

**PURCHASE ORDER – TERMS  
AND CONDITIONS (FOR THE  
SUPPLY OF PRODUCTS AND  
SERVICES ONLY)**



**Customer Materials:** has the meaning set out in clause 5.3(i).

**Deliverables:** all documents, products and materials developed by the Vendor 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).

**Delivery Location:** has the meaning given in clause 4.2(b).

**Force Majeure Event:** means any circumstance not within a party's reasonable control including, without limitation:

- (a) acts of God, flood, drought, earthquake or natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or any action taken by a government or public authority;
- (f) collapse of buildings, fire, explosion or accident; and/or
- (g) interruption or failure of utility service.

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

**Goods Specification:** any specification for the Goods, including any related plans and drawings that are agreed in writing by the Customer and the Vendor.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, 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.

**Liabilities:** in respect of a party, all losses (including direct, indirect, consequential or economic losses, and including loss of profits, revenue, opportunity or business), claims, damages, liabilities, fines, interest, penalties, costs, charges, expenses, actions, demands and legal and other professional costs (calculated on a full indemnity basis) or proceedings awarded against, suffered, incurred or paid by that party;

**Mandatory Policies:** the Customer's business policies in Schedule 1.

**Purchase Order:** the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form attached to these Conditions.

## 1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

### 1.1 Definitions

**Affiliate:** means any entity that directly or indirectly controls or is controlled by or is under common control with another entity.

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

**Business Hours:** the period from 8.30 am to 4.30 pm on any Business Day.

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

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 19.9.

**Confidential Information:** means all information (in whatever form) sent from one party (**Disclosing Party**) and is received or acquired (whether directly or indirectly) to the other party (**Receiving Party**) including but not limited to:

- (a) any know-how, trade secrets, financial, commercial, technical or strategic information of any kind; or
- (b) all information produced, developed or derived from information disclosed pursuant to this Contract;

but excluding any information which:

- (a) is, or was already known or available to the Receiving Party, otherwise than pursuant to or through breach of any confidentiality obligation owed to the Disclosing Party; or
- (b) is, or becomes, in the public domain other than through any breach of this Contract (save that any publicly available information shall be classified as Confidential Information where it is compiled in a form that is not in the public domain).

**Contract:** an executed contract between the Customer and the Vendor for the supply of Goods or Services or Goods and Services and any ancillary documents agreed between the parties (which may be dated on a date which pre-dates these Conditions).

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

**Customer:** Euro Garages Limited registered in England and Wales with company number 04246195.

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

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

**Vendor:** the person or firm from whom the Customer purchases the Goods and/or Services.

**Virus:** any program which contains malicious code or infiltrates or damages a computer system without the owner's informed consent or is designed to do so or which is hostile, intrusive or annoying to the owner or user and has no legitimate purpose.

**Vulnerabilities:** a weakness in the computational logic (for example, code) found in software and hardware components that, when exploited, results in a negative impact to confidentiality, integrity, or availability, and the term Vulnerability shall be interpreted accordingly.

**UK GDPR:** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

- 1.2 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 a reference to a party includes its personal representative successors and permitted assigns.
- 1.4 a reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- 1.5 any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- 1.6 A reference to **writing** or **written** excludes fax but not email.
- 1.7 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.8 If there is any ambiguity or inconsistency between the Contract, the Purchase Order and/or any other documents and the terms of these Conditions, then the order of precedent shall be:
  - (a) the Contract;
  - (b) the Purchase Order; and
  - (c) the Conditions.

## 2. Basis of the Contract

- 2.1 The Purchase Order constitutes an offer by the Customer to purchase Goods or Services or Goods and Services from the Vendor in accordance with these Conditions.
- 2.2 The Purchase Order shall be deemed to be accepted on the earlier of:
  - (a) the Vendor issuing written acceptance of the Purchase Order; or
  - (b) any act by the Vendor consistent with fulfilling the Purchase 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 Vendor seeks to impose or incorporate, or which are implied by law, 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.
- 2.5 The Vendor waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Vendor that is inconsistent with these Conditions.
- 2.6 On each occasion the Vendor fulfils or purports to fulfil a Purchase Order for the supply of Goods and or Services the Vendor warrants to the Customer that:
  - (a) it validly exists under the laws of its place of its incorporation and has the power and authority to carry on business;
  - (b) it has the requisite corporate power to enter into and perform this Purchase Order;
  - (c) it is able to provide title to the Goods and or Services free from any charge or encumbrance; and
  - (d) all information regarding the Goods and or Services provided by the Vendor to the Customer is true and accurate.

## 3. Supply of Goods

- 3.1 The Vendor shall ensure that the Goods shall:
  - (a) correspond with their description and any applicable Goods Specification;
  - (b) correspond with the request from the Customer as specified under the Purchase Order;
  - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Vendor or made known to the Vendor by the Customer, expressly or by implication, and in this respect the Customer relies on the Vendor's skill and judgment;
  - (d) where they are manufactured products, be free from defects in design, materials and workmanship and remain so for 24 months after delivery;
  - (e) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 3.2 The Vendor shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.
- 3.3 The Customer may inspect and test the Goods at any time before delivery. The Vendor 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 Vendor's obligations under the Contract.

3.4 If following such inspection or testing the Customer considers that the Goods do not comply or are unlikely to comply with the Vendor's undertakings at clause 3.1, the Customer shall inform the Vendor and the Vendor shall immediately take such remedial action as is necessary to ensure compliance.

3.5 The Customer may conduct further inspections and tests after the Vendor has carried out its remedial actions.

#### 4. Delivery of Goods

4.1 The Vendor 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 Purchase Order, the Purchase 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 Vendor. Any such packaging material shall only be returned to the Vendor at the cost of the Vendor.

4.2 The Vendor shall deliver the Goods to the Customer:

- (a) on the date specified in the Purchase Order or, if no such date is specified, then use reasonable endeavours to supply the Goods within 7 days of the date of the Customer instructing the Vendor to supply the Goods;
- (b) to the Customer's premises at Euro Garages Limited, Waterside Head Office, Haslingden Road, Guide, Blackburn, Lancashire, United Kingdom, BB1 2FA or at such other location as is set out in the Purchase Order or as instructed by the Customer before delivery (**Delivery Location**); and
- (c) during Business Hours or as instructed by the Customer.

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

4.4 If the Vendor:

- (a) delivers less than 98% of the quantity of Goods ordered, the Customer may reject the Goods; or
- (b) delivers more than 105% of the 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 Vendor's risk and expense. If the Vendor delivers more or less than the quantity of Goods ordered, and the Customer accepts the delivery, the Vendor shall make a pro rata adjustment to the invoice for the Goods.

4.5 The Vendor 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 Vendor 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 6.1.

4.6 Title and risk in the Goods shall pass to the Customer on completion of delivery in accordance with the Customer's Delivery Instructions.

#### 5. Supply of Services

5.1 The Vendor shall from the Commencement Date and for the duration of the Contract supply the Services to the Customer in accordance with the terms of this Contract.

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

5.3 In providing the Services, the Vendor 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 Vendor'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 Vendor's obligations are fulfilled in accordance with the Contract;
- (d) ensure that the Services will conform with all descriptions, standards 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 Vendor;
- (e) provide all its own 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) observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises;
  - (i) hold all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Vendor (**Customer Materials**) in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not dispose of or use the Customer Materials other than in accordance with the Customer's written instructions or authorisation;
  - (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 Vendor acknowledges that the Customer may rely or act on the Services;
  - (k) not introduce any Viruses or Vulnerabilities onto the Customer's network and information systems while performing or permitting the Customer to utilise the Services;
  - (l) adhere with the Customer's Group IT Policies (under Schedule 1) and associated IT controls and shall communicate any situations where this adherence is not achievable with 3 days of becoming aware of such incapability;
  - (m) upon request (and with reasonable notice from the Customer) make available to the Customer any records and supporting documents pertaining to the Contract for the purposes of monitoring, auditing, or evaluating the Vendor and or its sub-service organisation's IT controls and or processes; and
  - (n) comply with any additional obligations as set out in the Service Specification (where necessary);
- 5.4 The Vendor shall deliver the Services to the Customer on the date specified in the Purchase Order or, if no such date is specified, then the Vendor shall use reasonable endeavours to supply the Services within 7 days of the date agreed between the Customer and the Vendor.
- 6. Customer remedies**
- 6.1 If the Vendor fails to deliver the Goods by the applicable date as specified under clause 4.2(a) or fails to perform the Services by the applicable date as specified under clause 5.4, the Customer shall, without limiting or affecting other rights or remedies available to it, have any one or more of the following rights and remedies:
- (a) to terminate the Contract with immediate effect by giving not less than 7 days written notice to the Vendor;
  - (b) to refuse to accept any subsequent performance of the Services or delivery of the Goods which the Vendor attempts to make;
  - (c) to recover from the Vendor any costs incurred by the Customer in obtaining substitute goods or services from a third party;
  - (d) to require a refund from the Vendor of sums paid in advance for Services that the Vendor has not provided or Goods that it has not delivered; and
  - (e) to claim damages for any additional costs, loss or expenses incurred by the Customer which are in any way attributable to the Vendor's failure to meet such dates.
- 6.2 If the Goods are not delivered by the applicable date as specified under clause 4.2(a), the Customer may, at its option, claim or deduct 10% of the price of the Goods for each week's delay in delivery of the Goods, by way of liquidated damages, until the earlier of delivery of the Goods or termination or abandonment of the Contract by the Customer, up to a maximum of 80% of the total price of the Goods. If the Customer exercises its rights in respect of late delivery under this clause 6.2 it shall not be entitled to any of the remedies set out in clause 6.1 in respect of the later delivery of the Goods.
- 6.3 If the Services are not performed by the applicable date as specified under clause 5.4, the Customer may, at its option, claim or deduct 10% of the price of the Services for each week's delay in performance of the Services, by way of liquidated damages, until the earlier of performance of the Services or termination or abandonment of the Contract by the Customer, up to a maximum of 80% of the total price of the Services. If the Customer exercises its rights in respect of late performance under this clause 6.3 it shall not be entitled to any of the remedies set out in clause 6.1 in respect of the late performance of the Services.
- 6.4 If the Vendor has delivered Goods that do not comply with the undertakings set out in clause 3.1, then, without limiting or affecting other rights or remedies available to it, the Customer shall have one or more of the following rights and remedies, whether or not it has accepted the Goods:
- (a) to terminate the Contract with immediate effect by giving not less than 7 days written notice to the Vendor;
  - (b) to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Vendor at the Vendor's own risk and expense;
  - (c) to require the Vendor to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
  - (d) to refuse to accept any subsequent delivery of the Goods which the Vendor attempts to make;
  - (e) to recover from the Vendor any expenditure incurred by the Customer in obtaining substitute goods from a third party; and
  - (f) to claim damages for any additional costs, loss or expenses incurred by the Customer arising from the Vendor's failure to supply Goods in accordance with clause 3.1.
- 6.5 If the Vendor has supplied Services that do not comply with the requirements of clause 5.3(d) then, without limiting or affecting other rights or remedies available

to it, the Customer shall have one or more of the following rights and remedies:

- (a) to terminate the Contract with immediate effect by giving not less than 7 days written notice to the Vendor;
- (b) to return the Deliverables to the Vendor at the Vendor's own risk and expense;
- (c) to require the Vendor to provide repeat performance of the Services, or to provide a full refund of the price paid for the Services (if paid);
- (d) to refuse to accept any subsequent performance of the Services which the Vendor attempts to make;
- (e) to recover from the Vendor any expenditure incurred by the Customer in obtaining substitute services or deliverables from a third party; and
- (f) to claim damages for any additional costs, loss or expenses incurred by the Customer arising from the Vendor's failure to comply with clause 5.3(d).

6.6 These Conditions shall extend to any substituted or remedial services or repaired or replacement goods supplied by the Vendor.

6.7 The Customer's rights and remedies under the Contract are in addition to, and not exclusive of, any rights and remedies implied by statute and common law.

## **7. Customer's obligations**

7.1 The Customer shall:

- (a) provide the Vendor 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 Vendor may reasonably request.

## **8. Charges and payment**

8.1 The price for the Goods:

- (a) shall be the price set out in the Purchase Order at the front of this Contract, or if no price is quoted, the price as agreed between the parties; and
- (b) shall be inclusive of the costs of packaging, insurance, charges imposed or levied and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by the Customer.

8.2 The charges for the Services shall be set out in the Purchase Order, and shall be the full and exclusive remuneration of the Vendor 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 Vendor directly or indirectly incurred in connection with the performance of the Services.

8.3 In respect of the Goods, the Vendor shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Vendor 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 the relevant Purchase Order number.

8.4 In consideration of the supply of Goods and/or Services by the Vendor, upon receipt of a correctly rendered invoice the Customer shall have 45 days following the invoice date to pay the correctly invoiced amounts to a bank account nominated in writing by the Vendor. Invoices must display the approved purchase order number.

8.5 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 Vendor to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Vendor, pay to the Vendor 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.

8.6 If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party 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 8.6 will accrue each date at 3% a year above the Bank of England's base rate. Where a payment is disputed in good faith, interest is only payable after the dispute is resolved, on sums found or agreed to be due, from 5 days after the dispute is resolved until payment.

8.7 The Vendor shall maintain complete and accurate records of the time spent and materials used by the Vendor in providing the Services, and the Vendor shall allow the Customer to inspect such records at all reasonable times on request.

8.8 The Customer may at any time, without notice to the Vendor set off any liability of the Vendor to the Customer against any liability of the Customer to the Vendor, 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 8.8 shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

## **9. Intellectual Property Rights**

9.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any Customer Materials) shall be owned by the Vendor.

- 9.2 The Vendor grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy and modify the Deliverables (excluding Customer Materials) for the purpose of receiving and using the Services and the Deliverables.
- 9.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by 9.2.
- 9.4 The Customer grants the Vendor a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Vendor for the term of the Contract for the purpose of providing the Services to the Customer.
- 9.5 The Vendor acknowledges that all rights in the Customer Materials are and shall remain the exclusive property of the Customer.

## **10. Limitation on liability**

- 10.1 Neither party may benefit from limitations and exclusions set out in this clause 10 in respect of any liability arising from its deliberate default or fraud.
- 10.2 Nothing in this Contract limits any party's liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
  - (b) fraud or fraudulent misrepresentation;
  - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and
  - (d) any other liability which cannot be limited or excluded by applicable law.
- 10.3 Each party's total aggregate liability to the other party incurred or in connection with this Contract shall in no event exceed 200% of the amount of the Purchase Order (in each year).
- 10.4 Notwithstanding clause 10.3 neither party's liability shall be limited under this section 11 in respect of data protection, any infringement of that party's Intellectual Property Rights or any breach of Confidential Information by the other party under section 13.
- 10.5 Save for section 11 neither party shall be liable to the other party in relation to the following types of loss:
- (a) loss of profits;
  - (b) loss of sales or business;
  - (c) loss of agreements or contracts;
  - (d) loss of anticipated savings;
  - (e) loss of use or corruption of software, data or information;
  - (f) loss of or damage to goodwill; and/or
  - (g) indirect or consequential loss.
- 10.6 Each party shall use reasonable endeavours to mitigate any loss or damage suffered arising out of, or in connection with this Contract.

## **11. Indemnity**

- 11.1 The Vendor shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including 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:
- (a) 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);
  - (b) 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
  - (c) 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, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Vendor, its employees, agents or subcontractors.
- 11.2 This clause 11 shall survive termination of the Contract.

## **12. Insurance**

During the term of the Contract, the Vendor 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.

## **13. Confidentiality**

- 13.1 Each party undertakes that it shall not at any time and for a period of two years after termination or expiry of the Contract, disclose to any person any Confidential Information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 13.2.
- 13.2 Each party may disclose the other party's Confidential Information:
- (a) to its Affiliates, employees, officers, representatives, contractors, subcontractors or professional advisers who need to know such information for the purposes of exercising

the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its Affiliates, employees, officers, representatives, contractors, subcontractors or professional advisers to whom it discloses the other party's confidential information comply with this clause 13; and

- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

13.3 Neither party shall use the other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

13.4 On termination of this Contract, if requested by the Disclosing Party, and without delay, the Receiving Party of the Confidential Information must:

- (a) permanently erase any Confidential Information held on its computer and communications systems and devices used by it;
- (b) unless such identifying and deleting such copies of the Confidential Information is technically impractical and such copies are inaccessible without onerous technical means, permanently erase all the Confidential Information received from the Disclosing Party held by third party data storage or back-up server providers on behalf of the Recipient; and
- (c) destroy any hard copies of Confidential Information provided to it,

except that one copy of relevant Confidential Information (except Personal Data that is required by law to be permanently erased) may be kept by the Receiving Party if:

- (i) it is required to retain in law or to satisfy the requirements of a regulatory authority or the rules of any listing authority or stock exchange to which it is subject;
- (ii) it is necessary to be kept for corporate governance; or
- (iii) for the purpose of defending itself against any claims arising in connection with this Contract and in each case on the basis that the provisions of the Contract continue to apply to any such Confidential Information so retained.

#### 14. Compliance with relevant laws and policies

14.1 In performing its obligations under the Contract, the Vendor shall:

- (a) comply with all applicable laws, statutes, regulations and codes from time to time in force including but not limited to data protection, anti-slavery, anti-corruption, anti-bribery and anti-money laundering; and

- (b) comply with the Mandatory Policies listed in Schedule 1.

#### 15. Data Protection

15.1 In this clause 15 "Data Protection Legislation" shall mean all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR, the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.

15.2 Each party shall comply with its respective obligations under the Data Protection Legislation. This clause 15 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

15.3 The parties hereby acknowledge and agree that the Vendor shall not, and shall not be required to process any personal data as a processor of the Customer.

#### 16. Termination

16.1 Without affecting any other right or remedy available to it, the Customer may terminate the Contract:

- (a) with immediate effect by giving written notice to the Vendor if:
  - (i) there is a change of Control of the Vendor; or
  - (ii) the Vendor commits a breach of clause 14.1, or
- (b) for convenience by giving the Vendor not less than 1 months' written notice.

16.2 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:

- (a) the other party commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- (b) 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), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
- (c) 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; or

- (d) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

## 17. Consequences of termination

- 17.1 On termination of the Contract, the Vendor shall immediately deliver to the Customer all Deliverables whether or not then complete, and return all Customer Materials. If the Vendor fails to do so, then the Customer may enter the Vendor's premises and take possession of them. Until they have been returned or delivered, the Vendor shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 17.2 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.
- 17.3 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.

## 18. Force Majeure Event

- 18.1 Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control.
- 18.2 As soon as reasonably practicable after the start of the Force Majeure Event but no later than 14 Business Days after the affected party shall notify the not affected party of the Force Majeure Event and provide the following details in its notification:
  - (a) the date on which the Force Majeure Event started;
  - (b) its likely or potential duration; and
  - (c) the effect of the Force Majeure Event on its ability to perform any of its obligations under this Contract.
- 18.3 The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 4 weeks, the party not affected may terminate the Contract by giving not less than 30 days' written notice to the affected party.

## 19. General

### 19.1 Assignment and other dealings.

- (a) 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.

- (b) The Vendor shall not assign, transfer, mortgage, charge, 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.

- 19.2 **Subcontracting.** The Vendor may not subcontract any or all of its rights or obligations under the Contract without the prior written consent of the Customer. If the Customer consents to any subcontracting by the Vendor, the Vendor shall remain responsible for all the acts and omissions of its subcontractors as if they were its own.

### 19.3 Notices.

- (a) Any reference to notice or notify under this Contract shall be carried out in accordance with this clause 19.3.
- (b) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
  - (i) 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);
  - (ii) sent by email (or an address substituted in writing by the party to be served); or
  - (iii) unless otherwise not in writing the address for notice of the Vendor shall be the email address used in the ordinary course of business or the email address to which the Purchase Order number was sent.
- (c) Any notice shall be deemed to have been received:
  - (i) if delivered by hand, at the time the notice is left at the proper address;
  - (ii) 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; or
  - (iii) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- (d) This clause 19.3 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

- 19.4 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract



is deemed deleted under this clause 19.4 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

construed in accordance with the law of England and Wales.

19.11 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

**19.5 Waiver.**

- (a) Except as set out in clause 2.5 a waiver of any rights or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- (b) A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

19.6 **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. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

**19.7 Entire agreement.**

- (a) The Contract constitutes the entire agreement between the parties.
- (b) Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

**19.8 Third party rights.**

- (a) 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.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

19.9 **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.

19.10 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and

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

- The Mandatory Policies can be found on our website [www.eg-otm.com](http://www.eg-otm.com)
- Code of Conduct – from time to time and available on request.
- Supplier Questionnaire – from time to time and available on request.
- IT policies