-compliance.
- 21.4 In the event that the Supplier fails to remedy its non-compliance by the date specified in the Preliminary Notice, such failure shall constitute a material breach under clause 16.2(a) and such breach is deemed not to be remediable.
- 22. Intellectual Property Rights**
- 22.1 All Intellectual Property Rights in or arising out of or in connection with the Goods (other than the Intellectual Property Rights of the Purchaser Materials) shall be owned by the Supplier.
- 22.2 The Supplier grants to the Purchaser, or shall procure the direct grant to the Purchaser of, a fully paid-up, worldwide, non-exclusive, royalty-free, perpetual and irrevocable licence to copy and modify all documents, products and materials developed by the Supplier (excluding Purchaser Materials) for the purpose of receiving and using the Goods.
- 22.3 The Purchaser grants the Supplier a fully paid up, non-exclusive, royalty free, non-transferable licence to copy any materials provided by the Purchaser to the Supplier for the term of the Contract for the purpose of providing the Goods to the Purchaser.
- 22.4 The Supplier acknowledges that all rights in the Purchaser Materials are and shall remain the exclusive property of the Purchaser.
- 23. Social Responsibility**
- 23.1 The Supplier shall not engage in any activity, practice or conduct which could constitute, facilitate or cause (in whole or in part) an infringement of the fundamental principles and rights stated in the UN Guiding Principles on Business and Human Rights, any Human Rights and/or the Human Rights Policies.
- 23.2 The Supplier shall ensure that it has and maintains throughout the term of this Contract suitable policies and procedures to prevent the infringement of the fundamental principles and rights referred to in clause 23.1 by the Supplier or any officer, partner, employee or representative of the Supplier.
- 23.3 The Supplier shall at all times during the term of this Contract properly enforce such policies and procedures and shall carry out periodic monitoring of its compliance with such policies and procedures on an annual or more frequent basis. The Supplier shall, at the Purchaser's request, promptly provide to the Purchaser all such policies and procedures and sufficient evidence so as to satisfy the Purchaser (acting reasonably) that such policies and procedures are properly enforced and such periodic compliance monitoring is taking place.
- 23.4 In the event that the Purchaser engages any third party to perform any activity under this Contract (including, without limitation, where the Supplier sub-contracts any work to any third party) it shall ensure that:
- (a) provisions equivalent to clauses 23.1, 23.2 and 23.3 are included within the contract or terms of engagement under which that third party is appointed to carry out the relevant activity connected with this Contract; and
- (b) the Purchaser shall be entitled to enforce the above mentioned provisions (as against the relevant third party) as if it were the Supplier.