

Terms and Conditions for the Purchase of Goods and/or Services

1. INTERPRETATION

1.1 In these Conditions, the following definitions apply:

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

Commencement Date: has the meaning set out in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 14.8.

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

Customer: Gemella Limited registered in England and Wales with company number 4115691 and its registered office at c/o Eversheds LLP, 70 Great Bridgewater Street, Manchester, M1 5ES.

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

Deliverables: 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 without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

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

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

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Order: the Customer's order 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, proposal or similar, or overleaf, as the case may be.

Services: the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification.

Service Specification: the description, specification, scope of work and/or proposal for Services agreed in writing by the Customer and the Supplier.

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

1.2 In these Conditions, the following rules apply:

- a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- a reference to a party includes its successors or permitted assigns;
- a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- a reference to writing or written includes faxes and e-mails.

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.

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

- the Supplier issuing written acceptance of the Order; or
- 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:

- correspond with their description and any applicable Goods Specification;
- be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) 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 12 months after delivery; and

(d) comply with all applicable statutory and regulatory requirements including those relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

3.2 The Supplier 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 shall have the right to inspect and test the Goods at any time before delivery.

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

3.5 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and the Customer shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

4. DELIVERY OF GOODS

4.1 The Supplier shall ensure that:

- the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
- 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
- if the Supplier requires the Customer to return any packaging material for the Goods to the Supplier, that fact is clearly stated on the delivery note. 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:

- on the date specified in the Order or, if no such date is specified, then within 14 days of the date of the Order;
- to the location set out in the Order or as reasonably requested by the Customer before delivery (**Delivery Location**);
- 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 on the completion of unloading of the Goods at the Delivery Location.

4.4 If the Supplier:

- delivers less than 95 per cent of the quantity of Goods ordered, the Customer may reject the Goods; or
- delivers more than 105 per cent 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 Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and the Customer accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.

4.5 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 6.1.

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

5. SUPPLY OF SERVICES

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

5.2 The Supplier shall meet any performance dates for the Services specified in the Order or notified to the Supplier by the Customer.

5.3 In providing the Services, the Supplier shall:

- co-operate with the Customer in all matters relating to the Services, and comply with all reasonable instructions of the Customer;
- perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- 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;
- ensure that the Services and Deliverables conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Customer;
- provide all equipment, tools and such other items as are required to provide the Services;
- 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 necessary licences and consents, and comply with all applicable laws and regulations and with all the Customer's supplier policies as set out at [url] from time to time including its Anti-Bribery & Corruption Policy, Anti-Slavery Policy and Code of Conduct;
- (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 Supplier (**Customer Materials**) in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not dispose 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 Supplier acknowledges that the Customer may rely or act on the Services;
- (k) comply with any service levels set out in the Order.

6. CUSTOMER REMEDIES

- 6.1 If the Supplier fails to deliver the Goods and/or perform the Services by the applicable date, the Customer shall, without limiting its other rights or remedies, 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) where the Customer has paid in advance for Services that have not been provided by the Supplier and/or Goods which have not been delivered by the Supplier, to have such sums refunded by the Supplier; and
 - (e) to claim damages for any additional costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to meet such dates.
- 6.2 If the Goods are not delivered by the applicable date, the Customer may, at its option, claim or deduct 5 per cent of the price of the Goods for each week's delay in delivery by way of liquidated damages, up to a maximum of 25 per cent of the total price of the Goods. If the Customer exercises its rights 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 Goods' late delivery.
- 6.3 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 3.1, then, without limiting its other rights or remedies, the Customer shall have one or more of the following rights, whether or not it has accepted the Goods:
- (a) 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;
 - (b) to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - (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 refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
 - (e) to recover from the Supplier 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 Supplier's failure to supply Goods in accordance with clause 3.1.
- 6.4 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.
- 6.5 The Customer's rights under the Contract are in addition to its rights and remedies implied by statute and common law.

7. CUSTOMER'S OBLIGATIONS

- 7.1 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;
 - (b) provide such information as the Supplier may reasonably request for the provision of the Services.

8. CHARGES AND PAYMENT

- 8.1 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 packaging, insurance and carriage of the Goods, unless otherwise agreed in writing by the Customer. 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 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.

- 8.3 Unless otherwise agreed in an Order, in respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery and, 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.
- 8.4 In consideration of the supply of Goods and/or Services by the Supplier, the Customer shall pay the invoiced amounts within the timeframe set out in the Order or, if no timeframe is specified, within 60 days of receipt of the correctly rendered invoice to a bank account nominated in writing by the Supplier.
- 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 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.
- 8.6 If the Customer fails to pay any amount properly due and payable by it under the Contract, the Supplier shall have the right to charge interest on the overdue amount at the rate of 2% per cent per annum above the base rate for the time being of Bank of England accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment provided that the Supplier first gives at least fourteen (14) days prior written notice of its intention to charge interest, and provided further that payment remains outstanding at the end of such notice period. This clause shall not apply to payments that the Customer disputes in good faith.
- 8.7 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.
- 8.8 The Customer may, without limiting its other rights or remedies, set off any amount owing to it by the Supplier against any amount payable by the Customer to the Supplier under the Contract.

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1 In respect of the Goods and any goods that are transferred to the Customer as part of the Services under this Contract, including without limitation the Deliverables, the Supplier warrants that it has full, clear and unencumbered title to all such items, and that at the date of delivery of such items to the Customer, it will have full and unrestricted rights to sell and transfer all such items to the Customer.
- 9.2 Subject to the rights of the Supplier and/or any third party licensor in respect of any pre-existing materials which are used by the Supplier in order to provide the Services (**Existing Materials**), the Customer shall be entitled to all Intellectual Property Rights in the Deliverables and other materials arising out of the provision of the Services (**Developed Materials**), and the Supplier hereby irrevocably, unconditionally and absolutely assigns to the Customer, with full title guarantee, and without restriction, all right, title and interest in and to all existing and future Intellectual Property Rights (including future copyright and design right) subsisting in or relating to all Developed Materials whether created, developed or produced before, on or after the Commencement Date, in all countries and with the right to sue for damages and other relief for past infringement of any of those Intellectual Property Rights. For the avoidance of doubt, the assignment under this Clause 9.2 shall take effect from the date on which the relevant Developed Material was or is created, developed or produced.
- 9.3 The Supplier shall procure that, where relevant, all moral rights in respect of the Developed Materials are waived by the relevant third parties and at the request and reasonable expense of the Customer, the Supplier shall do and/or shall procure that its consultants, employees, agents, contractors and sub-contractors shall do all such things and sign all such documents or instruments necessary in the opinion of the Customer to enable the Customer to obtain, defend and enforce its rights in the Developed Materials.
- 9.4 The Supplier grants to the Customer a perpetual, irrevocable, non-exclusive, worldwide and royalty-free licence to use any Existing Materials incorporated in any Developed Materials to such extent as is necessary to enable the Customer to make use of the Developed Materials.
- 9.5 The Customer grants to the Supplier a non-exclusive, revocable, royalty free licence to use the Customer Materials and the Developed Materials to the extent necessary to perform its obligations under the Contract.

10. INDEMNITY

- 10.1 The Supplier shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (whether direct or indirect including but not limited to loss of profit, loss of reputation), including any interest, penalties, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Customer as a result of or in connection with:
- (a) 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 Goods;
 - (b) any claim made against the Customer by a third party arising out of, or in connection with, the supply of the Goods or Services; and
 - (c) 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).
- 10.2 For the duration of the Contract and for a period of 12 months 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.

10.3 This clause 10 shall survive termination of the Contract.

11. CONFIDENTIALITY

11.1 A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by or on behalf of the other party (**Disclosing Party**) and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party may disclose the Disclosing party's confidential information: a) to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party; and b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.2 The Receiving Party shall not use the Disclosing Party's confidential information for any purpose other than to perform its obligations under the Contract.

11.3 This clause 11 shall survive termination of the Contract.

12. TERMINATION

12.1 Without limiting its other rights or remedies, the Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if:

- (a) the Supplier commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of receipt of notice in writing of the breach;
- (b) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- (e) the Supplier (being an individual) is the subject of a bankruptcy petition order;
- (f) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier;
- (h) a floating charge holder over the assets of the Supplier has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
- (j) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.1(b) to clause 12.1(i) (inclusive);
- (k) the Supplier suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business; or
- (l) the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

12.2 Without limiting its other rights or remedies, the Customer may terminate the Contract:

- (a) in respect of the supply of Services, by giving the Supplier 30 days written notice; and
- (b) in respect of the supply of Goods, with immediate effect by giving written notice to the Supplier,

in which case the Customer shall pay the Supplier fair and reasonable compensation for any work in progress at the date of termination but such compensation shall not include loss of anticipated profits or any consequential loss.

12.3 Where both Goods and Services are supplied, the Customer may terminate part of the Contract in respect of the Goods, or in respect of the Services, and the Contract shall continue in respect of the remaining supply.

13. CONSEQUENCES OF TERMINATION

13.1 On termination of the Contract or any part of it for any reason:

- (a) where the Services are terminated, 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 without limiting its other rights or remedies 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;

- (b) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and
- (c) clauses which expressly or by implication have effect or continue in effect after termination shall continue in full force and effect.

14. GENERAL

14.1 **Force majeure:** Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under the Contract if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable. If such event or circumstances prevent the Supplier from supplying the Goods and/or Services for more than 4 weeks, the Customer shall have the right, without limiting its other rights or remedies, to terminate this Contract with immediate effect by giving written notice to the Supplier.

14.2 **Assignment and subcontracting:** The Supplier shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Customer.

14.3 Notices:

- (a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
- (b) Any notice or communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.
- (c) For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

14.4 Waiver and cumulative remedies:

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

14.5 Severance:

- (a) If a court or any other competent authority finds that any provision (or part of any provision) of the Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

14.6 **No partnership:** Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

14.7 **Third parties:** A party who is not a party to the Contract shall not have any rights under or in connection with it.

14.8 **Variation:** Any variation, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the parties or their authorised representatives.

14.9 **Governing law and jurisdiction:** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.