

Cleveland Group Standard Terms and Conditions of Purchase – Goods & Services**1 Definitions and interpretation**

1.1 In these Conditions the following definitions apply:

Affiliate	means any entity that directly or indirectly Controls, is Controlled by or is under common Control with, another entity;
Bribery Laws	means the Bribery Act 2010 and associated guidance published by the Secretary of State for Justice under the Bribery Act 2010 and all other applicable UK legislation, statutory instruments and regulations in relation to bribery or corruption;
Business Day	means a day other than a Saturday, Sunday or bank or public holiday in England;
Company	means Cleveland Group (Hire and Sales) Limited (Company Registration Number: 07520210.), 23a Falcon Court, Preston Farm Business Park, Stockton on Tees TS18 3TX.
Conditions	means the Company's terms and conditions of purchase for goods & services set out in this document;
Confidential Information	means any commercial, financial or technical information, information relating to the Deliverables, plans, know-how or trade secrets which is obviously confidential or has been identified as such, or which is developed by the Company in performing its obligations under, or otherwise pursuant to the Contract;
Contract	means the agreement between the Supplier and the Company for the sale and purchase of the Deliverables incorporating these Conditions, the Form of Contract and its appendices and the Order;
Client	means the Company's end customer
Form of Contract	means the Service Contract signed by both parties outlining the agreement between the parties. The expressions contained in the Supply agreement shall have the meanings given to them;
Control	means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company;
Deliverables	means the Goods or Services or both as the case may be and as set out in the Form of Contract and its appendices;
Force Majeure	means an event or sequence of events beyond any party's reasonable control (after exercise of reasonable care to put in place robust back-up and disaster recovery arrangements) preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster; war, riot or civil unrest; interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service; or material required for performance of the Contract; strike, lockout or boycott or other industrial action except strikes or other industrial disputes involving the Supplier's or its suppliers' workforce;
Goods	means the goods and related accessories, spare parts and documentation and other physical material set out in the Order and to be supplied by the Supplier to the Company;

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Intellectual Property Rights	means copyright, patents, know-how, trade secrets, trademarks, trade names, design rights, rights in get-up, rights in goodwill, rights in confidential information, rights to sue for passing off, domain names and all similar rights and, in each case:
(a)	whether registered or not
(b)	including any applications to protect or register such rights
(c)	including all renewals and extensions of such rights or applications
(d)	whether vested, contingent or future
(e)	to which the relevant party is or may be entitled, and
(f)	in whichever part of the world existing;
Location	means the address(es) for delivery of the Goods and performance of the Services as set out in the Order;
Modern Slavery Policy	means the Company's anti-slavery and human trafficking policy in force and notified to the Supplier from time to time;
Order	means the Company's order for the Deliverables as set out in the Company's order form;
Price	has the meaning given in clause 3
Supplier	means the person who sells the Deliverables to the Company and whose details are set out in the Order;
Services	means the services set out in the Order and to be supplied by the Supplier to the Company;
Specification	means the description or specification of the Deliverables set out or referred to in the Order; and
VAT	means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Deliverables.

1.2 In these Conditions, unless the context otherwise requires:

- 1.2.1 a reference to the Contract includes these Conditions, the Form of Contract, the Order, and their respective schedules, appendices and annexes (if any);
- 1.2.2 any clause, schedule or other headings in these Conditions are included for convenience only and shall have no effect on the interpretation of these Conditions;
- 1.2.3 a reference to a 'party' means either the Supplier or the Company and includes that party's personal representatives, successors and permitted assigns;
- 1.2.4 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns
- 1.2.5 a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.2.6 a reference to a gender includes each other gender;
- 1.2.7 words in the singular include the plural and vice versa;

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- 1.2.8 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- 1.2.9 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form;
- 1.2.10 a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time except to the extent that any such amendment, extension or re-enactment would increase or alter the liability of a party under the Contract;
- 1.2.11 a reference to any English action, remedy, method of judicial proceeding, court, official, legal document, legal status, legal doctrine, legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English equivalent in that jurisdiction.

2 Application of these Conditions

- 2.1 These Conditions apply to and form part of the Contract between the Supplier and the Company. They supersede any previously issued terms and conditions of purchase or supply.
- 2.2 No terms or conditions endorsed on, delivered with, or contained in the Supplier's quotation, sales conditions, confirmation of order, specification or other document shall form part of the Contract except to the extent that the Company otherwise agrees in writing.
- 2.3 No variation of these Conditions or to an Order or to the Contract, shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of the Company.
- 2.4 Each Order by the Company to the Supplier shall be an offer to purchase Deliverables subject to these Conditions.
- 2.5 An Order may be withdrawn or amended by the Company at any time before acceptance by the Supplier. If the Supplier is unable to accept an Order, it shall notify the Company promptly.
- 2.6 Acceptance of an Order by the Supplier shall take place when it is expressly accepted or by any other conduct of the Supplier which the Company reasonably considers is consistent with acceptance of the Order.

3 Price

- 3.1 The price for the Deliverables shall be as set out in the Order or, in default of such provision, shall be calculated in accordance with the Supplier's scale of charges as advised by the Supplier and received and acknowledged by the Company before the date the Order is made (**Price**). No increase in the Price may be made after the Order is placed.
- 3.2 The Price includes packaging, packing, shipping, carriage, insurance and delivery, commissioning or installation of Deliverables to or at the Location (unless otherwise agreed between the Parties) and any duties or levies other than VAT.

4 Payment

- 4.1 The Supplier shall invoice the Company for: (a) the Goods no sooner than completion of delivery/collection of the Goods or, if later, the Company's acceptance of the Goods, (b) Services no sooner than completion of performance of the Services or, if later, the Company's acceptance of the Services.

The Company shall pay the Supplier the amount specified in the applicable Order. The Supplier shall submit accurately dated invoices to the Company in accordance with the Order showing applicable Order number, description of Goods and/or Services, quantity, unit prices, extended totals and any other information reasonably requested by the Company.

- 4.2 All properly submitted and undisputed invoices will be paid within sixty (60) days of the end of the month in which the invoice is received, unless otherwise expressly agreed. Payment of any invoice shall not constitute acceptance of any

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Goods and/or Services. The Company reserves the right to: (i) withhold payment if invoices are not correctly submitted in line with clause 4.2 above (ii) make adjustment(s) for errors, shortages, defects in Goods and/or Services or other failure of Supplier to meet any Order requirements; and (iii) set off any amount owed by the Company to the Supplier against any amount owed to the Company by the Supplier.

- 4.3 Time of payment is not of the essence.
- 4.4 VAT shall be charged by the Supplier and paid by the Company at the then applicable rate.
- 4.5 The Supplier shall rebate to the Company, an amount equal to the agreed percentage of the Company's purchases of the Supplier's Deliverables as outlined in the Supply Agreement. The rebate shall be based on the invoiced value (excluding VAT) of the Company's total spend (being the amount of invoices delivered) during the relevant Contract Period and paid by the Company (whether before or after the Contract Period). The Supplier shall, deliver to the Company within 60 days following the end of the Contract Period, a written statement (with Supplier calculations) of the amount of the rebate due and shall issue to the Company a credit note for the amount due (including VAT) to accompany the remittance. Any disagreement between the parties, in relation to any rebate, shall be determined by an accountant (acting as an expert and not as an arbitrator) agreed by the parties and, in default of such agreement, to be appointed by the President for the time being of the Institute of Chartered Accountants of England and Wales, and whose determination shall be final and binding.

5 Cancellation

The Company shall have the right to cancel the Order for the Deliverables or for any part of the Deliverables which have not yet been, in the case of Goods, delivered to, and in the case of Services, performed for, the Company.

6 Delivery and performance

- 6.1 Unless otherwise agreed, the Goods shall be delivered by the Supplier to the Location on the date(s) specified in the Order. The Goods shall be deemed delivered by the Supplier only on completion of unloading of the Goods at the Location.
- 6.2 If collection of the Goods is agreed between the parties, the Company will collect from the Supplier's premises, unless otherwise agreed between the parties.
- 6.3 The Services shall be performed by the Supplier at the Location on the date(s) specified in the Order. The Services shall be deemed delivered by the Supplier only on completion of the performance of the Services at the Location.
- 6.4 The Deliverables shall not be delivered by or performed in instalments unless otherwise agreed in writing by the Company.
- 6.5 Each delivery or performance of the Deliverables shall be accompanied by a delivery note stating:
 - 6.5.1 the date of the Order;
 - 6.5.2 the relevant Company and Supplier details;
 - 6.5.3 if Goods, the product numbers and type and quantity of Goods in the consignment;
 - 6.5.4 if Services, the category, type and quantity of Services performed and copies of all timesheets (or equivalent supporting document) duly authorised by the Company's nominated site authority;
 - 6.5.5 any special instructions, handling and other requests; and
 - 6.5.6 in the case of Goods, whether any packaging material is to be returned, in which case the Company shall, after the Goods are unpacked, make them available for collection by the Supplier at the Supplier's expense.

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6.6 Time of delivery or performance (as the case may be) is of the essence. If the Supplier fails to deliver any of the Goods or perform any of the Services by the date specified in the Order, the Company shall (without prejudice to its other rights and remedies) be entitled at the Company's sole discretion:

- 6.6.1 to terminate the Contract in whole or in part;
- 6.6.2 to purchase the same or similar Deliverables from a supplier other than the Supplier;
- 6.6.3 to recover from the Supplier all costs and losses resulting to the Company, including the amount by which the price payable by the Company to acquire those Deliverables from another supplier exceeds the price payable under the Contract and any loss of profit; and
- 6.6.4 all or any of the foregoing.

7 Acceptance, rejection and inspection

7.1 The Company shall not have accepted, or be deemed to have accepted, the Deliverables until the Acceptance Conditions are fulfilled.

7.2 The Acceptance Conditions are that:

- 7.2.1 for Goods, the Goods have been delivered to or at the Location;
- 7.2.2 for Services, the Services have been performed at the Location; and
- 7.2.3 the Company has notified the Supplier in writing that the Deliverables have been delivered or performed (as the case may be) in full compliance with the terms and conditions of the Contract.

7.3 The Company shall be entitled to reject any Deliverables which are not in full compliance with the terms and conditions of the Contract. Any acceptance of defective, late or incomplete Deliverables or any payment made in respect thereof, shall not constitute a waiver of any of the Company's rights and remedies, including its right to reject. If the Goods are rejected due to the volume of the Goods exceeding the tolerances (if any) specified in the Order, the Supplier shall promptly and at its own cost arrange for redelivery of the correct volume.

7.4 Any rejected Goods may be returned to the Supplier by the Company at the Supplier's cost and risk. The Supplier shall pay to the Company a reasonable charge for storing and returning any of the Goods over-delivered or rejected.

7.5 The Company may inspect and test the Deliverables during performance or during manufacture or processing prior to despatch, and the Supplier shall provide the Company with all facilities reasonably required.

7.6 Any inspection or testing of the Deliverables shall not be deemed to be acceptance of the Deliverables or a waiver of any of the Company's rights and remedies, including its right to reject.

7.7 The rights of the Company in this clause Acceptance, rejection and inspection are without prejudice to the Company's rights under clause 9. Warranty.

8 Title and risk

8.1 Risk in the Goods shall pass to the Company on delivery and when the Company has accepted the Goods as conforming in every respect with the Contract.

8.2 Title to the Goods shall pass to the Company on the sooner of: (a) payment by the Company for the Goods; or (b) delivery of the Goods to the Company.

8.3 The passing of title shall not prejudice any other of the Company's rights and remedies, including its right to reject.

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8.4 Neither the Supplier, nor any other person, shall have a lien on, right of stoppage in transit or other rights in or to any Goods title to which have vested in the Company or any specifications or materials of the Company, and the Supplier shall ensure that relevant third parties accept the exclusion of such lien and rights.

8.5 The Supplier warrants and represents that it:

8.5.1 has at the time the Contract is made full, clear and unencumbered title to the Goods, and the full, clear and unencumbered right to sell and deliver them to the Company; and

8.5.2 shall hold such title and right to enable it to ensure that the Company shall acquire a valid, unqualified title to the Goods and shall enjoy quiet possession of them.

9 Warranty

9.1 The Supplier warrants and represents (the **Supplier Warranty**) that, for a period of 12 months from acceptance (the **Warranty Period**), the Deliverables shall:

9.1.1 conform in all material respects to any sample, their description and to the Specification;

9.1.2 be free from material defects in design, material and workmanship;

9.1.3 comply with all applicable laws, standards and best industry practice;

9.1.4 if Goods, be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and

9.1.5 if Services, be supplied with reasonable care and skill within the meaning of the Supply of Goods and Services Act 1982, Part II, s 13;

9.1.6 be fit for purpose and any purpose held out by the Supplier and set out in the Order; and

9.1.7 any media on which the results of the Services are supplied shall be free from defects in material and workmanship and of satisfactory quality within the meaning of the Sale of Goods Act 1979.

9.2 Where the Supplier obtains the Deliverables, or part thereof, from the original manufacturer or third party supplier, the Supplier agrees to assign to the Company any manufacturer warranty (the **Manufacturer Warranty**) relating to such Deliverables, that the Supplier may have from the original manufacturer or third party supplier, to the extent such assignment is allowed by such original manufacturer or third party supplier.

9.3 For the avoidance of doubt, if the Company relies on, and seeks to enforce its rights under the Manufacturer Warranty, that is without prejudice or limitation to the Company's rights under the Supplier Warranty.

9.4 The Supplier agrees that the approval by the Company of any design or Specification provided by the Supplier shall not relieve the Supplier of any of its obligations under this clause **Warranty**.

9.5 The Supplier warrants that it understands the Company's business and needs.

9.6 The Company may reject any Deliverables that do not comply with clause 9 and the Supplier shall, at the Company's option, promptly remedy, repair, replace, correct, re-perform or refund the price of any such Deliverables provided that the Company serves a written notice on the Supplier within the Warranty Period that some or all of the Deliverables do not comply with clause 9.

9.7 The provisions of these Conditions shall apply to any Deliverables that are remedied, repaired, replaced, corrected or re-performed with effect from the date of the delivery or performance of the remedied, repaired, replaced, corrected or re-performed Deliverables.

9.8 The Company's rights under these Conditions are in addition to, and do not exclude or modify, the rights and conditions contained in the Supply of Goods and Services Act 1982, s12 to 16 and the Sale of Goods Act 1979, s13 to 15.

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9.9 The Company shall be entitled to exercise its rights under clause **Warranty** regardless of whether the Deliverables have been accepted under the Acceptance Conditions and notwithstanding that the Deliverables were not rejected following their initial inspection under clause 7.

10 Anti-bribery

10.1 For the purposes of this clause **Anti-bribery** the expressions '**adequate procedures**' and '**associated with**' shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.

10.2 Each party shall comply with applicable Bribery Laws including ensuring that it has in place adequate procedures to prevent bribery and ensure that:

10.2.1 all of that party's personnel;

10.2.2 all others associated with that party; and

10.2.3 all of that party's subcontractors;

involved in performing the Contract so comply.

10.3 Without limitation to clause 10, neither party shall make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.

10.4 Each party shall immediately notify the other as soon as it becomes aware of a breach of any of the requirements in this clause **Anti-bribery**.

11 Anti-slavery

11.1 The Supplier undertakes, warrants and represents that:

11.1.1 neither the Supplier nor any of its officers, employees, agents or subcontractors has:

- committed an offence under the Modern Slavery Act 2015 (a **MSA Offence**); or
- been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
- is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;

11.1.2 it shall comply with the Modern Slavery Act 2015 and the Modern Slavery Policy;

11.1.3 its responses to the Company's modern slavery and human trafficking due diligence questionnaire are complete and accurate; and

11.1.4 it shall notify the Company immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of the Supplier's obligations under clause 11. Such notice to set out full details of the circumstances concerning the breach or potential breach of the Supplier's obligations.

11.2 Any breach of clause 11 by the Supplier shall be deemed a material breach of the Contract and shall entitle the Company to terminate the Contract with immediate effect.

12 Third Party Sexual Harassment

12.1 The Company will not tolerate sexual harassment in any form towards our staff.

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12.2 An action that is deemed as a breach of our Third-Party Sexual Harassment policy will be followed by a warning that continued actions will result in termination of agreement and cancellation of services where applicable.

12.3 Any criminal acts will be reported to the police and any information relating to the incident with our other offices and depots to ensure that we maintain a consistent approach to the cessation of services

13 Indemnity and insurance

13.1 The Supplier shall indemnify, and keep indemnified, the Company from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by the Company as a result of or in connection with the Supplier's breach of any of the Supplier's obligations under the Contract.

13.2 The Supplier shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom insuring the Deliverables and any of the Company's materials in the Supplier's possession against the usual risks, including accident, fire and theft, for their full replacement value until the risk in them passes to the Company, and insuring against all other risks that a prudent supplier should consider reasonable. On request, the Supplier shall supply so far as is reasonable evidence of the maintenance of the insurance and all of its terms from time to time applicable. The Supplier shall on request assign to the Company the benefit of such insurance.

14 Liability for Damage and Injury

14.1 Definitions

For the purpose of clause 14 the following expressions shall have the following meaning:

(a) "damage" shall mean actual damage or loss to property and any pecuniary losses resulting therefrom.

(b) "injury" shall mean bodily or mental injury to persons including sickness and disease.

(c) "Associated Company" shall mean any subsidiary company or any holding company of the Company from time to time as these terms are defined in Section 736 Companies Act 1985 as amended by Section 144 Companies Act 1989 or subsequent revisions.

(d) "Employer's Liability Insurance" shall mean insurance to the extent required under the law or statute governing liability to persons employed in the carrying out of the Contract.

14.2 Damages

The Supplier shall take full responsibility for the Deliverables from the commencement of the Order until completion and shall make good to the reasonable satisfaction of the Company any damage thereto however caused which occurs prior to completion or which arises after completion as a result of any act or omission of the Supplier either before or after completion.

14.3 Damage to Property (other than the Deliverables) and Death or Injury to Persons

The Supplier shall, except if and so far as the Contract provides, indemnify and keep indemnified the Company against all loss or damage which may arise out of or in consequence of the execution of the Deliverables and the remedying of any defect therein and against all claims, demands, proceedings, costs, charges and expenses, arising in connection therewith in respect of:

(a) loss of or damage to any property (other than the Deliverables) including for the avoidance of doubt any such property belonging to the Company, an Associated Company or the Client.

And/or

(b) Death or Injury to persons.

15 Intellectual property rights

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15.1 All specifications provided by the Company and all Intellectual Property Rights in the Deliverables made or performed in accordance with such specifications shall vest in and remain at all times the property of the Company and such specifications may only be used by the Supplier as necessary to perform the Contract. The Supplier assigns (or shall procure the assignment) to the Company absolutely, with full title guarantee, all right, title and interest in any such Intellectual Property Rights, and the Supplier shall do all such things and sign all documents necessary in the Company's opinion to so vest all such Intellectual Property Rights in the Company, and to enable the Company to defend and enforce such Intellectual Property Rights, and the Supplier shall at the Company's request waive or procure a waiver of applicable moral rights.

15.2 The Supplier shall indemnify the Company from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by the Company as a result of or in connection with any action, demand or claim that use or possession of any of the Intellectual Property Rights, infringes the Intellectual Property Rights of any third party (Supplier IPR Claim)

15.1 If any Supplier IPR Claim is made or is reasonably likely to be made against the Company, the Supplier shall promptly and at its own expense either:

15.1.1 procure for the Company the right to continue using and possessing the relevant Intellectual Property Rights; or

15.1.2 modify or replace the infringing part of the Intellectual Property Rights and without adversely affecting the functionality of the Intellectual Property Rights as set out in the Contract so as to avoid the infringement or alleged infringement, provided that if, having used reasonable endeavours, neither of the above can be accomplished on reasonable terms, the Supplier shall (without prejudice to the indemnity above) refund the price paid by the Company in respect of the affected Intellectual Property Rights. Confidentiality and announcements

15.2 The Supplier shall keep confidential all Confidential Information of the Company and of any Affiliate of the Company and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:

15.2.1 any information which was in the public domain at the date of the Contract;

15.2.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;

15.2.3 any information which is independently developed by the Supplier without using information supplied by the Company or by any Affiliate of the Company; or

15.2.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.

15.3 This clause shall remain in force for a period of five years from the date of the Contract.

15.4 The Supplier shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.

16 Force Majeure

16.1 A party shall not be liable if delayed in or prevented from performing its obligations due to Force Majeure, provided that it:

16.1.1 promptly notifies the other of the Force Majeure event and its expected duration; and

16.1.2 uses best endeavours to minimise the effects of that event.

16.2 If, due to Force Majeure, a party:

16.1.3 is or shall be unable to perform a material obligation; or

16.1.4 is delayed in or prevented from performing its obligations for a continuous period exceeding 14 days; the other party may, within 30 days, terminate the Contract on immediate notice.

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17 Termination

17.1 The Company may terminate the Contract or any other contract which it has with the Supplier at any time by giving notice in writing to the Supplier if:

- 17.1.1 the Supplier commits a material breach of the Contract and such breach is not remediable;
- 17.1.2 the Supplier commits a material breach of the Contract which is not remedied within 14 days of receiving written notice of such breach;
- 17.1.3 the Supplier has failed to pay any amount due under the Contract on the due date and such amount remains unpaid within 30 days after the Company has given notification that the payment is overdue; or
- 17.1.4 any consent, licence or authorisation held by the Supplier is revoked or modified such that the Supplier is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled.

17.2 The Company may terminate the Contract at any time by giving notice in writing to the Supplier if the Supplier:

- 17.2.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
- 17.2.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the Company reasonably believes that to be the case;
- 17.2.3 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
- 17.2.4 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
- 17.2.5 has a resolution passed for its winding up;
- 17.2.6 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
- 17.2.7 is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within [seven] days of that procedure being commenced;
- 17.2.8 has a freezing order made against it;
- 17.2.9 is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title in those items;
- 17.2.10 is subject to any events or circumstances analogous to those in clauses 17.2.1 to 17.2.9 is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title in those items; in any jurisdiction;
- 17.2.11 takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 17.2.1 to 17.2.10 in any jurisdiction; including for the avoidance of doubt, but not limited to, giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.

17.3 The Company may terminate the Contract at any time by giving not less than four' weeks' notice in writing to the Supplier if the Supplier undergoes a change of Control or if it is realistically anticipated that it shall undergo a change of Control within two months.

17.4 If the Supplier becomes aware that any event has occurred, or circumstances exist, which may entitle the Company to terminate the Contract under this clause **Termination**, it shall immediately notify the Company in writing.

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17.5 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of the Company at any time up to the date of termination.

18 Dispute resolution

18.1 Any dispute arising between the parties out of or in connection with the Contract shall be dealt with in accordance with the provisions of this clause **Dispute resolution**.

18.2 The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.

18.3 The parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedures:

18.3.1 Within fourteen days of service of the notice, the contract managers of the parties shall meet to discuss the dispute and attempt to resolve it.

18.3.2 If the dispute has not been resolved within fourteen days of the first meeting of the contract managers, then the matter shall be referred to the chief executives (or persons of equivalent seniority). The chief executives (or equivalent) shall

meet within fourteen days to discuss the dispute and attempt to resolve it.

18.4 The specific format for the resolution of the dispute under clause 18.3 shall be left to the reasonable discretion of the parties, but may include the preparation and submission of statements of fact or of position.

18.5 If the dispute has not been resolved within 14 days of the first meeting of the chief executives (or equivalent) under clause 18.3.2 then the matter shall be referred to mediation in accordance with the London Court of International Arbitration Mediation Rules.

18.6 Until the parties have completed the steps referred to in clause 18.3 and have failed to resolve the dispute, neither party shall commence formal legal proceedings or arbitration except that either party may at any time seek urgent interim relief from the courts or emergency arbitrator relief.

19 Notices

19.1 Any notice or other communication given by a party under these Conditions shall:

19.1.1 be in writing and in English;

19.1.2 be signed by, or on behalf of, the party giving it (except for notices sent by email);
and

19.1.3 be sent to the relevant party at the Company's registered head office.

19.2 Notices may be given, and are deemed received:

19.2.1 by hand: on receipt of a signature at the time of delivery;

19.2.2 by post: at 9.00 am on the second Business Day after posting (for post sent internationally: at 9.00am on the fourth Business Day after posting); and

19.2.3 by email: on receipt of a read receipt email from the correct address.

19.3 All references to time are to the local time at the place of deemed receipt.

19.4 This clause does not apply to notices given in legal proceedings or arbitration.

20 Cumulative remedies

The rights and remedies provided in the Contract for the Company only are cumulative and not exclusive of any rights and remedies provided by law.

21 Time

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Unless stated otherwise, time is of the essence for any date or period specified in the Contract in relation to the Supplier's obligations only.

22 Further assurance

The Supplier shall at the request of the Company, and at the Supplier's own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.

23 Entire agreement

23.1 The parties agree that the Contract constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.

23.2 Each party acknowledges that it has not entered into the Contract in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.

23.3 Nothing in these Conditions purports to limit or exclude any liability for fraud.

24 Variation

No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and these Conditions and is duly signed or executed by, or on behalf of, the Company.

25 Assignment

25.1 The Supplier may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Company's prior written consent, which it may withhold or delay at its absolute discretion.

25.2 Notwithstanding clause 25.1, the Supplier may perform any of its obligations and exercise any of its rights granted under the Contract through any Affiliate provided that it gives the Company prior written notice of such subcontracting or assignment including the identity of the relevant Affiliate. The Supplier acknowledges and agrees that any act or omission of its Affiliate in relation to the Supplier's rights or obligations under the Contract shall be deemed to be an act or omission of the Supplier itself.

26 Set off

26.1 The Company shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Supplier under the Contract or under any other contract which the Company has with the Supplier.

26.2 The Supplier shall pay all sums that it owes to the Company under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

27 No partnership or agency

The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

28 Equitable relief

The Supplier recognises that any breach or threatened breach of the Contract may cause the Company irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the Company, the Supplier acknowledges and agrees that the Company is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

29 Severance

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29.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.

29.2 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

30 Waiver

30.1 No failure, delay or omission by the Company in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.

30.2 No single or partial exercise of any right, power or remedy provided by law or under the Contract by the Company shall prevent any future exercise of it or the exercise of any other right, power or remedy by the Company.

31 Compliance with law

The Supplier shall comply with all laws, enactments, regulations, regulatory policies, guidelines and industry codes applicable to it and shall maintain such authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract.

32 Conflicts within contract

If there is a conflict between the terms contained in the Conditions and the terms of the Order, the terms of the Conditions shall prevail.

33 Costs and expenses

The Supplier shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of the Contract (and any documents referred to in it).

34 Third party rights

34.1 Except as expressly provided for in clause 25 or any provision of it., a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.

34.2 Any Affiliate of the Company shall be entitled under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract. The consent of any such Affiliate is not required in order to rescind or vary the Contract or any provision of it.

35 Governing law

The Contract and any dispute or claim arising out of, or in connection with it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

36 Jurisdiction

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).

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