

# ALLEN&HEATH

## Terms & Conditions of Purchase of Goods and/or Services

### 1. Interpretation

1.1 In these Conditions:

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

**Commencement Date** has the meaning given in clause 2.2.

**Conditions** means these terms and conditions as amended from time to time in accordance with clause 24.7.

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

**Control** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

**Customer** means Allen & Heath Limited registered in England and Wales with company number 4163451.

**Customer Equipment** has the meaning set out in clause 11.3.

**Customer Materials** has the meaning set out in clause 11.1.

**Deliverables** means all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

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

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

**Intellectual Property Rights** means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, 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 similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Mandatory Policies** means the Customer's business policies listed in the legal section of the website at [www.allen-heath.com/legal](http://www.allen-heath.com/legal), as updated from time to time.

**Order** means the Customer's order (which must be signed by an authorised signatory of the Customer) for the supply of Goods and/or Services, as set out in the Customer's purchase order form, or in the Customer's written acceptance of the Supplier's quotation, or overleaf, as the case may be.

**Services** mean the services, including any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification.

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

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

1.2 Interpretation:

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

(b) A reference to a party includes its successors and permitted assigns.

(c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

(d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

(e) A reference to **writing** or **written** includes fax and email.

### 2. Basis of contract

2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services from the Supplier in accordance with these Conditions, and shall be valid for a period of 10 Business Days from its date.

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

(a) the Supplier issuing written acceptance of the Order; or

(b) any act by the Supplier consistent with fulfilling the Order,

at which point and on which date the Contract shall come into existence (**Commencement Date**).



2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.4 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

### 3. Supply of Goods

3.1 The Supplier shall ensure that the Goods shall:

- (a) correspond with their description and any applicable Goods Specification;
- (b) be of the highest quality and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer, expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgement;
- (c) where they are manufactured products, be free from defects in design, materials and workmanship and remain so for at least twelve (12) months from the date of delivery or (if later) from the date of resale by the Customer, or as otherwise agreed with the supplier; and
- (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods (including, without limitation, the Californian Safe Drinking Water and Toxic Enforcement Act of 1986 (also known as California Proposition 65), the Restriction of Hazardous Substances Directives (EU) and similar or equivalent legislation in any part of the world).

3.2 The Supplier shall further ensure:

- (a) not to supply any Goods to the Customer that have been manufactured more than two (2) years, or twelve (12) months in the case of electronic components, prior to the date of delivery of the Goods to the Customer, unless otherwise agreed on our purchase order;
- (b) to have available for purchase by the Customer and users of the Goods (or products incorporating the Goods) spare parts and components for the Goods for a period of at least two (2) years from the date of delivery to the Customer of the last instalment of the Goods; and
- (c) that the Goods will, under conditions of normal use for which they were designed, remain in the condition specified in clause 3.1 (excluding fair wear and tear) for a period of at least twelve (12) months, or as otherwise agreed with the supplier, from the date of delivery or (if later) from the date of resale by the Customer.

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

### 4. Delivery of Goods

4.1 The Supplier shall ensure that:

- (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
- (b) 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; and
- (c) it states clearly on the delivery note any requirement for the Customer to return any packaging material for the Goods to the Supplier. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

4.2 The Supplier shall deliver the Goods:

- (a) on the date specified in the Order or, if no such date is specified, then within seven (7) days of the date of the Order;
- (b) to the Customer's premises at Allen & Heath Limited, Kernick Industrial Estate, Penryn, Cornwall, England TR10 9LU or such other location as is set out in the Order or as instructed by the Customer before delivery (**Delivery Location**); and
- (c) during the Customer's normal hours of business on a Business Day, or as instructed by the Customer.

4.3 Delivery of the Goods shall be completed in accordance with the latest INCOTERMS procedures. If the Supplier:

- (a) delivers less than 90% of the value or quantity of Goods ordered, the Customer may reject the Goods; or
- (b) delivers more than 110% of the value or quantity of Goods ordered, the Customer may at its sole discretion reject the Goods or the excess Goods,

and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and the Customer accepts the delivery, the Supplier shall make a pro rata adjustment to the invoice for the Goods.

4.4 The Supplier shall not deliver the Goods in instalments without the Customer's prior written consent. Where it is agreed that the Goods are 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 Customer to the remedies set out in clause 8.1.

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



## **5. Order Schedules**

5.1 An Order for a fixed time period (for example, six or twelve months) is subject to the following additional conditions:

- (a) the Order is firm and shall be exactly for the quantities of Goods as stipulated, for three months from the Commencement Date;
- (b) variations in the Order may occur for the remaining time period;
- (c) no responsibility will be accepted by the Customer for any quantities of Goods manufactured or stocked by the Supplier beyond the three month period from the Commencement Date of the Order.

5.2 By way of example:

- (a) if the Commencement Date of an Order is 1 January and the Order is scheduled for six consecutive months (that is until 30 June) then the quantities of Goods stipulated in the Order for the first three months i.e. up to 31 March are firm. Variances may occur for the remainder of the relevant period (i.e. April, May and June); and
- (b) as at 31 March, unless otherwise notified, the Order is firm with regards to quantities of Goods for the remainder of the relevant period (i.e. April, May and June) and so on.

## **6. Inspection, Testing and Rights of Access**

6.1 The Customer shall have the right to inspect and test the Goods at the Supplier's premises and within ninety (90) days of delivery of the Goods using such means as are applicable having regard to the nature of the Goods (including connecting the Goods to or incorporating them with other equipment using solder or such other form of connection as the Customer in its sole discretion considers necessary).

6.2 Prior to the delivery of the Goods, the Customer shall be entitled to have access to the Supplier's premises at all reasonable times for the purpose of checking progress and carrying out or witnessing test and/or procedures in connection with the manufacture of the Goods.

6.3 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.

6.4 If following any inspection or testing of the Goods prior to delivery, the Customer considers that the Goods do not comply or are unlikely to comply with the Supplier's undertakings at clause 3, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance. The Customer may conduct further inspections and tests after the Supplier has carried out its remedial actions.

## **7. Supply of Services**

7.1 The Supplier shall from the date set out in the Order and for the duration of the Contract supply the Services to the Customer in accordance with the terms of the Contract.

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

7.3 In providing the Services, the Supplier shall:

- (a) co-operate with the Customer in all matters relating to the Services, and comply with all instructions of the Customer;
- (b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;
- (d) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose that the Customer expressly or impliedly makes known to the Supplier;
- (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- (f) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Customer, will be free from defects in workmanship, installation and design;
- (g) obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
- (h) comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply to the provision of the Services;
- (i) observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises; and
- (j) not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Customer may rely or act on the Services.

## **8. Customer remedies**



- 8.1 If the Supplier fails to deliver the Goods and/or perform the Services by the applicable date, the Customer shall, without limiting or affecting other rights or remedies available to it, have one or more of the following rights:
- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
  - (b) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
  - (c) to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods and/or services from a third party;
  - (d) to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and/or Goods that it has not delivered; and
  - (e) to claim damages for any additional costs, loss or expenses (including, without limitation, loss of profit, any indirect or consequential loss, and loss or damage to the Customer's reputation) incurred by the Customer which are in any way attributable to the Supplier's failure to meet such dates.
- 8.2 If the Goods are not delivered by the applicable date, the Customer may, at its option, claim or deduct five (5)% of the price of the Goods for each week's delay in delivery by way of liquidated damages (for example, if Goods are delivered four weeks after the specified date, the Customer may, at its option, claim or deduct 20% of the invoice value). If the Customer exercises its rights under this clause 8.2 it shall not be entitled to any of the remedies set out in clause 8.1 in respect of the Goods' late delivery.
- 8.3 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 3, then, without limiting or affecting other rights or remedies available to it, and without incurring any liability whatsoever, the Customer shall have one or more of the following rights, whether or not it has accepted the Goods:
- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
  - (b) to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
  - (c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
  - (d) to take such remedial action as it considers necessary after consultation with the Supplier in order to prevent any further loss or damage to the Goods or to the Customer's business reputation;
  - (e) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
  - (f) to recover from the Supplier any expenditure incurred by the Customer in obtaining substitute goods from a third party; and
  - (g) to claim damages for any additional costs, loss or expenses (including, without limitation, loss of profit, any indirect or consequential loss, and loss or damage to the Customer's reputation) incurred by the Customer arising from the Supplier's failure to supply Goods in accordance with clause 3.

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

8.5 The Customer's rights under the Contract are in addition to its rights and remedies implied by statute and common law.

## **9. Customer's obligations**

9.1 The Customer shall:

- (a) provide the Supplier with reasonable access at reasonable times to the Customer's premises for the purpose of providing the Services; and
- (b) provide such necessary information for the provision of the Services as the Supplier may reasonably request.

## **10. Charges and payment**

10.1 The price for the Goods:

- (a) 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 at the Commencement Date; and
- (b) shall be inclusive of the costs of storage, packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by the Customer.

10.2 The charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Customer, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

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

10.4 In consideration of the supply of Goods and/or Services by the Supplier, the Customer shall pay the invoiced amounts, within the agreed account terms, following receipt of a correctly rendered invoice to a bank account nominated in writing by the Supplier.



- 10.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.
- 10.6 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 10.6 will accrue each day at 2% a year above the Bank of England's base rate from time to time.
- 10.7 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow the Customer to inspect such records at all reasonable times on request.
- 10.8 The Customer may at any time, without notice to the Supplier, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. If the liabilities to be set off are expressed in different currencies, the Customer may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Customer of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

## **11. Customer Information and Property**

- 11.1 Any specifications, drawings, sketches, models, samples, technical information or data whether written or oral supplied by the Customer to the Supplier, or produced by the Supplier, for the purposes of or in connection with the Contract (**Customer Materials**), shall be and remain the Customer's property. Any and all information contained or embodied in the Customer Materials shall be treated as confidential and shall not be published or disclosed to any third party or be used by the Supplier otherwise than for the purposes of the Contract.
- 11.2 The Supplier shall maintain all Customer Materials in good order and condition, and shall return all Customer Materials to the Customer upon request or upon the lapsing, fulfilment, cancellation or termination for whatever reason of the Contract.
- 11.3 All tools, tooling, test jigs and equipment supplied by the Customer to the Supplier, or manufactured or bought by the Supplier, for the purposes of or in connection with the Contract (**Customer Equipment**), shall be and remain the property of the Customer, and shall at all times be clearly labelled and identified as such. All Customer Equipment shall be at the risk of the Supplier and kept insured by the Supplier at its expense for their full replacement value and shall not be subject to any lien in favour of the Supplier.
- 11.4 The Supplier shall not loan, sell back or otherwise remove any of Customer Equipment or allow any Customer Equipment to be seized, sequestered or used otherwise than for the purpose of fulfilling the Order, and shall return all Customer Equipment to the Customer upon request in good condition (reasonable wear and tear excepted).
- 11.5 The Supplier acknowledges that where the cost of the Customer Equipment has been met by the Customer, the Supplier shall supply, and shall continue to supply, Goods to the Customer against Orders for the duration of the economic life of the tooling (which in most instances is not less than 5 years) and the Supplier shall not increase its prices for the Goods for a period of not less than 12 months from the date of the satisfactory acceptance (to be determined in the Customer's discretion) of the Customer Equipment by the Customer and thereafter price increases may only be made to reflect direct increases in the Supplier's cost of labour and materials.
- 11.6 Without prejudice to any other rights of the Customer, if an order is cancelled or terminated by the Customer due to any breach by the Supplier of the Contract or if an Order is cancelled or terminated for any reason by the Supplier before the Goods have been manufactured and delivered in accordance with any relevant Specification, the Customer may recover from the Supplier any costs, charges, damages, expenses and losses (including but not limited to consequential losses) that it suffers or incurs in respect of any items of Customer Equipment as a result of re-ordering the Goods from another supplier.

## **12. Design changes**

The Customer shall have the right to make changes in the design and/or specifications of the Goods and/or Services by notice to the Supplier. If such changes affect the price or delivery schedule, the Supplier shall notify the Customer immediately and negotiate an appropriate adjustment. In the absence of such notification the price and delivery schedule will remain the same.

## **13. Intellectual property rights**

- 13.1 All Intellectual Property Rights in or arising out of or in connection with the Services (including in any Deliverables) shall automatically vest in the Customer, and the Supplier hereby assigns all such Intellectual Property Rights to the Customer.
- 13.2 Without the limiting the generality of clause 13.1, where a Deliverable comprises computer programs and associated documentation, the Supplier shall deliver to the Customer the relevant source code and object code together with one reproducible copy of all available information as the Customer shall determine is necessary to enable it to sell goods incorporating the computer program, and if applicable to licence or sub-licence and support such computer program.
- 13.3 Where Goods supplied under this Contract incorporate software belonging to a third party, the Supplier hereby grants the Customer a non-exclusive, irrevocable, sub-licensable and perpetual sub-licence (or shall procure that the relevant owner grants a non-exclusive, irrevocable, sub-licensable and perpetual licence direct to the Customer) of that third party software free of charge.
- 13.4 The Customer hereby grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence, for the term of the Contract, to copy and modify any Customer Materials for the purpose of providing the Goods and/or Services to the Customer.

## **14. Compliance with law and policies**

- 14.1 General



The Supplier shall at its own expense comply with all laws and regulations relating to its activities under this Contract, as they may change from time to time, with any conditions binding on it in any applicable licences, registrations, permits and approvals, and with the Mandatory Policies.

14.2 Anti-money laundering

The Supplier warrants, represents and undertakes that the operations of the Supplier and its subsidiaries have been and will be, at all times and in all material respects, conducted in compliance with all applicable financial recordkeeping and reporting requirements, including applicable anti-money laundering statutes of jurisdictions where the Supplier and its subsidiaries conduct business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the "**Anti-Money Laundering Laws**"), and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Supplier or any of its subsidiaries with respect to the Anti-Money Laundering Laws is pending or, to the Supplier's best knowledge, threatened.

**15. Modern Slavery**

15.1 Modern slavery takes various forms, all of which have in common the deprivation of a person's liberty by another in order to exploit them for personal or commercial gain. Customer has a zero-tolerance approach to modern slavery and is committed to acting ethically and with integrity in all business dealings and relationships. Customer requires that Supplier comply with all local and international regulations regarding Modern Slavery and Supplier warrants, represents and undertakes that it is committed to acting ethically and with integrity in all business dealings and relationships and:

Supplier has in place effective systems and controls to validate that modern slavery is in no manner tolerated or exists in its supply chain;

Supplier's Supply chain is free from modern slavery and human trafficking in all forms; and

Supplier is compliant with the UK Modern Slavery Act 2015 (the "Act").

In the event that Customer becomes aware that any of these undertakings have not reasonably been met by Supplier or that Customer has reason to believe that the Supplier has not complied with the Act, Customer may terminate this Agreement upon 30 days written notice to Supplier, without recourse or further notice.

**16. Data Protection**

The Supplier warrants, represents and undertakes that the operations of the Customer and its subsidiaries have been and will be, at all times and in all material respects, conducted in compliance with the EU General Data Protection Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and that personal data shall be:

- (a) processed lawfully, fairly and with transparency;
- (b) collected for specified, explicit and legitimate purposes ("Purpose");
- (c) adequate, relevant and limited to what is necessary to fulfil the Purpose;
- (d) accurate and kept up to date;
- (e) retained only for so long as necessary to accomplish the Purpose;
- (f) processed in a secure manner to maintain its integrity and confidentiality;
- (g) and Supplier shall maintain records of all personal data processing in connection with these T&C's of purchase.



## **17. Anti-bribery compliance**

- 17.1.1 The Supplier shall:
- 17.1.1.1 at its own expense comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption as they may change from time to time, including but not limited to the UK Bribery Act 2010 ("**Relevant Requirements**");
  - 17.1.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
  - 17.1.1.3 comply with the Customer's Anti-bribery Policy (listed in the Schedule) and which may be updated [by notification to the Supplier] from time to time ("**Anti-bribery Policy**");
  - 17.1.1.4 have and maintain in place throughout the term of this Contract its own policies and procedures, including but not limited to adequate procedures (as determined in the Bribery Act 2010), to ensure compliance with the Relevant Requirements, the Relevant Policy and Condition 13.1.2, will enforce them where appropriate;
  - 17.1.1.5 promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by it in connection with the performance of this Contract;
  - 17.1.1.6 immediately notify the Customer (in writing) if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier, and the Supplier warrants that it has no foreign public officials as direct or indirect owners, officers or employees at the date of this Contract; and
  - 17.1.1.7 ensure that any person associated with it (as determined in the Bribery Act 2010) who is performing services or providing goods in connection with this Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to this clause 0 ("**Relevant Terms**"). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Customer for any breach by such persons of any of the Relevant Terms.
- 17.1.2 Breach of this clause 0 shall be deemed a material breach.
- 17.1.3 For the purpose of this clause 0, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively.

## **18 Indemnity**

- 18.1 The Supplier shall indemnify the Customer 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 reasonable professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with:
- 18.1.1 any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services (excluding the Customer Materials);
  - 18.1.2 any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods, as delivered, or the Deliverables; and
  - 18.1.3 any claim made against the Customer by a third party arising out of or in connection with the supply of the Goods, as delivered, or the Services.
- 18.2 This clause 18 shall survive termination of the Contract.

## **19 Insurance**

During the term of the Contract [and for a period of 6 years thereafter], the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on the Customer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

## **20 Confidentiality**

- 20.1 Each party undertakes that it shall not at any time, whether during or termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 20.2.
- 20.2 Each party may disclose the other party's confidential information:
- 20.2.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information must comply with this clause 20; and
  - 20.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 20.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- 20.4 The Supplier shall not, without prior permission use, the Customer's name or trade mark, or disclose the existence of the Order, in any publicity material.

## **21 Termination**



- 21.1 Without affecting any other right or remedy available to it, the Customer may terminate the Contract:
- 21.1.1 with immediate effect by giving written notice to the Supplier if:
- 21.1.1.1 there is a change of control of the Supplier; or
- 21.1.1.2 the Supplier's financial position deteriorates to such an extent that in the Customer's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- 21.1.1.3 the Supplier commits a breach of clause 7.3(h),
- 21.1.2 for convenience by giving the Supplier three (3) months' written notice.
- 21.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 21.2.1 the other party commits a breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of seven (7) days after being notified in writing to do so;
- 21.2.2 the other party 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), 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; or
- 21.2.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

## **22 Consequences of termination**

- 22.1 On termination of the Contract, the Supplier shall immediately deliver to the Customer all Deliverables whether or not then complete, and return all Customer Materials. If the Supplier fails to do so, then the Customer may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 22.2 On termination of the Contract by the Customer pursuant to clause 21.1.2, the Customer shall be bound to pay a reasonable price for any work already completed, but shall otherwise be free from liability.
- 22.3 Termination or expiry of the Contract shall not affect the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 22.4 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

## **23 Force majeure**

- 23.1 The Supplier shall not be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure results from events, circumstances or causes beyond its reasonable control ("an event of force majeure") provided that the Supplier:
- 23.1.1 immediately gives full written details to the Customer of the delay or failure to perform and, in any event, within five (5) days of its occurrence; and
- 23.1.2 uses every reasonable effort to overcome the effects of the event of force majeure and to complete delivery as soon as possible.
- 23.2 If the period of delay or non-performance continues for two (2) weeks after the date the Supplier has or ought to have given notice in accordance with clause 18.1, the Customer may terminate the Contract forthwith by notice to the Supplier, without liability.

## **24 General**

### **24.1 Assignment and other dealings.**

- 24.1.1 The Customer may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights and obligations under the Contract.
- 24.1.2 The Supplier shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Customer.

### **24.2 Notices.**

- 24.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
- 24.2.2 A notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; or 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.



- 24.2.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 24.3 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.
- 24.4 Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 24.5 No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 24.6 Third party rights.**
- 24.6.1** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 24.6.2** The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.]
- 24.7 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 parties or their authorised representatives.
- 24.8 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.
- 24.9 **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.

#### **Schedule 1 Mandatory Policies**

The Mandatory Policies are:

- Modern Slavery Policy <https://www.audiotonix.com/responsibility/legal/modern-slavery-act/>
- Anti-Bribery Policy <http://www.allen-heath.com/media/Audiotonix-Group-Anti-bribery-Policy-October-2019-v.2.docx>
- Economic Sanctions Policy <http://www.allen-heath.com/media/Audiotonix-Group-Sanctions-Policy-October-2019-v.1.docx>