

Aberley Standard Terms and Conditions of Purchase

1 Definitions

- 1.1** “Company” means Aberley (company number 03217466), with its registered office at Pendragon House, 65 London Road, St Albans, Hertfordshire, AL1 1LJ.
- 1.2** “Company Materials” means all materials, equipment, tools, drawings, specifications and data supplied by the Company to the Supplier pursuant to or in connection with the Contract if any.
- 1.3** “Contract” means the purchase order or contract between the Company and the Supplier for the supply of Goods and/or Services in accordance with these Terms and Conditions.
- 1.4** “Deliverables” means the Goods and/or Services to be provided by the Supplier to the Company as identified in the Purchase Order.
- 1.5** “Goods” means any goods, materials or products provided by the Supplier to the Company identified in the Purchase Order.
- 1.6** “Intellectual Property Rights” means patents, utility models, rights to inventions, copyright and related rights, moral rights, trademarks, business names and domain names, 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 and all other intellectual property rights, in each case whether registered or unregistered.
- 1.7** “Services” means any services provided by the Supplier to the Company identified in the Purchase Order.
- 1.8** “Supplier” means any individual, firm or company supplying the Goods or performing the Services as identified in the Purchase Order.

2 General

- 2.1** The Purchase Order constitutes an offer by the Company to purchase the Goods and/or Services from the Supplier in accordance with the Terms and Conditions.
- 2.2** The Purchase Order shall be deemed to be accepted on the earlier of the Supplier issuing written notification of acceptance of the Purchase Order; or any act by the Supplier consistent with fulfilling the Purchase Order such as despatch, at which point the Contract shall come into existence (“Commencement Date”) between the parties.
- 2.3** All of the Terms and Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

2.4 These terms and conditions shall override and take the place of any terms or conditions provided by the Supplier, including but not limited to any terms and conditions in an order confirmation, delivery note or invoice.

3 Price

3.1 The price of the Goods and the charges for the Services shall be as specified in the Purchase Order ("Charges") and cannot be varied without written agreement of the Company and the Supplier. Such Charges shall be the full and exclusive remuneration of the Supplier in respect of the supply of Goods and/or Services.

3.2 Unless otherwise agreed in writing, the Charges are fixed and shall not be subject to variation and shall be deemed to include all expenses incurred by the Supplier (directly or indirectly) in relation to provision of the Services and/or the supply of Goods; and the costs of packaging, insurance and carriage of Deliverables. The Charges are exclusive of any applicable VAT unless indicated in the Purchase Order.

4 Payment

4.1 Unless otherwise agreed in writing, detailed priced invoices, which shall be valid VAT invoices, shall be sent to the Company at the address detailed in the Purchase Order. Invoices shall be issued on or as soon as reasonably practicable after completion of delivery of Deliverables or completion of the supply of Services. Each invoice shall include supporting information required by the Company to verify the accuracy of the invoice, including, but not limited to, the Purchase Order number.

4.2 Unless otherwise stated in the Purchase Order, the terms of payment are 30 days from the date of receipt by the Company of a correctly rendered Supplier's invoice or acceptance of the Deliverables by the Company, whichever is later.

4.3 The Company reserves the right to return any invoices not deemed to be correctly rendered.

5 Standards

5.1 The Deliverables under the Contract shall be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); correspond with the Purchase Order, any description and/or any applicable specification, be fit for the purpose held out by the Supplier or made known to the Supplier expressly or by implication and in this respect the Company shall rely on the Supplier's skill and judgement; if they are Goods, be new and of sound materials and skilled and careful workmanship; and comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery.

5.2 If the Deliverables do not comply with clause 5.1, then, without limiting or affecting other rights or remedies available to it, the Company shall have one or more of the following rights, whether or not it has accepted the Deliverables: (a) to terminate the Contract with

immediate effect by giving written notice to the Supplier; (b) to reject the Deliverables 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 replace the rejected Deliverables, or to provide a full refund of the price of the rejected Deliverables (if paid); (d) to refuse to accept any subsequent delivery of the Deliverables; (e) to recover from the Supplier any expenditure incurred by the Company in obtaining substitute goods and/or services from a third party; and (f) to claim damages for any additional costs, loss or expenses incurred by the Company arising from the Supplier's failure to comply with clause 5.1.

5.3 The Terms and Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

5.4 In providing the Services, the Supplier shall: (a) co-operate with the Company in all matters relating to the Services, and comply with all reasonable instructions of the Company; (b) perform the Services with the best care, skill and diligence in accordance with best practice; (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number; (d) ensure that the Services conform with all applicable descriptions and specifications; (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; (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 premises attended; (j) hold all Company Materials in safe custody at its own risk, maintain the Company Materials in good condition until returned to the Company, and not dispose or use the Company Materials other than in accordance with the Company's written instructions or authorisation; (k) not do anything which may cause the Company to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Company may rely or act on the Services; (l) comply with any additional obligations as set out in the Purchase Order.

5.5 The Company reserves the right to require the Supplier to re-perform Services at the Supplier's expense if the Services do not correspond to the service specification of the Contract.

6 Delivery, Risk and Title

6.1 The Supplier shall deliver the Deliverables on the date(s) specified in the Purchase Order during the Company's normal business hours, or as instructed by the Company.

6.2 The Supplier is responsible for the delivery and all costs associated with the delivery of the Goods to the Company's premises or any other location that is specified in the Purchase Order ("Delivery Location").

6.3 Title and risk in the Goods shall pass to the Company on completion of delivery. If the goods are rejected then title will revert to the Supplier.

6.4 If the quantity of the Goods delivered to the Company does not correspond with the Purchase Order, the Company may reject the Goods or the excess, as applicable. Any rejected Goods shall be returnable at the Supplier's risk and expense.

7 Packaging and Preservation

7.1 All Goods supplied by the Supplier shall be packed so as to avoid being damaged during transportation, loading and unloading.

7.2 The Supplier undertakes to replace any Goods damaged in transit at the Suppliers expense.

8 Delays

8.1 Time is of the essence in the Supplier's performance of the Contract. If the provision of Deliverables or the supply of Services will not be met within the time specified, the Supplier must immediately notify the Company of any anticipated delay, with complete information regarding the cause and the earliest possible delivery date.

8.2 If the Supplier fails to provide the Deliverables or perform the Services by the applicable delivery date set out in the Purchase Order (if any), the Company 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 provision of the Deliverables which the Supplier attempts to make; (c) to recover from the Supplier any costs incurred by the Company 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; (e) to claim damages for any additional costs, loss or expenses incurred by the Company which are in any way attributable to the Supplier's failure to meet such dates.

9 Warranty

9.1 The Supplier warrants that the Deliverables shall be free from defects in design, materials and workmanship and remain so for 12 months after delivery.

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

9.3 If any part or aspect of the Goods fail or becomes defective within 12 months from the date the Goods were delivered to the Company, the Supplier must without delay and at no cost to the Company do all things necessary to remedy the defect or failure in the Goods. This can be by way or repair, replacement, modification or other means acceptable to the Company. If the Supplier does not do so, within a reasonable period

following notice of the defect from the Company, then the Company will have the right to remedy the defect and recover reasonable costs so incurred from the Supplier.

9.4 This clause 9 shall survive termination or expiry of the Contract.

10 Liability and Indemnity

10.1 The Supplier shall indemnify the Company and keep the Company indemnified against all claims, demands, proceedings, costs, charges, expenses, damages and losses or any other liability suffered by the Company, its officers, employees and/or agents arising out of or in connection with: (a) any claim made against the Company for actual or alleged infringement of a third party's rights (including Intellectual Property Rights) arising out of, or in connection with, the manufacture (if applicable), supply or use of the Goods, or receipt, use or supply of the Services (excluding the Company Materials); (b) any claim made against the Company by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Deliverables; (c) any claim made against the Company by a third party arising out of or in connection with the supply of the Goods, as delivered, or the Services; and/or (d) any breach by the Supplier of any of the terms of the Contract including any negligent or reckless act, omission or default in the provision of the Services and/or the supply of Goods.

10.2 The Company will not be liable to the Supplier for any: (i) loss of profits; (ii) loss of sales or business; (iii) loss of agreements or contracts; (iv) loss of anticipated savings; (v) loss or corruption of software, data or information; (vi) loss of or damage to goodwill; and/or (vii) any indirect or consequential loss or damage.

10.3 The maximum sum for which the Company may be liable to the Supplier under or in connection with the Contract is limited to the total amount of the Charges paid under the Contract.

10.4 Nothing in the Contract shall exclude or limit either party's liability for death, personal injury or fraud, or any other liability which cannot legally be limited or excluded.

11 Insurances

11.1 The Supplier shall maintain in force, with a reputable insurance company, an appropriate insurance policy to cover the liabilities that may arise under or in connection with the Contract and shall, on the Company's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium.

12 Intellectual Property

12.1 The Contract shall not affect the ownership of any Intellectual Property Rights existing prior to the Commencement Date.

12.2 The Company retains ownership of all Intellectual Property Rights in all Company Materials.

- 12.3** The Supplier grants to the Company, or shall procure the grant to the Company of, a perpetual, royalty-free, irrevocable non-exclusive worldwide licence to use, copy and modify the Deliverables for the purpose of receiving the full benefit and using the Deliverables and/or the Services.
- 12.4** Intellectual Property Rights in the Deliverables shall vest in the Supplier, unless otherwise specified in the Purchase Order or where the Deliverables are produced for the Company as bespoke, and in each such case the Intellectual Property Rights in such Deliverables shall vest in the Company upon their creation.

13 Data Protection

- 13.1** In the event the supply of Services under the Contract requires the Supplier to process any personal data as a data processor for and on behalf of the Company, the Supplier shall promptly enter into a written GDPR compliant data processing agreement with the Company, in the form required by the Company.

14 Force Majeure

- 14.1** Neither the Company nor the Supplier shall be liable to the other for default or delay in performing its obligations in respect of this Contract caused by any occurrence beyond its reasonable control including, without limitation, fire, strike, disturbance, riot, war, act of God and government order or regulation ("Force Majeure Event").
- 14.2** When the affected party ceases to be affected by the Force Majeure Event it must immediately recommence performing its obligations under the Contract and notify the other party accordingly. If the delay exceeds five days then the Company may, without penalty, cancel the Purchase Order.

15 Termination

- 15.1** The Contract shall expire automatically on the completion of the delivery of all Deliverables and/or the completion of the Services specified in the Purchase Order.
- 15.2** Without affecting any other right or remedy available to it, the Company may terminate the Contract with immediate effect by giving written notice to the Supplier.
- 15.3** On termination or expiry of the Contract, the Supplier shall immediately deliver to the Company all Deliverables (including Goods paid for but not delivered) whether or not then complete, and return all Company Materials. If the Supplier fails to do so, then the Company 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.
- 15.4** 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.

15.5 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.

16 Confidentiality

16.1 Each party undertakes that it shall not disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party.

16.2 Each party may disclose the other party's confidential information 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.

16.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

17 Waiver

17.1 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 breach or default. 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.

18 Alterations/variations

18.1 Alterations or variations to the Purchase Order, these Terms and Conditions or any other attached drawings or documents shall not be legally binding upon Company or Supplier unless agreed in writing by the parties.

19 Dispute resolution

19.1 The parties shall attempt in good faith to negotiate a settlement to any dispute arising out of or in connection with this Contract. In the event a settlement cannot be reached within 30 days of the dispute arising, the parties agree to enter into mediation in good faith to settle such a dispute and will do so in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure.

20 Rights of Third Parties

20.1 The parties do not intend any term of this Agreement to be enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999.

21 Sub-contracting and Assignment

- 21.1** The Supplier shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

22 Agency

- 22.1** 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 enter into any commitments for or on behalf of the other party.

23 Non-exclusivity

- 23.1** Nothing in the Contract shall confer, or shall be deemed to confer, on the Supplier any right to be a sole or exclusive supplier of the Deliverables, nor any obligation on the Company to buy any minimum quantity save as expressly set out in the Purchase Order.

24 Entire agreement

- 24.1** The Contract constitutes the entire agreement between the parties in relation to the subject matter of the Purchase Order and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

25. Severance

- 25.1** 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.

26 Notices

- 26.1** Any notification by either party to the other under the Contract shall be in writing, delivered by first class post, or by email to the other party at the address shown in the Purchase Order. All notices shall be deemed duly given on the day of posting or if sent by e-mail immediately when the notice is transmitted.

27 Law and Jurisdiction

This Contract shall be subject to and construed in accordance with English Law and the Parties submit to the exclusive jurisdiction of the English Courts.