

TERMS AND CONDITIONS

FOR THE SUPPLY OF GOODS AND/OR SERVICES

1. DEFINITIONS AND INTERPRETATION

1.1 In these Terms:

"Buyer"	means Newcastle Gateshead Initiative Limited (company number 02281242) whose registered office address is at 9th Floor, Baltic Place East South Shore Road, Gateshead, Tyne And Wear, NE8 3AE;
"Contract"	means each contract for the sale and purchase of the Goods and the supply and acquisition of the Services on these Terms;
"Goods"	means the goods described in the Order;
"Order"	means the Buyer's purchase order to which these Terms are annexed or which expressly incorporates these Terms;
"Price"	means the price of the Goods and/or the Services;
"Seller"	means the person, firm or company so described in the Order;
"Services"	means the services described in the Order;
"Specification"	any specification for the Goods and/or Services including any plans, strategies, drawings, data, description or other information; and
"Terms"	means these standard terms and conditions of purchase and includes any special terms agreed in writing between the Buyer and the Seller;

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 successors and permitted assigns.

1.4 Any reference to a statutory provision includes a reference to any modification or re-enactment of the provision from time to time in force and all subordinate instruments, orders or regulations made under it.

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

1.6 A reference to **writing** or **written** does not include email.

2. BASIS OF PURCHASE

2.1 Each Order constitutes an offer by the Buyer to purchase the Goods and/or acquisition of the Services subject to these Terms, which the Seller shall be obliged to accept.

2.2 These Terms apply to each Contract to the exclusion of any other terms and conditions on which any quotation has been given to the Buyer or subject to which the Order is accepted or purported to be accepted by the Seller. If any future contract is made with the Seller without reference to these Terms, such contract will be deemed to be subject to these Terms.

2.3 The Buyer is not obliged to place any Orders under the Contract and accordingly there are no minimum purchase obligations.

2.4 The Seller acknowledges that it is being appointed on a non-exclusive basis and the Buyer may at any time procure the Goods and/or Services from a third party at its sole discretion.

3. ORDERS

3.1 The quantity, quality and description of the Goods and the Services must be as specified in the Order and/or in any applicable Specification supplied by the Buyer to the Seller or agreed in writing by the Buyer.

3.2 Any Specification supplied by the Buyer to the Seller or specifically produced by the Seller for the Buyer in connection with a Contract, together with the copyright, design rights or any intellectual property rights (registered or unregistered) in a Specification, will be the exclusive property of the Buyer and delivered to the Buyer with the Goods or supply of the Services.

4. CHANGES

4.1 The Buyer may in its reasonable discretion from time to time change any details specified in its Order by written instructions. If any such change affects the time of performance or delivery or the costs involved, the Buyer will make an equitable adjustment to the delivery schedule and/or the Price.

4.2 The Buyer reserves the right to take any action in the event of an emergency or unforeseen situation arising in connection with the Contract and in particular may require the Seller to deliver the Goods and/or Services in advance of the time specified. The Seller must use all reasonable endeavours to comply with the Buyer's instructions in such an event.

5. PRICE AND PAYMENT

5.1 The Price of the Goods and the Services will be as stated in the Order and, unless otherwise stated, will be:

5.1.1 exclusive of any applicable VAT which will be payable by the Buyer subject to receipt of a VAT invoice; and

5.1.2 inclusive of all charges for shipping including carriage, insurance and delivery of the Goods to the Buyer.

5.2 If no Price is stated in the Order, the Price will be the lowest price currently quoted or charged at the time of the Order by the Seller for the Goods and the Services but may in no event be higher than the price most recently charged to the Buyer by the Seller for such Goods and Services.

5.3 No increase in the Price may be made without the prior written consent of the Buyer.

5.4 The Buyer will be entitled to any discount for prompt payment, bulk purchase, volume or purchase customarily granted by the Seller. The Seller must immediately notify the Buyer of any increase in any credit period and/or rates of discount which the Seller extends to its customers.

5.5 The Buyer will be entitled to deduct from the Price:

5.5.1 any costs or expenses incurred by the Buyer as a consequence of the Seller failing to correctly deliver the Goods and/or perform the Service; and

5.5.2 any amount which is disputed by the Buyer, pending resolution of such dispute.

5.6 Unless otherwise stated in the Order, the Seller may only invoice the Buyer on or after delivery of the Goods or supply of the Services with a separate invoice for each individual delivery or supply. Invoices will not be accepted unless they quote the number of the relevant Order. Invoices must be sent to the address specified by the Buyer from time to time.

- 5.7 Unless otherwise stated in the Order, the Buyer will pay the Price of the Goods or Services within [thirty (30) days after the end of the month] of receipt by the Buyer of a properly constituted invoice or, if later, after acceptance of the Goods and/or Services by the Buyer.
- 5.8 If any payment of the Price of the Goods and/or the Services (after any deductions made under Term 5.5) is overdue, interest at the rate of 2% above the base rate from time to time of the Bank of England will accrue on the unpaid amount of that payment from the date that that payment becomes overdue until date of payment. The provisions of this Term 5.8 provide a substantial contractual remedy for late payment of a debt under these Terms and as such are fair and reasonable.
- 5.9 The Buyer may at any time, without limiting any of its other rights or remedies, set off any liability of the Seller to the Buyer against any liability of the Buyer to the Seller.

6. DELIVERY

- 6.1 The Goods must be delivered to the address specified by the Buyer on the date or within the period stated in the Order during the Buyer's usual business hours. If the Buyer requires the Services to be performed at a specific location or time, the Buyer shall specify the address and the date or period in which the Services must be performed within the Order. The Buyer reserves the right to amend any delivery instructions. Delivery will be deemed to be made on receipt of the Goods and/or the Services by the Buyer in accordance with all terms of the Contract.
- 6.2 Where the date of delivery of the Goods or performance of the Services is to be specified after the placing of the Order, the Seller must give the Buyer reasonable notice of the specified date and all information reasonably required by the Buyer to enable it to accept delivery or performance.
- 6.3 Time of delivery of the Goods and of performance of the Services is of the essence of the Contract, but if for any reason the Buyer requests delivery or performance to be delayed, the Seller must agree to such request at no extra cost to the Buyer and the provisions of this Term 6 will apply to any such revised date for delivery or performance.
- 6.4 Delivery or performance by instalments will not be accepted by the Buyer unless previously agreed in writing. If Goods are to be delivered or the Services performed by instalments, the Contract will be treated as a single contract and not severable.
- 6.5 The Buyer will not be obliged to return to the Seller any packaging or packing materials for the Goods whether or not any Goods are accepted by the Buyer. Packaging will be returned at the Seller's expense upon request, but the Buyer accepts no responsibility for loss or damage to any packaging.

7. ACCEPTANCE

- 7.1 The Seller must supply the Buyer in good time with any instructions or other information required to enable the Buyer to accept delivery of the Goods and performance of the Services.
- 7.2 The Buyer will be entitled to reject all or any part of the Goods delivered or Services performed which are not in accordance with the Contract, including a right to reject where the defect is minor.
- 7.3 The Buyer will not be deemed to have accepted any Goods or Services until expiry of a reasonable time for inspection or testing following delivery or, if later, within a reasonable time after any latent defect has become apparent.
- 7.4 The Buyer will not be deemed to have accepted the Goods or Services by virtue of requiring the Seller to repair or replace Goods or to re-perform the Services under these Terms.

8. RISK AND PROPERTY

- 8.1 Risk of damage to or loss of the Goods pass to the Buyer upon delivery to the Buyer in accordance with the Contract.
- 8.2 Title to the Goods will pass to the Buyer upon delivery or (if earlier) once payment for the Goods has been made.

9. WARRANTIES

- 9.1 The Seller warrants to the Buyer that the Goods:
 - 9.1.1 will be of satisfactory quality within the meaning of the Sale of Goods Act 1979 and fit for any purpose held out by the Seller or made known to the Seller at the time the Order is placed;
 - 9.1.2 will be free from defects in design, material and workmanship;
 - 9.1.3 will correspond with any relevant Specification or sample;
 - 9.1.4 will not infringe any intellectual property rights of any person;
 - 9.1.5 will comply with all statutory requirements, regulations, bye-laws and EU directives and regulations relating to the manufacture and sale of the Goods, product safety, packaging, labelling, use, installation and maintenance and hazardous substances (including the appropriate British Standard or equivalent specification unless otherwise agreed); and
 - 9.1.6 will comply with the general requirements of safety in terms of risk presented to the health and safety of persons.
- 9.2 The Seller warrants to the Buyer that the Services:-
 - 9.2.1 will be performed by appropriately qualified and trained personnel, with due care and diligence and to such high standards of quality as it is reasonable for the Buyer to expect in all the circumstances;
 - 9.2.2 obtain and at all times maintain all licences and consents which may be required for the provision and receipt of the Services; and
 - 9.2.3 will comply with all statutory requirements, regulations, bye-laws and EU directives and regulations relating to the performance of the Services.
- 9.3 The warranties set out in this Term 9 will continue in force (notwithstanding acceptance by the Buyer of all or any part of the Goods or Services) for twelve (12) months from the date of first use of the Goods or completed performance of the Services in question.

10. RIGHTS AND REMEDIES

- 10.1 Each right or remedy of the Buyer is without prejudice to any other right or remedy of the Buyer, whether or not under the Contract.
- 10.2 If Goods are not delivered or if Services are not performed on the due date then the Buyer will be entitled to:-
 - 10.2.1 deduct from the Price or (if the Buyer has paid the Price) to claim from the Seller by way of liquidated damages for delay 0.5% of the Price for every week's delay up to a maximum of 10%;

- 10.2.2 cancel the Order (or any part) without liability to the Seller and purchase substitute items elsewhere and recover from the Seller any loss or additional costs incurred.
- 10.3 If the Buyer exercises its rights under Term 10.2, then if any other goods have been ordered or delivered and those other goods cannot, in the Buyer's reasonable opinion, be used as satisfactorily as intended without the Goods or Services rejected or cancelled, the Buyer may also cancel or return (at the Seller's cost and risk) all or any of those other goods. In such circumstances the Buyer will be entitled to recover from the Seller any loss the Buyer has incurred including the additional costs of acquiring replacements for those other goods from another supplier.

11. INDEMNITY

- 11.1 The Seller shall indemnify the Buyer in full and on an after tax basis against all liabilities, losses (whether direct or indirect and including loss of profits), damages (including special and consequential damages), costs and expenses (including legal expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with:
- 11.1.1 breach of any warranty given by the Seller in relation to the Goods and/or the Services;
 - 11.1.2 any claim or alleged claim that the Goods and/or the Services infringe the intellectual property rights of any third party except to the extent that the claim or alleged claim arises from compliance with any Specification supplied by the Buyer;
 - 11.1.3 any claim or alleged claim made against the Buyer in respect of any breach or alleged breach by the Buyer of any statutory provision, regulation or other rule of law in force from time to time (including any applicable law in force from time to time that relates to the protection of personal data, including the Data Protection Act 1998) and arising from the acts or omissions of the Seller or its employees, agents or subcontractors;
 - 11.1.4 any liability under the Consumer Protection Act 1987 in respect of the Goods;
 - 11.1.5 any liability under the General Product Safety Regulations 2005 in respect of the Goods and any claims which might arise as a result of the Goods being a risk to health and safety/unsafe;
 - 11.1.6 any act or omission of the Seller or its employees, agents or sub-contractors in supplying, delivering and installing the Goods or in performing the Services, including any injury, loss or damage to persons caused or contributed to by any of their negligence or by faulty design, workmanship or materials (except to the extent that the injury, loss or damage is caused by the negligent act or omission of the Buyer).
- 11.2 This Term 11 will survive termination of the Contract

12. FORCE MAJEURE

- 12.1 Neither the Seller nor the Buyer will be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform or any hindrance in performance of, any of its obligations in relation to the Goods or Services, if the delay, failure or hindrance was beyond that party's reasonable control.
- 12.2 Illness or shortage of the Seller's staff, agents or subcontractors, failure or delay by any of the Seller's suppliers to supply goods, services or materials and breach of the Seller's warranties under Term 9 will not be regarded as causes beyond the Seller's reasonable control.

13. INSURANCE

The Seller must at all times maintain insurance cover with a reputable insurer against its liability under the Contract and produce the policy and latest premium receipt to the Buyer on demand.

14. TERMINATION

- 14.1 The Buyer may cancel any Order in respect of all or part only of the Goods or Services by giving not less than seven (7) days' notice in writing to the Seller at any time before delivery or performance without incurring any liability to the Seller other than to pay for Goods or Services already delivered at the time of such notice.
- 14.2 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other Party if:
- 14.2.1 the other Party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within [thirty (30)] days of that Party being notified in writing to do so;
 - 14.2.2 the other Party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - 14.2.3 the other Party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - 14.2.4 the other Party's financial position deteriorates to such an extent that in the terminating Party's opinion the other Party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 14.3 In the event that any delay, failure or hindrance continues for a period of fourteen (14) days or more, the Buyer may terminate the Contract and/or any Order upon notice in writing to the Seller.
- 14.4 If delivery or performance is incomplete then, without prejudice to its other rights or remedies, the Buyer may accept or reject the Goods or Services delivered or performed (in whole or in part) and cancel or vary the balance of the Order.
- 14.5 The Seller undertakes to inform the Buyer of the occurrence of an event referred to in Term 14.2 in relation to it (including without limitation the filing of a notice of intention to appoint an administrator) and if it anticipates that such an event might occur in relation to it.
- 14.6 Upon termination of this Contract, any outstanding Orders which have yet to be fully performed shall also terminate unless otherwise required in writing by the Buyer.
- 14.7 Any termination of the Contract or any Order shall not affect any rights or remedies a party may have or any liabilities which have accrued prior to the date of termination.
- 14.8 The provisions of this Contract which expressly or by implication continue to have effect after termination shall continue to do so, no matter how the Contract is terminated.

15. CONFIDENTIALITY

- 15.1 Each Party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by this Term.
- 15.2 Each Party may disclose the other Party's confidential information:
- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the Party's rights or carrying out its obligations under or in connection with this Contract. Each Party shall ensure that

its employees, officers, representatives or advisers to whom it discloses the other Party's confidential information comply with this Term; and

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

15.3 No Party shall use any other Party's confidential information for any purpose other than to perform its obligations under this Contract.

16. ANTI BRIBERY

16.1 The Seller shall:

16.1.1 comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);

16.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

16.1.3 promptly report to the Buyer any request or demand for any undue financial or other advantage of any kind received by the Seller in connection with the performance of this Contract;

16.1.4 if requested by the Buyer within 3 months of the date of this Contract, and annually thereafter, certify to the Buyer in writing signed by an officer of the Seller, compliance with this *Term* by the Seller and all persons associated with it. The Seller shall provide such supporting evidence of compliance as the Buyer may reasonably request.

16.2 The Seller shall ensure that any person associated with the Seller who is performing services in connection with this Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Seller in this Term (**Relevant Terms**). The Seller shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Buyer for any breach by such persons of any of the Relevant Terms.

16.3 Breach of this Term shall be deemed a material breach under Term 14.2.1.

16.4 For the purpose of this Term, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this Term a person associated with the Seller includes but is not limited to any subcontractor of the Seller.

17. GENERAL

17.1 Each Order is personal to the Seller and the Seller may not sub-contract, transfer, assign, charge, dispose of or deal with in any manner (or purport to do the same) any of its rights or obligations under the Contract and/or any Order without obtaining the Buyer's prior written consent.

17.2 Any notice to be given by either party to the other under these Terms must be in writing addressed to that other party at its registered office or principal place of business or such other address as may have been notified for these purposes.

17.3 Notices must be delivered personally or sent by first class post and notices addressed to the Buyer must be marked for the attention of **[Sarah Stewart]**.

- 17.4 A notice is deemed to have been received:-
- 17.4.1 if delivered personally, at the time of delivery;
 - 17.4.2 if sent by prepaid first class post, on the second working day after posting (exclusive of the day of posting).
- 17.5 Any waiver by the Buyer of any breach is not a waiver of any subsequent breach.
- 17.6 Failure or delay by the Buyer in enforcing or partially enforcing any provision of the Contract is not a waiver of any of its rights under the Contract.
- 17.7 If any provision of these Terms is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and the remainder of the provision in question will not be affected.
- 17.8 The Contract and any disputes or claims (including non-contractual disputes or claims) arising out of or in connection with the Contract are governed by the laws of England and Wales, and the parties submit to the exclusive jurisdiction of the English Courts.
- 17.9 The Contract does not create, confer or purport to confer any benefit or right enforceable by any person not a party to it by virtue of the Contracts (Rights of Third Parties) Act 1999.