



## TERMS AND CONDITIONS

- 1 The definitions in this condition apply in these terms and conditions ("Conditions"):
- Certificate of Satisfactory Completion:** the certificate to be issued by the Supplier pursuant to condition 3 as confirmation of the satisfactory completion of the supply of Goods and Services under the Contract
- Completion Date:** the date of issue of the Certificate of Satisfactory Completion pursuant to condition 3
- Contract:** the Customer's acceptance of a Quotation for the supply of Goods and Services by the Supplier under condition 2.2
- Customer:** the person, firm or company who purchases Goods and Services from the Supplier
- Customer's Equipment:** any equipment, systems, cabling, tools or facilities to be provided by the Customer and used directly or indirectly in the supply of the Goods and Services
- Goods:** the goods to be supplied by the Supplier under the Contract as set out in the Quotation or as subsequently revised pursuant to condition 8
- Price:** the price to be paid by the Customer for the Goods and Services as set out in the Quotation or as subsequently revised pursuant to condition 2.2
- Quotation:** the quotation submitted by the Supplier pursuant to condition 2.2
- Services:** the services to be supplied by the Supplier under the Contract as set out in the Quotation or as subsequently revised pursuant to condition 2.2
- Site:** the site set out in the Quotation at which the Goods and Services are to be supplied by the Supplier
- Supplier:** White Horse Contractors Limited
- Supplier's Equipment** any equipment, systems, cabling, tools or facilities used directly or indirectly by the Supplier in the supply of the Goods and Services
- 2 **General**
- 2.1 These Conditions shall:
- 2.1.1 apply to and be incorporated into the Contract; and
- 2.1.2 prevail over any inconsistent terms or conditions contained, or referred to, in the Customer's purchase order, confirmation of order, acceptance of a quotation, or specification or other document supplied by the Customer, or implied by law, trade custom, practice or course of dealing.
- 2.2 The Supplier shall submit to the Customer a Quotation which, amongst other matters, shall specify the Goods and Services to be supplied and the Price payable. The Customer's acceptance of a Quotation constitutes an offer by the Customer to purchase the Goods and Services on these Conditions. No offer placed by the Customer shall be accepted by the Supplier other than:
- 2.2.1 by a written acknowledgement issued by the Supplier; or
- 2.2.2 (if earlier) by the Supplier starting to provide the Goods and Services,
- when a Contract for the supply and purchase of the Goods and Services on these Conditions will be established. The Customer's standard terms and conditions (if any) attached to, enclosed with or referred to in any purchase order or other document shall not govern the Contract.
- 2.3 Quotations are given by the Supplier on the basis that no Contract shall come into existence except in accordance with condition 2.2. Any Quotation is valid for a period of 90 days from its date, provided that the Supplier has not previously withdrawn it.
- 3 **Commencement and completion**
- 3.1 Provision of the Goods and Services to be supplied by the Supplier to the Customer under the Contract shall commence from the date specified in the Quotation.
- 3.2 Receipt by the Customer of the Supplier's final application for payment will amount to confirmation that the provision of the Goods and Services has been completed in accordance with the Contract.
- 4 **Supplier's obligations**
- 4.1 The Supplier shall use reasonable skill and care in the provision of the Goods and Services.
- 4.2 The Supplier shall use reasonable endeavours to meet any performance dates specified in the Quotation but any such dates shall be estimates only. Time shall not be of the essence for provision of the Goods and Services and the Supplier shall not be liable for any loss, costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods and/or Services.
- 4.3 The Supplier shall use reasonable endeavours to observe all health and safety rules and regulations, and any other reasonable security requirements that apply at the Site and that have been communicated to it under condition 10.1.5 provided that it shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract.
- 5 **Specification of the Goods**
- 5.1 All Goods shall be required only to conform to the specification in the Quotation. For the avoidance of doubt no description, specification or illustration contained in any product pamphlet or other sales or marketing literature of the Supplier and no representation written or oral, correspondence or statement shall form part of the Contract.
- 6 **Delivery**
- 6.1 All risk in the Goods shall pass to the Customer upon delivery.
- 7 **Title**
- 7.1 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:
- 7.1.1 such Goods; and
- 7.1.2 all other sums which are due to the Supplier from the Customer in respect of the supply of the Services.
- 7.2 Until title to the Goods has passed to the Customer, the Customer shall:
- 7.2.1 hold such Goods on a fiduciary basis as the Supplier's bailee;
- 7.2.2 store such Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- 7.2.3 not remove, deface or obscure any identifying mark or packaging on or relating to such Goods; and
- 7.2.4 maintain such Goods in satisfactory condition and keep them insured on the Supplier's behalf for their full price against all risks with an insurer that is reasonably acceptable to the Supplier. The Customer shall obtain an endorsement of the Supplier's interest in the Goods on its insurance policy, subject to the insurer being willing to make the endorsement. On request the Customer shall allow the Supplier to inspect such Goods and the insurance policy;
- 7.3 If before title to Goods passes to the Customer the Customer becomes subject to any of the events in condition 13.1.4 to 13.1.13 then, provided that such Goods have not been resold and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up such Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the relevant Goods are stored in order to recover them.
- 8 **Variations**
- 8.1 If the Supplier is unable to obtain at a reasonable cost or within a reasonable period any materials and/or Goods referred to in the Quotation, it may substitute for them alternative materials of comparable quality. The Supplier may make such modifications to the Goods and/or Services as may be required by any relevant authority or as required to comply with any consents.
- 8.2 The parties may at any time mutually agree upon variations to the scope of Goods and/or Services to be provided under the Contract. Any such mutually agreed variations shall be set out in writing ("Variation Order") which shall reflect any such agreed variations to the Goods and/or Services, the Price, the performance dates and any other terms agreed between the parties.
- 8.3 The Customer may at any time request variations to the scope of Goods and/or Services by notice in writing to the Supplier. Within five working days of receipt of a request for a variation, the Supplier shall by notice in writing either decline to implement such a variation or alternatively it shall advise the Customer of the effect such variation would have, if any, on the Price, the performance dates and any other terms already agreed between the parties.
- 8.4 Where, pursuant to condition 8.3, the Supplier gives a written notice advising the Customer of the effect a variation would have on the terms already agreed between the parties, the Customer shall, within two working days of receipt of such notice, advise the Supplier by notice in writing whether or not it wishes the variations to be implemented by the Supplier on such varied terms.
- 8.5 Where, pursuant to condition 8.4, the Customer gives notice in writing that it wishes a variation to be implemented, such varied terms shall be set out in a Variation Order and thereafter the Supplier shall perform the Contract upon the basis of such varied terms.
- 9 **Warranties**
- 9.1 The Supplier warrants that as from the Completion Date for a period of twelve months the Goods and all their component parts, where applicable, will be free from any defects in design, workmanship, construction or materials.
- 9.2 The Supplier warrants that the Services performed under the Contract shall be performed using reasonable skill and care, and shall be of a quality conforming to generally accepted industry standards and practices.
- 9.3 Except as expressly stated in these Conditions, all warranties whether express or implied, by operation of law or otherwise, are hereby excluded in relation to the Goods and Services to be supplied by the Supplier.
- 10 **Customer's obligations**
- 10.1 The Customer shall:
- 10.1.1 co-operate with the Supplier in all matters relating to the Goods and Services;
- 10.1.2 provide the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, with access to the Site;
- 10.1.3 provide to the Supplier, in a timely manner, such relevant Site records and other information as the Supplier may require and ensure that it is accurate in all material respects;
- 10.1.4 be responsible (at its own cost) for preparing, maintaining and insuring the Site for the supply of the Goods and Services at all times before and during the supply of the Goods and Services;
- 10.1.5 inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at the Site;
- 10.1.6 ensure that all Customer's Equipment is in good working order and suitable for the purposes for which it is used and conforms to all relevant United Kingdom standards or requirements;
- 10.1.7 unless otherwise agreed and set out to the contrary in the Quotation obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Goods and Services in all cases before the date on which the Supplier is to commence supply of the Goods and Services.
- 10.2 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay and, if necessary, any performance dates for the provision of the Goods and Services shall be modified accordingly.
- 10.3 The Customer shall be liable to pay to the Supplier, on demand, all reasonable costs, charges or losses sustained or incurred by the Supplier (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Supplier confirming such costs, charges and losses to the Customer in writing.



## 11 Price and payment

- 11.1 In consideration of the provision of the Goods and Services by the Supplier, the Customer shall pay the charges as set out in the Quotation or as may subsequently be revised pursuant to condition 8.
- 11.2 The Supplier shall be entitled to submit to the Customer applications for payment at the times specified in the Quotation or alternatively at monthly intervals in respect of the Goods and Services supplied at such time. The final date for payment of an application in full and in cleared funds shall be 30 days from the date of receipt by the Customer.
- 11.3 Not later than five days after receipt by the Customer of an application under condition 11.2 above, the Customer shall give a notice in writing to the Supplier specifying the amount of payment proposed ("Varied Sum") to be made in respect of such application, the basis on which the Varied Sum is calculated and to what the Varied Sum relates.
- 11.4 If the Customer intends to make any deduction from any payment due to the Supplier in respect of an application under condition 11.2, it shall not later than five days before the final date for payment, give a notice in writing to the Supplier, specifying the ground or grounds on which the Customer believes it is entitled to deduct or withhold payment from that amount due and the amount of withholding and/or deduction attributable to each ground.
- 11.5 Where the Customer does not give notices in writing pursuant to conditions 11.3 and 11.4 above, the Customer shall pay to the Supplier the amount stated in the application issued pursuant to condition 11.2 by the final date for payment. Receipts for payment will be issued only upon request.
- 11.6 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier on the due date, the Supplier may:
- 11.6.1 claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and
- 11.6.2 suspend the supply of all Goods and Services until payment has been made in full.
- 11.7 Time for payment shall be of the essence of the Contract.
- 11.8 All sums payable to the Supplier under the Contract shall become due immediately on its termination, despite any other provision. This condition 11.8 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 11.9 The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.

## 12 Limitation of liability - THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION

- 12.1 This condition 12 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to the Customer in respect of:
- 12.1.1 any breach of the Contract;
- 12.1.2 any use made by the Customer of the Goods and/or Services or any part of them; and
- 12.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 12.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 12.3 Nothing in these Conditions limits or excludes the liability of the Supplier:
- 12.3.1 for death or personal injury resulting from negligence; or
- 12.3.2 for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Supplier.
- 12.4 Subject to conditions 12.2 and 12.3 the Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, or contemplated performance, of the Contract shall be limited to the Price paid for the Goods and Services.

## 13 Termination

- 13.1 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract immediately by notice in writing if the other party:
- 13.1.1 fails to pay any amount due under the Contract on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment; or
- 13.1.2 commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of being notified in writing of the breach; or
- 13.1.3 repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract; or
- 13.1.4 enters into liquidation whether compulsorily or voluntarily (otherwise than for the purposes of a solvent amalgamation or reconstruction);
- 13.1.5 becomes insolvent;
- 13.1.6 ceases or threatens to cease to carry on business;
- 13.1.7 compounds or makes any voluntary arrangement with its creditors;
- 13.1.8 is the subject of a notice of appointment of an administrator, or a notice of intention to appoint an administrator or liquidator;
- 13.1.9 is unable to pay its debts as they fall due;
- 13.1.10 has an encumbrancer take possession of, or a receiver or administrative receiver appointed over, all or any part of its assets; or
- 13.1.11 takes or suffers any similar action due to debt,
- 13.1.12 suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- 13.1.13 if any event occurs, or proceeding are taken, with respect to the other party under the law of any jurisdiction that has an effect equivalent or similar to any of the events mentioned in conditions 13.1.4 to 13.1.11 (inclusive).
- 13.1.14 On termination of the Contract for any reason:
- 13.1.15 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
- 13.1.16 the Customer shall within one week return all of the Supplier's Equipment and any other property of the Supplier which is in the possession of the Customer. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping; and
- 13.1.17 the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

## 14 Force Majeure

- 14.1 The Supplier shall have no liability to the Customer under the Contract if it is prevented from, or delayed in performing, its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including (without limitation) strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, the use or threat of terrorism, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, exceptionally adverse weather conditions, fire, flood, storm or default of suppliers or subcontractors.

## 15 Expert Determination

- 15.1 Any dispute or difference arising between the parties hereto as to their respective rights duties and obligations or as to any other matter or thing in any way arising out of or in connection with the subject matter of the Contract (excluding any dispute or difference with regard to the meaning or construction of the Contract and any dispute) shall be referred to and determined by an independent person who has been professionally qualified in respect of the subject matter of the dispute or difference for not less than ten years and who is a specialist in relation to such subject matter, such independent person to be agreed between the parties hereto or failing such agreement to be nominated by the President or the Vice President or other duly authorised officer of the Royal Institution of Chartered Surveyors on the application of any of the parties hereto.
- 15.2 Whenever a person is to be appointed under condition 15.1 such person ("the Expert") shall act as an expert and the following provisions shall have effect:
- 15.2.1 the Expert shall act as an expert and not as an arbitrator and his decision shall be final and binding upon the parties hereto (save in case of manifest error);
- 15.2.2 the costs of appointing the Expert and his costs and disbursements in connection with his duties under the Contract shall be shared between the parties in such proportions as the Expert shall determine or in the absence of such determination equally between the Supplier and the Customer.

## 16 Waiver

- 16.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.
- 16.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

## 17 Severance

- 17.1 If any provision of the Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Contract, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 17.2 If a provision of the Contract (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

## 18 Entire agreement

- 18.1 The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.
- 18.2 Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) (other than for breach of contract).
- 18.3 Nothing in this condition shall limit or exclude any liability for fraud.

## 19 Assignment

- 19.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 19.2 The Supplier may at any time assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- 19.3 Each party that has rights under the Contract is acting on its own behalf and not for the benefit of another person.

## 20 Rights of third parties

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

## 21 Notices

- 21.1 Any notice required to be given under the Contract shall be in writing and shall be delivered personally, or sent by pre-paid first-class post, recorded delivery, commercial courier, facsimile or e-mail to the other party and for the attention of the person specified in the Quotation, or as otherwise specified by the relevant party by notice in writing to the other party.
- 21.2 Any notice shall be deemed to have been duly received if delivered personally, when left at the address and for the contact referred to in the Quotation or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second business day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

## 22 Governing law and jurisdiction

- 22.1 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of England and Wales.
- 22.2 The parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Contract or its subject matter.