

# RIGHTON LIMITED

## CONDITIONS OF PURCHASE

### 1. INTERPRETATION

#### 1.1 In these Conditions:

##### 1.1.1 The following expressions have the following meanings:

**Buyer** means Righton Limited a private limited company registered in England with limited liability under company number 143411 whose registered office is at 25 High Street, Cobham, Surrey KT11 3DH;

**Conditions** means the standard terms and conditions of purchase set out in this document;

**Contract** means the contract formed in accordance with clause 2.2 for the supply of the Goods and/or Services, on the terms set out in these Conditions and any documents referred to in them and any special terms agreed in Writing between the parties;

**Deliverables** means all documents, products, pictures, drawings, plans and other materials developed by or on behalf of the Seller as part of or in connection with the Services;

**Delivery Address** means the address stated on the Order or, where none is stated, the address agreed between the parties;

**Goods** means the goods or any part of them set out in the Order;

**Intellectual Property Rights** means patents, rights to inventions, copyright, trademarks, rights in confidential information, domain names, goodwill, database rights and all other registered or unregistered intellectual property rights and similar or equivalent rights which subsist or will subsist now or in future in any part of the world;

**Order** means the Buyer's order for the Goods and/or Services as set out in the Buyer's purchaser order form attached which shall be subject to these Conditions;

**Price** means the price of the Goods and/or the charge for the Services;

**Seller** means the person so described in the Order;

**Services** means the services (or any part of them) described in the Order, including any Deliverables;

**Specification** means the specification for the Goods and/or Services set out or referred to in the Order or agreed in writing between the parties, including any relevant drawings, plans or written descriptions;

**Writing** includes fax, email and comparable means of communication.

##### 1.1.2 Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

- 1.1.3 The headings in these conditions are for convenience only and shall not affect their interpretation.
- 1.1.4 A person includes a natural person, corporate or unincorporated body.
- 1.1.5 A reference to the "parties" is to the Buyer and the Seller and to a "party" is to either of them.
- 1.1.6 A phrase preceded by the words "including", "include", "in particular" or any similar words or expressions shall be construed as illustrative and shall not limit the sense of the preceding words.
- 1.1.7 "Holding company" and "subsidiary" have the meanings assigned to them in the Companies Act 2006.
- 1.1.8 In relation to a company "group" means that company, any company of which it is a subsidiary (its holding company) and any other subsidiary of such holding company.

## **2. BASIS OF PURCHASE**

- 2.1 The Order constitutes an offer by the Buyer to purchase the Goods and/or acquire the Services from the Seller in accordance with the terms of the Order and these Conditions.
- 2.2 The Order shall be deemed to be accepted on the earlier of the Seller accepting the Order in Writing or doing anything consistent with fulfilling the Order, at which point the Contract shall come into existence.
- 2.3 The Buyer may revoke the Order any time before it is accepted by the Seller in Writing and the Order will lapse unless unconditionally accepted by the Seller within 7 days of its date.
- 2.4 The Conditions shall apply to the Contract to the exclusion of any terms and conditions that the Seller might seek to impose or incorporate or which are implied by trade, practice or course of dealing.
- 2.5 No variation to the Order or these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.
- 2.6 The Contract constitutes the entire agreement between the parties to the exclusion of any other agreement, arrangement or understanding which is made or purported to be made between the Seller and the Buyer, whether written or oral in relation to its subject matter.
- 2.7 Each party agrees that it has not relied on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in the Contract and that its only rights and remedies in relation to any representation or warranty set out in the Contract are limited to damages for breach of contract.

## **3. SPECIFICATIONS AND REQUIREMENTS**

- 3.1 The Goods and Services shall correspond with their description in any applicable Specification.

- 3.2 Any Specification supplied by the Buyer to the Seller, or specifically produced by the Seller for the Buyer, in connection with the Contract, together with the Intellectual Property Rights in the Specification, shall be the exclusive property of the Buyer. The Seller shall not disclose to any third party or use any such Specification, other than for the purpose of the Contract.
- 3.3 In performing its obligations under the Contract, the Seller will
- 3.3.1 comply with all applicable regulations or other legal requirements;
  - 3.3.2 use the best quality goods, materials, standards and techniques;
  - 3.3.3 not do or omit to do anything that might cause the Buyer to lose any licence, authority, consent or permission it relies upon in connection with its business and the Seller acknowledges that the Buyer may rely on the performance of the Services or supply of the Goods;
  - 3.3.4 observe any health and safety rules and regulations and any other security requirements applicable at any of the Buyer's premises;
  - 3.3.5 use sufficient number of personnel who are suitably skilled and experienced;
  - 3.3.6 provide all equipment, tools and vehicles and such other items as are required to provide the Services or supply the Goods;
  - 3.3.7 obtain and at all times maintain all necessary licences and consents; and
  - 3.3.8 cooperate with the Buyer in all matters.
- 3.4 The Seller shall give the Buyer reasonable notice of any instructions or other information required to enable the Buyer to accept delivery of the Goods and/or performance of the Services.
- 3.5 The Seller shall hold all materials, equipment and tools, drawings, specification and data supplied by the Buyer to the Seller (**Buyer Materials**) in safe custody at its own risk, maintain the Buyer Materials in good condition until returned to the Buyer, and not dispose or use the Buyer Materials other than in accordance with the Buyer's written instructions or authorisation.
- 3.6 The Seller shall maintain in force, with reputable insurance company insurances sufficient to cover the Seller's potential liability under the Contract and for a period of not less than six years thereafter, and shall, on the Buyer's request, produce both the insurance certificate(s) giving details of cover and the receipt for the current year's premium.

#### 4. PRICE OF THE GOODS AND SERVICES

- 4.1 The Price shall be as stated in the Order and, unless otherwise so stated, shall be:
- 4.1.1 exclusive of any applicable value added tax (which shall be payable by the Buyer subject to receipt of a VAT invoice); and
  - 4.1.2 inclusive of all charges for packaging, packing, shipping, carriage insurance and delivery of the Goods to the Delivery Address and any duties, imposts, levies other than value added tax.

- 4.2 Where the Price of the Services is to be calculated on a time and materials basis, the Seller shall maintain complete and accurate records of the time spent and materials used and allow the Buyer to inspect such records at all reasonable times on request and to take copies of them.
- 4.3 The Price for the Services, as stated in the Order, shall be the full and exclusive remuneration of the Seller in respect of the Services and, unless otherwise agreed in writing by the Buyer, shall include every cost and expense of the Seller in connection with the Services.
- 4.4 No increase in the price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Buyer in Writing.
- 4.5 The Buyer shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Seller whether or not shown on its own terms and conditions of sale.

## **5. TERMS OF PAYMENT**

- 5.1 The Seller shall be entitled to invoice the Buyer on or at any time after delivery of the Goods and/or performance of the Services, as the case may be, and each invoice shall quote the number of the Order.
- 5.2 Unless otherwise stated in the Order or agreed in writing between the parties, the Buyer shall pay the Price within [STATE NUMBER OF DAYS] days after the end of the month of receipt by the Buyer of a proper invoice or, if later, after acceptance of the Goods or Services in question by the Buyer.
- 5.3 Unless otherwise set out in the Order or agreed in writing between the parties, payment shall be made to a bank account nominated in writing by the Seller.
- 5.4 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, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.
- 5.5 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 amount at the rate of 3% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments that the defaulting party disputes in good faith.

## **6. SUPPLY AND DELIVERY OF GOODS**

- 6.1 The Buyer shall have the right to inspect and test the Goods any time before delivery, and the Seller shall provide the Buyer with all access and facilities reasonably required for such inspection or testing. No inspection or test carried

out by the Buyer shall relieve the Seller of its responsibilities under or in relation to the Contract.

- 6.2 If as a result of inspection or testing the Buyer is not satisfied that the Goods will comply in all respects with the Contract, and the Buyer so informs the Seller within a reasonable period of time from inspection or testing, the Seller shall immediately take such steps as are necessary to ensure compliance. The Buyer shall have the right to conduct further inspections and tests after the Seller has carried out its remedial actions.
- 6.3 The Seller shall:
  - 6.3.1 deliver the Goods to the Delivery Address, on the date specified in the Order or otherwise agreed between the parties and during the Buyer's usual business hours;
  - 6.3.2 ensure that a packing note quoting the number of the Order accompanies each delivery or consignment of the Goods and is displayed prominently;
  - 6.3.3 mark the Goods with the Buyer's instructions and any applicable regulations or requirements of the carrier; and
  - 6.3.4 ensure that the Goods are properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course.
- 6.4 Delivery of the Goods shall be complete upon completion of unloading of the Goods at the Delivery Address.
- 6.5 Time for delivery of the Goods is of the essence of the Contract.
- 6.6 If the Seller delivers more or less than the quantity of Goods ordered, the Buyer may reject all of the Goods or reject any excess Goods, in which case a pro rata adjustment shall be made to the Price.
- 6.7 The Seller shall give the Buyer reasonable notice of any instructions or other information required to enable the Buyer to accept delivery of the Goods and/or performance of the Services.
- 6.8 The Buyer shall 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.
- 6.9 The Buyer shall be entitled to reject any Goods delivered which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods until the Buyer has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.
- 6.10 The Seller shall not deliver the Goods by instalments without the prior written consent of the Buyer. If the Goods are to be delivered by instalments, the Contract will be treated as a single contract and not severable. Any failures or delays by the Seller in relation to one instalment shall entitle the Buyer to exercise its remedies under these Conditions.

## **7. PERFORMANCE OF SERVICES**

- 7.1 The Seller shall perform the Services at the location and on the dates or during the period specified in the Order or otherwise agreed in writing between the parties.
- 7.2 The Seller shall meet any performance dates for the Services specified in the Order or notified to the Seller by the Buyer, acting reasonably.
- 7.3 Time for performance of the Services shall be of the essence of the Contract.

## **8. RISK AND PROPERTY**

- 8.1 Risk of damage to or loss of the Goods shall pass to the Buyer upon completion of delivery to the Buyer in accordance with the Contract.
- 8.2 The property in the Goods shall pass to the Buyer upon the earlier of completion of delivery of the Goods and the payment by the Buyer of the Price of the Goods.

## **9. WARRANTIES AND LIABILITY**

- 9.1 The Seller warrants and represents to the Buyer that the Goods shall:
  - 9.1.1 correspond with their description and any applicable Specification;
  - 9.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Seller or made known to the Seller in Writing at the time the Order is placed;
  - 9.1.3 be free from defects in design, material and workmanship and shall remain so for a period of 12 months after delivery;
  - 9.1.4 correspond with any relevant Specification or sample; and
  - 9.1.5 comply with all statutory requirements and regulations relating to the sale of the Goods.
- 9.2 The Seller warrants and represents to the Buyer in relation to the Services that:
  - 9.2.1 the Services shall conform with any applicable Specification;
  - 9.2.2 the Deliverables shall be fit for any purpose held out by the Seller or made known to the Seller in Writing at the time the Order is placed and free from defects in workmanship, installation and design;
  - 9.2.3 it shall perform the Services with the best care, skill and diligence in accordance with best practice and standards of quality as are found in the Seller's industry, profession or trade; and
  - 9.2.4 it shall use the best quality goods, materials, standards and techniques.
- 9.3 The Seller shall indemnify the Buyer in full against all liability, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with:
  - 9.3.1 breach of any warranty given by the Seller in relation to the Goods and/or Services;

- 9.3.2 any claim made against the Buyer 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, to the extent that the claim is attributable to the acts or omissions of the Seller, its employees, agents or subcontractors;
- 9.3.3 any liability under the Consumer Protection Act 1987 in respect of the Goods;
- 9.3.4 any act or omission of the Seller or its employees, agents or subcontractors in supplying, delivering and installing the Goods;
- 9.2.5 any act or omission of any of the Seller's employees, agents or subcontractors in connection with the performance of the Services; and
- 9.2.6 any breach of any of the provisions under clause 13.

## 10. REMEDIES

- 10.1 Without prejudice to any other remedy, if any Goods and/or Services are not in accordance with the Contract in any way, including, but not limited to, where Goods and/or Services are defective, do not comply with the Specification or are not supplied or delivered by the delivery date, the Buyer shall be entitled to any one or more of the following remedies, whether or not it has accepted the Goods and/or the Services:
  - 10.1.1 to terminate the Contract with immediate effect on notice to the Seller;
  - 10.1.2 to reject the Goods (in whole or in part) and to return them to the Seller at the Seller's own risk and expense and/or to refuse to accept any subsequent performance of the Services which the Seller attempts to make;
  - 10.1.3 to require the Seller to repair or replace any rejected Goods, or to provide a full refund of the Price of the rejected Goods (if paid);
  - 10.1.4 to require the Seller to re-perform any rejected Services or to provide a full refund of the Price of the rejected Services (if paid);
  - 10.1.5 to refuse to accept any subsequent delivery of the Goods (in full or by way of instalment) or performance of the Services which the Seller attempts to make;
  - 10.1.6 to recover from the Seller any costs incurred by the Buyer in obtaining substitute goods and/or substitute services from a third party;
  - 10.1.7 to claim damages for any other costs, loss or expenses incurred by the Buyer which are in any way attributable to the Seller's failure to carry out any of its obligations, including a failure to meet any agreed dates, under the Contract;
  - 10.1.8 where the Buyer has paid in advance for Services that have not been provided by the Seller, to have such sums refunded by the Seller; and/or
  - 10.1.9 unless agreed in Writing by the Buyer and the Seller, if the Goods and/or Services are not delivered on the due date, the Buyer shall be entitled to deduct from the Price or (if the Buyer has paid the Price) to claim from

the Seller by way of liquidated damages for delay, one percent of the Price for every week's delay, up to a maximum of ten percent of the Price.

- 10.2 These Conditions shall apply to any substituted or remedial services or repaired or replacement goods supplied by the Seller.

## 11. PROPERTY RIGHTS

- 11.1 The Seller warrants that it has clear and unencumbered title to all Goods and Deliverables transferred to the Buyer under the Contract and that at the date of delivery of such items, it will have full and unrestricted rights to sell and transfer such items to the Buyer.
- 11.2 The Seller assigns to the Buyer with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables. The Seller shall, at the Buyer's request, agree to such further acts and execute such other documents as the Buyer may require to secure the assignment to it of those Intellectual Property Rights.
- 11.3 All Buyer Materials shall remain the exclusive property of the Buyer.

## 12. CONFIDENTIALITY

- 12.1 A party (the **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 the other party (the **disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The terms of the Contract and the contents of the Order shall constitute confidential information of the Buyer.
- 12.2 The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.
- 12.3 This clause shall survive termination of the Contract.

## 13. ANTI-BRIBERY

- 13.1 The Seller shall:
- 13.1.1 comply with all applicable laws, statutes, regulations and binding codes of practice in relation to anti-bribery and anti-corruption (**Relevant Requirements**);



- 13.1.2 comply with any of the Buyer's anti-bribery and anti-corruption policies as are notified to it by the Buyer;
  - 13.1.3 have in place and maintain throughout the term of the Contract adequate policies and procedures to ensure compliance with the Relevant Requirements and will enforce them appropriately;
  - 13.1.4 procure that any person associated with it (within the meaning of the Biberly Act 2010) who performs services or provides goods in connection with the Contract complies with the Relevant Requirements; and
  - 13.1.5 promptly report to the Buyer any demand for any undue financial or other advantage of any kind received by the Seller in connection with the Contract and cooperate with any investigations the Buyer wishes to undertake.
- 13.2 Without prejudice to the general requirements of clause 13.1, the Seller shall not, and shall procure that its officers, employees, contractors and other personnel and representatives do not, in relation to the Contract or any other agreement between the parties, offer any undue or other financial advantage to any person. The Seller warrants that it has not, prior to the date of the Contract, offered or given any undue financial or other advantage of any kind to any person in connection with the Contract or other arrangement or agreement between the parties.
- 13.3 The Seller agrees that its books, records and all accounts shall accurately reflect any and all transactions with the Buyer whether under this Contract or otherwise, and that the Buyer (and the Buyer's authorised representatives) shall have the right to inspect, audit and to take copies of the Seller's books, records and accounts at any time on prior written notice.
- 13.4 A breach of this clause by the Seller shall be deemed to be a material breach of the Contract.

#### **14. DATA PROTECTION**

- 14.1 In this clause "data controller", "data processor", "data protection principle", "data subject", "personal data", "process" and "processing" shall have the meanings assigned to those terms in the Data Protection Act 1998 the **DPA**).
- 14.2 If and to the extent that the Services involve the processing by the Seller of any personal data of which the Buyer is the data controller then the Seller shall:
- 14.2.1 only process such personal data in accordance with the Buyer's instructions and for the purpose of supplying the Services;
  - 14.2.2 not transfer any such personal data outside the European Economic Area without the prior written consent of the Buyer; and
  - 14.2.3 take appropriate technical and organisational measures against the unauthorised or unlawful processing of personal data and against the accidental loss or destruction of, or damage to, personal data to ensure the Buyer's compliance with the seventh data protection principle.

## 15. TERMINATION

- 15.1 The Buyer shall be entitled to cancel the whole or any part of an Order by giving notice to the Seller at any time prior to delivery or performance whereupon the Seller shall discontinue all work on the Order and the Buyer shall pay to the Seller fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss.
- 15.2 The Buyer shall be entitled to terminate the Contract without liability to the Seller by giving notice to the Seller at any time if:
- 15.2.1 the Seller commits a material breach of the Contract which is irremediable or which it fails to remedy within 7 days of being notified in writing of the breach by the Buyer;
  - 15.2.2 a winding-up order or bankruptcy order is made against the Seller; or
  - 15.2.3 the Seller passes a resolution or makes a determination for it to be wound up (without a declaration of solvency/except for the purposes of amalgamation or reconstruction, the terms of which have been previously approved in writing by the other party); or
  - 15.2.4 the Seller has appointed to it an administrator or an administrative receiver; or
  - 15.2.5 being a partnership, in addition to the above, the Seller suffers bankruptcy orders being made against all of its partners; or
  - 15.2.6 an incumbrancer takes possession, or a receiver, manager or administrative receiver is appointed, of the whole or any part of the Seller's assets;
  - 15.2.7 the Seller ceases or suspends payment of any of its debts, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
  - 15.2.8 any arrangement, compromise or composition in satisfaction of its debts is proposed or entered into by the Seller; or
  - 15.2.9 any event analogous to those described in clauses 15.2.2 to 15.2.8 inclusive occurs in relation to the Seller in any jurisdiction in which that other party is incorporated, resident or carries on business;
  - 15.2.10 the Seller suspends or ceases, or threatens to suspend, or cease, to carry on all or a substantial part of its business;
  - 15.2.11 the Seller's financial position deteriorates to such an extent that in the Buyer's opinion the Seller's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
  - 15.2.12 The Seller (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.
- 15.3 On termination of the Contract for any reason:

- 15.3.1 the Seller shall immediately return to the Buyer any confidential information belonging to the Buyer and any Buyer Materials which is in the Seller's possession;
- 15.3.2 the accrued rights and remedies of each party shall be unaffected;
- 15.3.3 clauses of these Conditions which are expressly or by implication intended to survive to termination shall continue in full force and effect.

## **16. GENERAL**

- 16.1 The Buyer may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of the Group, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Buyer.
- 16.2 Any member of the Buyer's Group may enforce the terms of a Contract subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999. No other third party may enforce the terms of the Contract under that Act.
- 16.3 The Order is personal to the Seller and the Seller shall not assign or transfer or purport to assign or transfer to any other person any of its rights or sub-contract any of its obligations under the Contract.
- 16.4 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 16.5 The Buyer can only waive a breach of the contract expressly and in Writing. Failure or delay by the Buyer in enforcing any provision of any Contract shall not be construed as a waiver of any of its rights under the Contract. No waiver by the Buyer of any breach of the Contract by the Seller shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 16.6 Each right or remedy of the Buyer under the Contract is without prejudice to any other right or remedy of the Buyer whether under the Contract or not.
- 16.7 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 16.8 The Contract shall be governed by the laws of England, and the Seller agrees to submit to the exclusive jurisdiction of the English courts in relation to any dispute arising under or in connection with the Contract.

## **17. IMPORT TERMS**

- 17.1 Where the Goods are supplied for import into the United Kingdom, the following provisions shall (subject to any special terms and conditions agreed in Writing between the Buyer and the Seller) apply:

- 17.1.1 the Goods shall be delivered (FOB) (within the meaning of Incoterms 2010) to the air or sea port of shipment identified in the Order.
- 17.1.2 the Seller shall be responsible for arranging export clearance for the Goods.
- 17.1.3 the Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the United Kingdom and for the payment of any duties on them.